# LAWS AND RESOLUTIONS

# OF THE

# STATE OF MONTANA

## Enacted by the

## FIFTY-FIFTH LEGISLATURE
## IN REGULAR SESSION

**Held at Helena, the Seat of Government**
**January 6, 1997, through April 23, 1997**

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HeinOnline -- 1997 vol. I [i] 1997

# Table of Contents

**Volume I**
Officers and Members of Montana Senate
Officers and Members of Montana House
Title Contents of Bills and Resolutions
Chapters 1 - 266

**Volume II**
Chapters 267 - 482

**Volume III**
Chapters 483 - 552
Senate Joint Resolutions
Senate Resolutions
House Joint Resolutions
House Resolutions
Ballot Issues
Index to Appropriations
General Index
Tables
Code Sections Affected
Session Laws Affected
Senate Bill to Chapter Number
House Bill to Chapter Number
Chapter Number to Bill Number
Effective Dates
By Chapter Number
By Date
Session Law to Code

## Volume I

Officers and Members of Montana Senate . . . . . i
Officers and Members of Montana House . . . . . iii
Title Contents of Bills and Resolutions
Senate and House Bills . . . . . v
Senate Joint Resolutions . . . . . c
Senate Resolutions . . . . . ci
House Joint Resolutions . . . . . ciii
House Resolutions . . . . . cvi
Chapters 1 - 266 . . . . . 1

# OFFICERS AND MEMBERS OF THE MONTANA SENATE 1997

50 Members

34 Republicans 16 Democrats

## OFFICERS

President . . . . . Gary Aklestad
President Pro Tempore . . . . . Bruce Crippen
Majority Floor Leader . . . . . John Harp
Majority Whip . . . . . Mike Foster
Minority Floor Leader . . . . . Mike Halligan
Minority Whip . . . . . Eve Franklin
Secretary of the Senate . . . . . Rosana Skelton

## MEMBERS

| Name | Preferred Mailing Address | Dist No | Party |
|---|---|---|---|
| Aklestad, Gary C. | PO Box 32 Galata MT 59444-0032 | 44 | Republican |
| Baer, Larry L. | 6093 Montana Hwy 35 Bigfork MT 59911-6062 | 38 | Republican |
| Bartlett, Sue | 416 N Beattie St Helena MT 59601-3701 | 27 | Democrat |
| Beck, Thomas A. "Tom" | 792 Yellowstone Trl Deer Lodge MT 59722-9730 | 28 | Republican |
| Benedict, Steve | PO Box 668 Hamilton MT 59840-0668 | 30 | Republican |
| Bishop, Al | 3020 Leeann Blvd Billings MT 59102-0442 | 9 | Republican |
| Brooke, Vivian M. | 1610 Madeline Ave Missoula MT 59801-5806 | 33 | Democrat |
| Burnett, James H. "Jim" | HC 50 Box 4460 Luther MT 59051-9701 | 12 | Republican |
| Christiaens, B.F. "Chris" | 600 36th Street South Great Falls MT 59405-3508 | 23 | Democrat |
| Cole, Mack | Box 286 Hysham MT 59038-0286 | 4 | Republican |
| Crippen, Bruce D. | PO Box 80747 Billings MT 59108-0747 | 10 | Republican |
| Crismore, William S. | 237 Airfield Rd Libby MT 59923-9301 | 41 | Republican |
| DePratu, Bob | PO Box 1217 Whitefish MT 59937-1217 | 40 | Republican |
| Devlin, Gerry | PO Box 186 Terry MT 59349-0186 | 2 | Republican |
| Doherty, Steve | 1531 3rd Ave SW Great Falls MT 59404-2715 | 24 | Democrat |
| Eck, Dorothy | 10 W Garfield St Bozeman MT 59715-5502 | 15 | Democrat |
| Emerson, C.A. "Casey" | King Tool Inc, 5350 Love Ln Bozeman MT 59715-9408 | 14 | Republican |
| Estrada, Sharon | 528 Clark Billings MT 59101-1725 | 7 | Republican |
| Foster, Mike | 414 N Cedar St Townsend MT 59644-2100 | 20 | Republican |
| Franklin, Eve | PO Box 7208 Great Falls MT 59406-7208 | 21 | Democrat |
| Gage, Delwyn | PO Box 787 Cut Bank MT 59427-0787 | 43 | Republican |
| Glaser, Wm. E. "Bill" | 1402 Indian Creek Rd Huntley MT 59037-9348 | 8 | Republican |
| Grosfield, Lorents | HC 87 Box 2145 Big Timber MT 59011-9703 | 13 | Republican |
| Halligan, Mike | 269 W Front St Missoula MT 59802-4301 | 34 | Democrat |
| Hargrove, Don | PO Box 1 Belgrade MT 59714-0001 | 16 | Republican |
| Harp, John G. | 53 Willow Dr Kalispell MT 59901-2834 | 42 | Republican |
| Hertel, John R. | RR 1 Bex 30 Moore MT 59464-9703 | 47 | Republican |
| Holden, Ric | 164 Road 253 Glendive MT 59330-9438 | 1 | Republican |
| Jabs, Reiny | HCR 36 Hardin MT 59034-9613 | 3 | Republican |
| Jenkins, Loren | Box 9 Big Sandy MT 59520-0009 | 45 | Republican |
| Jergeson, Greg | Box 1568 Chinook MT 59523-1568 | 46 | Democrat |
| Keating, Thomas F. | PO Box 20522 Billings MT 59104-0522 | 5 | Republican |
| Lynch, John "J.D." | 527 W Mercury St Butte MT 59701-1629 | 19 | Democrat |
| Mahlum, Dale | 10955 Hwy 93 N Missoula MT 59802-9227 | 35 | Republican |
| McCarthy, Bea | 1906 Ogden St Anaconda MT 59711-1706 | 29 | Democrat |
| McNutt, Walter L. | 110 12Th Avenue SW Sidney MT 59270-3614 | 50 | Republican |
| Mesaros, Kenneth "Ken" | 2191 Milligan Rd Cascade MT 59421-8001 | 25 | Republican |
| Miller, Ken | PO Box 186 Laurel MT 59044-0186 | 11 | Republican |
| Mohl, Arnie A. | 3303 Hwy 2 E Kalispell MT 59901-6653 | 39 | Republican |
| Nelson, Linda J. | 469 Griffin Rd Medicine Lake MT 59247-9708 | 49 | Democrat |
| Shea, Debbie | 100 Moon Lane Butte MT 59701-3975 | 18 | Democrat |

HeinOnline -- 1997 vol. I i 1997

| | | | |
|---|---|---|---|
| Sprague, Mike | 174 Erickson Court Billings MT 59105-2345 | 6 | Republican |
| Stang, Barry "Spook" | 2 Montana Hwy 135 S, Po Box 277 St Regis MT 59866-0340 | 36 | Democrat |
| Swysgood, Charles "Chuck" | 506 S Atlantic St Dillon MT 59725-2723 | 17 | Republican |
| Taylor, Mike | Box 152 Proctor MT 59929-0152 | 37 | Republican |
| Thomas, Fred | 3566 Holly Lane Stevensville MT 59870-6634 | 31 | Republican |
| Toews, Daryl | HC 66 Box 34 Lustre MT 59225-9703 | 48 | Republican |
| Van Valkenburg, Fred R. | 112 University Ave Missoula MT 59801-4224 | 32 | Democrat |
| Waterman, Mignon | 530 Hazelgreen Ct Helena MT 59601-5410 | 26 | Democrat |
| Wilson, Bill | 1305 2nd Ave N Great Falls MT 59401-3265 | 22 | Democrat |

HeinOnline -- 1997 vol. I ii 1997

# OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES 1997

100 Members

65 Republicans 35 Democrats

## OFFICERS

Speaker . . . . . John Mercer
Speaker Pro Tempore . . . . . Marian Hanson
Majority Leader . . . . . Larry "Hal" Grinde
Majority Whip . . . . . Karl Ohs
Minority Leader . . . . . Vicki Cocchiarella
Minority Whip . . . . . Tim Dowell
Chief Clerk of the House . . . . . Marilyn Miller

## MEMBERS

| Name | Preferred Mailing Address | Dist No | Party |
|---|---|---|---|
| Adams, Darrel | 155 Eastland Crossroad Columbia Falls MT 59912 | 84 | Republican |
| Ahner, Chris | 1470 Boston Rd Helena MT 59601-7330 | 51 | Republican |
| Anderson, Shiell | 738 Hwy 89 N Livingston MT 59047-1234 | 25 | Republican |
| Arnott, Peggy | 1512 Colorado Billings MT 59102-3250 | 20 | Republican |
| Bankhead, Paul | 89 Cottonwood Road Heron MT 59844-9511 | 72 | Republican |
| Barnett, Joe | 201 Spooner Rd Belgrade MT 59714-3429 | 32 | Republican |
| Barnhart, Beverly | 614 S 6th Ave Bozeman MT 59715-4566 | 29 | Democrat |
| Beaudry, Haley | 1 Redwood Drive Butte MT 59701-4339 | 35 | Republican |
| Bergman, Ellen | 1019 S Strevell Ave Miles City MT 59301-4917 | 4 | Republican |
| Bergsagel, Ernest | HC 84 Box 8045 Malta MT 59538-9701 | 95 | Republican |
| Bitney, Rod | PO Box 10501 Kalispell MT 59904-3501 | 77 | Republican |
| Boharski, William E. | 1433 5th Ave W Kalispell MT 59901-5521 | 79 | Republican |
| Bohlinger, John C. | 2233 Remington Sq Billings MT 59101-9486 | 14 | Republican |
| Bookout-Reinicke, Sylvia | 35 Plateau Rd, Po Box 327 Alberton MT 59820-0327 | 71 | Republican |
| Brainard, Matt | 818 Woody St Missoula MT 59802-3632 | 62 | Republican |
| Carey, Bill | 219 S 3rd St W Missoula MT 59801-2523 | 67 | Democrat |
| Clark, Rebert C. | PO Box 216 Ryegate MT 59074-0216 | 8 | Republican |
| Cobb, John | PO Box 388 Augusta MT 59410-0388 | 50 | Republican |
| Cocchiarella, Vicki | 535 Livingston Ave Missoula MT 59801-8003 | 64 | Democrat |
| Curtiss, Aubyn A. | PO Box 216 Fortine MT 59918-0216 | 81 | Republican |
| DeBruycker, Roger | HC 77 Box 8 Flowerce MT 59440-9801 | 89 | Republican |
| Denny, Matt | 5610 Gharrett St Missoula MT 59803-3010 | 63 | Republican |
| Devaney, Charles R. | 141 Lavalley St Plentywood MT 59254-2124 | 97 | Republican |
| Dowell, Tim | 46 Westview Drive Kalispell MT 59901-3364 | 78 | Democrat |
| Ellingson, Jon | 430 Ryman St Missoula MT 59801-4208 | 65 | Democrat |
| Ellis, Jr., Alvin A. | HC 50 Bex 4840 Red Lodge MT 59068-9724 | 23 | Republican |
| Ewer, David | 1016 5th Ave Helena MT 59601-4444 | 53 | Democrat |
| Feland, Gary | 215 11th Ave N Shelby MT 59474-1720 | 88 | Republican |
| Galvin, Patrick G. | 105 29Th Ave NW Great Falls MT 59404-1333 | 48 | Democrat |
| Gillan, Kim | 750 Judicial Ave Billings MT 59105-2130 | 11 | Democrat |
| Grady, Edward J. "Ed" | HC 30 Canyon Creek MT 59633-9802 | 55 | Republican |
| Grimes, Duane | #4 Hole In The Wall Clancy MT 59634-9516 | 39 | Republican |
| Grinde, Larry Hal | RR 3 Lewistown MT 59457-9803 | 94 | Republican |
| Hagener, Antoinette R. | 612 17th St Havre MT 59501-5509 | 90 | Democrat |
| Hanson, H.S. "Sonny" | 2237 Green Terrace Dr Billings MT 59102-0629 | 9 | Republican |
| Hanson, Marian W. | PO Box 237 Ashland MT 59003-0237 | 1 | Republican |
| Harper, Hal | 9 Comstock Rd Helena MT 59601-5524 | 52 | Democrat |
| Harrington, Dan W. | 1201 N Excelsior Ave Butte MT 59701-8505 | 38 | Democrat |
| Hayne, Harriet | PO Box 209 Dupuyer MT 59432-0209 | 86 | Republican |
| Heavy Runner, George | Box 506 Browning MT 59417-0506 | 85 | Democrat |
| Hibbard, Chase | PO Box 835 Helena MT 59624-0835 | 54 | Republican |

| | | | |
|---|---|---|---|
| Holland, Don | PO Box 148 Forsyth MT 59327-0148 | 7 | Republican |
| Hurdle, Joan | PO Box 1991 Billings MT 59103-1991 | 13 | Democrat |
| Johnson, John | 124 Gresham St Glendive MT 59330-1910 | 2 | Democrat |
| Johnson, Royal C. | 2915 Illinois St Billings MT 59102-0814 | 10 | Republican |
| Jore, Rick | 5200 Cheff Ln Renan MT 59864-9806 | 73 | Republican |
| Kasten, Betty Lou | HC 77 Box A-14 Brockway MT 59214-9701 | 99 | Republican |
| Keenan, Bob | Box 697 Bigfork MT 59911-0697 | 75 | Republican |
| Kitzenberg, Sam | 130 Bonnie St Apt 1 Glasgow MT 59230-2101 | 96 | Republican |
| Knox, Dick* | HC 83 Box 14 Winifred MT 59489-9702 | 93 | Republican |
| Kottel, Deb | 6301 43rd St SW Great Falls MT 59404-5249 | 45 | Democrat |
| Krenzler, Billie | 4537 Ryan Avenue Billings MT 59101-4940 | 17 | Democrat |
| Lawson, Bob | Box 686 Whitefish MT 59937-0686 | 80 | Republican |
| Marshall, Rod | 2520 Fairway Dr Bozeman MT 59715-5843 | 28 | Republican |
| Masolo, Gay Ann | 20 Buck Dr Townsend MT 59644-9649 | 40 | Republican |
| McCann, Matt | PO Box 1093 Harlem MT 59526-1093 | 92 | Democrat |
| McCulloch, Linda | 5205 Deschamps Ln Missoula MT 59802-9471 | 70 | Democrat |
| McGee, Daniel W. | 1925 Pinyon Dr Laurel MT 59044-9381 | 21 | Republican |
| Menahan, William T. "Red" | 1304 W 5th St Anaconda MT 59711-1813 | 57 | Democrat |
| Mercer, John A. | PO Box 460 Polson MT 59860-0460 | 74 | Republican |
| Mills, Norm | 1908 9th St W Billings MT 59102-3310 | 19 | Republican |
| Molnar, Brad | PO Box 517 Laurel MT 59044-0517 | 22 | Republican |
| Mood, Doug | PO Box 42 Seeley Lake MT 59868-0042 | 58 | Republican |
| Ohs, Karl | PO Box 212 Harrison MT 59735-0212 | 33 | Republican |
| Orr, Scott J. | PO Box 1318 Libby MT 59923-1318 | 82 | Republican |
| Pavlovich, Robert J. "Bob" | 2751 Yale Ave Butte MT 59701-4205 | 37 | Democrat |
| Pease, Gerald | PO Box T Lodge Grass MT 59050-0556 | 6 | Democrat |
| Peck, Ray | 729 4th Ave Havre MT 59501-4020 | 91 | Democrat |
| Prouse, Wes | 8232 Shepherd Road Shepherd MT 59079-3831 | 15 | Republican |
| Quilici, Joe | 3040 Kossuth St Butte MT 59701-6336 | 36 | Democrat |
| Raney, Bob | 212 S 6th St Livingston MT 59047-3023 | 26 | Democrat |
| Ream, Robert R. "Bob" | School Of Forestry, U of M Missoula MT 59812-1063 | 69 | Democrat |
| Rehbein, Jr., William | PO Box 155 Lambert MT 59243-0155 | 100 | Republican |
| Rose, John "Sam" | PO Box 604 Choteau MT 59422-0604 | 87 | Republican |
| Ryan, William M. "Bill" | 8 18th Ave S Great Falls MT 59405-4113 | 44 | Democrat |
| Sands, Diane | 1733 Phillips Missoula MT 59802-2125 | 66 | Democrat |
| Schmidt, Trudi | 4029 6th Ave S Great Falls MT 59405-3746 | 42 | Democrat |
| Simon, Bruce T. | 217 Clark Ave Billings MT 59101-6040 | 18 | Republican |
| Simpkins, Richard D. | 1221 Park Garden Rd Great Falls MT 59404-3627 | 49 | Republican |
| Simpson, Dorothy C. | PO Box 142 Florence MT 59833-0142 | 61 | Democrat |
| Sliter, Paul | PO Box 130, 55 Somers Rd Somers MT 59932-9713 | 76 | Republican |
| Smith, Liz | 311 Freeze Out Ln Deer Lodge MT 59722-9701 | 56 | Republican |
| Soft, Loren L. | 161 Norris Court Billings MT 59105-2340 | 12 | Republican |
| Squires, Carolyn M. | 2111 S 10th St W Missoula MT 59801-3412 | 68 | Democrat |
| Story, Jr., Robert R. | RR 1, Valley Creek Rd Park City MT 59063-9801 | 24 | Republican |
| Stovall, Jay | 8325 Pryor Rd Billings MT 59101-9013 | 16 | Republican |
| Swanson, Emily | 15042 Kelly Canyon Rd Bezeman MT 59715-9625 | 30 | Democrat |
| Tash, Bill | 45 Vista Dr Dillon MT 59725-3100 | 34 | Republican |
| Taylor, Lila V. | Box 595 HC 42 Busby MT 59016-9705 | 5 | Republican |
| Thomas, William "Bill"** | Utica Route Hobson MT 59452 | 93 | Republican |
| Trexler, Cliff | 115 Main St Hamilton MT 59840-2555 | 59 | Republican |
| Tropila, Joe | 209 2nd St NW Great Falls MT 59404-1301 | 47 | Democrat |
| Tuss, Carley | 1910 Colorado Ave Black Eagle MT 59414-1207 | 46 | Democrat |
| Vick, Steve | 5875 Thorpe Rd Belgrade MT 59714-8909 | 31 | Republican |
| Wagner, Douglas T. | PO Box 190021 Hungry Horse MT 59919-0021 | 83 | Republican |
| Walters, Allan | 416 Grantsdale Road Hamilton MT 59840-3335 | 60 | Republican |
| Wells, Jack | 150 Coulee Dr Bozeman MT 59715-7717 | 27 | Republican |
| Whitehead, Bill | PO Box 1135 Wolf Point MT 59201-1135 | 98 | Democrat |
| Wiseman, William R. | 3310 Centennial Ct Great Falls MT 59404-3675 | 41 | Republican |
| Wyatt, Diana E. | 300 31st St S Great Falls MT 59405-3356 | 43 | Democrat |
| Zook, Tom | HC 40 Miles City MT 59301-9806 | 3 | Republican |

* Deceased May 7, 1997.

** Assumed Representative Knox's position May 21, 1997.

# TITLE CONTENTS

## SENATE AND HOUSE BILLS


| Chapter | | Page |
|---|---|---|
| 1 | *(House Bill No. 1; Zook)* AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . | 3 |
| 2 | *(Senate Bill No. 18; Halligan)* AN ACT CLARIFYING THE AUTHORITY OF THE LEGISLATIVE BRANCH TO ESTABLISH CERTAIN LEAVE AND OVERTIME PROVISIONS FOR LEGISLATIVE EMPLOYEES; AMENDING SECTIONS 2-18-606 AND 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . | 3 |
| 3 | *(House Bill No. 30; Hayne)* AN ACT ALLOWING THE MONTANA HISTORICAL SOCIETY TO SET HOURS FOR PUBLIC VISITATION; AND AMENDING SECTION 2-16-117, MCA. . . . . | 7 |
| 4 | *(House Bill No. 57; DeBruycker)* AN ACT GRANTING THE MONTANA ALFALFA SEED COMMITTEE THE AUTHORITY TO ADMINISTER THE ALFALFA LEAF-CUTTING BEE MANAGEMENT ACT AND THE ALFALFA SEED INDUSTRY ACT; EXPANDING THE MEMBERSHIP OF THE MONTANA ALFALFA SEED COMMITTEE; ELIMINATING THE ALFALFA LEAF-CUTTING BEE COMMITTEE; AMENDING SECTIONS 2-15-3004 AND 80-6-1102, MCA; REPEALING SECTION 2-15-3005, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . | 7 |
| 5 | *(House Bill No. 26; Cobb)* AN ACT PROVIDING TWO METHODS OF NOMINATING AN INDIVIDUAL FOR THE PRESIDENTIAL PREFERENCE PRIMARY; REDUCING THE NUMBER OF SIGNATURES NECESSARY ON A NOMINATING PETITION; AND AMENDING SECTIONS 13-10-201 AND 13-10-404, MCA. . . . . | 10 |
| 6 | *(Senate Bill No. 47; Foster)* AN ACT PROVIDING FOR SIGNATURE ALTERNATIVES FOR PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER; AMENDING SECTION 15-30-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . | 11 |
| 7 | *(Senate Bill No. 53; Hertel)* AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ESTABLISH RULES GOVERNING QUARANTINES TO CONTROL INJURIOUS PLANT PESTS, PLANTS CAPABLE OF SPREADING PLANT PESTS, NOXIOUS WEEDS, AND OTHER EXOTIC PLANTS DEFINED BY THE DEPARTMENT AS PLANT PESTS; AUTHORIZING THE ADOPTION OF PEST MANAGEMENT STANDARDS AND PROCEDURES REGARDING THE INTRODUCTION OF THESE PESTS AND BIOLOGICAL CONTROL AGENTS; PROVIDING FOR RECEIPT AND DEPOSIT OF FUNDS; PROVIDING A PENALTY; AMENDING SECTIONS 80-7-123 AND 80-7-135, MCA; AND REPEALING SECTION 80-7-121, MCA. . . . . | 12 |
| 8 | *(House Bill No. 33; Kasten)* AN ACT REPEALING PROVISIONS REQUIRING PLANNING AND MONITORING OF HEALTH CARE FACILITIES THAT HAD IMPLEMENTED PROVISIONS OF THE FEDERAL HILL-BURTON ACT THAT HAVE BEEN REPEALED; AND | |


HeinOnline -- 1997 vol. I v 1997

REPEALING SECTIONS 50-5-402, 50-5-403, 50-5-404, 50-5-405, 50-5-406, 50-5-407, 50-5-408, 50-5-409, 50-5-410, AND 50-5-411, MCA. . 14

9 *(House Bill No. 48; Quilici)* AN ACT CONFORMING REQUIREMENTS FOR RETIREMENT OF MONTANA NATIONAL GUARD MEMBERS BECAUSE OF AGE TO REQUIREMENTS FOR RETIREMENT OF MEMBERS OF THE NATIONAL GUARD OF THE UNITED STATES; AMENDING SECTIONS 10-1-203 AND 10-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 14

10 *(Senate Bill No. 24; McNutt)* AN ACT ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS, REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY THE STATE MILITARY FORCES; AND AMENDING SECTION 10-1-104, MCA. . . . . 15

11 *(Senate Bill No. 30; Lynch)* AN ACT ELIMINATING THE REQUIREMENT THAT A STATEMENT OF LEGISLATIVE INTENT BE INCLUDED IN A BILL DELEGATING RULEMAKING AUTHORITY TO AN AGENCY; REQUIRING STATUTES DELEGATING RULEMAKING AUTHORITY TO PROVIDE SPECIFIC GUIDELINES; AMENDING SECTION 17-7-138, MCA; REPEALING SECTIONS 5-4-401, 5-4-402, 5-4-403, AND 5-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 16

12 *(Senate Bill No. 161; Bartlett)* AN ACT PROVIDING THAT AN ADMINISTRATIVE WARRANT ISSUED TO A PAWNBROKER OR DEALER TO SURRENDER STOLEN PROPERTY SHALL BE ISSUED BY THE ADMINISTRATIVE HEAD OF THE INVESTIGATING AGENCY; AND AMENDING SECTION 46-5-212, MCA. . . . . 17

13 *(House Bill No. 16; Pavlovich)* AN ACT REQUIRING LICENSURE OF A PERSON SELLING SPORTS TAB GAMES; AND AMENDING SECTIONS 23-5-112, 23-5-502, AND 23-5-503, MCA. . . . . 18

14 *(House Bill No. 19; Pavlovieh)* AN ACT ESTABLISHING THE COMMITTEE ON VETERANS' NEEDS; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. . . . . 24

15 *(House Bill No. 144; Simon)* AN ACT REDUCING THE NUMBER OF MEMBERS THE STATE AUDITOR SHALL APPOINT TO THE BOARD OF DIRECTORS OF THE MONTANA SMALL EMPLOYER HEALTH REINSURANCE PROGRAM; AMENDING THE BOARD'S MEMBERSHIP; ELIMINATING THE STATE AUDITOR'S AUTHORITY TO APPROVE THE MONTANA SMALL EMPLOYER HEALTH INSURANCE PROGRAM BOARD'S PLAN OF OPERATION; ELIMINATING THE STATE AUDITOR'S AUTHORITY TO INTRODUCE AND TO ADOPT A TEMPORARY PLAN OF OPERATION; AMENDING SECTIONS 33-22-1818 AND 33-22-1819, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . 25

16 *(Senate Bill No. 20; Gage)* AN ACT CLARIFYING THE DEFINITION OF THE AVERAGE LEVY APPLIED TO RAILROAD CARS OPERATING WITHIN THE STATE; AMENDING SECTION 15-23-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. . . . . 31

17 *(Senate Bill No. 40; Gage)* AN ACT PROVIDING THAT FOR DEBT COLLECTION PURPOSES, THE TERM "AGENCY" INCLUDES THE INTERNAL REVENUE SERVICE; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION TRANSFER ANY FUND BALANCE IN EXCESS OF $10,000 FROM THE

HeinOnline -- 1997 vol. I vi 1997

DEBT COLLECTION INTERNAL SERVICE FUND TO THE GENERAL FUND AT THE END OF EACH BIENNIUM; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT REPORT CANCELING AND WRITING OFF OF ACCOUNTS RECEIVABLE TO THE BUDGET DIRECTOR; AMENDING SECTIONS 17-4-101, 17-4-106, 17-4-107, AND 17-4-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 31

18 *(Senate Bill No. 65; Devlin)* AN ACT REVISING HORSERACING LAWS; CHANGING THE DEFINITION OF "IMMEDIATE FAMILY"; REALLOCATING THE DISTRIBUTION OF FUNDS DERIVED FROM AMOUNTS WAGERED ON RACES TO PURSES OR FOR OTHER PURPOSES; AMENDING SECTIONS 23-4-101, 23-4-102, 23-4-105, 23-4-106, 23-4-202, 23-4-204, 23-4-302, AND 23-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 33

19 *(Senate Bill No. 135; Crippen)* AN ACT ELIMINATING THE SPECIAL NOTICE OF ARBITRATION PROVISION REQUIRED FOR CONTRACTS; AMENDING SECTION 27-5-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 38

20 *(Senate Bill No. 13; Lynch)* AN ACT GENERALLY REVISING THE LAWS GOVERNING THE ALLOCATION OF SPACE IN THE CAPITOL; ALLOWING FLEXIBILITY IN LOCATING A PRESS ROOM; CLARIFYING AUTHORITY OVER THE ALLOCATION OF LEGISLATIVE SPACE; AMENDING SECTIONS 2-17-101, 2-17-103, 2-17-108, AND 5-2-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 39

21 *(Senate Bill No. 58; Swysgood)* AN ACT REQUIRING ISSUERS OF CREDIT CARDS OR SIMILAR LOAN ADVANCE ACCESS DEVICES TO OBTAIN CONSENT FROM A MINOR'S PARENT OR LEGAL GUARDIAN BEFORE ISSUING A CREDIT CARD OR SIMILAR LOAN ADVANCE ACCESS DEVICE TO THE MINOR; PROHIBITING THE COLLECTION OF ANY DEBT INCURRED BY THE MINOR IN USING THE CREDIT CARD OR SIMILAR LOAN ADVANCE ACCESS DEVICE IF THE MINOR'S PARENT OR GUARDIAN DID NOT CONSENT TO THE ISSUANCE OF THE CREDIT CARD OR SIMILAR LOAN ADVANCE ACCESS DEVICE; AMENDING SECTION 41-1-304, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 41

22 *(Senate Bill No. 70; Gage)* AN ACT GENERALLY REVISING THE SCHOOL FINANCE AND BUDGETING LAWS; STANDARDIZING THE TERMS RELATING TO EQUALIZATION FUNDS AND THE BASIC COUNTY TAX FOR EQUALIZATION; ALLOWING SCHOOL TRUSTEES TO ADMINISTER OTHER FUNDS AUTHORIZED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION; MAKING TIME LIMITATIONS FOR HIGH SCHOOL DISTRICT BOUNDARY CHANGES CONSISTENT WITH ELEMENTARY DISTRICT TIME LIMITATIONS; CHANGING THE TERM "CASH BALANCE" TO "FUND BALANCE" WHEN APPROPRIATE; CHANGING REFERENCES TO "PUBLIC LAW 81-874" TO "IMPACT AID"; CORRECTING THE DATES FOR GIVING NOTICE OF THE PRELIMINARY SCHOOL BUDGET; CHANGING THE TERM "BASE FUNDING PROGRAM" TO "DIRECT STATE AID" WHEN APPROPRIATE; ALLOWING INDIRECT COST RECOVERIES TO BE DEPOSITED IN THE MISCELLANEOUS PROGRAMS FUND; SPECIFYING THE CASH BALANCE OF A LEASE AGREEMENT FOR A K-12 DISTRICT; ELIMINATING THE REQUIREMENT FOR A DISTRICT TO SEND COPIES OF BUS TRANSPORTATION CONTRACTS TO THE SUPERINTENDENT OF PUBLIC

HeinOnline -- 1997 vol. I vii 1997

INSTRUCTION; ELIMINATING THE COUNTY SUPERINTENDENT'S DUTY TO CALCULATE THE APPORTIONMENT OF COUNTY EQUALIZATION MONEY; ELIMINATING THE REQUIREMENT FOR TRUSTEES TO ADOPT A BUDGET FOR THE TECHNOLOGY ACQUISITION FUND; PROVIDING FOR AN ANNUAL ALLOCATION OF GRANT MONEY FOR SCHOOL TECHNOLOGY; AMENDING SECTIONS 15-23-703, 17-3-222, 20-1-301, 20-3-205, 20-3-209, 20-3-324, 20-4-301, 20-5-316, 20-5-324, 20-6-314, 20-6-609, 20-6-701, 20-6-702, 20-9-115, 20-9-143, 20-9-161, 20-9-166, 20-9-212, 20-9-314, 20-9-331, 20-9-332, 20-9-333, 20-9-334, 20-9-335, 20-9-347, 20-9-507, 20-9-509, 20-9-514, 20-9-533, 20-9-534, 20-10-124, 20-10-144, AND 69-11-202, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 43

23 *(House Bill No. 25; Ewer)* AN ACT AUTHORIZING SCHOOL DISTRICT TRUSTEES TO CAPITALIZE THE SCHOOL BUILDING RESERVE FUND IN AN AMOUNT EQUAL TO 5 YEARS OF LEVY REVENUE; LIMITING USE OF LOAN PROCEEDS FOR STATUTORILY AUTHORIZED PROJECTS; AMENDING SECTIONS 20-9-471 AND 20-9-503, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 68

24 *(House Bill No. 35; DeBruycker)* AN ACT ELIMINATING ARCHAIC CONSUMER PROTECTION PROVISIONS PERTAINING TO PAINT LABELING AND COAL INVOICES; AND REPEALING SECTIONS 30-12-1001, 30-12-1002, 30-12-1003, 30-12-1004, 30-12-1005, 30-12-1006, 82-3-201, 82-3-202, 82-3-203, 82-3-204, AND 82-3-205, MCA. . . . . 69

25 *(House Bill No. 85; Harper)* AN ACT SPECIFYING THAT THE COMMISSIONER OF POLITICAL PRACTICES SHALL NOTIFY THE SECRETARY OF STATE OR THE ELECTION ADMINISTRATOR OF NONCOMPLIANCE WITH CAMPAIGN PRACTICE LAWS BEFORE CERTAIN DEADLINES RELATED TO BALLOT CERTIFICATION; AND AMENDING SECTION 13-37-126, MCA. . . . . 70

26 *(House Bill No. 43; Bankhead)* AN ACT REDEFINING THE OFFENSE OF ESCAPE; ALLOWING A GOVERNMENTAL ENTITY TO RECOVER FROM AN ESCAPEE ITS COSTS REGARDING THE ESCAPE, THE INVESTIGATION OF THE ESCAPE, AND THE APPREHENSION OF THE ESCAPEE; AMENDING SECTIONS 45-7-306 AND 46-18-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 70

27 *(House Bill No. 73; Mood)* AN ACT TRANSFERRING RULEMAKING AUTHORITY FROM THE STATE BOARD OF LAND COMMISSIONERS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ENSURE THAT RULEMAKING AUTHORITY FOR FIRE PROTECTION, PROTECTION OF FOREST RESOURCES, FIRE PROTECTION SERVICES, AND CONTROL OF TIMBER AND DEBRIS IS CONSISTENT WITH RULEMAKING AUTHORITY IN THE DEPARTMENT'S OTHER FORESTRY PROGRAMS; CLARIFYING THE RESPONSIBILITIES OF THE DEPARTMENT CONCERNING THE PROTECTION OF FOREST RESOURCES, THE PROVISIONS FOR FIRE PROTECTION SERVICES, AND THE CONTROL OF TIMBER SLASH AND DEBRIS; AMENDING SECTIONS 76-11-101, 76-13-102, 76-13-103, 76-13-109, 76-13-112, 76-13-201, 76-13-204, 76-13-205, 76-13-403, 76-13-408, AND 76-13-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 72

28 *(House Bill No. 141; Keenan)* AN ACT REVISING ADMINISTRATIVE FUNCTIONS CONCERNING THE SUPREME COURT; ELIMINATING THE REQUIREMENT THAT THE SUPREME COURT

MAKE QUARTERLY SETTLEMENTS WITH THE STATE AUDITOR; REVISING THE REQUIREMENT FOR FREE DISTRIBUTION OF VOLUMES OF REPORTS OF DECISIONS; AMENDING SECTIONS 3-2-603 AND 3-2-604, MCA; AND REPEALING SECTION 3-2-405, MCA. 77

29 *(House Bill No. 218; Clark)* AN ACT AMENDING THE LAW RELATING TO ESTABLISHMENT OF INDIVIDUAL LICENSURE TO KEEP AND BEAR ARMS TO REVISE THE REFERENCE TO THE FEDERAL GUN-FREE SCHOOL ZONES ACT; AND AMENDING SECTION 45-8-360, MCA. . . . . 79

30 *(House Bill No. 24; Hagener)* AN ACT INCREASING THE HOMESTEAD EXEMPTION FROM $40,000 TO $60,000; AMENDING SECTION 70-32-104, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . 79

31 *(House Bill No. 32; Peck)* AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . 80

32 *(House Bill No. 36; Ewer)* AN ACT MODIFYING THE BOARD OF INVESTMENTS' AUTHORITY TO SELL REAL PROPERTY HELD AS AN INVESTMENT; AND AMENDING SECTIONS 17-6-201, 77-1-101, AND 77-1-701, MCA. . . . . 80

33 *(House Bill No. 59; Johnson, Royal)* AN ACT SETTING UNIFORM STATE AMBIENT SULFUR DIOXIDE STANDARDS; AND REPEALING SECTION 1, CHAPTER 504, LAWS OF 1987. . . . . 84

34 *(House Bill No. 81; Devaney)* AN ACT GENERALLY REVISING THE STATUTES REGARDING THE LEASING OF STATE LANDS FOR OIL AND GAS; REVISING THE REQUIREMENTS FOR OIL AND GAS OPERATIONS; AMENDING SECTIONS 77-3-423, 77-3-432, 77-3-433, 77-3-435, 77-3-442, 82-11-123, AND 82-11-161, MCA; REPEALING SECTIONS 82-11-113, 82-11-114, 82-11-115, 82-11-116, AND 82-11-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . 84

35 *(House Bill No. 87; Hanson, Marian)* AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE NOTIFY TAXPAYERS BY CERTIFIED MAIL WHEN THE DEPARTMENT PLANS TO ASSESS THE PROPERTY OF A TAXPAYER WHO HAS REFUSED TO FURNISH INFORMATION; AMENDING SECTION 15-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 88

36 *(House Bill No. 88; Hanson, Marian)* AN ACT ESTABLISHING A 30-DAY APPEAL TIME FOR APPEALS OF VALUATION REVIEWS AND ESTIMATED AND REVISED ASSESSMENTS OF PROPERTY FOR TAXATION PURPOSES; AMENDING SECTIONS 15-1-303 AND 15-8-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 89

37 *(House Bill No. 96; Johnson, Royal)* AN ACT INCREASING THE NUMBER AND KIND OF INVESTMENT OPTIONS AVAILABLE IN THE STATE AND POLITICAL SUBDIVISION DEFERRED COMPENSATION PLANS; AMENDING SECTION 19-50-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 92

38 *(House Bill No. 132; Knox)* AN ACT REQUIRING THE DEPARTMENTS OF ENVIRONMENTAL QUALITY, AGRICULTURE, AND NATURAL RESOURCES AND CONSERVATION TO REPORT SPECIFIC COMPLIANCE AND ENFORCEMENT INFORMATION TO THE ENVIRONMENTAL QUALITY COUNCIL; AND PROVIDING AN EFFECTIVE DATE. . . . . 93

HeinOnline -- 1997 vol. I ix 1997

39 *(House Bill No. 56; Johnson, Royal)* AN ACT MODIFYING THE REVERSE ANNUITY MORTGAGE LOAN PROGRAM TO BETTER SERVE THE NEEDS OF ELDERLY HOMEOWNERS; GRANTING GREATER FLEXIBILITY TO THE BOARD OF HOUSING IN ESTABLISHING AGE AND PROPERTY ELIGIBILITY CRITERIA; AMENDING SECTION 90-6-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 94

40 *(Senate Bill No. 1; Grosfield)* AN ACT CLARIFYING NITRATE WATER QUALITY MEASUREMENTS; AMENDING SECTION 75-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 95

41 *(Senate Bill No. 10; Hargrove)* AN ACT AUTHORIZING THE BOARD OF REGENTS OF HIGHER EDUCATION TO WAIVE TUITION AND FEES FOR THE SPOUSE OR CHILDREN OF A MONTANA NATIONAL GUARD MEMBER WHO WAS KILLED OR DIED AS A RESULT OF INJURY, DISEASE, OR OTHER DISABILITY INCURRED IN THE LINE OF DUTY WHILE SERVING ON STATE ACTIVE DUTY; AMENDING SECTION 20-25-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 97

42 *(Senate Bill No. 36; Lynch)* AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 55TH LEGISLATURE; AMENDING SECTIONS 1-11-101, 2-1-212, 2-2-121, 2-2-136, 2-4-313, 2-4-622, 2-7-517, 2-8-113, 2-15-2204, 2-18-203, 2-18-301, 2-18-303, 2-18-304, 2-18-704, 2-18-1202, 3-2-405, 5-2-504, 5-4-307, 5-4-308, 5-5-214, 5-5-217, 5-11-203, 5-11-210, 5-11-212, 5-11-213, 5-17-205, 5-18-107, 5-22-101, 7-1-114, 7-2-2218, 7-2-2219, 7-4-2106, 7-4-2206, 7-6-2531, 7-7-4602, 7-13-4311, 7-14-4736, 7-16-2105, 7-16-4222, 7-32-2244, 7-34-2201, 10-2-416, 10-3-207, 10-3-501, 10-3-504, 10-4-101, 10-4-301, 13-13-276, 13-13-278, 13-25-106, 13-27-202, 13-37-106, 13-37-128, 13-37-130, 15-1-521, 15-1-704, 15-7-303, 15-8-104, 15-16-102, 15-16-119, 15-23-101, 15-23-703, 15-23-706, 15-23-707, 15-30-101, 15-30-111, 15-30-117, 15-30-121, 15-30-162, 15-30-201, 15-30-202, 15-31-102, 15-31-131, 15-32-102, 15-32-201, 15-32-403, 15-36-324, 15-36-325, 15-38-104, 15-38-106, 15-38-201, 15-38-202, 15-70-125, 15-70-235, 15-70-236, 16-1-106, 16-1-201, 16-1-202, 16-2-101, 16-2-103, 16-3-220, 16-6-106, 17-2-107, 17-3-221, 17-5-202, 17-6-103, 17-6-212, 17-7-502, 17-8-101, 18-1-103, 19-1-104, 19-1-402, 19-1-503, 19-3-1104, 19-3-1205, 19-9-411, 19-9-1101, 19-20-302, 19-50-102, 20-1-301, 20-7-504, 20-9-115, 20-9-341, 20-9-347, 20-9-466, 20-15-326, 20-15-404, 20-25-501, 22-1-412, 22-3-429, 22-3-603, 23-2-523, 23-2-536, 23-2-622, 23-2-717, 23-2-736, 23-5-406, 23-7-103, 23-7-211, 23-7-301, 25-10-206, 27-1-307, 27-1-718, 30-4-213, 30-10-103, 30-10-110, 32-1-381, 32-1-453, 32-1-1005, 32-3-803, 32-6-102, 33-2-523, 33-2-830, 33-4-511, 33-10-202, 33-16-1026, 33-16-1035, 33-17-603, 33-19-104, 33-22-703, 33-22-1108, 33-22-1521, 33-31-311, 35-1-933, 35-1-934, 35-1-1107, 37-25-305, 37-29-302, 37-29-305, 39-3-406, 39-8-207, 39-29-101, 39-51-307, 39-51-401, 39-51-402, 39-51-403, 39-51-404, 39-51-407, 39-51-501, 39-51-503, 39-51-1110, 39-51-1304, 39-51-2106, 39-51-2110, 39-51-2508, 39-51-2602, 39-51-3106, 39-71-431, 39-71-501, 39-71-517, 39-71-519, 39-71-703, 40-5-161, 40-5-164, 40-5-201, 40-5-701, 40-5-821, 41-1-402, 41-3-204, 41-4-102, 41-5-103, 41-5-1008, 45-2-311, 45-5-624, 45-8-317, 45-9-208, 45-10-103, 46-6-211, 46-14-101, 46-18-130, 46-18-801, 46-20-701, 46-24-212, 46-30-401, 50-4-504, 50-4-605, 50-5-101, 50-5-228, 50-5-1104, 50-31-103, 50-31-202, 50-31-203, 50-31-301, 50-31-306, 50-31-307, 50-31-311, 50-31-312, 50-53-201, 50-53-202, 50-53-203, 50-53-204, 50-53-206, 50-53-207, 50-53-211, 50-53-212, 50-53-216, 50-53-217, 50-53-218, 50-60-101, 52-2-523, 52-5-101, 52-5-108,

HeinOnline -- 1997 vol. I x 1997

52-5-109, 52-5-112, 52-5-118, 53-1-104, 53-1-202, 53-6-110, 53-6-708, 53-7-101, 53-7-301, 53-19-102, 60-2-208, 60-11-121, 61-2-108, 61-3-446, 61-3-463, 61-3-502, 61-4-310, 61-5-121, 61-5-126, 61-8-356, 61-8-407, 61-8-422, 61-8-722, 61-12-201, 69-1-224, 69-12-314, 69-12-406, 72-16-331, 72-16-479, 72-17-213, 75-1-1101, 75-2-101, 75-3-103, 75-5-621, 75-5-1113, 75-6-205, 75-6-211, 75-10-707, 75-10-806, 75-11-313, 75-20-304, 76-2-202, 76-2-222, 76-2-302, 76-3-305, 76-3-511, 76-6-105, 76-14-113, 76-15-541, 76-15-543, 76-15-546, 77-1-804, 77-2-402, 77-2-403, 77-3-444, 77-6-202, 80-7-123, 80-8-111, 81-22-101, 82-4-232, 82-4-253, 82-4-254, 82-4-337, 82-4-360, 85-1-604, 85-2-701, 85-2-905, 85-3-211, 85-5-407, 85-5-408, 85-6-109, 85-7-1910, 85-7-2159, 87-2-803, 87-5-112, 90-2-1104, 90-2-1121, 90-4-1002, 90-6-127, 90-6-210, AND 90-8-301, MCA; REPEALING SECTIONS 2-18-314, 2-89-201, 2-89-202, 2-89-205, 2-89-206, 2-89-208, 2-89-209, 3-5-516, 13-13-279, 15-6-212, 15-16-802, 15-16-803, 16-2-401, 16-2-402, 16-2-403, 16-2-404, 16-2-405, 16-2-406, 16-2-407, 16-2-408, 20-7-505, 39-7-601, 39-7-602, 39-7-603, 39-7-604, 39-7-605, 39-7-606, 61-1-122, 61-4-309, 70-1-311, 77-1-221, AND 85-2-211, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 98

43 *(Senate Bill No. 52; Crismore)* AN ACT CLARIFYING THE AUTHORITY OF THE FISH, WILDLIFE, AND PARKS COMMISSION TO ALLOW AND REGULATE MOUNTAIN LION AND BOBCAT CHASE SEASONS; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 358

44 *(Senate Bill No. 59; Swysgood)* AN ACT EXTENDING THE PERIOD FOR SUSPENSION OF ADJUDICATION PROCEEDINGS DURING NEGOTIATIONS OF FEDERAL INDIAN AND NON-INDIAN RESERVED WATER RIGHTS; AMENDING SECTIONS 85-2-217 AND 85-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 358

45 *(Senate Bill No. 72; Mesaros)* AN ACT FORMALIZING THE OPERATION OF THE WATER INFORMATION SYSTEM WITHIN THE NATURAL RESOURCE INFORMATION SYSTEM AT THE STATE LIBRARY; AND AMENDING SECTIONS 85-2-105, 85-2-112, AND 90-15-303, MCA. . . . . 360

46 *(Senate Bill No. 77; Jenkins)* AN ACT PROVIDING FOR REQUESTS FOR ASSISTANCE WITH AN INCIDENT, EMERGENCY, OR DISASTER BY POLITICAL SUBDIVISIONS, FIRE DISTRICTS, FIRE SERVICE AREAS, OR FIRE COMPANIES IN UNINCORPORATED AREAS THAT HAVE NOT CONCLUDED MUTUAL AID AGREEMENTS; ELIMINATING THE REQUIREMENT THAT REQUESTS FOR ASSISTANCE MAY ONLY BE MADE TO STATE AGENCIES WITH FIRE PREVENTION SERVICES; REQUIRING THE DIVISION OF DISASTER AND EMERGENCY SERVICES OF THE DEPARTMENT OF MILITARY AFFAIRS TO ENCOURAGE MUTUAL AID AGREEMENTS FOR PURPOSES OF AND TO ASSIST IN INCIDENTS; PROVIDING FOR IMMUNITY OF FIRE DISTRICTS, FIRE SERVICE AREAS, OR FIRE COMPANIES PROVIDING OR REFUSING TO PROVIDE ASSISTANCE; AND AMENDING SECTIONS 7-33-2108, 7-33-2202, 7-33-2208, 7-33-2313, 7-33-2405, 7-33-4112, AND 10-3-202, MCA. . . . . 362

47 *(Senate Bill No. 76; Devlin)* AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITTEES AND ARGUMENTS FOR BALLOT ISSUES; PROVIDING FOR FILLING VACANCIES ON COMMITTEES; REVISING THE DEADLINES FOR APPOINTING COMMITTEES; REVISING THE LENGTH AND FORMAT OF ARGUMENTS AND REBUTTALS; AMENDING SECTIONS 13-27-402, 13-27-403, 13-27-406, AND 13-27-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 367

HeinOnline -- 1997 vol. I xi 1997

48 *(House Bill No. 23; Ohs)* AN ACT GENERALLY REVISING THE ACCOUNTING LAWS OF STATE GOVERNMENT TO ACCOMMODATE INTEGRATED STATE MANAGEMENT TECHNOLOGY FOR THE TWENTY-FIRST CENTURY AS REQUIRED BY SENATE JOINT RESOLUTION NO. 33, LAWS OF 1995; ELIMINATING CERTAIN REPORTS AND PLANS; ELIMINATING UNNECESSARY DUTIES OF THE STATE AUDITOR, THE STATE TREASURER, AND THE DEPARTMENT OF ADMINISTRATION; ELIMINATING THE REQUIREMENT THAT CERTAIN DUPLICATE WARRANTS MAY BE ISSUED ONLY AFTER A BOND IS PROVIDED; ELIMINATING THE REQUIREMENT FOR A STOP-PAYMENT ORDER EACH TIME A DUPLICATE WARRANT IS ISSUED; AMENDING SECTIONS 15-1-501, 17-1-102, 17-1-111, 17-2-110, 17-2-201, 17-3-102, 17-3-106, 17-4-101, 17-6-212, 17-8-201, 17-8-202, AND 17-8-306, MCA; REPEALING SECTIONS 17-1-123 AND 17-8-307, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 370

49 *(House Bill No. 70; Hibbard)* AN ACT EXEMPTING RECREATIONAL LEASES FROM THE BENEFICIAL USE PROPERTY TAX; AMENDING SECTIONS 15-1-101 AND 15-24-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 378

50 *(House Bill No. 71; Mood)* AN ACT INCREASING THE EMERGENCY LOAN CAP FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM FROM $1 MILLION TO $10 MILLION; AMENDING SECTION 85-1-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 382

51 *(House Bill No. 82; Hibbard)* AN ACT GENERALLY REVISING THE LAWS GOVERNING CORPORATE TAXES; REDUCING THE PERIODS OF LIMITATION APPLICABLE TO CORPORATIONS FOR TAXATION AND REFUND PURPOSES; REPLACING THE 10 PERCENT PENALTY ON DELINQUENT CORPORATE TAX RETURNS WITH A GRADUATED PERCENTAGE; AMENDING SECTIONS 15-31-111, 15-31-509, 15-31-510, 75-2-220, AND 75-5-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 383

52 *(Senate Bill No. 56; Lynch)* AN ACT REGULATING PRIVATELY OWNED, FOR-PROFIT, PERPETUALLY MAINTAINED CEMETERIES; REGULATING PRIVATE CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST FUNDS; ADDING A SIXTH MEMBER TO THE BOARD OF FUNERAL SERVICE; AMENDING SECTIONS 2-15-1853 AND 37-19-101, MCA; AND REPEALING SECTIONS 35-21-101, 35-21-102, 35-21-103, 35-21-201, 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207, 35-21-208, 35-21-209, 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215, 35-21-216, 35-21-217, 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306, 35-21-307, 35-21-401, 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407, 35-21-408, 35-21-409, 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415, 35-21-416, 35-21-417, 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423, 35-21-424, 35-21-425, 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431, 35-21-432, 35-21-433, 35-21-501, 35-21-502, 35-21-503, 35-21-601, 35-21-602, 35-21-603, 35-21-604, 35-21-605, 35-21-606, 35-21-607, 35-21-608, 35-21-609, 35-21-610, 35-21-611, 35-21-612, 35-21-613, 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619, 35-21-620, 35-21-621, 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701, 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706,

HeinOnline -- 1997 vol. I xii 1997

35-21-707, 35-21-708, 35-21-710, 35-21-711, 35-21-712, AND 35-21-713, MCA. . . . . 390

53 *(Senate Bill No. 80; Hertel)* AN ACT PROHIBITING UNDERWRITING ON OR AFTER THE ISSUE DATE OF THE POLICY, CERTIFICATE, OR SUBSCRIBER CONTRACT EXCEPT UNDER CERTAIN CONDITIONS. . . . . 399

54 *(Senate Bill No. 183; Mesaros)* AN ACT PROVIDING FOR THE REGULATION OF BRUCELLOSIS VACCINATION THROUGH THE DEPARTMENT OF LIVESTOCK'S PRESENT ADMINISTRATIVE RULEMAKING AUTHORITY BY SUSPENDING THE PRESENT BRUCELLOSIS VACCINATION STATUTES UNTIL OCTOBER 1, 1999; AMENDING SECTION 81-2-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 399

55 *(House Bill No. 11; Zook)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS; AUTHORIZING TREASURE STATE ENDOWMENT PROGRAM LOANS TO BE ADMINISTERED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AND PROVIDING EFFECTIVE DATES. . . . . 400

56 *(House Bill No. 22; Kottel)* AN ACT EXPANDING THE MEMBERSHIP AND DUTIES OF THE STATE INFORMATION TECHNOLOGY ADVISORY COUNCIL TO INCLUDE LOCAL GOVERNMENT MEMBERS AND TO PROVIDE A FORUM FOR TECHNOLOGICAL MATTERS INVOLVING BOTH STATE AGENCIES AND LOCAL GOVERNMENTS; AND AMENDING SECTION 2-17-502, MCA. . . . 403

57 *(House Bill No. 92; Tash)* AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO BYPASS THE COMPETITIVE BIDDING PROCESS IN THE RESTORATION AND PRESERVATION OF HISTORIC SITES AT BANNACK IF IT IS COST-EFFECTIVE AND NECESSARY TO PREVENT DEGRADATION AND LOSS; AMENDING SECTION 18-2-301, MCA; AND PROVIDING AN EFFECTIVE DATE. 404

58 *(House Bill No. 97; Devaney)* AN ACT ALLOWING FOR A LENGTH OF 61 FEET FOR A SEMITRAILER AND TRAILER OR TWO SEMITRAILERS IN A COMBINATION; AND AMENDING SECTION 61-10-104, MCA. . . . . 405

59 *(House Bill No. 105; Barnett)* AN ACT CLARIFYING THE AUTHORITY AND RESPONSIBILITY OF THE DEPARTMENT OF AGRICULTURE FOR THE CONTROL AND PREVENTION OF THE SPREAD OF CONTAGIOUS DISEASE IN SEED POTATO STOCK; EXTENDING TO ALL COUNTIES CERTAIN RESTRICTIONS REGARDING THE PLANTING OR PROPAGATION OF NONCERTIFIED SEED POTATOES; DEFINING "COMMERCIAL PURPOSE"; REVISING CERTIFICATION RECORD COMPILATION AND PUBLICATION REQUIREMENTS; AND AMENDING SECTIONS 80-5-402, 80-5-403, 80-5-404, AND 80-5-405, MCA. . . . . 407

60 *(House Bill No. 115; Grimes)* AN ACT PROVIDING FOR VOLUNTARY WITHHOLDING OF TAXES FROM UNEMPLOYMENT INSURANCE BENEFITS; PROVIDING FOR DEDUCTIONS FROM UNEMPLOYMENT BENEFITS TO REPAY OVERISSUANCE OF FOOD STAMP COUPONS; ADDING PARTNERS IN A LIMITED LIABILITY PARTNERSHIP TO THE TYPES OF EMPLOYING ENTITIES SUBJECT TO PENALTIES FOR UNPAID TAXES;

HeinOnline -- 1997 vol. I xiii 1997

CHANGING THE CRITERIA FOR DISQUALIFYING AN INDIVIDUAL FOR UNEMPLOYMENT BENEFITS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-403, 39-51-1213, 39-51-1303, 39-51-1304, 39-51-2302, 39-51-3105, AND 39-51-3201, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. 410

61 *(House Bill No. 148; Harrington)* AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE INCLUDE INHERITANCE TAX MATTERS IN ITS BIENNIAL REPORT TO THE GOVERNOR AND THE LEGISLATURE; AMENDING SECTION 15-1-205, MCA; REPEALING SECTION 72-16-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 423

62 *(House Bill No. 200; Ahner)* AN ACT CRIMINALIZING THE SURREPTITIOUS TAKING OF A PERSON'S PICTURE IN CERTAIN ROOMS IN A BUSINESS ESTABLISHMENT. . . . . 425

63 *(House Bill No. 215; Orr)* AN ACT EXPANDING THE DEFINITION OF POLICE DOG TO INCLUDE DOGS TRAINED FOR SEARCH AND RESCUE THAT ARE USED IN CONJUNCTION WITH OFFICIAL LAW ENFORCEMENT EFFORTS; IMPOSING A PENALTY FOR INTENTIONALLY HARMING A SEARCH AND RESCUE DOG THAT IS USED IN CONJUNCTION WITH OFFICIAL LAW ENFORCEMENT EFFORTS; AND AMENDING SECTION 45-8-209, MCA. . . . . 425

64 *(House Bill No. 239; Tropila)* AN ACT PROHIBITING A NOTARY PUBLIC FROM NOTARIZING THE NOTARY'S OWN SIGNATURE; AND AMENDING SECTION 1-5-416, MCA. . . . . 426

65 *(House Bill No. 274; Vick)* AN ACT ELIMINATING CERTAIN NUISANCE TAXES BY ELIMINATING THE $10 FILING FEES FOR SMALL BUSINESS CORPORATIONS, ELIMINATING THE RURAL COOPERATIVE UTILITIES ANNUAL FEE, AND REPEALING THE LICENSE TAX ON SALES OF CEMENT AND BYPRODUCTS; AMENDING SECTIONS 15-31-202 AND 35-18-503, MCA; REPEALING SECTIONS 15-31-204, 15-59-201, 15-59-203, 15-59-204, 15-59-205, 15-59-206, 15-59-207, 15-59-208, 15-59-209, 15-59-210, 15-59-212, 15-59-213, 15-59-214, 15-59-221, 35-18-504, 35-18-505, 35-18-506, AND 35-18-510, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES. . . . . 427

66 *(House Bill No. 289; Pavlovich)* AN ACT PROVIDING FOR 4-DAY FREE FISHING PERMITS FOR MEMBERS OF THE LEGION OF VALOR PARTICIPATING IN A CONVENTION IN MONTANA FROM AUGUST 27, 1997, TO AUGUST 31, 1997; AND PROVIDING A TERMINATION DATE. . . . . 428

67 *(House Bill No. 290; Harper)* AN ACT PROHIBITING THROWING AWAY LIGHTED OR BURNING MATERIAL ON PUBLIC AND PRIVATE ROADS AND RAILROAD RIGHTS-OF-WAY IN THIS STATE; PROHIBITING DUMPING ASHTRAYS CONTAINING MATCHES, ASHES, OR CIGARETTE OR CIGAR REFUSE ON PUBLIC AND PRIVATE ROADS AND RAILROAD RIGHTS-OF-WAY; PROVIDING A PENALTY; ALLOWING ADMINISTRATIVE ENTITIES OF ROADS AND PUBLIC TRANSIT OPERATORS TO POST COPIES OF THIS ACT IN CONSPICUOUS LOCATIONS; AND AMENDING SECTIONS 7-5-2109, 7-5-4104, AND 61-8-365, MCA. . . . . 429

68 *(House Bill No. 292; Grady)* AN ACT PROVIDING FOR CERTIFICATION OF A PEACE OFFICER WHO LEAVES FULL-TIME OR PART-TIME EMPLOYMENT AND GOES ON ACTIVE RESERVE STATUS OR RETURNS TO FULL-TIME OR PART-TIME EMPLOYMENT. . . . . 431

69 *(House Bill No. 321; McCulloch)* AN ACT MAKING IT AN OFFENSE TO OBSTRUCT A PERSON SERVING PROCESS; AMENDING SECTION 45-7-302, MCA; AND PRO "IDING AN IMMEDIATE EFFECTIVE DATE. . . . . 431

70 *(House Bill No. 358; Keenan)* AN ACT CLARIFYING THE DEPOSIT AND USE OF NONRESIDENT INSURANCE PRODUCERS' ANNUAL RENEWAL OF LICENSE FEES; AMENDING SECTION 33-2-708, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 432

71 *(Senate Bill No. 9; Holden)* AN ACT MODIFYING WHEN REPLACEMENT VALUE IS USED AS A MEASURE OF DAMAGES FOR A MOTOR VEHICLE; ALLOWING THE USE OF BOOK VALUE AS A MEASURE OF DAMAGES; AMENDING SECTIONS 27-1-306 AND 33-23-202, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . 435

72 *(Senate Bill No. 12; Swysgood)* AN ACT CHANGING THE REGISTRATION PERIOD FOR TRAILERS AND SEMITRAILERS REGISTERED THROUGH A PROPORTIONAL REGISTRATION AGREEMENT FROM AN ANNUAL REGISTRATION TO A 5-YEAR REGISTRATION; AMENDING SECTIONS 61-3-321, 61-3-332, AND 61-3-721, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE. . . . . 436

73 *(Senate Bill No. 14; Swysgood)* AN ACT GENERALLY AMENDING LAWS PERTAINING TO THE DEPARTMENTS OF PUBLIC HEALTH AND HUMAN SERVICES AND ENVIRONMENTAL QUALITY BY TRANSFERRING CERTAIN RESPONSIBILITIES RELATED TO LABORATORY LICENSING, RADIOACTIVE SUBSTANCES, VECTOR-BORNE ILLNESS, AND PESTICIDE REGISTRATION FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE DEPARTMENT OF "UBLIC HEALTH AND HUMAN SERVICES; CLARIFYING THAT THE STATE LABORATORY IS LOCATED WITHIN THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING THE DEPARTMENT TO SET FEES WHEN NECESSARY INSTEAD OF ANNUALLY; AMENDING SECTIONS 7-22-2403, 7-22-2409, 7-22-2418, 40-1-206, 50-1-202, 75-3-103, 75-3-502, 75-6-103, 75-6-106, 75-6-109, AND 80-8-201, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 443

74 *(Senate Bill No. 35; Jenkins)* AN ACT PROVIDING PROCEDURES AND STANDARDS FOR MAKING BUDGET COMPARISONS AND DETERMINING BUDGET PERFORMANCE. . . . . 453

75 *(Senate Bill No. 101; Beck)* AN ACT PROVIDING THAT CERTAIN VETERINARY MEDICAL STUDENTS WHO WORK UNDER THE DIRECT SUPERVISION OF A LICENSED VETERINARIAN ARE EXEMPT FROM VETERINARY LICENSURE; ALLOWING AN EMPLOYEE OF A LICENSED VETERINARIAN TO PERFORM CERTAIN VETERINARY FUNCTIONS, INCLUDING EMERGENCY SERVICES, AS DETERMINED BY RULE OF THE BOARD OF VETERINARY MEDICINE; AND AMENDING SECTIONS 37-18-104 AND 37-18-202, MCA. . . . . 455

76 *(Senate Bill No. 107; Beck)* AN ACT REVISING CERTAIN PROVISIONS REGARDING AGRICULTURAL COMMODITY STANDARDS, STORAGE, AND MERCHANDISING; EXEMPTING REVENUE COLLECTED FROM THE ADMINISTRATION OF THE STATE GRAIN LABORATORY FROM BUDGET AMENDMENT REQUIREMENTS; REVISING APPLICABLE PENALTIES; CLARIFYING THAT THE ANNUAL COMMODITY DEALER LICENSE FEE IS COLLECTIBLE FOR EACH FACILITY COVERED UNDER THE LICENSE; REVISING PROCEDURES FOR SUBMITTING SAMPLES TO THE STATE GRAIN

HeinOnline -- 1997 vol. I xv 1997

LABORATORY AND FOR APPEALING ANALYSIS RESULTS; AMENDING SECTIONS 17-7-402, 80-4-402, 80-4-405, 80-4-409, 80-4-421, 80-4-429, 80-4-501, 80-4-536, 80-4-602, 80-4-701, 80-4-702, 80-4-703, 80-4-704, 80-4-705, 80-4-706, 80-4-708, 80-4-721, 80-4-722, 80-4-724, AND 80-4-725, MCA; REPEALING SECTIONS 80-4-301, 80-4-302, 80-4-303, 80-4-304, 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707, 80-4-710, 80-4-723, AND 80-4-727, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 458

77 *(Senate Bill No. 115; Nelson)* AN ACT ALLOWING SUPERVISED RESIDENTS OF LICENSED LONG-TERM CARE FACILITIES, NURSING CARE FACILITIES, PERSONAL CARE FACILITIES, AND COMMUNITY HOMES FOR PERSONS WITH DISABILITIES TO FISH WITHOUT A LICENSE UPON ANNUAL APPLICATION BY MANAGERS OR DIRECTORS OF THE FACILITIES AND HOMES; AMENDING SECTION 87-2-802, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 471

78 *(Senate Bill No. 121; Hertel)* AN ACT ALLOWING THE REVENUE FROM CERTAIN COUNTY LEASES TO BE DEPOSITED IN THE COUNTY GENERAL FUND; ALLOWING THE REVENUE FROM CERTAIN COUNTY LEASES TO BE USED FOR ANY COUNTY PURPOSE; AMENDING SECTION 7-8-2232, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 471

79 *(Senate Bill No. 131; Mesaros)* AN ACT INCREASING THE NUMBER OF ACRES OF STATE LAND THAT THE BOARD OF LAND COMMISSIONERS MAY SELL OR LEASE TO A SCHOOL DISTRICT FOR USE AS A SCHOOL SITE TO 25 ACRES FOR AN ELEMENTARY SCHOOL AND 50 ACRES FOR A HIGH SCHOOL; AMENDING SECTION 20-6-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 472

80 *(House Bill No. 8; Bergsagel)* AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 54TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . 473

81 *(House Bill No. 12; Quilici)* AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 1998 AND 1999; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; REAPPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; AND PROVIDING AN EFFECTIVE DATE. . . . . 478

82 *(House Bill No. 40; Cobb)* AN ACT EXTENDING FOR 2 YEARS THE ATTORNEY GENERAL'S DUTY TO REPRESENT THE STATE IN BANKRUPTCY PROCEEDINGS IN WHICH THE STATE'S INTEREST MAY BE AFFECTED; AMENDING SECTION 4, CHAPTER 196, LAWS OF 1995; AND PROVIDING AN EFFECTIVE DATE. . . . . 481

83 *(House Bill No. 60; Rose)* AN ACT EXTENDING TO ALL CLASSES OF COUNTIES THE OPTION OF FINANCING A CITY-COUNTY BOARD OF HEALTH BY MUTUAL AGREEMENT BETWEEN THE COUNTY AND THE CITIES FORMING THE CITY-COUNTY BOARD OF HEALTH; AMENDING SECTION 50-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 481

84 *(House Bill No. 162; Denny)* AN ACT REQUIRING THAT FEES COLLECTED FOR THE REGISTRATION OF HAZARDOUS WASTE GENERATORS AND FEES FOR THE REISSUANCE OR MODIFICATION OF PERMITS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES BE PLACED IN THE HAZARDOUS WASTE FEE ACCOUNT WITHIN THE STATE SPECIAL REVENUE FUND; AMENDING SECTION 75-10-434, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 482

85 *(House Bill No. 182; Masolo)* AN ACT RELATING TO GENERAL ELECTIONS IN WHICH A CANDIDATE DIES SHORTLY BEFORE THE ELECTION; PROVIDING FOR ELECTION OF THE GOVERNOR OR LIEUTENANT GOVERNOR WHEN THERE IS A VACANCY IN THE CANDIDACY; PROVIDING METHODS FOR CORRECTION OF BALLOTS; PROVIDING A METHOD OF CORRECTING AND VOTING ABSENTEE BALLOTS; PROVIDING FOR REQUEST OF AN ABSENTEE BALLOT; AND AMENDING SECTIONS 13-10-327, 13-10-328, 13-12-204, 13-13-204, 13-13-212, AND 13-25-101, MCA. . . . 483

86 *(House Bill No. 288; Ohs)* AN ACT CLARIFYING THE LIABILITY PROVISIONS FOR PERSONS WHO MAKE VOLUNTARY CONTRIBUTIONS TO A SPECIFIC REMEDIATION ACCOUNT; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 486

87 *(Senate Bill No. 103; Van Valkenburg)* AN ACT PROVIDING FOR THE IMMUNITY OF THE STATE, ITS OFFICERS, EMPLOYEES, AND AGENTS, AND MEMBERS OF THE MILITIA IN A CIVIL ACTION FOR DAMAGES WHILE ENGAGED IN FEDERAL ACTIVITIES. . . . . 489

88 *(Senate Bill No. 106; Van Valkenburg)* AN ACT GENERALLY REVISING DRIVING UNDER THE INFLUENCE LAWS WITH RESPECT TO THE TESTS USED TO DETECT, ESTIMATE, AND MEASURE ALCOHOL OR DRUGS, OR BOTH, IN A PERSON'S BODY; AUTHORIZING ADMISSION OF PRELIMINARY ALCOHOL SCREENING TEST RESULTS AND PHYSICAL, PSYCHOMOTOR, AND PHYSIOLOGICAL ASSESSMENTS OF ALCOHOL OR DRUG PRESENCE OR IMPAIRMENT IN DRIVING UNDER THE INFLUENCE AND OTHER PROCEEDINGS, INCLUDING CERTAIN CRIMINAL PROSECUTIONS AND CIVIL PROCEEDINGS IN WHICH ALCOHOL OR DRUG-PRESENCE OR IMPAIRMENT IS AT ISSUE; ELIMINATING USE OF URINE TESTING UNDER THE IMPLIED CONSENT LAW; PERMITTING SUBMISSION OF CERTIFIED, RATHER THAN SWORN, STATEMENTS FROM PEACE OFFICERS CONCERNING TESTING REFUSALS; AUTHORIZING USE OF BLOOD OR BREATH ANALYSIS TEST RESULTS IN CERTAIN CRIMINAL PROSECUTIONS AND CIVIL ACTIONS; AND AMENDING SECTIONS 61-5-212, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-407, 61-8-409, 61-8-805, AND 61-8-806, MCA. . . . . 490

89 *(Senate Bill No. 126; Nelson)* AN ACT INCREASING THE MAXIMUM AMOUNT OF AN EDUCATIONAL DEBT PAYMENT THAT A RURAL PHYSICIAN MAY RECEIVE FROM THE BOARD OF REGENTS; AND AMENDING SECTION 20-26-1503, MCA. . . . . 499

HeinOnline -- 1997 vol. I xvii 1997

90 *(Senate Bill No. 152; McNutt)* AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ESTABLISH A PILOT PROGRAM FOR THE ELECTRONIC FILING AND PERFECTION OF MOTOR VEHICLE LIENS; AMENDING SECTION 61-3-103, MCA; AND PROVIDING A TERMINATION DATE. . . . . 500

91 *(House Bill No. 64; Ewer)* AN ACT ELIMINATING THE REQUIREMENT FOR AN AUDIT OF A LOCAL GOVERNMENT ENTITY RECEIVING FEDERAL FINANCIAL ASSISTANCE IN EXCESS OF $25,000; AMENDING SECTION 2-7-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 502

92 *(House Bill No. 98; Clark)* AN ACT ELIMINATING HANGING AS A MEANS OF EXECUTION; REVISING THE REQUIREMENTS FOR APPLICATIONS FOR EXECUTIVE CLEMENCY; REQUIRING APPLICATION FOR EXECUTIVE CLEMENCY IN CAPITAL CASES TO BE MADE WITHIN 10 DAYS AFTER AN EXECUTION DATE IS SET; CLARIFYING THAT THERE IS NO APPEAL FROM THE GOVERNOR'S GRANT OR DENIAL OF CLEMENCY; AMENDING SECTIONS 46-19-103 AND 46-23-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . 503

93 *(House Bill No. 108; Swanson)* AN ACT GENERALLY REVISING CERTIFICATE OF NEED STATUTES; ELIMINATING THE CERTIFICATE OF NEED REQUIREMENT FOR RESIDENTIAL TREATMENT FACILITIES, MEDICAL ASSISTANCE FACILITIES, MENTAL HEALTH CENTERS, MAJOR MEDICAL EQUIPMENT, AND INPATIENT MENTAL HEALTH CARE PROVIDED BY HOSPITALS; DELETING THE REQUIREMENT FOR LICENSURE OF PUBLIC HEALTH CENTERS; PROVIDING THAT THE STATEWIDE HEALTH COORDINATING COUNCIL IS APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; CLARIFYING WHEN A CHANGE IN BED CAPACITY REQUIRES A CERTIFICATE OF NEED; REVISING THE PROHIBITION AGAINST REQUIRING A HEALTH CARE FACILITY TO OBTAIN A CERTIFICATE OF NEED FOR AN ACTION THAT WOULD NOT BE SUBJECT TO A REVIEW IF UNDERTAKEN BY A PERSON OTHER THAN A HEALTH CARE FACILITY SO THAT IT REFERS TO A NONREVIEWABLE SERVICE RATHER THAN AN ACTION; DELETING THE AUTHORITY FOR THE ADOPTION OF RULES GOVERNING ABBREVIATED CERTIFICATE OF NEED REVIEW; REVISING THE CERTIFICATE OF NEED APPLICATION PROCESS; DELETING THE REQUIREMENT THAT A HOLDER OF AN UNEXPIRED CERTIFICATE OF NEED REPORT TO THE DEPARTMENT EVERY 6 MONTHS; ALLOWING THE PARTIES TO A RECONSIDERATION HEARING TO AGREE TO AN EXTENSION OF THE DECISION DEADLINE BEYOND 30 DAYS; EXEMPTING FROM THE CERTIFICATE OF NEED REQUIREMENT THE CONSTRUCTION OF A STATE-OWNED FACILITY AND RECONSTRUCTION OF A DAMAGED FACILITY UNDER CERTAIN CIRCUMSTANCES; DELETING RECONSIDERATION HEARING FEES; AMENDING SECTIONS 7-34-2102, 7-34-2201, 50-5-101, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-308, 50-5-309, 50-5-310, 50-10-101, 50-16-701, 50-60-205, 50-60-301, 50-78-103, 53-6-106, 53-6-110, AND 90-7-104, MCA; REPEALING SECTION 50-5-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 506

94 *(House Bill No. 143; Barnett)* AN ACT LIMITING THE AMOUNT OF ITS ASSETS AN INSURER MAY INVEST IN MORTGAGE LOANS; AND AMENDING SECTION 33-2-830, MCA. . . . . 524

95 *(House Bill No. 206; McCann)* AN ACT PROVIDING FOR DISSOLUTION OF A K-12 SCHOOL DISTRICT IF CREATION OR CONTINUATION OF THE K-12 DISTRICT RESULTS IN THE LOSS OF FEDERAL FUNDING; AMENDING SECTIONS 20-6-701 AND 20-6-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 526

96 *(House Bill No. 211; Rose)* AN ACT ALLOWING THIRD-CLASS CITIES OR TOWNS TO CONTRACT FOR FIRE PROTECTION SERVICES; ALLOWING THIRD-CLASS CITIES OR TOWNS TO CONSOLIDATE FIRE PROTECTION SERVICES; AND AMENDING SECTION 7-33-4101, MCA. . . . . 528

97 *(House Bill No. 227; Kottel)* AN ACT CLARIFYING THAT ELECTION MATERIAL PACKAGES MAY BE DISPOSED OF AFTER THEY HAVE BEEN OPENED; CLARIFYING THAT ELECTION MATERIALS MUST BE DISPOSED OF AS PROVIDED IN THE ELECTION ADMINISTRATOR'S PLAN; AND AMENDING SECTION 13-1-303, MCA. . . . . 528

98 *(House Bill No. 350; Beaudry)* AN ACT REVISING THE AUTHORITY FOR THE SIZE OF LOANS THAT ENHANCE ECONOMIC DEVELOPMENT AND CREATE JOBS IN THE BASIC SECTOR OF THE ECONOMY; PROVIDING A 4-YEAR PERIOD OVER WHICH TO ASSESS THE CREATION OF JOBS; EXTENDING TO 4 YEARS THE PERIOD FOR MEASURING JOBS TO CALCULATE INTEREST RATE REDUCTIONS FOR INFRASTRUCTURE LOANS; AND AMENDING SECTIONS 17-6-311 AND 17-6-318, MCA. . . . . 529

99 *(House Bill No. 359; Kasten)* AN ACT RELATING TO HEALTH CARE FACILITIES; ALLOWING A MEDICAL ASSISTANCE FACILITY TO PROVIDE INPATIENT CARE TO PERSONS FOR MORE THAN 96 HOURS IN CERTAIN CASES; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY LICENSE ONLY HOSPITALS WITHIN THE STATE ON THE BASIS OF ACCREDITATION BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE ORGANIZATIONS; AMENDING SECTIONS 50-5-101 AND 50-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 531

100 *(House Bill No. 367; Beaudry)* AN ACT REMOVING THE REQUIREMENT THAT EXPERIENCE FOR CONSTRUCTION BLASTERS BE OBTAINED IN A PERIOD FOLLOWING AND NOT DURING TRAINING; CHANGING THE EXPERIENCE REQUIREMENT FROM 1 YEAR TO 2 YEARS; AND AMENDING SECTION 37-72-302, MCA. . . . . 537

101 *(House Bill No. 370; Tuss)* AN ACT AMENDING THE TUMOR REGISTRY ACT TO EXPAND REPORTING REQUIREMENTS TO CERTAIN HEALTH CARE PRACTITIONERS AND CERTAIN HEALTH CARE FACILITIES OTHER THAN HOSPITALS; ALLOWING RELEASE OF TUMOR REGISTRY INFORMATION TO CERTAIN HEALTH CARE PRACTITIONERS AND ALLOWING RELEASE PURSUANT TO THE GOVERNMENT HEALTH CARE INFORMATION ACT AND NOT THE UNIFORM HEALTH CARE INFORMATION ACT; PROVIDING PROTECTION FROM LIABILITY FOR PERSONS REPORTING TUMORS AND PERSONS LAWFULLY USING TUMOR INFORMATION IN COMPLIANCE WITH THE TUMOR REGISTRY ACT; AND AMENDING SECTIONS 50-15-702, 50-15-703, AND 50-15-704, MCA. . . . . 537

102 *(House Bill No. 392; Bitney)* AN ACT INCREASING THE NUMBER OF PERSONS WHO SERVE ON THE MONTANA MINT COMMITTEE;

HeinOnline -- 1997 vol. I xix 1997

REQUIRING THAT ONE MEMBER REPRESENT THE MINT INDUSTRY RESEARCH COUNCIL; AND AMENDING SECTION 2-15-3006, MCA. . . . . 539

103 *(Senate Bill No. 8; Hargrove)* AN ACT INCLUDING EPHEDRINE IN THE SCHEDULE IV LIST OF DANGEROUS DRUGS; AND AMENDING SECTION 50-32-229, MCA. . . . . 540

104 *(Senate Bill No. 38; Lynch)* AN ACT REVISING THE MONTANA LEGISLATIVE INTERN PROGRAM TO ACCOMMODATE THE ACADEMIC YEAR STRUCTURE WITHIN THE MONTANA UNIVERSITY SYSTEM; AND AMENDING SECTION 5-6-103, MCA. . 543

105 *(Senate Bill No. 81; Swysgood)* AN ACT GENERALLY REVISING THE LAWS PERTAINING TO THE LICENSING AND OPERATION OF COMMERCIAL MOTOR VEHICLES; CLARIFYING THE DEFINITION OF "MOTOR VEHICLE"; AMENDING THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO INCLUDE COMBINATION VEHICLES WITH TOWED UNITS RATED GREATER THAN 10,000 POUNDS; EXCLUDING FROM LICENSURE CERTAIN VEHICLES OPERATED IN INTRASTATE COMMERCE; ALLOWING RELEASE OF ACCIDENT REPORTS TO GOVERNMENTAL AGENCIES FOR MOTOR CARRIER SAFETY MONITORING AND ROADWAY DESIGN PURPOSES; ALLOWING RELEASE OF AN ACCIDENT REPORT TO THE INSURANCE CARRIER OF A PERSON NAMED IN THE REPORT; CLARIFYING LICENSE SUSPENSION FOR SERIOUS TRAFFIC VIOLATIONS; REVISING PROCEDURAL ASPECTS OF COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT AND 0.04 ALCOHOL CONCENTRATION STATUTES; INCREASING THE LICENSE SUSPENSION PERIOD FOR SECOND OR SUBSEQUENT VIOLATIONS OF OUT-OF-SERVICE ORDERS; AND AMENDING SECTIONS 61-1-102, 61-1-134, 61-5-104, 61-7-114, 61-8-803, 61-8-805, 61-8-806, 61-8-808, AND 61-8-812, MCA. . . . . 543

106 *(Senate Bill No. 86; Crismore)* AN ACT CLARIFYING THE RULE OF RIGHT-OF-WAY AT AN INTERSECTION; AND AMENDING SECTION 61-8-339, MCA. . . . . 550

107 *(Senate Bill No. 303; Wilson)* AN ACT ALLOWING A JUDGE TO REQUIRE A PERSON TO HAVE AN IGNITION INTERLOCK DEVICE INSTALLED WHEN THE PERSON IS CONVICTED TWO OR MORE TIMES OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR IS CONVICTED FOR THE FIRST TIME OF OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.18 PERCENT OR MORE; PROVIDING A PENALTY FOR TAMPERING WITH OR ATTEMPTING TO CIRCUMVENT THE DEVICE; ALLOWING THE DEPARTMENT OF JUSTICE TO REINSTATE THE DRIVING PRIVILEGES OF AN IGNITION-INTERLOCK RESTRICTED OFFENDER UPON PROOF OF INSTALLATION OF THE DEVICE; REQUIRING IGNITION INTERLOCK RESTRICTIONS TO RUN PARALLEL TO TIME PERIODS AND CONDITIONS FOR LICENSE SUSPENSION OR REVOCATION FOR DUI AND BAC OFFENDERS; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES PROVIDING FOR APPROVAL OF IGNITION INTERLOCK DEVICES; AMENDING SECTIONS 61-2-302, 61-5-208, 61-8-401, AND 61-8-406, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 551

108 *(House Bill No. 7; Bergsagel)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS

PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 454, LAWS OF 1995; AND PROVIDING AN EFFECTIVE DATE. . . . . 558

109 *(House Bill No. 18; Johnson, John)* AN ACT REQUIRING THE BOARD OF VETERANS' AFFAIRS TO DEVELOP A REQUEST FOR PROPOSALS FROM TOWN, CITY, COUNTY, AND TRIBAL GOVERNMENTS IN EASTERN MONTANA FOR THE SITING OF AN EASTERN MONTANA STATE VETERANS' CEMETERY; SPECIFYING CERTAIN CRITERIA FOR THE SITE OF THE CEMETERY; DESIGNATING THE BOARD TO EVALUATE THE PROPOSALS; PROVIDING FOR THE EVALUATION OF THE PROPOSALS AND SELECTION OF A SITE; APPROPRIATING MONEY TO THE BOARD FOR THE PURPOSES OF SITE SELECTION; AMENDING SECTIONS 10-2-601, 10-2-602, 10-2-603, AND 61-3-332, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 561

110 *(House Bill No. 42; Cobb)* AN ACT REQUIRING AN AGENCY PRESENTED WITH A PETITION FOR RULEMAKING TO ISSUE ITS DECISION IN WRITING, BASED ON THE RECORD; REQUIRING THE AGENCY TO INCLUDE THE REASONS FOR THE DECISION IN THE WRITTEN DECISION; PROVIDING THAT AN AGENCY IS NOT REQUIRED TO HOLD A HEARING ON A PETITION FOR RULEMAKING; AND AMENDING SECTION 2-4-315, MCA. . . . . 569

111 *(House Bill No. 107; Kasten)* AN ACT REVISING THE INDIVIDUAL INCOME TAX DEDUCTION FOR LONG-TERM CARE INSURANCE PREMIUMS; ALLOWING A DEDUCTION FOR PREMIUMS PAID FOR INSURANCE POLICIES OR CERTIFICATES THAT PROVIDE COVERAGE FOR LONG-TERM CARE SERVICES FOR THE BENEFIT OF THE TAXPAYER OR THE TAXPAYER'S PARENTS OR GRANDPARENTS WHO RESIDE IN MONTANA; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 569

112 *(House Bill No. 152; Grady)* AN ACT SEPARATING THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT INTO TWO ACTS BY TRANSFERRING THE UNDERGROUND STORAGE TANK PROVISIONS INTO A SEPARATE ACT; AMENDING SECTIONS 75-2-216, 75-10-401, 75-10-402, 75-10-403, 75-10-404, 75-10-405, 75-10-409, 75-10-410, 75-10-411, 75-10-413, 75-10-415, 75-10-416, 75-10-420, 75-10-423, 75-10-424, 75-11-203, 75-11-302, AND 75-11-309, MCA; AND REPEALING SECTION 75-10-210, MCA. . . . . 572

113 *(House Bill No. 165; Tuss)* AN ACT PROVIDING FOR REVISION OF CONTROLLED SUBSTANCES SCHEDULES; AUTHORIZING THE BOARD OF PHARMACY TO ABOPT RULES MORE OFTEN THAN ANNUALLY TO MAKE CHANGES TO STATUTORILY CONTROLLED SUBSTANCES SCHEDULES; REVISING STATUTORILY CONTROLLED SUBSTANCES SCHEDULES TO INCLUDE AMENDMENTS AND ADDITIONS TO THE SCHEDULES MADE BY THE FEDERAL FOOD AND DRUG ADMINISTRATION; AMENDING SECTIONS 50-32-209, 50-32-222, 50-32-224, 50-32-226, 50-32-229, AND 50-32-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 598

114 *(House Bill No. 205; Johnson, Royal)* AN ACT ADDING HEALTH SERVICES AND HEALTH DEPARTMENT FUNCTIONS TO THE SERVICES A MULTIJURISDICTIONAL SERVICE DISTRICT MAY PROVIDE; AND AMENDING SECTION 7-11-1102, MCA. . . . . 617

HeinOnline -- 1997 vol. I xxi 1997

115 *(House Bill No. 214; Grady)* AN ACT REVISING THE FUNDING AND COST REIMBURSEMENT PROVISIONS OF THE PETROLEUM TANK RELEASE COMPENSATION LAWS; CLARIFYING AND IMPOSING LIMITATIONS ON COST REIMBURSEMENT; AUTHORIZING LOANS BY THE BOARD OF INVESTMENTS TO THE PETROLEUM TANK RELEASE COMPENSATION BOARD; PLEDGING THE PETROLEUM STORAGE TANK CLEANUP FEES FOR LOAN REPAYMENT; AMENDING SECTIONS 75-11-307, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 618

116 *(House Bill No. 225; Kitzenberg)* AN ACT ALLOWING THE INSTALLATION OF ABOVEGROUND STORAGE TANKS IN SMALL COMMUNITIES; AMENDING SECTION 50-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 622

117 *(House Bill No. 262; Barnett)* AN ACT GENERALLY REVISING STATE BANKING LAW PERTAINING TO BRANCH BANKS; TRANSFERRING CERTAIN POWERS AND DUTIES FROM THE STATE BANKING BOARD TO THE DEPARTMENT OF COMMERCE; REQUIRING THE STATE BANKING BOARD TO CONDUCT A HEARING AT THE REQUEST OF PERSONS PROTESTING CERTAIN TRANSACTIONS PERTAINING TO BRANCH BANKS AND BANKS; MODIFYING THE PAYMENT OF ADMINISTRATIVE FEES BY BANKS, INVESTMENT COMPANIES, AND TRUST COMPANIES; ELIMINATING TRUST COMPANY EXAMINATION FEES; REVISING CONSOLIDATION OR MERGER PROVISIONS RELATING TO BANKS; REVISING PROVISIONS PERTAINING TO ACQUISITION OF FINANCIAL INSTITUTIONS BY A BANK HOLDING COMPANY NOT LOCATED IN THIS STATE; PROHIBITING INTERSTATE MERGER TRANSACTIONS UNTIL OCTOBER 1, 2001; AMENDING SECTIONS 32-1-104, 32-1-109, 32-1-202, 32-1-203, 32-1-204, 32-1-213, 32-1-218, 32-1-362, 32-1-371, 32-1-372, 32-1-376, 32-1-377, 32-1-383, 32-1-384, AND 32-1-423, MCA; REPEALING SECTIONS 32-6-304, 32-6-401, AND 32-6-402, MCA; AND PROVIDING EFFECTIVE DATES. 623

118 *(House Bill No. 340; Kottel)* AN ACT CLARIFYING THE PLACE OF REGISTRATION OF A DEATH CERTIFICATE; CLARIFYING THE PLACE AND TIME OF DEATH TO BE ENTERED ON A DEATH CERTIFICATE WHEN THE PLACE OR TIME IS UNKNOWN OR UNCERTAIN; REQUIRING MEDICAL CERTIFICATION TO BE COMPLETED WITHIN THE TIME SET BY RULE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING A CERTIFICATE TO SHOW THE DATE OF FILING RATHER THAN THE DATE OF REGISTRATION; AMENDING SECTIONS 50-15-121 AND 50-15-403, MCA; AND REPEALING SECTION 50-15-401, MCA. . . . . 634

119 *(House Bill No. 385; McCulloch)* AN ACT CLARIFYING WHEN A DRIVER BEING OVERTAKEN BY A VEHICLE ON THE LEFT SHALL GIVE WAY TO THE RIGHT; ALLOWING FOR A LEFT TURN INTO A PUBLIC OR PRIVATE PARKING LOT OR A ROADWAY ACROSS DOUBLE YELLOW LINES UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 61-8-323 AND 61-8-328, MCA. . . . . 637

120 *(Senate Bill No. 7; Foster)* AN ACT GENERALLY REVISING THE ALLOCATION OF THE METAL MINES LICENSE TAX; CORRECTING AN OVERALLOCATION OF THE METAL MINES LICENSE TAX; PROVIDING THAT 15.5 PERCENT OF THE METAL MINES TAX IS DISTRIBUTED IN THE SAME MANNER AS THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 20-9-231,

HeinOnline -- 1997 vol. I xxii 1997

85-2-905, AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 638

121 *(Senate Bill No. 26; Cole)* AN ACT GENERALLY REVISING THE CLASSIFICATION AND TAXATION OF CERTAIN TRAILERS, CAMPERS, AND TRUCK TOPPERS; IMPOSING A FEE IN LIEU OF AD VALOREM TAXES ON ALL TRAILERS, POLE TRAILERS, AND SEMITRAILERS HAVING A DECLARED WEIGHT OF LESS THAN 26,000 POUNDS; EXEMPTING FROM PROPERTY TAXATION ALL CAMPERS AND TRUCK TOPPERS; AMENDING SECTIONS 7-1-2111, 15-6-138, 15-6-201, 61-1-129, 61-3-506, 61-3-509, 61-3-519, 61-3-521, 61-3-524, AND 61-3-535, MCA; AND PROVIDING EFFECTIVE DATES. 643

122 *(Senate Bill No. 62; Sprague)* AN ACT CLARIFYING THE PROCESS FOR PAYING REHABILITATION BENEFITS TO DISABLED WORKERS' COMPENSATION CLAIMANTS INJURED ON OR BEFORE JUNE 30, 1997; LIMITING FUNDING FOR CERTAIN REHABILITATION BENEFIT PAYMENTS; PROVIDING FOR DIRECT PAYMENT OF REHABILITATION BENEFITS BY INSURERS TO DISABLED WORKERS INJURED ON OR AFTER JULY 1, 1997; AMENDING SECTIONS 39-71-1003, 39-71-1004, 39-71-1006, 39-71-1011, 39-71-1014, 39-71-1031, AND 39-71-1032, MCA; REPEALING SECTION 39-71-1013, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 652

123 *(Senate Bill No. 119; Cole)* AN ACT GENERALLY REVISING THE LAWS GOVERNING TAX ADMINISTRATION; PROVIDING A THRESHOLD FOR THE REMITTANCE REQUIREMENT FOR NEW EMPLOYERS WITH LESS THAN 12 MONTHS' EXPERIENCE; PROVIDING UNIFORMITY IN ALL STATUTES INVOLVING QUARTERLY PAYMENT OF TAXES BY EMPLOYERS SUBJECT TO THE CHANGED PAYMENT SCHEDULE; CLARIFYING THE OLD FUND LIABILITY TAX ON WAGES PAID TO DOMESTICS IF THEY EARN LESS THAN $1,000 ANNUALLY, TO CONFORM TO FEDERAL LAW; PROVIDING A DEDUCTION FOR PARENTS OF CHILDREN WHO WORK AND FILE THEIR OWN RETURNS; AMENDING SECTIONS 15-1-211, 15-24-102, 15-30-111, 15-30-204, 39-71-2503, AND 39-71-2505, MCA; REPEALING SECTIONS 15-10-101, 15-10-102, AND 15-10-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 656

124 *(Senate Bill No. 125; Christiaens)* AN ACT ADOPTING THE UNIFORM UNCLAIMED PROPERTY ACT; AMENDING SECTIONS 17-8-303 AND 72-14-102, MCA; REPEALING SECTIONS 70-9-101, 70-9-102, 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204, 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304, 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315, AND 70-9-316, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 668

125 *(House Bill No. 311; Orr)* AN ACT REVISING THE TAXATION OF LIQUEFIED PETROLEUM GAS; PROVIDING FOR THE COLLECTION OF A TAX ON LIQUEFIED PETROLEUM GAS AT THE RETAIL LEVEL; ELIMINATING THE LICENSE TAX ON VEHICLES PROPELLED BY LIQUEFIED PETROLEUM GAS; AMENDING SECTIONS 15-70-701, 15-70-702, 15-70-703, 15-70-704, 15-70-705, 15-70-706, 15-70-707, 15-70-711, 15-70-712, 15-70-713, 15-70-714, 15-70-715, 15-70-716, 15-70-717, 15-70-718, AND 61-12-206, MCA; REPEALING SECTIONS 15-71-101, 15-71-102, 15-71-103, 15-71-104, 15-71-105, AND 15-71-110, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 685

HeinOnline -- 1997 vol. I xxiii 1997

126 *(House Bill No. 69; Hagener)* AN ACT ALLOWING THE SUBSTITUTION OF THE DEPARTMENT OF REVENUE FOR DISTRICT CLERKS OF COURT AS TRUSTEE OF TRUSTS FOR UNLOCATABLE MINERAL OWNERS; AND AMENDING SECTIONS 82-1-302, 82-1-304, 82-1-305, AND 82-1-306, MCA. . . . . 692

127 *(House Bill No. 197; Krenzler)* AN ACT REVISING CERTAIN PROVISIONS RELATING TO LIGHTING DISTRICTS; CLARIFYING THAT THE MAILING ADDRESS FOR PROPERTY ASSESSMENT PURPOSES IS THE APPROPRIATE MAILING ADDRESS WITH RESPECT TO CREATING A LIGHTING DISTRICT; ALLOWING THE TERMINATION OF A LIGHTING DISTRICT BY A MAJORITY VOTE OF A CITY OR TOWN COUNCIL AS WELL AS BY A PETITION OF PROPERTY OWNERS; INCREASING FROM 8 YEARS TO 20 YEARS THE PERIOD OVER WHICH A LIGHTING DISTRICT BOND MAY BE AMORTIZED; CLARIFYING THE MEANING OF "MINOR MODIFICATIONS" TO A LIGHTING DISTRICT; AND AMENDING SECTIONS 7-12-4303, 7-12-4311, 7-12-4342, AND 7-12-4354, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 694

128 *(House Bill No. 201; Krenzler)* AN ACT REVISING THE REQUIRED FREQUENCY FOR INVENTORYING COUNTY TOOLS, MACHINERY, AND EQUIPMENT FROM ANNUALLY TO BIENNIALLY; AND AMENDING SECTION 7-8-2111, MCA. . . . . 696

129 *(House Bill No. 257; Kottel)* AN ACT LIMITING DEFENDANTS TO ONE JURY TRIAL IN MISDEMEANOR CRIMINAL CASES FILED IN A JUSTICE'S OR CITY COURT; REQUIRING A DEFENDANT TO ELECT THE FORUM IN WHICH THE JURY TRIAL WILL OCCUR; PROVIDING THAT A TRIAL DE NOVO IN THE DISTRICT COURT ON APPEAL FROM A JUSTICE'S OR CITY COURT MAY NOT BE BY JURY IF THE DEFENDANT ELECTED A JURY TRIAL IN THE JUSTICE'S OR CITY COURT; AMENDING SECTIONS 46-7-102, 46-17-201, AND 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 696

130 *(House Bill No. 310; Protovich)* AN ACT CLARIFYING THAT CERTAIN ACTIONS OF BREWERS OR BEER IMPORTERS CONSTITUTE ESTABLISHING OR MAINTAINING THE PRICE FOR RESALE OF THEIR PRODUCTS BY WHOLESALE BEER DISTRIBUTORS; AMENDING SECTION 16-3-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 698

131 *(House Bill No. 330; Wiseman)* AN ACT ALLOWING LOCAL GOVERNMENT GROUP SELF-INSURANCE PROGRAMS TO INVEST IN DIRECT OBLIGATIONS OF THE UNITED STATES, WITH THE AVERAGE MATURITY DATE OF THE INVESTMENTS NOT TO EXCEED 6 YEARS; AND AMENDING SECTION 7-6-202, MCA. . . . 699

132 *(House Bill No. 357; Wells)* AN ACT CLARIFYING A LANDLORD'S WAIVER OF A CLAIMED BREACH OF A RENTAL AGREEMENT BY A TENANT; AND AMENDING SECTION 70-24-423, MCA. . . . . 700

133 *(House Bill No. 396; Grimes)* AN ACT GENERALLY REVISING THE MONTANA MEDICAL LEGAL PANEL ACT; ADDING PODIATRISTS TO THE MONTANA MEDICAL LEGAL PANEL ACT; PROVIDING FOR A MINIMUM ANNUAL ASSESSMENT OF $15 AGAINST HEALTH CARE PROVIDERS AND A 5-YEAR CAPITAL CONTRIBUTION BY PODIATRISTS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-302, 27-6-306, 27-6-308, AND 27-6-401, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 701

134 *(House Bill No. 441; Bankhead)* AN ACT ALLOWING ELECTRONIC RECORDING OF CERTAIN TAX APPEAL PROCEEDINGS TO

HeinOnline -- 1997 vol. I xxiv 1997

SUFFICE AS A RECORD OF THOSE PROCEEDINGS; AMENDING SECTIONS 15-2-301 AND 15-15-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 706

135 *(House Bill No. 243; Denny)* AN ACT ALLOWING CLAIMS FOR CIVIL PENALTIES FOR SHOPLIFTING TO BE ASSIGNED AND BROUGHT IN SMALL CLAIMS COURT; AMENDING SECTIONS 25-34-105, 25-35-505, AND 27-1-718, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 708

136 *(House Bill No. 256; Bergman)* AN ACT CLARIFYING THAT A LICENSED PRACTICAL NURSE MAY ACT IN A CHARGE-NURSE CAPACITY IN CERTAIN LONG-TERM CARE FACILITIES; AMENDING SECTION 37-8-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 710

137 *(House Bill No. 283; Swanson)* AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES FISH AND WILDLIFE SERVICE AND THE STATE OF MONTANA. . . . . 711

138 *(House Bill No. 314; Simpkins)* AN ACT ENCOURAGING A SCHOOL DISTRICT TO ESTABLISH AND MAINTAIN A FIREARMS SAFETY EDUCATION COURSE; AND AUTHORIZING A DISTRICT TO USE A COURSE DEVELOPED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, A LAW ENFORCEMENT AGENCY, OR A FIREARMS ASSOCIATION. . . . . 723

139 *(House Bill No. 348; Harrington)* AN ACT REVISING THE TYPES OF INFORMATION RELATED TO THE VALUE OF PROPERTY OWNED BY A CORPORATION THAT MUST BE SUBMITTED ANNUALLY BY DOMESTIC AND FOREIGN CORPORATIONS TO THE SECRETARY OF STATE; AND AMENDING SECTION 35-1-1104, MCA. . . . . 723

140 *(House Bill No. 382; Orr)* AN ACT EXTENDING TO ALL BUILDINGS AND STRUCTURES THE PERMISSIBLE INSTALLATION OF BELOW-GRADE LIQUEFIED PETROLEUM GAS-BURNING APPLIANCES; AND AMENDING SECTION 50-60-203, MCA. . . . . 725

141 *(House Bill No. 402; Holland)* AN ACT GENERALLY REVISING THE CONSERVATION PRACTICE LOAN PROGRAM LAWS; AMENDING SECTIONS 76-15-524, 76-15-542, 76-15-546, AND 76-15-547, MCA; PROVIDING A RETROACTIVE APPLICABILITY DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 725

142 *(House Bill No. 439; Schmidt)* AN ACT ALLOWING STUDENTS WHO PARTICIPATE IN THE YOUTH VOTING ACT TO CAST THEIR BALLOTS AT A LOCATION OTHER THAN A REGULAR POLLING PLACE; AND AMENDING SECTIONS 13-22-104 AND 13-22-106, MCA. 727

143 *(House Bill No. 470; Heavy Runner)* AN ACT ALLOWING SCHOOL DISTRICTS TO PROVIDE FOR CASH COMPENSATION IN LIEU OF ACCUMULATION OF VACATION LEAVE; AMENDING SECTION 2-18-617, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 728

144 *(House Bill No. 501; Wagner)* AN ACT SPECIFYING WHEN BALLOTS FOR CERTAIN SCHOOL BOND ELECTIONS MUST BE MADE AVAILABLE; REQUIRING THAT CERTAIN NOTICES BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IF THERE IS ONE IN THE SCHOOL DISTRICT; AND AMENDING SECTIONS 20-6-604, 20-9-426, 20-20-204, AND 20-20-401, MCA. . . . 729

145 *(House Bill No. 507; Story)* AN ACT TO EXTEND WATER RESERVATIONS IN THE YELLOWSTONE BASIN UNTIL THEY ARE PERFECTED; AMENDING SECTION 85-2-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 731

HeinOnline -- 1997 vol. I xxv 1997

146 *(House Bill No. 550; Cocchiarella)* AN ACT GENERALLY REVISING AND CLARIFYING WHAT ELECTIONS MAY BE CONDUCTED BY MAIL; AND AMENDING SECTIONS 13-19-102 AND 13-19-104, MCA. 732

147 *(Senate Bill No. 66; Benedict)* AN ACT CLARIFYING THAT STATE AND LOCAL GOVERNMENT AGENCIES MAY COOPERATIVELY PURCHASE BENEFIT SERVICES AND INSURANCE PRODUCTS TO PROVIDE EMPLOYEE GROUP BENEFITS; SPECIFYING PROCEDURES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 734

148 *(Senate Bill No. 104; Beck)* AN ACT AUTHORIZING THE DEPARTMENT OF COMMERCE TO REVIEW THE BOOKS AND AFFAIRS OF BANK HOLDING COMPANIES; AND AMENDING SECTION 32-1-220, MCA. . . . . 735

149 *(Senate Bill No. 142; Jabs)* AN ACT CLARIFYING THE PROCEDURE APPLICABLE TO THE APPEAL OF THE REVOCATION OF A SUSPENDED SENTENCE BY A JUSTICE'S COURT OR CITY COURT; AMENDING SECTION 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION. . . . . 735

150 *(Senate Bill No. 158; Estrada)* AN ACT CLARIFYING THE LAWS RELATING TO THE QUALIFICATION OF SUBSTITUTES FOR JUSTICES OF THE PEACE; PROVIDING FOR THE FILING, WITH THE COUNTY CLERK, OF WRITTEN DOCUMENTATION CONCERNING THE QUALIFICATION OF SUBSTITUTES FOR JUSTICES OF THE PEACE; AMENDING SECTION 3-10-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 736

151 *(Senate Bill No. 192; Keating)* AN ACT ALLOWING, FOR A PERIOD OF 12 MONTHS FOR THE PURPOSE OF SELLING THE DENTAL PRACTICE, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED DENTIST OR THE PERSONAL REPRESENTATIVE OF A DISABLED DENTIST TO CONTRACT WITH A DENTIST TO MANAGE AN ESTABLISHMENT WHERE DENTAL SERVICES ARE PROVIDED; PROHIBITING THE PERSONAL REPRESENTATIVE FROM GOVERNING OR INTERFERING WITH THE CLINICAL ASPECTS OF DENTAL PRACTICE; AMENDING SECTIONS 37-4-101, 37-4-102, 37-4-103, AND 37-4-327, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 738

152 *(Senate Bill No. 197; Grosfield)* AN ACT CLARIFYING THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING MORE SPECIFIC STANDARDS FOR DETERMINING WHEN AUTHORITY EXISTS TO ADOPT A RULE AND FOR STATING THE REASONABLE NECESSITY FOR RULES; AND AMENDING SECTIONS 2-4-302 AND 2-4-305, MCA. . . . . 742

153 *(Senate Bill No. 370; Thomas)* AN ACT CLARIFYING THE PROVISIONS RELATING TO ARCHITECTURAL SERVICES TO ALLOW A SCHOOL DISTRICT TO DETERMINE WHETHER ARCHITECTURAL SERVICES ARE NECESSARY FOR THE BUILDING, FURNISHING, REPAIRING, OR COMPLETION OF OTHER WORK FOR THE BENEFIT OF THE SCHOOL DISTRICT; INCREASING THE LIMIT RELATING TO REQUIRED ARCHITECTURAL SERVICES; ELIMINATING NEGOTIATION FOR ARCHITECTURAL SERVICE FEES; AMENDING SECTIONS 20-6-631 AND 20-6-633, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 745

154 *(House Bill No. 110; Swanson)* AN ACT APPROPRIATING MONEY TO THE DEPABTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA

HeinOnline -- 1997 vol. I xxvi 1997

NATURAL RESOURCE DAMAGE LITIGATION IN THE CLARK FORK RIVER BASIN; EXTENDING REPAYMENT AND PROVIDING FOR INTEREST ON PREVIOUS LOANS; REQUIRING A CONTRACT BETWEEN THE DEPARTMENT AND THE STATE TREASURER IN ORDER TO EFFECTUATE THE APPROPRIATION; TRANSFERRING THE FUND BALANCE IN CERTAIN FEDERAL SPECIAL REVENUE ACCOUNTS TO THE STATE SPECIAL REVENUE FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 745

155 *(House Bill No. 411; Ahner)* AN ACT MAKING IT A CRIME TO TATTOO A MINOR WITHOUT PARENTAL CONSENT; AMENDING SECTION 45-5-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 747

156 *(House Bill No. 486; Tuss)* AN ACT ELIMINATING CERTAIN UNDERGROUND PIPES FROM THE DEFINITION OF "UNDERGROUND STORAGE TANK" IN THE HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK LAWS; AMENDING SECTION 75-10-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 748

157 *(Senate Bill No. 15; Halligan)* AN ACT REQUIRING LOCAL EDUCATIONAL AGENCIES AND ACCREDITED SCHOOLS TO ADOPT A POLICY FOR THE TRANSFERRING OF PERMANENT AND SPECIAL EDUCATIONAL RECORDS; AUTHORIZING THE SUPERINTENDENT OF PURLIC INSTRUCTION TO ENTER INTO RECIPROCAL RECORDS TRANSFER AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE. . . . . 751

158 *(Senate Bill No. 39; Nelson)* AN ACT APPLYING MANAGEMENT AND EXCLUSIVE AGENCY CONTRACT RESTRICTIONS TO FARM MUTUAL INSURERS; DEFINING "FARM MUTUAL INSURER"; REQUIRING LICENSURE OF FARM MUTUAL MANAGING GENERAL AGENTS AND REGULATION OF FARM MUTUAL MANAGING GENERAL AGENT CONTRACTS; LIMITING THE RETENTION OF CROP-HAIL RISK BY A FARM MUTUAL INSURER; AND AMENDING SECTIONS 33-4-101, 33-4-102, AND 33-4-502, MCA. 752

159 *(Senate Bill No. 129; Crismore)* AN ACT DEFINING A LOG LOADER AS SPECIAL MOBILE EQUIPMENT FOR REGISTRATION PURPOSES; AMENDING SECTION 61-1-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 754

160 *(Senate Bill No. 138; Foster)* AN ACT REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A FULL-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE PRACTICE OF LAW FOR 3 YEARS BEFORE THE DATE OF ELECTION OR APPOINTMENT; REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A PART-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE PRACTICE OF LAW BEFORE TAKING OFFICE; ELIMINATING THE REQUIREMENT THAT A PERSON APPOINTED TO FILL A VACANCY IN THE OFFICE OF COUNTY ATTORNEY BE DESIGNATED AN ACTING COUNTY ATTORNEY UNTIL THAT PERSON ESTABLISHES RESIDENCY IN THE COUNTY; AND AMENDING SECTIONS 7-4-2701 AND 7-4-2702, MCA. . . . . 755

161 *(Senate Bill No. 141; Mesaros)* AN ACT CLARIFYING THAT PENALTY PROVISIONS OF THE FISH AND GAME CODE ARE SUPPLEMENTAL TO BUT DO NOT SUPERSEDE THE CRIMINAL CODE; PROVIDING THAT THE GENERAL TIME LIMITS FOR PROSECUTION OF FISH AND GAME OFFENSES ARE GOVERNED

HeinOnline -- 1997 vol. I xxvii 1997

BY THE TIME LIMITS SET OUT IN THE CRIMINAL CODE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 756

162 *(Senate Bill No. 145; Bishop)* AN ACT CLARIFYING THE BAR AGAINST A SUBSEQUENT PROSECUTION AFTER A FORMER PROSECUTION IN ANOTHER JURISDICTION; AMENDING SECTION 46-11-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 757

163 *(Senate Bill No. 163; Christiaens)* AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION FOR ENTERING PLEAS AND SENTENCING IN MISDEMEANOR CRIMINAL CASES IF NEITHER PARTY OBJECTS AND THE COURT AGREES; AMENDING SECTIONS 46-12-211, 46-16-105, 46-17-203, 46-18-102, AND 46-18-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 758

164 *(Senate Bill No. 204; Nelson)* AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO SCHEDULE COMMERCIAL DRIVER'S LICENSE EXAMINATIONS IN A COUNTY IF PREVIOUSLY SCHEDULED THROUGH THE DEPARTMENT OF JUSTICE; AMENDING SECTION 61-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 761

165 *(House Bill No. 46; Grinde)* AN ACT REQUIRING CERTAIN HEALTH MAINTENANCE ORGANIZATIONS TO OFFER A POINT-OF-SERVICE OPTION BENEFIT PLAN TO EACH PURCHASER OF A HEALTH CARE SERVICES AGREEMENT; AMENDING SECTION 33-31-102, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 762

166 *(House Bill No. 381; Hibbard)* AN ACT REVISING CERTAIN PROVISIONS RELATING TO THE EXEMPTION FROM PROPERTY TAXATION OF CERTAIN COMMUNITY SERVICE BUILDINGS AND LAND; ALLOWING A NONPROFIT COMMUNITY SERVICE ORGANIZATION THAT SELLS FOOD AND BEVERAGES TO QUALIFY FOR THE PROPERTY TAX EXEMPTION; ALLOWING CERTAIN COMMUNITY SERVICE ORGANIZATIONS TO APPLY FOR THE EXEMPTION FOR TAX YEAR 1997; AMENDING SECTION 15-6-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 765

167 *(House Bill No. 506; Story)* AN ACT ESTABLISHING A PROCESS FOR THE ACKNOWLEDGMENT OF WATER RIGHT TRANSFERS IN REAL PROPERTY TRANSFER TRANSACTIONS; AMENDING SECTIONS 15-7-305, 15-7-308, AND 85-2-424; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . . 766

168 *(Senate Bill No. 6; Christiaens)* AN ACT REVISING THE OFFENSE OF POSSESSION OF A DEADLY WEAPON BY A PRISONER; MAKING IT AN OFFENSE FOR A PERSON IN A YOUTH DETENTION FACILITY, SECURE DETENTION FACILITY, REGIONAL DETENTION FACILITY, SHORT-TERM DETENTION CENTER, STATE YOUTH CORRECTIONAL FACILITY, OR SHELTER CARE FACILITY TO POSSESS A DEADLY WEAPON; AND AMENDING SECTION 45-8-318, MCA. . . . . 768

169 *(Senate Bill No. 160; Bartlett)* AN ACT AUTHORIZING A NAME CHANGE PETITION TO PROCEED ON A SEALED-RECORD BASIS WHEN PROBABLE CAUSE IS SHOWN THAT THE SAFETY OF THE PETITIONER IS AT RISK; AMENDING SECTION 27-31-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 769

HeinOnline -- 1997 vol. I xxviii 1997

170 *(Senate Bill No. 175; Swysgood)* AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES BUREAU OF LAND MANAGEMENT AND THE STATE OF MONTANA. . . . . 770

171 *(Senate Bill No. 298; Swysgood)* AN ACT REVISING THE ADVISORY COUNCILS ASSOCIATED WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ELIMINATING THE STATE ADVISORY COUNCIL ON FOOD AND NUTRITION, THE MONTANA INITIATIVE FOR THE ABATEMENT OF MORTALITY IN INFANTS PROJECT ADVISORY COUNCIL, THE EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL, THE STATE AND LOCAL FAMILY SERVICES ADVISORY COUNCILS, THE STATEWIDE HEALTH COORDINATING COUNCIL, THE CHILD-CARE ADVISORY COUNCIL, THE REGIONAL ADVISORY COUNCILS FOR DEVELOPMENTAL DISABILITIES, AND THE ADVISORY COUNCIL ON EMOTIONALLY DISTURBED CHILDREN; AMENDING SECTIONS 2-15-2204, 50-5-101, 50-6-103, 50-6-401, 50-6-402, 50-6-404, 50-19-303, 50-49-103, 50-49-106, 50-49-107, 52-1-103, 52-2-704, 53-20-203, 53-20-205, AND 53-21-202, MCA; AND REPEALING SECTIONS 2-15-2210, 2-15-2213, 2-15-2215, 50-6-403, 50-19-312, 50-49-104, 50-49-105, 52-1-202, 52-1-203, 52-2-705, AND 53-20-207, MCA. . . . . 784

172 *(Senate Bill No. 41; Benedict)* AN ACT TRANSFERRING JURISDICTION OVER DISPUTES RELATING TO WAGES PAID FOR IN PROPERTY OTHER THAN MONEY, DISPUTES RELATING TO SUBROGATION, AND DISPUTES RELATING TO PAYMENT OF COMPENSATION TO BENEFICIARIES TO THE WORKERS' COMPENSATION COURT; REQUIRING MEDIATION OF CERTAIN TYPES OF DISPUTES; INCLUDING LIMITED LIABILITY PARTNERSHIPS WITHIN THE PROVISIONS OF THE WORKERS' COMPENSATION ACT; ELIMINATING THE UNDERINSURED EMPLOYERS' PROVISIONS OF THE WORKERS' COMPENSATION ACT; PROVIDING FOR TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; AMENDING SECTIONS 39-71-117, 39-71-118, 39-71-303, 39-71-401, 39-71-414, 39-71-432, 39-71-723, AND 39-71-724, MCA; REPEALING SECTIONS 39-71-531, 39-71-532, 39-71-533, AND 39-71-534, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 799

173 *(Senate Bill No. 92; Eck)* AN ACT REVISING THE COMPOSITION AND DUTIES OF THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS TO INCLUDE THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS AND THE STATE COORDINATOR OF INDIAN AFFAIRS AS MEMBERS; REQUIRING PREPARATION OF A UNIFIED PREVENTION BUDGET; REQUIRING THE DEVELOPMENT, MAINTENANCE, AND IMPLEMENTATION OF BENCHMARKS FOR PREVENTION PROGRAMS; AMENDING SECTION 2-15-225, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 810

174 *(Senate Bill No. 108; Beck)* AN ACT GENERALLY REVISING WATER ADJUDICATION LAWS; ALLOWING THE WATER COURT TO ADJUDICATE ABANDONMENT OF WATER RIGHTS; ALLOWING A WATER JUDGE TO CONSIDER RELEVANT EVIDENCE ARISING BEFORE OR AFTER JULY 1, 1973; PROVIDING FOR THE WATER COURT TO ENTER A TEMPORARY PRELIMINARY DECREE FOR ANY CATEGORY OF CLAIM THAT REQUIRES ADJUDICATION; REQUIRING OBJECTIONS TO BE FILED AT THE INITIAL DECREE STAGE; ALLOWING CLAIMANTS AND OBJECTORS TO AMEND THEIR CLAIMS OR OBJECTIONS; GIVING CLAIMANTS AN

HeinOnline -- 1997 vol. I xxix 1997

OPPORTUNITY TO FILE COUNTEROBJECTIONS; ENCOURAGING INCREASED USE OF ALTERNATIVE DISPUTE RESOLUTION; CLARIFYING THE PROCESS FOR ADMINISTERING WATER RIGHTS PENDING ADJUDICATION; AMENDING SECTIONS 3-7-501, 85-2-227, 85-2-231, 85-2-233, 85-2-404, AND 85-2-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 812

175 *(House Bill No. 317; Gillan)* AN ACT ESTABLISHING THAT THE COSTS TO A COUNTY OF ADMINISTERING A RURAL SPECIAL IMPROVEMENT DISTRICT MAINTENANCE FUND ARE A COST OF MAINTAINING THE DISTRICT; REQUIRING A MAINTENANCE DISTRICT BOARD OF TRUSTEES TO ANNUALLY DETERMINE THE COST OF ADMINISTERING THE MAINTENANCE DISTRICT AND TO ASSESS FOR THE COST; LIMITING THE COSTS FOR ADMINISTERING A MAINTENANCE DISTRICT; REQUIRING THE BOARD OF TRUSTEES OF A MAINTENANCE DISTRICT TO PAY TO THE COUNTY TREASURER THE AMOUNT FOR ADMINISTERING THE DISTRICT; REQUIRING THE COUNTY TREASURER TO DEPOSIT IN THE COUNTY GENERAL FUND ALL FUNDS RECEIVED FOR ADMINISTERING A MAINTENANCE DISTRICT; AMENDING SECTION 7-12-2161, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 820

176 *(House Bill No. 319; Gillan)* AN ACT CHANGING THE DATE BY WHICH A LOCAL GOVERNMENT USING THE LOCAL GOVERNMENT ALTERNATIVE ACCOUNTING METHOD MUST HAVE ADOPTED A BUDGET; AMENDING SECTION 7-6-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 821

177 *(House Bill No. 322; McCulloch)* AN ACT PROVIDING FOR AN ELECTION ON THE QUESTION OF ENLARGING A TRANSPORTATION DISTRICT; REDUCING THE NUMBER OF SIGNATURES NEEDED ON A PETITION TO ENLARGE A TRANSPORTATION DISTRICT FROM 51 PERCENT TO 20 PERCENT; AND AMENDING SECTIONS 7-14-203, 7-14-204, 7-14-207, 7-14-208, 7-14-209, 7-14-210, AND 7-14-241, MCA. . . . . 822

178 *(House Bill No. 363; Anderson)* AN ACT ALLOWING THE TRANSPORTATION COMMISSION AND LOCAL GOVERNMENTS TO AGREE TO EXCHANGE PORTIONS OF HIGHWAYS, COUNTY ROADS, OR STREETS WHEN MUTUALLY BENEFICIAL; AND AMENDING SECTIONS 60-2-107 AND 60-2-128, MCA. . . . . 824

179 *(House Bill No. 375; Ryan)* AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR UNDERGROUND UTILITIES; CLARIFYING CERTAIN DEFINITIONS; DEFINING "EMERGENCY EXCAVATION", "EMERGENCY LOCATE", "EXCAVATOR", AND "LOCATE"; ELIMINATING THE REQUIREMENT THAT A PUBLIC UTILITY FILE UNDERGROUND FACILITY INFORMATION WITH THE COUNTY CLERK AND RECORDER; CLARIFYING GENERAL AND EMERGENCY EXCAVATION AND LOCATION REQUIREMENTS; AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA; AND REPEALING SECTIONS 69-4-506 AND 69-4-511, MCA. . . . . 825

180 *(House Bill No. 489; Story)* AN ACT SPECIFYING THE PROVISIONS FOR A UNIT OF LOCAL GOVERNMENT TO REGULATE THE NOTIFICATION OF PESTICIDE APPLICATION; AMENDING SECTION 80-8-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 829

181 *(House Bill No. 540; Orr)* AN ACT CLARIFYING LAWS REQUIRING CRIMINALS TO PAY RESTITUTION TO THEIR VICTIMS;

REQUIRING RESTITUTION TO BE PAID IN FULL; PROVIDING THAT THE DUTY TO PAY RESTITUTION REMAINS WITH THE CRIMINAL UNTIL RESTITUTION IS PAID; PROVIDING FOR CREDIT AGAINST RESTITUTION FOR COMMUNITY SERVICE BY A CRIMINAL UNABLE TO PAY RESTITUTION; ALLOWING A COURT TO TAKE ACTION TO ENSURE THAT ASSETS OF A PERSON CHARGED WITH A CRIME THAT CAN BE USED TO PAY RESTITUTION ARE NOT DISSIPATED; PROVIDING FOR THE ORDER IN WHICH RESTITUTION MUST BE PAID TO PERSONS AND ENTITIES ENTITLED TO RESTITUTION PAYMENTS; AND AMENDING SECTIONS 46-18-201, 46-18-241, 46-18-244, 46-18-246, 46-18-247, AND 46-18-251, MCA. . . . . 832

182 *(House Bill No. 577; Molnar)* AN ACT DELETING THE PROVISION THAT A PERSON UNDER 21 YEARS OF AGE NEED NOT BE CONSUMING OR IN POSSESSION OF THE INTOXICATING SUBSTANCE AT THE TIME OF ARREST TO COMMIT THE OFFENSE OF POSSESSION OF AN INTOXICATING SUBSTANCE; AMENDING SECTION 45-5-624, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 840

183 *(Senate Bill No. 34; Nelson)* AN ACT REQUIRING INSURANCE COVERAGE FOR A MINIMUM HOSPITAL STAY FOLLOWING CHILDBIRTH; AMENDING SECTION 33-31-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 842

184 *(Senate Bill No. 42; Bishop)* AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, UNDER CERTAIN CIRCUMSTANCES, TO CONVEY DEPARTMENT INTERESTS IN LANDS AND WATERS THROUGH DIRECT SALES RATHER THAN THROUGH A BIDDING PROCESS; AMENDING SECTION 87-1-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . 846

185 *(Senate Bill No. 46; Sprague)* AN ACT ALLOWING CONFISCATION OF THE DRIVER'S LICENSE OF A YOUTH WHO IS DELINQUENT OR IN NEED OF SUPERVISION; AND AMENDING SECTIONS 41-5-301, 41-5-403, AND 41-5-523, MCA. . . . . 848

186 *(Senate Bill No. 54; Shea)* AN ACT GENERALLY REVISING THE LAWS PERTAINING TO CRIME VICTIMS AND VICTIMS COMPENSATION; PROHIBITING THE IMPOSITION OF CHARGES FOR FILING A PETITION FOR AN ORDER OF PROTECTION; PROVIDING THAT A VICTIM MUST BE GIVEN NOTICE OF AND AN OPPORTUNITY TO BE HEARD ON A PETITION FOR DESTRUCTION, DISPOSAL, OR USE OF EVIDENCE; CLARIFYING THAT RESTITUTION PAYMENTS WILL BE MADE TO THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT IF THE ACCOUNT HAS PAID BENEFITS TO THE VICTIM; PROVIDING FOR REIMBURSEMENT OF OTHER GOVERNMENT AGENCIES AND OF INSURERS WHO HAVE COMPENSATED THE VICTIM; SPECIFYING PROBATION SUPERVISORY FEES IN THE ALLOCATION OF PAYMENTS MADE BY AN OFFENDER; CLARIFYING THE OBLIGATION OF LAW ENFORCEMENT AGENCIES TO PAY FOR INVESTIGATIVE MEDICAL EXAMINATIONS OF VICTIMS OF CERTAIN SEXUAL OFFENSES; AUTHORIZING VICTIMS' DEATH BENEFITS TO BE PAID BY LUMP SUM; EXTENDING THE SUBROGATION RIGHTS OF THE CRIME VICTIMS COMPENSATION PROGRAM TO RECOVERIES RECEIVED BY THE VICTIM FROM ANY THIRD PARTY; LIMITING VICTIMS' WAGE LOSS BENEFITS TO 26 WEEKS; AMENDING SECTIONS 40-15-204, 46-5-307, 46-5-308, 46-15-411, 46-18-251, 46-24-206, 53-9-102, 53-9-103, AND 53-9-128, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 856

HeinOnline -- 1997 vol. I xxxi 1997

187 *(Senate Bill No. 60; Sprague)* AN ACT REVISING CERTAIN PROVISIONS REGARDING FISH AND GAME LICENSES; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADOPT RULES REGARDING PROOF OF COMPETENCY IN SAFETY INSTRUCTION; REVISING THE INFORMATION REQUIREMENTS AND THE FORM OF THE WILDLIFE CONSERVATION LICENSE; CLARIFYING PROVISIONS RELATED TO THE MIGRATORY BIRD LICENSE AND MIGRATORY BIRD STAMP; ALLOWING RATHER THAN REQUIRING THE DEPARTMENT TO FURNISH A DECAL TO THE HOLDER OF A COMBINATION SPORTS LICENSE; REVISING TIIE DATE WHEN A LICENSE AGENT MUST ACCOUNT FOR UNSOLD LICENSES; ALLOWING THE DEPARTMENT TO CHARGE NEW LICENSE AGENTS AN ELECTRONIC LICENSE SYSTEM INSTALLATION FEE; ALLOWING THE DEPARTMENT TO ADOPT RULES REGARDING THE COMPENSATION, FEES, AND DUTIES OF LICENSE AGENTS; REVISING THE TERMS OF THE RECIPROCAL FISHING LICENSE; AMENDING SECTIONS 87-2-102, 87-2-105, 87-2-106, 87-2-202, 87-2-411, 87-2-412, 87-2-711, 87-2-902, 87-2-903, AND 87-2-1001, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 864

188 *(Senate Bill No. 68; Keating)* AN ACT PROVIDING THAT A REHABILITATION FACILITY ACCREDITED BY THE COMMISSION ON ACCREDITATION OF REHABILITATION FACILITIES MAY BE CONSIDERED ELIGIBLE FOR LICENSURE AS A REHABILITATION FACILITY OR A TREATMENT FACILITY FOR CHEMICAL DEPENDENCY; AND AMENDING SECTIONS 50-4-504, 50-4-605, 50-5-101, 50-5-103, 53-24-103, AND 53-24-208, MCA. . . . . 871

189 *(Senate Bill No. 109; Holden)* AN ACT RELATING TO THE DEPARTMENT OF CORRECTIONS AND CORRECTIONAL FACILITIES; PROVIDING FOR CERTIFICATION BY THE DEPARTMENT OF CORRECTIONS OF APPROPRIATIONS FOR YOUTH COURT AND PROBATION FOSTER CARE PLACEMENTS; CLARIFYING NAMES OF PRISONS AND CORRECTIONAL FACILITIES AND THE APPLICATION OF CERTAIN STATUTES TO THOSE PRISONS AND FACILITIES; REQUIRING A PSYCHOSEXUAL EVALUATION OF CERTAIN OFFENDERS; REQUIRING THAT THE PRESENTENCE INVESTIGATION REPORT BE MADE AVAILABLE TO THE PROBATION AND PAROLE OFFICER IN ADDITION TO OTHERS; PROVIDING FOR QUALIFICATIONS OF PERSONS CONDUCTING PRESENTENCE INVESTIGATIONS; PROVIDING FOR LIMITED RELEASE FROM JAIL FOR PURPOSES OF EMPLOYMENT; REQUIRING THAT CERTAIN INFORMATION BE MADE AVAILARLE CONCERNING A PERSON'S CONFINEMENT; CLARIFYING STATUTES RELATING TO THE POWERS OF THE DEPARTMENT, CORRECTIONAL FACILITIES, AND PRISON INDUSTRIES TRAINING PROGRAMS; AMENDING SECTIONS 1-1-207, 41-5-103, 46-18-101, 46-18-111, 46-18-113, 46-18-201, 46-18-225, 46-18-701, 46-23-201, 46-23-215, 46-23-401, 46-24-212, 52-5-101, 52-5-108, 52-5-109, 52-5-112, 52-5-113, 53-1-102, 53-1-103, 53-1-104, 53-1-202, 53-1-203, 53-1-302, 53-30-101, 53-30-102, 53-30-105, 53-30-151, 53-30-503, AND 87-2-802, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 881

190 *(Senate Bill No. 114; Waterman)* AN ACT GENERALLY REVISING THE LAWS RELATING TO LIABILITY FOR A RESIDENT'S COST OF CARE IN A STATE INSTITUTION; SPECIFYING FACTORS TO BE CONSIDERED BY THE DEPARTMENT OF PURLIC HEALTH AND HUMAN SERVICES IN DETERMINING ABILITY TO PAY; REQUIRING NOTICE OF AND AN OPPORTUNITY FOR A HEARING

HeinOnline -- 1997 vol. I xxxii 1997

REGARDING A DETERMINATION OF ABILITY TO PAY; SPECIFYING BILLING PROCEDURES; SPECIFYING THE INFORMATION TO BE PROVIDED TO AND CONSIDERED BY THE DEPARTMENT IN A FINANCIAL INVESTIGATION; PROVIDING FOR ANNUAL REVIEW OF ABILITY TO PAY; SPECIFYING THE EFFECT OF A FAILURE TO PROVIDE REQUIRED FINANCIAL INFORMATION; SPECIFYING LIMITS ON LIABILITY FOR COSTS OF CARE; SPECIFYING COLLECTION PROCEDURES; SPECIFYING THE EXTENT OF RECOVERY FROM A DECEDENT'S ESTATE; SPECIFYING THE EFFECT AND TREATMENT OF CERTAIN MANAGED CARE PAYMENTS; PROVIDING FOR AUTOMATIC ASSIGNMENT OF THIRD-PARTY PAYMENTS TO THE DEPARTMENT FOR A RESIDENT'S COST OF CARE; AMENDING SECTIONS 53-1-401, 53-1-402, 53-1-403, 53-1-404, 53-1-405, 53-1-406, 53-1-407, 53-1-408, 53-1-409, 53-1-410, 53-1-411, 53-1-412, AND 53-1-413, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES. . . . . 903

191 *(House Bill No. 90; Wiseman)* AN ACT DIRECTING A COMMITTEE DESIGNATED BY THE LEGISLATIVE COUNCIL TO DESIGN A RETIREMENT PLAN TO REPLACE OR MODIFY THE CURRENT PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REQUIRING THAT THE COMMITTEE DEVELOP LEGISLATION AND AN IMPLEMENTATION PLAN FOR THE 56TH LEGISLATURE; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE. . . . . 913

192 *(House Bill No. 91; Wiseman)* AN ACT EXTENDING THE SUNSET PROVISION ON THE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS; AMENDING SECTION 9, CHAPTER 549, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 915

193 *(House Bill No. 341; Mercer)* AN ACT EXCLUDING SALESPERSONS, PARTS PERSONS, AND MECHANICS EMPLOYED BY A BUSINESS PRIMARILY ENGAGED IN SELLING REPLACEMENT PARTS TO A WHOLESALER OR THE ULTIMATE PURCHASER FROM THE OVERTIME COMPENSATION LAW; AND AMENDING SECTION 39-3-406, MCA. . . . . 915

194 *(House Bill No. 495; Mills)* AN ACT REVISING THE HUMAN RIGHTS LAW EXCEPTION FOR HOUSING FOR OLDER PERSONS TO THE PROHIBITION AGAINST DISCRIMINATION BASED ON AGE OR FAMILIAL STATUS; AND AMENDING SECTION 49-2-305, MCA. . . 919

195 *(Senate Bill No. 69; Waterman)* AN ACT AUTHORIZING THE CREATION OF LONG-TERM CARE INSURANCE PARTNERSHIPS BETWEEN INDIVIDUALS, PRIVATE HEALTH INSURERS, THE COMMISSIONER OF INSURANCE, AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AUTHORIZING THE DEPARTMENT AND THE COMMISSIONER OF INSURANCE TO ADOPT STANDARDS FOR CERTIFYING CERTAIN LONG-TERM CARE INSURANCE POLICIES; ALLOWING CERTAIN ASSETS OF AN INDIVIDUAL WHO PURCHASES A CERTIFIED LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE TO BE DISREGARDED BY THE DEPARTMENT IN DETERMINING ELIGIBILITY FOR MEDICAID BENEFITS; AMENDING SECTION 53-6-143, MCA; AND PROVIDING CONTINGENT EFFECTIVE DATES. . . . . 922

196 *(House Bill No. 154; Taylor, Lila)* AN ACT GENERALLY REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; REQUIRING UNDERGROUND COAL MINE PERMITTEES TO

HeinOnline -- 1997 vol. I xxxiii 1997

COMPENSATE FOR CERTAIN PROPERTY DAMAGE CAUSED BY SUBSIDENCE; REQUIRING REPLACEMENT OF A WATER SUPPLY THAT IS CONTAMINATED, DIMINISHED, OR INTERRUPTED BY UNDERGROUND COAL MINING OPERATIONS; PROVIDING THAT AN OPERATING PERMIT IS REQUIRED FOR ALL UNDERGROUND INJECTION MINING OF URANIUM; CLARIFYING PROSPECTING PERMIT REQUIREMENTS; MODIFYING REVEGETATION REQUIREMENTS; AMENDING SECTIONS 82-4-203, 82-4-226, 82-4-233, AND 82-4-235, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. . . . . 926

197 *(House Bill No. 412; Bergman)* AN ACT REVISING THE DEFINITION OF "HEALTH CARE PROVIDER" FOR THE AIDS PREVENTION ACT TO ALLOW AN OUT-OF-STATE HEALTH CARE PROVIDER TO ORDER AN HIV TEST FOR INSURANCE COMPANIES; AMENDING SECTION 50-16-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 934

198 *(Senate Bill No. 144; Keating)* AN ACT PROVIDING FOR THE INCLUSION OF PARTICIPATING OBSTETRICIANS AND GYNECOLOGISTS AS PRIMARY CARE PHYSICIANS; PROVIDING THAT A HEALTH BENEFIT PLAN MAY NOT REQUIRE A REFERRAL FROM A PRIMARY CARE PHYSICIAN AS A CONDITION FOR THE COVERAGE OF THE SERVICES OF AN OBSTETRICIAN OR GYNECOLOGIST; PROVIDING COVERAGE FOR SERVICES PROVIDED BY AN ADVANCED PRACTICE REGISTERED NURSE IN COLLABORATION WITH THE PARTICIPATING OBSTETRICIAN OR GYNECOLOGIST; REQUIRING NOTICE TO COVERED PERSONS; AMENDING SECTIONS 33-22-101 AND 33-31-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 937

199 *(House Bill No. 63; Harrington)* AN ACT REALLOCATING THE PROCEEDS OF THE SALES TAX ON NEW MOTOR VEHICLES BY DEPOSITING $1 PER VEHICLE IN A SPECIAL REVENUE ACCOUNT; PROVIDING THAT THE REALLOCATED FUNDS BE USED BY THE DEPARTMENT OF COMMERCE TO ADMINISTER THE NEW VEHICLE WARRANTY LAWS; AMENDING SECTION 61-3-502, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 941

200 *(House Bill No. 532; Barnett)* AN ACT GENERALLY REVISING THE LAWS RELATING TO MOBILE HOMES AND MANUFACTURED HOMES; DEFINING "MANUFACTURED HOME"; ALLOWING FOR THE UNTITLING AND RETITLING OF A MANUFACTURED HOME; TREATING A MANUFACTURED HOME AS A MOBILE HOME FOR PURPOSES OF TAXATION; CHANGING THE DATES FOR THE PAYMENT OF PERSONAL PROPERTY TAXES ON A MOBILE OR MANUFACTURED HOME; REQUIRING THAT ALL TAXES ON A MOBILE HOME BE PAID BEFORE A TRANSFER OF INTEREST CAN OCCUR; AMENDING SECTIONS 7-13-4502, 15-1-101, 15-6-134, 15-8-201, 15-8-205, 15-16-202, 15-24-201, 15-24-202, 15-24-203, 15-24-204, 15-24-205, 15-24-206, 15-24-208, 15-24-209, 15-24-210, 15-32-102, 61-3-207, 61-3-303, 61-3-503, AND 69-12-331, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 943

201 *(House Bill No. 224; Kitzenberg)* AN ACT AMENDING FIRE AND SAFETY REQUIREMENTS FOR FUEL TANKS ON FARMS AND RANCHES; PROVIDING FOR WRITTEN WARNING NOTICES FOR FARM AND RANCH TANK VIOLATIONS; AMENDING SECTION 50-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 958

HeinOnline -- 1997 vol. I xxxiv 1997

202 *(Senate Bill No. 117; Nelson)* AN ACT DESIGNATING THE FOURTH FRIDAY IN SEPTEMBER OF EACH YEAR AS "AMERICAN INDIAN HERITAGE DAY" IN THE STATE OF MONTANA; AMENDING SECTION 20-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 960

203 *(House Bill No. 316; Krenzler)* AN ACT INCREASING TO $50,000 THE THRESHOLD AT WHICH BIDDING IS REQUIRED FOR THE CONSTRUCTION, REPAIR, OR MAINTENANCE, BY A COUNTY, OF A BUILDING, ROAD, OR BRIDGE; AND AMENDING SECTION 7-5-2301, MCA. . . . . 961

204 *(Senate Bill No. 223; Cole)* AN ACT CLARIFYING THE AUTHORITY OF THE MONTANA COAL BOARD TO ASSIST LOCAL GOVERNMENTAL UNITS IN PROVIDING SERVICES NECESSITATED BY A SIGNIFICANT DECLINE IN COAL MINING OR IN THE CONSUMPTION OF COAL BY COAL-USING ENERGY COMPLEXES; ELIMINATING THE COAL BOARD'S AUTHORITY TO MAKE LOANS TO LOCAL GOVERNMENTAL UNITS; AMENDING SECTIONS 90-6-201, 90-6-205, 90-6-206, 90-6-207, 90-6-208, AND 90-6-209, MCA; REPEALING SECTION 90-6-212, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 961

205 *(Senate Bill No. 264; Miller)* AN ACT AUTHORIZING THE GOVERNOR TO CREATE AND PARTICIPATE IN THE WESTERN GOVERNORS' UNIVERSITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 966

206 *(House Bill No. 466; Barnhart)* AN ACT ALLOWING A LOCAL GOVERNMENT TO SELECT AN ENGINEER FROM AN APPROVED LIST TO CONDUCT AN ENGINEERING AND TRAFFIC INVESTIGATION; REQUIRING THE ENGINEER TO SUBMIT A REPORT TO THE TRANSPORTATION COMMISSION; REQUIRING THE COMMISSION TO ACT ON THE FINDINGS WITHIN 120 DAYS; AND AMENDING SECTION 61-8-309, MCA. . . . . 967

207 *(House Bill No. 478; Wiseman)* AN ACT REVISING THE DEFINITION OF "GLASS BROKER"; REVISING THE PRACTICES FROM WHICH CERTAIN PERSONS ENGAGED IN THE SALE, REPAIR, OR REPLACEMENT OF AUTOMOBILE GLASS ARE PROHIBITED; AND AMENDING SECTIONS 30-14-225 AND 33-18-223, MCA. . . . . 968

208 *(House Bill No. 496; Feland)* AN ACT ALLOWING EMPLOYEES OF COUNTY HOSPITALS OR REST HOMES IN CERTAIN CLASSES OF COUNTIES TO NOT BECOME MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTION 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 969

209 *(Senate Bill No. 120; Mahlum)* AN ACT PROVIDING AN EXCEPTION FROM THE REQUIREMENT THAT AN EMPLOYEE WHO IS SEPARATED FOR CAUSE OR LAID OFF FROM EMPLOYMENT BE PAID ALL UNPAID WAGES IMMEDIATELY UPON SEPARATION IF A WAGE PAYMENT PROVISION IS PROVIDED FOR IN THE EMPLOYER'S WRITTEN PERSONNEL POLICY MANUAL; CLARIFYING THE PROVISIONS FOR PAYMENT OF UNPAID WAGES; AND AMENDING SECTION 39-3-205, MCA. . . . . 970

210 *(Senate Bill No. 148; Bishop)* AN ACT ALLOWING RECIPROCITY AGREEMENTS FOR ISSUING PROFESSIONAL OR OCCUPATIONAL LICENSES TO PERSONS LICENSED IN ANOTHER STATE; AND AMENDING SECTION 37-1-304, MCA. . . . . 971

HeinOnline -- 1997 vol. I xxxv 1997

211 *(Senate Bill No. 235; Hertel)* AN ACT ELIMINATING THE REQUIREMENT THAT SCHOOL DISTRICT TRUSTEES PREPARE AND ADOPT A PRELIMINARY BUDGET; AMENDING SECTIONS 20-3-322, 20-7-705, 20-9-115, 20-9-121, 20-9-131, 20-9-132, 20-9-165, 20-9-353, 20-9-438, 20-9-501, 20-9-503, 20-10-143, AND 20-10-144, MCA; REPEALING SECTIONS 20-9-113, 20-9-114, AND 20-9-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 972

212 *(Senate Bill No. 240; Beck)* AN ACT CREATING THE VOLUNTARY CONSOLIDATION AND ANNEXATION INCENTIVE PLAN FOR SCHOOL DISTRICTS; ALLOWING AN ELEMENTARY, HIGH SCHOOL, OR K-12 SCHOOL DISTRICT THAT IS CONSOLIDATED OR ANNEXED TO RECEIVE ANB AND ENTITLEMENT PAYMENTS OF THE COMPONENT DISTRICTS FOR 3 YEARS FOLLOWING THE CONSOLIDATION OR ANNEXATION; AMENDING SECTION 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 984

213 *(House Bill No. 160; Tash)* AN ACT PROVIDING ADMINISTRATIVE ENFORCEMENT FOR VIOLATIONS OF THE JUNK VEHICLE AND MOTOR VEHICLE WRECKING FACILITY LAWS; AUTHORIZING FACILITY LICENSE SUSPENSION OR DENIAL FOR VIOLATION OF AN ORDER; AUTHORIZING FACILITY LICENSE REVOCATION FOR VIOLATION OF A SUSPENSION ORDER; AMENDING SECTION 75-10-514, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 986

214 *(House Bill No. 278; Stovall)* AN ACT ALLOWING COUNTIES TO RETAIN 100 PERCENT OF THE MONEY RECEIVED BY THE COUNTY FOR ISSUING COUNTY LICENSES; REVISING THE ALLOCATION OF FEE MONEY FOR PREDATOR CONTROL; AMENDING SECTIONS 7-21-2105, 81-7-111, 81-7-114, 81-7-118, 81-7-120, 81-7-121, AND 81-7-122, MCA; AND REPEALING SECTION 81-7-119, MCA. . . . . 987

215 *(House Bill No. 318; Gillan)* AN ACT ALLOWING CERTAIN COUNTY OFFICIALS TO BE REIMBURSED FOR ACTUAL TRANSPORTATION EXPENSES AND PER DIEM FOR ATTENDING GENERAL MEETINGS OF THEIR PEERS HELD WITHIN THE STATE; AMENDING SECTIONS 7-5-2142, 7-5-2143, 7-5-2144, AND 7-5-2145, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 990

216 *(House Bill No. 377; Ryan)* AN ACT REQUIRING THAT A REQUEST FOR AN EXEMPTION FROM PAYING THE TAX FOR A TELEVISION DISTRICT BE SUBJECT TO REVIEW AND APPROVAL BY THE TELEVISION DISTRICT BOARD OF TRUSTEES; AND AMENDING SECTION 7-13-2529, MCA. . . . . 992

217 *(House Bill No. 421; Denny)* AN ACT ALLOWING A MUNICIPALITY TO HOLD A HEARING ON A PROPOSED ANNEXATION IN CONJUNCTION WITH A HEARING ON THE ZONING OF THE PROPOSED ANNEXATION; AND AMENDING SECTION 76-2-303, MCA. . . . . 993

218 *(House Bill No. 480; Grimes)* AN ACT ALLOWING A DEDUCTION FROM ADJUSTED GROSS INCOME OR FROM CORPORATE GROSS INCOME EXPENDITURES FOR INORGANIC FERTILIZER PRODUCED AS A BYPRODUCT; AMENDING SECTIONS 15-30-121, 15-32-301, 15-32-302, AND 15-32-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 994

219 *(House Bill No. 560; Peck)* AN ACT IMPLEMENTING THE MORATORIUM ON THE CREATION OF NEW SCHOOL DISTRICTS

HeinOnline -- 1997 vol. I xxxvi 1997

BY ELIMINATING THE PROCEDURES FOR CREATION OF A NEW ELEMENTARY OR HIGH SCHOOL DISTRICT; ELIMINATING DUTIES OF BOUNDARY COMMISSIONS RELATING TO CREATION OF DISTRICTS; ELIMINATING OUTDATED REFERENCES AND PROCEDURES RELATING TO COUNTY HIGH SCHOOL DISTRICTS; AMENDING SECTIONS 7-6-2701, 7-7-2203, 7-14-2524, 20-3-106, 20-3-206, 20-3-302, 20-3-312, 20-3-342, 20-3-343, 20-3-351, 20-3-352, 20-3-355, 20-3-356, 20-6-101, 20-6-104, 20-6-312, 20-6-313, 20-6-501, 20-9-402, 20-9-435, AND 20-15-404, MCA; REPEALING SECTIONS 7-6-2802, 20-6-216, 20-6-217, 20-6-303, 20-6-304, 20-6-311, 20-6-325, 20-6-415, 20-9-451, 20-9-452, 20-9-453, 20-9-454, 20-9-455, AND 20-9-456, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 997

220 *(Senate Bill No. 116; Nelson)* AN ACT ALLOWING AN APPLICANT FOR A USED MOTOR VEHICLE DEALER'S LICENSE TO MAINTAIN A PERMANENT NONRESIDENTIAL BUILDING FOR RECORDKEEPING AND SALES WITHIN 1,000 FEET OF THE LOT WHERE MOTOR VEHICLES ARE DISPLAYED; AMENDING SECTION 61-4-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1012

221 *(Senate Bill No. 343; Thomas)* AN ACT REVISING AND CLARIFYING LAWS GOVERNING MOTOR VEHICLE DEALERS, MANUFACTURERS, AND DISTRIBUTORS; AND AMENDING SECTIONS 61-4-101, 61-4-104, 61-4-120, 61-4-121, 61-4-131, 61-4-133, 61-4-134, 61-4-201, 61-4-205, 61-4-206, 61-4-207, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1015

222 *(House Bill No. 159; Barnhart)* AN ACT ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INITIATE AN ACTION FOR ENFORCEMENT OF CHILD CARE REMEDIES IN JUSTICE'S COURT, CITY COURT, OR MUNICIPAL COURT AS WELL AS DISTRICT COURT; AND AMENDING SECTION 52-2-741, MCA. . . . . 1029

223 *(House Bill No. 174; Smith)* AN ACT EXPANDING THE GAME WARDENS' RETIREMENT SYSTEM TO BE A GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM FOR STATE PEACE OFFICERS; REVISING DEFINITIONS; PROVIDING MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO ARE PEACE OFFICERS WITH AN ELECTION TO JOIN THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; CLARIFYING THAT PUBLIC EMPLOYEES' RETIREMENT SYSTEM MEMBERS TRANSFERRING TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM MAY TRANSFER CREDITABLE SERVICE WITHOUT ACTUARIAL COST TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMBNT SYSTEM; REDUCING THE VESTING REQUIREMENTS; AMENDING SECTIONS 19-8-101, 19-8-102, 19-8-301, 19-8-302, 19-8-504, 19-8-604, 19-8-701, 19-8-712, 19-8-902, AND 19-8-903, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1030

224 *(House Bill No. 544; Grady)* AN ACT REVISING THE REGIONAL CORRECTIONAL FACILITY ACT TO PERMIT THE DEPARTMENT OF CORRECTIONS TO ENTER INTO AGREEMENTS WITH CORPORATIONS; ALLOWING THE CORPORATION AN OPTION TO PURCHASE A FACILITY OWNED BY THE STATE; ALLOWING A LOCAL GOVERNMENTAL ENTITY TO ENTER INTO LONG-TERM CONTRACTS AND TO INCUR INDEBTEDNESS TO ACQUIRE A FACILITY THROUGH A LEASE OR LEASE-PURCHASE OPTION;

HeinOnline -- 1997 vol. I xxxvii 1997

AND AMENDING SECTIONS 53-30-503, 53-30-504, 53-30-506, AND 53-30-507, MCA. . . . . 1035

225 *(Senate Bill No. 21; Jergeson)* AN ACT EXTENDING FOR 8 YEARS THE JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET; AMENDING SECTION 11, CHAPTER 387, LAWS OF 1993, AND SECTION 1, CHAPTER 381, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1038

226 *(Senate Bill No. 25; Jergeson)* AN ACT CLARIFYING THE TERM OF OFFICE FOR CERTAIN APPOINTEES TO FILL VACANT ELECTED POSITIONS; AMENDING SECTION 7-4-2206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1038

227 *(Senate Bill No. 27; Keating)* AN ACT INCREASING THE AMOUNT THAT A COUNTY MAY BORROW WITHOUT APPROVAL OF THE ELECTORATE BASED UPON A COUNTY'S TAXABLE VALUATION; AND AMENDING SECTIONS 7-7-2101 AND 7-7-2402, MCA. . . . . 1039

228 *(Senate Bill No. 50; Keating)* AN ACT ALLOWING THE LESSEE OF AN OIL, GAS, OR OTHER MINERAL LEASE TO MAKE IN A SINGLE REQUEST FOR RECORDATION THE ASSIGNMENT OR RELEASE OF MORE THAN ONE LEASE; REQUIRING THAT A REQUEST FOR THE ASSIGNMENT OR RELEASE OF MORE THAN ONE LEASE BE TREATED AS A SINGLE REQUEST FOR PUBLIC RECORDING PURPOSES; AND AMENDING SECTION 82-1-201, MCA. . . . . 1040

229 *(Senate Bill No. 159; Jergeson)* AN ACT ELIMINATING THE REQUIREMENT THAT A LOCAL GOVERNMENT DISTRIBUTE DEMAND DEPOSITS RATABLY AMONG ALL BANKS WITHIN THE BOUNDARY OF THE LOCAL GOVERNMENT; AND AMENDING SECTION 7-6-205, MCA. . . . . 1041

230 *(Senate Bill No. 205; McNutt)* AN ACT CLARIFYING THAT TRUTH IS AN ABSOLUTE DEFENSE IN A CRIMINAL DEFAMATION PROCEEDING; AMENDING SECTION 45-8-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1042

231 *(Senate Bill No. 246; Beck)* AN ACT REGULATING THE SALE OF A MOTOR VEHICLE BY A PERSON ON REAL PROPERTY IN WHICH THE PERSON DOES NOT HAVE A LEGAL INTEREST; AND AMENDING SECTION 61-1-314, MCA. . . . . 1043

232 *(Senate Bill No. 29; Swysgood)* AN ACT GENERALLY REVISING THE MOTOR CARRIER LAWS; ELIMINATING THE SPECIAL PERMIT FOR A VEHICLE EXCEEDING A GROSS WEIGHT OF 80,000 POUNDS; ELIMINATING THE SPECIAL PERMIT FOR A CRANE; INCREASING THE WEIGHT FEES FOR VEHICLES WEIGHING IN EXCESS OF 80,000 POUNDS; INCREASING THE ALTERNATIVE GROSS WEIGHT FEES FOR CERTAIN VEHICLES WEIGHING IN EXCESS OF 78,001 POUNDS; INCREASING THE FEES ON CERTAIN VEHICLES LICENSED IN OTHER STATES; ELIMINATING THE TEMPORARY CASH COMPLIANCE BOND FOR SPECIAL FUEL USERS; AMENDING SECTIONS 61-8-312, 61-10-104, 61-10-107, 61-10-109, 61-10-124, 61-10-128, 61-10-144, 61-10-145, 61-10-146, 61-10-201, 61-10-203, AND 61-10-211, MCA; REPEALING SECTION 15-70-308, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. 1044

233 *(Senate Bill No. 167; Brooke)* AN ACT PROVIDING FOR THE DELETION OF THE ADDRESSES OF VICTIMS OF CERTAIN CRIMINAL OFFENSES FROM THE OFFICIAL PRECINCT REGISTER OF VOTERS AND FROM ANY LIST OR ADDRESS LABELS AVAILABLE FROM THE COUNTY ELECTION ADMINISTRATOR; REQUIRING PEACE OFFICERS TO INFORM VICTIMS OF PARTNER

HeinOnline -- 1997 vol. I xxxviii 1997

OR FAMILY MEMBER ASSAULT OR CERTAIN OTHER OFFENSES OF THEIR RIGHT TO DELETION OF THEIR ADDRESS FROM THE LISTS; AND AMENDING SECTIONS 13-2-115, 13-2-122, AND 46-6-602, MCA. . . . . 1056

234 *(Senate Bill No. 180; Doherty)* AN ACT CLARIFYING THE APPLICABILITY OF MAIL BALLOT ELECTIONS TO CERTAIN ELECTIONS; CLARIFYING THE AVAILABILITY OF SPECIAL ELECTIONS FOR CERTAIN WATER AND SEWER PROJECTS; AMENDING SECTIONS 7-7-2223, 7-7-2227, 7-7-2229, 7-7-2237, 7-7-4226, 7-7-4227, 7-7-4235, 7-7-4426, 7-7-4427, 7-13-2208, 7-13-2231, 7-13-2323, 7-13-2341, 85-9-206, AND 85-9-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1059

235 *(Senate Bill No. 182; Hertel)* AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATING TO RAILROADS; DELETING AND ELIMINATING ARCHAIC REQUIREMENTS FOR RAILROADS; AMENDING SECTIONS 69-14-111, 69-14-112, 69-14-114, 69-14-115, 69-14-116, 69-14-120, 69-14-133, 69-14-232, 69-14-401, 69-14-604, 69-14-708, 69-14-713, 69-14-801, 69-14-921, 69-14-922, AND 69-14-1004, MCA; AND REPEALING SECTIONS 69-14-119, 69-14-301, 69-14-302, 69-14-303, 69-14-304, 69-14-305, 69-14-306, 69-14-307, 69-14-308, 69-14-309, 69-14-310, 69-14-311, 69-14-312, AND 69-14-712, MCA. . . . 1066

236 *(Senate Bill No. 188; Mohl)* AN ACT ALLOWING CERTAIN EMPLOYEES OF THE DEPARTMENT OF TRANSPORTATION TO SEIZE FUEL THAT IS BEING IMPROPERLY IMPORTED INTO THE STATE; DEFINING "CONVEYANCE", "IMPROPERLY IMPORTED FUEL", AND "PEACE OFFICER"; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH RULES GOVERNING A BIDDING PROCESS AMONG LICENSED MONTANA FUEL DISTRIBUTORS FOR THE PURCHASE OF SEIZED FUEL; PROVIDING FOR A HEARING TO DETERMINE THE RECIPIENT OF SEIZED FUEL; AMENDING SECTIONS 15-70-104, 15-70-201, 15-70-202, 15-70-301, AND 15-70-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1073

237 *(Senate Bill No. 239; Beck)* AN ACT DEFINING "BANK RECORDS" AND "ELECTRONIC STORAGE"; REQUIRING THAT CERTAIN ELECTRONICALLY STORED INFORMATION BE TREATED AS AN ORIGINAL RECORD; AND AMENDING SECTION 32-1-492, MCA. . 1082

238 *(Senate Bill No. 244; Toews)* AN ACT ALLOWING THE TRANSFER OF A BUS DEPRECIATION RESERVE FUND BALANCE ONLY WHEN A SCHOOL DISTRICT SELLS ALL OF ITS BUSES; AND AMENDING SECTION 20-10-147, MCA. . . . . 1083

239 *(Senate Bill No. 257; DePratu)* AN ACT GENERALLY REVISING THE DISPOSITION OF GASOLINE TAXES AND FEDERAL HIGHWAY FUNDS; CORRECTLY IDENTIFYING THE LOCAL TECHNICAL ASSISTANCE TRANSPORTATION PROGRAM; CORRECTLY IDENTIFYING ROUTE DESIGNATION IN ACCORDANCE WITH FEDERAL LAW; ALLOWING THE DISBURSEMENT OF GASOLINE TAXES TO CONSOLIDATED CITY-COUNTY GOVERNMENTS; MODIFYING FUNDING ALLOCATION FORMULAS TO REFLECT THE MOST RECENT CENSUS DATA; REVISING THE DEFINITION OF "RURAL POPULATION" AND "RURAL ROAD MILEAGE"; AMENDING SECTIONS 15-70-101 AND 60-3-206, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1084

240 *(Senate Bill No. 265; Thomas)* AN ACT REVISING THE LAWS RELATING TO CONSTRUCTION STANDARDS FOR RECREATIONAL VEHICLES; ELIMINATING THE

HeinOnline -- 1997 vol. I xxxix 1997

RESPONSIBILITY OF THE DEPARTMENT OF COMMERCE FOR ADOPTING CONSTRUCTION STANDARDS FOR RECREATIONAL VEHICLES; ADOPTING THE AMERICAN NATIONAL STANDARDS INSTITUTE CONSTRUCTION STANDARD FOR RECREATIONAL VEHICLES; AND AMENDING SECTIONS 50-60-104, 50-60-401, 50-60-402, AND 50-60-403, MCA. . . . . 1087

241 *(Senate Bill No. 277; Bartlett)* AN ACT GENERALLY REVISING PROCEDURE FOR THE SMALL CLAIMS COURT; PROVIDING THAT THE SMALL CLAIMS COURT PROCEDURE IN DISTRICT COURT MUST CONFORM TO THE SMALL CLAIMS COURT PROCEDURE IN JUSTICE'S COURT; REPEALING THE SMALL CLAIMS PROCEDURE FOR DISTRICT COURT; AMENDING SECTION 3-12-101, MCA; REPEALING SECTIONS 3-12-106, 25-34-101, 25-34-102, 25-34-103, 25-34-104, 25-34-105, 25-34-106, 25-34-201, 25-34-202, 25-34-203, 25-34-204, 25-34-205, 25-34-206, 25-34-207, 25-34-208, 25-34-301, 25-34-302, 25-34-303, 25-34-401, 25-34-402, 25-34-403, AND 25-34-404, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1089

242 *(Senate Bill No. 311; McCarthy)* AN ACT PROVIDING FOR SECRECY FOR ABSENTEE BALLOTS; AND AMENDING SECTIONS 13-13-201, 13-13-214, 13-13-221, 13-13-225, 13-13-229, 13-13-231, 13-13-232, 13-13-241, AND 13-15-201, MCA. . . . . 1089

243 *(Senate Bill No. 313; Brooke)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE MONTANA UNIVERSITY SYSTEM; ALLOWING A PUBLIC SCHOOL TEACHER TO RECEIVE COMPENSATION FROM A COLLEGE OR UNIVERSITY FOR SUPERVISING STUDENT TEACHERS WHILE EMPLOYED BY A PUBLIC SCHOOL DISTRICT; ADDING A MEMBER TO THE STUDENT LOAN ADVISORY COUNCIL; CHANGING THE DATE BY WHICH A COMMUNITY COLLEGE MUST SUBMIT ITS BUDGET TO THE BOARD OF REGENTS; CHANGING THE RESIDENCY REQUIREMENT FOR MONTANA HIGH SCHOOL GRADUATES SEEKING ADMISSION TO THE MONTANA UNIVERSITY SYSTEM; MAKING CHANGES TO THE GUARANTEED STUDENT LOAN PROGRAM TO REFLECT CHANGES IN FEDERAL REGULATIONS; REMOVING THE STATUTORY LIMITATIONS ON BUILDING FEES; REMOVING THE DATE BY WHICH MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK (METNET) FEES MUST BE DEPOSITED WITH THE COMMISSIONER OF HIGHER EDUCATION; AMENDING SECTIONS 2-2-104, 2-15-1520, 17-8-306, 20-15-312, 20-25-302, 20-25-503, 20-26-103, 20-26-1101, 20-26-1102, 20-26-1103, 20-26-1104, 20-26-1105, 20-26-1106, 20-26-1107, AND 20-32-103, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1094

244 *(Senate Bill No. 326; Devlin)* AN ACT ESTABLISHING THE MONTANA GRASS CONSERVATION ADVISORY COMMITTEE; PROVIDING FOR SUPPORT OF THE COMMITTEE BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 76-16-103, 76-16-104, AND 76-16-105, MCA; AND PROVIDING A TERMINATION DATE. . . . . 1104

245 *(Senate Bill No. 341; Stang)* AN ACT REVISING THE PENALTY FOR THE OFFENSE OF FELONY ASSAULT; PROVIDING THAT IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, THE OFFENDER IS REQUIRED TO PAY FOR AND UNDERGO COUNSELING ASSESSMENT; PROVIDING THAT A CONVICTION FOR FELONY ASSAULT, IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, IS A PRIOR CONVICTION FOR PURPOSES OF PARTNER OR FAMILY MEMBER ASSAULT; AND AMENDING SECTIONS 45-5-202 AND 45-5-206, MCA. . . . . 1106

HeinOnline -- 1997 vol. I xl 1997

246 *(Senate Bill No. 361; Benedict)* AN ACT IMPLEMENTING THE NATIONAL VOTER REGISTRATION ACT; REQUIRING THE SECRETARY OF STATE TO ASSIST ELECTION ADMINISTRATORS WITH THE IMPLEMENTATION OF THE NATIONAL VOTER REGISTRATION ACT; REQUIRING THE SECRETARY OF STATE TO ADOPT RULES PROVIDING PROCEDURES FOR AGENCY-BASED REGISTRATION; REQUIRING THE SECRETARY OF STATE TO MAKE APPLICATIONS FOR VOTER REGISTRATION FORMS AVAILABLE; PROVIDING ADDITIONAL LOCATIONS FOR AVAILABILITY OF VOTER REGISTRATION FORMS; REQUIRING RETURN OR FORWARDING OF NOTICES OF REGISTRATION; PROVIDING FOR CANCELLATION OF VOTER REGISTRATION; PROVIDING FOR LISTS OF ACTIVE AND INACTIVE ELECTORS; PROVIDING FOR REACTIVATION OF ELECTOR'S NAMES FROM INACTIVE TO ACTIVE LISTS; AMENDING SECTIONS 1-2-112, 13-1-101, 13-1-203, 13-1-204, 13-2-203, 13-2-207, 13-2-402, 13-2-403, 13-2-512, AND 13-19-313, MCA; REPEALING SECTION 13-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1109

247 *(House Bill No. 156; Grady)* AN ACT PROVIDING FOR A 2-YEAR INCREASE IN THE AMOUNT ALLOWED TO FUND RESOURCE DEVELOPMENT ON SCHOOL LANDS; AMENDING SECTION 77-1-607, MCA; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A TERMINATION DATE. . . . . 1119

248 *(House Bill No. 216; Hibbard)* AN ACT REDUCING THE YEARS REQUIRED FOR VESTING IN THE SHERIFFS' RETIREMENT SYSTEM; INCREASING THE SERVICE RETIREMENT, DISABILITY, AND DEATH BENEFIT; INCREASING MEMBER AND EMPLOYER CONTRIBUTIONS; REPEALING THE INVOLUNTARY RETIREMENT BENEFIT; SUPERSEDING THE UNFUNDED MANDATE LAW; AMENDING SECTIONS 19-7-301, 19-7-403, 19-7-404, 19-7-502, 19-7-503, AND 19-7-901, MCA; REPEALING SECTION 19-7-504, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1120

249 *(House Bill No. 217; Bergsagel)* AN ACT INCREASING CONSTRUCTION COST AUTHORIZATION THAT DOES NOT REQUIRE LEGISLATIVE CONSENT; INCREASING THE COST LIMIT FOR PROJECTS SUBJECT TO ADVERTISING AND BIDDING; ELIMINATING THE APPROVAL OF NEGOTIATED CONTRACTS BY THE BOARD OF EXAMINERS; INCREASING THE COST OF BUILDING OR CONSTRUCTION PROJECTS FOR WHICH SECURITY MAY BE WAIVED; AMENDING SECTIONS 18-2-102, 18-2-103, 18-2-105, 18-2-201, 18-2-301, AND 18-2-302, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1123

250 *(House Bill No. 505; Beaudry)* AN ACT REDUCING THE VESTING REQUIREMENTS FOR MEMBERS OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; INCREASING EMPLOYER AND STATE CONTRIBUTIONS; SUPERSEDING THE UNFUNDED MANDATE LAW; AMENDING SECTIONS 19-9-104, 19-9-301, 19-9-702, 19-9-703, AND 19-9-801, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1127

251 *(House Bill No. 533; Devaney)* AN ACT PROVIDING AN EXEMPTION FROM REAL ESTATE LICENSURE REQUIREMENTS FOR A PERSON WHO PERFORMS ACTS WITH RESPECT TO CERTAIN RIGHT-OF-WAY TRANSFERS, CONDEMNATIONS, OR GOVERNMENTAL OR TRIBAL PERMITS; AND AMENDING SECTION 37-51-103, MCA. . . . . 1130

HeinOnline -- 1997 vol. I xli 1997

252 *(House Bill No. 541; Grimes)* AN ACT REVISING THE LAW PROHIBITING CREDIT GAMBLING; INCLUDING OFFERS TO OBTAIN AND COMMON SCHEMES IN THE OFFENSE OF OBTAINING ANYTHING OF VALUE BY FRAUD OR OPERATION OF AN ILLEGAL GAMBLING ACTIVITY, DEVICE, OR ENTERPRISE; AND AMENDING SECTIONS 23-5-112, 23-5-156, AND 23-5-157, MCA. 1131

253 *(House Bill No. 566; Menahan)* AN ACT TO INCREASE THE AMOUNT OF LIFE INSURANCE THAT IS NOT CONSIDERED PART OF AN ESTATE; AMENDING SECTION 72-16-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1136

254 *(House Bill No. 569; Squires)* AN ACT ALLOWING CERTAIN FIREFIGHTERS WHO ARE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO ELECT TO REMAIN IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM INSTEAD OF TRANSFERRING TO THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM WHEN THE FIREFIGHTER IS HIRED INTO A POSITION THAT WOULD OTHERWISE BE COVERED UNDER THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; AMENDING SECTION 19-13-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1137

255 *(Senate Bill No. 32; Halligan)* AN ACT ALLOWING A PARTY, AS A PART OF A MOTION FOR TEMPORARY MAINTENANCE OR SUPPORT OR BY INDEPENDENT MOTION, TO REQUEST A TEMPORARY RESTRAINING ORDER PROVIDING THAT INSURANCE COVERAGE NOT BE MODIFIED; REQUIRING THAT A SUMMONS ISSUED IN A MARRIAGE DISSOLUTION, MAINTENANCE, CHILD CUSTODY, CHILD SUPPORT, OR FAMILY LAW MEDIATION ACTION CONTAIN A TEMPORARY RESTRAINING ORDER PREVENTING A PARTY FROM DISPOSING OF MARITAL PROPERTY WITHOUT A COURT ORDER OR THE CONSENT OF THE OTHER PARTY, EXCEPT IN THE USUAL COURSE OF BUSINESS, FOR NECESSITIES OF LIFE, OR FOR THE PAYMENT OF ATTORNEY FEES; SETTING OUT THE TERMS OF THE TEMPORARY RESTRAINING ORDER; AND AMENDING SECTION 40-4-121, MCA. . . . . 1138

256 *(Senate Bill No. 33; Halligan)* AN ACT ALLOWING THE ISSUANCE OF A TEMPORARY FAMILY SUPPORT ORDER TO ENSURE THE PAYMENT OF PERIODIC MARITAL ESTATE LIABILITIES OUT OF THE PARTIES' INCOME OR MARITAL ASSETS DURING THE PENDENCY OF MARRIAGE DISSOLUTION PROCEEDINGS; AND AMENDING SECTION 40-4-121, MCA. . . . . 1141

257 *(Senate Bill No. 94; Brooke)* AN ACT ADDING TO THE RESPONSIBILITIES OF THE JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES A PERFORMANCE EVALUATION AT THE CONCLUSION OF EACH INTERIM; AND AMENDING SECTION 5-22-102, MCA. . . . . 1143

258 *(Senate Bill No. 113; McCarthy)* AN ACT REVISING THE DEFINITION OF "INSURANCE-SUPPORT ORGANIZATION"; ALLOWING THE COMMISSIONER OF INSURANCE TO REVIEW INFORMATION COMPILED FOR USE IN AN INSURANCE TRANSACTION AND TO ORDER AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION TO CORRECT, AMEND, OR DELETE INFORMATION THAT THE COMMISSIONER DETERMINES IS ERRONEOUS; REQUIRING THAT PERSONAL INFORMATION USED FOR INSURANCE UNDERWRITING BE

HeinOnline -- 1997 vol. I xlii 1997

ACCURATE; AND AMENDING SECTIONS 33-19-104, 33-19-302, AND 33-19-303, MCA. . . . . 1144

259 *(Senate Bill No. 198; Grosfield)* AN ACT DEFINING "SAME SALARY" FOR THE PURPOSES OF TEACHER TENURE; AMENDING SECTION 20-4-203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1151

260 *(Senate Bill No. 226; Doherty)* AN ACT REQUIRING THE COMMISSIONER OF INSURANCE TO PROMULGATE RULES PRESCRIBING INFORMATION THAT MUST BE DELIVERED TO A PROSPECTIVE ANNUITANT AT THE TIME OF SALE. . . . . 1152

261 *(Senate Bill No. 245; Devlin)* AN ACT ALLOWING INSURANCE PRODUCERS TO MAINTAIN MORE THAN ONE PLACE OF BUSINESS IN THE STATE; AND AMENDING SECTION 33-17-1101, MCA. . . . . 1152

262 *(Senate Bill No. 288; Van Valkenburg)* AN ACT EXEMPTING SELF-SUFFICIENCY TRUSTS FROM LIENS IMPOSED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE EXTENT PERMITTED BY FEDERAL LAW; AMENDING SECTIONS 40-5-242, 40-5-248, 53-2-612, AND 53-6-143, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1153

263 *(Senate Bill No. 266; Devlin)* AN ACT ESTABLISHING SUBROGATION RIGHTS IN MOTOR VEHICLE LIABILITY POLICIES; AND AMENDING SECTION 33-23-203, MCA. . . . . 1160

264 *(Senate Bill No. 285; Benedict)* AN ACT ALLOWING COUNTY ADULT LITERACY FUNDING FOR PERSONS WHO ARE 16 YEARS OF AGE OR OLDER AND NOT ATTENDING SCHOOL; AND AMENDING SECTION 20-7-714, MCA. . . . . 1161

265 *(Senate Bill No. 337; Grosfield)* AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT AMONG THE STATE OF MONTANA, THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S INDIAN RESERVATION, AND THE UNITED STATES OF AMERICA. . . . . 1162

266 *(Senate Bill No. 275; Miller)* AN ACT CHANGING THE DELINQUENCY FEE IN THE MONTANA RETAIL INSTALLMENT SALES ACT; AND AMENDING SECTION 31-1-235, MCA. . . . . 1204

267 *(Senate Bill No. 276; Miller)* AN ACT CHANGING THE COMPUTATION OF FINANCE CHARGES UNDER THE MONTANA RETAIL INSTALLMENT SALES ACT; AND AMENDING SECTION 31-1-241, MCA. . . . . 1205

268 *(Senate Bill No. 329; Halligan)* AN ACT GENERALLY REVISING THE LAWS GOVERNING LIMITED PARTNERSHIPS, BUSINESS CORPORATIONS, AND LIMITED LIABILITY COMPANIES; INCORPORATING REVISIONS TO THE UNIFORM LIMITED PARTNERSHIP ACT; PROHIBITING THE WITHDRAWAL OF LIMITED PARTNERS; PROVIDING A SAVING PROVISION FOR SHAREHOLDER AGREEMENTS; PROVIDING FOR THE PURCHASE AND VALUATION OF INTERESTS; ALLOWING A NONUTILITY COOPERATIVE TO DISTRIBUTE UNCLAIMED SHARES FOR CIVIC OR CHARITABLE PUBPOSES IN THE COMMUNITY IN WHICH THE COOPERATIVE IS LOCATED; AND AMENDING SECTIONS 35-8-304, 35-8-1306, 35-12-504, 35-12-505, 35-12-508, 35-12-521, 35-12-601, 35-12-602, 35-12-604, 35-12-605, 35-12-606, 35-12-607, 35-12-608, 35-12-611, 35-12-701, 35-12-703, 35-12-704, 35-12-801, 35-12-802, 35-12-902, 35-12-903, 35-12-904, 35-12-1001, 35-12-1003, 35-12-1004, 35-12-1005, 35-12-1008, 35-12-1104, 35-12-1201, 35-12-1302, AND 35-12-1402, MCA, AND SECTION 3, SENATE BILL NO. 25. . . . . 1206

269 *(House Bill No. 3; Zook)* AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . 1224

270 *(House Bill No. 240; Devaney)* AN ACT PROHIBITING STATE AGENCIES AND LOCAL GOVERNMENT ENTITIES THAT SET AND COLLECT CHARGES FOR SERVICES FROM MAINTAINING IN A FUND RECEIVING THE CHARGES A CASH BALANCE THAT IS GREATER THAN NECESSARY TO FINANCE THE SERVICES OF THE AGENCY OR ENTITY FOR MORE THAN 2 YEARS; REQUIRING REDUCTION OF CHARGES FOR SERVICES IN CERTAIN INSTANCES; PROVIDING DEFINITIONS AND EXCEPTIONS; REQUIRING REPORTS; AND PROVIDING A DELAYED EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1226

271 *(House Bill No. 383; Knox)* AN ACT REVISING THE CIVIL PENALTY PROVISIONS OF THE METAL MINE RECLAMATION ACT AND THE OPENCUT MINING ACT; GRANTING DISCRETION TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN INSTITUTING CIVIL PENALTY ACTIONS; PROVIDING CRITERIA FOR EXERCISING THE DEPARTMENT'S CIVIL PENALTY ACTION DISCRETION AND FOR DETERMINING CIVIL PENALTY AMOUNTS; AMENDING SECTIONS 82-4-361 AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1229

272 *(House Bill No. 437; Beaudry)* AN ACT REVISING PROVISIONS OF THE METAL MINE RECLAMATION LAW PERTAINING TO SMALL MINERS AND RECREATIONAL MINERS; REVISING THE SMALL MINER DEFINITION; REQUIRING SOIL MATERIALS SALVAGE BY SMALL MINERS WHO ENGAGE IN PLACER OR DREDGE MINING; INCREASING THE MAXIMUM BOND FOR SMALL MINERS; REVISING EXEMPTIONS FOR RECREATIONAL AND HOBBY MINERS; AMENDING SECTIONS 82-4-303, 82-4-305, AND 82-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES. . . . . 1232

273 *(House Bill No. 529; Denny)* AN ACT GENERALLY REVISING THE LAWS THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY ADMINISTERS; AMENDING SECTIONS 75-2-211, 75-20-204, 82-4-205, 82-4-361, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1238

274 *(House Bill No. 556; Grady)* AN ACT REVISING THE MEMBERSHIP REQUIREMENTS FOR JOINT OR CONSOLIDATED CITY-COUNTY PLANNING BOARDS; AMENDING SECTION 76-1-112, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1244

275 *(Senate Bill No. 63; Foster)* AN ACT PROVIDING A FREE FISHING DAY FOR PARTICIPANTS IN APPROVED ANGLER EDUCATIONAL EVENTS AND ACTIVITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1245

276 *(Senate Bill No. 67; Benedict)* AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; INCREASING TO SEVEN MEMBERS THE STATE COMPENSATION INSURANCE FUND BOARD AND AUTHORIZING A LICENSED INSURANCE PRODUCER MEMBER; PROVIDING FOR THE TRANSFER OF $63.8 MILLION TO THE OLD FUND ACCOUNT; TERMINATING THE OLD FUND LIABILITY TAX ON EMPLOYERS, EMPLOYEES, AND SELF-EMPLOYED PERSONS WHEN THE OLD FUND IS ADEQUATELY FUNDED; REMOVING THE LIMITATION ON THE

HeinOnline -- 1997 vol. I xliv 1997

PAYMENT OF DIVIDENDS BY THE NEW FUND; PROVIDING THAT THE AMOUNTS IN EXCESS OF ADEQUATE FUNDING OF THE OLD FUND ARE RETURNED TO THE NEW FUND ACCOUNT AND THAT ANY SHORTFALL IN ADEQUATE FUNDING IS RETURNED TO THE OLD FUND IN AN AMOUNT EQUAL TO THAT RETURNED TO THE NEW FUND; CLARIFYING THE DEFINITION OF "DEPENDENT" FOR FATAL INJURY BENEFICIARY CLAIMS; PROVIDING THAT AN INSURER'S FAILURE TO MEET TIME LIMITATIONS IS NOT AN ACCEPTANCE OF THE CLAIM; PROVIDING THAT A WORKER WHO HAS NOT REACHED MAXIMUM HEALING BUT WHO IS RELEASED BY A TREATING PHYSICIAN AND REFUSES THE OFFER OF EMPLOYMENT IN A MODIFIED OR ALTERNATIVE POSITION AT AN EQUIVALENT OR HIGHER WAGE IS NOT ELIGIBLE FOR TEMPORARY PARTIAL OR TEMPORARY TOTAL DISABILITY BENEFITS; INCREASING ACCESS TO REHABILITATION BENEFITS; PROVIDING FOR FRAUD INVESTIGATION AND PROSECUTION FOR THE UNINSURED EMPLOYERS' FUND BY THE DEPARTMENT OF JUSTICE; DEFINING "TREATING PHYSICIAN" TO INCLUDE THOSE PHYSICIANS LICENSED IN OTHER STATES; INCLUDING PSYCHOLOGISTS AND FUNCTIONAL CAPACITY EVALUATIONS AND PROVIDING FOR EXAMINATIONS BY LICENSED PROVIDERS IN ANOTHER STATE WHEN EXAMINATIONS ARE REQUESTED BY THE INSURER; ADJUSTING THE LIFTING REQUIREMENT FOR LIGHT ACTIVITY FOR PERMANENT PARTIAL DISABILITY BENEFITS; AUTHORIZING THE STATE FUND TO PROVIDE "OTHER STATES" COVERAGE; CLARIFYING THE STATE FUND'S USE OF LICENSED INSURANCE PRODUCERS; REQUIRING THAT THE STATE FUND REPAY $20 MILLION TO THE GENERAL FUND; PROVIDING FOR UP TO ONE-HALF OF THE PRIOR YEAR'S INVESTMENT INCOME FOR ADMINISTRATIVE EXPENDITURES AND FOR REVIEW BY THE LEGISLATIVE FINANCE COMMITTEE; LIMITING THE TIME FOR BRINGING AN ACTION TO RESOLVE A BENEFITS DISPUTE; REQUIRING THE STATE FUND, THE DEPARTMENT OF JUSTICE, AND THE DEPARTMENT OF LABOR AND INDUSTRY TO FILE A JOINT BIENNIAL BUDGET FOR THE WORKERS' COMPENSATION FRAUD OFFICE; PROVIDING FOR TRANSFER OF THE BALANCE IN THE WORKERS' COMPENSATION BOND REPAYMENT ACCOUNT ON JUNE 30, 1997, TO THE STATE FUND; AMENDING SECTIONS 2-15-1019, 2-15-2015, 17-7-502, 33-1-1205, 33-16-1024, 39-71-116, 39-71-318, 39-71-406, 39-71-502, 39-71-605, 39-71-606, 39-71-703, 39-71-712, 39-71-1006, 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2322, 39-71-2327, 39-71-2351, 39-71-2352, 39-71-2363, 39-71-2501, 39-71-2503, 39-71-2505, AND 39-71-2905, MCA; REPEALING SECTIONS 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2502, 39-71-2503, 39-71-2504, AND 39-71-2506, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND TERMINATION DATES. . . 1246

277 *(Senate Bill No. 133; Swysgood)* AN ACT CONTINUING THE AUTHORITY FOR THE TAX LEVY FOR THE SUPPORT OF THE MONTANA UNIVERSITY SYSTEM FOR 10 YEARS; PROVIDING THAT THE PROPOSED AUTHORITY BE SURMITTED TO THE ELECTORS OF MONTANA; AMENDING SECTION 20-25-423, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 1275

278 *(Senate Bill No. 229; Thomas)* AN ACT ALLOWING CERTAIN COUNSELORS TO TAKE AN EXAMINATION FOR LICENSURE AS LICENSED PROFESSIONAL COUNSELORS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. . . . . 1276

HeinOnline -- 1997 vol. I xlv 1997

279 *(Senate Bill No. 263; Bishop)* AN ACT GENERALLY REVISING THE LAWS GOVERNING ESTATES, TRUSTS, AND FIDUCIARIES; CLARIFYING THE RECORDING FOR UNIT OWNERSHIP; CLARIFYING THAT A COURT MAY LIMIT THE POWERS AND DUTIES OF THE GUARDIAN OF A MINOR; CLARIFYING PROVISIONS RELATING TO MULTIPLE-PERSON ACCOUNTS; CLARIFYING PROTECTION FOR A FINANCIAL INSTITUTION FOR HONORING A REQUEST FOR THE ALTERATION OF RIGHTS TO A MULTIPLE-PERSON ACCOUNT; ALLOWING DEVIATIONS FROM THE STATUTORY DEATH TAX APPORTIONMENT RULE; PERMITTING A REGULATED FINANCIAL INSTITUTION TO HIRE AN AFFILIATE FOR THE PURCHASE OR SALE OF INVESTMENT SECURITIES; AND AMENDING SECTIONS 70-23-304, 72-5-231, 72-6-204, 72-6-213, 72-6-226, 72-16-603, AND 72-34-117, MCA. . . . . 1277

280 *(Senate Bill No. 282; Lynch)* AN ACT ALLOWING A LICENSED CHIROPRACTOR TO CERTIFY AN APPLICATION FOR A SPECIAL PARKING PERMIT FOR THE DISABLED; AND AMENDING SECTIONS 49-4-301, 49-4-303, AND 49-4-305, MCA. . . . . 1281

281 *(Senate Bill No. 309; Mahlum)* AN ACT ALLOWING THE PLACEMENT OF NOT MORE THAN FOUR BUSINESS SIGNS ON ONE SPECIFIC INFORMATION SIGN FOR QUALIFYING BUSINESSES; AMENDING SECTION 60-5-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1283

282 *(Senate Bill No. 316; Bartlett)* AN ACT REVISING THE LAW RELATING TO GROUP INSURANCE FOR PUBLIC EMPLOYEES; REQUIRING A CONTRACT FOR GROUP HEALTH INSURANCE TO PROVIDE FOR CONTINUED PARTICIPATION BY RETIRED JUDGES IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 2-18-704, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE. . . . . 1284

283 *(Senate Bill No. 335; Jenkins)* AN ACT PROVIDING FOR THE OPERATION OF FARM VEHICLES ON A COUNTY ROAD WITHOUT ACCOMPANYING FLAG VEHICLES; INCREASING THE WIDTH THAT A VEHICLE MUST BE TO WARRANT AN ACCOMPANYING FLAG VEHICLE; AMENDING SECTION 61-10-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1286

284 *(Senate Bill No. 375; Thomas)* AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008, 39-71-504, 39-71-903, AND 39-71-907, MCA; REPEALING SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 1288

285 *(Senate Bill No. 383; Crippen)* AN ACT CREATING THE MONTANA STREET TERRORISM ENFORCEMENT AND PREVENTION ACT; DEFINING "CRIMINAL STREET GANG" AND "PATTERN OF CRIMINAL STREET GANG ACTIVITY"; PROVIDING FOR THE ENHANCEMENT OF CRIMINAL PENALTIES FOR CRIMINAL STREET GANG-RELATED ACTIVITY; PROVIDING FOR THE DETERRENCE AND PUNISHMENT OF CRIMINAL STREET GANG-RELATED OFFENSES; AMENDING SECTION 41-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1292

286 *(House Bill No. 114; McCulloch)* AN ACT GENERALLY REVISING AND RECODIFYING THE MONTANA YOUTH COURT ACT; CLARIFYING

THAT SHORT-TERM DETENTION OF YOUTH, FOR UP TO 96 HOURS, EXCLUDES WEEKENDS AND LEGAL HOLIDAYS; AMENDING SECTIONS 7-6-501, 7-32-2244, 41-5-103, 41-5-208, 41-5-301, 41-5-303, 41-5-305, 41-5-306, 41-5-307, 41-5-311, 41-5-403, 41-5-502, 41-5-521, 41-5-522, 41-5-523, 41-5-525, 41-5-527, 41-5-530, 41-5-1004, 41-5-1104, 46-24-207, 52-5-129, AND 53-9-107, MCA; REPEALING SECTIONS 41-5-310 AND 41-5-312, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 1299

287 *(House Bill No. 170; Ahner)* AN ACT ESTABLISHING A GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR CERTAIN BENEFIT RECIPIENTS IN THE STATEWIDE PUBLIC EMPLOYEE RETIREMENT SYSTEMS UNDER THE PUBLIC EMPLOYEES' RETIREMENT BOARD; DEFINING "ACTUARIALLY SOUND BASIS"; MAKING THE ANNUAL ADJUSTMENT AN ALTERNATIVE TO CERTAIN EXISTING BENEFITS; INCREASING CONTRIBUTION RATES AND MODIFYING CERTAIN BENEFITS TO FUND THE ADJUSTMENT; PROVIDING THAT CERTAIN COURT FEES BE CREDITED TO THE GENERAL FUND; REQUIRING THAT MEMBERS OF THE PUBLIC EMPLOYEES' AND HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEMS PAY THE FULL ACTUARIAL COST OF PURCHASING CERTAIN SERVICE; ALLOWING MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO BECAME MEMBERS ON OR AFTER JULY 1, 1989, TO PURCHASE ADDITIONAL SERVICE FOR CALCULATING BENEFITS; REDEFINING THE SALARY USED TO CALCULATE CERTAIN BENEFITS UNDER THE JUDGES' AND FIREFIGHTERS' RETIREMENT SYSTEMS; ADJUSTING CERTAIN DEATH BENEFITS PAID UNDER THE JUDGES' AND GAME WARDENS' RETIREMENT SYSTEMS; REPLACING CURRENT POSTRETIREMENT ADJUSTMENTS AND MINIMUM BENEFITS UNDER EACH RETIREMENT SYSTEM FOR CURRENT MEMBERS WHO ELECT THE ANNUAL ADJUSTMENT AND FOR ALL NEW MEMBERS; AMENDING SECTIONS 3-2-404, 3-2-405, 19-3-315, 19-3-316, 19-3-503, 19-3-512, 19-3-513, 19-5-101, 19-5-404, 19-5-502, 19-5-601, 19-5-802, 19-6-402, 19-6-404, 19-6-707, 19-6-709, 19-6-801, 19-8-502, 19-8-504, 19-8-1002, 19-9-702, 19-9-710, 19-9-1007, 19-13-601, 19-13-604, 19-13-704, 19-13-803, 19-13-902, 19-13-1006, 19-13-1007, 19-13-1009, AND 25-1-201, MCA; REPEALING SECTIONS 19-3-1601, 19-3-1602, 19-3-1603, 19-7-708, 19-7-709, 19-7-710, 19-8-1101, 19-8-1102, AND 19-8-1103, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1337

288 *(House Bill No. 384; Ellis)* AN ACT EXCLUDING FROM INHERITANCE TAXES ANY INTEREST IN AND THE REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY OF CLOSELY HELD BUSINESSES THAT ARE TRANSFERRED TO THE LINEAL DESCENDANTS OF THE DECEDENT'S GRANDPARENTS; AMENDING SECTIONS 72-16-101, 72-16-453, AND 72-16-455, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1359

289 *(House Bill No. 408; Trexler)* AN ACT EXEMPTING FROM REVIEW OF DEVELOPMENT PLANS A PARCEL OF 1 ACRE OR MORE WITH AN EXISTING WELL AND SEPTIC SYSTEM; AND AMENDING SECTION 76-4-125, MCA. . . . . 1362

290 *(House Bill No. 422; Gillan)* AN ACT ELIMINATING THE REQUIREMENT THAT THE ORIGINAL OF CERTAIN DOCUMENTS FILED BY FACSIMILE WITH THE SECRETARY OF STATE BE RECEIVED BY AND FILED WITH THE SECRETARY OF STATE WITHIN 5 DAYS OF THE RECEIPT AND FILING OF THE

HeinOnline -- 1997 vol. I xlvii 1997

FACSIMILE; AMENDING SECTIONS 30-9-403, 30-9-431, 30-13-221, 30-13-341, 35-1-218, 35-2-120, 35-8-207, 35-10-112, 35-12-615, AND 35-15-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1363

291 *(House Bill No. 468; Gillan)* AN ACT AUTHORIZING THE SECRETARY OF STATE TO DEVELOP AND IMPLEMENT A STATEWIDE ELECTRONIC FILING SYSTEM; REQUIRING THAT IF AN ELECTRONIC FILING SYSTEM IS DEVELOPED AND IMPLEMENTED BY THE SECRETARY OF STATE, THE SECRETARY OF STATE SHALL PROMULGATE RULES REGARDING ACCESS, SECURITY, AND INTEGRITY AND OTHER MATTERS RELEVANT TO THE SYSTEM; ALLOWING THE DEVELOPMENT AND IMPLEMENTATION OF A STATEWIDE ELECTRONIC FILING SYSTEM TO BE PHASED IN; AND AMENDING SECTION 2-15-401, MCA. . . . . 1371

292 *(House Bill No. 543; Schmidt)* AN ACT PROHIBITING AN INSURANCE COMPANY FROM REQUIRING AN INSURED PERSON TO USE A SPECIFIC AUTOMOBILE BODY REPAIR SHOP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1373

293 *(House Bill No. 571; Beaudry)* AN ACT PROVIDING FOR THE EFFECT OF A RELEASE OR COVENANT NOT TO SUE; REVISING THE PRINCIPLES GOVERNING LIABILITY AND THE DETERMINATION OF LIABILITY WHEN MULTIPLE PERSONS ARE AT FAULT; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1374

294 *(House Bill No. 575; Rehbein)* AN ACT PROHIBITING CERTAIN CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS, COOPERATIVES, AND OTHER ORGANIZATIONS FROM CONTRIBUTING TO THE SUPPORT OR OPPOSITION OF BALLOT ISSUES; REMOVING FROM THE PROHIBITION AN EXEMPTION FOR CERTAIN NONPROFIT CORPORATIONS; DESCRIBING EXPENDITURES MADE BY A POLITICAL COMMITTEE FOR THE PURPOSE OF VOLUNTARY SPENDING LIMITS; AMENDING SECTIONS 13-35-227 AND 13-37-250, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1378

295 *(Senate Bill No. 49; Gage)* AN ACT REVISING THE DISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAXES AND OIL AND NATURAL GAS PRODUCTION TAXES FOR DEFICIENCY ASSESSMENTS OR FOR OVERPAYMENT OF THE TAXES; REQUIRING THAT DEFICIENCY ASSESSMENTS FOR LOCAL GOVERNMENT SEVERANCE TAXES BE COLLECTED IN THE SAME MANNER AS OIL AND NATURAL GAS DEFICIENCY ASSESSMENTS; REQUIRING THAT DEFICIENCY ASSESSMENTS FOR CERTAIN LOCAL GOVERNMENT SEVERANCE TAXES BE DISTRIBUTED AS CURRENT REVENUE; REQUIRING THAT CREDITS OR REFUNDS FOR THE OVERPAYMENT OF OIL AND NATURAL GAS PRODUCTION TAXES OR LOCAL GOVERNMENT SEVERANCE TAXES BE WITHHELD FROM CURRENT DISTRIBUTIONS; REQUIRING THE DEPARTMENT OF REVENUE TO DEMAND THE AMOUNT OF REFUND FOR OVERPAYMENTS FROM THE COUNTY TO WHICH THE TAX WAS ORIGINALLY DISTRIBUTED; AMENDING SECTIONS 15-36-314 AND 15-36-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1381

HeinOnline -- 1997 vol. I xlviii 1997

296 *(Senate Bill No. 55; Benedict)* AN ACT AMENDING THE MONTANA MEDICAL CARE SAVINGS ACCOUNT ACT OF 1995 TO ALLOW ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNT; PROVIDING DEFINITIONS AND EXCEPTIONS; AMENDING SECTIONS 15-61-102, 15-61-203, AND 15-61-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1383

297 *(Senate Bill No. 100; Beck)* AN ACT CLARIFYING THE CLASSIFICATION OF FOREST LAND FOR PROPERTY TAX PURPOSES; CLARIFYING THE PROPERTY TAX RATE APPLIED TO FOREST LAND; REVISING THE DEFINITIONS OF "FOREST LAND" AND "FOREST PRODUCTIVITY VALUE"; AMENDING SECTIONS 15-6-143, 15-44-102, AND 15-44-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1386

298 *(Senate Bill No. 112; Van Valkenburg)* AN ACT CREATING A VIATICAL SETTLEMENT ACT; PROVIDING FOR LICENSURE OF VIATICAL SETTLEMENT PROVIDERS AND BROKERS; PROVIDING FOR REGULATION BY THE INSURANCE COMMISSIONER; PROVIDING AUTHORITY TO PROMULGATE RULES; PROVIDING MINIMAL REQUIREMENTS FOR VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR EXAMINATION OF LICENSEES AND LICENSE APPLICANTS; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING FOR CONDITIONS PRECEDENT TO VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR CONFIDENTIALITY; AND PROVIDING REQUIREMENTS FOR PAYMENT PURSUANT TO VIATICAL SETTLEMENT CONTRACTS. . . . . 1389

299 *(Senate Bill No. 127; Cole)* AN ACT CLARIFYING THAT THE WHOLESALE VALUE OF AGRICULTURAL IMPLEMENTS AND MACHINERY FOR PROPERTY TAX PURPOSES IS THE AVERAGE WHOLESALE VALUE; SPECIFYING THE OFFICIAL GUIDE TO BE USED BY THE DEPARTMENT OF REVENUE IN DETERMINING THE AVERAGE WHOLESALE VALUE OF AGRICULTURAL IMPLEMENTS AND MACHINERY; REQUIRING THE DEPARTMENT TO USE A COMPARABLE PUBLICATION OR WHOLESALE VALUE CATEGORY IN DETERMINING THE WHOLESALE VALUE; AMENDING SECTION 15-8-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1398

300 *(Senate Bill No. 134; Nelson)* AN ACT EXEMPTING A HOSPITAL DISTRICT FROM PROPERTY TAX LIMITATION LAW IF AUTHORIZED BY THE ELECTORATE OF THE DISTRICT; LIMITING THE NUMBER OF MILLS THAT MAY BE LEVIED BY AN EXEMPTED HOSPITAL DISTRICT; AND AMENDING SECTION 15-10-412, MCA. 1400

301 *(Senate Bill No. 213; Mahlum)* AN ACT REVISING THE PROPERTY TAX EXEMPTION FOR A DISABLED VETERAN OR SURVIVING SPOUSE; INCREASING THE INCOME LIMITATIONS APPLICABLE TO THE PROPERTY TAX EXEMPTION FOR A DISABLED VETERAN OR A SURVIVING SPOUSE; AMENDING SECTION 15-6-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1404

302 *(Senate Bill No. 216; Van Valkenburg)* AN ACT GENERALLY REVISING PROCEDURES FOR POSTJUDGMENT REVIEW IN CRIMINAL CASES; CLARIFYING THE STANDARDS FOR APPELLATE REVIEW OF A DEATH SENTENCE; CLARIFYING THE REQUIRED CONTENTS OF POSTCONVICTION RELIEF PETITIONS;

HeinOnline -- 1997 vol. I xlix 1997

CLARIFYING THE GROUNDS FOR RELIEF THAT MAY BE RAISED AND DECIDED IN A POSTCONVICTION PROCEEDING; AMENDING SECTIONS 46-18-310, 46-21-104, AND 46-21-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1405

303 *(Senate Bill No. 219; Franklin)* AN ACT CREATING THE CRIMINAL OFFENSE OF SURREPTITIOUS VISUAL OBSERVATION OR RECORDATION IN A PLACE OF RESIDENCE; PROVIDING AN EXCEPTION FOR LEGITIMATE INVESTIGATIVE PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1407

304 *(Senate Bill No. 234; Brooke)* AN ACT PROHIBITING DISCRIMINATION AGAINST VICTIMS OF ABUSE IN ALL LINES OF INSURANCE. . . . . 1409

305 *(Senate Bill No. 259; Shea)* AN ACT PROVIDING LICENSURE FOR TEACHERS OF MANICURING AND FOR ESTHETICIANS, ESTHETICS INSTRUCTORS, SCHOOLS OF ESTHETICS, AND ESTHETICS SALONS; AND AMENDING SECTIONS 37-31-101, 37-31-203, 37-31-301, 37-31-302, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, AND 37-31-331, MCA. . . . . 1410

306 *(Senate Bill No. 284; Halligan)* AN ACT ALLOWING INDIVIDUAL OWNERS OF TRACTS OF LAND 3 ACRES OR SMALLER IN SIZE LOCATED WITHIN THE BOUNDARIES OF CERTAIN URBANIZED IRRIGATION DISTRICTS THAT ARE NOT BEING SERVED BY THE IRRIGATION DISTRICT WORKS TO BE ELIMINATED FROM ASSESSMENTS OVER AND ABOVE CURRENT INDEBTEDNESS; AMENDING SECTIONS 85-7-411 AND 85-7-1802, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. 1419

307 *(Senate Bill No. 325; Crismore)* AN ACT PROHIBITING THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY FROM INSPECTING METALLIC AND NONMETALLIC NONCOAL MINES, OTHER THAN SAND AND GRAVEL OPERATIONS, AS LONG AS THE FEDERAL MINE SAFETY AND HEALTH LAWS ARE IMPLEMENTED AND ENFORCED IN MONTANA BY THE FEDERAL GOVERNMENT; AMENDING SECTIONS 50-71-321, 50-72-201, AND 50-72-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 1421

308 *(Senate Bill No. 331; Thomas)* AN ACT REVISING WORKERS' COMPENSATION ACT PAYMENTS FOR HOSPITAL REIMBURSEMENTS; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 1423

309 *(Senate Bill No. 344; Harp)* AN ACT REQUIRING THE SECRETARY OF STATE TO COMPILE AND MAINTAIN A LIST OF ALL REGISTERED ELECTORS IN THE STATE; REQUIRING COUNTY OFFICIALS TO FORWARD VOTER REGISTRATION LISTS TO THE SECRETARY OF STATE; REQUIRING THE SECRETARY OF STATE TO FURNISH UPON REQUEST A CURRENT LIST OF REGISTERED ELECTORS TO ANY ELECTOR FOR NONCOMMERCIAL USE AND REQUIRING THE SECRETARY OF STATE TO CHARGE FEES COMMENSURATE WITH THE COST OF COMPILING, MAINTAINING, AND PROVIDING THE LIST; PROVIDING THAT THE SECRETARY OF STATE MAY NOT BE PROVIDED WITH THE SOCIAL SECURITY NUMBERS OF REGISTERED ELECTORS; AMENDING SECTIONS 13-2-114 AND 13-2-115, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1426

310 *(Senate Bill No. 349; Keating)* AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO THE WORKERS' COMPENSATION DATA BASE SYSTEM; ELIMINATING DEPARTMENT OF LABOR AND

HeinOnline -- 1997 vol. I l 1997

INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; ELIMINATING THE UNDERINSURED EMPLOYERS' FUND; CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; AMENDING SECTIONS 20-15-403, 33-2-119, 39-71-225, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721, 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532, 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1429

311 *(House Bill No. 28; Rose)* AN ACT REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE TRUSTEES OF A SCHOOL DISTRICT, UPON REQUEST AND IN COMPLIANCE WITH STATE AND FEDERAL CONFIDENTIALITY LAWS, TO DISCLOSE REQUIRED STUDENT ASSESSMENT DATA TO INTERESTED PARTIES; AND AMENDING SECTIONS 20-3-106 AND 20-3-324, MCA. . . . . 1443

312 *(Senate Bill No. 201; Glaser)* AN ACT PROVIDING FOR A DEATH SENTENCE FOR A PERSON CONVICTED TWICE OF SEXUAL INTERCOURSE WITHOUT CONSENT WHO INFLICTED SERIOUS BODILY INJURY ON A PERSON DURING THE COMMISSION OF EACH OFFENSE; AND AMENDING SECTIONS 45-5-503 AND 46-18-303, MCA. . . . . 1447

313 *(House Bill No. 234; Bitney)* AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 28, OF THE MONTANA CONSTITUTION PROVIDING THAT CRIMINAL LAWS MUST BE BASED ON PRINCIPLES OF PUBLIC SAFETY AND RESTITUTION FOR VICTIMS AS WELL AS PREVENTION AND REFORMATION. . . . . 1450

314 *(House Bill No. 365; McGee)* AN ACT CREATING THE OFFENSE OF CAUSING A PARTIAL-BIRTH ABORTION; ALLOWING A PARTIAL-BIRTH ABORTION TO SAVE THE LIFE OF A WOMAN; PROVIDING DEFINITIONS; PROVIDING PENALTIES; AND AMENDING SECTION 50-20-109, MCA. . . . . 1450

315 *(Senate Bill No. 2; Holden)* AN ACT GENERALLY REVISING, CLARIFYING, AND CONSOLIDATING THE LAWS GOVERNING WORK PROGRAMS FOR INMATES; AUTHORIZING THE USE OF INMATE LABOR FOR THE REMOVAL OF GRAFFITI FROM PROPERTY AND EQUIPMENT OF INSTITUTIONS; AUTHORIZING THE USE OF INMATE LABOR FOR THE REMOVAL OF LITTER FROM THE PROPERTY OF INSTITUTIONS, PUBLIC ROADS, AND PUBLIC PARKS; PROVIDING FOR SECURING INMATES WHILE PERFORMING WORK; ALLOWING THE DEPARTMENT OF CORRECTIONS TO DONATE SURPLUS FOOD GROWN OR PRODUCED TO CERTAIN ENTITIES; AMENDING SECTIONS 53-1-301, 53-1-304, 53-30-111, 53-30-131, AND 53-30-132, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1452

HeinOnline -- 1997 vol. I li 1997

316 *(House Bill No. 44; Devaney)* AN ACT LIMITING THE FINANCIAL TRANSACTIONS OF CORRECTIONAL FACILITY INMATES; AND PROVIDING FOR DISCLOSURE OF INMATES' ACCOUNTS IN FINANCIAL INSTITUTIONS AND MONITORING OF THEIR ACCOUNTS. . . . . 1458

317 *(House Bill No. 65; Menahan)* AN ACT INCREASING THE PENALTY FOR NEGLIGENT VEHICULAR ASSAULT THAT RESULTS IN SERIOUS BODILY INJURY TO ANOTHER; AND AMENDING SECTION 45-5-205, MCA. . . . . 1459

318 *(House Bill No. 66; Cocchiarella)* AN ACT ESTABLISHING A CHILD-CARE RESOURCE AND REFERRAL AND CHILD-CARE IMPROVEMENT GRANT PROGRAM; DEFINING "PROFESSIONAL TRAINING", "SCHOOL AGE", AND "SCHOOL-AGE CARE"; SPECIFYING PRIORITIES; AMENDING SECTIONS 52-2-703 AND 52-2-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1460

319 *(House Bill No. 72; Quilici)* AN ACT OFFICIALLY DESIGNATING THE KOREAN VETERANS' MEMORIAL IN STODDEN PARK, BUTTE, MONTANA, AS A STATE KOREAN VETERANS' MEMORIAL; AND DIRECTING THAT THE MEMORIAL BE IDENTIFIED ON OFFICIAL STATE MAPS. . . . . 1463

320 *(House Bill No. 77; Simpkins)* AN ACT REQUIRING RECITATION OF THE PLEDGE OF ALLEGIANCE IN PUBLIC SCHOOLS; PROVIDING THAT A STUDENT OR TEACHER MUST BE EXCUSED FROM PARTICIPATION IF THE STUDENT'S OR TEACHER'S CONVICTIONS PRECLUDE PARTICIPATION; REQUIRING A SCHOOL DISTRICT TO INFORM STUDENTS AND TEACHERS OF THE RIGHT NOT TO PARTICIPATE IN PLEDGE RECITATION; PROHIBITING A SCHOOL DISTRICT FROM USING A STUDENT'S OR TEACHER'S REFUSAL TO PARTICIPATE FOR EVALUATION PURPOSES; CLARIFYING THAT A TEACHER WHO EXERCISES THE RIGHT NOT TO PARTICIPATE IN THE PLEDGE RECITATION IS STILL REQUIRED TO TEACH SUBJECTS RELATED TO THE FLAG IN A PRESCRIBED CURRICULUM; AND AMENDING SECTION 20-4-301, MCA. . . . . 1464

321 *(House Bill No. 93; Hagener)* AN ACT DESIGNATING PORTIONS OF FORT BENTON CITY STREETS AND STATE AND U.S. HIGHWAYS FROM FORT BENTON THROUGH HAVRE INTO SASKATCHEWAN, CANADA, AS THE "OLD FORTS TRAIL". . . . . 1466

322 *(House Bill No. 125; Grady)* AN ACT REVISING AND CLARIFYING INTERMEDIATE SENTENCING OPTIONS; REVISING THE HOME ARREST LAW; REVISING THE LAW RELATING TO COMMUNITY CORRECTIONS PROGRAMS AND FACILITIES; AMENDING SECTIONS 46-18-201, 46-18-1001, 46-18-1002, 46-18-1003, 53-1-203, 53-30-302, 53-30-303, 53-30-312, 53-30-313, 53-30-314, 53-30-315, 53-30-321, 53-30-322, AND 53-30-326, MCA; AND REPEALING SECTIONS 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, 46-23-426, 53-30-324, AND 53-30-325, MCA. . . . . 1467

323 *(House Bill No. 190; Anderson)* AN ACT PROVIDING THAT THE ISSUE OF THE DISPOSAL OF A RECORD BE SUBMITTED TO THE LOCAL GOVERNMENT RECORDS COMMITTEE IF THERE IS NOT UNANIMOUS APPROVAL OF THE DISPOSAL OF THE RECORD BY THE LOCAL GOVERNMENT RECORDS DESTRUCTION SUBCOMMITTEE; REQUIRING THE LOCAL GOVERNMENT RECORDS COMMITTEE TO ESTABLISH A RETENTION AND DISPOSITION SCHEDULE FOR CATEGORIES OF RECORDS AND

HeinOnline -- 1997 vol. I lii 1997

TO PUBLISH THE SCHEDULES AND UPDATES TO THE SCHEDULES; REQUIRING THE LOCAL GOVERNMENT RECORDS COMMITTEE TO ESTABLISH SCHOOL RECORDS RETENTION SCHEDULES; AND AMENDING SECTIONS 2-6-403 AND 20-1-212, MCA. . . . . 1483

324 *(House Bill No. 320; Anderson)* AN ACT CLARIFYING THE COSTS FOR WHICH THE DEPARTMENT OF TRANSPORTATION IS RESPONSIBLE WHEN HIGHWAY CONSTRUCTION REQUIRES UTILITY RELOCATION; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT HOLD A PUBLIC HEARING TO DETERMINE THE NECESSITY OF FACILITY RELOCATION; ALLOWING THE DEPARTMENT TO ADOPT RULES REFLECTING THE CHANGES IN THE DEPARTMENT'S REIMBURSEMENT RESPONSIBILITIES; AMENDING SECTIONS 60-4-401, 60-4-402, AND 60-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1485

325 *(House Bill No. 431; Quilici)* AN ACT PROHIBITING THE UNAUTHORIZED CHANGING OF A CUSTOMER'S TELECOMMUNICATIONS SERVICES PROVIDER; GRANTING RULEMAKING AUTHORITY TO THE PUBLIC SERVICE COMMISSION; ESTABLISHING LIABILITY FOR VIOLATIONS; PROVIDING A PENALTY FOR VIOLATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1487

326 *(Senate Bill No. 16; Halligan)* AN ACT REQUIRING MANDATORY DISCLOSURE BETWEEN PARTIES OF ALL ASSETS AND LIABILITIES SUBJECT TO EQUITABLE DIVISION OF THE MARITAL ESTATE IN CASES OF MARRIAGE DISSOLUTION OR NULLITY OR LEGAL SEPARATION; PROVIDING PENALTIES FOR FAILURE TO COMPLY; AMENDING SECTIONS 40-4-201 AND 40-4-208, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . 1489

327 *(Senate Bill No. 191; Hargrove)* AN ACT AUTHORIZING THE CREATION OF A RESORT AREA DISTRICT; PROVIDING AN ELECTION PROCESS BY WHICH A RESORT AREA DISTRICT MAY BE CREATED; PROVIDING FOR THE ELECTION OF MEMBERS TO THE BOARD OF DIRECTORS OF A RESORT AREA DISTRICT; ENABLING THE ADMINISTRATION OF A RESORT AREA DISTRICT; ALLOWING THE BOARD OF DIRECTORS OF A RESORT AREA DISTRICT TO EXPEND REVENUE FROM A RESORT AREA TAX; AMENDING SECTIONS 7-6-4465 AND 7-6-4469, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1495

328 *(Senate Bill No. 212; McNutt)* AN ACT REQUIRING A JURY AWARD OF PUNITIVE DAMAGES TO BE UNANIMOUS AS TO LIABILITY AND AMOUNT; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 1501

329 *(Senate Bill No. 224; Cole)* AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-225, 75-20-226, 75-20-301, 75-20-302, 75-20-303, 75-20-304, 75-20-402, 75-20-403, 75-20-406, 75-20-1202, AND 75-20-1205, MCA; REPEALING SECTIONS 75-20-202, 75-20-205, 75-20-218, 75-20-220, 75-20-221, 75-20-222, 75-20-227, 75-20-501, AND 75-20-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION. . . . . 1502

330 *(Senate Bill No. 273; Nelson)* AN ACT ALLOWING FOR THE SUBORDINATION OF A WATER RESERVATION TO A CERTIFICATE OF WATER RIGHT; AMENDING SECTIONS 85-2-316 AND 85-2-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . 1523

HeinOnline -- 1997 vol. I liii 1997

331 *(Senate Bill No. 286; Crippen)* AN ACT PROVIDING FOR THE INSPECTION OF THE CONSTRUCTION OF A PUBLIC BUILDING OR ALTERATION OF PRIMARY FUNCTION AREAS FOR ACCESSIBILITY TO PERSONS WITH DISABILITIES; REQUIRING ACCESSIBLE EXTERIOR ROUTES; REGULATING THE ALTERATION OF A PRIMARY FUNCTION AREA; PROVIDING FOR A DISCLAIMER ON BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY; AMENDING SECTIONS 50-60-101, 50-60-201, AND 50-60-203, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . 1528

332 *(Senate Bill No. 310; Grosfield)* AN ACT PROVIDING AN ALTERNATIVE FAIR MARKET SECURITY ASSURANCE FOR RENEWABLE RESOURCE LOANS TO WATER USERS' ASSOCIATIONS; INCREASING THE DOLLAR AMOUNT FOR CERTAIN LOANS; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ATTACH ADDITIONAL PROPERTY TO SECURE LOANS; PROVIDING THAT LOAN FUNDS MAY NOT BE USED FOR PROJECT OPERATION AND MAINTENANCE; AMENDING SECTIONS 85-1-603, 85-1-613, AND 85-1-615, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES. . . . . 1534

333 *(Senate Bill No. 369; Swysgood)* AN ACT REVISING THE LAW RELATING TO ENDANGERING THE WELFARE OF CHILDREN; PROHIBITING A PERSON FROM CONTACTING A CHILD LESS THAN 16 YEARS OF AGE FOR CERTAIN PURPOSES; AND AMENDING SECTION 45-5-622, MCA. . . . . 1537

334 *(Senate Bill No. 31; Jenkins)* AN ACT PROVIDING FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS; AND PROVIDING APPLICABILITY DATES. . . . . 1538

335 *(Senate Bill No. 271; Jenkins)* AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY A MAJORITY OF THE MEMBERS OF THE ADMINISTRATIVE CODE COMMITTEE MAY NOT BE ADOPTED UNTIL THE END OF THE 6-MONTH PERIOD DURING WHICH THE RULE MUST BE ADOPTED, UNLESS PRIOR TO THAT TIME, THE COMMITTEE MEETS AND DOES NOT MAKE THE SAME OBJECTION; PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY THE ADMINISTRATIVE CODE COMMITTEE BEFORE THE RULE IS ADOPTED IS IN SOME CIRCUMSTANCES NOT EFFECTIVE UNTIL AFTER ADJOURNMENT OF THE NEXT REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS 2-4-305 AND 2-4-306, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 1539

336 *(House Bill No. 20; Cobb)* AN ACT PROVIDING A TEMPORARY FISHING LICENSE FOR MONTANA RESIDENTS; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SET THE TERMS AND CONDITIONS OF THE LICENSE BY ADMINISTRATIVE RULE; PROVIDING THAT A PORTION OF THE LICENSE FEE BE USED TO PURCHASE RECREATIONAL FACILITIES IN A LIKE MANNER AS OTHER FISHING LICENSE FEES; AND AMENDING SECTION 87-1-605, MCA. . . . . 1542

337 *(House Bill No. 68; McGee)* AN ACT ABOLISHING GOVERNMENTAL LIABILITY FOR NEGLIGENT TORT DAMAGES TO PERSONS INJURED ON THE PREMISES OF A CORRECTIONAL INSTITUTION WHILE SERVING A SENTENCE IMPOSED UPON CONVICTION OF A CRIME; AMENDING SECTION 2-9-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1543

HeinOnline -- 1997 vol. I liv 1997

338 *(House Bill No. 76; Masolo)* AN ACT PROVIDING FOR CORRECTION OF ELECTOR ADDRESSES IN CONJUNCTION WITH MAILED BALLOT ELECTIONS; ALLOWING FORWARDING OF MAILED BALLOTS; REQUIRING ELECTION ADMINISTRATORS TO PROVIDE A FORM FOR THE ELECTOR TO CORRECT THE ELECTOR'S MAILING ADDRESS; PROVIDING THAT AN OTHERWISE VALID MAILED BALLOT THAT HAS NOT BEEN CORRECTED BY THE ELECTOR AS TO THE RETURN ADDRESS IS NOT A VALID BALLOT; AND AMENDING SECTIONS 13-19-106, 13-19-206, AND 13-19-311, MCA. . . . . 1544

339 *(House Bill No. 172; Soft)* AN ACT REVISING DEFINITIONS RELATED TO PERMANENT, TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH CERTAIN EMPLOYEES ARE EXEMPT; REMOVING THE EXEMPT STATUS OF TEACHERS UNDER THE AUTHORITY OF THE DEPARTMENTS OF CORRECTIONS AND PUBLIC HEALTH AND HUMAN SERVICES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ADMINISTER A STATE SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102, 2-18-103, 2-18-104, 2-18-111, 2-18-304, 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND 39-30-103, MCA; REPEALING SECTION 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1546

340 *(House Bill No. 199; Knox)* AN ACT REQUIRING NOTICE TO THE SPONSOR OF A BILL THAT BECOMES LAW THAT INITIAL RULEMAKING IMPLEMENTING THE BILL HAS BEGUN; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1560

341 *(House Bill No. 268; Kottel)* AN ACT PROVIDING FOR MEDROXYPROGESTERONE ACETATE TREATMENT OR ITS CHEMICAL EQUIVALENT FOR CERTAIN SEX OFFENDERS; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 1561

342 *(House Bill No. 202; Galvin)* AN ACT ESTABLISHING MONTANA HIGHWAY 3 BETWEEN BILLINGS AND GREAT FALLS; AND PROVIDING AN EFFECTIVE DATE. . . . . 1566

343 *(House Bill No. 231; Barnhart)* AN ACT GENERALLY REVISING DOMESTIC RELATIONS STATUTES REGARDING THE CUSTODY AND VISITATION OF CHILDREN INVOLVED IN A MARRIAGE DISSOLUTION; REVISING APPLICABLE TERMINOLOGY; REQUIRING ADOPTION OF A FINAL PARENTING PLAN THAT INCLUDES SPECIFIC PROVISIONS IN THE BEST INTERESTS OF THE CHILD, AN OPTION FOR DISPUTE RESOLUTION OR MEDIATION EXCEPT IN CASES OF PROVEN CHILD OR SPOUSAL ABUSE, AND AN OPTION FOR PERIODIC REVIEW OF THE PARENTING PLAN; ALLOWING ADOPTION OF AN INTERIM PARENTING PLAN DURING THE TIME DISSOLUTION PROCEEDINGS ARE PENDING; REQUIRING DESIGNATION OF ONE PARENT AS CUSTODIAN FOR APPLICABILITY OF FEDERAL OR STATE LAWS; REQUIRING THAT PARENTS RECEIVE INFORMATION REGARDING PARENTAL RESPONSIBILITY AND CONTACT WITH THE CHILD IN DISPUTED CASES; ALLOWING THE TRIAL COURT TO DETERMINE THE APPROPRIATE LEVEL OF EVALUATION NECESSARY TO ESTABLISH PARENTING ABRANGEMENTS; PROVIDING A FEE FOR FILING A PETITION FOR CONTESTED AMENDMENT OF A PARENTING PLAN TO

HeinOnline -- 1997 vol. I lv 1997

DEFRAY THE COSTS OF IMPLEMENTING THE COURT-SANCTIONED EDUCATIONAL PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN IN DISPUTED CASES AND THE COST OF PARENTING EDUCATION WHEN ORDERED FOR THE INVESTIGATION AND PREPARATION OF A REPORT CONCERNING PARENTING ARRANGEMENTS; REVISING APPROPRIATE TERMINOLOGY IN GRANDPARENT VISITATION STATUTES AND APPLICABLE CRIMINAL STATUTES; AMENDING SECTIONS 25-1-201, 40-1-105, 40-1-213, 40-1-402, 40-4-103, 40-4-104, 40-4-105, 40-4-109, 40-4-110, 40-4-123, 40-4-201, 40-4-204, 40-4-205, 40-4-211, 40-4-212, 40-4-213, 40-4-214, 40-4-215, 40-4-216, 40-4-217, 40-4-219, 40-4-220, 40-4-221, 40-4-225, 40-4-226, 40-4-302, 40-4-307, 40-6-211, 40-6-221, 40-9-101, 40-9-102, 45-5-304, 45-5-631, 45-5-632, AND 45-5-633, MCA; REPEALING SECTIONS 40-4-222, 40-4-223, 40-4-224, 40-6-222, 40-6-223, 40-6-224, AND 40-6-231, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 1567

344 *(House Bill No. 271; Harper)* AN ACT INCREASING THE PENALTY FOR THE INTENTIONAL IMPORTATION, INTRODUCTION, OR TRANSPLANTATION OF FISH IN VIOLATION OF TITLE 87, CHAPTER 5, PART 7; AND AMENDING SECTION 87-5-721, MCA. . 1595

345 *(House Bill No. 479; Tuss)* AN ACT PROVIDING THAT A PERSON WHO IS CHRONICALLY INCAPACITATED BY ILLNESS OR INJURY MAY REQUEST TO BE PERMANENTLY EXCLUDED FROM JURY DUTY AND FROM THE LIST OF JURORS; AND AMENDING SECTIONS 3-15-313 AND 3-15-402, MCA. . . . . 1596

346 *(House Bill No. 594; DeBruycker)* AN ACT ELIMINATING THE BOARD OF PASSENGER TRAMWAY SAFETY; ELIMINATING THE FUNCTIONS AND DUTIES OF THE BOARD OF PASSENGER TRAMWAY SAFETY; AMENDING SECTIONS 23-2-702, 23-2-734, AND 50-60-104, MCA; REPEALING SECTIONS 2-15-1896, 23-2-701, 23-2-705, 23-2-711, 23-2-712, 23-2-713, 23-2-714, 23-2-715, 23-2-716, 23-2-717, 23-2-718, 23-2-721, 23-2-722, 23-2-723, 23-2-724, 23-2-725, AND 23-2-732, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1597

347 *(Senate Bill No. 19; Gage)* AN ACT GENERALLY REVISING STATE BUDGETING LAWS; REQUIRING THAT THE LEGISLATIVE FINANCE COMMITTEE PREPARE RECOMMENDATIONS INVOLVING MAJOR BUDGETARY MATTERS FOR AN ENSUING LEGISLATIVE SESSION; CLARIFYING TYPES OF INFORMATION CONTAINED IN AND THE MANNER AND TIMES FOR PREPARING PROPOSED BUDGETS AND REPORTS; REDUCING THE NUMBER OF REPORTS MADE TO THE BUDGET DIRECTOR; REDEFINING "BASE BUDGET", "PRESENT LAW BASE", AND "PROGRAM" FOR THE PURPOSES OF PREPARING THE STATE BUDGET; CHANGING THE MANNER OF DETERMINING WHETHER AN AGENCY IS IN SUBSTANTIAL COMPLIANCE WITH THE BUDGET; CHANGING THE APPROVAL AND REPORTING PROCEDURES FOR PROGRAM TRANSFERS; PROVIDING FOR BUDGET AMENDMENTS UNDER THE LONG-RANGE BUILDING PROGRAM; CLARIFYING THE PROVISIONS RELATING TO AUTHORITY TO MAKE EXPENDITURES IN THE SECOND YEAR OF A BIENNIUM; AMENDING SECTIONS 5-12-205, 5-12-303, 17-4-107, 17-4-108, 17-7-102, 17-7-111, 17-7-112, 17-7-121, 17-7-122, 17-7-123, 17-7-124, 17-7-132, 17-7-138, 17-7-139, 17-7-204, 17-7-211, 17-7-301, AND 17-8-101, MCA; REPEALING SECTION 17-3-109, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1599

348 *(Senate Bill No. 79; Christiaens)* AN ACT CREATING A MONTANA LIVING TRUST ACT; PROVIDING FOR THE REGULATION OF

HeinOnline -- 1997 vol. I lvi 1997

LIVING TRUSTS BY THE STATE AUDITOR; PROVIDING CRIMINAL AND CIVIL PENALTIES AND REMEDIES FOR VIOLATIONS OF THE ACT; PROVIDING FOR A REPORT TO THE 1999 REGULAR SESSION OF THE LEGISLATURE; AND PROVIDING A TERMINATION DATE. 1615

349 *(Senate Bill No. 89; Beck)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; PROVIDING FOR THE REGISTRATION OF TELECOMMUNICATIONS PROVIDERS; ESTABLISHING A DUTY TO INTERCONNECT TELECOMMUNICATIONS CARRIERS AND PROVIDING FOR NEGOTIATED, MEDIATED, AND ARBITRATED INTERCONNECTION AGREEMENTS; REQUIRING LIMITED PUBLIC SERVICE COMMISSION APPROVAL OF INTERCONNECTION AGREEMENTS; PROVIDING FOR THE DESIGNATION OF CARRIERS ELIGIBLE FOR FEDERAL UNIVERSAL SERVICE SUPPORT; PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS; ESTABLISHING STANDARDS FOR WHOLESALE PRICING OF TELECOMMUNICATIONS SERVICES, INCLUDING INDIVIDUAL NETWORK ELEMENTS; PROHIBITING CERTAIN SUBSIDIES; AMENDING THE LAWS REGARDING PROMOTIONAL OFFERINGS BY REGULATED TELECOMMUNICATIONS PROVIDERS; INCREASING THE AMOUNT OF ASSISTANCE IN THE TELEPHONE LOW-INCOME ASSISTANCE PROGRAM; ESTABLISHING AN INTERIM UNIVERSAL ACCESS TO THE ADVANCED TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND TRIBAL COLLEGES; ESTARLISHING A SUBCHARGE ON RETAIL REVENUE DERIVED FROM INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING THE PUBLIC SERVICE COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE REGARDING UNIVERSAL ACCESS AND SERVICE; CREATING A UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS SERVICES; PROVIDING FOR THE TELECOMMUNICATIONS SERVICES SUPPORTED BY THE FUND AND OPERATION OF THE FUND THROUGH A CONTRIBUTION FROM TELECOMMUNICATIONS CARRIERS BASED UPON A PERCENTAGE OF THE TELECOMMUNICATIONS CARRIERS' RETAIL REVENUE; PROVIDING THAT THE FUND BE ADMINISTERED BY A PRIVATELY CONTRACTED ENTITY UNDER THE DIRECTION OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR DISTRIBUTIONS FROM THE FUND TO ELIGIBLE TELECOMMUNICATIONS CARRIERS; ESTABLISHING A COMMITTEE TO MONITOR FEDERAL IMPLEMENTATION OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; APPROPRIATING FUNDS FOR THE COMMITTEE; AMENDING SECTIONS 2-4-102, 69-3-305, 69-3-803, 69-3-805, 69-3-806, 69-3-807, AND 69-3-1001, MCA; REPEALING SECTIONS 69-6-101, 69-6-102, AND 69-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . . . 1621

350 *(Senate Bill No. 118; Crismore)* AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC ACCOMMODATIONS, CAMPGROUNDS, AND TRAILER COURTS; PROVIDING DEFINITIONS; CLARIFYING THAT A BED AND BREAKFAST IS A PUBLIC ACCOMMODATION; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR EXPIRATION AND CANCELLATION OF LICENSES; AMENDING SECTIONS 50-51-102, 50-51-103, 50-51-201, 50-51-207, 50-51-212, 50-52-102, AND 50-52-203, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 1645

351 *(Senate Bill No. 297; Brooke)* AN ACT PROVIDING FOR REPORTING OF DEATH BY SUDDEN INFANT DEATH SYNDROME; DEFINING "SUDDEN INFANT DEATH SYNDROME"; PROVIDING FOR A SUDDEN INFANT DEATH SYNDROME CAUSE OF DEATH IN CERTAIN INFANT DEATHS; AND PROVIDING AN EFFECTIVE DATE. . . . . 1649

352 *(Senate Bill No. 314; Crippen)* AN ACT REVISING GENERAL VENUE STATUTES; AND AMENDING SECTIONS 25-2-118 AND 25-2-122, MCA. . . . . 1649

353 *(Senate Bill No. 342; Brooke)* AN ACT REVISING THE BASIN CLOSURE, WATER LEASING, AND TEMPORARY CHANGE STATUTES AS THEY APPLY TO THE UPPER CLARK FORK RIVER BASIN; ALTERING THE COMPOSITION OF THE UPPER CLARK FORK BASIN STEERING COMMITTEE; AMENDING SECTIONS 85-2-337, 85-2-338, AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1650

354 *(Senate Bill No. 368; Lynch)* AN ACT REGULATING BUSINESS PRACTICES RELATING TO THE SALE AND IMPORTATION OF VIDEO GAMBLING MACHINES; AMENDING SECTIONS 23-5-152, 23-5-612, 23-5-614, AND 23-5-631, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 1662

355 *(Senate Bill No. 394; Jabs)* AN ACT AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SEPARATE NONRESIDENT DEER LICENSES FROM THE NONRESIDENT BIG GAME COMBINATION LICENSES FOR THE PURPOSE OF DEER MANAGEMENT; ALLOWING THE COMMISSION TO SET THE FEE FOR THE NONRESIDENT ELK COMBINATION LICENSE WITHOUT A DEER TAG AND FOR THE SEPARATED NONRESIDENT DEER COMBINATION LICENSE, TO DETERMINE THE NUMBER OF LICENSES WITHIN ESTABLISHED LIMITS, AND TO SET CONDITIONS ON THE USE OF THE LICENSES; AMENDING SECTIONS 87-1-301 AND 87-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . 1666

356 *(House Bill No. 251; Holland)* AN ACT PROVIDING THAT IN CIVIL ACTIONS, THE COURT MAY ASSESS THE REASONABLE PUBLIC EXPENSES OF IMPANELING THE JURY IF THE COURT OR THE JURY DETERMINES THE CASE OF A PARTY TO BE FRIVOLOUS OR MAINTAINED FOR PURPOSES OF HARASSMENT; AND AMENDING SECTION 3-15-205, MCA. . . . . 1670

357 *(House Bill No. 281; Ryan)* AN ACT APPROPRIATING TO THE DEPARTMENT OF LABOR AND INDUSTRY $140,000 FOR FISCAL YEARS 1998 AND 1999 FROM THE FUND BALANCE OF THE STATE SPECIAL REVENUE ACCOUNT ESTABLISHED FOR THE DEPOSIT OF FEES COLLECTED BY THE DEPARTMENT OF COMMERCE FROM PERMIT FEES FOR THE ENFORCEMENT OF THE STATE PLUMBING CODE, FROM INSPECTION FEES FOR THE

HeinOnline -- 1997 vol. I lviii 1997

INSPECTION OF ELECTRICAL INSTALLATIONS, AND FROM FEES FOR THE INSPECTION OF BUILDINGS, FACTORY-BUILT BUILDINGS, RECREATIONAL VEHICLES, TRAMWAYS, OR OTHER FACILITIES OR STRUCTURES TO FUND APPRENTICESHIP INSTRUCTION PROGRAMS; REQUIRING THAT FEES FOR INSPECTIONS BE COMMENSURATE WITH PROGRAM COSTS; AMENDING SECTIONS 50-60-104, 50-60-508, AND 50-60-604, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1670

358 *(House Bill No. 302; Bohlinger)* AN ACT REQUIRING A PROTOCOL FOR REFERRING DENTISTS WHO ARE IMPAIRED BY HABITUAL INTEMPERANCE OR DRUG USE OR BY MENTAL ILLNESS OR CHRONIC PHYSICAL ILLNESS TO A REHABILITATION PROGRAM; PROVIDING FOR THE REPORTING OF IMPAIRED DENTISTS; PROVIDING IMMUNITY FOR PERSONS PROVIDING INFORMATION; PROVIDING FOR NOTIFICATION TO THE BOARD OF DENTISTRY OF A DENTIST FAILING TO COOPERATE WITH THE REFERRAL; AND AUTHORIZING THE BOARD OF DENTISTRY TO COMPEL A DENTIST TO PARTICIPATE IN AN EVALUATION TO DETERMINE IMPAIRMENT. . . . . 1672

359 *(House Bill No. 337; Bohlinger)* AN ACT PROVIDING LIMITS ON LIABILITY FOR DENTISTS WHO PROVIDE CARE OR ASSISTANCE FOR CHARITABLE PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1673

360 *(House Bill No. 447; Stovall)* AN ACT PERMITTING TEMPORARY PRIVATE SECURITY GUARDS; AMENDING SECTIONS 37-60-301, 37-60-309, AND 37-60-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1674

361 *(House Bill No. 567; Squires)* AN ACT PROVIDING PERMANENT FUNDING FOR ADDITIONAL YEARS OF SERVICE TO BE PURCHASED UNDER THE STATE EMPLOYEE PROTECTION ACT FOR A MEMBER INVOLUNTARILY TERMINATED FROM MEMBERSHIP; CREATING A METHOD OF FUNDING JOB RETRAINING, RELOCATION EXPENSES, AND HEALTH INSURANCE FOR A STATE EMPLOYEE WHO IS INVOLUNTARILY TERMINATED; IMPOSING A TIME LIMIT FOR A STATE EMPLOYEE PARTICIPATING IN THE JOB REGISTRY PROGRAM; PROVIDING THAT THE UNEXPENDED BALANCE IN ANY SPECIFIC APPROPRIATION MAY BE USED IN THE SUCCEEDING YEAR TO FUND JOB TRAINING, HEALTH INSURANCE BENEFITS, RELOCATION, AND THE PURCHASE OF SERVICE YEARS; AMENDING SECTIONS 2-18-1203, 17-7-304, AND 19-2-706, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1675

362 *(Senate Bill No. 84; Jergeson)* AN ACT REQUIRING THE BOARD OF REGENTS, UPON APPROPRIATION OF FUNDS, TO PROVIDE FINANCIAL ASSISTANCE TO RESIDENT NONBENEFICIARY STUDENTS ATTENDING TRIBALLY CONTROLLED COMMUNITY COLLEGES IN MONTANA; PROVIDING REQUIREMENTS FOR RECEIPT OF MONEY; PROVIDING FOR A REVERSION OF UNSPENT FUNDS TO THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1679

363 *(Senate Bill No. 269; Bartlett)* AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO STUDY, WITH THE COOPERATION OF THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF CORRECTIONS, AND CERTAIN OTHER STATE AGENCIES, A SEPARATE PAY PLAN FOR PROTECTIVE SERVICES

HeinOnline -- 1997 vol. I lix 1997

PROFESSIONALS; DEFINING "PROTECTIVE SERVICES PROFESSIONAL" FOR THE PURPOSE OF THE STUDY; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP DRAFT LEGISLATION FOR REVIEW BY THE 56TH LEGISLATURE FOR THE IMPLEMENTATION OF A SEPARATE PAY PLAN FOR PROTECTIVE SERVICES PROFESSIONALS; AND PROVIDING AN EFFECTIVE DATE. . . . . 1681

364 *(House Bill No. 58; Ewer)* AN ACT ELIMINATING THE LICENSING AND PERMITTING OF POSTSECONDARY EDUCATIONAL INSTITUTIONS BY THE DEPARTMENT OF COMMERCE; AMENDING SECTION 2-6-109, MCA; AND REPEALING SECTIONS 20-30-101, 20-30-102, 20-30-103, 20-30-104, 20-30-105, 20-30-201, 20-30-202, 20-30-203, 20-30-301, 20-30-302, 20-30-303, 20-30-304, 20-30-305, 20-30-306, 20-30-401, 20-30-402, 20-30-403, 20-30-404, AND 20-30-405, MCA. . . . . 1682

365 *(House Bill No. 238; Peck)* AN ACT GENERALLY REVISING THE LAWS RELATING TO CREDIT UNIONS; CONFORMING DIVIDEND PAYMENT PROVISIONS TO FEDERAL LAW; INCREASING THE TRIGGER AMOUNT FOR REPORTING TO THE BOARD LOANS TO OFFICIALS; REVISING CAPITAL ACCOUNTS AND CAPITAL RESERVE REQUIREMENTS FOR CORPORATE CREDIT UNIONS TO CONFORM WITH FEDERAL REGULATIONS; ALLOWING CREDIT UNIONS TO HOLD FUNERAL PLAN TRUSTS; DEFINING AND AUTHORIZING WITH RESTRICTIONS "PAID-IN CAPITAL"; AND AMENDING SECTIONS 32-3-502, 32-3-608, 32-3-803, 32-3-804, 32-3-805, 32-3-807, 72-37-102, AND 72-37-103, MCA. . . . . 1683

366 *(House Bill No. 391; Rose)* AN ACT IMPLEMENTING THE ONE-STOP BUSINESS LICENSING PILOT PROJECT; PROVIDING THAT CERTAIN LICENSEE RENEWAL DATES BE AN ANNIVERSARY DATE ESTABLISHED BY RULE; GRANTING AUTHORITY TO THE BOARD OF REVIEW TO ABOPT RULES GOVERNING THE USE OF ELECTRONIC MEANS OF VERIFYING INFORMATION REQUIRED FOR LICENSURE; ALLOWING CERTAIN LICENSEES TO PAY FEES BY CREDIT CARD AND ALLOWING RELEVANT LICENSING AGENCIES TO DISCOUNT FEES ACCORDINGLY; DESIGNATING THE DEPARTMENT OF REVENUE AS THE AGENCY RESPONSIBLE FOR ADMINISTERING THE LICENSING PILOT PROJECT; AND AMENDING SECTIONS 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, AND 82-15-105, MCA. . . . . 1688

367 *(House Bill No. 521; Ryan)* AN ACT REVISING THE GENERAL RULES FOR DETERMINING RESIDENCE; PROVIDING THAT A CLAIM OF RESIDENCE WITHIN MONTANA FOR ANY PURPOSE ESTABLISHES A PERSON'S RESIDENCE FOR ALL PURPOSES; AND AMENDING SECTION 1-1-215, MCA. . . . . 1699

368 *(House Bill No. 596; Wiseman)* AN ACT EXEMPTING COMMON TRUST FUNDS, AS DEFINED BY FEDERAL LAW, FROM THE CORPORATION LICENSE TAX AND CORPORATION INCOME TAX; AMENDING SECTION 15-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1699

369 *(House Bill No. 612; Hibbard)* AN ACT CHANGING THE DISTRIBUTION OF CORPORATE LICENSE TAX PAYMENTS FROM BANKS AND SAVINGS AND LOAN ASSOCIATIONS TO COUNTIES TO PROVIDE FOR PAYMENTS BASED ON A 5-YEAR AVERAGE;

HeinOnline -- 1997 vol. I lx 1997

AMENDING SECTIONS 15-31-141, 15-31-701, AND 15-31-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND AN APPLICABILITY DATE. . . . . 1701

370 *(Senate Bill No. 124; Christiaens)* AN ACT GENERALLY REVISING THE LAWS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; PROVIDING THAT FEDERAL TAX LAWS GOVERNING QUALIFICATION OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEMS SUPERSEDE CONFLICTING STATE STATUTES; GIVING THE BOARD RULEMAKING AUTHORITY; DEFINING "STATUTORY BENEFICIARY" AND "TERMINATION OF EMPLOYMENT" OR "TERMINATION OF SERVICE"; ALLOWING MEMBERS OF THE GAME WABDENS' RETIREMENT SYSTEM TO QUALIFY PERIODS OF ABSENCE FROM COVERED EMPLOYMENT BECAUSE OF SERVICE-CONNECTED INJURY OR ILLNESS; CLARIFYING CERTAIN SERVICE CREDIT PROVISIONS; ALLOWING MAILINGS FOR CERTAIN NONPROFIT ORGANIZATIONS; CLARIFYING CERTAIN DEFINITIONS; REVISING CERTAIN PROVISIONS RELATED TO FAMILY LAW ORDERS; REVISING CERTAIN OPTIONAL MEMBERSHIP PROVISIONS; REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING BENEFIT COMMENCEMENT DATES FOR ALL SYSTEMS; ALLOWING CANCELLATION OF DISABILITY BENEFITS AND AN EXCEPTION TO REINSTATEMENT PROVISIONS; REVISING CERTAIN PROVISIONS RELATED TO BENEFICIARY DESIGNATION AND SURVIVOR BENEFIT OPTIONS; AMENDING SECTIONS 2-6-109, 19-2-303, 19-2-701, 19-2-702, 19-2-704, 19-2-801, 19-2-802, 19-2-907, 19-3-401, 19-3-412, 19-3-504, 19-3-511, 19-3-513, 19-3-1015, 19-3-1104, 19-3-1601, 19-5-103, 19-5-601, 19-5-801, 19-6-501, 19-6-612, 19-7-501, 19-7-612, 19-7-708, 19-7-801, 19-8-601, 19-8-712, 19-8-1101, 19-9-801, 19-9-904, 19-9-905, 19-13-701, 19-13-804, 19-13-805, AND 19-17-102, MCA; REPEALING SECTIONS 19-3-903 AND 19-3-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 1704

371 *(Senate Bill No. 181; Hargrove)* AN ACT CLARIFYING CERTAIN PROVISIONS RELATING TO RESORT RETAIL ALL-BEVERAGES LICENSES; ESTABLISHING THAT A RESORT ABEA, FOR THE PURPOSES OF A RESORT RETAIL ALL-BEVERAGES LICENSE, MAY NOT INCLUDE LAND OR IMPROVEMENTS LYING WITHIN THE BOUNDARIES OF AN INCORPORATED CITY OR TOWN; CLARIFYING THE MEANING OF THE TERMS "CONTROL" AND "RESORT AREA" FOR THE PURPOSES OF RESORT RETAIL ALL-BEVERAGES LICENSES; CLARIFYING HEARING NOTICE REQUIREMENTS FOR THE PURPOSES OF RESORT RETAIL ALL-BEVERAGES LICENSES; ESTABLISHING AN INITIAL $20,000 FEE TO OBTAIN A RESORT RETAIL ALL-BEVERAGES LICENSE; AMENDING SECTIONS 16-4-202 AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1729

372 *(Senate Bill No. 315; McCarthy)* AN ACT MODIFYING THE DEFINITION OF "CONTAINER SITE"; AMENDING SECTION 75-10-103, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1734

373 *(Senate Bill No. 332; Miller)* AN ACT REQUIRING SOLID WASTE MANAGEMENT FACILITIES LICENSED PRIMARILY AS WASTE TIRE DISPOSAL SITES TO PROVIDE FINANCIAL ASSURANCE TO GUARANTEE THE PROPER MANAGEMENT AND DISPOSAL OF WASTE TIRES; REQUIRING A STUDY OF ISSUES REGARDING

HeinOnline -- 1997 vol. I lxi 1997

WASTE TIRES; AMENDING SECTIONS 75-10-203 AND 75-10-204, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1735

374 *(Senate Bill No. 379; Lynch)* AN ACT GENERALLY REVISING CONSUMER LOAN LAWS; SPECIFYING THAT, WITH RESPECT TO LOANS ON WHICH CHARGES ARE MADE ON AN ADD-ON BASIS, THE INSTALLMENT CONTRACTED FOR MAY NOT BE SUBSTANTIALLY LARGER THAN ANY PRECEDING INSTALLMENT; SPECIFYING THAT, WITH RESPECT TO LOANS ON WHICH CHARGES ARE MADE ON AN ADD-ON BASIS, THE MINIMUM MONTHLY PAYMENTS MUST BE MADE IN AN AMOUNT THAT WOULD RESULT IN THE FULL REPAYMENT OF THE INITIAL LOAN ADVANCE, EXCLUSIVE OF ANY CHARGES, WITHIN A STATUTORILY-SPECIFIED MAXIMUM TERM; SETTING A 30-DAY LIMIT FOR CERTAIN CONSUMER LOAN LICENSEES TO RETURN TO CERTAIN BORROWERS A RELEASE OF THE MORTGAGE OR A REQUEST FOR RECONVEYANCE OF THE DEED OF TRUST OR TRUST INDENTURE ON REAL PROPERTY TAKEN AS SECURITY FOR A LOAN; AND AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-203, 32-5-302, 32-5-307, 32-5-503, AND 32-5-505, MCA. . . . . 1739

375 *(House Bill No. 111; Ahner)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; PROVIDING FOR A SEXUALLY VIOLENT PREDATOR DESIGNATION; PROVIDING IMMUNITY FOR NEGLIGENCE; AMENDING SECTIONS 41-5-523, 44-6-101, 46-18-201, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, 46-23-507, AND 46-23-508, MCA; REPEALING SECTION 46-18-254, MCA; AND PROVIDING APPLICABILITY DATES. . . . . 1742

376 *(House Bill No. 189; Barnett)* AN ACT AUTHORIZING THE TRAINING, CERTIFICATION, AND APPOINTMENT OF SPECIALLY QUALIFIED DEPUTY STOCK INSPECTORS; EXTENDING THE APPLICATION OF CERTAIN TRAVEL PERMITS FOR ADDITIONAL TYPES OF LIVESTOCK; DELINEATING THE AUTHORITY OF SPECIALLY QUALIFIED DEPUTY STOCK INSPECTORS WITH RESPECT TO A CHANGE IN OWNERSHIP OF THE LIVESTOCK AND WITH RESPECT TO TRANSPORTING LIVESTOCK; REVISING THE DEFINITION OF "LIVESTOCK" AS THE TERM IS USED WITH RESPECT TO MARKS AND BRANDS; AMENDING SECTIONS 81-3-201 AND 81-3-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1759

377 *(House Bill No. 193; Hanson, Sonny)* AN ACT CLARIFYING THE AUTHORITY OF THE LEGISLATIVE AUDITOR TO ACCESS CERTAIN TRANSACTIONS BETWEEN PUBLIC ENTITIES AND PRIVATE FOUNDATIONS OR ORGANIZATIONS SUPPORTING THE UNIVERSITY SYSTEM IN ORDER TO ENSURE COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS; AMENDING SECTIONS 5-13-304 AND 18-1-118, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. . . . . 1762

378 *(House Bill No. 222; Anderson)* AN ACT ADOPTING STANDARDS ESTABLISHED FOR DEATH PENALTY CASES BY THE FEDERAL ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996; IMPOSING A TIME LIMIT FOR THE SENTENCING HEARING IN A DEATH PENALTY CASE; GENERALLY REVISING LAWS PERTAINING TO POSTCONVICTION PROCEEDINGS; AMENDING SECTIONS 46-18-102, 46-18-301, 46-21-101, 46-21-102, 46-21-105, AND

46-21-201, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES. . . . . 1764

379 *(House Bill No. 266; Cocchiarella)* AN ACT REQUIRING THE DEPARTMENT OF COMMERCE, ITS REPRESENTATIVES, AND COUNTY AND CITY AUTHORITIES DURING ROUTINE INSPECTIONS TO REQUEST PROOF OF LICENSURE FOR ANY PERSON WHO IS REQUIRED TO BE LICENSED WHO IS INVOLVED WITH PLUMBING OR ELECTRICAL WORK AND TO REPORT LICENSE VIOLATIONS TO THE INSPECTOR'S EMPLOYING AGENCY; REQUIRING EACH EMPLOYING AGENCY TO REPORT LICENSE VIOLATIONS TO THE BOARD OF PLUMBERS OR THE STATE ELECTRICAL BOARD; AND AMENDING SECTIONS 50-60-510 AND 50-60-604, MCA. . . . . 1768

380 *(House Bill No. 538; Keenan)* AN ACT CREATING A PILOT PROJECT FOR THE USE OF MEDICAL SAVINGS ACCOUNTS IN CONJUNCTION WITH THE MONTANA MEDICAID PROGRAM; PROVIDING FOR THE DESIGN OF THE PROJECT; PROVIDING FOR ADMINISTRATION OF THE PROJECT BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THE POWERS AND DUTIES OF THE DEPARTMENT; REQUIRING CONTRACTS FOR THE ADMINISTRATION OF MEDICAL SAVINGS ACCOUNTS AND THE PROVISION OF HIGH-DEDUCTIBLE HEALTH CARE COVERAGE; REQUIRING REPORTS AND EVALUATION OF THE PROJECT; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. . . . . 1769

381 *(Senate Bill No. 51; Hertel)* AN ACT COORDINATING COST-OF-LIVING ADJUSTMENTS FOR PROBATION OFFICERS WITH OTHER COUNTY OFFICIALS; AMENDING SECTIONS 41-5-704 AND 41-5-705, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1773

382 *(Senate Bill No. 83; Sprague)* AN ACT AUTHORIZING THE CHARTERING OF FOREIGN CAPITAL DEPOSITORIES; PROVIDING FOR THE RIGHTS OF FINANCIAL PRIVACY, ASSET PROTECTION, AND SPECIALIZED SERVICES TO NONRESIDENT ALIENS WHO ARE DEPOSITORY CUSTOMERS; ESTABLISHING THE DEPARTMENT OF COMMERCE AS THE REGULATING AUTHORITY; MANDATING COMPLIANCE WITH CERTAIN FEDERAL BANKING LAWS; PROVIDING FOR A NEW SOURCE OF STATE REVENUE DERIVED FROM AN ASSESSMENT BASED ON THE VALUE OF ASSETS ON DEPOSIT; AMENDING SECTIONS 15-1-501, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 32-1-101, 32-1-102, 32-1-202, 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND 32-1-501, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . 1775

383 *(Senate Bill No. 151; Miller)* AN ACT ALLOWING THE DEDUCTION OF THE COST OF PREMIUMS FOR HEALTH CARE INSURANCE AND LONG-TERM CARE INSURANCE FOR A TAXPAYER, THE TAXPAYER'S DEPENDENTS, AND THE TAXPAYER'S PARENTS AND GRANDPARENTS; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES. . . . . 1814

384 *(Senate Bill No. 280; Van Valkenburg)* AN ACT PROVIDING FOR AN INCREASE IN THE BASE SALARY OF COURT REPORTERS; FUNDING THE INCREASE BY A FEE INCREASE; ALLOWING A JUDGE TO SOLICIT BIDS FOR THE WORK PERFORMED BY A

HeinOnline -- 1997 vol. I lxiii 1997

COURT REPORTER; AND AMENDING SECTIONS 3-5-602 AND 25-1-202, MCA. . . . . 1820

385 *(Senate Bill No. 290; Keating)* AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ADMINISTRATION FUND; ELIMINATING ASSESSMENT FUNDING TO THE DEPARTMENT OF COMMERCE AND PROVIDING SUBSTITUTE FUNDING FOR THE BOILER INSPECTION PROGRAM; CLARIFYING THOSE FEES THAT ARE DEPOSITED TO THE ADMINISTRATION FUND; REVISING THE METHOD OF ASSESSMENT AND THE ASSESSMENT BASE; REVISING THE PAYMENT AND COLLECTION REQUIREMENTS; PROVIDING FOR FORMATION OF A WORKERS' COMPENSATION REGULATION ADVISORY COUNCIL; AMENDING SECTIONS 39-71-201 AND 50-74-219, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE. . . 1821

386 *(Senate Bill No. 304; Cole)* AN ACT MODIFYING THE STOCK OWNERSHIP AND OTHER REQUIREMENTS NECESSARY FOR BEING EXEMPT FROM THE WORKERS' COMPENSATION ACT FOR AN OFFICER OR MANAGER OF A QUASI-PUBLIC OR PRIVATE CORPORATION, MANAGER-MANAGED LIMITED LIABILITY COMPANY, OR DITCH COMPANY; AND AMENDING SECTION 39-71-401, MCA. . . . . 1825

387 *(House Bill No. 4; Grady)* AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1997; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO FISCAL YEAR 1998; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1829

388 *(Senate Bill No. 28; Hertel)* AN ACT REQUIRING THAT AT LEAST ONE MEMBER OF THE TEACHERS' RETIREMENT BOARD BE ACTIVELY EMPLOYED AS A PUBLIC SCHOOL CLASSROOM TEACHER; REMOVING THE SUPERINTENDENT OF PUBLIC INSTRUCTION; DEFINING "CLASSROOM TEACHER"; AMENDING SECTIONS 2-15-1010 AND 20-3-106, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1832

389 *(Senate Bill No. 95; Halligan)* AN ACT ALLOWING SPECIAL EDUCATION TUITION PAYMENTS IN EXCESS OF REGULAR TUITION COSTS FOR AN OUT-OF-DISTRICT PUPIL TO BE USED FOR THE PROGRAM IN WHICH THE SPECIAL EDUCATION PUPIL IS ENROLLED; AMENDING SECTIONS 20-5-324 AND 20-9-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1836

390 *(Senate Bill No. 270; Benedict)* AN ACT CLARIFYING AND EXPANDING INSURANCE AND SECURITIES FRAUD; CREATING AN INSURANCE AND SECURITIES FRAUD EDUCATION AND PREVENTION PROGRAM; REQUIRING DISCLOSURE OF SUSPECTED INSURANCE AND SECURITIES FRAUD TO THE COMMISSIONER OF INSURANCE AND COMMISSIONER OF SECURITIES; CLARIFYING THE OFFENSE OF THEFT; AND PROVIDING PENALTIES FOR INSURANCE AND SECURITIES FRAUD. . . . . 1839

391 *(House Bill No. 89; Kottel)* AN ACT CREATING A LEGISLATIVE OVERSIGHT COMMITTEE ON STATE MANAGEMENT SYSTEMS; SPECIFYING THE APPOINTMENT OF MEMBERS TO THE COMMITTEE; DESCRIBING THE DUTIES, RESPONSIBILITIES, AND AUTHORITY OF THE COMMITTEE; PROVIDING FOR STAFF SUPPORT FOR THE COMMITTEE; APPROPRIATING FUNDS FOR

THE ACTIVITIES OF THE COMMITTEE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 1841

392 *(House Bill No. 118; Grady)* AN ACT PROVIDING THAT CERTAIN PROCUREMENT STATUTES REGARDING STATE BUILDINGS AND CONSTRUCTION DO NOT APPLY TO ENVIRONMENTAL REMEDIATION AND ABANDONED MINE RECLAMATION PROJECTS; AMENDING SECTION 18-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1844

393 *(House Bill No. 151; Marshall)* AN ACT EXPANDING THE FISH, WILDLIFE, AND PARKS CRIMESTOPPERS ACT TO INCLUDE STATE PARKS-RELATED CRIMES; AMENDING SECTIONS 2-15-3404, 87-5-601, 87-5-602, 87-5-603, AND 87-5-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1845

394 *(House Bill No. 184; Peck)* AN ACT GENERALLY REVISING THE LAWS RELATING TO GUIDE OR HEARING DOGS; DEFINING THE TERM "SERVICE ANIMAL"; ALLOWING A PERSON WITH A DISABILITY TO BE ACCOMPANIED BY A SERVICE ANIMAL IN A PUBLIC PLACE; ALLOWING A SERVICE ANIMAL IN TRAINING IN A PUBLIC PLACE; ALLOWING FULL ACCESS TO HOUSING ACCOMMODATIONS TO A PERSON TRAINING A SERVICE ANIMAL; AND AMENDING SECTIONS 49-4-203 AND 49-4-214, MCA. . . . . 1847

395 *(House Bill No. 185; Bergsagel)* AN ACT EXEMPTING FROM REGISTRATION THE OFFER OR SALE OF SECURITIES BY A COOPERATIVE ASSOCIATION TO ITS MEMBERS OR AS NECESSARY OR INCIDENTAL TO ESTABLISHING MEMBERSHIP IN THE COOPERATIVE ASSOCIATION; AMENDING SECTION 30-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1848

396 *(House Bill No. 207; Grady)* AN ACT GENERALLY REVISING PROVISIONS OF TELECOMMUNICATIONS SERVICES FOR THE DISABLED; PROVIDING FOR AN ADDITIONAL MEMBER ON THE COMMITTEE ON MONTANA TELECOMMUNICATIONS ACCESS SERVICES FOR THE DISABLED; AMENDING SECTIONS 2-15-2212, 53-19-301, 53-19-302, 53-19-303, 53-19-304, 53-19-306, 53-19-307, 53-19-308, AND 53-19-310, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1853

397 *(House Bill No. 263; Dowell)* AN ACT AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ENTER INTO A CONTRACT WITH THE TRUSTEES OF ANY SCHOOL DISTRICT WITHIN THE COUNTY OR WITH ANY SCHOOL DISTRICT IN AN ADJOINING COUNTY TO ISSUE BONDS FOR THE JOINT CONSTRUCTION OF A FACILITY; CLARIFYING THE INTERLOCAL AGREEMENTS LAW TO INCLUDE A REFERENCE TO JOINT BONDING AUTHORITY; AMENDING SECTIONS 7-11-104, 20-9-404, AND 20-9-405, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 1857

398 *(House Bill No. 276; Kottel)* AN ACT RELATING TO PATERNITY PROCEEDINGS; PROVIDING THAT WHEN THE CHILD SUPPORT ENFORCEMENT DIVISION IN A CASE UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT RECEIVES A WRITTEN CLAIM FROM A CHILD'S MOTHER THAT NAMES A PERSON AS THE ALLEGED NATURAL FATHER OF A CHILD, THE DEPARTMENT SHALL PROMPTLY TAKE REASONABLE STEPS TO LOCATE AND NOTIFY THE ALLEGED FATHER OF THE EXISTENCE OF THE CLAIM; AND AMENDING SECTION 40-5-232, MCA. . . . . 1858

399 *(House Bill No. 308; Pavlovich)* AN ACT AUTHORIZING THE SALE OF HARD CIDER; DEFINING "HARD CIDER"; IMPOSING A TAX ON THE IMPORTATION OR SALE OF HARD CIDER; CLARIFYING THAT

HeinOnline -- 1997 vol. I lxv 1997

THE ADDITIONAL TAX ON TABLE WINE DOES NOT APPLY AS AN ADDITIONAL TAX ON HARD CIDER; CLARIFYING THAT THE DEPARTMENT OF REVENUE MUST COLLECT THE TAX ON THE SALE OF HARD CIDER IN THE SAME MANNER IT NOW COLLECTS TAXES ON TABLE WINE; PROVIDING FOR THE DISTRIBUTION OF REVENUE RECEIVED FROM THE TAX ON HARD CIDER; AUTHORIZING LICENSED TABLE WINE DISTRIBUTORS TO SELL HARD CIDER UNDER A LICENSE TO SELL TABLE WINE; AMENDING SECTIONS 16-1-106, 16-1-411, 16-2-301, AND 16-3-418, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1860

400 *(House Bill No. 352; Sliter)* AN ACT PROVIDING THAT THE OWNER OR POSSESSOR OF STOLEN PERSONAL PROPERTY OR THE OWNER OF REAL PROPERTY CRIMINALLY MISUSED WITHOUT THE KNOWLEDGE OF THE OWNER IS NOT LIABLE IN THE ABSENCE OF GROSS NEGLIGENCE FOR INJURY OR DAMAGES ARISING OUT OF THE USE OR MISUSE OF THE PROPERTY WHILE THE PROPERTY IS POSSESSED BY ANOTHER; PROVIDING THAT THIS IMMUNITY DOES NOT AFFECT THE DOCTRINES OF NEGLIGENCE PER SE AND ATTRACTIVE NUISANCE; AND PROVIDING AN APPLICABILITY DATE. . . . . 1864

401 *(House Bill No. 406; Bankhead)* AN ACT REVISING LANDLORD AND TENANT LAWS; REVISING LANDLORDS' RIGHTS AND DUTIES; DECREASING THE TIME PERIOD FOR A TENANT TO REMOVE ABANDONED PROPERTY AFTER NOTICE FROM THE LANDLORD; ALLOWING A LANDLORD TO COVER LABOR COSTS; AND AMENDING SECTIONS 70-24-103, 70-24-303, 70-24-430, 70-24-436, AND 70-25-201, MCA. . . . . 1865

402 *(House Bill No. 444; Wells)* AN ACT MAKING THE DESIGNATED MODEL YEAR OF CERTAIN PROPERTY SUBJECT TO A FEE IN LIEU OF TAX CORRESPOND WITH THE PURCHASE YEAR FOR THE PURPOSES OF IMPOSING FEES IN LIEU OF TAX IF THE PURCHASE YEAR PRECEDES THE MODEL YEAR; AMENDING SECTIONS 23-2-517, 23-2-615.1, 23-2-803, 61-3-522, 61-3-523, 61-3-527, AND 67-3-206, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES. . . . . 1872

403 *(House Bill No. 491; Rehbein)* AN ACT REVISING THE LAWS RELATING TO THE TRANSFER OF TERRITORY FROM ONE SCHOOL DISTRICT TO ANOTHER; INCREASING THE FILING FEE TO $100; ALLOWING AN APPEAL TO THE DISTRICT COURT CONCERNING A TRANSFER; ELIMINATING THE DUTIES OF THE COUNTY COMMISSIONERS RELATING TO TRANSFERS; ELIMINATING THE VOTE OF THE PEOPLE IN THE CASE OF AN ELEMENTARY DISTRICT TRANSFER; CHANGING THE TIME LIMITATION FOR A BOUNDARY CHANGE FOR A HIGH SCHOOL DISTRICT; REQUIRING THAT A TRANSFER INVOLVING A K-12 DISTRICT MUST INCLUDE BOTH AN ELEMENTARY AND A HIGH SCHOOL TRANSFER; AMENDING SECTIONS 20-6-213, 20-6-314, 20-6-320, AND 20-6-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1878

404 *(House Bill No. 519; Wyatt)* AN ACT ALLOWING AN ADVANCED PRACTICE REGISTERED NURSE THAT IS A NURSE PRACTITIONER OR A CLINICAL NURSE SPECIALIST TO PROVIDE SERVICES AS A TREATING PROVIDER AND A PRIMARY CARE PROVIDER UNDER THE WORKERS' COMPENSATION ACT; AND AMENDING SECTION 39-71-116, MCA. . . . . 1883

HeinOnline -- 1997 vol. I lxvi 1997

405 *(House Bill No. 576; Cobb)* AN ACT CREATING AN ENDOWMENT FOR CHILDREN FUND WITHIN THE NONEXPENDABLE TRUST FUND TYPE; PROVIDING FOR THE USE OF THE FUND; REVISING THE USES OF THE CHILDREN'S TRUST FUND ACCOUNT; AMENDING SECTIONS 41-3-701 AND 41-3-703, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1887

406 *(Senate Bill No. 87; Jergeson)* AN ACT ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE TRANSFER PROPRIETARY FUNDS TO THE GENERAL FUND AT THE END OF A FISCAL YEAR; REQUIRING THAT FEES FOR FILING AND COPYING SERVICES BE COMMENSURATE WITH COSTS; PROVIDING THAT THE FEES BE DEPOSITED INTO A PROPRIETARY FUND; AMENDING SECTION 2-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1889

407 *(Senate Bill No. 130; Holden)* AN ACT CLARIFYING THE NOTICE REQUIREMENTS IN TAX SALE PROCEEDINGS; REQUIRING ACTUAL NOTICE TO TAXPAYERS WHOSE NAMES AND ADDRESSES ARE REASONABLY ASCERTAINABLE IN TAX SALE PROCEEDINGS; AMENDING SECTION 15-18-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1890

408 *(Senate Bill No. 296; Jergeson)* AN ACT ALLOWING MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM TO QUALIFY MONTANA UNIVERSITY SYSTEM EXTENSION SERVICE BY PAYING THE FULL ACTUARIAL COST OF THE SERVICE; CLARIFYING THAT MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM MAY NOT RECEIVE DUPLICATE CREDIT FOR THE SAME PERIOD OF SERVICE; AMENDING SECTIONS 19-20-405, 19-20-407, AND 19-20-410, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 1892

409 *(Senate Bill No. 300; Thomas)* AN ACT REVISING THE TAXATION OF CLASS SIX PERSONAL PROPERTY INTENDED FOR RENTAL OR LEASE; BASING THE VALUE OF RENTAL OR LEASE PROPERTY ON ACQUIRED COST; INCREASING THE VALUE OF RENTAL OR LEASE PROPERTY ELIGIBLE FOR TAXATION AS CLASS SIX PROPERTY FROM $5,000 TO $15,000; AND AMENDING SECTION 15-6-136, MCA. . . . . 1893

410 *(Senate Bill No. 324; Estrada)* AN ACT PROVIDING FOR COVERAGE OF POSTMASTECTOMY CARE AS DETERMINED BY AN ATTENDING PHYSICIAN AND PATIENT OR, FOR AN HMO, BY A PRIMARY CARE PHYSICIAN, ATTENDING PHYSICIAN, AND PATIENT; PROVIDING FOR COVERAGE OF RECONSTRUCTIVE SURGERY FOLLOWING A MASTECTOMY; REQUIRING WRITTEN INFORMED CONSENT FOR PATIENTS RECEIVING TREATMENT FOR BREAST CANCER; CLARIFYING THAT THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT MUST OFFER COVERAGE FOR MAMMOGRAPHY EXAMINATIONS; AMENDING SECTIONS 33-22-101, 33-22-1827, 33-31-111, AND 33-35-306, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . 1894

411 *(Senate Bill No. 336; Halligan)* AN ACT EXTENDING THE TERMINATION DATE FOR THE INCOME AND CORPORATE TAX CREDIT FOR RECYCLING OF MATERIAL; AMENDING SECTION 5, CHAPTER 542, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 1898

412 *(Senate Bill No. 338; Grosfield)* AN ACT REQUIRING LICENSURE OF CERTAIN GUEST RANCHES AND OUTFITTING AND GUIDE FACILITIES BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; DEREGULATING FOOD SERVICE IN CERTAIN

HeinOnline -- 1997 vol. I lxvii 1997

ESTABLISHMENTS THAT SERVE FOOD ONLY TO REGISTERED GUESTS; PROVIDING DEFINITIONS; REQUIRING THE DEPARTMENT TO ADOPT RULES; REQUIRING NEGOTIATED RULEMAKING; PROVIDING FOR STAGGERED LICENSE DATES; REQUIRING AN OPPORTUNITY FOR CORRECTION OF CERTAIN LICENSING VIOLATIONS; AMENDING SECTIONS 50-50-102, 50-51-101, 50-51-102, 50-51-103, 50-51-201, 50-51-207, AND 50-51-401, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 1898

413 *(Senate Bill No. 365; Benedict)* AN ACT PROVIDING FOR THE REGULATION OF HEALTH INSURANCE CARRIERS WHO OFFER MANAGED CARE PLANS; PROVIDING FOR STATE NETWORK ADEQUACY AND QUALITY ASSURANCE STANDARDS AND A MEANS FOR ENFORCING THE STANDARDS; REGULATING CONTRACTS RELATING TO MANAGED CARE PLANS; PROVIDING REPORTING AND DISCLOSURE REQUIREMENTS; PROVIDING FOR CONFIDENTIALITY OF HEALTH CARE INFORMATION; PROVIDING DEFINITIONS; APPLYING PREMIUM INCREASE RESTRICTIONS TO HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING HEALTH MAINTENANCE ORGANIZATIONS TO FILE FINANCIAL STATEMENTS; REQUIRING PROTECTION AGAINST INSOLVENCY BY HEALTH MAINTENANCE ORGANIZATIONS; AMENDING SECTIONS 33-22-1703, 33-22-1707, 33-31-102, 33-31-111, 33-31-211, AND 33-31-216, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. . . . . 1905

414 *(Senate Bill No. 372; Waterman)* AN ACT REQUIRING THE DEPARTMENT OF REVENUE, UPON A TIMELY SHOWING OF A CHANGE IN OWNERSHIP OR OF A LAND CONVEYANCE RESULTING IN A CHANGE OF OWNERSHIP, EXCEPT IN THE CASE OF LAND SPLITS, TO CHANGE THE CURRENT OWNERSHIP RECORDS; AMENDING SECTIONS 15-7-102, 15-8-201, AND 15-10-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 1926

415 *(Senate Bill No. 377; Grosfield)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; PROVIDING AN OPTIONAL PROCEDURE FOR ALLOCATING LIABILITY FOR SITE REMEDIATION; CREATING AN ORPHAN SHARE FUND ACCOUNT AND ALLOCATING CERTAIN RESOURCE INDEMNITY TRUST INTEREST AND TAX PROCEEDS, METALLIFEROUS MINE TAX PROCEEDS, AND OTHER MONEY TO THE ACCOUNT; PROVIDING FOR CITIZEN SUITS; PROVIDING EXCLUSIONS FROM LIABILITY; PROVIDING ADDITIONAL AND SPECIFIC RULEMAKING AUTHORITY; AMENDING PROVISIONS AND EXTENDING THE TERMINATION DATE OF THE MIXED FUNDING PILOT PROGRAM; AMENDING SECTIONS 15-37-117, 15-38-106, 15-38-202, 75-10-701, 75-10-702, 75-10-704, 75-10-715, 75-10-719, 75-10-720, AND 75-10-724, MCA, AND SECTIONS 16, 18, AND 27, CHAPTER 584, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 1930

416 *(Senate Bill No. 378; Benedict)* AN ACT GENERALLY REVISING INSURANCE LAWS; REVISING INSURANCE LAWS TO COMPLY WITH PUBLIC LAW 104-191; PROHIBITING THE USE OF PREEXISTING CONDITION EXCLUSIONS AS THOSE EXCLUSIONS APPLY TO CERTAIN ELIGIBLE INDIVIDUALS; REGULATING LONG-TERM CARE INSURANCE CONTRACTS; REVISING THE MONTANA COMPREHENSIVE HEALTH CARE ASSOCIATION PLAN TO PROVIDE FOR AN ASSOCIATION PORTABILITY PLAN TO

HeinOnline -- 1997 vol. I lxviii 1997

COMPLY WITH PUBLIC LAW 104-191; REVISING THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT; PROVIDING FOR GUARANTEED RENEWABILITY OF INDIVIDUAL AND GROUP HEALTH INSURANCE COVERAGE; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ADOPT RULES; AMENDING SECTIONS 33-15-403, 33-20-128, 33-22-101, 33-22-109, 33-22-110, 33-22-130, 33-22-242, 33-22-504, 33-22-703, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1121, 33-22-1501, 33-22-1512, 33-22-1518, 33-22-1516, 33-22-1803, 33-22-1804, 33-22-1809, 33-22-1811, 33-22-1819, 33-22-1827, 33-22-1828, 33-30-1001, 33-31-102, 33-31-111, 33-31-322, AND 33-35-306, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE. . . . . 1962

417 *(House Bill No. 13; Wiseman)* AN ACT DIRECTING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP AN ALTERNATIVE COMPENSATION SYSTEM FOR STATE EMPLOYEES TO BE PRESENTED TO THE 56TH LEGISLATURE; CLARIFYING STATUTES GOVERNING CERTAIN SALARY AND EXPENSE PAYMENTS FOR ELECTED OFFICIALS; PROVIDING FOR IMPLEMENTATION OF THE LEGISLATIVE BRANCH PAY PLAN; PROVIDING PAY ADJUSTMENTS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS, AND BLUE-COLLAR PAY PLANS; INCREASING THE STATE CONTRIBUTION TO THE EMPLOYEE GROUP BENEFIT PROGRAM; EXTENDING AND REVISING THE STATE EMPLOYEE INCENTIVE AWARDS PROGRAM; INCREASING THE SALARY OF THE COMMISSIONER OF POLITICAL PRACTICES; CLARIFYING THE BENEFITS TO WHICH THE COMMISSIONER OF POLITICAL PRACTICES IS ENTITLED; PROHIBITING THE REDUCTION OF THE SALARY OF THE COMMISSIONER OF POLITICAL PRACTICES DURING THE TERM TO WHICH THE COMMISSIONER IS APPOINTED; PROVIDING AN APPROPRIATION TO FUND PAY AND BENEFIT ADJUSTMENTS; AMENDING SECTIONS 2-16-405, 2-18-103, 2-18-301, 2-18-303, 2-18-304, 2-18-312, 2-18-313, 2-18-315, 2-18-703, 2-18-1102, 2-18-1103, 2-18-1105, 2-18-1106, 5-2-301, AND 13-37-106, MCA, AND SECTION 13, CHAPTER 23, SPECIAL LAWS OF NOVEMBER 1993; REPEALING SECTION 2-18-314, MCA; AND PROVIDING AN EFFECTIVE DATE. 2015

418 *(House Bill No. 17; Pavlovich)* AN ACT AUTHORIZING THE BOARD OF REGENTS TO PROVIDE TUITION WAIVERS PURSUANT TO THE MONTANA NATIONAL GUARD EDUCATION BENEFIT PROGRAM; AMENDING SECTION 20-25-421, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 2035

419 *(House Bill No. 121; Simpkins)* AN ACT ADJUSTING THE MONTANA UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM SUPPLEMENTAL EMPLOYER CONTRIBUTION RATE TO AMORTIZE, BY JULY 1, 2033, THE PAST SERVICE LIABILITIES OF THE UNIVERSITY SYSTEM MEMBERS PARTICIPATING IN THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTION 19-21-203, MCA; REPEALING SECTION 19-21-111, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2038

420 *(House Bill No. 135; Smith)* AN ACT GENERALLY REVISING THE LAWS GOVERNING THE BOARD OF PARDONS AND PAROLE; REVISING THE STRUCTURE OF THE BOARD BY ADDING A SECOND AUXILIARY MEMBER TO THE BOARD AND BY PROVIDING FOR STAGGERED TERMS FOR BOARD MEMBERS; REVISING THE LAW RELATING TO MEDICAL PAROLE FOR PRISONERS; REVISING THE BOABD'S AUTHORITY TO GRANT

HeinOnline -- 1997 vol. I lxix 1997

MEDICAL PAROLE TO PRISONERS WHO ARE PHYSICALLY INCAPACITATED; AMENDING SECTIONS 2-15-2302 AND 46-23-210, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. . . . . 2040

421 *(House Bill No. 140; Krenzler)* AN ACT CHANGING THE DATE ON WHICH ELECTED COUNTY OFFICERS TAKE OFFICE; REQUIRING ELECTED OFFICERS TO TAKE THE OATH OF OFFICE ON THE LAST BUSINESS DAY OF DECEMBER FOLLOWING THE ELECTION; REQUIRING ELECTED OFFICERS TO TAKE OFFICE AT 12:01 A.M. ON JANUARY 1 FOLLOWING THE ELECTION; AND AMENDING SECTIONS 7-4-2105 AND 7-4-2205, MCA. . . . . 2043

422 *(House Bill No. 166; Zook)* AN ACT GENERALLY REVISING AND CLARIFYING STATUTES CONTAINING STATUTORY APPROPRIATIONS AND DEDICATIONS OF REVENUE; REMOVING THE STATUTORY APPROPRIATION OF CERTAIN FUNDS; PROVIDING FOR THE DEPOSIT OF CERTAIN FUNDS IN THE STATE GENERAL FUND RATHER THAN THE SPECIAL REVENUE FUND; AMENDING SECTIONS 2-17-105, 7-15-4286, 7-15-4292, 10-3-312, 10-4-301, 10-4-302, 15-1-501, 15-30-153, 15-35-108, 15-36-324, 15-38-106, 15-70-125, 16-1-306, 16-1-404, 16-1-406, 16-1-409, 16-11-119, 16-11-206, 17-1-508, 17-5-403, 17-5-404, 17-5-405, 17-5-408, 17-5-804, 17-6-201, 17-7-502, 19-19-205, 20-3-108, 20-8-111, 20-9-360, 20-9-361, 32-1-537, 37-43-204, 39-71-503, 39-71-531, 39-71-533, 39-71-2354, 39-71-2503, 39-71-2504, 49-2-510, 50-5-112, 50-5-113, 50-5-232, 50-40-206, 53-6-150, 53-24-108, 60-2-220, 60-11-120, 60-11-123, 61-3-509, 61-5-121, 75-5-1108, 75-6-214, 75-10-954, 76-12-123, 77-1-505, 77-2-323, 77-2-328, 77-5-305, 82-11-136, 85-1-220, 90-3-301, 90-7-220, AND 90-7-221, MCA; REPEALING SECTIONS 15-1-111, 15-31-408, 16-1-408, 16-1-410, 39-71-534, 60-11-122, AND 77-5-306, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 2044

423 *(House Bill No. 183; Masolo)* AN ACT GENERALLY REVISING THE LAWS RELATING TO SCHOOL FIRE DRILLS; CHANGING "FIRE DRILLS" TO "DISASTER DRILLS"; REQUIRING SCHOOL DISTRICTS TO IDENTIFY LOCAL HAZARDS AND TO DESIGN APPROPRIATE DRILLS; ELIMINATING THE REQUIREMENT THAT SCHOOL DISTRICTS IN CERTAIN SEISMIC ZONES ESTABLISH EARTHQUAKE EMERGENCY PLANS; AMENDING SECTIONS 20-1-401, 20-1-402, 20-1-404, AND 20-1-407, MCA; AND REPEALING SECTIONS 20-1-403, 20-1-406, AND 20-7-1101, MCA. . . . . 2087

424 *(House Bill No. 323; Boharski)* AN ACT PROHIBITING MARRIAGE BETWEEN PERSONS OF THE SAME SEX; PROVIDING THAT CERTAIN CONTRACTS ARE AGAINST PUBLIC POLICY; AND AMENDING SECTION 40-1-401, MCA. . . . . 2088

425 *(House Bill No. 344; Peck)* AN ACT REVISING THE PROCEDURES FOR UNIVERSITY SYSTEM LAND TRANSACTIONS; CLARIFYING THAT PROPOSED LAND TRANSACTIONS MUST COMPLY WITH THE REQUIREMENTS OF THE MONTANA ENVIRONMENT POLICY ACT AND WITH MONTANA ANTIQUITIES LAWS; AND AMENDING SECTION 20-25-307, MCA. . . . . 2089

426 *(House Bill No. 435; Harper)* AN ACT REQUIRING THAT, ABSENT A CONFLICTING LOCAL ORDINANCE, CERTAIN INFORMATION BE PROVIDED BY PET SHOPS, HUMANE SOCIETIES, AND PUBLICLY OPERATED ANIMAL SHELTERS AND POUNDS WHEN MAKING A CAT OR DOG AVAILARLE FOR SALE OR ADOPTION; PROVIDING FOR THE RETENTION AND CONFIDENTIALITY OF CERTAIN INFORMATION; REQUIRING THE SPAYING OR NEUTERING OF

HeinOnline -- 1997 vol. I lxx 1997

CERTAIN CATS AND DOGS THAT ARE ADOPTED FROM OR SOLD BY A HUMANE SOCIETY OR PUBLICLY OPERATED ANIMAL SHELTER OR POUND; PROVIDING A PENALTY FOR FAILURE TO SPAY OR NEUTER; ALLOWING COOPERATIVE AGREEMENTS TO PROVIDE SPAYING OR NEUTERING SERVICES; AND PROVIDING AN APPLICADILITY PROVISION. . . . . 2091

427 *(House Bill No. 523; McCulloch)* AN ACT CLARIFYING THE PENALTIES FOR A VIOLATION OF SCHOOL TRANSPORTATION LAW OR BOARD OF PUBLIC EDUCATION TRANSPORTATION POLICY; AUTHORIZING THE TRUSTEES OF A DISTRICT TO INFORM THE COUNTY TRANSPORTATION COMMITTEE OF A DISTRICT BELIEVED TO BE OPERATING AN UNAPPROVED ROUTE OUTSIDE ITS DISTRICT BOUNDARIES; AND AMENDING SECTIONS 20-10-104 AND 20-10-126, MCA. . . . . 2093

428 *(House Bill No. 568; Ohs)* AN ACT ESTABLISHING A LEWIS AND CLARK BICENTENNIAL COMMISSION; SPECIFYING ITS MEMBERSHIP AND DUTIES; ESTABLISHING AN ACCOUNT; AND PROVIDING A TERMINATION DATE. . . . . 2095

429 *(House Bill No. 572; Anderson)* AN ACT PROVIDING FOR SEVERAL LIABILITY FOR MOST TORT ACTIONS; LIMITING JOINT AND SEVERAL LIABILITY TO CERTAIN SPECIFIED TORT ACTIONS; PROVIDING FOR THE EFFECT OF A RELEASE OR OF A COVENANT NOT TO SUE; AMENDING SECTIONS 25-9-411, 27-1-702, 27-1-703, 27-1-719, 28-1-301, AND 28-11-311, MCA; AND PROVIDING CONTINGENT EFFECTIVE DATES AND AN APPLICABILITY DATE. 2096

430 *(Senate Bill No. 71; Toews)* AN ACT GENERALLY REVISING THE DUTIES OF ELECTED SCHOOL OFFICIALS; PROVIDING SCHOOL DISTRICT TRUSTEES WITH GREATER FLEXIBILITY IN DETERMINING PUPIL-INSTRUCTION TIME; ELIMINATING THE NEED FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO APPROVE KINDERGARTEN VARIANCES FOR REQUIRED HOURS OF INSTRUCTION, PUPIL-INSTRUCTION-RELATED DAYS, AND ADULT EDUCATION PROGRAMS OPERATED BY A SCHOOL DISTRICT; AUTHORIZING A BOARD OF TRUSTEES TO DECLARE AN EMERGENCY IN A DISTRICT; CLARIFYING THE REQUIREMENTS FOR RESCHEDULING INSTRUCTION TIME CANCELED BECAUSE OF AN UNFORESEEN EMERGENCY; REMOVING THE REQUIREMENT FOR A COUNTY SUPERINTENDENT OR THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO DETERMINE THAT A REASONABLE EFFORT HAS BEEN MADE TO MAKE UP SCHOOL DAYS LOST BECAUSE OF AN EMERGENCY; AMENDING SECTIONS 20-1-301, 20-1-302, 20-1-304, 20-3-106, 20-6-209, 20-7-705, 20-9-311, 20-9-801, 20-9-802, AND 20-9-806, MCA; REPEALING SECTIONS 20-9-803 AND 20-9-804, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2104

431 *(Senate Bill No. 85; Jergeson)* AN ACT GENERALLY REVISING THE LAWS PERTAINING TO MOTOR VEHICLE EQUIPMENT; REVISING THE DEFINITION OF "QUADRICYCLE"; DEFINING "PUBLIC SAFETY WORKER" FOR PURPOSES OF TRAFFIC CONTROL AT AN INCIDENT; REQUIRING EQUIPMENT TO BE MAINTAINED IN PROPER WORKING ORDER; PROHIBITING CERTAIN TYPES OF LIGHTING ON MOTOR VEHICLES; SPECIFYING REQUIREMENTS FOR HEADLAMPS, TAILLAMPS, AND OTHER LIGHTING DEVICES; REVISING VISIBILITY DISTANCE REQUIREMENTS FOR LIGHTING ON CERTAIN VEHICLES; REVISING REQUIREMENTS FOR PROJECTING LOADS; CLARIFYING THE DEFINITIONS OF "SPOT LAMPS", "FOG LAMPS", AND "AUXILIARY LAMPS";

HeinOnline -- 1997 vol. I lxxi 1997

REVISING REQUIREMENTS FOR BRAKING SYSTEMS; REVISING PERFORMANCE STANDARDS FOR BRAKING SYSTEMS; CLARIFYING USE OF LIGHTING ON EMERGENCY VEHICLES; REQUIRING SAFETY GEAR FOR AN OPERATOR OF A VEHICLE WITH NO WINDSHIELD; REVISING REQUIREMENTS FOR SEATBELTS; REVISING CERTAIN REQUIREMENTS FOR LOGGING TRUCKS; REQUIRING TOW TRUCKS TO PROVIDE REAR LIGHTS FOR TOWED VEHICLES DURING ALL HOURS OF THE DAY; PROVIDING PENALTIES FOR A MOTORCYCLE OPERATOR WHO CARRIES A CHILD WHO IS NOT WEARING A HELMET; REVISING THE LAWS PERTAINING TO CHILD SAFETY RESTRAINT SYSTEMS; INCREASING THE PENALTY FOR FAILING TO HAVE A REQUIRED CHILD SAFETY RESTRAINT IN A VEHICLE; REQUIRING BUMPERS ON CERTAIN MOTOR VEHICLES; ELIMINATING THE USE OF ALTERNATE ROAD-LIGHTING EQUIPMENT; ELIMINATING DEPARTMENT SPECIFICATIONS FOR SEATBELTS; DEFINING "STREET ROD" AND EXEMPTING STREET RODS FROM CERTAIN EQUIPMENT RESTRICTIONS; AMENDING SECTIONS 61-1-133, 61-8-105, 61-9-101, 61-9-105, 61-9-109, 61-9-203, 61-9-204, 61-9-206, 61-9-207, 61-9-208, 61-9-209, 61-9-213, 61-9-215, 61-9-216, 61-9-217, 61-9-218, 61-9-220, 61-9-221, 61-9-226, 61-9-227, 61-9-308, 61-9-309, 61-9-310, 61-9-311, 61-9-312, 61-9-401, 61-9-402, 61-9-404, 61-9-405, 61-9-407, 61-9-408, 61-9-409, 61-9-414, 61-9-415, 61-9-416, 61-9-417, 61-9-419, 61-9-420, 61-9-423, AND 61-9-516, MCA; AND REPEALING SECTIONS 61-9-224 AND 61-9-410, MCA. . . . . 2111

432 *(Senate Bill No. 173; McNutt)* AN ACT PROVIDING THAT A BUYER FOR VALUE OF A CHILD SUPPORT OBLIGOR'S MOTOR VEHICLE OR OTHER ITEM FOR WHICH A CERTIFICATE OF OWNERSHIP IS ISSUED BY THE DEPARTMENT OF JUSTICE WHO BUYS IN GOOD FAITH AND WITHOUT KNOWLEDGE OF THE SUPPORT LIEN TAKES THE PROPERTY FREE OF THE SUPPORT LIEN; AMENDING SECTION 40-5-248, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 2136

433 *(Senate Bill No. 256; Hargrove)* AN ACT CREATING THE OFFENSE OF ASSAULT ON A PEACE OFFICER OR JUDICIAL OFFICER; PROVIDING PENALTIES FOR ASSAULT ON A PEACE OFFICER OR JUDICIAL OFFICER; REMOVING ASSAULT ON A PEACE OFFICER OR JUDICIAL OFFICER FROM THE OFFENSE OF FELONY ASSAULT; AMENDING SECTION 45-5-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 2138

434 *(House Bill No. 6; Bergsagel)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AMENDING SECTION 1, CHAPTER 613, LAWS OF 1993, AND SECTION 1, CHAPTER 512, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES. . . . . 2140

435 *(House Bill No. 29; Bohlinger)* AN ACT MAKING IT A CRIMINAL OFFENSE FOR A PERSON TO POSSESS, CARRY, OR STORE A WEAPON IN A SCHOOL BUILDING AND FOR A PARENT OR GUARDIAN TO PERMIT A MINOR TO POSSESS, CARRY, OR STORE A WEAPON IN A SCHOOL BUILDING; PROVIDING FOR A PENALTY; PROVIDING AN EXCEPTION FOR LAW ENFORCEMENT PERSONNEL; PERMITTING TRUSTEES AUTHORITY TO GRANT PERMISSION TO POSSESS, CARRY, OR STORE A WEAPON; AUTHORIZING SEIZURE AND FORFEITURE OR RETURN OF THE WEAPON TO THE LAWFUL OWNER; DEFINING "WEAPON" AND

HeinOnline -- 1997 vol. I lxxii 1997

"SCHOOL BUILDING"; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2144

436 *(House Bill No. 31; Heavy Runner)* AN ACT ALLOWING A FEDERALLY RECOGNIZED TRIBAL GOVERNMENT TO PARTICIPATE IN THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; DEFINING "TRIBAL GOVERNMENT"; PROVIDING ADDITIONAL GRANT AND LOAN CONDITIONS; AMENDING SECTIONS 85-1-102, 85-1-601, 85-1-602, 85-1-605, 85-1-611, AND 85-1-613, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2145

437 *(House Bill No. 47; Ellis)* AN ACT INCREASING THE BASIC ENTITLEMENT AND THE PER-ANB ENTITLEMENT FOR PUBLIC SCHOOLS IN FISCAL YEAR 1998 AND FISCAL YEAR 1999; APPROPRIATING FUNDS FOR DIRECT STATE AID AND GUARANTEED TAX BASE AID; PROVIDING AID TO SCHOOLS FOR TECHNOLOGY ACQUISITION, TEXTBOOKS, LIBRARY MATERIALS, AND BUILDING MAINTENANCE; PROVIDING APPROPRIATIONS; AMENDING SECTION 20-9-306, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE. . . . . 2151

438 *(House Bill No. 49; Ellis)* AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS AND CONTESTED CASE PROCEDURES; REMOVING JURISDICTION OF THE OFFICE OF PUBLIC INSTRUCTION TO HEAR APPEALS AND TO DECIDE DISPUTES ARISING FROM TERMINATION DECISIONS OF A SCHOOL DISTRICT NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA; CLARIFYING THAT A DISTRICT MAY TERMINATE EMPLOYMENT OF A TENURE TEACHER FOR GOOD CAUSE; EXTENDING THE DEADLINE FOR NOTIFICATION OF REELECTION OF A TEACHER; LIMITING APPEAL OF EMPLOYMENT TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA, TO FINAL AND BINDING ARBITRATION; ESTABLISHING A PROCEDURE FOR ARBITRATION; LIMITING THE REMEDIES THAT MAY BE IMPOSED BY AN ARBITRATOR; REMOVING JURISDICTION OF A COUNTY SUPERINTENDENT TO DECIDE DISPUTES ARISING FROM A COLLECTIVE BARGAINING AGREEMENT; CLARIFYING THAT A DISTRICT MAY TERMINATE THE EMPLOYMENT OF A NONTENURE TEACHER AT THE CONCLUSION OF A SCHOOL FISCAL YEAR WITH OR WITHOUT CAUSE UPON PROPER NOTICE; CLARIFYING THAT A DISTRICT MAY DISMISS FOR GOOD CAUSE A TENURE OR NONTENURE TEACHER BEFORE THE EXPIRATION OF A CONTRACT; CLARIFYING THAT A DISTRICT MAY REDUCE THE SALARY OF A TEACHER SERVING IN AN ADMINISTRATIVE POSITION WHO IS ASSIGNED TO A TEACHING POSITION WHEN A DISTRICT REDUCES THE SIZE OF ITS ADMINISTRATIVE STAFF; AMENDING SECTIONS 20-3-107, 20-3-210, 20-4-203, 20-4-204, 20-4-205, 20-4-206, 20-4-207, AND 20-4-208, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2155

439 *(House Bill No. 74; Masolo)* AN ACT REVISING STATE TRAVEL REIMBURSEMENT PROVISIONS AFFECTING LODGING, MEALS, AND MILEAGE; ESTABLISHING A MAXIMUM FOR LODGING AND MEALS; PROVIDING FOR EXCEPTIONS; ALLOWING THE DEPARTMENT OF ADMINISTRATION TO PRESCRIBE POLICIES INSTEAD OF RULES; AMENDING SECTIONS 2-18-501, 2-18-502, AND 2-18-503, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2163

HeinOnline -- 1997 vol. I lxxiii 1997

440 *(House Bill No. 75; Hagener)* AN ACT EXPANDING THE MEANS OF PROVIDING ELECTRONIC INFORMATION TO THE PUBLIC; AND AMENDING SECTIONS 2-17-321, 2-17-322, 2-17-323, 75-10-805, AND 87-1-272, MCA. . . . . 2166

441 *(House Bill No. 120; Rose)* AN ACT PROVIDING FOR AN ADDITIONAL EXCEPTION TO THE UPPER MISSOURI RIVER BASIN CLOSURE; AND AMENDING SECTION 85-2-343, MCA. . . . . 2170

442 *(House Bill No. 134; Johnson, John)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM; DEFINING "TERMINATION", "TERMINATION PAY", AND "VESTED"; PROVIDING TERMINATION PAY OPTIONS; CLARIFYING THAT TEACHERS' RETIREMENT SYSTEM PROVISIONS MUST COMPLY WITH FEDERAL TAX LAWS REGARDING QUALIFIED PLAN STATUS; CLARIFYING THE DISTRIBUTION OF BENEFITS TO BENEFICIARIES; CLARIFYING CERTAIN DEFINITIONS; CLARIFYING DEFINITIONS RELATED TO COMPENSATION USED TO DETERMINE BENEFITS; CLARIFYING THAT FAMILY LAW ORDERS AFFECTING DISTRIBUTION OF BENEFITS MUST CONTAIN A STATEMENT THAT THE ORDER IS SUBJECT TO REVIEW AND APPROVAL BY THE TEACHERS' RETIREMENT BOARD; GENERALLY REVISING LANGUAGE REFERRING TO ANNUITIES; REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING CERTAIN SERVICE PROVISIONS; CLARIFYING DISPOSITION OF UNCLAIMED ACCOUNTS; REVISING CERTAIN WITHDRAWAL AND OPTIONAL ALLOWANCE PROVISIONS; REVISING PAYMENT COMMENCEMENT PROVISIONS; REVISING CERTAIN DISABILITY RETIREMENT AND REINSTATEMENT FROM DISABILITY PROVISIONS; CLARIFYING POSTRETIREMENT PROVISIONS; AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-208, 19-20-305, 19-20-409, 19-20-412, 19-20-503, 19-20-602, 19-20-603, 19-20-605, 19-20-702, 19-20-703, 19-20-706, 19-20-711, 19-20-712, 19-20-713, 19-20-715, 19-20-801, 19-20-804, 19-20-902, 19-20-903, 19-20-904, 19-20-905, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 2171

443 *(House Bill No. 139; Swanson)* AN ACT GENERALLY REVISING THE LAW RELATING TO PUBLIC CONTRACTS; AMENDING MONTANA PROCUREMENT LAWS; MODERNIZING STATE PROCUREMENT PROCEDURE BY PROVIDING OPTIONS FOR SOURCE SELECTION, CLARIFYING TERMS AND PROCEDURES, AND STREAMLINING THE STATE PROCUREMENT PROCESS; PROVIDING EXCLUSIVE REMEDIES FOR UNLAWFUL SOLICITATIONS OR AWARDS; PROVIDING FOR THE PROCUREMENT OF CONSULTING SERVICES IN THE SAME MANNER AS OTHER SERVICES ARE PROCURED; AMENDING SECTIONS 18-1-101, 18-4-122, 18-4-123, 18-4-126, 18-4-132, 18-4-133, 18-4-141, 18-4-224, 18-4-241, 18-4-242, 18-4-302, 18-4-303, 18-4-304, 18-4-305, 18-4-309, 18-4-310, 18-4-312, 18-4-402, 18-8-211, AND 60-2-112, MCA; REPEALING SECTIONS 18-4-131, 18-4-225, 18-8-101, 18-8-102, 18-8-103, 18-8-104, 18-8-105, 18-8-106, 18-8-111, AND 18-8-112, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. . . . . 2191

444 *(House Bill No. 171; Raney)* AN ACT GENERALLY REVISING AND CLARIFYING THE ALLOCATION OF RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES; REVISING THE TIME FOR ALLOCATING CERTAIN PORTIONS OF THE RESOURCE

HeinOnline -- 1997 vol. I lxxiv 1997

INDEMNITY TRUST FUND EARNINGS; AMENDING SECTIONS 15-38-201, 15-38-202, 15-38-203, 75-1-1101, 85-1-604, 85-2-905, AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2207

445 *(House Bill No. 173; Squires)* AN ACT PROVIDING ACTUARIAL FUNDING MECHANISMS FOR MINIMUM BENEFIT ADJUSTMENTS UNDER THE MUNICIPAL POLICE OFFICERS' AND THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; ELIMINATING DIRECT REIMBURSEMENT OF SUPPLEMENTAL BENEFIT PAYMENTS; INCREASING CONTRIBUTIONS; AMENDING SECTIONS 17-7-502, 19-9-702, 19-9-1007, 19-13-604, 19-13-1007, AND 19-18-606, MCA; REPEALING SECTIONS 19-13-615, 19-13-1006, AND 19-13-1009, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2212

446 *(House Bill No. 180; Bohlinger)* AN ACT PROVIDING FOR THE SUSPENSION OF STATE-ISSUED LICENSES OF DEBTORS WHO HAVE DEFAULTED ON A GUARANTEED STUDENT LOAN AND WHO HAVE REFUSED TO ENTER INTO A REPAYMENT AGREEMENT WITH THE MONTANA STUDENT LOAN PROGRAM; AMENDING SECTION 20-26-1101, MCA; AND PROVIDING FOR VOIDING THE TWO-THIRDS VOTE REQUIREMENT. . . . . 2219

447 *(House Bill No. 188; Denny)* AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR INFORMATION TECHNOLOGY PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1999; PROVIDING FOR DEBT SERVICE PAYMENTS FROM THE GENERAL FUND AND OTHER SOURCES; PROVIDING FOR MATTERS RELATING TO THE ISSUANCE OF THE BONDS AND THE APPROPRIATION OF THE BOND PROCEEDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2223

448 *(House Bill No. 210; Hayne)* AN ACT ENABLING 9-1-1 EMERGENCY TELEPHONE SYSTEMS TO PROVIDE ENHANCED 9-1-1 SERVICES; DISTINGUISHING BASIC 9-1-1 SYSTEMS FROM ENHANCED 9-1-1 SYSTEMS; ESTABLISHING REQUIREMENTS FOR BASIC 9-1-1 AND ENHANCED 9-1-1 SYSTEMS; ESTABLISHING FEES FOR BASIC 9-1-1 AND ENHANCED 9-1-1 SYSTEMS; CLARIFYING THE SERVICES TO WHICH 9-1-1 FEES APPLY; PROVIDING FOR ACCOUNTING FOR BASIC 9-1-1 AND ENHANCED 9-1-1 FEES; CLARIFYING THE STATUTORY APPROPRIATION OF ENHANCED 9-1-1 FEES; PROVIDING LIMITS ON AND REQUIREMENTS FOR THE DISTRIBUTION OF AND THE EXPENDITURE OF BASIC 9-1-1 AND ENHANCED 9-1-1 FEES; AMENDING SECTIONS 10-4-101, 10-4-102, 10-4-103, 10-4-111, 10-4-112, 10-4-113, 10-4-201, 10-4-202, 10-4-301, 10-4-302, AND 10-4-303, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES. . . . . 2227

449 *(House Bill No. 212; Raney)* AN ACT PROVIDING FOR RIVER AND LAKE ISLAND PARKS ON STATE-OWNED OR STATE-LEASED ISLAND PROPERTY IN NAVIGABLE RIVERS, STREAMS, AND LAKES; LIMITING DEVELOPMENT OF ISLAND PARKS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2237

450 *(House Bill No. 264; Molnar)* AN ACT REQUIRING THE YOUTH COURT TO NOTIFY A SCHOOL OF THE IDENTITY OF A STUDENT WHO FOR A SECOND OR SUDSEQUENT TIME ADMITS VIOLATING OR IS ADJUDICATED AS HAVING VIOLATED A STATUTE; AND AMENDING SECTION 41-5-603, MCA. . . . . 2238

HeinOnline -- 1997 vol. I lxxv 1997

451 *(House Bill No. 285; Sliter)* AN ACT REVISING THE MEMBERSHIP OF THE FLATHEAD BASIN COMMISSION; ADDING TO THE COMMISSION ONE MEMBER APPOINTED BY THE FLATHEAD COUNTY CONSERVATION DISTRICT BOARD OF SUPERVISORS AND ONE MEMBER APPOINTED BY THE LAKE COUNTY CONSERVATION DISTRICT BOARD OF SUPERVISORS TO REPLACE OTHER MEMBERS; AND AMENDING SECTION 2-15-213, MCA. . . . . 2239

452 *(House Bill No. 346; Tropila)* AN ACT GENERALLY REVISING THE LAWS RELATING TO MANDATORY MOTOR VEHICLE INSURANCE; REQUIRING SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON CONVICTED OF A FOURTH OR SUBSEQUENT VIOLATION OF MANDATORY MOTOR VEHICLE INSURANCE LAWS; REQUIRING A PERSON TO PROVIDE THE DEPARTMENT OF JUSTICE WITH PROOF OF COMPLIANCE WITH MANDATORY MOTOR VEHICLE INSURANCE LAWS BEFORE REINSTATEMENT OF LICENSE PLATES, REGISTRATION RECEIPTS, OR A SUSPENDED DRIVER'S LICENSE; AMENDING SECTION 61-6-304, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2240

453 *(House Bill No. 360; Menahan)* AN ACT REVISING THE PROHIBITION AGAINST INTENTIONAL INTERFERENCE WITH THE TAKING OF A WILD ANIMAL BY INCLUDING HARASSMENT OF ANGLERS AND HARASSMENT OF GAME BIRD HUNTERS AS PROHIBITED ACTIVITIES; REVISING DEFINITIONS; AND AMENDING SECTIONS 87-3-141 AND 87-3-142, MCA. . . . . 2242

454 *(House Bill No. 361; Harper)* AN ACT REQUIRING NOTICE OF THE APPLICATION OR USE OF INDOOR PESTICIDES TO BE POSTED FOR PUBLIC BUILDINGS; AND AMENDING SECTION 80-8-107, MCA. . . . . 2243

455 *(House Bill No. 398; Johnson, Royal)* AN ACT GENERALLY REVISING THE LAWS GOVERNING THE LEASE WITH OPTION TO PURCHASE FOR STATE BUILDINGS; PROVIDING FOR A REQUEST FOR PROPOSALS PROCESS; EXEMPTING LEASE-PURCHASE PROVISIONS FROM STATE CONSTRUCTION CONTRACT REQUIREMENTS; REVISING THE APPOINTMENT OF ARCHITECTS FOR BUILDING LEASE PROJECTS; ELIMINATING CERTAIN REQUIREMENTS CONCERNING LEASES FOR BUILDINGS; REMOVING THE STATUTORY PROVISIONS GOVERNING RENT; APPROVING THE LEASE WITH OPTION TO PURCHASE FOR SPECIFIC BUILDINGS; CONTINGENTLY AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION LONG-RANGE BUILDING PROGRAM BONDS; CREATING A STATE DEBT; AMENDING SECTIONS 18-3-101, 18-3-105, 53-1-203, AND 53-30-505, MCA; REPEALING SECTIONS 18-3-102, 18-3-103, 18-3-104, AND 18-3-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2244

456 *(House Bill No. 401; Barnett)* AN ACT GENERALLY REVISING THE LAWS GOVERNING BAIL; EXEMPTING PERSONS WHO ONLY EXECUTE SURETY BAIL BONDS FROM INSURANCE PRODUCER CONTINUING EDUCATION REQUIREMENTS; EXTENDING THE TIME IN WHICH A SURETY MAY APPEAR TO EXCUSE THE DEFENDANT'S FAILURE TO APPEAR; REVISING THE CONDITIONS UNDER WHICH A BAIL BOND MUST BE EXONERATED; AND AMENDING SECTIONS 33-17-1203 AND 46-9-503, MCA. . . . . 2247

HeinOnline -- 1997 vol. I lxxvi 1997

457 *(House Bill No. 430; Simon)* AN ACT INCREASING THE SERVICE RETIREMENT BENEFIT FOR CERTAIN MEMBERS OF THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM TO 2.5 PERCENT OF FINAL AVERAGE COMPENSATION FOR EACH YEAR OF SERVICE; USING FINAL AVERAGE COMPENSATION IN THE CALCULATION OF DISABILITY BENEFITS INSTEAD OF FINAL MONTHLY COMPENSATION; RAISING CONTRIBUTIONS; INCREASING GENERAL FUND REVENUES BY PROVIDING THAT EXCESS INSURANCE PREMIUM TAXES BE DEPOSITED TO THE STATE GENERAL FUND; PROVIDING AN ACTUARIAL FUNDING MECHANISM TO PAY MINIMUM BENEFIT INCREASES; REDUCING THE NUMBER OF YEARS REQUIRED FOR VESTING; CLARIFYING THE DATE ON WHICH RETIREMENT BENEFITS MAY COMMENCE; AMENDING SECTIONS 19-13-104, 19-13-301, 19-13-601, 19-13-604, 19-13-701, 19-13-704, 19-13-803, 19-13-902, 19-13-1007, AND 19-18-606, MCA; REPEALING SECTIONS 19-13-615, 19-13-1006, AND 19-13-1009, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2249

458 *(House Bill No. 508; Devaney)* AN ACT GENERALLY REVISING MUNICIPAL BUDGET LAWS; AMENDING SECTIONS 2-7-503, 7-6-4104, 7-6-4121, 7-6-4123, 7-6-4124, 7-6-4134, 7-6-4135, 7-6-4202, 7-6-4205, 7-6-4234, 7-6-4237, AND 7-6-4240, MCA; REPEALING SECTIONS 7-3-4371, 7-3-4372, 7-3-4373, 7-6-4102, 7-6-4103, 7-6-4105, 7-6-4106, 7-6-4107, 7-6-4108, 7-6-4109, 7-6-4110, 7-6-4111, 7-6-4112, 7-6-4113, 7-6-4119, 7-6-4120, 7-6-4122, 7-6-4131, 7-6-4132, 7-6-4133, 7-6-4204, 7-6-4221, 7-6-4222, 7-6-4223, 7-6-4224, 7-6-4225, 7-6-4226, 7-6-4227, 7-6-4228, 7-6-4229, 7-6-4230, 7-6-4231, 7-6-4233, 7-6-4235, 7-6-4236, 7-6-4239, 7-6-4241, 7-6-4251, 7-6-4252, 7-6-4253, 7-6-4254, AND 7-6-4255, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 2258

459 *(House Bill No. 518; Ewer)* AN ACT GENERALLY REVISING LOCAL GOVERNMENT LAWS; ALLOWING APPOINTED MUNICIPAL OFFICIALS TO RESIDE OUTSIDE CITY LIMITS; INCREASING THE PERIOD FOR MUNICIPAL INSTALLMENT CONTRACTS FROM 5 YEARS TO 10 YEARS; CLARIFYING THAT AMORTIZATION BONDS ARE NOT PREFERRED OVER SERIAL BONDS; ALLOWING REFUNDING BONDS TO BE SOLD AT LESS THAN PAR VALUE; ALLOWING MULTIJURISDICTIONAL SERVICE DISTRICTS TO PROVIDE PROGRAMS FOR THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT; ALLOWING MONEY IN A DISTRICT RESERVE ACCOUNT TO BE USED TO PAY THE FINAL PRINCIPAL AND INTEREST PAYMENT ON BONDS OR WARRANTS; ALLOWING A VOTE ON CHANGING COUNTY WATER OR SEWER DISTRICT BOUNDARIES TO BE HELD BY MAIL BALLOT; ALLOWING A FIRE SERVICE AREA TO INCUR INDEBTEDNESS IN AN AMOUNT NOT EXCEEDING 18 PERCENT OF THE AREA'S TAXABLE VALUE; ALLOWING A MUNICIPALITY TO INCUR INDEBTEDNESS FOR THE REPAIR AND REHABILITATION OF CERTAIN FACILITIES; REGULATING LOCAL GOVERNMENT REQUIREMENTS FOR RECORDKEEPING; AMENDING SECTIONS 7-4-4111, 7-5-4302, 7-5-4306, 7-7-2209, 7-7-4208, 7-7-4251, 7-7-4626, 7-11-1102, 7-12-2171, 7-12-4169, 7-12-4203, 7-13-2208, 7-14-2526, 7-16-4104, AND 7-33-2404, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 2270

460 *(House Bill No. 551; Grinde)* AN ACT PROVIDING A PENALTY FOR INSTALLATION OR CONSTRUCTION OF A FACILITY OR STRUCTURE ON STATE TRUST LAND BY A PERSON OTHER THAN A LESSEE WITHOUT PERMISSION OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ALLOWING THE

HeinOnline -- 1997 vol. I lxxvii 1997

DEPARTMENT TO REQUIRE THE REMOVAL OF THE FACILITY OR STRUCTURE, RECLAMATION OF DISTURBED STATE TRUST LAND, PAYMENT FOR REMOVAL AND RECLAMATION, OR PAYMENT FOR AN EASEMENT, LEASE, OR LICENSE IN LIEU OF REMOVAL; AND PROVIDING AN EFFECTIVE DATE. . . . . 2278

461 *(House Bill No. 607; Grinde)* AN ACT PROVIDING FOR THE ISSUANCE OF HISTORIC RIGHT-OF-WAY DEEDS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION GRANTING NONEXCLUSIVE EASEMENTS FOR HISTORIC USES OF STATE LANDS FOR RIGHTS-OF-WAY; PROVIDING FOR THE CRITERIA FOR ISSUANCE OF THE DEEDS AND THE TERMS OF THE DEEDS; REQUIRING PAYMENT OF A FEE AND THE VALUE OF THE HISTORIC RIGHT-OF-WAY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A TERMINATION DATE. . . . . 2280

462 *(House Bill No. 616; Anderson)* AN ACT AUTHORIZING THE CONTINUED USE AND DISPLAY OF A COLLEGIATE LICENSE PLATE THAT BEARS THE NAME OF AN INSTITUTION THAT HAS BEEN RENAMED; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE. . 2283

463 *(Senate Bill No. 195; Harp)* AN ACT PHASING IN THE EFFECT OF THE CURRENT PROPERTY REAPPRAISAL CYCLE FOR CLASS THREE, FOUR, AND TEN PROPERTY; ALLOWING AN EXTENSION OF 1997 STATUTORY DEADLINES RELATING TO PROPERTY TAXES; PROVIDING FOR AN ADJUSTMENT OF TAX RATES FOR CLASS THREE AND FOUR PROPERTY TO COMPENSATE FOR INCREASED VALUATION OF TAXABLE PROPERTY; REVISING THE PROPERTY TAX LIMITATIONS IMPLEMENTING INITIATIVE MEASURE NO. 105 BY CHANGING THE EXCEPTIONS TO THE LIMITATIONS; PROVIDING A METHOD FOR THE VOTERS OF A TAXING UNIT TO AUTHORIZE AN INCREASE IN TAXES; PROVIDING FOR A PROPERTY TAX STUDY COMMITTEE; PROVIDING AN APPROPRIATION FOR THE OPERATION OF THE COMMITTEE; PROVIDING CARRYOVER APPROPRIATION AUTHORITY FOR THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 7-6-2514, 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412, 15-36-323, AND 77-1-208, MCA; REPEALING SECTION 15-10-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 2284

464 *(Senate Bill No. 272; Aklestad)* AN ACT EXTENDING THE INHERITANCE TAX EXEMPTION FOR STEPCHILDREN; AMENDING SECTION 72-16-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE. . 2296

465 *(Senate Bill No. 354; Waterman)* AN ACT ESTABLISHING A RESTAURANT BEER AND WINE LICENSE TO ALLOW RESTAURANTS TO SERVE BEER AND WINE TO PATRONS WHO PURCHASE FOOD; PROHIBITING A RESTAURANT BEER AND WINE LICENSEE FROM HOLDING ANY OTHER TYPE OF BEER, WINE, OR LIQUOR LICENSE; BASING THE ISSUANCE OF RESTAURANT BEER AND WINE LICENSES ON THE QUOTA SYSTEM; LIMITING THE NUMBER OF LICENSES THAT MAY BE ISSUED TO RESTAURANTS WITH A SEATING CAPACITY OF 101 PERSONS OR MORE; PROVIDING THAT CERTAIN LICENSES BE ISSUED BY LOTTERY; PROVIDING THAT RESTAURANT BEER AND WINE LICENSES ARE TRANSFERABLE UNDER CERTAIN CONDITIONS; PROHIBITING GAMING AND GAMBLING IN

HeinOnline -- 1997 vol. I lxxviii 1997

CONJUNCTION WITH A LICENSE, OTHER THAN AN ALL-BEVERAGES LICENSE OR A BEER AND WINE LICENSE ISSUED OUTSIDE OF A CITY OR TOWN, TO SELL ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES NOT ORIGINALLY LICENSED PRIOR TO THE EFFECTIVE DATE OF THIS ACT; AND AMENDING SECTIONS 16-4-105, 16-4-111, 23-5-306, 23-5-502, 23-5-603, AND 23-5-611, MCA. . . . . 2297

466 *(Senate Bill No. 386; Gage)* AN ACT CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES TO CONFORM WITH THE NEW OIL AND NATURAL GAS TAX LAWS ENACTED DURING THE 1995 LEGISLATIVE SESSION; ALLOWING THE DEPARTMENT TO REVISE, BY RULE, THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES UNDER CERTAIN CONDITIONS; CLARIFYING THE TAX RATE IMPOSED ON INCREMENTAL PRODUCTION FROM POST-1985 WELLS WHEN THE PRICE OF OIL IS EQUAL TO OR GREATER THAN $30 A BARREL; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-1-501, 15-36-304, 15-36-324, 15-36-325, 17-7-502, AND 82-11-135, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 2307

467 *(Senate Bill No. 350; McNutt)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS; PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN STAFF; TRANSFERRING THE STAFF OF THE COMMISSION TO THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE COMMISSIONER OF LABOR; PROVIDING THAT THE DEPARTMENT MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE ADOPTION OF THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL PROCEDURE AS PART OF PROCEDURAL RULES; PROVIDING THAT THE COMMISSIONER MAY AFPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST A RESFONDENT; REQUIRING THE DEPARTMENT TO INFORM A POTENTIAL RESPONDENT WITHIN 10 BUSINESS DAYS AFTER RECEIPT OF A COMPLAINT; PREVENTING THE DEPARTMENT FROM REQUESTING A CHANGE OF VENUE IN A CONTESTED CASE HEARING; PROHIBITING THE DEPARTMENT FROM PETITIONING A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE DEPARTMENT FROM DENYING THE FILING OF A CASE IN DISTRICT COURT; ALLOWING A RESPONDENT TO REMOVE A CASE TO DISTRICT COURT; REVISING PENALTY PROVISIONS; AMENDING SECTIONS 2-15-1706, 39-1-102, 49-2-101, 49-2-203, 49-2-204, 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, 49-2-509, AND 49-2-510, MCA; REPEALING SECTIONS 49-2-201, 49-2-502, 49-3-304, 49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 2327

468 *(Senate Bill No. 382; Harp)* AN ACT GENERALLY REVISING PRIVATE SECURITIES LITIGATION LAWS; ESTABLISHING REQUIREMENTS FOR SECURITIES FRAUD ACTIONS; PROVIDING SANCTIONS FOR ABUSIVE LITIGATION; LIMITING DAMAGES; CREATING A SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2340

HeinOnline -- 1997 vol. I lxxix 1997

469 *(House Bill No. 5; Bergsagel)* AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1999; APPROPRIATING A PORTION OF THE BALANCE IN THE CULTURAL TRUST FUND FOR THE ACQUISITION, RENOVATION, AND PRESERVATION OF HISTORIC PROPERTIES; REVISING THE ALLOCATION OF COAL SEVERANCE TAXES TO THE CULTURAL TRUST FUND; ALLOCATING COAL SEVERANCE TAX REVENUE FOR CULTURAL AND AESTHETIC PROJECTS AND TO PROVIDE DEBT SERVICE ON BONDS USED TO FINANCE THE PROJECTS; ESTABLISHING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; AUTHORIZING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO ADMINISTER PROPERTIES AT VIRGINIA CITY AND NEVADA CITY AND OTHER CULTURALLY AND HISTORICALLY SIGNIFICANT PROPERTIES; CREATING A MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; ALLOCATING A PORTION OF THE LODGING FACILITY USE TAX TO THE ACCOUNT; STATUTORILY APPROPRIATING THE ACCOUNT; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AMENDING SECTIONS 15-35-108, 15-65-121, AND 17-7-502, MCA; AMENDING SECTION 6, CHAPTER 547, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 2347

470 *(House Bill No. 9; Bergsagel)* AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; AND APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS. . . . . 2359

471 *(House Bill No. 14; Johnson, Royal)* AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1999; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AMENDING SECTION 12, CHAPTER 774, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2365

472 *(House Bill No. 53; Bohlinger)* AN ACT GENERALLY REVISING LAWS GOVERNING DISABILITIES; SUBSTITUTING REFERENCES TO A PERSON WITH A DISABILITY FOR REFERENCES TO A HANDICAPPED PERSON; AND AMENDING SECTIONS 2-15-2205, 2-15-2212, 7-14-111, 7-15-4207, 7-15-4431, 13-3-201, 13-3-202, 13-3-203, 13-3-205, 13-3-207, 13-3-213, 13-13-211, 15-6-201, 15-30-114, 15-30-115, 18-5-101, 18-5-102, 18-5-103, 20-7-401, 20-25-707, 22-1-103, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004, 37-15-101, 37-30-307, 37-31-301, 37-31-308, 39-2-912, 39-3-406, 39-30-101, 39-30-102, 39-30-103, 39-30-106, 39-30-107, 39-30-201, 39-30-202, 39-30-203, 39-71-901, 39-71-903, 39-71-904, 39-71-905, 39-71-906, 39-71-907, 50-1-202, 50-5-105, 50-60-201, 52-1-103, 52-2-113, 53-2-201, 53-4-607, 53-7-101, 53-7-102, 53-7-105, 53-7-301, 53-7-306, 53-18-101, 53-18-103, 53-18-105, 53-19-102, 53-19-301, 53-19-302, 53-19-306, 53-19-307, 53-19-310, 53-20-102, 53-20-142, 53-20-148, 53-20-202, 53-20-203, 61-3-332, 61-3-454, 61-12-504, 69-3-307, 77-2-318, 87-2-706, 87-2-803, 90-6-103, AND 90-7-104, MCA. . . . . 2367

473 *(House Bill No. 99; Trexler)* AN ACT REVISING THE TRAFFIC REGULATIONS IN A HIGHWAY CONSTRUCTION AREA; ESTABLISHING SPEED REGULATIONS IN A CONSTRUCTION ZONE AND A WORK ZONE; CREATING THE OFFENSE OF RECKLESS ENDANGERMENT OF HIGHWAY WORKERS; DEFINING "HIGHWAY WORKER", "CONSTRUCTION ZONE", AND "WORK

ZONE"; DOUBLING THE PENALTIES FOR TRAFFIC VIOLATIONS IN A WORK ZONE; PROVIDING FOR DELAYED ENFORCEMENT OF RECKLESS ENDANGERMENT OF HIGHWAY WORKERS; AMENDING SECTIONS 61-8-303 AND 61-8-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE. . . . . 2424

474 *(House Bill No. 102; Beaudry)* AN ACT ESTABLISHING THE CORRECTIONAL AND SENTENCING POLICY FOR THE STATE OF MONTANA; ADOPTING PRINCIPLES TO IMPLEMENT THE STATE POLICY; AND AMENDING SECTION 46-18-101, MCA. . . . . 2427

475 *(House Bill No. 122; McGee)* AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT; PROVIDING THAT MONEY RECEIVED BY A PRISONER BE SUBJECT TO GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF IMPRISONMENT; PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST CERTAIN PROFESSIONALS; CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; AMENDING SECTIONS 25-10-404 AND 37-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2429

476 *(House Bill No. 123; Simpkins)* AN ACT PROVIDING FOR A CAPITOL COMPLEX MASTER PLAN ACT; CREATING A CAPITOL COMPLEX ADVISORY COUNCIL; SPECIFYING THE ADVISORY COUNCIL'S DUTIES; REQUIRING LEGISLATIVE APPROVAL FOR NAMING CERTAIN BUILDINGS AND ESTABLISHING CERTAIN PERMANENT DISPLAYS; REQUIRING THE DEPARTMENTS OF ADMINISTRATION AND FISH, WILDLIFE, AND PARKS TO MAINTAIN INVENTORIES OF IMPROVEMENTS; AND AMENDING SECTION 5-11-115, MCA. . . . . 2432

477 *(House Bill No. 136; Wiseman)* AN ACT PROVIDING FOR THE ISSUANCE OF REVENUE BONDS TO PROVIDE FUNDING FOR STATE CORRECTIONAL SERVICES BEING CONTRACTED TO A PRIVATE ENTITY; AUTHORIZING THE MONTANA HEALTH FACILITY AUTHORITY TO ADMINISTER THE PROGRAM; AMENDING SECTIONS 90-7-102, 90-7-103, 90-7-104, 90-7-111, 90-7-202, 90-7-204, 90-7-211, 90-7-213, 90-7-214, 90-7-303, 90-7-304, 90-7-305, 90-7-307, AND 90-7-317, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2436

478 *(House Bill No. 137; Smith)* AN ACT CHANGING FROM MANDATORY TO DISCRETIONARY AN INQUEST FOR A CONVICTED PRISONER WHOSE DEATH IS CAUSED BY A TERMINAL CONDITION OR THE DEATH SENTENCE; AND AMENDING SECTION 46-4-201, MCA. . 2445

479 *(House Bill No. 149; Johnson, Royal)* AN ACT REVISING PROVISIONS RELATED TO THE HEALTH FACILITY AUTHORITY; REVISING DEFINITIONS TO INCLUDE ADDITIONAL VARIATIONS OF HEALTH INSTITUTIONS; CLARIFYING AUTHORITY TO MAKE DIRECT LOANS FROM THE AUTHORITY'S FUNDS; CLARIFYING FUNDING OF THE CAPITAL RESERVE ACCOUNT; PROVIDING THAT THE AUTHORITY MAY MAKE CERTAIN DEPOSITS INTO THE CAPITAL RESERVE ACCOUNT; CLARIFYING THAT THE AUTHORITY'S MEETINGS ARE COVERED UNDER THE OPEN

HeinOnline -- 1997 vol. I lxxxi 1997

MEETING LAW; AND AMENDING SECTIONS 90-7-102, 90-7-104, 90-7-201, 90-7-202, 90-7-211, 90-7-213, 90-7-302, 90-7-305, AND 90-7-317, MCA. . . . . 2446

480 *(House Bill No. 163; Johnson, John)* AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108, 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125, 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136, 40-8-201, 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE. . . . . 2453

481 *(House Bill No. 164; Tuss)* AN ACT GENERALLY REVISING OCCUPATIONAL LICENSING LAWS, INCLUDING THOSE RELATED TO HEARING AID DISPENSERS, DENTISTS, BARBERS, PHYSICAL THERAPISTS, NATUROPATHIC PHYSICIANS, REAL ESTATE APPRAISERS, PRIVATE INVESTIGATORS, FIRE PROTECTION EQUIPMENT INSTALLERS, FIRE SUPPRESSION SYSTEM INSTALLERS, CRANE AND HOIST OPERATORS, AND LICENSED PROFESSIONS AND OCCUPATIONS WITHOUT BOARDS; AMENDING SECTIONS 2-15-1842, 2-15-1850, 37-4-202, 37-11-201, 37-11-303, 37-16-202, 37-16-303, 37-16-304, 37-16-405, 37-16-407, 37-26-201, 37-26-301, 37-30-203, 37-30-307, 37-54-102, 37-54-105, 37-54-201, 37-54-202, 37-54-210, 37-54-211, 37-54-301, 37-54-304, 37-54-305, 37-54-311, 37-60-303, 37-65-202, 50-39-101, 50-39-102, 50-76-103, AND 50-76-104, MCA; AND REPEALING SECTIONS 37-54-203, 50-39-104, 50-74-314, 50-76-106, 76-4-1201, 76-4-1202, 76-4-1203, 76-4-1204, 76-4-1205, 76-4-1206, 76-4-1207, 76-4-1208, 76-4-1209, 76-4-1210, 76-4-1211, 76-4-1212, 76-4-1213, 76-4-1221, 76-4-1222, 76-4-1223, 76-4-1224, 76-4-1225, 76-4-1226, 76-4-1227, 76-4-1228, 76-4-1229, 76-4-1230, 76-4-1231, 76-4-1232, 76-4-1233, 76-4-1234, 76-4-1235, 76-4-1236, 76-4-1237, 76-4-1238, 76-4-1239, 76-4-1240, 76-4-1241, 76-4-1242, 76-4-1243, 76-4-1244, 76-4-1245, 76-4-1246, 76-4-1247, 76-4-1248, 76-4-1249, 76-4-1250, AND 76-4-1251, MCA. . . . . 2522

482 *(House Bill No. 168; Johnson, Royal)* AN ACT GENERALLY REVISING CHILD SUPPORT LAWS; CLARIFYING THAT HEARINGS BY THE DEPARTMENT MAY BE BY TELECONFERENCING METHODS; ALLOWING SERVICE OF CERTAIN NOTICES BY CERTIFIED MAIL; REVISING ADMINISTRATIVE PATERNITY PROCESSES; CLARIFYING JUDICIAL REVIEW OF A CHILD SUPPORT ORDER; CHANGING THE DEFINITION OF "SUPPORT ORDER" AS IT PERTAINS TO WITHHOLDING; REVISING THE DEFINITION OF MISTAKE OF FACT FOR INCOME WITHHOLDING HEARING PURPOSES; CHANGING HEALTH INSURANCE PROVISIONS RELATING TO SUPPORT; REVISING PATERNITY PRESUMPTIONS; PROVIDING FOR PRIORITY OF SUPPORT OF A DECEDENT'S CHILDREN IN PROBATE OF A DECEDENT'S

HeinOnline -- 1997 vol. I lxxxii 1997

ESTATE; AMENDING SECTIONS 17-4-105, 40-5-189, 40-5-201, 40-5-202, 40-5-225, 40-5-226, 40-5-231, 40-5-236, 40-5-253, 40-5-273, 40-5-403, 40-5-412, 40-5-414, 40-5-703, 40-5-809, 40-5-824, 71-3-302, AND 72-3-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2550

483 *(House Bill No. 248; Harper)* AN ACT CLARIFYING TERMS AND CONDITIONS OF BOARD OF INVESTMENTS LOANS TO STATE AGENCIES; INCREASING THE BONDING LIMIT OF THE BOARD OF INVESTMENTS FROM $50 MILLION TO $75 MILLION FOR THE PURPOSES OF THE MUNICIPAL FINANCE CONSOLIDATION ACT; PROVIDING AUTHORITY FOR FUNDING LOW-INCOME HOUSING UNITS; AMENDING SECTION 17-5-1608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2575

484 *(House Bill No. 343; Grimes)* AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; INCREASING CERTAIN FILING FEES; CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL; PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ARUSE STATUTE IS A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING SECTIONS 25-1-201, 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. . . . . 2576

485 *(House Bill No. 369; Brainard)* AN ACT GENERALLY REVISING LOCAL GOVERNMENT LAW; REQUIRING CONTIGUOUS ANNEXATION BY A CITY OR TOWN TO BE APPROVED BY VOTE OF THE REGISTERED VOTERS RESIDING IN THE AREA TO BE ANNEXED UNLESS THERE ARE LESS THAN 300 RECORDED PARCELS IN THE AREA; INCREASING IN CERTAIN INSTANCES FROM 1 YEAR TO 5 YEARS THE PERIOD THAT A CITY OR TOWN COUNCIL IS REQUIRED TO WAIT TO INITIATE, WITHOUT PETITION, THE QUESTION OF ANNEXING AN AREA, CALCULATED FROM THE DATE VOTERS RESIDING IN THAT AREA VOTE AGAINST ANNEXATION; ELIMINATING A MAYOR'S AUTHORITY TO CALL OUT THE MILITIA; ELIMINATING A MAYOR'S RIGHT TO CALL OUT CITIZENS IN CASE OF A RIOT; MODIFYING A MAYOR'S RIGHT TO EXERCISE EXTRATERRITORIAL POWERS WITHIN 5 MILES OF THE CITY OR TOWN LIMITS FOR THE PURPOSE OF ENFORCING HEALTH AND QUARANTINE ORDINANCES; AMENDING SECTIONS 7-2-4303, 7-2-4311, 7-2-4312, 7-2-4313, 7-2-4314, 7-2-4325, 7-2-4502, 7-3-4101, 7-4-4303, AND 7-4-4306, MCA; AND REPEALING SECTIONS 7-2-4321, 7-2-4322, 7-2-4323, 7-2-4324, AND 7-4-4304, MCA. . . . . 2583

486 *(House Bill No. 371; Ahner)* AN ACT REPLACING THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM WITH THE FAMILIES ACHIEVING INDEPENDENCE IN MONTANA (FAIM) FINANCIAL ASSISTANCE PROGRAM; MAKING PROVISIONS

HeinOnline -- 1997 vol. I lxxxiii 1997

REGARDING OVERPAYMENT OF PUBLIC ASSISTANCE APPLY TO RECIPIENT ERROR; REQUIRING RECIPIENTS TO NOTIFY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES REGARDING ANY CHANGE THAT MAY AFFECT ELIGIBILITY FOR PUBLIC ASSISTANCE; AMENDING PROVISIONS REGARDING THE FOOD STAMP PROGRAM; ALLOWING THE DEPARTMENT TO ADOPT RULES; REPLACING THE JOBS PROGRAM WITH AN EMPLOYMENT AND TRAINING PROGRAM; DELETING THE CHILD SUPPORT PASS-THROUGH PAYMENT OF UP TO $50 A MONTH; REVISING THE TERMS "DEPENDENT CHILD" AND "FAMILY" FOR PUBPOSES OF THE FAIM FINANCIAL ASSISTANCE PROGRAM; ALLOWING ADMINISTRATION OF THE FAIM FINANCIAL ASSISTANCE PROGRAM TO VARY ACROSS THE STATE; REQUIRING MEMBERS OF INDIAN TRIBES PARTICIPATING IN THE FAIM FINANCIAL ASSISTANCE PROGRAM TO BE SUBJECT TO THE SAME RULES, POLICIES, AND REQUIREMENTS OF THE PROGRAM; REQUIRING THE DEPARTMENT TO ADOPT ADDITIONAL RULES FOR THE FAIM FINANCIAL ASSISTANCE PROGRAM, INCLUDING RULES FOR EXEMPTIONS FROM TIME LIMITS, FOR ALIENS, AND FOR TEENAGE PARENTS; REVISING ELIGIBILITY PROVISIONS; MAKING THE PROVISION OF CHILD-CARE ASSISTANCE DISCRETIONARY; PROVIDING THAT THE FAIM FINANCIAL ASSISTANCE PROGRAM IS NOT AN ENTITLEMENT; PROVIDING A 24-MONTH MAXIMUM FOR RECEIPT OF PATHWAYS ASSISTANCE FOR SINGLE-PARENT AND TWO-PARENT FAMILIES, SUBJECT TO A 60-MONTH LIMITATION; REMOVING THE REQUIREMENT FOR WORKERS' COMPENSATION COVERAGE FOR FAIM PROJECT RECIPIENTS; MAINTAINING ELIGIBILITY FOR BASIC MEDICAID FOR RECIPIENTS OF FAIM FINANCIAL ASSISTANCE AND UNDER OTHER CIRCUMSTANCES; AMENDING SECTIONS 23-1-303, 39-7-303, 40-4-215, 53-2-108, 53-2-109, 53-2-201, 53-2-211, 53-2-606, 53-2-610, 53-2-613, 53-2-901, 53-2-902, 53-2-903, 53-2-904, 53-2-1103, 53-2-1109, 53-4-201, 53-4-202, 53-4-211, 53-4-212, 53-4-214, 53-4-221, 53-4-231, 53-4-233, 53-4-241, 53-4-246, 53-4-247, 53-4-248, 53-4-601, 53-4-602, 53-4-603, 53-4-606, 53-4-607, 53-4-608, 53-4-609, 53-4-611, 53-4-612, 53-4-613, 53-4-701, 53-4-702, 53-4-703, 53-4-705, 53-4-706, 53-4-717, 53-6-101, 53-6-113, 53-6-131, AND 53-6-134, MCA; REPEALING SECTIONS 39-7-601, 39-7-602, 39-7-603, 39-7-604, 39-7-605, 39-7-606, 53-4-249, 53-4-707, 53-4-708, 53-4-715, 53-4-716, 53-4-718, AND 53-4-720, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 2587

487 *(House Bill No. 376; Tropila)* AN ACT INCREASING PUBLIC INPUT INTO STATE AGENCY DECISIONS BY REQUIRING A PUBLIC HEARING HELD FOR AN ACTION THAT DIRECTLY IMPACTS A SPECIFIC COMMUNITY OR AREA TO BE HELD IN AN ACCESSIBLE FACILITY IN THE IMPACTED COMMUNITY OR AREA; EXCEPTING THE BOARD OF REGENTS; AND AMENDING SECTIONS 2-3-111, 16-4-202, AND 75-10-924, MCA. . . . . 2620

488 *(House Bill No. 388; Simon)* AN ACT DEFINING AND REVISING BUILDING CODE LAW TERMS; EXPANDING THE TYPES OF BUILDINGS EXEMPT FROM BUILDING CODES; EXPANDING THE DUTIES OF MUNICIPALITIES AND COUNTIES; PROVIDING THAT RULE CHANGES ARE OF SIGNIFICANT INTEREST TO THE PUBLIC; CHANGING PROVISIONS RELATING TO CERTIFICATION OF BUILDING CODES BY THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 50-60-101, 50-60-102, 50-60-106, 50-60-203,

HeinOnline -- 1997 vol. I lxxxiv 1997

50-60-204, AND 50-60-302, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 2622

489 *(House Bill No. 389; Simon)* AN ACT PROVIDING FOR GREATER PUBLIC PARTICIPATION IN AGENCY RULEMAKING; AMENDING PROVISIONS FOR NOTICE OF AGENCY RULES; DEFINING TERMS; STRENGTHENING THE REQUIREMENTS FOR AN EMERGENCY RULE; PROHIBITING THE USE OF AN ADOPTION NOTICE TO CURE DEFICIENCIES IN STATEMENTS OF REASONABLE NECESSITY; AND AMENDING SECTIONS 2-4-102, 2-4-302, 2-4-303, 2-4-305, AND 2-4-306, MCA. . . . . 2629

490 *(House Bill No. 502; Soft)* AN ACT RELATING TO MENTAL HEALTH; DELETING THE DEFINITION OF "SERIOUSLY MENTALLY ILL" AND SUBSTITUTING "MENTAL DISORDER"; DEFINING THE TERMS "COMMITMENT" AND "MENTAL DISORDER"; ALLOWING COMMITMENT TO A COMMUNITY FACILITY OF A PERSON SUFFERING FROM A MENTAL DISORDER; CLARIFYING STATUTES RELATING TO VOLUNTARY AND INVOLUNTARY COMMITMENT OF MINORS; ALLOWING CLINICAL AND ADMINISTRATIVE USE OF PHOTOGRAPHS OF MENTAL HEALTH FACILITY PATIENTS; AMENDING SECTIONS 2-16-501, 2-16-503, 25-31-602, 27-2-401, 27-8-204, 33-20-121, 37-3-323, 37-6-311, 37-11-321, 37-12-322, 41-5-523, 46-14-206, 53-20-112, 53-21-101, 53-21-102, 53-21-112, 53-21-115, 53-21-116, 53-21-121, 53-21-122, 53-21-123, 53-21-126, 53-21-127, 53-21-128, 53-21-129, 53-21-132, 53-21-134, 53-21-138, 53-21-139, 53-21-144, 53-21-182, 53-21-195, 53-21-197, 53-21-198, 70-19-413, 70-29-113, 70-29-210, 70-29-328, AND 72-5-322, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2635

491 *(House Bill No. 561; Kasten)* AN ACT FURTHERING THE RENEWAL OF STATE GOVERNMENT BY HARMONIZING THE DEFINITIONS OF "WAGES" AND "EMPLOYMENT"; BY REENGINEERING, RESTRUCTURING, AND COMBINING THE REPORTING AND REMITTANCE OF EMPLOYER TAXES; BY COORDINATING THE ADMINISTRATION OF THE STATE'S INCOME TAX AND OLD FUND LIABILITY TAX WITHHOLDING, UNEMPLOYMENT INSURANCE TAX, AND THE EMPLOYERS' SHARE OF THE OLD FUND LIABILITY TAX SO THAT ALL REPORTS AND REMITTANCES MUST BE MADE TO THE DEPARTMENT OF REVENUE THEREBY PROVIDING AN EMPLOYER THE CONVENIENCE OF DEALING WITH ONLY ONE STATE AGENCY; BY CLARIFYING INDIVIDUAL LIABILITY FOR THE REPORTING AND PAYMENT OF EMPLOYER TAXES; AMENDING SECTIONS 15-1-302, 15-2-302, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-207, 15-30-208, 15-30-209, 37-31-101, 39-51-201, 39-51-204, 39-51-301, 39-51-1105, 39-51-1109, 39-51-1110, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2108, 39-51-2402, 39-71-123, 39-71-401, 39-71-2501, 39-71-2503, AND 39-71-2505, MCA; REPEALING ARM 24.11.831; AND PROVIDING EFFECTIVE DATES. 2673

492 *(House Bill No. 598; Trexler)* AN ACT GENERALLY REVISING THE LAWS GOVERNING PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING APPROPRIATIONS TO FUND COMPLIANCE AND ENFORCEMENT POSITIONS FOR CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSURE BOARDS; ALLOWING DEPARTMENTAL RULES TO PROVIDE FOR VARIATION FROM ANNUAL LICENSE RENEWAL PERIODS; AMENDING SECTIONS 23-3-501, 27-6-206, 37-3-301, 37-3-313, 37-4-307, 37-4-326, 37-4-406, 37-6-304, 37-7-303, 37-7-321, 37-7-606, 37-7-703, 37-8-431, 37-9-304, 37-9-305, 37-10-307, 37-11-308, 37-12-307, 37-13-306, 37-14-310, 37-16-407, 37-18-307, 37-19-301, 37-19-304,

HeinOnline -- 1997 vol. I lxxxv 1997

37-19-306, 37-20-203, 37-20-302, 37-23-203, 37-23-205, 37-25-307, 37-27-205, 37-29-304, 37-29-306, 37-30-310, 37-30-423, 37-30-424, 37-31-302, 37-32-305, 37-40-203, 37-40-304, 37-50-203, 37-50-314, 37-50-317, 37-51-310, 37-51-603, 37-65-306, 37-66-307, 37-68-307, 37-68-310, 37-69-307, 37-72-306, 50-39-102, 50-74-313, AND 50-76-105, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2723

493 *(House Bill No. 610; Grady)* AN ACT ESTABLISHING A LEGISLATIVE COMMITTEE TO STUDY THE REVENUE AND EXPENDITURES OF THE HIGHWAYS STATE SPECIAL REVENUE ACCOUNT AND MONTANA'S TRANSPORTATION INFRASTRUCTURE NEEDS; PROVIDING FOR APPOINTMENTS TO THE COMMITTEE; APPROPRIATING FUNDS FOR THE OPERATION OF THE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. . . . . 2746

494 *(House Bill No. 615; Cobb)* AN ACT ESTABLISHING AN INTERIM COMMISSION TO OVERSEE, PUBLICIZE, AND REPORT ON A STUDY OF THE SOCIOECONOMIC IMPACTS OF GAMBLING IN MONTANA; PROVIDING AN APPROPRIATION; AMENDING SECTION 23-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. . . . . 2749

495 *(Senate Bill No. 44; Holden)* AN ACT CLARIFYING AND LIMITING A MOTOR VEHICLE LIABILITY INSURER'S LIABILITY UNDER A POLICY; AMBNDING SECTIONS 33-23-203 AND 33-23-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 2752

496 *(Senate Bill No. 57; Waterman)* AN ACT GENERALLY REVISING THE CLASSIFICATION, VALUATION, AND TAXATION OF MOTOR VEHICLES; TAXING AUTOMOBILES, TRUCKS HAVING A MANUFACTURER'S RATED CAPACITY OF 1 TON OR LESS, VANS, AND SPORT UTILITY VEHICLES AT 2 PERCENT OF THE DEPRECIATED VALUE OF THE MANUFACTURER'S SUGGESTED RETAIL PRICE; EXEMPTING FROM PROPERTY TAXATION BUSES, TRUCKS HAVING A MANUFACTURER'S RATED CAPACITY OF MORE THAN 1 TON, TRUCK TRACTORS, AND PERSONAL PROPERTY ATTACHED TO THESE EXEMPT VEHICLES; IMPOSING A FEE IN LIEU OF PROPERTY TAXES ON BUSES, TRUCKS HAVING A MANUFACTURER'S RATED CAPACITY OF MORE THAN 1 TON, AND TRUCK TRACTORS; PROVIDING FOR THE PRORATION OF THE FEE IN LIEU OF TAX; CLARIFYING THAT SPECIAL MOBILE EQUIPMENT IS SUBJECT TO PROPERTY TAX; REPLACING THE TAX ON QUADRICYCLES WITH A FEE IN LIEU OF TAX; PROVIDING FOR AN ANALYSIS OF ALTERNATIVE METHODS OF CLASSIFICATION, VALUATION, AND TAXATION OF AUTOMOBILES AND TRUCKS HAVING A MANUFACTURER'S RATED CAPACITY OF 1 TON GR LESS; AMENDING SECTIONS 7-1-2111, 15-6-138, 15-6-201, 15-8-111, 15-8-201, 15-8-202, 15-16-202, 15-50-207; 20-9-141, 20-9-331, 20-9-333, 20-9-360, 20-9-501, 20-10-144, 20-10-146, 61-3-101, 61-3-208, 61-3-303, 61-3-456, 61-3-501, 61-3-503, 61-3-504, 61-3-506, 61-3-507, 61-3-509, 61-3-520, 61-3-527, 61-3-525, 61-3-537, 61-3-701, AND 61-12-402, MCA; REPEALING SECTIONS 15-24-101, 15-24-102, 15-24-103, 15-24-104, 15-24-105, AND 15-24-2501, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE. . . . . 2753

497 *(Senate Bill No. 97; Grosfield)* AN ACT GENERALLY REVISING THE WATER LAWS TO CLARIFY THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ISSUE WATER PERMITS AND CHANGE AUTHORIZATIONS PRIOR TO THE

HeinOnline -- 1997 vol. I lxxxvi 1997

COMPLETION OF AN ADJUDICATION IN A SOURCE OF SUPPLY; CLARIFYING THAT WATER RESERVED UNDER STATE LAW IS NOT SYNONYMOUS WITH FEDERAL AND INDIAN RESERVED WATER RIGHTS UNDER FEDERAL LAW; REQUIRING A WATER JUDGE TO GIVE PRIORITY OVER OTHER ADJUDICATION ISSUES TO ISSUES CERTIFIED TO THE DISTRICT COURT BY THE DEPARTMENT; ALLOWING THE DEPARTMENT TO NEGOTIATE INTERIM AGREEMENTS WITH TRIBAL GOVERNMENTS; AMENDING SECTIONS 85-2-101, 85-2-102, 85-2-217, 85-2-228, 85-2-301, 85-2-309, 85-2-311, 85-2-313, 85-2-316, 85-2-321, 85-2-329, 85-2-331, 85-2-336, 85-2-340, 85-2-341, 85-2-342, 85-2-401, AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 2789

498 *(Senate Bill No. 99; Thomas)* AN ACT GENERALLY REVISING THE LAWS RELATING TO JUVENILE JUSTICE; GENERALLY REVISING THE LAWS RELATING TO EXTENDED JURISDICTION PROSECUTION OF JUVENILES; AUTHORIZING THE COURT OR THE COUNTY ATTORNEY TO DESIGNATE A JUVENILE AS AN EXTENDED JURISDICTION JUVENILE; AUTHORIZING FELONY SENTENCES FOR EXTENDED JURISDICTION JUVENILES; EXTENDING YOUTH COURT JURISDICTION TO AGE 25 FOR EXTENDED JURISDICTION JUVENILES; GENERALLY REVISING THE LAW RELATING TO THE TRANSFER OF JUVENILE CASES TO THE DISTRICT COURT AFTER PROSECUTION IN THE YOUTH COURT WITH RESPECT TO CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; PROVIDING FOR TRANSFER, AFTER A HEARING, OF SUPERVISORY RESPONSIBILITY OF CERTAIN JUVENILE CASES FROM THE YOUTH COURT TO THE DISTRICT COURT AFTER PROSECUTION WITH RESPECT TO CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; AMENDING SECTIONS 41-5-203, 41-5-205, 41-5-206, 41-5-208, 41-5-501, 41-5-1102, 41-5-1103, 41-5-1104, AND 41-5-1105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 2821

499 *(Senate Bill No. 207; Jabs)* AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO OBLIGATE FUNDS TO ACQUIRE REAL PROPERTY OR CONSTRUCT A SCHOOL FACILITY IF THE ACQUISITION OR CONSTRUCTION DOES NOT EXCEED 20 PERCENT OF THE SQUARE FOOTAGE OF THE EXISTING REAL PROPERTY IMPROVEMENTS AND IS APPROVED BY THE QUALIFIED VOTERS OF THE DISTRICT; INCREASING THE TERM OF AN OBLIGATION FROM 5 TO 10 FISCAL YEARS; AMENDING SECTION 20-9-471, MCA; AND PROVIDING AN EFFECTIVE DATE. 2830

500 *(Senate Bill No. 251; Stang)* AN ACT CLARIFYING WORKERS' COMPENSATION ACT COVERAGE REQUIREMENTS FOR A STUDENT WHO IS ENROLLED IN AN ELEMENTARY, SECONDARY, OR POSTSECONDARY EDUCATIONAL INSTITUTION AND WHO PARTICIPATES AS A VOLUNTEER OR FOR WAGES IN WORK-BASED LEARNING ACTIVITIES; DEFINING "BUSINESS PARTNER" AND "WORK-BASED LEARNING ACTIVITIES"; AMENDING SECTIONS 39-71-116 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. 2832

501 *(Senate Bill No. 283; Burnett)* AN ACT REQUIRING A SOCIAL WORKER IN CHILD ABUSE AND NEGLECT CASES TO INTERVIEW THE

HeinOnline -- 1997 vol. I lxxxvii 1997

PARENTS, IF AVAILABLE, BEFORE REQUESTING TEMPORARY INVESTIGATIVE AUTHORITY; REQUIRING THAT A PETITION FOR TEMPORARY INVESTIGATIVE AUTHORITY AND PROTECTIVE SERVICES IN CHILD ABUSE AND NEGLECT CASES MUST INCLUDE STATEMENTS, IF ANY, MADE BY THE PARENTS REGARDING THE FACTS OF THE CASE OR MUST ALLOW AN APPEARANCE BY THE PARENTS AT THE HEARING ON THE PETITION, EXCEPT IN EMERGENCY CASES; AMENDING SECTIONS 41-3-101, 41-3-402, AND 41-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . . . . 2840

502 *(Senate Bill No. 308; Beck)* AN ACT REQUIRING STATE AND LOCAL GOVERNMENT ENTITIES TO PROVIDE UPON REQUEST A WRITTEN STATEMENT OF THE LEGAL AUTHORITY UPON WHICH CERTAIN ACTION IS BASED; PROVIDING DEFINITIONS AND EXCEPTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 2842

503 *(Senate Bill No. 339; Grosfield)* AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS; AMENDING SECTIONS 76-3-103, 76-3-201, AND 76-3-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. 2844

504 *(Senate Bill No. 381; Benedict)* AN ACT EXCLUDING THE APPLICABILITY OF MANDATED INSURANCE BENEFIT PROVISIONS AND FREEDOM OF CHOICE OF PRACTITIONER PROVISIONS FROM GROUP AND INDIVIDUAL UNIFORM HEALTH BENEFIT PLANS; AMENDING SECTIONS 33-22-245 AND 33-22-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . 2847

505 *(Senate Bill No. 390; Thomas)* AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS FOR MONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES IN CLASS NINE PROPERTY; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104, 69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2848

506 *(Senate Bill No. 396; Foster)* AN ACT ALLOWING NATURAL GAS UTILITIES TO PROVIDE FOR CUSTOMER CHOICE; ALLOWING NATURAL GAS UTILITIES TO USE TRANSITION BOND FINANCING FOR TRANSITION COSTS; ALLOWING FOR FUNCTIONAL SEPARATION AND CONSUMER PROTECTION; REQUIRING THE PUBLIC SERVICE COMMISSION TO LICENSE NATURAL GAS SUPPLIERS; ESTABLISHING RECIPROCITY FOR ALL NATURAL GAS SUPPLIERS; PROVIDING FOR OPTIONAL PERFORMANCE-BASED RATEMAKING; REQUIRING THE REVENUE OVERSIGHT COMMITTEE TO CONDUCT A TAX REVENUE ANALYSIS AND REPORT TO THE 56TH LEGISLATURE; PROVIDING FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 2884

507 *(House Bill No. 399; Tuss)* AN ACT TRANSFERRING THE DUTIES AND RESPONSIBILITIES FOR CERTIFYING CHEMICAL

HeinOnline -- 1997 vol. I lxxxviii 1997

DEPENDENCY COUNSELORS FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE DEPARTMENT OF COMMERCE; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR DEPARTMENT POWERS AND DUTIES; PROVIDING CERTIFICATION REQUIREMENTS AND FEES; PROVIDING FOR COMPLAINTS OF UNPROFESSIONAL CONDUCT AND SANCTIONS; PROVIDING A CRIMINAL PENALTY FOR VIOLATIONS; PROVIDING FOR TRANSITION; AMENDING SECTIONS 33-22-705, 37-23-201, AND 53-24-204, MCA; REPEALING SECTIONS 53-24-215, 53-24-216, AND 53-24-217, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 2889

508 *(House Bill No. 534; Wells)* AN ACT MAKING THE STATE LIABLE FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT INVOLVING A CONTRACT; AMENDING SECTIONS 2-9-317 AND 18-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2897

509 *(House Bill No. 554; Simpkins)* AN ACT ELIMINATING THE PROVISIONS THAT ALLOW CERTAIN PERSONS CLAIMING MONTANA RESIDENCY WHO ARE ON ACTIVE MILITARY DUTY AND LIVING OUTSIDE OF MONTANA TO PURCHASE LICENSE PLATES AND REGISTER A MOTOR VEHICLE FOR THE COST OF REGISTRATION ALONE; AMENDING SECTION 61-3-456, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND FOR APPLICABILITY. . . . . 2897

510 *(House Bill No. 555; Simpkins)* AN ACT EXTENDING THE 30 CENTS PER GALLON TAX INCENTIVE FOR PRODUCTION OF ALCOHOL; LIMITING TO $3 MILLION THE MAXIMUM AMOUNT PAYABLE TO A PRODUCER; AND AMENDING SECTION 15-70-522, MCA. . . . . 2898

511 *(House Bill No. 83; Bergsagel)* AN ACT ALLOWING AND PROVIDING FOR THE REGULATION OF PRIVATE CORRECTIONAL FACILITIES; SPECIFYING THE DEPARTMENT OF CORRECTIONS DUTIES AND RESPONSIBILITIES; SPECIFYING THE DUTIES NOT DELEGABLE TO A CONTRACTOR; SPECIFYING THE REQUIREMENTS OF REQUESTS FOR PROPOSALS; SPECIFYING CERTAIN REQUIREMENTS OF CONTRACTS; SPECIFYING CONTRACTOR RESPONSIBILITY FOR CERTAIN COSTS; PROVIDING FOR LICENSURE OF FACILITIES; SPECIFYING ACTION BY THE DEPARTMENT FOR CONTRACTOR FAILURE TO COMPLY WITH LAW OR TO RENEW CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. 2901

512 *(House Bill No. 100; Soft)* AN ACT REVISING THE PUNISHMENT FOR DRIVING UNDER THE INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2909

513 *(House Bill No. 101; Bergsagel)* AN ACT INCREASING THE AGGREGATE VALUE OF A CONSTRUCTION PROJECT THAT MAY BE PERFORMED BY INMATE LABOR FROM $25,000 TO $200,000 FOR EACH PROJECT; EXEMPTING THE PROJECTS FROM THE PROVISIONS OF TITLE 18, CHAPTER 2, FOR CONSTRUCTION, PUBLIC BIDDING, BONDING, AND CONTRACTS AND EXEMPTING INMATES WHO PROVIDE LABOR ON THE PROJECTS FROM THE LABOR AND WAGE REQUIREMENTS OF TITLE 18, CHAPTER 2, PART 4; ALLOWING THE USE OF INMATE LABOR FOR CONSTRUCTION PROJECTS APPROVED BY THE LEGISLATURE AT THE MONTANA STATE PRISON; AMENDING SECTION 53-1-301,

HeinOnline -- 1997 vol. I lxxxix 1997

MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 2915

514 *(House Bill No. 129; Soft)* AN ACT GENERALLY REVISING THE LAW RELATING TO CHILD PROTECTIVE SERVICES; CLARIFYING DEFINITIONS; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE ORDERED TO SUPERVISE VISITATION; LIMITING THE REQUIREMENT FOR FOSTER CARE LICENSING; AMENDING SECTIONS 40-4-218, 40-8-111, 41-3-102, 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-609, 41-3-1102, 41-3-1141, AND 41-3-1142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2918

515 *(House Bill No. 146; Johnson, Royal)* AN ACT EXEMPTING A PERSON PLACED AS A PARTICIPANT IN A PUBLIC ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53 INTO A WORK SETTING FOR THE PURPOSE OF DEVELOPING EMPLOYMENT SKILLS FROM WAGE AND HOUR REQUIREMENTS; EXEMPTING CHILD FOSTER CARE PROVIDERS FROM WAGE AND HOUR AND WORKERS' COMPENSATION REQUIREMENTS; DEFINING A PERSON PLACED AS A PARTICIPANT IN A PUBLIC ASSISTANCE PROGRAM AUTHORIZED UNDER TITLE 53 INTO A WORK SETTING AS AN EMPLOYEE FOR WORKERS' COMPENSATION PURPOSES ONLY AND REQUIRING WORKERS' COMPENSATION COVERAGE; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REIMBURSE PRIVATE AND LOCAL GOVERNMENTAL EMPLOYERS FOR THE COSTS OF WORKERS' COMPENSATION COVERAGE; AMENDING SECTIONS 39-3-406, 39-71-118, AND 53-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2931

516 *(House Bill No. 203; Johnson, Royal)* AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS; DEFINING BEST INTERESTS OF THE CHILD; PROVIDING FOR A PERMANENCY PLAN HEARING; AMENDING SECTIONS 40-8-111, 41-3-102, 41-3-202, 41-3-204, 41-3-303, 41-3-401, 41-3-403, 41-3-404, 41-3-406, 41-3-607, 41-3-609, 41-4-102, AND 41-5-530, MCA; REPEALING SECTIONS 41-3-410 AND 41-3-603, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 2940

517 *(House Bill No. 298; Johnson, Royal)* AN ACT PROVIDING FOR 2-YEAR TERMS FOR MEMBERS OF THE HEALTH CARE ADVISORY COUNCIL; PROVIDING THAT A MEMBER MAY SERVE THREE TERMS; EXTENDING THE TERMINATION PROVISION FOR THE HEALTH CARE ADVISORY COUNCIL TO THE YEAR 2001; AMENDING SECTION 50-4-203, MCA, AND SECTION 25, CHAPTER 378, LAWS OF 1995; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES. . . . . 2960

518 *(House Bill No. 331; Soft)* AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; RESTRICTING THE SALE OF TOBACCO PRODUCTS THROUGH VENDING MACHINES; PROVIDING FOR HEARINGS PURSUANT TO CERTAIN RULES; AND AMENDING SECTIONS 16-11-306 AND 16-11-308, MCA. . . . . 2961

519 *(House Bill No. 333; Soft)* AN ACT ESTABLISHING THE POLICY OF THE STATE TO PREVENT FETAL, INFANT, AND CHILD DEATHS; ENCOURAGING FETAL, INFANT, AND CHILD MORTALITY REVIEW THROUGH THE CREATION OF VOLUNTARY FETAL, INFANT, AND CHILD MORTALITY REVIEW TEAMS; PROVIDING ACCESS TO INFORMATION NECESSARY TO THE WORK OF FETAL, INFANT, AND CHILD MORTALITY REVIEW TEAMS; PROVIDING

HeinOnline -- 1997 vol. I xc 1997

CIVIL AND CRIMINAL PENALTIES FOR UNLAWFUL USE OR DISCLOSURE OF THAT INFORMATION; AMENDING SECTIONS 44-5-303, 50-16-525, AND 50-19-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2964

520 *(House Bill No. 339; Carey)* AN ACT CHANGING THE PENALTIES FOR A PERSON UNDER THE AGE OF 21 WHO HAS AN ALCOHOL CONCENTRATION OF 0.02 OR MORE AND DRIVES OR WHO IS IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON WAYS OF THIS STATE OPEN TO THE PUBLIC; RESTRICTING PROBATIONARY DRIVING PRIVILEGES FOR PERSONS UNDER THE AGE OF 18 FOR THE FIRST 30 DAYS OF LICENSE SUSPENSION; PROHIBITING USE OF CONVICTION FOR CERTAIN PURPOSES; REQUIRING PAYMENT OF A LICENSE REINSTATEMENT FEE PRIOR TO ISSUANCE OF A PROBATIONARY DRIVER'S LICENSE; AMENDING SECTION 61-8-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 2968

521 *(House Bill No. 345; Masolo)* AN ACT ADOPTING THE WORKFORCE DRUG AND ALCOHOL TESTING ACT; ESTABLISHING CRITERIA FOR DRUG AND ALCOHOL TESTING OF EMPLOYEES AND PROSPECTIVE EMPLOYEES; PROVIDING FOR CONFIDENTIALITY OF TEST RESULTS EXCEPT IN CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 39-2-304, MCA. . . . . 2969

522 *(House Bill No. 407; Ewer)* AN ACT DEFINING "CONSTRUCTION SERVICES", "NONCONSTRUCTION SERVICES", AND "PUBLIC WORKS CONTRACT" FOR PURPOSES OF THE PREVAILING WAGE LAWS; PROVIDING THAT OTHER INFORMATION OR METHODS MAY BE CONSIDERED TO COMPUTE STANDARD PREVAILING WAGE RATES WHEN INADEQUATE DATA IS OBTAINED BY SURVEY; ELIMINATING THE REQUIREMENT THAT ALL STATE PUBLIC WORKS CONTRACTS BE SUBJECT TO LEGAL REVIEW; AUTHORIZING TEMPORARY STANDARD PREVAILING WAGE RATES; AMENDING SECTIONS 18-2-401, 18-2-403, 18-2-404, 18-2-421, 18-2-422, 18-2-432, AND 20-15-403, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 2975

523 *(House Bill No. 547; Rehbein)* AN ACT REQUIRING THAT THE PROCEEDS, LESS COSTS, FROM THE SALE OF GAME ANIMAL MEAT SEIZED FROM A PERSON FOUND GUILTY OF ILLEGALLY KILLING A WILD ANIMAL OR GAME ANIMAL BE STATUTORILY APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSES OF AWARDING GRANTS TO THE MONTANA FOOD BANK NETWORK; REQUIRING THAT MEAT FROM AN ILLEGALLY TAKEN GAME ANIMAL SEIZED BY GAME WARDENS BE EITHER DONATED DIRECTLY TO THE MONTANA FOOD BANK NETWORK OR PUBLIC OR CHARITABLE INSTITUTIONS OR SOLD, WITH THE PROCEEDS, LESS COSTS, GOING TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING THE DEPARTMENT OF LIVESTOCK TO CAPTURE, TEST, QUARANTINE, VACCINATE, AND SELL LIVE WILD BUFFALO OR BISON TO HELP DEFRAY COSTS INCURRED AS PART OF THE DISEASE CONTROL PROGRAM; ALLOWING THE DEPARTMENT OF LIVESTOCK TO TRANSFER BRUCELLOSIS-FREE WILD BUFFALO OR BISON TO QUALIFIED TRIBAL ENTITIES UNDER CERTAIN CONDITIONS; PROVIDING THAT REVENUE GENERATED IN EXCESS OF FUNDS NEEDED FOR THE WILD BUFFALO OR BISON DISEASE CONTROL PROGRAM BE STATUTORILY APPROPRIATED TO THE

HeinOnline -- 1997 vol. I xci 1997

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSES OF AWARDING GRANTS TO THE MONTANA FOOD BANK NETWORK; AND AMENDING SECTIONS 17-7-502, 81-2-120, 87-1-506, AND 87-1-513, MCA. . . . . 2981

524 *(House Bill No. 558; Smith)* AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER COMMUNICABLE DISEASES, INCLUDING SEXUALLY TRANSMITTED DISEASES; REMOVING THE REQUIREMENT FROM THE AIDS PREVENTION ACT THAT INFORMED CONSENT BE IN WRITING; DEFINING "INFORMED CONSENT"; AND AMENDING SECTIONS 50-16-1003 AND 50-16-1007, MCA. . . . . 2985

525 *(House Bill No. 559; Grimes)* AN ACT GENERALLY REVISING AND RECODIFYING PENALTY LAWS RELATING TO ALCOHOL OR DRUGS AND DRIVING-RELATED OFFENSES; PROVIDING ON SECOND OR SUBSEQUENT CONVICTIONS, THAT THE REMAINING PORTION OF A PREVIOUSLY SUSPENDED SENTENCE MAY BE IMPOSED IF A DEFENDANT FAILS TO COMPLETE MONTHLY MONITORING FOLLOWING A TREATMENT PROGRAM AND THAT 6 MONTHS' ADDITIONAL MONITORING MAY BE IMPOSED; DELETING THE REQUIREMENT THAT DRIVING UNDER THE INFLUENCE OR EXCESSIVE ALCOHOL CONCENTRATION VIOLATIONS BE CONSIDERED CONFIDENTIAL CRIMINAL JUSTICE INFORMATION UPON PASSAGE OF 5 YEARS WITHOUT SUBSEQUENT CONVICTION; RECOGNIZING CONVICTIONS FROM TRIBAL COURTS FOR THE PURPOSE OF DETERMINING NUMBER OF PRIOR CONVICTIONS; AMENDING SECTIONS 46-18-201, 61-8-401, 61-8-406, 61-8-421, 61-8-422, 61-8-714, 61-8-722, AND 61-11-101, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 2990

526 *(House Bill No. 10; Quilici)* AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE. . 3006

527 *(House Bill No. 27; Simon)* AN ACT PROHIBITING HEALTH CARRIERS AND MANAGED CARE ORGANIZATIONS FROM INTERFERING WITH CERTAIN MEDICAL COMMUNICATIONS MADE BY PERSONS PROVIDING HEALTH CARE SERVICES IN A MANAGED CARE SETTING; PROVIDING DEFINITIONS; PROVIDING A PENALTY; AMENDING SECTION 33-31-111, MCA; AND PROVIDING AN APPLICABILITY DATE. . . . . 3010

528 *(House Bill No. 78; Simpkins)* AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; REVISING TIIE CONDITIONS UNDER WHICH A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY TO THE TRANSFER OF A LICENSE IS REQUIRED; REVISING LICENSE APPLICATION PROCEDURES AND THE PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL APPROVAL OF A LICENSE; PROVIDING ADDITIONAL GROUNDS FOR DENYING A LICENSE; REVISING SPECIAL PERMIT FEES; AMENDING SECTIONS 16-4-105, 16-4-115, 16-4-203, 16-4-207, 16-4-402, 16-4-404, 16-4-405, AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 3013

529 *(House Bill No. 104; Hagener)* AN ACT TRANSFERRING THE RESPONSIBILITY FOR PAYMENT OF EDUCATION COSTS FOR A

STUDENT PLACED IN AN OUT-OF-STATE TREATMENT FACILITY TO THE STATE AGENCY RESPONSIBLE FOR THE PLACEMENT DECISION; AMENDING SECTIONS 20-5-321, 20-5-323, 20-5-324, 20-7-403, 20-7-420, AND 20-7-422, MCA; REPEALING SECTION 20-5-316, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 3024

530 *(House Bill No. 117; Pavlovich)* AN ACT REQUIRING THAT CREDIT DISABILITY INSURANCE FOR CREDIT CARD INDEBTEDNESS PROVIDE COVERAGE FOR MINIMUM PAYMENTS OR FINANCE CHARGES, PREMIUM PAYMENTS, AND OTHER CHARGES THROUGHOUT THE TERM OF COVERAGE; AND AMENDING SECTION 33-21-202, MCA. . . . . 3031

531 *(House Bill No. 131; Simon)* AN ACT GENERALLY REVISING STATE INSURANCE LAWS; PROVIDING FOR UNIFORM HEALTH INSURANCE CLAIM FORMS; PROVIDING PENALTIES FOR MISREPRESENTATIONS MADE TO THE COMMISSIONER; AMENDING SECTIONS 18-8-103, 33-1-1205, 33-2-307, 33-2-317, 33-2-514, 33-2-517, 33-2-537, 33-2-704, 33-2-806, 33-2-1359, 33-2-1902, 33-3-303, 33-3-307, 33-4-202, 33-4-203, 33-4-204, 33-4-313, 33-4-314, 33-5-402, 33-10-202, 33-15-1105, 33-15-1106, 33-16-1027, 33-17-102, 33-17-212, 33-17-301, 33-17-1203, 33-20-101, 33-22-107, 33-22-508, 33-22-903, 33-22-907, 33-22-910, 33-22-1803, 33-22-1819, 33-22-1820, 33-22-1828, 33-30-102, 33-30-107, 33-31-111, AND 33-31-211, MCA; REPEALING SECTIONS 33-2-515, 33-2-536, 33-2-721, 33-2-722, 33-2-723, 33-4-404, 33-4-409, 33-22-1201, 33-22-1202, 33-22-1203, 33-22-1204, AND 33-22-1205, MCA; AND PROVIDING EFFECTIVE DATES. . . . . 3032

532 *(House Bill No. 169; Zook)* AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING APPROPRIATIONS AND THE ADMINISTRATION OF STATE GOVERNMENT FINANCES; CLARIFYING THE TREASURY FUNDS SUBJECT TO APPROPRIATION; REVISING AND CLARIFYING THE DEPOSIT OF CERTAIN FUNDS; REVISING THE STATUTORY APPROPRIATION OF CERTAIN FUNDS; CONFORMING THE ADMINISTRATION OF RETIREMENT SYSTEMS TO CONSTITUTIONAL REVISIONS; AUTHORIZING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO HIRE THEIR OWN PERSONNEL; LIMITING THE ADMINISTRATIVE EXPENSES OF THE RETIREMENT SYSTEMS; CLARIFYING APPROPRIATIONS CARRYOVER RESTRICTIONS; AMENDING SECTIONS 2-9-202, 2-15-1009, 2-18-812, 15-36-324, 15-36-325, 17-2-101, 17-2-102, 17-2-103, 17-2-121, 17-3-221, 17-3-222, 17-6-201, 17-7-304, 17-7-402, 17-7-502, 17-8-101, 19-2-404, 19-2-408, 19-2-502, 19-5-404, 19-6-709, 19-8-504, 19-9-702, 19-9-1007, 19-13-604, 19-13-1006, 19-13-1009, 19-17-301, 19-18-512, 19-19-205, 19-19-305, 19-19-506, 19-20-203, 19-20-501, 19-20-605, 50-3-109, 61-3-321, AND 76-13-114, MCA; REPEALING SECTIONS 19-9-208, 19-13-615, 19-18-513, 19-18-606, AND 19-20-606, MCA, AND SECTION 13, CHAPTER 23, SPECIAL LAWS OF NOVEMBER 1993; AND PROVIDING EFFECTIVE DATES. . . . . 3069

533 *(House Bill No. 287; Wiseman)* AN ACT GENERALLY REVISING SECURITY LAWS; ADDING TO THE LIST OF EXEMPT EXCHANGES; INCREASING THE COMMISSIONER'S AUTHORITY TO CONDITION THE EXEMPTION OF A SECURITY AND THE REGISTRATION OF SALESPERSONS; PROVIDING FOR THE SERVICE OF AN ORDER OR NOTICE; PERMITTING THE DENIAL OF REGISTRATION OF A SECURITY FOR ANY VIOLATION OF STATE SECURITY LAW INCLUDING ACTS IN CONNECTION WITH PREVIOUS OFFERINGS; PROVIDING FOR THE OFFER AND SALE OF FEDERAL COVERED

HeinOnline -- 1997 vol. I xciii 1997

SECURITIES; REGULATING THE ACTIVITIES OF FEDERAL COVERED ADVISERS; AND AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-107, 30-10-110, 30-10-201, 30-10-202, 30-10-206, 30-10-207, 30-10-209, 30-10-301, AND 30-10-303, MCA. . . . . 3101

534 *(House Bill No. 293; Orr)* AN ACT PROVIDING FOR CERTAIN VOLUNTARY ENVIRONMENTAL AUDITS; AND PROVIDING A TERMINATION DATE. . . . . 3123

535 *(House Bill No. 395; Grimes)* AN ACT SPECIFYING THE VENUE FOR ACTIONS BROUGHT BY THIRD PARTIES TO ENFORCE COMPLIANCE WITH THE METAL MINE RECLAMATION LAWS AND FOR ACTIONS BROUGHT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR RECOVERY OF CIVIL PENALTIES OR INJUNCTIVE RELIEF UNDER THE METAL MINE RECLAMATION LAWS; AND AMENDING SECTIONS 82-4-354 AND 82-4-361, MCA. . . . . 3125

536 *(House Bill No. 426; Kottel)* AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE; REPLACING THE FORMER LAWS GOVERNING LETTERS OF CREDIT WITH UPDATED LAWS; CONFORMING THE LAWS GOVERNING LETTERS OF CREDIT TO CURRENT USAGE AND PRACTICE; ACCOMMODATING NEW FORMS OF LETTERS OF CREDIT, PARTICULARLY THE USE OF ELECTRONIC MEDIA; MAINTAINING LETTERS OF CREDIT AS AN INEXPENSIVE AND EFFICIENT INSTRUMENT FOR FACILITATING TRADE; REPLACING THE FORMER LAWS GOVERNING INVESTMENT SECURITIES WITH UPDATED LAWS; ADDRESSING SECURITIES HOLDING THROUGH SECURITIES INTERMEDIARIES; PROVIDING A MODERN LEGAL STRUCTURE FOR CURRENT SECURITIES HOLDING PRACTICES; PROVIDING RULES FOR DETERMINING RIGHTS UNDER THE INDIRECT HOLDING OF SECURITIES; REVISING OTHER LAWS TO REFLECT THE REVISIONS TO THE LAWS GOVERNING LETTERS OF CREDIT AND INVESTMENT SECURITIES; AMENDING SECTIONS 30-1-105, 30-1-206, 30-2-512, 30-3-124, 30-4-104, 30-9-103, 30-9-104, 30-9-105, 30-9-106, 30-9-203, 30-9-301, 30-9-302, 30-9-303, 30-9-304, 30-9-305, 30-9-306, 30-9-309, 30-9-312, AND 32-1-426, MCA; AND REPEALING SECTIONS 30-5-102, 30-5-103, 30-5-104, 30-5-105, 30-5-106, 30-5-107, 30-5-108, 30-5-109, 30-5-110, 30-5-111, 30-5-112, 30-5-113, 30-5-114, 30-5-115, 30-5-116, 30-5-117, 30-8-102, 30-8-103, 30-8-104, 30-8-105, 30-8-106, 30-8-107, 30-8-108, 30-8-201, 30-8-202, 30-8-203, 30-8-204, 30-8-205, 30-8-206, 30-8-207, 30-8-208, 30-8-301, 30-8-302, 30-8-303, 30-8-304, 30-8-305, 30-8-306, 30-8-307, 30-8-308, 30-8-309, 30-8-310, 30-8-311, 30-8-312, 30-8-313, 30-8-314, 30-8-315, 30-8-316, 30-8-317, 30-8-318, 30-8-319, 30-8-320, 30-8-321, 30-8-401, 30-8-402, 30-8-403, 30-8-404, 30-8-405, 30-8-406, 30-8-407, 30-8-408, 30-10-401, 30-10-402, 30-10-403, 30-10-404, 30-10-405, 30-10-406, 30-10-407, 30-10-408, 30-10-409, 30-10-410, AND 30-10-411, MCA. . . . . 3127

537 *(House Bill No. 434; Hibbard)* AN ACT PROVIDING A TAX CREDIT FOR PLANNED GIFTS BY INDIVIDUALS AND OTHER GIFTS BY CORPORATIONS AND ESTATES MADE TO QUALIFIED CHARITABLE ENDOWMENT FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE. . . . . 3183

538 *(House Bill No. 483; Mood)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE SAFE DRINKING WATER AND WASTEWATER TREATMENT REVOLVING FUNDS AND WATER SYSTEM LICENSING; FORMING AN ADVISORY COMMITTEE; AMENDING SECTIONS 37-42-102, 75-5-1101, 75-5-1102, 75-5-1103,

HeinOnline -- 1997 vol. I xciv 1997

75-5-1104, 75-5-1105, 75-5-1106, 75-5-1107, 75-5-1111, 75-5-1112, 75-5-1113, 75-5-1121, 75-6-201, 75-6-202, 75-6-203, 75-6-204, 75-6-205, 75-6-211, 75-6-212, 75-6-221, 75-6-222, 75-6-223, AND 75-6-224, MCA; REPEALING SECTIONS 75-6-213 AND 75-6-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 3187

539 *(House Bill No. 524; Anderson)* AN ACT GENERALLY REVISING REMEDIATION REQUIREMENTS FOR HAZARDOUS AND DELETERIOUS SUBSTANCES; PROVIDING THAT A PERSON LIABLE FOR REMEDIAL ACTION HAVE THE OPPORTUNITY TO RESPOND PRIOR TO REMEDIAL ACTION BEING INITIATED BY THE STATE; CLARIFYING THE PROCESS FOR WHEN STATE ORDERS MAY BE ISSUED; ELIMINATING THE REQUIREMENT FOR AGREEMENTS TO BE FILED IN DISTRICT COURT AS CONSENT DECREES; INCREASING ELIGIBILITY FOR SITES SUBMITTING VOLUNTARY REMEDIATION PLANS; PROVIDING FOR APPEAL OF AGENCY DECISIONS REGARDING REMEDIATION PLANS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES FOR THE JOINT SELECTION OF REMEDIAL ACTION CONTRACTORS; AMENDING SECTIONS 75-10-711, 75-10-723, 75-10-732, AND 75-10-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE. . . . . 3210

540 *(House Bill No. 536; Bohlinger)* AN ACT ESTABLISHING THE FAMILY EDUCATION SAVINGS ACT; ESTABLISHING A FAMILY EDUCATION SAVINGS PROGRAM OVERSIGHT COMMITTEE; ESTABLISHING PROCEDURES AUTHORIZING A PERSON TO MAKE CONTRIBUTIONS TO ACCOUNTS THAT ARE ESTABLISHED TO PAY HIGHER EDUCATION EXPENSES FOR A DESIGNATED BENEFICIARY OF AN ACCOUNT OWNER; REQUIRING THE BOARD OF REGENTS TO IMPLEMENT THE PROGRAM AND AUTHORIZING THE BOARD TO SELECT FINANCIAL INSTITUTIONS TO ACT AS DEPOSITORIES AND PROGRAM MANAGERS, USING SPECIFIED BIDDING CRITERIA; PROVIDING FOR THE FEDERAL DEFERRAL OF TAXES ON INVESTMENT EARNINGS CONTRIBUTED TO AN ACCOUNT; PROVIDING A DEDUCTION FROM STATE INCOME TAX PURPOSES OF UP TO $3,000 ANNUALLY FOR CONTRIBUTIONS TO AN ACCOUNT; REQUIRING ANNUAL REPORTING OF CONTRIBUTIONS RECEIVED TO THE INTERNAL REVENUE SERVICE AND THE ACCOUNT OWNER; REQUIRING DISTRIBUTIONS FROM AN ACCOUNT TO BE REPORTED TO THE INTERNAL REVENUE SERVICE AND THE ACCOUNT OWNER; PROVIDING A 10 PERCENT PENALTY FOR A NONQUALIFED WITHDRAWAL FROM AN ACCOUNT; AUTHORIZING A CHANGE IN DESIGNATED BENEFICIARY BY AN ACCOUNT OWNER UNDER CERTAIN CONDITIONS; AUTHORIZING THE WITHDRAWAL OF ALL OR PART OF THE BALANCE OF AN ACCOUNT PURSUANT TO BOARD OF REGENT RULES; PROHIBITING USE OF ACCOUNT INTEREST AS LOAN SECURITY; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 3216

541 *(House Bill No. 546; Tash)* AN ACT AMENDING THE WATER QUALITY LAWS TO FURTHER DIRECT THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO MONITOR STATE WATERS TO ASSESS THEIR QUALITY AND TO DEVELOP TOTAL MAXIMUM DAILY LOADS FOR THOSE WATERS IDENTIFIED AS THREATENED OR IMPAIRED; AMENDING SECTION 75-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. . . . . 3229

HeinOnline -- 1997 vol. I xcv 1997

542 *(House Bill No. 584; Knox)* AN ACT CREATING AN ORPHAN SHARE ACCOUNT FOR COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT SITES; ALLOCATING RESOURCE INDEMNITY TRUST INTEREST AND TAX PROCEEDS AND METAL MINES LICENSE TAX PROCEEDS TO THE ORPHAN SHARE ACCOUNT; APPROPRIATING FUNDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR REIMBURSEMENTS AND ORPHAN SHARE DEFENSE COSTS FROM THE ORPHAN SHARE ACCOUNT; AMENDING SECTIONS 15-37-117, 15-38-106, AND 15-38-202, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE. . . . . 3239

543 *(House Bill No. 591; Arnott)* AN ACT REFORMING, STREAMLINING, AND SIMPLIFYING THE APPLICATION FOR THE ELDERLY HOMEOWNER PROPERTY TAX CREDIT BY PROVIDING FOR A DEDUCTION BASED ON PROPERTY TAXES LEVIED AND A STANDARD PENSION DEDUCTION; AMENDING SECTIONS 15-30-171, 15-30-172, 15-30-176, 15-30-177, AND 15-30-178, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. . . . . 3245

544 *(House Bill No. 599; Bankhead)* AN ACT PROVIDING FOR FIRST-TIME HOME BUYER SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION OF THE ACCOUNTS; ALLOWING ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNTS; LIMITING THE PERIOD IN WHICH CONTRIBUTIONS MAY BE MADE TO THE ACCOUNT; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF PRINCIPAL AND INCOME CONTAINED WITHIN AN ACCOUNT AND AMOUNTS WITHDRAWN FOR ELIGIBLE COSTS FOR THE FIRST-TIME PURCHASE OF A SINGLE-FAMILY RESIDENCE IN MONTANA; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE COSTS; REQUIRING THAT PRINCIPAL AND INCOME IN THE ACCOUNT MUST BE USED FOR THE PURCHASE OF A SINGLE-FAMILY RESIDENCE IN MONTANA BY A FIRST-TIME HOME BUYER WITHIN A SPECIFIED PERIOD; TAXING AMOUNTS REMAINING IN THE ACCOUNT AS ORDINARY INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE. . . . . 3248

545 *(House Bill No. 601; Harrington)* AN ACT ALLOWING AN INCOME TAX CREDIT OR CORPORATE LICENSE TAX CREDIT FOR THE PRESERVATION OF HISTORIC BUILDINGS; PROVIDING THAT THE AMOUNT OF THE CREDIT IS 25 PERCENT OF THE CREDIT ALLOWED UNDER FEDERAL INCOME TAX LAWS; AND PROVIDING AN APPLICABILITY DATE. . . . . 3254

546 *(House Bill No. 604; Harper)* AN ACT RELATING TO BREWING BEER IN MONTANA; PROVIDING THAT MALTING BARLEY MACHINERY AND EQUIPMENT ARE CLASSIFIED AS CLASS 6 PROPERTY; AUTHORIZING HOME BREWING THAT MEETS THE REQUIREMENTS OF FEDERAL LAW; AND AMENDING SECTIONS 15-6-136, 16-3-201, AND 16-6-301, MCA. . . . . 3255

547 *(Senate Bill No. 187; Crippen)* AN ACT REMOVING THE CONFLICT BETWEEN ARTICLE X, SECTION 10, OF THE MONTANA CONSTITUTION AND STATUTORY LAW BY AUTHORIZING THE MONTANA UNIVERSITY SYSTEM TO RETAIN INVESTMENT EARNINGS ON ALL UNIVERSITY FUNDS; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 3258

HeinOnline -- 1997 vol. I xcvi 1997

548 *(House Bill No. 252; Molnar)* AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND INDEPENDENT CONTRACTORS; REPEALING CERTAIN CONTRACTOR REGISTRATION REQUIREMENTS; ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; ELIMINATING INVESTIGATORY, ENFORCEMENT, AND NOTICE AND APPEAL PROCEDURES RELATING TO CONTRACTOR REGISTRATION; PROVIDING FOR A PENALTY OF UP TO $500 FOR CERTAIN VIOLATIONS OF THE CONSTRUCTION CONTRACTOR REGISTRATION LAWS; REQUIRING THAT ANY PENALTY COLLECTED BE DEPOSITED IN THE UNINSURED EMPLOYERS' FUND; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL 2-YEAR CERTIFICATE TO A MAXIMUM OF $70 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF $70; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, FOR LICENSED WATER WELL CONTRACTORS, FOR ENROLLED TRIBAL MEMBERS OR TRIBALLY OWNED BUSINESSES, FOR CERTAIN PROPERTY OWNERS, FOR PROJECTS COSTING LESS THAN $2,500, AND FOR INDEPENDENT CONTRACTORS WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A $25 FEE FOR THE INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 39-9-101, 39-9-102, 39-9-201, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 39-9-401, 39-71-120, AND 39-71-401, MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, 39-9-202, 39-9-203, 39-9-302, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE. . . . . 3260

549 *(House Bill No. 578; Johnson, Royal)* AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT IN 1999; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE DEPARTMENT OF COMMERCE; REVISING THE JOB INVESTMENT LOAN LAWS; REVISING THE CONDITIONS FOR MEMBERSHIP ON THE BOARD; TRANSFERRING A PORTION OF THE INTEREST EARNINGS TO THE SUPREME COURT TO FUND JUDGES' RETIREMENT; AUTHORIZING A GRANT OF INTEREST EARNINGS TO THE UNIVERSITY SYSTEM; AMENDING SECTIONS 2-15-1818, 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE. . . . . 3273

550 *(Senate Bill No. 48; Sprague)* AN ACT GENERALLY REVISING THE YOUTH COURT ACT; REPLACING THE CATEGORY OF "YOUTH IN NEED OF SUPERVISION" WITH "YOUTH IN NEED OF INTERVENTION"; INCLUDING SCHOOLS UNDER CONFIDENTIALITY DISCLOSURE EXCEPTIONS FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RECORDS; CREATING YOUTH ASSESSMENT CENTERS, YOUTH ASSESSMENTS, AND ASSESSMENT OFFICERS TO EVALUATE THE

HeinOnline -- 1997 vol. I xcvii 1997

STRENGTHS AND NEEDS OF A YOUTH BROUGHT TO THE ATTENTION OF YOUTH COURT; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LICENSE YOUTH ASSESSMENT CENTERS; DEFINING "HABITUAL TRUANCY", "RUNNING AWAY FROM HOME", "VICTIM", "YOUTH IN NEED OF INTERVENTION", AND OTHER TERMS; CHANGING THE TERM "AFTERCARE" TO "PAROLE"; ALLOWING SHORT-TERM DETENTION FOR UP TO 10 DAYS; ALLOWING THE APPOINTMENT OF JUDGES PRO TEMPORE OR SPECIAL MASTERS FOR YOUTH COURT PRELIMINARY MATTERS; ALLOWING A COUNTY ATTORNEY TO MAKE A MOTION FOR LEAVE TO FILE AN INFORMATION DIRECTLY IN DISTRICT COURT FOR CERTAIN YOUTH OFFENSES; REQUIRING A COUNTY ATTORNEY TO MAKE A MOTION FOR A LEAVE TO FILE AN INFORMATION DIRECTLY INTO DISTRICT COURT FOR A YOUTH 17 YEARS OF AGE WHO COMMITS AN OFFENSE LISTED UNDER 41-5-206; ADDING ACCOUNTABILITY AS AN OFFENSE THAT CAN BE FILED IN DISTRICT COURT; ADDING ASSESSMENT CENTERS FOR PLACEMENTS PRIOR TO ADJUDICATION AND FOR DISPOSITION; ALLOWING FINGERPRINTS OR PHOTOGRAPHS OF ANY YOUTH FOR WHICH A PETITION ALLEGING DELINQUENCY HAS BEEN FILED; PROVIDING CRITERIA FOR AN ASSESSMENT; PROVIDING FOR SPECIFIC INFORMATION GATHERING BY JUVENILE PROBATION OFFICERS; PROVIDING THE TYPES OF PLACEMENTS ALLOWED FOR ASSESSMENT; GENERALLY REORGANIZING DISPOSITION STATUTES; ALLOWING COMMITMENT TO THE DEPARTMENT OF CORRECTIONS AS A DISPOSITION FOR DELINQUENT YOUTH; GENERALLY REORGANIZING PARENTAL CONTRIBUTIONS STATUTES; ALLOWING MEDIATION AS A DISPOSITION; LIMITING THE USE OF A CONSENT ADJUSTMENT AND A CONSENT DECREE TO A SINGLE FELONY EACH AND FOR THREE OR MORE MISDEMEANORS; PROVIDING GRADUATED SANCTIONS; PROVIDING ADDITIONAL SANCTIONS; ADDING PROVISIONS THAT YOUTH MAY BE HELD RESPONSIBLE FOR CONTRIBUTING TO THE COSTS OF ADJUDICATION, DISPOSITION, SUPERVISION, AND MEDICAL COSTS OR VICTIM'S COUNSELING AND DAMAGES; ALLOWING DETENTION FOR UP TO 3 DAYS FOR A CONSENT ADJUSTMENT; PROVIDING THAT PERSONS BE ADVISED OF CERTAIN RIGHTS AND OBLIGATIONS UNDER THE ACT; CLARIFYING JURY TRIAL PROVISIONS; ALLOWING DETENTION FOR A CONSENT DECREE FOR UP TO 10 DAYS; REQUIRING THAT A YOUTH MUST ADMIT GUILT FOR CHARGES OF AN OFFENSE IN ORDER FOR A CASE TO BE DISPOSED OF BY A CONSENT DECREE; ADDING A PROVISION THAT SCHOOL REPRESENTATIVES ON YOUTH PLACEMENT COMMITTEES AND AUXILIARY TEAMS BE PERSONS WITH PERSONAL KNOWLEDGE OF THE CHILD; ALLOWING SHELTER CARE FACILITIES TO BE ALTERNATIVE EDUCATION SITES; CLARIFYING THE ABILITY OF SCHOOL DISTRICTS TO SHARE INFORMATION ACCORDING TO FEDERAL LAW; AMENDING THE MAXIMUM AGE OF COMMITMENT TO THE DEPARTMENT OF CORRECTIONS TO YOUTH UNDER 18 YEARS OF AGE; ALLOWING PUBLICATION OF INFORMATION ON CERTAIN YOUTH FOR PURPOSES OF RETURNING A YOUTH TO A FACILITY AND FOR PUBLIC SAFETY; ALLOWING DETENTION FOR YOUTH WHO ESCAPE FROM DEPARTMENT OF CORRECTIONS FACILITIES OR PROGRAMS; AMENDING THE PAROLE VIOLATION HEARINGS AND APPEAL PROCESS; AUTHORIZING THE DEPARTMENT OF CORRECTIONS TO OPERATE A PILOT

HeinOnline -- 1997 vol. I xcviii 1997

PROGRAM AND TO DEVELOP RECOMMENDATIONS FOR ALLOCATION OF APPROPRIATIONS AMONG JUDICIAL DISTRICTS; AMENDING SECTIONS 7-6-501, 20-5-321, 20-7-422, 23-5-158, 41-3-205, 41-3-1101, 41-3-1102, 41-3-1103, 41-3-1104, 41-3-1114, 41-3-1122, 41-3-1132, 41-5-103, 41-5-201, 41-5-203, 41-5-204, 41-5-205, 41-5-206, 41-5-208, 41-5-301, 41-5-303, 41-5-304, 41-5-305, 41-5-306, 41-5-401, 41-5-403, 41-5-501, 41-5-511, 41-5-515, 41-5-521, 41-5-522, 41-5-523, 41-5-524, 41-5-525, 41-5-530, 41-5-533, 41-5-603, 41-5-605, 41-5-703, 41-5-802, 41-5-1004, 41-5-1008, 41-5-1104, 41-5-1105, 45-5-624, 45-5-637, 46-18-256, 46-24-207, 52-2-211, 52-5-101, 52-5-102, 52-5-103, 52-5-107, 52-5-111, 52-5-113, 52-5-126, 52-5-127, 52-5-128, 52-5-129, 53-1-201, 53-1-203, AND 53-21-506, MCA; REPEALING SECTION 41-5-310, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE. . . . . 3283

551 *(House Bill No. 2; Zook)* AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1999; AND PROVIDING AN EFFECTIVE DATE. . . . . 3349

552 *(Senate Bill No. 374; Hargrove)* AN ACT IMPLEMENTING THE CHILD SUPPORT PROVISIONS OF THE FEDERAL PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996; CREATING AN ADVISORY BOARD TO ADVISE THE DEPARTMENT; INSTITUTING AUTOMATED, MASS CASE PROCESSING TECHNIQUES FOR CHILD SUPPORT, INCLUDING A CENTRAL CASE REGISTRY, A CENTRALIZED UNIT FOR TRACKING AND DISBURSING CHILD SUPPORT COLLECTIONS, AND A DIRECTORY OF NEW HIRES; RESTRUCTURING EXISTING CHILD SUPPORT PROCEDURES BY INCLUDING REVISED INCOME-WITHHOLDING PROCEDURES, REVISED PATERNITY ESTABLISHMENT PROCESSES, AVAILABILITY OF SOCIAL SECURITY NUMBERS, EXPANDED ACCESS TO PUBLIC AND PRIVATE SOURCES OF INFORMATION FOR LOCATE PURPOSES, AVAILABILITY OF OTHER AUTOMATED LOCATE SOURCES, WORK REQUIREMENTS FOR PARENTS OWING SUPPORT, ENHANCED INTERSTATE ENFORCEMENT PROCEDURES INVOLVING INTERSTATE LIENS AND SUBPOENAS, AND EXPANDED LICENSE SUSPENSION PROCEDURES TO INCLUDE RECREATIONAL LICENSES; PROVIDING THAT ADMINISTRATIVE ORDERS HAVE FULL FORCE AND EFFECT WITHOUT FILING THEM WITH THE DISTRICT COURT; REVISING ADMINISTRATIVE REGISTRATION PROCEDURES; GENERALLY REVISING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO MAKE CHANGES REQUIRED BY THE FEDERAL ACT; AMENDING SECTIONS 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, 25-13-608, 37-1-307, 40-1-107, 40-4-105, 40-4-204, 40-4-206, 40-5-103, 40-5-149, 40-5-151, 40-5-161, 40-5-162, 40-5-163, 40-5-164, 40-5-173, 40-5-188, 40-5-189, 40-5-194, 40-5-195, 40-5-196, 40-5-201, 40-5-203, 40-5-206, 40-5-210, 40-5-225, 40-5-226, 40-5-227, 40-5-232, 40-5-233, 40-5-235, 40-5-236, 40-5-237, 40-5-263, 40-5-264, 40-5-271, 40-5-273, 40-5-274, 40-5-302, 40-5-303, 40-5-304, 40-5-305, 40-5-306, 40-5-307, 40-5-308, 40-5-309, 40-5-310, 40-5-312, 40-5-313, 40-5-314, 40-5-315, 40-5-403, 40-5-404, 40-5-412, 40-5-413, 40-5-414, 40-5-421, 40-5-423, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-6-102, 40-6-105, 40-6-111, 40-6-115, 40-6-116, 40-6-117, 50-15-210, 50-15-223, 50-15-403,53-2-613, 61-5-107, 87-1-102, AND 87-1-108, MCA; AND PROVIDING EFFECTIVE DATES, CONTINGENT TERMINATION DATES, AND A TERMINATION DATE. . . . . 3418

# SENATE JOINT RESOLUTIONS


| SJR | | Page |
|---|---|---|
| 1 | *(Harp)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING THE JOINT LEGISLATIVE RULES. . . . . | 3519 |
| 4 | *(Jergeson)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE STUDY THE CHALLENGES CONFRONTING AND OPPORTUNITIES EMERGING FOR FAMILY FARMING AND RANCHING IN MONTANA; AND REQUIRING THE COMMITTEE TO REPORT ITS FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS. . . . . | 3536 |
| 5 | *(Aklestad)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING ADDITIONAL PERFORMANCE MEASURES AND ASSESSMENT OF OUTCOMES FOR ADULTS IN CERTAIN JOB TRAINING PARTNERSHIP ACT PROGRAMS; AND ENCOURAGING THE TARGETING OF CERTAIN AVAILABLE JOB TRAINING PARTNERSHIP ACT FUNDS TO AT-RISK YOUTH AND YOUTH WHO HAVE COMMITTED OFFENSES. . . . . | 3537 |
| 8 | *(Estrada)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS AND THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES TO PROVIDE ANNUAL SCREENING MAMMOGRAMS FOR WOMEN WHO QUALIFY FOR MEDICARE. . | 3538 |
| 9 | *(Stang)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ACT IN A TIMELY FASHION TO REAUTHORIZE THE FEDERAL SURFACE TRANSPORTATION PROGRAM AND TO CONTINUE TO RECOGNIZE THE NATIONAL INTEREST IN THE INVESTMENT IN HIGHWAYS THAT SERVE AND CROSS RURAL WESTERN STATES. . . . . | 3539 |
| 10 | *(Beck)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF LAND COMMISSIONERS TO LEASE THE OLD REGISTRAR OF MOTOR VEHICLES OFFICE TO THE POWELL COUNTY MUSEUM AND ARTS FOUNDATION FOR THE PURPOSE OF ENHANCEMENT OF THE MONTANA TERRITORIAL PRISON MUSEUM OR FOR OTHER COMMUNITY PURPOSES. . . . . | 3541 |
| 12 | *(Foster)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING JEFFERSON HIGH SCHOOL FOR BEING THE FIRST MONTANA SCHOOL SELECTED TO PARTICIPATE IN THE AMERICAN HIGH SCHOOL THEATRE FESTIVAL. . . . . | 3542 |
| 13 | *(Miller)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE EFFORTS OF THE GOVERNOR TO DEVELOP A PROPOSAL THAT INCLUDES FEDERAL PROPERTIES WITHIN MONTANA THAT CAN BE PRESENTED TO THE FEDERAL GOVERNMENT AS A SOLUTION TO THE LAND EXCHANGE REQUIREMENTS OF THE CROWN BUTTE AGREEMENT AND | |


HeinOnline -- 1997 vol. I c 1997

REQUESTING FEDERAL COMPENSATION FOR THE LOSS OF TAX REVENUE THAT WOULD HAVE ACCRUED TO THE STATE OF MONTANA AND ITS LOCAL GOVERNMENTS AS A RESULT OF THE CROWN BUTTE PROJECT. . . . . 3542

14 *(McCarthy)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO APPOINT AN INTERIM COMMITTEE TO STUDY THE EFFECTS OF AND POSSIBLE REMEDIES TO TELEMARKETING FRAUD; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 56TH LEGISLATURE. . . . . 3544

15 *(Keating)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING AND CELEBRATING THE CONTRIBUTIONS OF CHET BLAYLOCK TO MONTANA AND AUTHORIZING THE PERMANENT PLACEMENT OF A SENATE MEMORIAL IN THE CAPITOL. . . . . 3545

16 *(Shea)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO STUDY THE NEED FOR AND METHOD OF PROVIDING A PROGRAM FOR THE VOLUNTARY REGISTRATION OR CERTIFICATION OF HOME COMPANIONS; AND REQUIRING A REPORT TO THE 56TH LEGISLATURE. . . . . 3546

# SENATE RESOLUTIONS

SR Page

1 *(Harp)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING RULES TO GOVERN THE PROCEEDINGS OF THE SENATE. . . . . 3548

3 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3565

4 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3566

5 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3566

6 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3567

7 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING

HeinOnline -- 1997 vol. I ci 1997

TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3567

8 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3568

9 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3568

10 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3569

11 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3569

12 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3570

13 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3570

14 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3571

15 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE. . . . . 3571

16 *(Doherty)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE KENNETH ROGER NEILL AS DISTRICT JUDGE, EIGHTH JUDICIAL DISTRICT, GREAT FALLS, MONTANA. . . . . 3572

17 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 6, 1997, TO THE SENATE. . . . . 3572

18 *(Harp)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REVISING CERTAIN SENATE RULES. . . . . 3583

19 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 1, 1997, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA. . . . . 3586

20 *(Hargrove)* A RESOLUTION OF THE SENATE OF THE 55TH LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 1997, TO THE SENATE. . . . . 3587

# HOUSE JOINT RESOLUTIONS

HJR Page

2 *(Harrington)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 1998-99 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING THE JUNE 30, 1996, GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 1997-98 AND 1998-99. . . . . 3594

3 *(DeBruycker)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO CONTINUE TO INVESTIGATE EXORBITANT DRUG PRICES THAT ARE BEING CHARGED TO CUSTOMERS IN THE UNITED STATES. . . . . 3598

4 *(McCunn)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF STATE PROPERTY MANAGEMENT; AND PROVIDING FOR A REPORT OF FINDINGS TO THE GOVERNOR AND 56TH LEGISLATURE. . . . . 3599

6 *(Heavy Runner)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE PERMANENT PLACEMENT OF A PLAQUE IN THE CAPITOL COMMEMORATING THE SERVICE OF WOMEN IN THE MONTANA LEGISLATURE. . . . . 3600

7 *(Peck)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING FULL MEMBERSHIP IN THE UNITED NATIONS FOR THE REPUBLIC OF CHINA ON TAIWAN. . . . . 3601

8 *(Brainard)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE 1995 AND 1996 UNIVERSITY OF

HeinOnline -- 1997 vol. I ciii 1997

MONTANA GRIZZLY FOOTBALL TEAMS FOR THEIR OUTSTANDING SEASONS. . . . . 3602

10 *(Hibbard)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRY TO UNDERTAKE AN EXPLORATION AND ANALYSIS OF DIFFERENT APPROACHES TO AN INTEGRATED DISPUTE SETTLEMENT PROCESS FOR EMPLOYMENT-RELATED ISSUES. . . . . 3602

12 *(Pavlovich)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ENACT LEGISLATION TO ALLOW DISABLED MILITARY RETIREES CONCURRENT RECEIPT OF FULL LONGEVITY RETIREMENT BENEFITS AND SERVICE-CONNECTED DISABILITY COMPENSATION. . . . . 3603

13 *(Curtiss)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO AMEND PRESIDENT CLINTON'S UNILATERAL ACTION IN DESIGNATING THE GRAND STAIRCASE—ESCALANTE NATIONAL MONUMENT; URGING CONGRESS TO REQUIRE NEGOTIATION WITH THE STATES AND A STRONGER CONSIDERATION OF THE SOCIAL AND ECONOMIC CONSEQUENCES IN THE DESIGNATION OF NATIONAL MONUMENTS AND WILDERNESS AREAS; AND REQUIRING THE SECRETARY OF STATE TO TRANSMIT COPIES OF THE GRAND STAIRCASE—ESCALANTE NATIONAL MONUMENT RESOLUTION. 3604

14 *(Curtiss)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE MONITOR AND STUDY FEDERAL MANDATES; AND REQUIRING A REPORT OF THE COMMITTEE'S FINDINGS AND CONCLUSIONS TO THE 56TH LEGISLATURE. . . . . 3606

16 *(Pavlovich)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE HONOR AND VALOR OF MONTANA'S 163RD INFANTRY REGIMENT, MONTANA ARMY NATIONAL GUARD. . . . . 3607

17 *(Pavlovich)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE HONOR AND LINEAGE OF THE 120TH FIGHTER WING, MONTANA AIR NATIONAL GUARD. . . . . 3608

18 *(DeBruycker)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ENACT LEGISLATION TO REVISE THE PROCESS BY WHICH NEW DRUGS, BIOLOGICAL PRODUCTS, AND MEDICAL DEVICES ARE APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION. . . . . 3609

19 *(Mercer)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF CORRECTIONAL STANDARDS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 56TH LEGISLATURE. . . . . 3610

21 *(Denny)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE LOYOLA SACRED HEART HIGH SCHOOL

HeinOnline -- 1997 vol. I civ 1997

SPEECH AND DEBATE TEAM FOR ITS 14TH CONSECUTIVE STATE CHAMPIONSHIP. . . . . 3611

22 *(Pavlovich)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE 130TH ANNIVERSARY OF MONTANA'S MILITARY EXPERIENCE AND RECOGNIZING ALL PERSONS WHO HAVE IN THE PAST BEEN IN OR WHO ARE CURRENTLY IN SERVICE TO THE NATION AND STATE. . . . . 3612

23 *(Tropila)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF COMBINING SCHOOL ELECTIONS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 56TH LEGISLATURE. . . . . 3614

24 *(Soft)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONSENTING TO THE CONSTRUCTION OF A CHAPEL AT THE INSTITUTION OF THE MONTANA WOMEN'S CORRECTIONAL SYSTEM IN BILLINGS AND A CHURCH AT THE MONTANA DEVELOPMENTAL CENTER IN BOULDER AND THE MOVING OF A CHURCH STRUCTURE FROM THE GALEN CAMPUS TO THE WARM SPRINGS CAMPUS. 3615

25 *(Brainard)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO REAFFIRM ITS POWER OVER INTERNATIONAL AGREEMENTS THAT CONCERN THE USE AND MANAGEMENT OF LAND AND RESOURCES BELONGING TO THE UNITED STATES, THE INDIVIDUAL STATES, AND THE PEOPLE. 3616

26 *(Curtiss)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO SUBMIT TO THE STATES FOR RATIFICATION A BALANCED BUDGET AMENDMENT TO THE UNITED STATES CONSTITUTION. . . . . 3617

27 *(Anderson)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE GOVERNOR FOR HIS STANCE ON FEDERAL BISON MANAGEMENT AND URGING HIM TO REMAIN FIRM IN HIS DEMAND THAT THE PRESIDENT OF THE UNITED STATES DIRECT THE UNITED STATES SECRETARIES OF AGRICULTURE AND THE INTERIOR TO RESOLVE THEIR DIFFERENCES OVER BISON MANAGEMENT IN A WAY THAT WILL NOT EXPOSE MONTANA CITIZENS OR THE AGRICULTURE INDUSTRY TO HARM. . . . . 3618

28 *(Curtiss)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING FEDERAL LAW ENFORCEMENT OFFICERS TO MORE FULLY COOPERATE WITH COUNTY SHERIFFS. . . . . 3620

29 *(Cocchiarella)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE MISSOULA BIG SKY HIGH SCHOOL BOYS BASKETBALL TEAM ON WINNING THE 1997 CLASS AA STATE CHAMPIONSHIP. . . . . 3621

30 *(Ahner)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE HELENA CAPITAL HIGH BRUIN FOOTBALL TEAM ON WINNING THE MONTANA STATE AA HIGH SCHOOL FOOTBALL CHAMPIONSHIP. . . . . 3622

HeinOnline -- 1997 vol. I cv 1997

31 *(Pease)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE HARDIN HIGH SCHOOL BULLDOGS BASKETBALL TEAM ON WINNING THE MONTANA STATE CLASS A HIGH SCHOOL BOYS BASKETBALL CHAMPIONSHIP. . . . . 3622

# HOUSE RESOLUTIONS

HR Page

1 *(Grinde)* A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING RULES GOVERNING THE HOUSE OF REPRESENTATIVES. . . . . 3624

# SESSION LAWS

## Enacted by the

# FIFTY-FIFTH LEGISLATURE
# IN REGULAR SESSION

**Held at Helena, the Seat of Government**
**January 6, 1997, through April 23, 1997**

**Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes he printed in italics and that deleted provisions be shown as stricken.**

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**COMPILED BY MONTANA**
**LEGISLATIVE SERVICES DIVISION**

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HeinOnline -- 1997 vol. I 1 1997

HeinOnline -- 1997 vol. I 2 1997

# CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** The following amounts are appropriated from the general fund for fiscal years 1997, 1998, and 1999 for the operation of the 55th legislature and costs of preparing for the 56th legislature:

| | |
|---|---|
| LEGISLATIVE BRANCH (1104) | |
| 1. Senate (25) | $1,622,683 |
| 2. House of Representatives (26) | 2,671,637 |
| 3. Legislative Services Division Feed Bill (22) | 634,839 |

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved January 15, 1997

# CHAPTER NO. 2

[SB 18]

AN ACT CLARIFYING THE AUTHORITY OF THE LEGISLATIVE BRANCH TO ESTABLISH CERTAIN LEAVE AND OVERTIME PROVISIONS FOR LEGISLATIVE EMPLOYEES; AMENDING SECTIONS 2-18-606 AND 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-18-606, MCA, is amended to read:

**"2-18-606. Parental leave for state employees.** (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave~~,~~ immediately following the birth or placement of a child~~,~~ for a period not to exceed 15 working days if:

(a) the employee is adopting a child; or

(b) the employee is a birth father.

(2) As used in this section, "placement" means placement for adoption as defined in 40-8-103.

*(3) A state agency that is not subject to the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency."*

**Section 2.** Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distrihutive education program estahlished under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of tlie household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their suppert in the customary sense of being a dependent;

(e) any persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial dato of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate estahlished in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the United Statos of America;

(l) resident managers employed in lodging estahlishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food hroker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transpertation has power to establish qualifications and maximum hours of service pursuant to tlie provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

HeinOnline -- 1997 vol. I 5 1997

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

HeinOnline -- 1997 vol. I 6 1997

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

*(y) an employee of the consolidated legislative branch as provided in 5-2-503."*

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved January 27, 1997

# CHAPTER NO. 3

[HB 30]

AN ACT ALLOWING THE MONTANA HISTORICAL SOCIETY TO SET HOURS FOR PUBLIC VISITATION; AND AMENDING SECTION 2-16-117, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-16-117, MCA, is amended to read:

**"2-16-117. Office hours.** *(1)* Unless otherwise provided by law, ~~every officer must keep his office~~ *state executive branch offices must be* open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except ~~upon~~ *on* Saturdays, *Sundays,* and holidays. ~~Every officer shall keep his office~~ *Each office must also be* open at ~~such~~ other times as the accommodation of the public or the proper transaction of business requires~~, excepting the~~.

*(2) The* state treasurer~~, who in his discretion~~ may, in the interest of ~~the~~ safekeeping ~~of~~ funds, securities, and records ~~under his control~~, close ~~his~~ *the state treasurer's* office ~~during the period~~ from ~~12~~ noon to 1 p.m. ~~every~~ *each* day.

*(3) The Montana historical society, established in 22-3-101, may be open for public visitation at hours other than those prescribed in this section, including hours during evenings and weekends."*

Approved January 28, 1997

# CHAPTER NO. 4

[HB 57]

AN ACT GRANTING THE MONTANA ALFALFA SEED COMMITTEE THE AUTHORITY TO ADMINISTER THE ALFALFA LEAF-CUTTING BEE MANAGEMENT ACT AND THE ALFALFA SEED INDUSTRY ACT; EXPANDING THE MEMBERSHIP OF THE MONTANA ALFALFA SEED COMMITTEE; ELIMINATING THE ALFALFA LEAF-CUTTING BEE COMMITTEE; AMENDING SECTIONS 2-15-3004 AND 80-6-1102, MCA; REPEALING SECTION 2-15-3005, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature finds that the alfalfa seed industry and the alfalfa leaf-cutting bee industry are closely related; and

HeinOnline -- 1997 vol. I 7 1997

WHEREAS, the Legislature also finds that it is in the best interest of the people of the State of Montana to promote economy in government regulation of industry; and

WHEREAS, it is the intent of the Legislature to combine with the Montana Alfalfa Seed Committee the duties, respensibilities, and representation of the Alfalfa Leaf-Cutting Bee Committee and to grant the Montana Alfalfa Seed Committee the authority to administer the Alfalfa Leaf-Cutting Bee Management Act and the Alfalfa Seed Industry Act.

*Be it enacted by the legislature of the State of Montana:*

**Section 1.** Section 2-15-3004, MCA, is amended to read:

**"2-15-3004. Montana alfalfa seed committee — composition — allocation.** (1) There is a Montana alfalfa seed committee composed of ~~seven~~ *eight* members *as follows:*

*(a) five members* appointod by the gevernor *who are citizens of Montana and who are actively engaged in the growing of alfalfa seed within the state, deriving a substantial portion of their income from handling, packing, shipping, buying, or selling alfalfa seed, or acting as a broker or factor of alfalfa seed. These five members must be compensated as provided in 80-11-305.*

*(b) two members appointed by the governor who are citizens of Montana and who are actively engaged in the growing of alfalfa seed within the state and the rearing of alfalfa leaf-cutting bees. Each member must be compensated from the enterprise fund established in 80-6-1109 at $25 for each day in which the member is engaged in the official business of the committee, plus expenses as provided for in 2-18-501 through 2-18-503.*

*(c)* ~~The~~ *the* director of the department of agriculture or ~~his~~ *the director's* authorized representative ~~shall be an ex officio, nonvoting member of the committee~~.

~~(2) Each of the appointed members shall be a citizen of Montana actively engaged in the growing of alfalfa seed within the state or deriving a substantial portion of his income from handling, packing, shipping, buying, or selling alfalfa seed or acting as a broker or factor of alfalfa seed. These qualifications of members must continue during their terms of office.~~

~~(3)~~*(2)* A list of nominees for appointment may be submitted to the governor by the Montana alfalfa seed association, the Montana seed trade association, the Montana seed growers association, and any other organization representing alfalfa seed growers or dealers. Names of nominees ~~shall~~ *must* be submitted at least 91 days before the expiration of a committee member's term. The governor shall appoint members from among the persons nominated.

~~(4)~~*(3)* The appointed members ~~shall~~ serve staggered terms of 3 years. The initial appointments ~~shall be~~ *are* as follows: two members for 1-year terms, two members for 2-year terms, and three members for 3-year terms.

~~(5)~~*(4)* The committee is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121."

**Section 2.** Section 80-6-1102, MCA, is amended to read:

"80-6-1102. **Definitions.** As used in this part, the following definitions apply:

(1) "Bee" means any stage in the life cycle of a bee of the species Megachile rotundata (F), commonly known as the alfalfa leaf-cutting bee.

(2) "Certification" means the process of analyzing bees and equipment by the committee to determine whether they meet required standards.

(3) "Chalkbrood" means a fungal disease that attacks larvae of the alfalfa leaf-cutting bee.

(4) "Committee" means the *Montana* alfalfa ~~leaf-cutting bee~~ *seed* committee established in ~~2-15-3005~~ *2-15-3004*.

(5) "Department" means the department of agriculture established in 2-15-3001.

(6) "Equipment" means shelters, trays, incubators, cell removers, tumblers, and other apparatus, except nesting materials, used in rearing bees.

(7) "Nest destroyer" means any organism that competes with the bee larvae for nest provisions.

(8) "Nesting materials" means laminates, drilled boards, and other apparatus used in nesting bees.

(9) "Parasite" means an organism living in or on any stage of the alfalfa leaf-cutting bee obtaining nutriment from the body of the bee.

(10) "Pathogen" means an organism that causes disease in the alfalfa leaf-cutting bee.

(11) "Person" means an individual, association, partnership, or corporation.

(12) "Predator" means any organism or insect that preys on, devours, or destroys bees or nests.

(13) "Wild trap" means to intentionally trap bees on property not owned or leased by the trapper."

**Section 3. Repealer.** Section 2-15-3005, MCA, is repealed.

**Section 4. Transition.** [This act] merges the alfalfa leaf-cutting bee committee into the Montana alfalfa seed committee and revises the membership of the Montana alfalfa seed committee to accommodate the merger. Because there are now incumbents holding positions on both committees, the legislature intends for the governor to make membership adjustments when necessary on and after [the effective date of this act], in accordance with 2-15-3004 as amended by [this act].

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved January 28, 1997

HeinOnline -- 1997 vol. I 9 1997

# CHAPTER NO. 5

[HB 26]

AN ACT PROVIDING TWO METHODS OF NOMINATING AN INDIVIDUAL FOR THE PRESIDENTIAL PREFERENCE PRIMARY; REDUCING THE NUMBER OF SIGNATURES NECESSARY ON A NOMINATING PETITION; AND AMENDING SECTIONS 13-10-201 AND 13-10-404, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-10-201, MCA, is amended to read:

"**13-10-201. Declaration for nomination.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidato for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for *placement of a name on the ballot for the presidential preference primary,* a congressional office, *a* state or district office to be voted for in more than one county, *a* member of the legislature, or *a* judge of the district court;

(b) the election administrator for a county, niunicipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required hy 13-10-203. The declaration for nomination niust be acknowledged by an officer empowered to acknowledge signatures if sent by mail or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changos residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting theni.

(6) Declarations for nomination niust be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.ni., 75 days before the date of the primary election."

**Section 2.** Section 13-10-404, MCA, is amended to read:

HeinOnline -- 1997 vol. I 10 1997

"13-10-404. ~~Nomination petition~~ ***Placement of candidate on primary ballot — methods of qualification.*** Before *an individual intending to qualify as* a presidential candidate may qualify for placement on the ballot, the ~~candidate must be~~ *individual shall qualify by one or more of the following methods:*

*(1) The individual has been* nominated on petitions with the verified signatures of at least ~~2,000~~ *500* qualified electors. The secretary of state ~~is empowered to~~ *shall* prescribe the form and content of the petition.

*(2) The individual has submitted a declaration for nomination to the secretary of state pursuant to 13-10-201, and the secretary of state has determined, by the time that declarations for nomination are to be filed, that the individual is eligible to receive payments pursuant to the federal Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031, et seq.*"

Approved February 5, 1997

# CHAPTER NO. 6

[SB 47]

AN ACT PROVIDING FOR SIGNATURE ALTERNATIVES FOR PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER; AMENDING SECTION 15-30-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-211, MCA, is amended to read:

"**15-30-211. Signature alternatives for electronically filed returns.** For purposes of ~~this part~~ *Title 15, chapters 1, 2, 6 through 10, 15 through 18, 23, 24, 30 through 33, 35 through 38, 44, 50, 51, 53, 59 through 61, and 65, and Title 16, chapter 11,* the director of revenue, *and for the purposes of Title 15, chapter 70, the director of the department of transportation,* may prescribe, by rule, methods for ~~the~~ signing, subscribing, or verifying ~~of the~~ electronically filed tax returns ~~required to be filed by this part~~. Returns electronically filed in accordance with the methods adopted by rule have the same validity and consequences as physical forms signed by a taxpayer."

**Section 2. Renumbering — directions to code commissioner.** The code commissioner is instructed to renumber 15-30-211 as an integral part of Title 15, chapter 1, part 2, and as an integral part of Title 16, chapter 11.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved February 5, 1997

HeinOnline -- 1997 vol. I 11 1997

# CHAPTER NO. 7

[SB 53]

AN ACT AUTHORIZING THE DEPARTMENT OF AGRICULTURE TO ESTABLISH RULES GOVERNING QUARANTINES TO CONTROL INJURIOUS PLANT PESTS, PLANTS CAPABLE OF SPREADING PLANT PESTS, NOXIOUS WEEDS, AND OTHER EXOTIC PLANTS DEFINED BY THE DEPARTMENT AS PLANT PESTS; AUTHORIZING THE ADOPTION OF PEST MANAGEMENT STANDARDS AND PROCEDURES REGARDING THE INTRODUCTION OF THESE PESTS AND BIOLOGICAL CONTROL AGENTS; PROVIDING FOR RECEIPT AND DEPOSIT OF FUNDS; PROVIDING A PENALTY; AMENDING SECTIONS 80-7-123 AND 80-7-135, MCA; AND REPEALING SECTION 80-7-121, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] allows the department of agriculture to adopt all rules necessary to impose and administer quarantines. It is intended that the rules address:

(1) quarantines applicable to both intrastate and interstate plant and plant pest movement;

(2) procedures necessary to prevent the introduction and spread of pests that are considered plant pests and of plants capable of spreading plant pests, noxious weeds, and certain exotic plants that are considered pests;

(3) establishment of plant pest standards and procedures for surveying and controlling plant pests in this state;

(4) procedures that will allow the introduction of certain plant pests and biological control agents into Montana when necessary to control plant diseases or other plant pests; and

(5) procedures that will allow the department to recover costs incurred in implementing quarantines and plant pest management standards and te impose civil fines for violations of these rules, which may include a penalty schedule for initial and subsequent violations.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 4] may be cited as the "Montana Quarantine and Pest Management Act".

**Section 2. Quarantines and pest management procedures — department rules.** The department may adopt rules concerning:

(1) intrastate and interstate quarantines;

(2) procedures to investigate and enforce quarantines to prevent the introduction or spread of plant pests, plants capable of spreading plant pests, plants defined as noxious weeds in 7-22-2101, and other exotic plants defined by department rule as plant pests;

(3) pest management standards and procedures for surveying and controlling plant pests;

(4) procedures for the introduction of plant pests and biological control agents into the state; and

(5) procedures for the recovery of expenses and imposition of penalties.

**Section 3. Receipt and deposit of gifts, grants, and other funds.** (1) To fund the provisions of [section 2], the department may receive funds from any source as gifts, grants, contracts, cost-share funds, and other funds, including civil penalties and recovered expenses.

(2) Except for funds received in the form of civil penalties, funds received pursuant to this section must be deposited in the produce account established in 80-3-304. Funds received in the form of civil penalties must be deposited in the general fund.

**Section 4. Penalty.** (1) A person who violates the quarantines, procedures, or rules of the department adopted under [section 2] commits a civil offense and is subject to a civil penalty of not more than $1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by [sections 1 through 4]. A civil penalty collected under this section must be depesited in the general fund.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $1,000, for initial and subsequent offenses; and

(b) other matters necessary for the enforcement of civil penalties.

(4) This section may not be construed as requiring the department or its agents to report violations of [section 2] when the department believes that the public interest will be best served by a suitable notice of warning.

**Section 5.** Section 80-7-123, MCA, is amended to read:

**"80-7-123. Nursery account — investment of funds.** (1) There is an account in the state special revenue fund. All inspection and license fee revenue authorized under 80-7-105, 80-7-106, 80-7-108, 80-7-109, ~~80-7-121,~~ 80-7-122, 80-7-135, and this section must be depesited in this account.

(2) Revenue received under 80-7-105, 80-7-106, 80-7-108, 80-7-109, ~~80-7-121,~~ 80-7-122, 80-7-135, and this section not immediately required for the purpose of 80-7-105, 80-7-106, 80-7-108, 80-7-109, ~~80-7-121,~~ 80-7-122, 80-7-135, and this section must be invested in accordance with the unified investment program established in Title 17, chapter 6, part 2. Income from the investments must be deposited in the account."

**Section 6.** Section 80-7-135, MCA, is amended to read:

**"80-7-135. Penalty for violation.** (1) A firm or nursery that purposely, knowingly, or negligently violates or aids in the violation of a provision of this chapter or of the rules, orders, or quarantines of the department adopted under Title 2, chapter 4, and this chapter commits a civil offense and is subject to a civil penalty of not more than $1,000 for each violation.

HeinOnline -- 1997 vol. I 13 1997

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this chapter. A civil penalty collected under this section must be deposited in the general fund.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $1,000, for initial and subsequent offenses; and

(b) other matters necessary for the administration of civil penalties.

(4) Sections 80-7-105, 80-7-106, 80-7-108, 80-7-109, ~~80-7-121 through~~ *80-7-122,* 80-7-123, and this section may not be construed as requiring the department or its agents to report violations of this chapter when the department believes that the public interest will be best served by a suitable notice of warning."

**Section 7. Repealer.** Section 80-7-121, MCA, is repealed.

Approved February 5, 1997

# CHAPTER NO. 8

[HB 33]

AN ACT REPEALING PROVISIONS REQUIRING PLANNING AND MONITORING OF HEALTH CARE FACILITIES THAT HAD IMPLEMENTED PROVISIONS OF THE FEDERAL HILL-BURTON ACT THAT HAVE BEEN REPEALED; AND REPEALING SECTIONS 50-5-402, 50-5-403, 50-5-404, 50-5-405, 50-5-406, 50-5-407, 50-5-408, 50-5-409, 50-5-410, AND 50-5-411, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** Sections 50-5-402, 50-5-403, 50-5-404, 50-5-405, 50-5-406, 50-5-407, 50-5-408, 50-5-409, 50-5-410, and 50-5-411, MCA, are repealed.

Approved February 6, 1997

# CHAPTER NO. 9

[HB 48]

AN ACT CONFORMING REQUIREMENTS FOR RETIREMENT OF MONTANA NATIONAL GUARD MEMBERS BECAUSE OF AGE TO REQUIREMENTS FOR RETIREMENT OF MEMBERS OF THE NATIONAL GUARD OF THE UNITED STATES; AMENDING SECTIONS 10-1-203 AND 10-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-1-203, MCA, is amended to read:

HeinOnline -- 1997 vol. I 14 1997

"**10-1-203. Retirement of officers.** (1) An officer of the national guard ~~shall~~ *must* be retired by order of the governor for the following reasons:

(a) upon ~~reaching his 60th birthday~~ *loss of federal recognition*; or

(b) ~~his~~ unfitness for military service because of a physical disability.

(2) An officer is retired *from the militia* with the grade and rank held ~~by him~~ at the time of retirement."

**Section 2.** Section 10-1-304, MCA, is amended to read:

"**10-1-304. Retirement of enlisted members.** An enlisted member of the national guard ~~shall~~ *must* be retired by order of the governor for the following reasons:

(1) upon ~~reaching his 60th birthday~~ *loss of active reserve status*; or

(2) ~~his~~ unfitness for military service because of a physical disability."

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to officers appointed by commission or warrant and all other members enlisted prior to [the effective date of this act].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved February 7, 1997

# CHAPTER NO. 10

[SB 24]

AN ACT ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS, REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY THE STATE MILITARY FORCES; AND AMENDING SECTION 10-1-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-1-104, MCA, is amended to read:

"**10-1-104. Federal regulations to govern.** (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the militia, as in effect on October 1, ~~1995~~ *1997*, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the military forces of this state, including all members of the national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~1995~~ *1997*, including the regulations, manuals, forms, precedents and usages implementing, interpreting, and complementing the code, is adopted for use by the military forces of this state and applies, insofar as the code is not otherwise inconsistent with the constitution of this state and except as otherwise provided by this title or by rule adopted by the department, to the greatest extent

HeinOnline -- 1997 vol. I 15 1997

practicable to govern the military forces of this state, including all members of the national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

**Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved February 7, 1997

# CHAPTER NO. 11

[SB 30]

AN ACT ELIMINATING THE REQUIREMENT THAT A STATEMENT OF LEGISLATIVE INTENT BE INCLUDED IN A BILL DELEGATING RULEMAKING AUTHORITY TO AN AGENCY; REQUIRING STATUTES DELEGATING RULEMAKING AUTHORITY TO PROVIDE SPECIFIC GUIDELINES; AMENDING SECTION 17-7-138, MCA; REPEALING SECTIONS 5-4-401, 5-4-402, 5-4-403, AND 5-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-7-138, MCA, is amended to read:

**"17-7-138. Operating budget.** (1) Expenditures by a state agency must be made in substantial compliance with an operating budget approved by an approving authority. Substantial compliance means that a first-level category in the operating budget may not be exceeded by more than 5%. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law ~~and any statement of intent adopted as part of a bill~~.

(2) The expenditure of money appropriated in the general appropriations act to the university system units, as defined in 17-7-102, is contingent upen approval of an operating budget by Octeber 1 of each fiscal year. All other requirements in this section apply to the university system.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the oporating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget and any approved changos on the statewide budget and accounting system. Forms used for changing an operating budget must reference the current, complete, and approved operating budget, show the propesed changes to the oporating budgot, and reference any other pending documents to chango the operating budget."

HeinOnline -- 1997 vol. I 16 1997

**Section 2. Rulemaking authority.** A statute delegating rulemaking authority to an agency must contain specific guidelines describing for the agency and the public what the rules may and may not contain.

**Section 3. Codification instruction.** [Section 2] is intended to he codified as an integral part of Title 5, chapter 4, part 1, and the provisions of Title 5, chapter 4, part 1, apply to [section 2].

**Section 4. Repealer.** Sections 5-4-401, 5-4-402, 5-4-403, and 5-4-404, MCA, are repealed.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved February 7, 1997

# CHAPTER NO. 12

[SB 161]

AN ACT PROVIDING THAT AN ADMINISTRATIVE WARRANT ISSUED TO A PAWNBROKER OR DEALER TO SURRENDER STOLEN PROPERTY SHALL BE ISSUED BY THE ADMINISTRATIVE HEAD OF THE INVESTIGATING AGENCY; AND AMENDING SECTION 46-5-212, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-5-212, MCA, is amended to read:

"**46-5-212. Pawnbroker to surrender stolen property — warrant.** (1) When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to or purchased by the pawnbroker or dealer is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days upon issuance of an administrative warrant by a peace officer. Following *the* expiration of the 30-day period, the pawnbroker or dealer shall surrender the property to the peace officer upon demand. The peace officer shall give the pawnbroker or dealer a receipt for any property surrendered by the pawnbroker or dealer. During the 30-day period, the pawnbroker or dealer may appeal the validity of the administrative warrant in justice's court or *in* municipal court.

(2) As used in this section, "administrative warrant" means a warrant:

(a) issued by the ~~chief law enforcement officer~~ *administrative head, or the administrative head's designee, of the investigating agency* of the jurisdiction;

(b) that describes the property to he held; and

(c) that states that the pawnbroker *or dealer* shall hold the property for 30 days from tbe date of receipt."

Approved Fehruary 7, 1997

# CHAPTER NO. 13

[HB 16]

AN ACT REQUIRING LICENSURE OF A PERSON SELLING SPORTS TAB GAMES; AND AMENDING SECTIONS 23-5-112, 23-5-502, AND 23-5-503, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-5-112, MCA, is amended to read:

**"23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued hy the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Autborized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter ahove one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of ago or older who, using authorized equipment, announces the order of the numbers drawn in live hingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

(a) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(b) a promotional game of chance; or

(c) an amusement game regulated under chapter 6 of this title.

(15) "Gross proceeds" means gross revenue received less prizes paid out.

(16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under chapter 7 *of this title* or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives

money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or hetter, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2, 5, and 8 of this chapter.

(18) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(19) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(20) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab ~~card manufacturer~~ *game seller*, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(21) "Licensee" means a person who has received a license from the department.

(22) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(23) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. The term does not mean lotteries authorized under chapter 7 of this title.

(24) "Manufacturer" means a person who assemhles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator.

(25) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(26) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

HeinOnline -- 1997 vol. I 20 1997

(27) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(28) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(29) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(30) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected te pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a sbare in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(31) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to wlich tbe public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(32) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(33) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(34) "Senior citizen center" means a facility oporatod by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

HeinOnline -- 1997 vol. I 21 1997

(35) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(36) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

**Section 2. Sports tab game seller's license — fees.** (1) It is a misdemeanor for a person to sell sports tab games without first obtaining a sports tab game seller's license from the department.

(2) The department shall charge an annual license fee of $100 for issuing or renewing a license.

(3) A license expires on June 30 of each year, and the license fee may not be prorated.

(4) The department may charge an additional, one-time license application processing fee to cover the actual cost of processing the original license. The department shall refund any amount of the application processing fee not needed to reimburse the department for actual costs or shall collect an amount sufficient to reimburse the department for actual costs not completely covered by the initial fee charged.

(5) The department shall retain for administrative purposes the license and application processing fees collected under this section.

**Section 3.** Section 23-5-502, MCA, is amended to read:

**"23-5-502. Sports pools and sports tab games authorized — tax.** (1) Conducting or participating in sports pools and sports tab games as defined and governed in this part is lawful, except that:

(a) sports tab games may only be conducted on premises licensed to sell alcoholic beverages for consumption on the premises; and

(b) only a licensee of premises that are located in an incorporated city or town with a population of less than 100 or located outside the boundaries of an incorporated city or town and that are licensed to sell alcoholic beverages for consumption on the premises may conduct a race between animals and conduct one or more sports pools on the race. The race may be conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment where food and beverages are usually stored, prepared, or served.

(2) A ~~manufacturer~~ *sports tab game seller* licensed under ~~23-5-115~~ *[section 2]* who sells sports tabs ~~to a licensed operator~~ for use in a sports tab game shall collect from the ~~operator~~ *purchaser*, at the time of sale, a tax of $1 for each 100

sports tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms required by the department and the proceeds of the collected tax. The ~~manufacturer~~ *sports tab game seller* shall keep a record of taxes collected as required by department rule. The records must be made available for inspection by the department upon request of the department. The department shall retain the proceeds of the tax to administer this part."

**Section 4.** Section 23-5-503, MCA, is amended to read:

"**23-5-503. Rules.** (1) The card or other device used for recording the sports pool or sports tab game must clearly indicate in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event or series of events, the consideration to be paid for each chance, and the total amount or percentage to be paid to the winners. The sports tabs must be purchased from a ~~manufacturer~~ *sports tab game seller* licensed under ~~23-5-115~~ *[section 2]*.

(2) Each sports tab or chance to participate in a sports pool must be sold for the same amount, which may not exceed $5, and the total amount paid to all winners of any individual sports pool or sports tab game may not exceed the value of $500. Chances for a series of events may be purchased all at once prior to the occurrence of the first event.

(3) (a) Except as provided in subsection (3)(b), the winners of any sports pool ~~shall~~ *must* receive a 100% payout of the value of the sports pool. The winner of a sports tab game must receive at least 90% of the total cost of the 100 sports tabs. The operator of the sports tab game may retain the remaining money for administration and other expenses.

(b) A nonprofit organization that maintains records and opens the records to inspection upon reasonable demand to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community service projects may retain up to 50% of the value of a sports pool or sports tab game.

(4) A person or nonprofit organization conducting a sports pool or sports tab game may purchase chances or sports tabs to participate in the sports pool or sports tab game but may not:

(a) retain any portion of the amount wagered in the sports pool or sports tab game, except as provided in subsection (3)(b);

(b) charge a fee for participating in the sports pool or sports tab game; or

(c) use the sports pool or sports tab game in any manner to establish odds or handicaps or to allow betting or booking against the person or nonprofit organization conducting the pool or game."

**Section 5. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 23, chapter 5, part 5, and the provisions of Title 23, chapter 5, apply to [section 2].

Approved February 10, 1997

HeinOnline -- 1997 vol. I 23 1997

# CHAPTER NO. 14

[HB 19]

AN ACT ESTABLISHING THE COMMITTEE ON VETERANS' NEEDS; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Joint Interim Subcommittee on Veterans' Needs created by the 1993 and the 1995 Legislatures provided an important liaison between state government, veterans' service organizations, and veterans; and

WHEREAS, the 1995 Joint Interim Suhcommittee on Veterans' Needs determined tbat the continuation of a study Committee would be of great service to Montana veterans.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Committee on veterans' needs.** (1) There is a committee on veterans' needs. The committee is composed of eight members who are appointed as follows:

(a) four members of the house of representatives, not more than two of whom may be from one political party, appointed by the speaker of the house; and

(b) four members of the senate, not more than two of whom may be from one political party, appointed by the committee on committees.

(2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(3) Memhers are entitled to salary and expenses as provided in 5-2-302.

(4) The committee may request staff assistance from the legislative services division, which assistance may be provided within the limits established by the legislative services division, given other priorities and responsibilities.

(5) Each state agency that provides services or funding for a program or services for veterans shall provide assistance and information upon request of the committee.

**Section 2. Duties of committee.** The committee on veterans' needs shall:

(1) provide a forum for tlie study of issues related to veterans' needs;

(2) continue to follow up on the issues identified by the 1993 and 1995 joint interim subcommittees on veterans' needs, as needed;

(3) continue to review the contmuum of veterans' services available throughout the state and the effects of federal changes and reform efforts;

(4) study the role of and potential for additional federally funded veterans' programs in Montana; and

(5) report its findings, conclusions, and recommendations to the 56th legislature.

**Section 3. Appropriation.** There is appropriated $10,000 from cigarette tax state special revenue to the legislative services division for the support of the committee on veterans' needs for the biennium ending June 30, 1999.

**Section 4. Effective date.** [This act] is effective July 1, 1997.

**Section 5. Termination.** [This act] terminates June 30, 1999.

Approved February 11, 1997

# CHAPTER NO. 15

[HB 144]

AN ACT REDUCING THE NUMBER OF MEMBERS THE STATE AUDITOR SHALL APPOINT TO THE BOARD OF DIRECTORS OF THE MONTANA SMALL EMPLOYER HEALTH REINSURANCE PROGRAM; AMENDING THE BOARD'S MEMBERSHIP; ELIMINATING THE STATE AUDITOR'S AUTHORITY TO APPROVE THE MONTANA SMALL EMPLOYER HEALTH INSURANCE PROGRAM BOARD'S PLAN OF OPERATION; ELIMINATING THE STATE AUDITOR'S AUTHORITY TO INTRODUCE AND TO ADOPT A TEMPORARY PLAN OF OPERATION; AMENDING SECTIONS 33-22-1818 AND 33-22-1819, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-22-1818, MCA, is amended to read:

**"33-22-1818. Small employer carrier reinsurance program — board membership.** (1) There is a nonprofit entity ~~to be~~ known as the Montana small employer health reinsurance program.

(2)~~(a)~~ The program must operate subject to the supervision and control of the board. The board consists of nine members ~~appointed by the commissioner~~ plus the commissioner or the commissioner's designated representative, who shall serve as an ex officio member of the board.

~~(b) (i) In selecting the members of the board, the commissioner shall include representatives of small employers, small employer carriers, and other qualified individuals, as determined by the commissioner. At least six~~ *Five* of the members of the board must be representatives of *each of the five* small employer carriers~~, one from each of the four small employer carriers~~ with the highest annual premium volume derived from health benefit plans issued to small employers in Montana in the previous calendar year~~, one from the remaining small employer carriers, and one~~. *Each of the five companies eligible to name a representative to the board shall notify the commissioner of who the representative will be for the coming term. One member of the board must be* from a disability reinsurance carrier. One member of the board must be ~~a~~ a representative *of an issuer* of a health benefit plan with a restricted network provision. One member of the board must be a small employer who is not active in the health care or insurance fields. One member of the board must be a representative of the general public who is employed by a small employer and *who* is not employed in the health care or insurance fields.

HeinOnline -- 1997 vol. I 25 1997

*(a) The five board members representing the largest small employer carriers shall nominate and elect the board member representing a disability reinsurance carrier. The commissioner shall appoint the board members representing an issuer of health benefit plans with a restricted network, representing a small employer, and representing an employee of a small employer.*

~~(ii)~~*(b)* The initial board members' terms are as follows: one-third of the members shall serve a term of 1 year; one-third of the members shall serve a term of 2 years; and one-third of the members shall serve a term of 3 years. Subsequent board members shall serve for a term of 3 years. A board member's term continues until that member's successor is appointed.

~~(iii) A vacancy on the board must be filled by the commissioner. The commissioner may remove a board member for cause.~~

(3) On or before March 1 of each year, each assessable carrier shall file with the commissioner the carrier's net health insurance premium derived from health benefit plans issued in this state in the previous calendar year."

**Section 2.** Section 33-22-1819, MCA, is amended to read:

**"33-22-1819. Program plan of operation — treatment of losses — exemption from taxation.** (1) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner *for review* a plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program. The commissioner may~~, after notice and hearing, approve~~ *review* the plan of operation ~~if the commissioner determines~~ *to determine if* it ~~to be~~ *is* suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. ~~The plan of operation is effective upon written approval by the commissioner.~~ *The commissioner may make recommendations to the board if the commissioner determines the plan of operation does not meet the criteria of this subsection.*

~~(2) If the board fails to submit a suitable plan of operation within 180 days after its appointment, the commissioner shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The commissioner shall amend or rescind any temporary plan adopted under this subsection at the time a plan of operation is submitted by the board and approved by the commissioner.~~

~~(3)~~*(2)* The plan of operation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from assessable carriers to fund claims incurred by the program;

HeinOnline -- 1997 vol. I 26 1997

(e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to fund administrative expenses incurred or to be incurred by the program; and

(f) provide for any additional matters necessary for the implementation and administration of the program.

~~(4)~~*(3)* The program has the general powers and authority granted under the laws of this state to insurance companies and health maintonance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program may:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of this part;

(e) establish conditions and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program;

(h) to the extent permitted by federal law and in accordance with subsection ~~(8)(e)~~ *(7)(c)*, make annual assessments against assessable carriers and make interim assessments to fund claims incurred by the program; and

(i) borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

~~(5)~~*(4)* A reinsuring carrier may reinsure with the program as provided for in this subsection ~~(5)~~:

(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.

HeinOnline -- 1997 vol. I 27 1997

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

(d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

(ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(e) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

(f) A small employer group health benefit plan in effect before January 1, 1994, may not be reinsured by the program until January 1, 1997, and then only if the board determines that sufficient funding sources are available.

(g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

~~(6) (a)~~*(5) (a)* As part of the plan of operation, the board shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology must provide for the development of base reinsurance premium rates that must be multiplied by the factors set forth in subsection ~~(6)(b)~~ *(5)(b)* to determine the premium rates for the program. The base reinsurance premium rates must be established by the board, subject to the approval of the commissioner, and must be set at levels that reasonably approximate the premiums necessary to recover one-half of the expenses for the calendar year. For purposes of this section, expenses include administrative expenses, one-half of the program net loss for the previous calendar year, and the actuarially anticipated claims to be incurred, adjusted to reflect retention levels required under this part.

(b) Premiums for the program are as follows:

HeinOnline -- 1997 vol. I 28 1997

(i) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection ~~(6)~~ *(5)*.

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection ~~(6)~~ *(5)*.

(c) The board shall annually review the methodology established under subsection ~~(6)(a)~~ *(5)(a)*, including the system of classification and any rating factors, to ensure that it is actuarially sound and that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

~~(7)~~*(6)* If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in 33-22-1809.

~~(8)(a)~~*(7)(a)* ~~Prior to~~ *Before* March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses, and the actuarially anticipated losses for the calendar year. The sum of one-half of the program net loss for the previous calendar year plus the anticipated net loss for the calendar year must equal the total assessment amount. If the program net loss for the previous calendar year is zero or less, the total assessment amount must equal the actuarially anticipated losses for the calendar year.

(b) (i) Each assessable carrier shall share in the program in an amount determined by multiplying the total assessment amount by a fraction, the numerator of which is the number of individuals in this state covered under disability insurance by the assessable carrier and the denominator of which is the number of all individuals in this state covered under disability insurance by all assessable carriers.

(ii) The board shall make a reasonable effort to ensure that each insured individual is counted only once for the purpose of assessment. The board shall require each assessable carrier that provides excess of loss or stop loss insurance to include in its count of insured individuals all individuals whose coverage is reinsured in whole or in part, including coverage under excess of loss or stop loss insurance. The board shall allow an assessable carrier who is an excess of loss or stop loss insurer to exclude from its count of insured individuals those who have been counted by a primary disability insurer or by a primary reinsurer.

(iii) The board shall base each assessable carrier's assessment on reports filed with the commissioner as required by 33-22-1820. The board may use any reasonable method of estimating the number of individuals insured by an assessable carrier if the specific number is unknown.

HeinOnline -- 1997 vol. I 29 1997

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liability for its share of the contribution to the program and, except as otherwise provided hy this section, make an annual assessment against each assessable carrier to the extent of that liability. Payment of an assessment is due within 30 days of receipt by the assessable carrier of written notice of the assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing business. The board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed $10.

(d) The board may establish and maintain program reserves not to exceed five times the actuarially anticipated losses for the calendar year.

(e) If the sum of the reinsurance premiums and assessments in any calendar year exceeds the sum of the administrative expenses and incurred claims for that year, the board may proportionately credit the excess to assessable carriers or it may place the excess in program reserves, subject to the limits in subsection ~~(8)(d)~~ *(7)(d)*.

~~(9)~~*(8)* The participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by this part may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

~~(10)~~*(9)* The board, as part of the plan of operation, shall develop standards setting forth the minimum levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board shall take into consideration the need to ensure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to small employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

~~(11)~~*(10)* The program is exempt from taxation.

~~(12)~~*(11)* On or before ~~March~~ *July* 1 of each year, the commissioner shall evaluate the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimate of future costs of the program, assessments necessary to pay those costs, the appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverago of small employers, and any recommendations for change to the plan of operation.

~~(13)~~*(12)* All premiums and other money paid to the small employer carrier reinsurance program and all property and securities acquired through the use of money and interest and dividends earned on money belonging to the small employer carrier reinsurance program are solely the proporty of the program and must he used exclusively for the operations and obligations of the program. Money collected by the program is not subject to legislative appropriation."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved February 11, 1997

HeinOnline -- 1997 vol. I 30 1997

# CHAPTER NO. 16

[SB 20]

AN ACT CLARIFYING THE DEFINITION OF THE AVERAGE LEVY APPLIED TO RAILROAD CARS OPERATING WITHIN THE STATE; AMENDING SECTION 15-23-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-23-211, MCA, is amended to read:

"**15-23-211. Definitions.** As used in 15-23-211 through 15-23-216, unless the context requires otherwise, the following definitions apply:

(1) "Average levy" means *95% of* the average statewide ~~rate of taxation on~~ *mill levy for* commercial and industrial property.

(2) "Person" includes an individual, firm, association, company, partnership, corporation, joint-stock company, agency, syndicate, or cooperative.

(3) "Private railroad cars" means all railroad cars that:

(a) are not owned by a railroad company operating in this state;

(b) are used for transperting persons or freight; and

(c) are not otherwise assessed for property taxation in this state.

(4) "Railroad car company" means any person, other than a railroad company, engaged in operating, leasing, or furnishing private railroad cars, whether or not owned by that person, for the transportation of persons or freight over railroad lines located wholly or partially within this state."

**Section 2. Effeetive date — retroactive applicability.** [This act] is effective on passaga and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1995.

**Seetion 3. Termination.** [This act] terminates Decemher 31, 2002.

Approved February 11, 1997

# CHAPTER NO. 17

[SB 40]

AN ACT PROVIDING THAT FOR DEBT COLLECTION PURPOSES, THE TERM "AGENCY" INCLUDES THE INTERNAL REVENUE SERVICE; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION TRANSFER ANY FUND BALANCE IN EXCESS OF $10,000 FROM THE DEBT COLLECTION INTERNAL SERVICE FUND TO THE GENERAL FUND AT THE END OF EACH BIENNIUM; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT REPORT CANCELING

HeinOnline -- 1997 vol. I 31 1997

AND WRITING OFF OF ACCOUNTS RECEIVABLE TO THE BUDGET DIRECTOR; AMENDING SECTIONS 17-4-101, 17-4-106, 17-4-107, AND 17-4-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-4-101, MCA, is amended to read:

**"17-4-101. Definitions.** In this part, the:

(1) term "agency" includes:

(a) all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government; ~~and~~

(b) with respect to delinquent taxes that the ~~state auditor~~ *department* is requested to collect, state and local entities whose personal property taxes are collected by the county treasurer; *and*

*(c) the internal revenue service;*

(2) word "department" means the department of administration."

**Section 2.** Section 17-4-106, MCA, is amended to read:

**"17-4-106. Agency owed debt to receive all money collected — exception.** (1) All money collected by the department on debts transferred to the department by the various agencies, except funds collected under 17-4-103(3), must be deposited to the account or fund of the agency to which the debt was originally owed. A county shall apply a delinquent personal property tax collection by the department to the payment of the taxpayer's most delinquent personal property taxes or portion ~~thereof~~ *of the taxes*.

(2) Funds collected under 17-4-103(3) must be deposited in an account in the internal service fund for the cost of assistance of debt collection by the department. Funds deposited in excess of the amount appropriated for operation of the debt collection program must be carried forward into the next fiscal year for operation of the debt collection program. Any excess carried forward into the next fiscal year must be used to reduce the designated percentage of the collected proceeds charged to the various agencies. ~~At the end of each biennium, any fund balance in excess of $10,000 must be transferred to the general fund.~~"

**Section 3.** Section 17-4-107, MCA, is amended to read:

**"17-4-107. Writeoff procedures.** ~~(1)~~ The department may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies that have been transferred to the department pursuant to 17-4-104 and that are uncollectible or the continued pursuance of the collection of accounts would cost the state more than the amount collected. ~~The procedures must be established in accordance with subsection (2).~~

~~(2) The department may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies that are uncollectible or the continued pursuance of the collection would cost the state~~

~~more than the amount collected. The procedures must include the reporting to the budget director of any canceling and writing off of accounts receivable.~~"

**Section 4.** Section 17-4-108, MCA, is amended to read:

"**17-4-108. Circumstances under which previously written-off debt may be collected.** If a debt previously written off under 17-4-107~~(1)~~ subsequently becomes collectible, the department shall proceed to collect the money due pursuant to 17-4-105(1) and 17-4-106."

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved February 11, 1997

# CHAPTER NO. 18

[SB 65]

AN ACT REVISING HORSERACING LAWS; CHANGING THE DEFINITION OF "IMMEDIATE FAMILY"; REALLOCATING THE DISTRIBUTION OF FUNDS DERIVED FROM AMOUNTS WAGERED ON RACES TO PURSES OR FOR OTHER PURPOSES; AMENDING SECTIONS 23-4-101, 23-4-102, 23-4-105, 23-4-106, 23-4-202, 23-4-204, 23-4-302, AND 23-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it allows the board of horseracing to adopt rules implementing this bill, which allows percentages of the money withheld from amounts wagered for distribution among the licensed race meets to be added to the purses for live races in addition to the previous year's purse structure.

[Section 8] grants authority to the board of horseracing to administer the money withheld from amounts wagered and by distributing it to the race purses or to other purposes that the board determines will benefit the horseracing industry.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-4-101, MCA, is amended to read:

"**23-4-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-1881.

(2) "Board of stewards" means a board composed of three stewards who supervise race meets.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter *who have a permanent or continuous residence in the household of the official or licensee*

and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(5) "Minor" means a person under 18 years of age.

(6) "Persons" means individuals, firms, corporations, fair boards, and associations.

(7) (a) "Race meet" means racing of registered horses or mules at which the parimutuel system of wagering is used. The term includes horseraces, mule races, and greyhound races that are simulcast.

(b) The term does not include live greyhound racing.

(8) "Racing" means live racing of registered horses or mules and simulcast racing of horses, mules, and greyhounds.

(9) "Simulcast" means a live broadcast of an actual horserace, mule race, or greyhound race at the time it is run. The term includes races of local or national prominence.

(10) "Simulcast facility" means a facility at which horseraces, mule races, or greyhound races are simulcast and wagering on the outcome is permitted under the parimutuel system.

(11) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet."

**Section 2.** Section 23-4-102, MCA, is amended to read:

**"23-4-102. ~~Chairman~~ *Presiding officer* — quorum — costs — salary.** (1) The board shall organize by electing one of its members ~~chairman~~ *as presiding officer*. ~~Three~~ *Four* members of the board ~~shall~~ constitute a quorum for the transaction of business by the board.

(2) The board may incur costs, charges, and expenses reasonably necessary to carry out this chapter.

(3) Each member may be paid $50 for each day in which ~~he~~ *the member* is actually and necessarily engaged in the performance of board duties and ~~shall~~ *must* be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ incurred in ~~his~~ *the member's* official service."

**Section 3.** Section 23-4-105, MCA, is amended to read:

**"23-4-105. Authority of board.** The board shall, subject to 37-1-101 and 37-1-121, license and regulate racing and review race meets held in this state under this chapter. *All percentages withheld from amounts wagered must be deposited in the board's agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d), 23-4-204(3), and 23-4-302(3) to live race purses or for other purposes for the good of the existing horseracing industry.* If the board decides to authorize new forms of racing, including new forms of simulcast racing, not currently engaged in Montana, it shall do so after holding public hearings to determine the effects of these forms of racing on the existing

HeinOnline -- 1997 vol. I 34 1997

saddle racing program in Montana. The board should consider both *the* economic and safety impacts on the existing racing and breeding industry."

**Section 4.** Section 23-4-106, MCA, is amended to read:

**"23-4-106. Exeeutive seeretary — powers and duties — staff — prohibition on racing activities.** (1) The department shall appoint an executive secretary for the board.

(2) The executive secretary, in accordance with rules adopted by the board and provisions of this chapter, shall:

(a) supervise race meets and activities of racing officials;

(b) hire all state racing officials for the department;

(c) inspect race facilities;

(d) prescribe the duties and salary of state stewards; and

(e) perform other duties as directed by the board.

(3) The executive secretary may, subject to the approval of the board, hire staff to assist ~~him~~ in ~~performing his duties~~ *the performance of the executive secretary's duties.*

(4) The executive secretary, a *staff* member ~~of his staff~~, and any member of the executive secretary's or a staff member's immediate family are prohibited from owning, training, or having any interest in a racehorse or mule running on a Montana track or having any financial interest in any Montana racing association. ~~No~~ *A* racing official hired by the department or approved by the board may *not* wager at a race meet at which ~~he~~ *the racing official* presides."

**Section 5.** Section 23-4-202, MCA, is amended to read:

**"23-4-202. Penalty for violations of law — authority of board — judicial review.** (1) A person holding a race meet or an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, or a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which they officiate may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period. Fines collected under this subsection must be deposited in the general fund.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed under this chapter. The rules may include provisions for the following:

HeinOnline -- 1997 vol. I 35 1997

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of a summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to ~~2%~~ *3%* of exotic wagering on races, including simulcast races, to be ~~used as a bonus for owners pursuant to 23-4-304(2). Up to 30% of the amount set aside may be used to defray administrative costs in addition to the 20% already withheld under 23-4-302.~~ *deposited in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.*

(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;

(f) assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

(g) definition of exotic forms of wagering on races to be allowed;

(h) standards for simulcast facilities; and

(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races.

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

**Section 6.** Section 23-4-204, MCA, is amended to read:

**"23-4-204. Race exclusively for Montana-bred horses — bonus for winner.** (1) For the purpose of encouraging the breeding in this state of valuable registered horses, at least one race each day at each race meet ~~shall~~ *must* be limited to horses bred in this state unless, in the board's judgment, there is an insufficient number of Montana-bred horses for ~~such a~~ *the* race. If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead. *Races with exclusively Montana-bred horses must be run for 20% higher purses than races in comparable conditions that are not run with exclusively Montana-bred horses.*

(2) *The licensee conducting the race meet shall pay a* ~~A~~ sum equal to 10% of the first money of every purse won by a horse bred in this state ~~shall be paid by the licensee conducting the race meet~~ to the breeder of the horse *within 30 days of the end of the race meet*. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

(3) ~~Two~~ *Three* percent of exotic wagering on a simulcast race ~~shall~~ *must* be ~~placed in a fund to be distributed by the board, in addition to existing Montana breeders' awards, on a percentage basis of actual breeders' awards earned.~~

HeinOnline -- 1997 vol. I 36 1997

*deposited in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.*

~~(4) Up to 10% of the amount set aside for Montana breeders' awards may be used to defray administrative costs in addition to the 20% withheld under 23-4-302.~~"

**Section 7.** Section 23-4-302, MCA, is amended to read:

"23-4-302. **Distribution of deposits — breakage.** (1) Each licensee conducting the parimutuel system shall distribute all ~~sums~~ *funds* deposited in any pool to the winner ~~thereof~~ *of the parimutuel pool*, less an amount ~~which~~ *that* in the case of exotic wagering on races ~~shall~~ *may* not exceed ~~25%~~ *26%* and in all other races ~~shall~~ *may* not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all ~~sums~~ *funds* deposited with the licensee in any pool for ~~such~~ *the* simulcast race meet, less an amount ~~which~~ *that* in the case of exotic wagering on ~~such~~ *these* races ~~shall~~ *may* not exceed ~~25%~~ *26%, unless the signal originator percentage is higher, in which case the Montana simulcast licensee may adopt the same percentage withheld as the place where the signal originated,* and *that* in all other ~~such~~ *of these* races ~~shall~~ *may* not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of ~~its total parimutuel handle~~ *the total amount wagered on the race meet and* ~~of the simulcast facility and give it to the local fair board. The money must be used to operate or enhance the county fairgrounds facility.~~ *deposit it in the board's agency fund account. The board shall then distribute all funds collected under this subsection to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.*"

**Section 8.** Section 23-4-304, MCA, is amended to read:

"23-4-304. **Gross receipts — department's pereentage — collection and allocation.** (1) (a) The licensee shall pay to tbe department *within 5 days following receipt by the licensee* 1% of the gross receipts of each day's parimutuel betting at each race meet~~, which sums shall be paid to the department within 5 days after receipt by the licensee~~. At tlie end of eacli race meet the licensee shall prepare a report to the department sliowing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance ~~shall~~ *must* be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the departinent all ~~sums~~ *funds* collected under 23-4-202(4)(d) on exotic wagering on races. *These funds must be deposited in the board's agency fund account. The board shall then distribute all funds collected undsr 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for thc good of the existing horseracing industry.*

HeinOnline -- 1997 vol. I 37 1997

(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all ~~sums~~ *funds* collected under 23-4-202(4)(d) on exotic wagering on races. *These funds must be deposited in the board's agency fund account. The board shall then distribute all funds collected under 23-4-202(4)(d) to live race purses or for other purposes that the board considers appropriate for the good of the existing horseracing industry.*

(2) ~~At the end of the~~ *Prior to the beginning of the live* racing season, ~~sums~~ *funds* collected under 23-4-202(4)(d) must be distributed by the department, after first passing through the board's agency fund account, to ~~the licensed owners of those Montana-bred horses or mules finishing in the money at the meet from which the sums derived. The owner's award must be calculated as follows:~~

~~(a) divide the total amount collected under 23-4-202(4)(d) by the total amount won by Montana-bred horses or mules;~~

~~(b) multiply the quotient derived under subsection (2)(a) by the total amount of money won by each owner's Montana-bred horses or mules.~~

~~(3) For purposes of the owner's award under subsection (2), "owner" means the individual, partnership, corporation, person, or other entity that owns the horse or mule at the time of entry.~~

~~(4) Licensees may not consider the sums available under 23-4-202(4)(d) when establishing purses~~ *be used for race purses that are distributed to each live race meet by the board or for other purposes that the board considers appropriate for the good of the horseracing industry.*"

**Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 10. Effective date.** [This act] is effective on passage and approval.

Approved February 11, 1997

# CHAPTER NO. 19

[SB 135]

AN ACT ELIMINATING THE SPECIAL NOTICE OF ARBITRATION PROVISION REQUIRED FOR CONTRACTS; AMENDING SECTION 27-5-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HeinOnline -- 1997 vol. I 38 1997

WHEREAS, in *Doctor's Associates, Inc. v. Casarotto*, No. 95-559, U.S. (1996), the United States Supreme Court held that the notice requirement in 27-5-114(4), MCA, was preempted hy section 2 of the Federal Arhitration Act.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-5-114, MCA, is amended to read:

"**27-5-114. Validity of arbitration agreement — exceptions.** (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon ~~such~~ grounds ~~as~~ *that* exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the agreement is made is valid and enforceable except upon ~~such~~ grounds ~~as~~ *that* exist at law or in equity for the revocation of a contract. Except as pormitted under subsection (3), this subsection does not apply to:

(a) claims arising out of porsonal injury, whether based on contract or tort;

(b) any contract by an individual for the acquisition of real or personal property, services, or money or credit ~~where~~ *when* the total consideration to be paid or furnished by the individual is $5,000 or less;

(c) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; or

(d) claims for workers' compensation.

(3) A written agreement between members of a trade or professional organization to submit to arbitration any controversies arising between members of the trade or professional organization after the agreement is made is valid and enforceable except upon ~~such~~ grounds ~~as~~ *that* exist at law or in equity for the revocation of a contract.

~~(4) Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration.~~"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 11, 1997

# CHAPTER NO. 20

[SB 13]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE ALLOCATION OF SPACE IN THE CAPITOL; ALLOWING FLEXIBILITY IN LOCATING A PRESS ROOM; CLARIFYING AUTHORITY OVER THE ALLOCATION OF LEGISLATIVE SPACE; AMENDING SECTIONS 2-17-101, 2-17-103, 2-17-108, AND 5-2-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

HeinOnline -- 1997 vol. I 39 1997

**Section 1.** Section 2-17-101, MCA, is amended to read:

**"2-17-101. Allocation of space.** (1) The department of administration shall determine the space required by state agencies other than the university system and shall allocate space in buildings owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department periodically shall identify the amount, location, and nature of space used by each agency.

(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state to meet the agency's requirements. If space is not available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate building or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not lease, rent, or purchase property for quarters without prior approval of the department.

(3) (a) The location of the chambers for the house of representatives must be determined in the sole discretion of the house of representatives. The location of the chambers of the senate must be determined in the sole discretion of the senate.

(b) ~~The~~ *Subject to 2-17-108, the* department ~~of administration~~, with the advice of the legislative council, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(4) For state agencies located in a city other than Helena, the department ~~of administration~~ shall consolidate the offices of these agencies in a single, central location within the city whenever the consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in the city to achieve consolidation. Offices of the law enforcement services division and motor vehicle division of the department of justice are exempted from consolidation."

**Section 2.** Section 2-17-103, MCA, is amended to read:

**"2-17-103. ~~Permanent press~~ *Press* room.** The department of administration ~~is required to~~ *may* provide *space in the capitol* for the use of representatives of the press ~~a room on the third floor of the capitol to be used as a permanent press room~~."

**Section 3.** Section 2-17-108, MCA, is amended to read:

**"2-17-108. Allocation of legislative rooms and offices.** Notwithstanding the provisions of 2-17-101, *after each session of the legislature, the department of administration shall conduct an inventory of the rooms and offices in the capitol controlled by* the house of representatives and the senate ~~shall continue to occupy and control the rooms and offices in the capitol building that they occupied and controlled during the 50th and 51st legislatures~~. *Legislative space in the capitol may not be reduced without the consent of the legislature. The control of the rooms and offices may not be changed without the*

*permission of the speaker of the house of representatives, the minority leader of the house, the president of the senate, and the minority leader of the senate."*

**Section 4.** Section 5-2-503, MCA, is amended to read:

**"5-2-503. Consolidation of legislative branch entities for specified purposes.** (1) An entity of the legislative branch that is consolidated with the legislative council as provided in 5-2-504 shall:

(a) exercise its substantive functions independently as provided by law;

(b) adhere to administrative policies, including personnel policies, adopted by the legislative council;

(c) submit its budget proposals through the legislative council; and

(d) submit reports required of it as provided in 5-11-210.

(2) The legislative council shall:

(a) coordinate budgeting, recordkeeping, reporting, and related administrative and clerical functions as a consolidated entity, including acknowledgment of actions by the approving authority of the consolidated entity;

(b) include within the legislative council budget the budget proposals for the legislature and the consolidated entities, separately identified;

(c) provide separate identification for appropriations and expenditures for the legislature and for each of the consolidated entities;

(d) establish procedures for approval of expenditures by the legislature and by each of the consolidated entities; and

(e) provide personnel administration for the legislative branch. The senate and the house of representatives or a consolidated entity with statutory hiring authority may hire its own personnel, subject to administrative procedures established by the legislature and legislative council.

(3) The legislative council shall allocate office space occupied by the legislative branch for the use of a consolidated entity as necessary. Space occupied by the senate or the house of representatives may not be reallocated except ~~upon approval of the respective house~~ as provided in ~~the rules of that house~~ *2-17-108*. The location of the chambers of the house of representatives and the senate must he determined as provided by 2-17-101."

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved February 12, 1997

# CHAPTER NO. 21

[SB 58]

AN ACT REQUIRING ISSUERS OF CREDIT CARDS OR SIMILAR LOAN ADVANCE ACCESS DEVICES TO OBTAIN CONSENT FROM A MINOR'S PARENT OR LEGAL GUARDIAN BEFORE ISSUING A CREDIT CARD OR

HeinOnline -- 1997 vol. I 41 1997

SIMILAR LOAN ADVANCE ACCESS DEVICE TO THE MINOR; PROHIBITING THE COLLECTION OF ANY DEBT INCURRED BY THE MINOR IN USING THE CREDIT CARD OR SIMILAR LOAN ADVANCE ACCESS DEVICE IF THE MINOR'S PARENT OR GUARDIAN DID NOT CONSENT TO THE ISSUANCE OF THE CREDIT CARD OR SIMILAR LOAN ADVANCE ACCESS DEVICE; AMENDING SECTION 41-1-304, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Issuing credit cards to minors — collection of debt.** (1) An issuer of a credit card or similar loan advance access device may not issue a credit card or similar loan advance access device to a minor, as defined in 41-1-101, residing in this state without first obtaining consent to the issuance from the minor's parent or legal guardian.

(2) An issuer of a credit card or similar loan advance access device that does not receive a parent's or legal guardian's consent, as required in subsection (1), before issuing the credit card or similar loan advance access device to a minor may not collect in this state from the minor or the minor's parent or guardian any debt incurred by the minor through the use of the credit card or similar loan advance access device.

**Section 2.** Section 41-1-304, MCA, is amended to read:

"**41-1-304. When minors may disaffirm.** *(1) Except as provided in subsection (2), in* ~~In~~ all cases other than those specified by 41-1-303, 41-1-305, and 41-1-306, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor ~~himself~~, either before ~~his~~ *the minor reaches* majority or within a reasonable time afterwards, or, in case of ~~his~~ *the minor's* death within that period, by ~~his~~ *the minor's* heirs or personal representatives.

*(2) A minor subject to the provisions of [section 1] is not required to restore any consideration received from the issuer of a credit card or similar loan advance access device that has not obtained the consent of the minor's parent or legal guardian before issuing the card or similar loan advance access device to the minor.*"

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 31, chapter 1, and the provisions of Title 31, chapter 1, apply to [section 1].

**Section 4. Applicability.** [This act] applies to credit cards or similar loan advance access devices issued after [the effective date of this act].

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved February 12, 1997

HeinOnline -- 1997 vol. I 42 1997

# CHAPTER NO. 22

[SB 70]

AN ACT GENERALLY REVISING THE SCHOOL FINANCE AND BUDGETING LAWS; STANDARDIZING THE TERMS RELATING TO EQUALIZATION FUNDS AND THE BASIC COUNTY TAX FOR EQUALIZATION; ALLOWING SCHOOL TRUSTEES TO ADMINISTER OTHER FUNDS AUTHORIZED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION; MAKING TIME LIMITATIONS FOR HIGH SCHOOL DISTRICT BOUNDARY CHANGES CONSISTENT WITH ELEMENTARY DISTRICT TIME LIMITATIONS; CHANGING THE TERM "CASH BALANCE" TO "FUND BALANCE" WHEN APPROPRIATE; CHANGING REFERENCES TO "PUBLIC LAW 81-874" TO "IMPACT AID"; CORRECTING THE DATES FOR GIVING NOTICE OF THE PRELIMINARY SCHOOL BUDGET; CHANGING THE TERM "BASE FUNDING PROGRAM" TO "DIRECT STATE AID" WHEN APPROPRIATE; ALLOWING INDIRECT COST RECOVERIES TO BE DEPOSITED IN THE MISCELLANEOUS PROGRAMS FUND; SPECIFYING THE CASH BALANCE OF A LEASE AGREEMENT FOR A K-12 DISTRICT; ELIMINATING THE REQUIREMENT FOR A DISTRICT TO SEND COPIES OF BUS TRANSPORTATION CONTRACTS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION; ELIMINATING THE COUNTY SUPERINTENDENT'S DUTY TO CALCULATE THE APPORTIONMENT OF COUNTY EQUALIZATION MONEY; ELIMINATING THE REQUIREMENT FOR TRUSTEES TO ADOPT A BUDGET FOR THE TECHNOLOGY ACQUISITION FUND; PROVIDING FOR AN ANNUAL ALLOCATION OF GRANT MONEY FOR SCHOOL TECHNOLOGY; AMENDING SECTIONS 15-23-703, 17-3-222, 20-1-301, 20-3-205, 20-3-209, 20-3-324, 20-4-301, 20-5-316, 20-5-324, 20-6-314, 20-6-609, 20-6-701, 20-6-702, 20-9-115, 20-9-143, 20-9-161, 20-9-166, 20-9-212, 20-9-314, 20-9-331, 20-9-332, 20-9-333, 20-9-334, 20-9-335, 20-9-347, 20-9-507, 20-9-509, 20-9-514, 20-9-533, 20-9-534, 20-10-124, 20-10-144, AND 69-11-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-23-703, MCA, is amended to read:

**"15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools.** (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value

HeinOnline -- 1997 vol. I 43 1997

calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as ~~Public Law 81-874~~ *impact aid* money, *as provided in 20 U.S.C. 7701, et seq.*, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

HeinOnline -- 1997 vol. I 44 1997

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year. (In subsection (2), the deletion of the reference to subsection (5) of 15-35-102 terminates December 31, 2005—sec. 5, Ch. 318, L. 1995.)"

**Section 2.** Section 17-3-222, MCA, is amended to read:

"**17-3-222. Apportionment of ~~moneys~~ *money* to counties.** It ~~shall be~~ *is* the duty of the state treasurer to properly apportion and allocato ~~these moneys~~ *the money received under 17-3-221* to the county treasurers, who ~~will~~ *shall* allocate ~~and pay all such moneys~~ *the money* as follows: 50% to the county general fund and 50% to the ~~common school fund of the~~ *elementary* county *equalization fund.*"

**Section 3.** Section 20-1-301, MCA, is amended to read:

"**20-1-301. School fiscal year.** The school fiscal year ~~shall begin~~ *begins* on July 1 and ~~end~~ *ends* on June 30. At least 180 school days of pupil instruction ~~shall~~ *must* be conductod durmg each school fiscal year, except that 175 days of pupil instruction for graduating seniors nıay be sufficient, as provided in 20-9-313, or unless a varianco for kindergarten has bcen granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8~~, of this title~~. For any elementary or high school district that fails to provide for at least 180 school days of pupil instruction, tbe superintendent of public instruction shall reduce the ~~county equalization as defined in 20-9-334 and the state equalization as defined in 20-9-343~~ *direct state aid* for the district for that school year by 1/90th for each school day less than 180 school days."

**Section 4.** Section 20-3-205, MCA, is amended to read:

"**20-3-205. Powers and duties.** The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perforın the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

HeinOnline -- 1997 vol. I 45 1997

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, ~~20-9-334,~~ *20-9-335,* 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the

policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

**Section 5.** Section 20-3-209, MCA, is amended to read:

"**20-3-209. Annual report.** The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than September 1. ~~Such~~ *The* report ~~shall~~ *must* be completed on the forms supplied by the superintendent of public instruction~~, which shall require the reporting of~~ *and must include*:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(2) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(5);

(3) the pupil information for each district provided the county superintendent under the provisions of ~~20-4-301(1)(d) or~~ 20-4-402(7); and

(4) any other information that may be requested by the superintendent of public instruction ~~which~~ *that* is within ~~his~~ *the superintendent's* authority prescribed by this title."

**Section 6.** Section 20-3-324, MCA, is amended to read:

"**20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

HeinOnline -- 1997 vol. I 47 1997

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the hoard considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school hus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and ~~otherwise~~ govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, opon, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school hudget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, oporating reserve, and state impact aid amounts for tlie general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of tlie district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous ~~federal~~ programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, ~~and~~ interlocal cooperative agreement fund, *and other funds as authorized by the state superintendent of public instruction* in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110; and

(25) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

**Section 7.** Section 20-4-301, MCA, is amended to read:

**"20-4-301. Duties of teacher — nonpayment for failure to comply.** (1) Any teacher under contract with a district shall:

(a) conform to and enforce the laws, board of public education policies, and the policies of the trustees of the district;

(b) ~~utilize~~ *use* the course of instruction prescribed by the trustees;

(c) keep, in a neat and businesslike manner, a teacher's register ~~in the form and on the blanks prescribed by the superintendent of public instruction~~ *of attendance and grades*;

(d) within 10 days after the conclusion of each school semester, prepare a report ~~in the manner and on the forms prescribed by the superintendent of public instruction, which~~ *that* must include the pupil attendance and absence data from ~~his~~ *the* teacher's register ~~that is necessary to calculate ANB~~ *and grades*. The report must be submitted te:

(i) the district superintendent, if there is one;

(ii) the principal of the school, if there is one and there is no district suporintendent; or

(iii) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal.

(e) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books, and supplies; and

(f) provide moral and civic instruction by:

(i) endeavoring to impress the pupils with the principles of morality, truth, justice, and patriotism;

(ii) teaching the pupils to avoid idleness, profanity, and falsehood;

(iii) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities, and dignity of American citizenship.

(2) The trustees are authorized to withhold the salary warrant of any teacher who does not comply with the provisions of subsection (1)(a) or (1)(b) until the teacher does comply with the provisions.

(3) The trustees may not pay any teacher ~~his~~ *the teacher's* last month's salary until ~~he~~ *the teacher* has provided a complete and accurate semester report to the required person, as determined by the person and as required in subsection (1)(d) ~~of this section~~."

**Section 8.** Section 20-5-316, MCA, is amended to read:

**"20-5-316. Out-of-state tuition.** (1) The county superintendent of schools of the county of the district of residence shall make payments from the *elementary* county ~~basic tax for elementary schools~~ *equalization fund* for children who are placed in facilities outside the state of Montana pursuant to 20-5-321 but not under the provisions of Title 20, chapter 7, part 4.

(2) The county superintendent of schools of the county of residence shall make payments from the *high school* county ~~basic special tax for high schools as provided in 20-9-334~~ *equalization fund* for children who are placed in facilities outside the state of Montana as a result of a court order or placement by a state

agency. This provision does not apply to children with disahilities that are defined under the provisions of Title 20, chapter 7, part 4."

**Seetion 9.** Section 20-5-324, MCA, is amended to read:

**"20-5-324. Tuition report and payment provisions.** (1) At the close of the school term of each school fiscal year and hefore July 15, the trustees of a district shall report to the county superintendent:

(a) the name and district of residence of each child who is attending a school of the district under an approved mandatory out-of-district attendance agreement;

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each reported child; and

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state.

(2) The county suporimtendent shall send, as soon as practicable, the reported information to the county suporintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent sball report the information in subsection (1)(d) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would he eligible if the student were enrolled in the resident district. The reimhursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) Except as provided in suhsection (6), when a child has approval te attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall finance the tuition amount from the district tuition fund and any transpertation amount from the transportation fund.

(6) When a child has mandatory approval under the provisions of 20-5-321, the tuition and transportation obligation for an elementary school child attending a school outside of the child's county of residence must he financed by the ~~county~~ basic *county* tax for elementary ~~districts~~ *equalization*, as provided in 20-9-331, for the child's county of residence or for a high scbool child attending a school outside the county of residence by the ~~county~~ basic *county* tax for high school ~~districts~~ *equalization*, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation estahlished under this section out of the money realized to date from the appropriate ~~basic~~ *elementary or high school* county ~~tax account~~ *equalization fund* provided for in ~~20-9-334~~ *20-9-335* or from the district tuition or

transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3).

(9) (a) Any tuition receipts received under the provisions of Title 20, chapter 7, part 4, or 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget."

**Section 10.** Section 20-6-314, MCA, is amended to read:

**"20-6-314. Time limitations for boundary changes.** ~~No~~ *A* high school district may *not* be created and ~~no~~ *a* high school district boundary may *not* be changed between the first day of ~~March~~ *January* and the second Monday of August of any calendar year except when:

(1) the entire territory of a high school district is annexed or attached to another high school district;

(2) the entire territory or portion of a joint high school district located in one county is annexed or attached to another high school district; or

(3) two or more districts are consolidated in their entirety."

**Section 11.** Section 20-6-609, MCA, is amended to read:

**"20-6-609. Trustees' authority to acquire property by lease-purchase agreement.** The trustees of a district may acquire real and personal property by an agreement to lease *for 3 years* with an option to purchase. *The terms of the lease must comply with 20-6-625.* If real property is acquired, the trustees shall comply with 20-6-603."

**Section 12.** Section 20-6-701, MCA, is amended to read:

**"20-6-701. K-12 school districts required — definition — procedure for creation — exception.** (1) Except as provided in subsection (4), ~~by the school fiscal year beginning July 1, 1995,~~ each elementary district with the same district boundaries as a high school district shall attach to the high school district for the purpose of establishing a K-12 school district.

HeinOnline -- 1997 vol. I 52 1997

(2) For the purposes of this title, unless the context clearly indicates otherwise, "K-12 school district" means a high school district with an elementary district that has been attached to the high school district under the procedures provided in this section, with the high school district remaining an organized district under the provisions of 20-6-101 and other provisions of law and the elementary district becoming an inactive district under the provisions of 20-6-101.

(3) The attachment of an elementary district to a high school district to form a K-12 school district must be conducted under the following procedure:

(a) The trustees of each district shall pass a resolution requesting the county superintendent to order an attachment involving their districts.

(b) When the county superintendent receives a resolution from each of the districts, the county superintendent shall, within 10 days after receipt of the last resolution, order the attachment of the elementary district to the high school district to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the districts included in the attachment order, and the superintendent of public instruction.

(4) This section does not apply to a school district receiving ~~Public Law 81-874~~ *impact aid* funding, *as provided in 20 U.S.C. 7701, et seq.,* if creation of a K-12 district would result in the loss of ~~Public Law 81-874~~ *impact aid* funding."

**Section 13.** Section 20-6-702, MCA, is amended to read:

**"20-6-702. Funding for K-12 school districts.** (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the total per-ANB entitlements must be in accordance with the provisions of 20-9-311;

(b) the basic county tax *for elementary equalization* and ~~revenues~~ *revenue* for the elementary BASE funding program ~~amount~~ for the district must be determined in accordance with the provisions of 20-9-331, and the basic ~~special~~ *county* tax *for high school equalization* and ~~revenues~~ *revenue* for the high school BASE funding program ~~amount~~ for the district must be determined in accordance with 20-9-333; and

(c) the guaranteed tax base aid for BASE funding program purposes for a K-12 school district must be calculated separately, using each district's guaranteed tax base ratio, as defined in 20-9-366. The BASE budget levy to be levied for the K-12 school district must be prorated based on the ratio of the BASE funding program amounts for elementary school programs to the BASE funding program amounts for high school programs.

HeinOnline -- 1997 vol. I 53 1997

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of 20-5-320 through 20-5-324, except that the actual expenditures used for calculations in 20-5-323 must be based on an amount prorated between the elementary and high school programs in the appropriate funds of each district in the year prior to the attachment of the districts."

**Section 14.** Section 20-9-115, MCA, is amended to read:

"**20-9-115. Notice of preliminary budget filing and final budget meeting.** Between July ~~10~~ *24* and ~~July 20~~ *August 4* of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in the clerk's office and open to inspection by all taxpayers. The notice must also state the time and place that the trustees will meet on the ~~fourth~~ *second* Monday in August for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget."

**Section 15.** Section 20-9-143, MCA, is amended to read:

"**20-9-143. Allocation of federal funds in lieu of property taxation.** Federal funds received by a district under the provisions of ~~Title I of Public Law 81-874~~ *impact aid, as provided in 20 U.S.C. 7701, et seq.,* or funds designated in lieu of ~~such~~ *the* federal act by the congress of the United States must be deposited in the impact aid fund established in 20-9-514."

**Section 16.** Section 20-9-161, MCA, is amended to read:

"**20-9-161. Definition of budget amendment for budgeting purposes.** As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

HeinOnline -- 1997 vol. I 54 1997

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year;

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents;

(c) delinquent taxes from a prior school fiscal year; or

(d) local government severance tax payments for calendar year 1995 production as provided in 15-36-325(7); and

(e) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), (5)(c), or (5)(d) for a project or projects that were deferred from a previous budget of the district ~~as a result of the protested taxes~~; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the safety of the students and district employees or the educational functions of the district."

**Section 17.** Section 20-9-166, MCA, is amended to read:

"**20-9-166. State financial aid for budget amendments.** Whenever a final budget amendment has been adopted for the general fund or the transportation fund to finance the cost of an amendment resulting from increased enrollment, the trustees may apply to the superintendent of public instruction for an increased payment from the state for ~~the BASE funding program~~ *direct state aid* or for state transportation reimbursement, or both. The superintendent of public instruction shall adopt rules for the application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with 20-9-314 and this section. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of state aid from the state or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made."

**Section 18.** Section 20-9-212, MCA, is amended to read:

"**20-9-212. Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county

HeinOnline -- 1997 vol. I 55 1997

superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax ~~in support of the~~ *for* elementary ~~BASE aid~~ *equalization*;

(b) the basic ~~special~~ *county* tax for high ~~schools in support of the high~~ school ~~BASE aid~~ *equalization*;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money;

(5) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) invest the money of any district as directed by the trustees of the district within 3 working days of the direction;

(10) each month give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered

HeinOnline -- 1997 vol. I 56 1997

warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) remit promptly to the state treasurer receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) invest the money received from the basic county ~~tax, the basic special tax~~ *taxes for elementary and high school equalization*, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) remit on a monthly basis to the state treasurer, in accordance with the provisions of 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding any amount required for high school out-of-county tuition under the provisions of 20-9-334, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

**Section 19.** Section 20-9-314, MCA, is amended to read:

"**20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.** A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to May 10, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than May 10, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

HeinOnline -- 1997 vol. I 57 1997

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase that the estimated enrollment increase is over the current enrollment; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the basic entitlement and total per-ANB entitlement for the ensuing ANB calculation period is the difference between the enrollment for the ensuing school fiscal year and 106% of the current enrollment. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's basic entitlement and tetal per-ANB entitlement.

(6) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year. If the actual enrollment is less than the average number belonging used for BASE funding program and entitlement calculations, the superintendent of public instruction shall revise the total per-ANB entitlement *and basic entitlement* calculations using the actual average number belonging. All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(4)."

**Section 20.** Section 20-9-331, MCA, is amended to read:

**"20-9-331. Basic county tax *for elementary equalization* and other ~~revenues~~ *revenue* for county equalization of ~~the~~ elementary ~~district~~ BASE funding program.** (1) The county commissioners of each county shall levy an annual basic *county* tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-527, 61-3-537, and 67-3-204, for the purposes of ~~local~~ *elementary equalization* and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order te determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in suhsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization,

the county treasurer shall remit the surplus funds to the state treasurer for deposit to the stato general fund immediately upon occurrence of a surplus balance and each subsequent month ~~thereafter~~, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of tbe revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the ~~common school fund~~ *elementary county equalization fund* under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) oil and natural gas production taxes;

(h) anticipated local gevernment severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(i) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-527, 61-3-537, and 67-3-204."

**Section 21.** Section 20-9-332, MCA, is amended to read:

"**20-9-332. Fines and penalties proceeds for elementary county equalization.** All fines and penalties collected under the provisions of this title, except those collected by a justice's court, ~~shall~~ *must* be paid into the ~~county~~ elementary *county* equalization fund as provided by 20-9-331(2)(c). In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, a report ~~shall~~ *must* be made to the county superintendent of the county, at the close of each term, by the clerk of each district court, reporting all fines imposed and collected during the term and indicating the type of violation and the date of collection."

**Section 22.** Section 20-9-333, MCA, is amended to read:

HeinOnline -- 1997 vol. I 59 1997

"20-9-333. **Basic ~~special levy~~ *county tax for high school equalization* and other revenue for county equalization of high school ~~district~~ BASE funding program.** (1) The county commissioners of each county shall levy an annual basic ~~special~~ *county* tax ~~for high schools~~ of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-527, 61-3-537, and 67-3-204, for the purposes of ~~local~~ *high school equalization* and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month ~~thereafter~~, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) oil and natural gas production taxes;

(e) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(f) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-527, 61-3-537, and 67-3-204."

**Section 23.** Section 20-9-334, MCA, is amended to read:

"20-9-334. ~~**Apportionment of county equalization moneys — high school out-of-county** *Out-of-county*~~ **tuition obligations.** ~~(1) The county superintendent shall calculate the apportionment of revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for~~

HeinOnline -- 1997 vol. I 60 1997

~~high schools account to the several districts of the county. The apportionments shall be known as "county equalization moneys".~~

~~(2)~~ The county superintendent shall direct the county treasurer to deduct from the ~~revenues~~ *revenue* available in the ~~basic special tax for high schools account~~ *elementary and high school county equalization funds*, prior to remittance of the funds to the state treasurer under the provisions of 15-1-504 and 20-9-212, the amount required for the month to pay the county's obligation for *elementary and* high school out-of-county tuition *under 20-5-324*."

**Section 24.** Section 20-9-335, MCA, is amended to read:

**"20-9-335. Formula for apportionment of county equalization money.** (1) The superintendent of public instruction shall calculate the apportionment of revenue available in the ~~basic~~ *elementary and high school* county ~~tax account and in the basic special tax for high schools account~~ *equalization funds* in accordance with the following procedure:

(a) determine the percentage that the county equalization money available for the support of the elementary direct state aid of the districts in the county is of the total elementary direct state aid of all districts in the county;

(b) multiply the elementary direct state aid amount of each district by the percentage determined in subsection (1)(a) to determine the portion of the county equalization money available to each school district.

(2) The procedure in subsection (1) must also be applied for the high school direct state aid after the deduction of the county's obligation for high school out-of-county tuition.

(3) Territory situated within a county may not be excluded from the calculations of the county equalization money under this section solely because the territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization money reported under these procedures is the first source of revenue for financing the elementary and high school direct state aid payments."

**Section 25.** Section 20-9-347, MCA, is amended to read:

**"20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program —exceptions.** (1) The suporintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a monthly report of the payment of BASE aid in support of the BASE funding program of each district of the county;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the ~~basic~~ *elementary and high school* county ~~tax fund~~ *equalization funds* as provided in 20-9-331 and ~~for the basic special tax fund as provided in~~ 20-9-333; *and*

HeinOnline -- 1997 vol. I 61 1997

(c) adopt rules to implement the provisions of subsection (1)(b).

(2) (a) The superintendent of puhlic instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the BASE aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(8).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money availahle in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. This section may not be construed to authorize the superintendent of public instruction to exceed a district's annual payment for BASE aid.

(3) The superintendent of public instruction shall:

(a) distribute special education allowable cost payments to districts; and

(b) supply the county treasurer and the county superintendent of puhlic instruction with a report of payments for special education allowable costs to districts of the county."

**Section 26.** Section 20-9-507, MCA, is amended to read:

"**20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324 other than money under tbe provisions of ~~Title I of Public Law 81-874~~ *impact aid, as provided in 20 U.S.C. 7701, et seq.,* or federal money designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, a payment received as a local government severance tax payment for calendar year 1995 production as provided in 15-36-325, *indirect cost recoveries,* or a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement or a local government severance tax payment, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall ~~cause~~ *maintain* a separate accounting ~~to be maintained~~ for each *local, state, or* federal grant ~~program and for the aggregate of all reimbursement money~~ *project and the indirect cost recoveries.*

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

**Section 27.** Section 20-9-509, MCA, is amended to read:

"**20-9-509. Lease or rental agreement fund.** (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives ~~moneys~~ *money* under the provision of 20-6-607 may establish a lease or rental agreement fund.

HeinOnline -- 1997 vol. I 62 1997

All ~~moneys~~ *money* received from ~~such~~ *the* lease or rental agreements may be deposited with the county treasurer to the credit of the lease or rental agreement fund, general fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a lease or rental agreement fund is more than $10,000 *for an elementary or high school district or $20,000 for a K-12 district*, ~~such~~ *the* cash balance in excess of ~~$10,000 shall~~ *this limit must* be transferred to the general fund of the district.

(2) Any expenditure of ~~moneys~~ *money* from a lease or rental agreement fund ~~shall~~ *must* be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the lease or rental agreement fund ~~shall~~ *must* be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

**Section 28.** Section 20-9-514, MCA, is amended to read:

"**20-9-514. Impact aid fund.** (1) The trustees of a district that receives federal funds under the provisions of ~~Title I of Public Law 81-874~~ *impact aid, as provided in 20 U.S.C. 7701, et seq.*, shall establish an impact aid fund. Money received under the provisions of ~~Public Law 81-874~~ *20 U.S.C. 7701, et seq.*, must be deposited with the county treasurer to the credit of the impact aid fund.

(2) The expenditure of money from the impact aid fund must be made pursuant to ~~Title I of Public Law 81-874~~ *20 U.S.C. 7701, et seq.* The impact aid fund must be administered pursuant to the financial administration provisions of this title for nonbudgeted funds."

**Section 29.** Section 20-9-533, MCA, is amended to read:

"**20-9-533. Technology acquisition fund — limitations.** (1) The trustees of a district may establish a technology acquisition fund for school district expenditures incurred for:

(a) the purchase, rental, repair, and maintenance of technological equipment, including computers and computer network access; and

(b) associated technical training for school district personnel.

(2) The trustees of a district shall fund the ~~budget for the~~ technology acquisition fund with the state money received under 20-9-534 *and with other local, state, and federal funds received for the purpose of funding technology.*

~~(3) Whenever the trustees of a district establish the technology acquisition fund, the trustees shall:~~

~~(a) adopt a resolution stating the reasons and purpose for financing a technology acquisition fund budget;~~

~~(b) adopt a budget for the amount required for the technology acquisition fund for the ensuing school fiscal year; and~~

~~(c) report the technology acquisition fund budget to the county superintendent on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103.~~

HeinOnline -- 1997 vol. I 63 1997

~~(4)~~*(3)* The trustees of a district may not use revenue in the technology acquisition fund to finance contributions to the teachers' retirement system, the public employees' retirement system, or the federal social security system or for unemployment compensation insurance."

**Section 30.** Section 20-9-534, MCA, is amended to read:

"**20-9-534. School technology purchases.** ~~The~~ *By September 1, the* superintendent of public instruction shall allocate the *annual* amount appropriated for grants for school technology purchases to each district based on the ratio that each district's BASE budget hears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343(3)(a)(ii) in the current school year."

**Section 31.** Section 20-10-124, MCA, is amended to read:

"**20-10-124. Private party contract for transportation — individual transportation contract.** (1) When the trustees contract with any private party to provide transportation to eligible transportees, the private party shall comply ~~in every respect~~ with the regulations of the board of public education for the standards of equipment, operation and safety of the school bus, and qualifications of the driver. The trustees may~~, in contracting with private parties,~~ require added safeguards by supplementing the board of public education policies in the contract with additional requirements for bus specifications, age of drivers, liability insurance, operating speed, or any other contractual condition ~~deemed~~ *considered* necessary by the trustees.

(2) Any school bus transportation by a private party or individual transportation that is furnished by a district ~~shall~~ *must* be under contract, and ~~no~~ district, county, or state money ~~shall~~ *may not* be paid for ~~such~~ transportation services to any person or firm who does not hold a legal contract with the district. Transpertation contracts for the ensuing year ~~shall~~ *must* be completed by the fourth Monday of June, except when an eligible transpertee establishes residence in the district after the fourth Monday of June and a contingency amount is included in the regular transportation budget or an emergency transportation budget is adopted.

(3) Transportation contracts between a district and a private party for the provision of school bus transportation ~~shall be subject to the following requirements~~ *must*:

(a) ~~the contract shall~~ be completed in ~~quadruplicate and, upon completion,~~ *triplicate, with* one copy ~~shall be~~ for the county superintendent, one copy for the privato party, ~~one copy for the superintendent of public instruction,~~ and one copy ~~shall be retained by~~ *for* the district;

(b) ~~the contract terms shall require conformance~~ *conform* to the transportation law, policies of the board of public education, and rules of the superintendent of public instruction; and

(c) ~~the contract shall~~ be signed by the ~~chairman~~ *presiding officer* of the trustees and the private party.

HeinOnline -- 1997 vol. I 64 1997

(4) A transportation contract between a parent or guardian of an eligible transportee and a district for the provision of individual transportation ~~shall be~~ *is* subject to the following requirements:

(a) it ~~shall~~ *must* be completed in quadruplicate ~~and, upon approval~~, *with* one copy ~~shall be~~ for the parent or guardian, one copy for the district, one copy for the county superintendent, and one copy for the superintendent of public instruction;

(b) it ~~shall~~ *must* be completed on forms promulgated by the superintendent of public instruction;

(c) the parent or guardian shall sign an affidavit attesting to the place of residence of ~~his~~ *the* child or children; and

(d) it ~~shall~~ *must* be signed by the ~~chairman~~ *presiding officer* of the trustees and the parent or guardian of the eligible transportees."

**Section 32.** Section 20-10-144, MCA, is amended to read:

**"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

HeinOnline -- 1997 vol. I 65 1997

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to he budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of ~~cash~~ *fund balance* for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and ~~cash~~ *fund balance* reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of ~~Title I of Public Law 81-874~~ *20 U.S.C. 7701, et seq.*, or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-527, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated oil and natural gas production taxes;

(h) anticipated local government severance tax payments for calendar year 1995 production;

(i) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

HeinOnline -- 1997 vol. I 66 1997

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

**Section 33.** Section 69-11-202, MCA, is amended to read:

**"69-11-202. Establishment and notice of schedule for passenger carriers.** ~~Every~~ *A* common carrier of passengers by railroad or by vessel plying upon waters lying wholly within this state shall establish *and give public notice of* a schedule time for the starting of trains or vessels from their ~~respective~~ stations or wharves~~, of which public notice shall be given, and~~. *A common carrier* shall, ~~weather permitting,~~ except in case of accident or detention caused by connecting lines *or weather conditions*, start ~~their~~ trains or vessels at or within 10 minutes after the schedule time ~~so established and notice given, under a penalty~~. *Failure to comply is punishable by a fine* of $250 ~~for each neglect so to do~~, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the county attorney ~~of the county in the name of the state~~, and paid into the ~~common school fund of the county~~ *elementary county equalization fund*."

**Section 34. Effective date.** [This act] is effective July 1, 1997.

Approved February 12, 1997

HeinOnline -- 1997 vol. I 67 1997

# CHAPTER NO. 23

[HB 25]

AN ACT AUTHORIZING SCHOOL DISTRICT TRUSTEES TO CAPITALIZE THE SCHOOL BUILDING RESERVE FUND IN AN AMOUNT EQUAL TO 5 YEARS OF LEVY REVENUE; LIMITING USE OF LOAN PROCEEDS FOR STATUTORILY AUTHORIZED PROJECTS; AMENDING SECTIONS 20-9-471 AND 20-9-503, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-9-471, MCA, is amended to read:

**"20-9-471. Issuance of obligations — authorization — conditions.** (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, and electrical systems;

(c) any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and

(d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation may not exceed 5 fiscal years, except that the term of the obligation for a qualified energy project may not exceed 10 fiscal years. For the purposes of this subsection, a "qualified energy project" means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) ~~The~~ *Except as provided in 20-9-502 and 20-9-503, the* proceeds of the obligation may not be used to acquire real property or construct a facility.

(5) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(6) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

HeinOnline -- 1997 vol. I 68 1997

(7) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406."

**Section 2.** Section 20-9-503, MCA, is amended to read:

**"20-9-503. Budgeting, tax levy, and use of building reserve fund.** (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include ~~such~~ *the* authorized amount in the building reserve fund of the preliminary budget. The county superintendent shall report ~~such~~ *the* amount as the building reserve fund levy requirement to the county commissioners on the fourth Monday of August, and a levy on the district ~~shall~~ *must* be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund ~~shall have the authority to~~ *may:*

*(a) pledge the revenue for loans from the building reserve fund levy for up to 5 years. However, loan proceeds may be used only for projects authorized by 20-9-502.*

*(b)* expend ~~moneys~~ *money* from ~~such~~ *the* fund for the purpose or purposes for which it was authorized without ~~such~~ *the* specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to ~~commence~~ *begin* the authorized projects. ~~Such~~ *The* expenditures ~~shall~~ *may* not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest ~~such~~ *the* money in accordance with 20-9-213(4). The interest earned from the investment ~~shall~~ *must* be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for ~~such~~ *the* fund."

**Section 3. Effective date.** [This act] is effective July 1, 1997.

Approved February 20, 1997

# CHAPTER NO. 24

[HB 35]

AN ACT ELIMINATING ARCHAIC CONSUMER PROTECTION PROVISIONS PERTAINING TO PAINT LABELING AND COAL INVOICES; AND REPEALING SECTIONS 30-12-1001, 30-12-1002, 30-12-1003, 30-12-1004, 30-12-1005, 30-12-1006, 82-3-201, 82-3-202, 82-3-203, 82-3-204, AND 82-3-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** Sections 30-12-1001, 30-12-1002, 30-12-1003, 30-12-1004, 30-12-1005, 30-12-1006, 82-3-201, 82-3-202, 82-3-203, 82-3-204, and 82-3-205, MCA, are repealed.

Approved February 20, 1997

HeinOnline -- 1997 vol. I 69 1997

# CHAPTER NO. 25

[HB 85]

AN ACT SPECIFYING THAT THE COMMISSIONER OF POLITICAL PRACTICES SHALL NOTIFY THE SECRETARY OF STATE OR THE ELECTION ADMINISTRATOR OF NONCOMPLIANCE WITH CAMPAIGN PRACTICE LAWS BEFORE CERTAIN DEADLINES RELATED TO BALLOT CERTIFICATION; AND AMENDING SECTION 13-37-126, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-37-126, MCA, is amended to read:

**"13-37-126. Names not to be printed on ballot.** (1) The name of a candidate may not be printed on the official ballot for an election if the candidate or a political treasurer for a candidate fails to file any statement or report as required by this chapter.

(2) A vacancy on an official ballot under this section may be filled in the manner provided by law, but not by the name of the same candidate.

(3) In carrying out the mandate of this section, the commissioner ~~must~~ *shall*, by a written statement, notify the secretary of state or the election administrator that a candidate or a candidate's treasurer has not complied with the provisions of this chapter, as described in subsection (1), and that a candidate's name should not he printed on the official ballot. *The commissioner shall provide this notification by the ballot certification deadline provided in 13-10-208 for primary elections and by no later than 7 days before the ballot certification deadline provided in 13-12-201 for general elections.*"

Approved February 20, 1997

# CHAPTER NO. 26

[HB 43]

AN ACT REDEFINING THE OFFENSE OF ESCAPE; ALLOWING A GOVERNMENTAL ENTITY TO RECOVER FROM AN ESCAPEE ITS COSTS REGARDING THE ESCAPE, THE INVESTIGATION OF THE ESCAPE, AND THE APPREHENSION OF THE ESCAPEE; AMENDING SECTIONS 45-7-306 AND 46-18-243, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-7-306, MCA, is amended to read:

**"45-7-306. Escape.** (1) *(a)* "Official detention" means ~~imprisonment which resulted from~~ *placement of a person in the legal custody of a municipality, a county, or the state as a result of:*

*(i)* a conviction for an offense~~, confinement for an offense, confinement of a person charged with~~ *or of having been charged with* an offense~~, detention~~;

*(ii) the actual or constructive restraint or custody of a person* by a peace officer pursuant to arrest, *transport, or court order;*

*(iii)* detention for extradition or deportation~~,~~;

*(iv)* placement in a community corrections facility or program~~,~~;

*(v)* supervision while under a supervised release program~~,~~;

*(vi)* participation in a county jail work program under 7-32-2225 through 7-32-2227~~,~~; or

*(vii)* any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.

*(b)* ~~"Official detention"~~ *Official detention* does not include supervision of *a person on* probation or parole, constraint incidental to release on hail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detontion commits the offense of escape if ~~he~~ *the person* knowingly or purposely ~~removes himself from~~ *eludes* official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if ~~he~~ *the person* is participating in a county jail work program under 7-32-2225 through 7-32-2227 and ~~he~~ knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if ~~he~~ *the person* escapes ~~from or while in transit to or from a state prison, county jail, city jail, community corrections facility or program, or supervised release program~~ by the use or threat of force, physical violence, *a* weapon, or *a* simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if ~~he:~~

~~(i) has~~ *the person escapes after having* been charged with or convicted of a felony ~~and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or~~

~~(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon~~; or

(c) fined *an amount* not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if ~~he commits escape, including escape while in transit to or from official detention,~~ *the person escapes* under circumstances other than *those described in* subsections (3)(a) and (3)(b)."

**Section 2.** Section 46-18-243, MCA, is amended to read:

**"46-18-243. Definitions.** For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

HeinOnline -- 1997 vol. I 71 1997

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) (a) "Victim" means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this stato *or that incurs costs or losses during the commission or investigation of an escape, as defined in 45-7-306, or during the apprehension or attempted apprehension of the escapee*; or

(iv) an insurer or surety with a right of subrogation to the extent it has reiinbursed the victim of the offense for pecuniary loss.

(b) Victim does not include a person who is accoimtable for the crime or accountable for a crime arising from the same transaction."

**Section 3. Applicability.** [This act] applies to escapes occurring after [the effective date of this act].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved February 21, 1997

# CHAPTER NO. 27

[HB 73]

AN ACT TRANSFERRING RULEMAKING AUTHORITY FROM THE STATE BOARD OF LAND COMMISSIONERS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ENSURE THAT RULEMAKING AUTHORITY FOR FIRE PROTECTION, PROTECTION OF FOREST

HeinOnline -- 1997 vol. I 72 1997

RESOURCES, FIRE PROTECTION SERVICES, AND CONTROL OF TIMBER AND DEBRIS IS CONSISTENT WITH RULEMAKING AUTHORITY IN THE DEPARTMENT'S OTHER FORESTRY PROGRAMS; CLARIFYING THE RESPONSIBILITIES OF THE DEPARTMENT CONCERNING THE PROTECTION OF FOREST RESOURCES, THE PROVISIONS FOR FIRE PROTECTION SERVICES, AND THE CONTROL OF TIMBER SLASH AND DEBRIS; AMENDING SECTIONS 76-11-101, 76-13-102, 76-13-103, 76-13-109, 76-13-112, 76-13-201, 76-13-204, 76-13-205, 76-13-403, 76-13-408, AND 76-13-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] transfers rulemaking authority from the state board of land commissioners to the department of natural resources and conservation. It is the intent of [section 4] to transfer the administration of protection of natural resources from fire, protection of forest resources, fire protection services, and control of timber slash and debris from the state board of land commissioners to the department of natural resources and conservation.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-11-101, MCA, is amended to read:

**"76-11-101. Protection of natural resources from fire.** The department of natural resources and conservation~~, under rules adopted by the state board of land commissioners,~~ shall *adopt rules to* protect the natural resources of the state, especially the natural resources owned by the state, from destruction by fire and for that purpose, in emergencies, may employ personnel and incur other expenses when necessary."

**Section 2.** Section 76-13-102, MCA, is amended to read:

**"76-13-102. Definitions.** Unless the context requires otherwise, in part 2 and this part, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(6) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and in which forest fire protection is provided through the medium of an agency recognized by the ~~board~~ *department*.

HeinOnline -- 1997 vol. I 73 1997

(7) "Forest fire season" means the period of each year beginning May 1 and ending September 30, inclusive.

(8) "Forest land" means land that has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

(9) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.

(b) The term does not include activities for the purpose of:

(i) the operation of a nursery or Christmas tree farm;

(ii) the harvest of Christmas trees;

(iii) the harvest of firewood; or

(iv) the cutting of trees for personal use by an owner or operator.

(10) "Lands" for conservation purposes means all forest lands within this state that are officially classified by the department as forest lands under 76-13-107.

(11) "Operator" means a person responsible for conducting forest practices. An operator may he the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.

(12) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

(13) "Person" means an individual, corporation, partnership, or association of any kind.

(14) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the ~~board~~ *department* as giving adequate fire protection to forest lands in accordance with rules adopted by the ~~board~~ *department*.

(15) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area."

**Section 3.** Section 76-13-103, MCA, is amended to read:

**"76-13-103. Applicability.** This part and part 2 apply to all forest lands within this state ~~which~~ *that* are officially classified by the ~~board~~ *department* as forest lands according to the definition of forest land in 76-13-102."

**Section 4.** Section 76-13-109, MCA, is amended to read:

HeinOnline -- 1997 vol. I 74 1997

"**76-13-109. Rules.** The ~~board~~ *department* may adopt and enforce ~~through the department~~ reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this part and part 2."

**Section 5.** Section 76-13-112, MCA, is amended to read:

"**76-13-112. Penalty for violation.** Unless otherwise provided by this part or part 2, a person who violates this part or part 2 or any rule adopted ~~by the board or department~~ pursuant to this part or part 2 is guilty of a misdemeanor and shall be punished by a fine of not more than $500 or imprisonment in a county jail for not more than 6 months or both."

**Section 6.** Section 76-13-201, MCA, is amended te read:

"**76-13-201. Duty of owner to protcct against fire.** (1) An owner of forest land classified as such by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression ~~shall~~ *must* be in conformity with reasonable rules and standards for adequate fire protection adopted by the ~~board~~ *department*.

(2) If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than $30 for each landowner in the protection district and of not more than an additional 20 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. The owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department in accordance with this part and part 1.

(3) No otber charges may be assessed those landowners participating except in cases of proven negligence on the part of the landowner or ~~his~~ *the landowner's* agent."

**Section 7.** Section 76-13-204, MCA, is amended to read:

"**76-13-204. Creation, annexation of land into, and dissolution of forest fire protcction districts.** (1) In accordance with the provisions of subsections (2) and (3), the ~~board~~ *department* may create, annex land to, or dissolve forest fire protection districts.

(2) Before a district is created, land is annexed into a district, or a district is dissolved, the ~~board~~ *department* shall hold a hearing in any county in which land affected by the proposed cbange is located.

(a) The department sball give notice at ieast 20 days in advance of the hearing to all property owners to be affected by the propesed cbange. Service of the notice may be made by certified mail to each affected property owner or by publication of the notice in a newspaper published or generally circulated in the county in which the hearing is to be held.

(b) The department shall ~~report to the board~~ *consider* the arguments made for and against the proposed change ~~and shall make a recommendation to the board~~ *in making a determination under this section*.

(3) (a) A forest fire protection district may not be created or dissolved unless approved in writing by a vote of not iess than 51% of the owners representing at

HeinOnline -- 1997 vol. I 75 1997

least 51% of the acreage to be involved in the affected forest fire protection district.

(b) Land may not be annexed into a district unless approved by 51% of the owners representing at least 51% of the acreage to be annexed.

(4) Land annexed into a district may not be removed from that district unless that district is dissolved."

**Section 8.** Section 76-13-205, MCA, is amended to read:

**"76-13-205. Determination of boundaries of district.** In establishing boundaries of organized forest fire protection districts covering forest lands, the ~~board~~ *department* may for the purpose of administrative convenience designate recognizable landmarks as boundaries."

**Section 9.** Section 76-13-403, MCA, is amended to read:

**"76-13-403. Supervision by department.** The department~~, under rules adopted by the board,~~ may *adopt and enforce rules to* supervise and inspect the fire hazard reduction or management of all fire hazards created by forest products harvesting, timber stand improvement, and right-of-way clearing on private land in the state."

**Section 10.** Section 76-13-408, MCA, is amended to read:

**"76-13-408. Fire hazard reduction agreement and bond.** (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber stand improvement, such as but not limited to thinning, weeding, or pruning, upon private lands within the state, the person conducting the work shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department, providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted ~~by the board~~ *under this part*.

(2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post a bond to the state in a form and for an amount as may be prescribed by the department, but the amount may not exceed $6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut.

(3) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall pay 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(4) The agreement must provide that:

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

HeinOnline -- 1997 vol. I 76 1997

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted ~~by the board~~ *under this part*.

(5) The bond must be released upon the issuance of the certificate of clearance."

**Section 11.** Section 76-13-414, MCA, is amended to read:

**"76-13-414. Fees.** (1) In addition to any bond, the department shall charge the contractor fees for administration, inspections, and enforcement work conducted in the exercise of its duties under this part. The fees must be deposited in the state special revenue fund to the credit of the department.

(2) (a) The fee for a fire hazard reduction agreement is $25 and must be collected by the department upon issuance of the agreement.

(b) In addition, a fee of 60 cents for each 1,000 board feet (log scale) must be charged or an equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding 500,000 board feet per agreement in a calendar year must be returned to the contractor by the department.

(3) (a) The fee for mastor fire hazard reduction agreements must be equal to 100% of the department's actual costs incurred in the administration, inspection, and enforcement of each agreement, and the department shall bill the contractor annually to collect ~~such~~ *the* fees.

(b) In addition, each contractor with a master fire hazard reduction agreement shall pay to the department 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year for each master fire hazard attachment. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(c) The fee required under subsection (3)(b) must be paid annually in conjunction with the fee paid under subsection (3)(a). The ~~board~~ *department* may, in its discretion, conduct an audit to determine the volume of forest products harvested by a contractor. If the ~~board~~ *department* conducts an audit, the contractor shall cooperate and make available to the ~~board~~ *department* all requested records, inventories, and other information relevant to the audit."

**Section 12. Effective date.** [This act] is effective on passage and approval.

Approved February 21, 1997

# CHAPTER NO. 28

[HB 141]

AN ACT REVISING ADMINISTRATIVE FUNCTIONS CONCERNING THE SUPREME COURT; ELIMINATING THE REQUIREMENT THAT THE SUPREME COURT MAKE QUARTERLY SETTLEMENTS WITH THE STATE AUDITOR; REVISING THE REQUIREMENT FOR FREE DISTRIBUTION OF

HeinOnline -- 1997 vol. I 77 1997

VOLUMES OF REPORTS OF DECISIONS; AMENDING SECTIONS 3-2-603 AND 3-2-604, MCA; AND REPEALING SECTION 3-2-405, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-2-603, MCA, is amended to read:

**"3-2-603. Duties of reporters.** ~~(1)~~ The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided hy the supreme court. The reports of the cases ~~shall~~ *must* he made under the supervision of and pursuant to rules adopted by the justices of the supreme court.

~~(2) Reports of all cases shall be furnished to the West Publishing Company for inclusion in its publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting the reports for publication.~~

~~(3) The department of administration, on request of the supreme court, shall contract with a publishing house to publish volumes of reports. The style, size, and format of the reports shall be determined by the justices. The department of administration shall prepare and issue a call for bids and, in accordance with the terms and specifications of the call, contract with the lowest and best bidder. The contract shall provide that the copies of the reports purchased by state or local governmental agencies of Montana, including the reports purchased by the supreme court pursuant to 3-2-604, shall be sold to them by the publisher at the cost of publication.~~"

**Section 2.** Section 3-2-604, MCA, is amended to read:

**"3-2-604. Distribution of reports.** (1) On the publication of each volume of the reports, the supreme court shall purchase ~~up to 221 copies from the publisher. The court shall~~ *and* distribute ~~them at no charge and in the following manner~~:

(a) ~~to the state library for distribution, five copies;~~

~~(b) to the library of congress, four copies;~~

~~(c) to the university of Montana-Missoula law library, two copies;~~

~~(d)~~ *each volume* to each justice of the supreme court~~,~~ *and to each* district *court* judge~~, and county attorney, one copy~~; *and*

~~(e)~~*(b) four copies of each volume* to the law library of the state of Montana~~, four copies;~~

~~(f) to the attorney general, 11 copies;~~

~~(g) to other institutions, publishers, authors, and libraries with which the state law librarian has established a system of exchange for materials of comparable value, up to 50 copies; and~~

~~(h) to the university of Montana-Missoula up to 50 copies to be used by the law librarian of the university for the purpose of exchanges for materials of comparable value with libraries, universities, and institutions of higher education in other states.~~

(2) All reports distributed ~~to state, district, and other officers in the state~~ *pursuant to subsection (1)* are for the use of ~~their~~ *the* office and ~~shall~~ *must* ~~he, by the person receiving them,~~ turned over to ~~his~~ *the* successor in office."

**Section 3. Repealer.** Section 3-2-405, MCA, is repealed.

Approved February 21, 1997

## CHAPTER NO. 29

[HB 218]

AN ACT AMENDING THE LAW RELATING TO ESTABLISHMENT OF INDIVIDUAL LICENSURE TO KEEP AND BEAR ARMS TO REVISE THE REFERENCE TO THE FEDERAL GUN-FREE SCHOOL ZONES ACT; AND AMENDING SECTION 45-8-360, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-8-360, MCA, is amended to read:

**"45-8-360. Establishment of individual licensure.** In consideration that the right to keep and bear arms is protected and reserved to the people in Article II, section 12, of the Montana constitution, a person who has not been convicted of a violent, felony crime and who is lawfully able to own or to possess a firearm under the Montana constitution is considered to be individually licensed and verified by the state of Montana within the meaning of the provisions regarding individual licensure and verification in the federal Gun-Free School Zones Act ~~of 1990~~."

Approved February 21, 1997

## CHAPTER NO. 30

[HB 24]

AN ACT INCREASING THE HOMESTEAD EXEMPTION FROM $40,000 TO $60,000; AMENDING SECTION 70-32-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-32-104, MCA, is amended to read:

**"70-32-104. Limitation on value.** (1) A homestead may not exceed in value ~~$40,000~~ *$60,000*. In ~~any proceedings~~ *a proceeding* instituted to determine the value of ~~such~~ *the* homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the ~~last completed~~ *last-completed* assessment roll preceding the institution of ~~such proceedings shall be~~ *the proceeding is* prima facie evidence of the value of the property claimed as a homestead.

HeinOnline -- 1997 vol. I 79 1997

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, ~~he~~ *the claimant* is limited to an exemption amount propertional to ~~his~~ *the claimant's* undivided interest."

**Section 2. Applicability.** [Section 1] applies to judgments obtained and bankruptcy proceedings begun after October 1, 1997.

Approved February 24, 1997

# CHAPTER NO. 31

[HB 32]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-5-205, MCA, is amended to read:

**"17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~March 22, 1995~~ *[the effective date of this act]*."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 24, 1997

# CHAPTER NO. 32

[HB 36]

AN ACT MODIFYING THE BOARD OF INVESTMENTS' AUTHORITY TO SELL REAL PROPERTY HELD AS AN INVESTMENT; AND AMENDING SECTIONS 17-6-201, 77-1-101, AND 77-1-701, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-6-201, MCA, is amended to read:

**"17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires ~~any~~ *an* investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in ~~any~~ *a* retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto ~~any~~ investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring ~~all~~ real property obtained through ~~foreclosure of any~~ investments ~~purchased under the provisions of~~

~~17-6-211 when full payment has been received for the property~~. *Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.*

(b) direct the withdrawal of ~~any~~ funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of ~~any~~ securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305."

**Section 2.** Section 77-1-101, MCA, is amended to read:

**"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) *(a)* "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

*(b)* General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(5) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to puhlic use; or

(d) adjacent contiguous private land if permission to cross the land has heen secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use hy members of the public, other than those granted permission.

(6) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes hy ~~any~~ *a* state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or

(iv) lands acquired through ~~foreclosure of any~~ investments ~~purchased~~ under the provisions of ~~17-6-211~~ *17-6-201*."

**Section 3.** Section 77-1-701, MCA, is amended to read:

**"77-1-701. Definitions.** When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Ownership record" means the original deed, abstract, and any other instrument signifying state ownership or other interest in real property.

(2) "State agency" means any board, hureau, department, commission, or officer of the state.

(3) "State land" means land held, possessed, or administered by the state by virtue of fee simple title, grant, or deed. This term does not include:

(a) land acquired through ~~foreclosure of any~~ investments ~~purchased~~ under the provisions of ~~17-6-211~~ *17-6-201*;

(b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

(c) land used for easements and rights-of-way."

Approved February 24, 1997

HeinOnline -- 1997 vol. I 83 1997

# CHAPTER NO. 33

[HB 59]

AN ACT SETTING UNIFORM STATE AMBIENT SULFUR DIOXIDE STANDARDS; AND REPEALING SECTION 1, CHAPTER 504, LAWS OF 1987.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Repealer.** Section 1, Chapter 504, Laws of 1987, is repealed.

Approved February 24, 1997

# CHAPTER NO. 34

[HB 81]

AN ACT GENERALLY REVISING THE STATUTES REGARDING THE LEASING OF STATE LANDS FOR OIL AND GAS; REVISING THE REQUIREMENTS FOR OIL AND GAS OPERATIONS; AMENDING SECTIONS 77-3-423, 77-3-432, 77-3-433, 77-3-435, 77-3-442, 82-11-123, AND 82-11-161, MCA; REPEALING SECTIONS 82-11-113, 82-11-114, 82-11-115, 82-11-116, AND 82-11-162, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 77-3-423, MCA, is amended to read:

**"77-3-423. Annual rental.** (1) The annual money rentals to be paid to the state for oil and gas leases ~~issued on and after July 1, 1975, shall~~ *must* be set by the board but may not be less than $1.50 for each acre of land leased.

(2) In addition to the sum of $1.50 per acre, the rental for the first year of the lease ~~shall~~ *must* also include any sum in excess of $1.50 per acre offered and accepted for the first year's rental.

(3) ~~This~~ *The* annual rental ~~shall in no case~~ *under this section may not* be less than $100 a year.

(4) The first year's rental ~~shall~~ *must* be paid before the issuance of the lease. The rentals for each subsequent year of the lease ~~shall be~~ *are* due and payable before the beginning of ~~such~~ *the* subsequent *lease* year~~, and upon~~. *Upon* failure to make ~~such~~ *the rental* payment, the lease terminates unless there is ~~a producing well~~ *a well currently being drilled, a producing well, or a shut-in well approved by the department* on the lease. Rental paid for any year ~~shall~~ *must* be credited against any royalty that accrues during that year."

**Section 2.** Section 77-3-432, MCA, is amended to read:

**"77-3-432. Royalty.** In ~~every~~ *each* oil and gas lease granted by the state under this part ~~and acts amendatory thereto~~, there ~~shall~~ *must* be reserved to the state as consideration ~~therefor~~ *for the lease* a royalty in all oil and gas produced and saved from all lands covered ~~thereby~~ *by the lease* and not used for light, fuel, and operation purposes on the leased premises, which ~~shall~~ *must* be equivalent

to the full market value, as ascertained hy the board at the date of ~~such~~ *the* lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under ~~such~~ *the* lease. ~~Such~~ *The* royalty reservation ~~shall~~ *must* be set by the board but may not be less than 12 1/2% on gas and not less than 12 1/2% on ~~that portion of the average production of~~ oil or casinghead gasoline for each producing well ~~not exceeding 3,000 barrels~~ for the calendar month. The state may share the expense of transporting the oil to the nearest market on a basis proportional to the state's royalty interest in ~~such~~ *the* oil and at a rate per mile acceptable to the department."

**Section 3.** Section 77-3-433, MCA, is amended to read:

**"77-3-433. Shut-in gas royalty.** The royalty on gas, including casinghead gas and all gaseous substances~~, while the same is~~ not sold or used off the premises, ~~shall~~ *must* be at the rate of $400 per ~~well~~ *lease* each year or the amount of the annual rental provided in ~~said~~ *the* lease ~~in lieu of such per well rate~~, whichever is the greater, payable on or before the annual anniversary date of the lease. As long as ~~such~~ *the* leased lands contain a well capable of ~~such~~ production *in paying quantities* and ~~such~~ *the requisite* payment is made, the lease ~~shall~~ *must* be considered as a producing lease under the lease terms."

**Section 4.** Section 77-3-435, MCA, is amended to read:

**"77-3-435. Payments due to state — *audit — notice — action.*** (1) The report under 77-3-431 ~~shall~~ *must* be accompanied by payment of the amount due the state as royalty for the month covered by the report unless the state's royalty is being or has been paid ~~direct~~ *directly* by the purchaser ~~thereof~~. However, ~~where~~ *when* the amount of royalty due from ~~any~~ *a* lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

(2) Oil and gas leases granted hy the state ~~shall~~ *must* contain suitable provisions imposing upon all lessees the obligation to make payments due the state in the manner, at the time, and to ~~such~~ *the* representative of the state ~~as~~ *that* may be required by the board.

*(3) Except as provided in subsection (4), the department may, within 7 years of the filing of a report pursuant to 77-3-431, commence an audit of a lessee's or a former lessee's operation to determine whether the report is complete and accurate and whether all royalties owed have been paid. The department shall notify the lessee in writing of the audit. The notice must describe the period for which the audit is being conducted. Upon conclusion of the audit, the department shall notify the lessee of the department's conclusions and, if the department has determined that additional royalties are owed, the basis for that determination. An action to compel payment of royalties due must be commenced within 2 years of the date of mailing the notice.*

*(4) If a lessee or former lessee, with intent to evade payment of royalties, purposely or knowingly files a false report or purposely or knowingly fails to pay royalties owed, the department may conduct an audit and file an action to collect royalties at any time after the royalty is due."*

**Section 5.** Section 77-3-442, MCA, is amended to read:

HeinOnline -- 1997 vol. I 85 1997

**"77-3-442. Disposition of property of lessee upon termination of lease.** (1) Upon the termination for any cause of ~~any~~ *a* lease issued under this part, the former lessee has 6 months after the date of the termination to remove *from the premises* all machinery, fixtures, improvements, huildings, and equipment belonging to ~~him on the premises~~ *the lessee*, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. As to ~~such~~ *the* casing, equipment, and apparatus, any succeeding lessee or, in the event there is no succeeding lessee, the stato wishing to have ~~such~~ *the* property left upon the premises shall pay ~~the~~ *a* reasonable value ~~thereof~~ *for the property* to the former lessee.

(2) If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of ~~such~~ *the* casing, equipment, and apparatus, the succeeding lessee or, *if there is no succeeding lessee,* the state~~, as the case may be,~~ shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three appraisers, one of whom ~~shall~~ *must* be chosen by the successful bidder, one by the former lessee, and the third by the two ~~so~~ *appraisers* chosen. *If a person refuses to appoint an appraiser within 15 days of a request to do so by the department, the department may appoint an appraiser for that person.* ~~Its~~ *The* appraisal ~~shall~~ *must* be reported to the respective parties in writing and is final and conclusive.

(3) ~~The~~ *Unless the department gives written authorization, the* former lessee may *not* remain in possession ~~and~~ *or* manage the land and property formerly covered by ~~his~~ *the* lease. ~~until the value of the casing, equipment, and apparatus which the succeeding lessee or the state desires to have left upon the premises is fixed in the manner provided in this section and has been paid to him in cash.~~ During the time the former lessee remains in ~~such~~ *authorized* possession, ~~he~~ *the lessee* may retain the same share of the products of the premises as inured to ~~him~~ *the lessee* during the term of ~~his~~ *the* lease. ~~Should~~ *If* the state or other bidder *does* not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of ~~his~~ *the lessee's* proporty from the ~~lands~~ *premises.*"

**Section 6.** Section 82-11-123, MCA, is amended to read:

**"82-11-123. Requirements for oil and gas operations.** Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures (in order to facilitate the discovery of potential geothermal energy sources), the making and filing of reports on well locations, and the filing of directional surveys, geological sample logs, mud logs, core descriptions, and ordinary core analysis, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

(3) the drilling, casing, producing, and plugging of wells and class II injection wells in a manner that prevents the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

HeinOnline -- 1997 vol. I 86 1997

(4) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has heen utilized and necessary measures to prevent adverse hydrological effects from the well or hole, unless the surface owner agrees in writing, with the approval of the hoard or its representatives, to a different plan of restoration;

(5) the furnishing of a reasonable hond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well. The hond may be forfeited in its entirety by the hoard for failure to perform the duty to properly plug each dry or abandoned well and may not he canceled or absolved:

~~(a)~~ if the well fails to produce oil or gas in commercial quantities, until:

~~(i)~~*(a)* the board determines the well is properly plugged and abandoned as provided in the board's rules; or

~~(ii)~~*(b)* the requirements of 82-11-163 are met~~; or~~.

~~(b) if the well is completed after June 30, 1989, until the owner notifies the board that the well is producing oil and gas in commercial quantities and meets the requirements of 82-11-162;~~

(6) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality of oil and gas;

(7) that every person who produces, transports, or stores oil or gas or injects or disposes of water in this state shall make available within this state for a period of 5 years complete and accurate records of tbe quantities. The records must be available for examination hy the board or its employees at all reasonable times. The person shall file with the board reports as it may prescribe with respect to quantities, transportations, and storages of tbe oil, gas, or water~~; and~~.

(8) the installation, use, and maintenance of mo iitoring equipment or methods in the operation of class II injection wells."

**Section 7.** Section 82-11-161, MCA, is amended to read:

**"82-11-161. Oil and gas production damage mitigation account — statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) At the beginning of each biennium, there must be allocated to the oil and gas production damage mitigation account $50,000 from the interest income of the resource indemnity trust fund, except *that* if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a) equals or exceeds $200,000, no allocation will be made; or

(b) is less than $200,000, then an amount less than or equal to the difference between the unobligated cash balance and $200,000, but not more than $50,000, must be allocated to the oil and gas production damage mitigation account from the interest income of tbe resource indemnity trust fund.

HeinOnline -- 1997 vol. I 87 1997

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account:

~~(a)~~ all funds received by the board pursuant to 82-11-136~~; and~~

~~(b) all fees received by the board from owners of producing wells pursuant to 82-11-162~~.

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, *sump, hole,* drill site, or drilling or producing area within a reasonable time after demand by the board. The responsible person shall, however, pay costs to the extent of that person's available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to properly plug, reclaim, or restore the well, *sump, hole,* drill site, or drilling or producing area and to mitigate any damage for which the person is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account."

**Section 8. Repealer.** Sections 82-11-113, 82-11-114, 82-11-115, 82-11-116, and 82-11-162, MCA, are repealed.

**Section 9. Effective date.** [This act] is effective on passage and approval.

Approved February 24, 1997

# CHAPTER NO. 35

[HB 87]

AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE NOTIFY TAXPAYERS BY CERTIFIED MAIL WHEN THE DEPARTMENT PLANS TO ASSESS THE PROPERTY OF A TAXPAYER WHO HAS REFUSED TO FURNISH INFORMATION; AMENDING SECTION 15-1-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-1-303, MCA, is amended to read:

**"15-1-303. Penalty for refusal to furnish information.** (1) If a person refuses to allow inspection of any books or records when requested by the department or refuses or neglects to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make a determination and assessment of the property as in its judgment appears to be just and equitable

HeinOnline -- 1997 vol. I 88 1997

and may add to the assessment an amount not to exceed 20% of the assessment as a penalty for the refusal or neglect. The department shall immediately notify the person assessed of its action, either by ~~certified~~ mail or by personal service of the notice.

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, the taxpayer may request an informal conference with the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of the failure to supply the information requested by the department. Within 10 days after the conference, the department shall notify the taxpayer by ~~certified~~ mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of the failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, the taxpayer may appeal to the county tax appeal board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of the failure to supply the information that the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment or, if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 30 calendar days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board shall follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved February 24, 1997

# CHAPTER NO. 36

[HB 88]

AN ACT ESTABLISHING A 30-DAY APPEAL TIME FOR APPEALS OF VALUATION REVIEWS AND ESTIMATED AND REVISED ASSESSMENTS

HeinOnline -- 1997 vol. I 89 1997

OF PROPERTY FOR TAXATION PURPOSES; AMENDING SECTIONS 15-1-303 AND 15-8-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-1-303, MCA, is amended to read:

**"15-1-303. Penalty for refusal to furnish information.** (1) If a person refuses to allow inspection of any books or records when requested by the department or refuses or neglects to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make a determination and assessment of the property ~~as~~ *that* in its judgment appears to be just and equitable and may add to the assessment an amount not to exceed 20% of the assessment as a penalty for the refusal or neglect. The department shall immediately notify the person assessed of its action, either by certified mail or by personal service of the notice.

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within ~~15~~ *30* days after receipt of the assessment, the taxpayer may request an informal conference with the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of the failure to supply the information requested by the department. Within 10 days after the conference, the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of the failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, the taxpayer may appeal to the county tax appeal board within ~~20~~ *30* days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of the failure to supply the information that the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment or, if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within 30 calendar days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board shall follow the provisions of subsections (2)(b) and (2)(c).

HeinOnline -- 1997 vol. I 90 1997

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303."

**Section 2.** Section 15-8-601, MCA, is amended to read:

**"15-8-601. Assessment revision — conference for review.** (1) (a) Except as provided in subsection (1)(b), whenever the department discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

(b) Within the time limits set by 15-23-116, whenever the department discovers property subject to assessment under Title 15, chapter 23, that has escaped assessment, been erroneously assessed, or been omitted from taxation, the department may issue a revised assessment to the person, firm, or corporation who owned the property at the time it escaped assessment, was erroneously assessed, or was omitted from taxation, regardless of the ownership of the property at the time of the department's revised assessment.

(2) When the department proposes to revise the statement reported by the taxpayer under 15-8-301, the action of the department is subject to the notice and conference provisions of this section. Revised assessments of centrally assessed property are subject to review pursuant to 15-1-211.

(3) (a) Notice of revised assessment pursuant to this section must be made by the department by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. If the property is locally assessed, the notice must include the opportunity for a conference on the matter, at the request of the person interested, within ~~15~~ *30* days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes in writing of each assessment revision review conference, and the minutes are public records.

(c) Following an assessment revision review conference or expiration of the opportunity for a conference, the department shall order an assessment ~~as~~ *that* it considers proper. Any party to the conference aggrieved by the action of the department *or a taxpayer who does not request a conference* may appeal to the county tax appeal board ~~at its next meeting~~ *within 30 days of receipt of the revised assessment or the department's assessment made pursuant to the conference.*

(4) The department shall enter in the property tax record all changes and corrections made by it."

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1997.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved February 24, 1997

HeinOnline -- 1997 vol. I 91 1997

# CHAPTER NO. 37

[HB 96]

AN ACT INCREASING THE NUMBER AND KIND OF INVESTMENT OPTIONS AVAILABLE IN THE STATE AND POLITICAL SUBDIVISION DEFERRED COMPENSATION PLANS; AMENDING SECTION 19-50-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-50-102, MCA, is amended to read:

**"19-50-102. Deferred compensation programs permitted — rules.** (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954, as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of ~~his~~ *the employee's* compensation *to one or more of the investment options provided in subsection (4)* for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The ~~amount of compensation deferred under this chapter may be used to purchase~~ *department or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political subdivision employee deferred compensation plan funds may be invested. The department or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include*:

(a) ~~shares in~~ a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund ~~shall~~ *must* be credited to the fund. These *state-invested* funds may be commingled with other state investment funds, but separate ~~accounts~~ *accounting* must be maintained ~~for participants in the state deferred compensation investment fund~~. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner; ~~or~~

*(d) investment funds managed pursuant to investment services contracts maintained by the department or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission;*

*(e) mutual funds provided through contracts maintained by the department or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission; or*

~~(d)~~*(f)* ~~any~~ *a* combination of subsections *(4)*(a)~~, (b), or (c) above, as specified by the participant~~ *through (4)(e).*

*(5)* The ~~shares, accounts, or contracts so purchased are the exclusive property of and stand in the name of the state of Montana or a political subdivision until distributed to an employee in a manner provided in the plan agreement established by the administrator~~ *deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.*

~~(5)~~*(6)* The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

~~(5)~~*(7)* The department or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

**Section 2. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to compensation deferred by employees, as defined in 19-50-101, and to deferred compensation plans established before [the effective date of this act].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved February 24, 1997

## CHAPTER NO. 38

[HB 132]

AN ACT REQUIRING THE DEPARTMENTS OF ENVIRONMENTAL QUALITY, AGRICULTURE, AND NATURAL RESOURCES AND CONSERVATION TO REPORT SPECIFIC COMPLIANCE AND ENFORCEMENT INFORMATION TO THE ENVIRONMENTAL QUALITY COUNCIL; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Reporting requirements.** (1) The departments of environmental quality, agriculture, and natural resources and conservation shall

HeinOnline -- 1997 vol. I 93 1997

biennially report to the council the following natural resource and environmental compliance and enforcement information:

(a) the activities and efforts taking place to promote compliance assistance and education;

(b) the size and description of the regulated community and the estimated proportion of that community that is in compliance;

(c) the number, description, method of discovery, and significance of noncompliances, including those noncompliances that are pending; and

(d) a description of how the department has addressed the noncompliances identified in subsection (1)(c) and a list of the noncompliances left unresolved.

(2) When practical, reporting required in subsection (1) should include quantitative trend information.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 1, part 3, and the provisions of Title 75, chapter 1, part 3, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 1997.

Approved February 24, 1997

# CHAPTER NO. 39

[HB 56]

AN ACT MODIFYING THE REVERSE ANNUITY MORTGAGE LOAN PROGRAM TO BETTER SERVE THE NEEDS OF ELDERLY HOMEOWNERS; GRANTING GREATER FLEXIBILITY TO THE BOARD OF HOUSING IN ESTABLISHING AGE AND PROPERTY ELIGIBILITY CRITERIA; AMENDING SECTION 90-6-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 90-6-503, MCA, is amended to read:

**"90-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following terms apply:

(1) "Mortgage" means a mortgaga as defined in 90-6-103.

(2) "Mortgagee" means the holder of a mortgage or its assignee.

(3) "Mortgagor" means a person:

(a) *who is* of lower income as determined by the board. In its determination of lower income, the board shall take into consideration the criteria in 90-6-103(16).

(b) ~~68 years of age or older~~ *68 years of age or older, except as provided on a case-by-case basis in accordance with program guidelines established by the board of housing*;

(c) who is the owner and occupant of a single-family dwelling ~~that is unencumbered by any prior mortgage, lien, or pledge~~; and

(d) who has completed a reverse annuity mortgage counseling program approved by the board.

(4) "Reverse annuity mortgage loan" means a loan in which loan proceeds are advanced to the mortgagor to provide a monthly tax-free cash payment for 10 years.

(5) "Single-family dwelling" means a one- to four-family living unit~~, excluding a condominium as defined in 70-23-102~~."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 12, 1997

# CHAPTER NO. 40

[SB 1]

AN ACT CLARIFYING NITRATE WATER QUALITY MEASUREMENTS; AMENDING SECTION 75-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-5-301, MCA, is amended to read:

**"75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed $1 \times 10^{-3}$ in the case of arsenic and $1 \times 10^{-5}$ for other carcinogens. However, if a standard established at a risk level of $1 \times 10^{-3}$ for arsenic or $1 \times 10^{-5}$ for other carcinogons violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

HeinOnline -- 1997 vol. I 95 1997

(ii) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate ~~[as nitrogen]~~ *as nitrogen* in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate ~~[as nitrogen]~~ *as nitrogen* at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate ~~[as nitrogen]~~ *as nitrogen* sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate ~~[as nitrogen]~~ *as nitrogen* level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

**Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to April 4, 1995.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved March 12, 1997

# CHAPTER NO. 41

[SB 10]

AN ACT AUTHORIZING THE BOARD OF REGENTS OF HIGHER EDUCATION TO WAIVE TUITION AND FEES FOR THE SPOUSE OR CHILDREN OF A MONTANA NATIONAL GUARD MEMBER WHO WAS KILLED OR DIED AS A RESULT OF INJURY, DISEASE, OR OTHER DISABILITY INCURRED IN THE LINE OF DUTY WHILE SERVING ON STATE ACTIVE DUTY; AMENDING SECTION 20-25-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-25-421, MCA, is amended to read:

**"20-25-421. Charges for tuition — waivers.** The regents may:

(1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction;

(2) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; ~~except that~~ *however,* when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements

HeinOnline -- 1997 vol. I 97 1997

~~which~~ *that* provide for the payment, ~~where~~ *when* required, of the student support fee by the reciprocal state;

(3) waive resident tuition for students at least 62 years of age;

(4) waive tuition and fees for:

(a) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(b) persons designated by the department of corrections pursuant to 52-5-112;

(c) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(d) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States; ~~or~~

(e) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; *or*

*(f) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state active duty;*

(5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(a) a paid or volunteer member of a municipal or rural fire department;

(b) a law enforcement officer as defined in 7-32-201; or

(c) a full-time highway patrol officer."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 12, 1997

# CHAPTER NO. 42

[SB 36]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 55TH LEGISLATURE; AMENDING SECTIONS 1-11-101, 2-1-212,

2-2-121, 2-2-136, 2-4-313, 2-4-622, 2-7-517, 2-8-113, 2-15-2204, 2-18-203, 2-18-301, 2-18-303, 2-18-304, 2-18-704, 2-18-1202, 3-2-405, 5-2-504, 5-4-307, 5-4-308, 5-5-214, 5-5-217, 5-11-203, 5-11-210, 5-11-212, 5-11-213, 5-17-205, 5-18-107, 5-22-101, 7-1-114, 7-2-2218, 7-2-2219, 7-4-2106, 7-4-2206, 7-6-2531, 7-7-4602, 7-13-4311, 7-14-4736, 7-16-2105, 7-16-4222, 7-32-2244, 7-34-2201, 10-2-416, 10-3-207, 10-3-501, 10-3-504, 10-4-101, 10-4-301, 13-13-276, 13-13-278, 13-25-106, 13-27-202, 13-37-106, 13-37-128, 13-37-130, 15-1-521, 15-1-704, 15-7-303, 15-8-104, 15-16-102, 15-16-119, 15-23-101, 15-23-703, 15-23-706, 15-23-707, 15-30-101, 15-30-111, 15-30-117, 15-30-121, 15-30-162, 15-30-201, 15-30-202, 15-31-102, 15-31-131, 15-32-102, 15-32-201, 15-32-403, 15-36-324, 15-36-325, 15-38-104, 15-38-106, 15-38-201, 15-38-202, 15-70-125, 15-70-235, 15-70-236, 16-1-106, 16-1-201, 16-1-202, 16-2-101, 16-2-103, 16-3-220, 16-6-106, 17-2-107, 17-3-221, 17-5-202, 17-6-103, 17-6-212, 17-7-502, 17-8-101, 18-1-103, 19-1-104, 19-1-402, 19-1-503, 19-3-1104, 19-3-1205, 19-9-411, 19-9-1101, 19-20-302, 19-50-102, 20-1-301, 20-7-504, 20-9-115, 20-9-341, 20-9-347, 20-9-466, 20-15-326, 20-15-404, 20-25-501, 22-1-412, 22-3-429, 22-3-603, 23-2-523, 23-2-536, 23-2-622, 23-2-717, 23-2-736, 23-5-406, 23-7-103, 23-7-211, 23-7-301, 25-10-206, 27-1-307, 27-1-718, 30-4-213, 30-10-103, 30-10-110, 32-1-381, 32-1-453, 32-1-1005, 32-3-803, 32-6-102, 33-2-523, 33-2-830, 33-4-511, 33-10-202, 33-16-1026, 33-16-1035, 33-17-603, 33-19-104, 33-22-703, 33-22-1108, 33-22-1521, 33-31-311, 35-1-933, 35-1-934, 35-1-1107, 37-25-305, 37-29-302, 37-29-305, 39-3-406, 39-8-207, 39-29-101, 39-51-307, 39-51-401, 39-51-402, 39-51-403, 39-51-404, 39-51-407, 39-51-501, 39-51-503, 39-51-1110, 39-51-1304, 39-51-2106, 39-51-2110, 39-51-2508, 39-51-2602, 39-51-3106, 39-71-431, 39-71-501, 39-71-517, 39-71-519, 39-71-703, 40-5-161, 40-5-164, 40-5-201, 40-5-701, 40-5-821, 41-1-402, 41-3-204, 41-4-102, 41-5-103, 41-5-1008, 45-2-311, 45-5-624, 45-8-317, 45-9-208, 45-10-108, 46-6-211, 46-14-101, 46-18-130, 46-18-801, 46-20-701, 46-24-212, 46-30-401, 50-4-504, 50-4-605, 50-5-101, 50-5-228, 50-5-1104, 50-31-103, 50-31-202, 50-31-203, 50-31-301, 50-31-306, 50-31-307, 50-31-311, 50-31-312, 50-53-201, 50-53-202, 50-53-203, 50-53-204, 50-53-206, 50-53-207, 50-53-211, 50-53-212, 50-53-216, 50-53-217, 50-53-218, 50-60-101, 52-2-523, 52-5-101, 52-5-108, 52-5-109, 52-5-112, 52-5-113, 53-1-104, 53-1-202, 53-6-110, 53-6-708, 53-7-101, 53-7-301, 53-19-102, 60-2-208, 60-11-121, 61-2-108, 61-3-446, 61-3-463, 61-3-502, 61-4-310, 61-5-121, 61-5-126, 61-8-356, 61-8-407, 61-8-422, 61-8-722, 61-12-201, 69-1-224, 69-12-314, 69-12-406, 72-16-331, 72-16-479, 72-17-213, 75-1-1101, 75-2-101, 75-3-103, 75-5-621, 75-5-1113, 75-6-205, 75-6-211, 75-10-707, 75-10-806, 75-11-313, 75-20-304, 76-2-202, 76-2-222, 76-2-302, 76-3-305, 76-3-511, 76-6-105, 76-14-113, 76-15-541, 76-15-543, 76-15-546, 77-1-804, 77-2-402, 77-2-403, 77-3-444, 77-6-202, 80-7-123, 80-8-111, 81-22-101, 82-4-232, 82-4-253, 82-4-254, 82-4-337, 82-4-360, 85-1-604, 85-2-701, 85-2-905, 85-3-211, 85-5-407, 85-5-408, 85-6-109, 85-7-1910, 85-7-2159, 87-2-803, 87-5-112, 90-2-1104, 90-2-1121, 90-4-1002, 90-6-127, 90-6-210, AND 90-8-301, MCA; REPEALING SECTIONS 2-18-314, 2-89-201, 2-89-202, 2-89-205, 2-89-206, 2-89-208, 2-89-209, 3-5-516, 13-13-279, 15-6-212, 15-16-802, 15-16-803, 16-2-401, 16-2-402, 16-2-403, 16-2-404, 16-2-405, 16-2-406, 16-2-407, 16-2-408, 20-7-505, 39-7-601, 39-7-602, 39-7-603, 39-7-604, 39-7-605, 39-7-606, 61-1-122, 61-4-309, 70-1-311, 77-1-221, AND 85-2-211, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 1-11-101, MCA, is amended to read:

HeinOnline -- 1997 vol. I 99 1997

"**1-11-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Code" or "codes" means the *Montana Code Annotated, which is a reenactment of the* Revised Codes of Montana, 1947, ~~the pocket supplements thereto, and the replacement volumes~~ *as provided in 1-11-103.*

(2) "Recodify" means to compile, arrange, rearrange, and prepare for publication. It includes, without changing the meaning, effect, or intent of any law:

(a) correcting or changing punctuation, capitalization, spelling, grammatical construction, and numbering as required by uniform literary and bill drafting practice;

(b) substituting the appropriate new code division reference for reference to a section of, to a part of, or to an entire "act";

(c) substituting calendar date for "effective date", "hereafter", and similar terms;

(d) creating new titles, chapters, parts, sections, or other divisions of the code;

(e) changing or inserting language made necessary because of rearrangement;

(f) eliminating redundant words;

(g) when given direction or authority by another statute, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes;

(ii) other code sections, such as those that have been repealed or repealed and replaced;

(h) changing inaccurate terminology to comply with statutory definitions or short form amendments~~, such as those found in 1-1-202(7)~~;

(i) changing or creating section captions (catchlines) to clearly reflect the content of the section, unless the section captions are specifically and expressly adopted as part of the law by the legislature."

**Section 2.** Section 2-1-212, MCA, is amended to read:

"**2-1-212. Acceptance of concurrent jurisdiction over veterans center.** The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans center, Fort Harrison, Montana, as ceded by Public Law 91-45, ~~83~~ *88* Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana."

**Section 3.** Section 2-2-121, MCA, is amended to read:

HeinOnline -- 1997 vol. I 100 1997

**"2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds for any campaign activity persuading or affecting a political decision unless the use is:

(a) authorized by law; or

(b) properly incidental to another activity required or authorized by law, such as the function of an elected public official, the official's staff, or the legislative staff in the normal course of duties.

(4) A state employee may not participate in a proceeding when an organization of which the employee is an officer or director is:

(a) involved in a proceeding before the employing *state* agency that is within the scope of the employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the employee represents the state.

(5) A state officer or state employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization of which the officer or employee is a member while performing the officer's or employee's job duties. The provisions of this subsection do not prohibit an officer or employee from performing charitable fundraising activities if approved by the employee's supervisor or authorized by law.

HeinOnline -- 1997 vol. I 101 1997

(6) A department head or a member of a quasi-judicial or rulemaking hoard may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if tbe person complies witb the disclosure procedures under 2-2-131.

(7) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(8) A person who purposely or knowingly violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $1,000, by imprisonment in the county jail for not more than 6 months, or by both. A civil proceeding under 2-2-136 or 2-2-144 does not preclude an action under this subsection."

**Section 4.** Section 2-2-136, MCA, is amended to read:

"**2-2-136. Enforcement for state officers, legislators, and state employees.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner shall request any information necessary to make a determination from tbe complainant or the person who is the subject of the complaint and may issue subpoenas.

(b) Unless the complaint is referred to the county attorney under subsection (1)(c), the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(c) If it appears to the commissioner that a complaint alleges criminal conduct, tlie commissioner shall stay the proceedings under this section and refer the matter to the appropriate county attorney.

(2) If the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than $50 or more tban $1,000, and if the violation was committed by a state employee, the commissioner may also recommend that tlie employing *state* agency discipline tlie employee. Tbe commissioner may assess the costs of the proceeding against the person bringing the charges if tbe commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) The decision of the commissioner may be appealed to the ethics commission as provided in 2-2-137.

(4) Except for records made public in the course of a hearing, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are not open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."

**Section 5.** Section 2-4-313, MCA, is amended to read:

HeinOnline -- 1997 vol. I 102 1997

"2-4-313. **Distribution, costs, and maintenance.** (1) The secretary of state shall distribute copies of ARM and supplements or revisions to ARM to the following:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana-Missoula, one copy;

(i) legislative ~~council~~ *services division*, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall maintain a complete, current set of ARM, including supplements or revisions to ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions to ARM and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions to ARM and the register to persons not listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions to ARM and the register. Fees are not refundable.

(5) The secretary of state shall deposit all fees in a proprietary fund.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. The secretary of state shall fix, in consultation with the administrative code committee, the fee to cover the costs of supplying copies of ARM and supplements or revisions to ARM and the register to the persons listed in subsection (1). The cost must be the approximate cost of

HeinOnline -- 1997 vol. I 103 1997

publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions to ARM and the register."

**Section 6.** Section 2-4-622, MCA, is amended to read:

**"2-4-622. When hearings officer unavailable for decision.** (1) If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.

(2) The parties may waive compliance with 2-4-621 and ~~2-4-622~~ *this section* by written stipulation."

**Section 7.** Section 2-7-517, MCA, is amended to read:

**"2-7-517. Penalty.** (1) When a local government entity has failed to file a report as required by 2-7-503(1), unless an extension has been granted by the department for good cause shown, or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) When a local government entity has failed to make payment as required by 2-7-516~~(1)~~ within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity."

**Section 8.** Section 2-8-113, MCA, is amended to read:

**"2-8-113. Hearings by standing committee — criteria for termination.** (1) Prior to termination of an agency or program, the appropriate standing committee in each house of the legislature or a joint committee of both houses composed of members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency or program involved is attached, the head of the agency involved, and persons who conducted the review.

(2) In the event termination of an agency or program is recommended by the legislative audit committee, the agency involved in the termination has the burden of demonstrating a public need for the agency's or program's continued existence and the extent to which a change in the composition, structure, and operation of the agency or program would improve public health, safety, or welfare.

(3) In determining whether to reestablish an agency or program, the legislature shall consider the performance audit and review conducted by the legislative audit committee, ~~the~~ public testimony ~~responsive to the questions set forth in subsection (2) of 2-8-112~~, and other matters considered relevant by the committee."

HeinOnline -- 1997 vol. I 104 1997

**Section 9.** Section 2-15-2204, MCA, is amended to read:

**"2-15-2204. Developmental disabilities planning and advisory council.** (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of at least 23 but no more than 25 members and consists of the following:

(a) a representative of the program of services provided under the authority of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq.;

(b) a representative of the program of services provided under the authority of the Older Americans Act of 1965, 42 U.S.C. 3001, et seq.;

(c) a representative of the program of services for persons with developmental disabilities provided under the authority of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;

(d) a representative of the program of services provided under the authority of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.;

(e) two recognized professionals, one each in the disciplines of medicine and law;

(f) one member of the state senate;

(g) one member of the state house of representatives;

(h) seven persons, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;

(i) one member of each of the five regional councils provided for in 53-20-207, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;

(j) the director of the university-affiliated or satellite program on developmental disabilities, created pursuant to 42 U.S.C. ~~6031~~ *6061*, or a designee of the director;

(k) the director of the state protection and advocacy system, created pursuant to 42 U.S.C. ~~6012~~ *6041*, or a designee of the director; and

(l) a representative of a statewide developmental disabilities service provider organization whose member agencies provide direct services to persons with developmental disabilities.

(3) (a) Each member who serves on the council pursuant to subsection (2)(a), (2)(b), (2)(c), or (2)(d) shall serve for a term concurrent with the respective term of the director of the agency that administers the program that the member represents. Upon the removal of an agency director from office, the representative's term as a member of the council is automatically terminated.

(b) Each member who serves on the council pursuant to subsection (2)(f) or (2)(g) must be appointed or reappointed annually by the governor.

HeinOnline -- 1997 vol. I 105 1997

(c) Eight of the members serving on the council pursuant to subsection (2)(e), (2)(h), (2)(i), (2)(l), or (3)(d) must be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members serving on the council pursuant to subsection (2)(e), (2)(h), (2)(i), (2)(l), or (3)(d) must be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding guhernatorial term and until their successors are appointed.

(d) Representatives named to the council pursuant to this section, in addition to fulfilling the requirements listed in subsections (2)(a) through (2)(l), may also he selected to represent the following areas: psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum of one member of the council must represent each of these areas. In the event that the porsons listed in subsections (2)(a) through (2)(l) do not represent all of the areas of psychology, social work, special education, and minority groups, including Native Americans with developmental disahilities, up to two representatives may be added to the membership of the council to represent not more than two of these groups.

(4) The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of 53-20-206 and this section, the provisions of 2-15-121 apply."

**Section 10.** Section 2-18-203, MCA, is amended to read:

**"2-18-203. Review of positions — change in classification.** (1) The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities. In the event that adjustments are to be made to class specifications, class series benchmarks, or criteria used for allocating positions to classes affecting employees within a bargaining unit, the department shall consult with the representative of the bargaining unit prior to implementation of the adjustments, except for blue-collar, *and* teachers', ~~, and liquor store clerks'~~ classification plans, which plans must remain mandatory negotiable items under Title 39, chapter 31.

(2) Employees and employee organizations must be given the opportunity to appeal the allocation or reallocation of a position to a class. The grade assigned to a class and factors assigned to class series benchmarks are not appealable subjects under 2-18-1011 through 2-18-1013.

(3) The period of time for which retroactive pay for a classification appeal may be awarded under 2-18-1011 through 2-18-1013 or under parts 1 through 3 of this chapter may not extend beyond 30 days prior to the date on which the appeal was filed."

**Section 11.** Section 2-18-301, MCA, is amended to read:

**"2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain compotent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for stato employees, excluding those employees exceptod under 2-18-103 or 2-18-104 and

HeinOnline -- 1997 vol. I 106 1997

excluding employees compensated under 2-18-313 ~~through~~ *and* 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments and pay schedules provided for in 2-18-303 and in 2-18-312, *2-18-313, and* ~~through~~ 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the 54th legislature.

(4) Pay levels provided for in 2-18-312, *2-18-313, and* ~~through~~ 2-18-315 may not he increased through collective bargaining after adjournment of the 54th legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312, *2-18-313, and* ~~through~~ 2-18-315 for any employee group or bargaining unit may not be increased througb collective bargaining over the amount appropriated by the 54th legislature.

(6) The department shall administer tbe pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

**Section 12.** Section 2-18-303, MCA, is amended to read:

"2-18-303. **Procedures for using pay schedules.** (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate tbe entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be bired at the entry rate, except as provided in subsections (7) and (8).

~~(c) On the first day of the first complete pay period in fiscal year 1996, each employee hired before July 1, 1995, is entitled to the amount of the employee's base salary as it was on June 30, 1995, plus, on the employee's anniversary date that occurs on or after September 30, 1995, the increases provided in subsection (1)(d), if applicable.~~

~~(d)~~*(c)* (i) Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal ~~years~~ *year* ending ~~June 30, 1996, and~~ June 30, 1997, an employee's market ratio must be compared to the target market ratio in the matrix in subsection ~~(1)(d)(ii)~~ *(1)(c)(ii)* that corresponds to tbe employee's grade level and completed years of uninterrupted state service. For employees hired on or before September 30, 1994, the anniversary date is Octeber 1.

(ii) As provided in subsection ~~(1)(d)(i)~~ *(1)(c)(i)*, the following matrix must be used to compare an employee's market ratio to the target market ratio that

HeinOnline -- 1997 vol. I 107 1997

corresponds to the employee's grade level and completed years of uninterrupted state service:

TARGET MARKET RATIOS

| Grade | Years | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 4 | 0.844 | 0.874 | 0.904 | 0.935 | 0.967 | 0.999 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 5 | 0.842 | 0.871 | 0.000 | 0.930 | 0.961 | 0.992 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 6 | 0.840 | 0.868 | 0.896 | 0.925 | 0.955 | 0.985 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 7 | 0.838 | 0.865 | 0.892 | 0.920 | 0.949 | 0.978 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 8 | 0.838 | 0.862 | 0.889 | 0.916 | 0.944 | 0.972 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 9 | 0.834 | 0.869 | 0.885 | 0.911 | 0.938 | 0.965 | 0.993 | 1.000 | 1.000 | 1.000 | 1.000 |
| 10 | 0.832 | 0.857 | 0.882 | 0.908 | 0.934 | 0.961 | 0.988 | 1.000 | 1.000 | 1.000 | 1.000 |
| 11 | 0.830 | 0.854 | 0.878 | 0.903 | 0.928 | 0.954 | 0.980 | 1.000 | 1.000 | 1.000 | 1.000 |
| 12 | 0.828 | 0.851 | 0.875 | 0.899 | 0.924 | 0.949 | 0.975 | 1.000 | 1.000 | 1.000 | 1.000 |
| 13 | 0.826 | 0.849 | 0.872 | 0.896 | 0.920 | 0.945 | 0.970 | 0.996 | 1.000 | 1.000 | 1.000 |
| 14 | 0.824 | 0.846 | 0.869 | 0.892 | 0.915 | 0.939 | 0.963 | 0.986 | 1.000 | 1.000 | 1.000 |
| 15 | 0.822 | 0.844 | 0.866 | 0.888 | 0.911 | 0.934 | 0.958 | 0.982 | 1.000 | 1.000 | 1.000 |
| 16 | 0.820 | 0.841 | 0.866 | 0.885 | 0.007 | 0.930 | 0.958 | 0.977 | 1.000 | 1.000 | 1.000 |
| 17 | 0.818 | 0.869 | 0.860 | 0.832 | 0.904 | 0.926 | 0.949 | 0.972 | 0.996 | 1.000 | 1.000 |
| 18 | 0.816 | 0.836 | 0.857 | 0.878 | 0.899 | 0.921 | 0.943 | 0.966 | 0.989 | 1.000 | 1.000 |
| 19 | 0.814 | 0.834 | 0.854 | 0.875 | 0.896 | 0.917 | 0.939 | 0.961 | 0.934 | 1.000 | 1.000 |
| 20 | 0.812 | 0.831 | 0.851 | 0.871 | 0.892 | 0.913 | 0.935 | 0.957 | 0.979 | 1.000 | 1.000 |
| 21 | 0.810 | 0.829 | 0.849 | 0.859 | 0.889 | 0.910 | 0.931 | 0.953 | 0.975 | 0.997 | 1.000 |
| 22 | 0.808 | 0.827 | 0.846 | 0.866 | 0.888 | 0.906 | 0.927 | 0.948 | 0.970 | 0.992 | 1.000 |
| 23 | 0.806 | 0.825 | 0.844 | 0.863 | 0.863 | 0.903 | 0.923 | 0.944 | 0.966 | 0.987 | 1.000 |
| 24 | 0.804 | 0.822 | 0.841 | 0.860 | 0.879 | 0.899 | 0.919 | 0.940 | 0.961 | 0.982 | 1.000 |
| 25 | 0.862 | 0.820 | 0.838 | 0.857 | 0.876 | 0.895 | 0.915 | 0.935 | 0.956 | 0.977 | 0.999 |

~~(iii) If, on the first day of the pay period that includes an employee's anniversary date during the fiscal year ending June 30, 1996, the employee's market ratio is less than the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service, the employee's base salary must be increased to the lesser of:~~

~~(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service; or~~

~~(B) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1995, plus 5%.~~

~~(iv)~~*(iii)* If, on the first day of the pay period that includes an employee's anniversary date during the fiscal year ending June 30, 1997, the employee's market ratio is less than the target market ratio that corresponds to the

employee's grade level and completed years of uninterrupted state service, the employee's base salary must be increased to the lesser of:

(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service; or

(B) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1996, plus 6%.

~~(e)~~*(d)* An employee's base salary may be no less than the entry salary for the employee's assigned grade.

~~(f)~~*(e)* An employee's base salary may not exceed the maximum salary for the employee's grade. The salary of an employee may not be reduced because of this provision.

~~(g)~~*(f)* The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

~~(h)~~*(g)* An employee's market ratio, as it was on the last day of the pay period immediately preceding the pay peried that includes October 1, 1996, may not be reduced as a result of the adjustment of the pay ranges provided in 2-18-312(2).

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers~~, liquor store occupations,~~ or blue-collar occupations compensated under the pay schedules provided in 2-18-313 ~~through~~ *and* 2-18-315.

(3) The pay scbedules provided in 2-18-313 ~~through~~ *and* 2-18-315 must be implemented as follows:

(a) (i) The pay scbedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal ~~years 1996 and~~ *year* 1997.

~~(ii) The compensation of each teacher on July 1, 1995, is the same as it was on June 30, 1995.~~

~~(iii)~~*(ii)* On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of public health and human services prior to October 1, 1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.

~~(iv)~~*(iii)* On the first day of the first full pay period during the month that includes the teacher's anniversary date, a teacher employed under the authority of the department of corrections shall advance one step on the appropriate pay schedule adopted in 2-18-313.

~~(v)~~*(iv)* On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed by the Montana school for the deaf and blind sball advance one step on the teacher pay matrix used by the school.

HeinOnline -- 1997 vol. I 109 1997

~~(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, 1996, and June 30, 1997, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.~~

~~(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1996 or 1997 is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.~~

~~(c)~~*(b)* (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, 1996, and June 30, 1997, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively hargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year ~~1996 or~~ 1997 is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) A member of a hargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employeo's bargaining unit has ratified a completely integrated collective bargaining agreement covering the biennium ending June 30, 1997.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, 1995, retroactivity to that date may he negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, 1995, members of the bargaining unit must continue to receive the compensation that they were receiving as of June 30, 1995, until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, *2-18-313,* ~~through~~ 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, *2-18-313, and* ~~through~~ 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. ~~Insofar as~~ *To the extent that* the program ~~may apply~~ *applies* to employees within a collective bargaining unit, it is a negetiable subject under 39-31-305.

(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate

salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. ~~Insofar as~~ *To the extent that* these adjustments ~~may~~ apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

**Section 13.** Section 2-18-304, MCA, is amended to read:

**"2-18-304. Longevity allowance.** (1) (a) ~~(i) Effective July 1, 1995, through the last day of the pay period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.~~

~~(ii)~~ Effective on the first day of the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, ~~2-18-314,~~ or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section."

**Section 14.** Section 2-18-704, MCA, is amended to read:

**"2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that

HeinOnline -- 1997 vol. I 111 1997

employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A stato insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a stato retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)*(a)* if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participato in another group plan with substantially the same or greater benefits at an equivaleut cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)*(a)* and subsequently terminates membership may not rejoin the group unless the person again serves as a legislator.

(4) A person electing to remain a member of the group under subsection (1), (2), or (3) shall pay the full premium for coverage and for that of the person's covered dependents.

(5) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation."

**Section 15.** Section 2-18-1202, MCA, is amended to read:

**"2-18-1202. Definitions.** As used in this part, the following definitions apply:

(1) "Agency" has the meaning provided in 2-18-101 but does not include the Montana university system.

(2) "Employee" means a person employed by the state who has achieved permanent status, as defined in 2-18-101, or officers and employees of the legislative branch and teachers under the authority of the department of corrections or department of public health and human services who have been employed for at least 6 continuous months ~~and who have waived benefits under the provisions of 2-18-319 and 2-18-320~~.

(3) "Privatization" means contracting with the private sector to provide a service normally or traditionally provided directly by an employee of an agency."

**Section 16.** Section 3-2-405, MCA, is amended to read:

**"3-2-405. Settlements and accounts to state ~~auditor~~ *treasurer*.** (1) The clerk is responsible *for* and ~~must~~ *shall* account ~~for and, in his settlement with~~ *to* the state ~~auditor,~~ *treasurer for* ~~must be charged with~~ the full amount of all fees collected or chargeable and accruing in causes brought into the court for services rendered ~~therein~~ *in the court* up to the time of each settlement. The settlement must take place quarterly, and immediately ~~thereafter~~ *after the settlement,* the clerk ~~must~~ *shall* pay the amount found due into the treasury or to the public employees' retirement division, as provided in 3-2-404.

(2) ~~He must also at~~ *At* the end of each quarter *the clerk shall* render to the state ~~auditor~~ *treasurer*, in ~~such~~ *the* form as that officer prescribes, an account in detail and under oath of all fees chargeable and accruing in causes brought into court and not included in ~~his~~ *the clerk's* previous accounts.

(3) ~~His~~ *The clerk's* salary may not be ~~allowed or~~ paid until all fees ~~so accruing~~ for which ~~he~~ *the clerk* is chargeable have been accounted for and paid ~~over~~."

**Section 17.** Section 5-2-504, MCA, is amended to read:

HeinOnline -- 1997 vol. I 113 1997

"5-2-504. **Legislative branch consolidated.** The following legislative branch entities are consolidated ~~with the legislative council~~, as provided in 5-2-503 and this section, *with the legislative council established by 5-11-101*:

(1) the senate and the house of representatives provided for in Article V, section 1, of the Montana constitution;

~~(2) the legislative council established by 5-11-101;~~

~~(3)~~*(2)* the legislative services division established by 5-11-111;

~~(4)~~*(3)* the legislative finance committee established by 5-12-201;

~~(5)~~*(4)* the legislative fiscal division established by 5-12-301;

~~(5)~~*(5)* the legislative audit committee established by 5-13-201;

~~(7)~~*(6)* the legislative audit division established by 5-13-301;

~~(3)~~*(7)* the administrative code committee established by Title 5, chapter 14, part 1;

~~(9)~~*(8)* the environmental quality council established by 5-16-101;

~~(10)~~*(9)* the revenue oversight committee established by 5-18-102; and

~~(11)~~*(10)* the committee on Indian affairs established by 5-19-102."

**Section 18.** Section 5-4-307, MCA, is amended to read:

"5-4-307. **Bills remaining with ~~the~~ governor.** (1) A bill ~~which~~ *that* has passed both houses of the legislature and has not been returned by the governor within ~~5 days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned~~ *10 days after its delivery to the governor* becomes law.

(2) The governor shall deliver the bill to the secretary of state and direct ~~him~~ *the secretary of state* to authenticate it by a certificate endorsed *on* or attached ~~thereon~~ *to the bill*. The form of the certificate ~~shall~~ *must* be: "This bill having remained with the governor ~~5~~ *10* days, ~~and the legislature being in session,~~ it has become a law this.... day of....,....". ~~or "This bill having remained with the governor 25 days, and the legislature being adjourned, it has become a law this.... day of....,....".~~ The certificate ~~shall~~ *must* be signed by the secretary of state and deposited with the laws in ~~his~~ *the secretary of state's* office."

**Section 19.** Section 5-4-308, MCA, is amended to read:

"5-4-308. **Transmittal of veto messages to legislative ~~council~~ *services division*.** The governor shall transmit one copy of each veto message to the legislative ~~council~~ *services division*."

**Section 20.** Section 5-5-214, MCA, is amended to read:

"5-5-214. **Interim activity.** The subcommittees may perform their functions when the legislature is not in session. The personnel, data, and facilities of the legislative ~~council~~ *services division* ~~shall~~ *must* be made available to ~~such~~ *the* subcommittees."

HeinOnline -- 1997 vol. I 114 1997

**Section 21.** Section 5-5-217, MCA, is amended to read:

**"5-5-217. Selection and assignment of interim studies.** (1) Immediately following adjournment sine die, the legislative ~~council~~ *services division* shall prepare a list of study requests adopted. A copy of the list ~~shall~~ *must* be distributed to each legislator with a request that the legislator rank the study requests in the order of importance ~~he~~ *that the legislator* ascribes to them. The lists, with the priorities assigned, ~~shall~~ *must* be returned to the legislative ~~council~~ *services division*.

(2) The legislative council shall review the priority lists returned by legislators, review estimated costs and staff assistance associated with the requested studies, and designate those studies to be assigned. In designating studies, the legislative council may combine requests as one study when the subject matter of those requests is closely related. The legislative council shall group related studies together and shall designate the number of subcommittees to be assigned studies.

(3) The legislative ~~council~~ *services division* shall inform the committee on committees and speaker of the house of those studies that have been selected and to which joint subcommittee each study has been assigned. The committee on committees and speaker shall then proceed under 5-5-211 to appoint the subcommittees."

**Section 22.** Section 5-11-203, MCA, is amended to read:

**"5-11-203. Distribution of session laws — inspection of journals.** (1) Immediately after the session laws are published, the legislative services division shall distribute them.

(2) The legislative services division shall make the house and senate journals available for inspection or copying by the public as provided in Title 2, chapter 6, part 1. The legislative services division may publish the journals in an electronic format.

(3) The following entities may receive the number of copies of session laws listed at no cost:

(a) to the library of congress, eight copies;

(b) to the state library, two copies;

(c) to the state historical library, two copies;

(d) to the state law librarian, four copies for the use of the library and additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;

(e) to the library of each custodial institution, one copy;

(f) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102~~(8)~~, one copy;

HeinOnline -- 1997 vol. I 115 1997

(g) to any agency, board, commission, or office of the state, other than a state officer, and to any other subdivision of the state upon request and approval by the legislative council, one copy;

(h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;

(i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;

(j) to each county clerk, one copy for the use of the county; and

(k) to each county attorney and to each clerk of a district court, one copy."

**Section 23.** Section 5-11-210, MCA, is amended to read:

**"5-11-210. Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report" means a report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the executive director of the legislative ~~council~~ *services division*:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed 100 words;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; and

(e) an estimated cost for each copy of the report.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the legislative council or the executive director shall, in writing, direct the reporting entity te provide a specific number of copies. The number of copies required is at the sole discretion of the legislative council. The legislative council or the executive director may require the reporting entity to mail the copies of the report.

(4) The legislative council may require that the report be submitted in an electronic format usable on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative ~~council~~ *services division*.

HeinOnline -- 1997 vol. I 116 1997

(6) The executive director of the legislative ~~council~~ *services division* shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b). The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director of the legislative ~~council~~ *services division* shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative ~~council~~ *services division* may keep as many copies of a report as are necessary and discard the rest.

(10) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201."

**Section 24.** Section 5-11-212, MCA, is amended to read:

"**5-11-212. Fees for proceedings.** (1) A complete set of the proceedings of a regular *or special* session of the legislature may be purchased from the legislative ~~council~~ *services division* for the amount prescribed by the *legislative* council. Upon receipt of payment, the executive director of the ~~council~~ *legislative services division* shall supply the purchaser with a complete set of the proceedings.

(2) A purchaser who requests that a set of the proceedings be mailed shall pay an additional fee as prescribed by the council for each complete set that is mailed.

(3) Single copies of bills, resolutions, or amendments ~~thereto~~ *to bills or resolutions* may be purchased from the legislative ~~council~~ *services division* for a price varying with the length of the document as prescribed by the *legislative* council.

(4) Single copies of status sheets or status of proceedings may be purchased from the legislative ~~council~~ *services division* for a price per copy as prescribed by the *legislative* council. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee set by the legislative council to cover the costs of the service.

(5) The executive director of the legislative ~~council~~ *services division* shall account for all funds collected under this section and shall transmit the funds to the treasurer of the state of Montana, who shall credit them to the general fund."

**Section 25.** Section 5-11-213, MCA, is amended to read:

HeinOnline -- 1997 vol. I 117 1997

**"5-11-213. Exclusions.** Each general circulation newspaper published in Montana and each radio or television station broadcasting in Montana that has registered with the executive director of the legislative ~~council~~ *services division* is exempt from 5-11-212 and shall receive one complete set of the ~~legislative~~ proceedings *of the legislature* for the ensuing biennium without charge."

**Section 26.** Section 5-17-205, MCA, is amended to read:

**"5-17-205. Commission activities — authority.** The commission may:

(1) raise money from the private sector for the ongeing historical restoration and preservation of the capitol; *and*

(2) suggest capitol improvements, except changes in the location of the Montana senate chambers~~; and~~

~~(3) plan for the capitol centennial event.~~"

**Section 27.** Section 5-18-107, MCA, is amended to read:

**"5-18-107. Powers and duties of committee — duty to review revenue rules — legislative oversight of department of revenue — committee reports — revenue estimating and use of estimates — coal tax oversight.** (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) request and obtain the department's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department;

(c) submit oral or written testimony at a rulemaking hearing;

(d) require the department to appear before the committee and respond to the committee's recommendations for the adoption, amendment, or rejection of a rule;

(e) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(f) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412;

(g) institute, intervene in, or otherwise participate in proceedings involving the legality of a rule under the Montana Administrative Procedure Act in the state and federal courts and administrative agencies;

(h) review the incidence and conduct of the department's administrative proceedings;

(i) require the department to publish the full or partial text of any pertinent material adopted by reference under 2-4-307;

HeinOnline -- 1997 vol. I 118 1997

(j) by an affirmative vote of at least six members of the committee, contract for the preparation of an economic impact statement or require the department to prepare an economic impact statement, following the provisions of 2-4-405;

(k) petition the department to promulgate, amend, or repeal a rule. Within 60 days after submission of a petition, tbe department shall either deny the petition in writing, stating its reasons for the denial, or ~~shall~~ initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(l) make written objection to a proposed rule of the department for lack of substantial compliance with 2-4-302 through 2-4-305. The provisions of 2-4-406 govern the objection procedure, the department's response, and tbe procedure for and effect of publication of the objection in the Montana Administrative Register and the Administrative Rules of Montana.

(m) petition the department for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the department. A copy of a declaratory ruling must be filed with the secretary of state for publication in tbe register. A declaratory ruling or the refusal to issue a ruling is subject to judicial review in the same manner as decisions or orders in contested cases under the Montana Administrative Procedure Act.

(n) petition for judicial review of the sufficiency of the reasons for the department's finding of imminent peril to the public health, safety, or welfare, cited in support of an emergency or temporary rule proposed by the department under 2-4-303; and

(o) require the department to conduct the biennial review of its rules as required in 2-4-314 and report its findings to the committee.

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of tbe department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.

(5) (a) The committee shall bave prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenues or costs, including the preparation of fiscal notes.

HeinOnline -- 1997 vol. I 119 1997

(c) The legislative ~~council~~ *services division* shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.

(6) The committee may:

(a) review the programs financed by coal severance tax funds;

(b) consider any matters relating to coal taxation; and

(c) prepare for the legislature a report, as provided in 5-11-210, on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution."

**Section 28.** Section 5-22-101, MCA, is amended to read:

**"5-22-101. Legislative oversight committee — appointment — staff assistance.** (1) (a) There is a joint oversight committee on children and families. The oversight committee is composed of eight members who are appointed as follows:

(i) four members of the house of representatives, not more than two of whom may be from one political party, appointed by the speaker of the house; and

(ii) four members of the senate, not more than two of whom may be from one political party, appointed by the committee on committees.

(b) The members appointed under subsection (1)(a) must include representatives from the house appropriations subcommittee on human services and aging and the senate finance and claims subcommittee on human services and aging.

(2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(3) Members are entitled to salary and expenses as provided in 5-2-302.

(4) The oversight committee may request staff assistance from the legislative ~~council~~ *services division*, which assistance may be provided within limits established by the legislative council, given other priorities and responsibilities.

(5) Each state agency that provides services or funding for a program or service for children and families shall provide assistance and information upon request of the oversight committee."

**Section 29.** Section 7-1-114, MCA, is amended to read:

**"7-1-114. Mandatory provisions.** (1) A local government with self-government powers is subject to the following provisions:

(a) ~~All~~ *all* state laws providing for the incorporation or disincorporation of cities and towns; for the annexation, disannexation, or exclusion of territory from

HeinOnline -- 1997 vol. I 120 1997

a city or town; for the creation, abandonment, or boundary alteration of counties; and for city-county consolidation;

(b) ~~Sections 7-3-104 through 7-3-106, 7-3-111 through 7-3-114, and 7-3-1101 through 7-3-1105~~ *Title 7, chapter 3, part 1*;

(c) ~~All~~ *all* laws establishing legislative procedures or requirements for units of local government;

(d) ~~All~~ *all* laws regulating the election of local officials;

(e) ~~All~~ *all* laws ~~which~~ *that* require or regulate planning or zoning;

(f) ~~Any~~ *any* law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;

(g) ~~Any~~ *any* law regulating the budget, finance, or borrowing procedures and powers of local governments, except that the mill levy limits established by state law ~~shall~~ *do* not apply;

(h) Title 70, chapters 30 and 31.

(2) These provisions are a prohibition on the self-government unit acting other than as provided."

**Section 30.** Section 7-2-2218, MCA, is amended to read:

**"7-2-2218. Form of ballot.** (1) If the proposed new county is to be formed from one county~~,~~ or from portions of two or more existing counties, the ballot ~~shall~~ *must* be in the following form:

(a) ~~proclamation and~~ notice required by 7-2-2215 ~~shall~~ *must* require the electors to cast ballots ~~which shall~~ *that* contain the words "For the new county of.... (giving the name of the proposed new county) — Yes" and "For the new county of.... (giving the name of the proposed new county) — No".

(b) The ballots ~~shall~~ *must* also contain the names of individuals to be voted for to fill the various elective offices designated in the ~~proclamation~~ *notice* for counties of the class to which the proposed county will belong, as determined by the board of county commissioners, as ~~herein otherwise~~ provided *in this part*.

(c) There ~~shall~~ *must* also be printed upon the ballot the words "For the county seat" and the names of all cities or towns ~~which~~ *that* may have filed with the election administrater a petition, signed by at least 25 registered electors, nominating any city or town within the proposed new county for the county seat. The elector shall designate ~~his~~ *the elector's* choice for county seat by marking a cross (X) opposite the name of the city or town for which ~~he~~ *the elector* desires to cast ~~his ballot~~ *a vote*.

(2) If the proposed new county is to be an existing county enlarged by territory taken from one or more other counties, the ~~proclamation and~~ notice required by 7-2-2215(1) ~~shall~~ *must* require the electors to cast ballots ~~which shall~~ *that must* contain the legal description of the territery to be taken from the county in which the election is held, together with any name or names for the territory that may be in common use, and the words "For the territory described (or commonly known as....) to be detached from.... County and added to.... County

HeinOnline -- 1997 vol. I 121 1997

— Yes" and "For the territory described (or commonly known as....) to be detached from.... County and added to.... County — No"."

**Section 31.** Section 7-2-2219, MCA, is amended to read:

"**7-2-2219. Conduct of election.** (1) (a) The board issuing the ~~proclamation and~~ notice of election pursuant to 7-2-2215 shall ~~cause~~ *require* the county election administrator to furnish to the election judges of each precinct in the proposed new county all election supplies and equipment necessary to conduct the election ~~and which~~ *that* are not specifically directed to be furnished by the election administrator of another county or counties.

(b) The election administrator of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of the election, furnish for each precinct within the proposed new county a precinct register for the precincts of the proposed new county ~~which~~ *that* are within their respective counties.

(2) The elections provided for in 7-2-2215 ~~shall be~~ *are* governed and controlled by the general election laws of the state~~, so far as~~ *to the extent that* the ~~same~~ *general election laws* are applicable and except as otherwise provided ~~herein~~ *in this section*. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of these laws relating to primary elections in this state, apply to any election provided for in this part. All returns of an election ~~shall~~ *must* be made to and canvassed by the board of county commissioners calling the election.

(3) All nominations of candidates for offices required to he filled at the election ~~shall~~ *must* be made in the manner provided by law for the nomination of candidates by petition."

**Section 32.** Section 7-4-2106, MCA, is amended to read:

"**7-4-2106. Vacancy on board of county commissioners.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the remaining county commissioners ~~must~~ *shall* fill the vacancy~~,~~ and ~~such~~ *the* appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4). The procedure to be used to fill the vacancy is as follows:

(a) If the former incumbent represented a party eligible for a primary election under 13-10-601, the county central committee of that party shall submit to the remaining commissioners three names of people who have lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs~~, and the~~. *The* remaining commissioners shall appoint one of these three to fill the vacancy. Whenever the remaining commissioners are unable to elect an appointee from the submitted list, they shall request a second list of three names from tbe county central committee. The second list may not contain any of the names submitted on the first list. The remaining commissioners shall tben select an appointee from the individuals named on both lists.

(b) If the former incumbent was independent or was originally nominated by a party that does not meet the requirements of 13-10-601 or if tbe vacancy

HeinOnline -- 1997 vol. I 122 1997

occurs from a failure to elect, the remaining commissioners shall invite applications for the vacancy in a notice published as provided in 13-1-108 and shall accept an application from any person who has lived in the unrepresented district for at least 2 years preceding the day the vacancy occurs. The remaining commissioners shall appoint one of these applicants to fill the vacancy.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second or fourth year of the term, an individual ~~shall~~ *must* be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second or fourth year of the term, the same procedure ~~shall be utilized~~ *must be used* as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate ~~shall~~ *must* be filed with the clerk and recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the fourth year of the term, the person appointed by the remaining county commissioners under ~~7-4-2106(2)~~ *subsection (2)* shall serve until the end of the term."

**Section 33.** Section 7-4-2206, MCA, is amended to read:

**"7-4-2206. Vacancies.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, ~~shall~~ *must* be filled by appointment by the board of county commissioners. Except for the justice of the peace, the appointee ~~shall hold his~~ *holds the* office, if elective, until the next general election unless otherwise provided in subsection (3) or (4), and if not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second year of the term, an individual ~~shall~~ *must* be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second year of the term, the same procedure ~~shall be utilized~~ *must be used* as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 75th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate ~~shall~~ *must* be filed with the clerk and

HeinOnline -- 1997 vol. I 123 1997

recorder on or before the 75th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day preceding the general election held during the second year of the term, the person appointed by the commissioners under ~~7-4-2206(2)~~ *subsection (2)* shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace ~~shall~~ *must* be filled as provided in Title 3, chapter 10, part 2."

**Section 34.** Section 7-6-2531, MCA, is amended to read:

**"7-6-2531. County may exceed maximum mill levy — election required.** The governing body of a county may raise money by taxation for the support of county government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body shall pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;

(b) the specific amount to be raised;

(c) the approximate number of mills required; and

(d) the specific mill levy limitation to be exceeded.

(2) (a) Except as provided in subsection (2)(b), the governing body shall submit the question of the additional mill levy to the qualified electors of the county at the next regular primary election held in an even-numbered year.

(b) If the purpose of the special levy designated pursuant to subsection (1)(a) is for the support of a ~~hospital~~ *health care* facility as described in 7-6-2512, the governing body may submit the question of the additional mill levy to the qualified electors of the county at a general election, *at* a school election held pursuant to 20-3-304, or at a regnlar primary election held in an even-numbered year.

(c) If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years."

**Section 35.** Section 7-7-4602, MCA, is amended to read:

**"7-7-4602. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Enterprise" means any work, undertaking, or project ~~which~~ *that* the municipality is authorized to construct and from which the municipality derives ~~revenues,~~ *revenue* for the refinancing or the refinancing and improving of which enterprise refunding bonds are issued under this part~~, and such~~. *The* enterprise includes all *incidental or connected* improvements, betterments, extensions, ~~and~~ replacements, ~~thereto and all~~ appurtenances, facilities, lands, rights in land,

water rights, franchises, and structures ~~in connection therewith or incidental thereto~~.

~~(2) "Federal agency" means the United States, the president of the United States, the federal emergency administrator of public works, or any agency, instrumentality, or corporation of the United States designated or created by or pursuant to any act or joint resolution of the congress of the United States or directly or indirectly owned or controlled by the United States.~~

~~(3)~~*(2)* "Governing body" means, in the case of a city or town, the council, commission, or other body, board, officer, or officers having charge of the finances ~~thereof~~ *of the city or town*.

~~(4)~~*(3)* "Holder of bonds" or "bondholder" (or any similar term) means ~~any~~ *a* person who is the bearer of any outstanding refunding bond, registered to bearer or not registered, or the registered owner of any ~~such~~ outstanding bond ~~which~~ *that* is at the time registered other than to bearer.

~~(5)~~*(4)* "Improving" means reconstructing, replacing, extending, repairing, bettering, equipping, developing, *or* embellishing~~, or improving or any one or more of the foregoing~~.

~~(6)~~*(5)* "Law" means any act or statute (general, special, or local) of this state, including ~~without being~~ *but not* limited to the charter of any municipality.

~~(7)~~*(6)* "Municipality" means any city or town of this state.

~~(3)~~*(7)* "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds received from the sale ~~thereof~~ *of refunding bonds*, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improving of an enterprise and payable solely from all or any part of the ~~revenues thereof~~ *revenue of the refunding bonds*, including interest ~~thereon~~ *on the refunding bonds* in arrears or about to become due, whether or not represented by coupons or interest certificates.

~~(9)~~*(8)* "Refunding bonds" means notes, bonds, certificates, or other obligations of a municipality issued pursuant to this part or pursuant to any other law as supplemented by or in conjunction with this part.

~~(10)~~*(9)* ~~"Revenues"~~ *"Revenue"* means all fees, tolls, rates, rentals, and charges to be levied and collected in connection with *an enterprise* and all other income and receipts of whatever kind or character derived by the municipality from the operation of ~~any~~ *an* enterprise or arising from ~~any~~ *an* enterprise."

**Section 36.** Section 7-13-4311, MCA, is amended to read:

**"7-13-4311. Authorization to furnish water and sewer services to industrial consumers.** (1) Subject to the provisions of subsection (2), the city or town council of any city or town within Montana that owns and operates a municipal water system, ~~and/or~~ a municipal sewage system, *or both,* to furnish water *services,* ~~and/or~~ sewage services, *or both,* to the inhabitants of ~~such~~ *the* city or town as a public utility ~~shall~~ *may*, in addition to all other powers, ~~have power to~~ furnish water from ~~such~~ *the* water system and sewage services from ~~such~~ *the* sewage system:

HeinOnline -- 1997 vol. I 125 1997

(a) to any person, factory, or other industry located within the corporate limits of ~~such~~ *the* city or town; or

(b) to any person, factory, or other industry located outside the corporate limits of ~~such~~ *the* city or town.

(2) (a) The services authorized by subsection (1) ~~shall~~ *must* be furnished at reasonable rates~~, filed by the city or town council and approved by the public service commission~~.

(b) Delivery of water and delivery of sewage services by ~~any such~~ *a* city or town to or for the use of any person, factory, or other industry located outside the corporate limits of ~~such~~ *the* city or town ~~shall~~ *must* be made within or at the boundary line of the corporate limits of ~~such~~ *the* city or town or from any existing waterline or sewerline of ~~such~~ *the* city or town located outside of the corporate limits of ~~such~~ *the* city or town, except as ~~hereinafter~~ provided *in this part.*"

**Section 37.** Section 7-14-4736, MCA, is amended to read:

"**7-14-4736. Participation by municipality.** If the municipality is willing to participate in the cost of leasing, improving, operating, or maintaining the offstreet parking sites in an improvement district established pursuant to 7-14-4731, the governing body may by resolution ~~summarily~~ order ~~such~~ *the* participation, and the amount of ~~any such~~ participation ~~shall~~ *is* not ~~be~~ subject to the limitations of 7-12-4102~~, 7-12-4103,~~ and 7-12-4132."

**Section 38.** Section 7-16-2105, MCA, is amended to read:

"**7-16-2105. Acquisition of land by county for public recreational or cultural purposes.** (1) The counties of this state are authorized to acquire, by purchase, grant, deed, gift, devise, condemnation, or otherwise, lands suitable for public camping, public recreational purposes, civic centers, youth centers, museums, recreational centers, and any combination thereof or may lease the land tracts, each of which must be situated as to offer ready access to a public highway.

(2) This section may not be construed as amending or repealing 7-16-2201 through ~~7-16-2204~~ *7-16-2203.*"

**Section 39.** Section 7-16-4222, MCA, is amended to read:

"**7-16-4222. Rules to implement part.** (1) In addition to the powers and duties established in the ordinance creating the board of park commissioners and the provisions of 7-16-4223 *and 7-16-4225* through 7-16-4228, the board of park commissioners has the following powers and duties:

(a) to make all rules necessary or convenient to protect and promote the growth of trees and plants in parks, streets, avenues, alleys, boulevards, and public places under the care and control of the board and for the protection of all birds inhabiting, frequenting, or nesting in the parks, streets, avenues, boulevards, and public places;

(b) to make all rules for the use of parks by the public; and

(c) to provide penalties for the violation of the rules.

HeinOnline -- 1997 vol. I 126 1997

(2) The rules authorized hy this section have the force of city ordinances and may be enforced as ordinances of the city are enforced."

**Section 40.** Section 7-32-2244, MCA, is amended to read:

"**7-32-2244. Detention of juveniles.** Juveniles may be held in a detention center only in accordance with ~~41-5-301 through 41-5-307, 41-5-309, and 41-5-311~~ *Title 41, chapter 5, part 3.*"

**Section 41.** Section 7-34-2201, MCA, is amended to read:

"**7-34-2201. Erection and management of county health care facilities — definition — provision of health care services.** (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.

(2) The board of county commissioners of a county that has or may acquire title to a site and huilding or buildings suitable for county health care purposes has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and operate the building or buildings for health care purposes as provided by this section.

(3) As used in parts 21, 23, 24, and 25 and this part, unless the context clearly requires otherwise, the term "health care facility" means a hospital, a medical assistance facility, an ambulatory surgical facility, a hospice, ~~a kidney treatment center~~ *an end-stage renal dialysis facility*, an outpatient facility, a public health center, a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, or any combination and related medical facilities including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

**Section 42.** Section 10-2-416, MCA, is amended to read:

"**10-2-416. Pledge to continue operation and maintenance.** Pursuant to 38 U.S.C. ~~641 and 5035(a)(6)~~ *8134 and 8135(a)(6)*, the state shall appropriate funds either from the general fund or from funds generated under 16-11-111 to the department of public health and human services *for* financial support necessary to provide for continued operation and maintenance of the state home for veterans in eastern Montana. The department of public health and buman services may contract with a private vendor to provide for the operation of the eastern Montana veterans' home and may charge the contract vendor a rental fee for the maintenance and upkeep of the facility."

**Section 43.** Section 10-3-207, MCA, is amended to read:

"**10-3-207. Text of compact.** The interstate mutual aid compact referred to in 10-3-204 and 10-3-205 reads as follows:

INTERSTATE MUTUAL AID COMPACT

Article I

The purpose of this compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster tbat overextends the ability of local and state governments to reduce, counteract, or

HeinOnline -- 1997 vol. I 127 1997

remove the danger. Assistance may include but is not limited to rescue, fire, police, medical, communication, and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 *(now repealed)* and the executive branch, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

Article III

It is agreed by participating states that the following conditions will guide implementation of the compact:

(1) Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the emergency and other resources are not immediately available.

(2) Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request shall provide an itemization of equipment and operators, types of expertise, and personnel or other resources needed. Each request must be signed by an authorized official.

(3) Personnel and equipment of the aiding state made available to the requesting state shall, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.

(4) An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

Article IV

(1) The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting stato of an itemized voucher requesting reimbursement of costs.

(2) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid, and for the cost incurred in connection with such requests.

(3) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and such payments are made in the same

manner and on the same terms as if the injury or death were sustained within the aiding state.

Article V

(1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective functions within the territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this compact.

(2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this compact. Volunteers may include but are not limited to physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue volunteers.

(3) The signatory states, their political subdivisions, municipal corporations, and other public agencies shall hold harmless the corresponding entities and personnel thereof from the other state with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.

(4) Nothing in this arrangement may be construed as repealing or impairing any existing interstate mutual aid agreements.

(5) Upon enactment of this compact by two or more states, and annually by each January 1 thereafter, the participating states will exchange with each other the names of officials designated to request and provide services under this arrangement. In accordance with the cooperative nature of this arrangement, it is permissible and desirable for the states to exchange operational procedures to be followed in requesting assistance and reimbursing expenses.

(6) This compact becomes effective and is binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact becomes effective and binding as to any other state upon similar action by such state.

(7) This compact remains binding upon a party state until it enacts a law repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal may not take effect until the 30th consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations assumed under this compact prior to the effective date of withdrawal."

**Section 44.** Section 10-3-501, MCA, is amended to read:

**"10-3-501. Policy of state.** (1) The legislature recognizes that an *enemy* attack upon the United States is a possibility; that such *an* attack might be of unprecedented size and destructiveness; that a considerable period of time may

HeinOnline -- 1997 vol. I 129 1997

elapse after an *enemy* attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to postattack recovery and rehabilitation ~~necessarily~~ are predicated on the ability of the states and their political subdivisions to prepare for and respond promptly to the problems created hy an *enemy* attack. Therefore, it is ~~hereby found and declared to be~~ necessary to confer upon the governor and upon the executive heads of governing bodies of political suhdivisions of this state the emergency powers provided for in this part.

(2) It is ~~further declared to be~~ the purpose of this part and tlie policy of this state that all resource managoment functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available manpower, resources, and facilities in an emergency."

**Section 45.** Section 10-3-504, MCA, is amended to read:

"**10-3-504. Emergency resource management plan.** The plan ~~shall~~ *must* provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. ~~It shall be~~ *The plan is* supplemental to the national plan for emergency preparedness adopted by the president of the United States and ~~shall become~~ *becomes* operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state *emergency resources management* plan will substituto for and replace the federal program until ~~such~~ *the* time ~~as~~ *that* the federal program becomes effective in the state."

**Section 46.** Section 10-4-101, MCA, is amended to read:

"**10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, tbe following definitions apply:

(1) "Account" means tbe 9-1-1 emergoncy telecommunications account established in 10-4-301.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Direct dispatch ~~method~~" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

(4) "Emergency" means ~~any~~ *an* event that requires dispatch of a public or private safety agency.

(5) "Emergency services" means services provided by ~~any~~ *a* public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

(6) "Exchange access services" means:

HeinOnline -- 1997 vol. I 130 1997

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in subsection (6)(a).

~~(7) "Local government" means any city, county, or political subdivision of the state and its agencies.~~

~~(8)~~*(7)* "Minimum 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point. "Minimum 9-1-1 services" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, for transferring the call to another point, when appropriate.

~~(9)~~*(8)* A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

~~(10)~~*(9)* "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

~~(11)~~*(10)* "Provider" means a public utility, cooperative telephone company, or any other entity that provides telepbone exchange access services.

~~(12)~~*(11)* "Public safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority te provide emergency services.

~~(13)~~*(12)* "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from porsons in a 9-1-1 service area and ~~which~~ *that* may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

~~(14)~~*(13)* "Relay ~~method~~" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays ~~such~~ *the* information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

~~(13)~~*(14)* "Subscriber" means an end user who receives telephone exchange access services.

~~(12)~~*(15)* "Transfer ~~method~~" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers ~~such a~~ *the* request to an appropriate public safety answering agency or other provider of emergency services."

**Section 47.** Section 10-4-301, MCA, is amended to read:

HeinOnline -- 1997 vol. I 131 1997

"**10-4-301. Establishment of emergency telecommunications account.** A 9-1-1 emergency telecommunications account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the account. After payment of refunds pursuant to 10-4-205, the balance of the account must be used for the purposes described in part 1 of this chapter. The distribution of the 9-1-1 emergency telecommunications account, according to the requirements of 10-4-302, is statutorily appropriated *as provided in 17-7-502*. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose."

**Section 48.** Section 13-13-276, MCA, is amended to read:

"**13-13-276. Legislative findings and purpose.** The legislature finds that the increased use of facsimile transmissions has encouraged the possibility of absentee voter registration and the sending and receiving of absentee ballots by facsimile. The legislature also finds that while federal law encourages but does not require the use of facsimile transmissions in federal elections, there ~~are~~ *is* sufficient reliability in facsimile technology and *there is* sufficient evidence that absentee facsimile voting would be of benefit to electors in the United States service~~,~~ to provide for absentee registration and voting by facsimile. It is the purpose of 13-13-276 through ~~13-13-279~~ *13-13-278* to allow for absentee voter registration and voting by facsimile, while recognizing that state and local election officials have the responsibility to maintain the accuracy, integrity, and secrecy of the election process and the individual election ballot. It is the purpose of the legislature to allow facsimile voting for electors in the United States service but to continue to ensure that voting security is maintained for the ultimate purpose of preventing election fraud and maintaining the validity of the election process."

**Section 49.** Section 13-13-278, MCA, is amended to read:

"**13-13-278. Adoption of rules — acceptance of funds.** (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement 13-13-277. The rules are binding upon election administrators. The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails, except that the rules may provide for different times for the acceptance of facsimile ballots after the closing of the polls. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential te the purposes of 13-13-276 through ~~13-13-279~~ *13-13-278*.

(2) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing 13-13-276 through ~~13-13-279~~ *13-13-278*."

**Section 50.** Section 13-25-106, MCA, is amended to read:

HeinOnline -- 1997 vol. I 132 1997

"**13-25-106. Compensation of electors.** Electors ~~shall~~ *must* receive the same pay and mileage *that is* allowed *to* members of the legislature. Payments ~~shall~~ *must* be certified by the secretary of state and paid by the state ~~auditor~~ *treasurer* from the state general fund."

**Section 51.** Section 13-27-202, MCA, is amended to read:

"**13-27-202. Recommendations — approval of form required.** (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must he submitted to the legislative services division for review.

(b) The legislative services division staff shall review the text for clarity, consistency, and any other factors *that* the ~~council~~ staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the legislative services division staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

(2) The legislative services division shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will he circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the secretary of state. The secretary of state shall refer a copy of the petition sheet te the attorney general for approval. The secretary of state and attorney general shall each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative services division unless the material not submitted to the legislative services division is a substantive change not suggested by the legislative services division.

(4) The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the form of the petition. The secretary of state shall send written notice to the person who submitted the petition sheet of the approval or rejection within 28 days after submission of the petition sheet. If the petition is rejected, the notice must include reasons for rejection.

HeinOnline -- 1997 vol. I 133 1997

(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state."

**Section 52.** Section 13-37-106, MCA, is amended to read:

"**13-37-106. Salary.** The commissioner of political practices is entitled to receive a *an annual* salary of ~~$30,303 in fiscal year 1992 and~~ $31,551 ~~in fiscal year 1993 and thereafter~~."

**Section 53.** Section 13-37-128, MCA, is amended to read:

"**13-37-128. Cause of action created.** (1) ~~Except as provided in 13-37-306, any~~ *A* person who intentionally or negligently violates any of the reporting provisions of this chapter~~, shall be~~ *is* liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.

(2) ~~Any~~ *A* person who makes or receives a contribution or expenditure in violation of 13-35-225, 13-35-227, 13-35-228, or this chapter is liable in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to $500 or three times the amount of the unlawful contribution or expenditure, whichever is greater."

**Section 54.** Section 13-37-130, MCA, is amended to read:

"**13-37-130. Limitation of action.** ~~No~~ *An* action may *not* be brought under 13-37-128 and 13-37-129 more than 4 years after the occurrence of the facts ~~which~~ *that* give rise to the action. No more than one judgment against a particular defendant may be had on a single state of facts. The civil action created in 13-37-128 and 13-37-129 ~~shall be~~ *is* the exclusive remedy for violation of the contribution, expenditure, and reporting provisions of this chapter~~, except as provided in 13-37-306~~. These provisions are not subject to the misdemeanor penalties of 13-35-103 but may be a ground for contest of election or removal from office as provided in 13-35-106(3) and Title 13, chapter 36."

**Section 55.** Section 15-1-521, MCA, is amended to read:

"**15-1-521. Property valuation improvement fund.** There is an account in the state special revenue fund to be used by the department for increasing the efficiency of the property appraisal, assessment, and taxation process through improvements in technology and administration. The department shall deposit fees collected pursuant to 2-6-110~~(4)~~*(3)* in the account."

**Section 56.** Section 15-1-704, MCA, is amended to read:

"**15-1-704. Filing with district court.** (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall

HeinOnline -- 1997 vol. I 134 1997

file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

(3) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the ~~provisions of~~ *methods provided in* 25-13-102."

**Section 57.** Section 15-7-303, MCA, is amended to read:

"**15-7-303. Definitions.** As used in this part, the following definitions apply:

~~(1) "Partial interest" means a percentage interest in property when less than 100%.~~

~~(2)~~*(1)* "Person" means ~~and includes~~ an individual, corporation, partnership, or other business organization, trust, fiduciary, or agent or any other party presenting a document for recordation.

~~(3)~~*(2)* "Real estate" includes:

(a) land;

(b) growing timber;

(c) buildings, structures, fixtures, fences, and improvements affixed to land.

~~(4)~~*(3)* "Transfer" means an act of the parties or of the law by which the title to real property is conveyed from one person to another.

~~(5)~~*(4)* "Value" means the amount of the full actual consideration ~~therefor~~ *for real estate* paid or to be paid, including the amount of any lien or liens ~~thereon~~ *on the real estate.*"

**Section 58.** Section 15-8-104, MCA, is amended to read:

"**15-8-104. Department audit and review of taxable value — costs paid by department.** (1) When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines ~~and oil and gas wells~~ and all other types of property subject to ad valorem taxation.

(2) The department may conduct reviews of the assessment of all commercial personal property to ensure that the value of the property in those classes reflects market value. Because the assessed value of commercial personal property is defined as market value under 15-8-111(2), the review conducted by the department may be directed toward ensuring that all taxable personal property is reported to the department.

(3) The cost of any audit or review performed under subsection (1) or (2) must be paid by the department."

**Section 59.** Section 15-16-102, MCA, is amended to read:

HeinOnline -- 1997 vol. I 135 1997

**"15-16-102. Time for payment — penalty for delinquency.** ~~Except as provided in 15-16-802 and 15-16-803 and unless~~ *Unless* suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added te the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided *that taxes for* both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of *taxes for* the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of tbe resolution must be certified to the county treasurer."

**Section 60.** Section 15-16-119, MCA, is amended to read:

**"15-16-119. Taxation of personal property — duty of department — collection by state auditor.** (1) If the taxes on personal property are not a lien upon real property in the same county in an amount sufficient to secure the payment of tbe taxes, the department shall assess the property and compute the tax for the assessment. The department shall notify tlie county treasurer of the assessment and the amount of taxes due. To compute the taxes due on the personal property, the department shall use tlie appropriato mills levied during the previous year.

(2) The county treasurer shall notify the person against whom the tax is assessed and any other person having a properly perfected security interest of record of the amount and due date of the tax. The tax is due and payable 30 days from the date the treasurer mails the notice. Taxes not paid within 30 days become delinquent, and the penalty and interest provisions of 15-16-101 must be applied.

HeinOnline -- 1997 vol. I 136 1997

(3) The county treasurer shall, after the tax becomes delinquent, either proceed under subsection (7) or levy upon and take into possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer. The county treasurer may proceed to sell the property in the same manner as property is sold on execution by the sheriff.

(4) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for sale purposes and may receive payment of the taxes, penalty, and interest. The sheriff may receive the same fees as for making a seizure and sale as provided in 15-17-911.

(5) The county treasurer and the treasurer's sureties are liable on the treasurer's official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell the personal property for the taxes levied upon the property, including penalty and interest.

(6) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax, including penalty and interest.

(7) The county treasurer shall give the board of county commissioners a list of delinquent personal property taxpayers and the taxes due. The board may order the county treasurer to verify the list under oath and to send a copy of the list to the ~~state auditor~~ *department of administration* for collection under Title 17, chapter 4, part 1.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

**Section 61.** Section 15-23-101, MCA, is amended to read:

"**15-23-101. Properties centrally assessed.** The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines; natural gas or oil pipolines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or oporated by a public agancy created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(3) all property of scheduled airlines;

(4) the net proceeds of mines ~~and of oil and gas wells~~;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) ~~which~~ *that* is subject to the provisions of Title 15, chapter 24, part 12."

**Section 62.** Section 15-23-703, MCA, is amended to read:

**"15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools.** (1) The department shall compute from the reported gross proceeds from coal a tax roll that must be transmitted to the county treasurer on or before September 15 each year. The department may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice *as provided in 15-16-101* to each coal producer of the taxes due and ~~to~~ *shall* collect the taxes ~~as provided in 15-16-101~~.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenue, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would

HeinOnline -- 1997 vol. I 138 1997

have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other proporty tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budgot for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The hoard of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the tetal budget for a fund, the trustees may allocate the excess to any hudgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that hegan production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year. (In subsection (2), the deletion of the reference to subsection (5) of 15-35-102 terminates December 31, 2005—sec. 5, Ch. 318, L. 1995.)"

**Section 63.** Section 15-23-706, MCA, is amended to read:

**"15-23-706. Department to determine rcdistribution of coal gross proceeds to taxing jurisdictions.** (1) The coal gross proceeds redistribution account established in 15-23-707 is statutorily appropriated, as provided in 17-7-502, for allocation to the county for redistribution as provided in subsections (2) and (3).

(2) Each year the department shall determine the amount of tax collected under this part from within each taxing unit in the county. If the amount collected by each county is less than the amount determined under 15-23-703~~(4)~~*(3)* for that county, the department shall, on or before June 30 of each year, send the amount of the difference from the state special revenue account established in 15-23-707 to the county treasurer for redistribution as provided in 15-23-703~~(5)~~*(4)*.

(3) If the amount received by the department for redistribution is less than or more than the redistribution amount determined in subsection (2), the department shall calculate and redistrihute the shortage or excess amount in the following manner:

(a) If a county does not receive the entire amount to which it is entitled under subsection (2), the shortage amounts of each taxing unit must be divided by the total shortage amounts of all taxing umits determined under 15-23-703~~(4)~~*(3)* to ohtain a shortage percentage for each taxing unit. The shortage porcontage for

each taxing unit must be multiplied by the amount that is available for redistribution to each taxing unit, and this amount must be redistributed to each respective taxing unit.

(b) If there are excess amounts after the redistribution provided for in subsection (2), the excess amounts must be redistributed to the county of origin in proportion to the amount each taxing unit in the county contributed for redistribution.

(4) The county treasurer shall distribute the money received under subsection (3)(b) *of this section* as provided in 15-23-703~~(5)~~*(4)*."

**Section 64.** Section 15-23-707, MCA, is amended to read:

**"15-23-707. Coal gross proceeds redistribution aecount.** (1) There is within the state special revenue fund a coal gross proceeds redistribution account.

(2) All money received from county treasurers as provided in 15-23-703~~(6)(a)~~*(5)(a)* must be deposited by the department into the coal gross proceeds redistribution account for redistribution as provided in 15-23-706."

**Section 65.** Section 15-30-101, MCA, is amended to read:

**"15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by ~~subsection (2) of~~ 15-30-103*(2)*, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted hy 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by ~~subsection (2) of~~ 15-30-122*(2)*, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, usmg the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) ~~"Foreign country" or "foreign~~ *"Foreign* government" means any jurisdiction other than the one embraced within the United States, its torritories, and its possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 *(26 U.S.C. 61)* or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 *(26 U.S.C. 85)* as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code *(26 U.S.C. 401)*, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or ~~profitsharing~~ *profit-sharing* plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code *(26 U.S.C. 401 through 408)* to the extent that the distributions are not considered to he premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(14) "Purposely" is as defined in 45-2-101.

HeinOnline -- 1997 vol. I 141 1997

(15) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(17) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(18) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(19) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

(20) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

**Section 66.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 *(26 U.S.C. 62)*, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986 *(26 U.S.C. 852(b)(5))*, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15); and

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

HeinOnline -- 1997 vol. I 142 1997

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986 *(26 U.S.C. 852(b)(5))*, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to he recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954 *(26 U.S.C. 3402(k) or 3401)*, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

HeinOnline -- 1997 vol. I 143 1997

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer; and

(k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code *(26 U.S.C. 995)* for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under ~~section 44B~~ *sections 38 and 51(a)* of the Internal Revenue Code of 1954, as ~~that section~~ *those sections* may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess roduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

**Section 67.** Section 15-30-117, MCA, is amended to read:

**"15-30-117. Net operating loss — computation.** (1) A Montana net operating loss must be determined in accordance with section 172 of the Internal Revenue Code of 1954 *(26 U.S.C. 172)* or as that section may be labeled or amended and in accordance with the following:

HeinOnline -- 1997 vol. I 144 1997

(a) The net operating loss deduction for Montana purposes is increased by the following:

(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 ~~which~~ *that* is attributable to income from a Montana trade or business; and

(ii) Montana wages and salaries allowed as a business deduction under 15-30-111(4).

(b) The net operating loss deduction for Montana purposes is decreased by the following:

(i) interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a);

(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as Montana business income;

(iii) state income tax; and

(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 *(26 U.S.C. 172)* or as that section may be labeled or amended, a net operating loss does not include:

(a) income defined as exempt from state taxation under 15-30-111(2); or

(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 *(26 U.S.C. 63)* or as that section may be labeled or amended."

**Section 68.** Section 15-30-121, MCA, is amended to read:

**"15-30-121. Deductions allowed in computing net income.** *(1)* In computing net income, there are allowed as deductions:

~~(1)~~*(a)* the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 *(26 U.S.C. 161 and 211)*, or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

~~(a)~~*(i)* items provided for in 15-30-123;

~~(b)~~*(ii)* state income tax paid;

~~(c)~~*(iii)* one-half of premium payments for medical care as provided in subsection ~~(9)~~ *(2)*;

~~(2)~~*(b)* federal income tax paid within the tax year;

~~(3)~~*(c)* expenses of household and dependent care services as outlined in subsections ~~(3)(a) through (3)(c) and (9)~~ *(1)(c)(i) through (1)(c)(iii) and (3)* and

subject to the limitations and rules as set out in subsections ~~(3)(d) through (3)(f)~~ *(1)(c)(iv) through (1)(c)(vi)*, as follows:

~~(a)~~*(i)* expenses for household and dependent care services necessary for gainful employment incurred for:

~~(i)~~*(A)* a dependent under 15 years of age for whom an exemption can be claimed;

~~(ii)~~*(B)* a dependent as allowable under 15-30-112(5), except that the limitations for aga and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

~~(iii)~~*(C)* a spouse who is unable to provide self-care because of physical or mental illness;

~~(b)~~*(ii)* employment-related expenses incurred for the following services, but only if the expenses are incurred to enahle the taxpayer to be gainfully employed:

~~(i)~~*(A)* household services that are attrihutable to the care of the qualifying individual; and

~~(ii)~~*(B)* care of an individual who qualifies under subsection ~~(3)(a)~~ *(1)(c)(i)*;

~~(c)~~*(iii)* expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished hy an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

~~(d)~~*(iv)* the amounts deductible in subsections ~~(3)(a) through (3)(c)~~ *(1)(c)(i) through (1)(c)(iii)*, subject to the following limitations:

~~(i)~~*(A)* a deduction is allowed under subsection ~~(3)(a)~~ *(1)(c)(i)* for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

~~(ii)~~*(B)* expenses for services in the household are doductible under subsection ~~(3)(a)~~ *(1)(c)(i)* for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection ~~(3)(a)(i)~~ *(1)(c)(i)(A)* and only to the extent that the expenses incurred during the year do not exceed:

~~(A)~~*(I)* $2,400 in the case of one qualifying individual;

~~(B)~~*(II)* $3,600 in the case of two qualifying individuals; and

~~(C)~~*(III)* $4,800 in the case of three or more qualifying individuals;

~~(c)~~*(v)* if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to he reduced by one-half of the excess of the combined adjusted gross income over $18,000;

~~(f)~~*(vi)* for purposes of this subsection ~~(3)~~ *(1)(c)*:

~~(i)~~*(A)* married couples shall file a joint return or file separately on the same form;

~~(ii)~~*(B)* if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

~~(A)~~*(I)* both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

~~(B)~~*(II)* the spouse is a qualifying individual described in subsection ~~(3)(a)(iii)~~ *(1)(c)(i)(C)*;

~~(iii)~~*(C)* an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

~~(iv)~~*(D)* the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

~~(v)~~*(E)* payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

~~(4)~~*(d)* in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code *(now repealed)* that were in effect for the tax year ended December 31, 1978;

~~(5)~~*(e)* that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

~~(6)~~*(f)* contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

~~(7)~~*(g)* one-half of premium payments, except premiums deducted in determining Montana adjusted gross income, for:

~~(a)~~*(i)* insurance for medical care made directly by the taxpayer; and

~~(b)~~*(ii)* long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner; and

~~(6)~~*(h)* contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159.

~~(6)~~*(2)* For the purpose of subsection ~~(7)(a)~~ *(1)(g)(i)*, deductible medical insurance premiums are those premiums that provide payment for medical care as defined by 26 U.S.C. 213(d).

~~(10)~~*(3)* (a) Subject to the conditions of subsection ~~(3)~~ *(1)(c)*, a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the

HeinOnline -- 1997 vol. I 147 1997

care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection ~~(3)(d)(ii)~~ *(1)(c)(iv)(B)*.

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection ~~(10)~~ *(3)*. (Subsection ~~(8)~~ *(1)(h)* terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)"

**Section 69.** Section 15-30-162, MCA, is amended to read:

**"15-30-162. Investment credit.** (1) There is allowed as a credit against the tax imposed by 15-30-103 a percentage of the credit allowed with respect to certain depreciable property under section 38 of the Internal Revenue Code of 1954 *(26 U.S.C. 38)*, ~~as amended,~~ or as *that* section ~~38~~ may be renumbered or amended. However, rehabilitation costs as set forth under section ~~46(a)(2)(F)~~ of the Internal Revenue Code of 1954 *(26 U.S.C. 46)*, or as *that* section ~~46(a)(2)(F)~~ may be renumbered or amended, are not to be included in the computation of the investment credit. The credit is allowed for the purchase and installation of certain qualified preperty defined by section 38 of the Internal Revenue Code of 1954 *(26 U.S.C. 38)*, as amended, if the property meets all of the following qualifications:

(a) it was placed in service in Montana; and

(b) it was used for the production of Montana adjusted gross income.

(2) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section ~~46(a)(2)~~ of the Internal Revenue Code of 1954 *(26 U.S.C. 46)*, ~~as amended,~~ or as *that* section ~~46(a)(2)~~ may be renumberod or amended.

(3) Notwithstanding the provisions of subsection (2), the investment credit allowed for the taxable year may not exceed the taxpayer's tax liability for the taxable year or $500, whichever is less.

(4) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be appertioned according to a fraction the numerator of which is the number of days during the taxable year the property was located in Montana and the denominator of which is the number of days during the taxable year the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed. The credit may not be allocated between spouses unless the property is used by a partnership or small business corporation of which they are partners or shareholders.

(5) The investment credit allowed by this section is subject to recapture as provided for in section 47 of the Internal Revenue Code of 1954 *(26 U.S.C. 47)*, ~~as amended,~~ or as *that* section ~~47~~ may be renumbered or amended."

**Section 70.** Section 15-30-201, MCA, is amended to read:

**"15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions apply:

HeinOnline -- 1997 vol. I 148 1997

(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" means an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana. The term also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person. However, if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term means the person who has control of the payment of wages.

(4) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(5) "Lookback period" means the 12-month period ending the preceding June 30.

(6) "Wages" means all remuneration, other than fees paid to a public official, for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101~~(33)~~;

(b) for agricultural labor;

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection ~~(d)~~ *(6)(d)*, an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during a quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection (6)(d)(i), by the employer in the performance of service during the preceding calendar quarter.

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by an ordained, commissioned, or licensed minister of a church in the exercise of the ministry or by a member of a religious order in the exercise of duties required by the order;

(g) (i) for services performed by an individual under 18 years of age in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, with the individual's compensation based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when the payments are in the form of lodgings or meals and the services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

(j) as tips or gratuities that are in accordance with section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954 *(26 U.S.C. 3402(k) or 3401)*, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(k) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in section 129(b) of the Internal Revenue Code *(26 U.S.C. 129(b))* as it read on January 1, 1989. (Subsection (6)(j) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

**Section 71.** Section 15-30-202, MCA, is amended to read:

**"15-30-202. Withholding of tax from wages.** Each employer, *except an independent contractor,* making payment of wages shall withhold from wages a tax determined in accordance with the withholding tax tables prepared and issued by the department. Persons on active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101~~(33)~~, are not subject to the provisions of this section."

HeinOnline -- 1997 vol. I 150 1997

**Section 72.** Section 15-31-102, MCA, is amended to read:

**"15-31-102. Organizations exempt from tax — unrelated business income not exempt.** (1) Except as provided in subsection (3), there ~~shall~~ *may* not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of ~~such~~ *the* society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit, ~~and~~ no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income ~~therefrom~~ *from the property*, and turning over the entire amount ~~thereof~~ *of the income*, less expenses, to an organization ~~which~~ *that* itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep;.

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code

HeinOnline -- 1997 vol. I 151 1997

*(26 U.S.C. 991, et seq.)* and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes such an election under federal law, each person who at any time is a shareholder of ~~such~~ *the* corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, ~~and~~ no part of the net income of which inures to the benefit of any member, but *that* is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller.

(2) In determining the license fee to be paid under this part, there ~~shall~~ *may* not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business *taxable* income, as defined by section 512 of the Internal Revenue Code~~,~~ *of* 1954 *(26 U.S.C. 512)*, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 ~~shall~~ *must* be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section ~~must~~ *shall* file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

**Section 73.** Section 15-31-131, MCA, is amended to read:

**"15-31-131. Credit for dependent care assistanee.** (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section ~~89(k) and~~ 129(d)(2) through (6) of the Internal Revenue Code *(26 U.S.C. 129(d)(2) through (d)(6))*.

(2) (a) The amount of the credit allowed under subsection (1) is 20% of the amount paid or incurred by the employer during the taxable year, but the credit may not exceed $1,250 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code *(26 U.S.C. 21(e)(3) and (e)(4))*.

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) An amount paid or incurred during the taxable year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code *(26 U.S.C. 129(c)(1) or (c)(2))*.

HeinOnline -- 1997 vol. I 152 1997

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must he made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code *(26 U.S.C. 129(b))*. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) If the taxpayer is an S. corporation, as defined in section 1361 of the Internal Revenue Code *(26 U.S.C. 1361)*, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code *(26 U.S.C. 129(e))* apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

~~(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989.~~"

**Section 74.** Section 15-32-102, MCA, is amended to read:

"**15-32-102. Definitions.** As used in this part, the following definitions apply:

(1) "Building" means:

*(a)* a single or multiple dwelling, including a mobile home~~,~~; or

*(b)* a building used for commercial, industrial, or agricultural purposes~~,~~ that is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or both of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(4) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, hy way of an open loop, for the purpose of heating or cooling a residential building.

~~(5) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.~~

~~(6)~~*(5)* "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203.

*(6) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are*

HeinOnline -- 1997 vol. I 154 1997

*expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.*

(7) "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources by using:

*(i)* solar energy, including passive solar systems;

*(ii)* wind;

*(iii)* solid waste; or

*(iv)* the decomposition of organic wastes;

(b) a system that produces electric power from solid wood wastes; or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area."

**Section 75.** Section 15-32-201, MCA, is amended to read:

"**15-32-201. Amount of credit — to whom available.** (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in the taxpayer's principal dwelling prior to January 1, 1993, or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 1/2% of the next $3,000 of the cost of the system, including installation costs, less grants received, against the income tax liability imposed against the taxpayer pursuant to chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low emission wood or biomass combustion device, as defined in 15-32-102~~(6)(a)~~*(5)(a)*, in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 20% of the first $1,000 and 10% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in 15-32-102~~(6)(b)~~*(5)(b)*, in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."

**Section 76.** Section 15-32-403, MCA, is amended to read:

HeinOnline -- 1997 vol. I 155 1997

"**15-32-403. Limitation on credit.** Whenever any federal wind energy tax credits for a system that generates electricity by means of wind power are allowed or allowable under section ~~48(1)~~ *48(a)* of the Internal Revenue Code *(26 U.S.C. 48(a))* or any other federal law, the state credit allowed by 15-32-402 must be reduced by the amount of federal credits so that the effective credit does not exceed 60% of the eligible costs."

**Section 77.** Section 15-36-324, MCA, is amended to read:

"**15-36-324. Distribution of taxes.** (1) For each calendar quarter, the department of revenue shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally drilled wells located in the taxing unit.

(2) Except as provided in subsections (3) and (4), oil production taxes must be distributed as follows:

(a) The amount equal to 41.6% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (7).

(b) The remaining 58.4% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (7).

(4) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from horizontally drilled wells and on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (7).

(5) Except as provided in subsection (6), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14.6% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (7).

(b) The remaining 85.4% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(6) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under

this part on production from post-1985 wells occurring during the first 12 months of production must he distributed as provided in subsection (7).

(7) The department shall, in accordance with the provisions of 15-1-501~~(6)~~, distribute the state portion of oil and natural gas production taxes, including late payment interest and penalty collected, as follows:

(a) 85% to the state general fund;

(b) 4.3% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 10.7% to be distributed as provided by 15-38-106(2).

(8) (a) For the purpose of distrihution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas preduction taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distrihution occurs. The amount of oil and natural gas production taxes distributions must he calculated and distrihuted as follows:

(i) By the dates referred to in suhsection (9), the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection (8)(a), by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liahility exceeds or is less than the total distributions determined in subsection (8)(a) must he calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the total distribution determined for tbat period to ohtain an excess or shortage percentage.

(B) The excess percentage must be multiplied hy the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as provided in subsection (8)(c), the county treasurer shall distribute the money received under subsection (9) from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (8)(b), to

HeinOnline -- 1997 vol. I 157 1997

another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (8)(c)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (8)(d)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b) and (5)(b) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection (8)(e) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection (8)(e) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection (8)(b) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributed under subsection (8)(e) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (8)(h) and (8)(i) is for the exclusive use and benefit of the county and school taxing units.

HeinOnline -- 1997 vol. I 158 1997

(9) The department shall remit the amounts to be distributed in subsection (8) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(10) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes."

**Section 78.** Section 15-36-325, MCA, is amended to read:

**"15-36-325. Local government severance tax payments for calendar year 1995 production — distribution of payments — not subject to I-105 limitations.** (1) The local government severance tax imposed under 15-36-101, as that section read before January 1, 1996, for calendar year 1995 production is due as follows:

~~(a) for oil and natural gas production occurring in the first calendar quarter of 1995, the tax is due May 31, 1996;~~

~~(b)~~*(a)* for oil and natural gas production occurring in the second calendar quarter of 1995, the tax is due May 31, 1997;

~~(c)~~*(b)* for oil and natural gas production occurring in the third calendar quarter of 1995, the tax is due May 31, 1998; and

~~(d)~~*(c)* for oil and natural gas production occurring in the fourth calendar quarter of 1995, the tax is due May 31, 1999.

(2) (a) If the taxpayer pays the entire local government severance tax liability for calendar year 1995 on or before June 30, 1996, the taxpayer must receive a 6% reduction in the total local government severance tax liability.

(b) Any payment of local government severance taxes for calendar year 1995 made on or before June 30, 1997, does not accrue interest. Any payment of local government severance taxes for calendar year 1995 made after June 30, 1997, must accrue interest at the rate of 1% a month or fraction of a month from July 1, 1997, to the date of payment. Any payment for the third quarter of 1995 received after May 31, 1998, and any payment for the fourth quarter of 1995

HeinOnline -- 1997 vol. I 159 1997

received after May 31, 1999, is subject to the late payment penalty provisions in 15-36-311.

(c) In the case of the dissolution of the operator or a change in the operator of any lease or unit, any unpaid local government severance tax for calendar year 1995 becomes due on the date of dissolution or on the date of the change in operator. The operator is subject to the provisions of subsection (2)(a) regarding the 6% tax liability reduction or the provisions of subsection (2)(b) regarding interest and penalties.

(3) The department shall determine the amount of tax collected under subsections (1) and (2) from within each taxing unit.

(4) For purposes of the distribution of local government severance taxes collected under this section, the department shall use the unit value of oil and gas for each taxing unit as determined in 15-36-323.

(5) The local government severance tax must be deposited in the agency fund in the state treasury and transferred to the county for distribution as provided in subsection (6).

(6) For the purpose of the distribution of the local government severance tax for calendar year 1995 production, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters for which the distribution occurs plus penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters for which the distribution occurs. The taxes must be calculatod and distributed as follows:

(a) By July 31 of each of the years ~~1996,~~ 1997, 1998, and 1999, the department shall calculate and distribute to each eligible county the amount of local government severance tax for calendar year 1995 production, determined hy multiplying the unit value, as adjusted in this subsection (6), by the units of production on which the local government severance tax was owed during calendar year 1995 production.

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (6)(a) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied hy the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied hy the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(7) (a) The county treasurer shall distribute the money received under subsection (6) between the county and school taxing units. The distribution between county and school taxing units is the ratio of the number of mills levied

HeinOnline -- 1997 vol. I 160 1997

for fiscal year 1990 against 1988 production in each taxing unit for the county and schools, including the county equalization levies that were in effect under 20-9-331 and 20-9-333 as those sections read on July 1, 1989, and the university 6-mill levy imposed under 20-25-423, except that a distribution may not be made to a municipal taxing unit or the state equalization aid levy imposed under 20-9-360. Distribution of money for the county equalization levies and the university levy must be remitted to the state by the county treasurer. The amounts distributed under subsections (7)(b) and (7)(c) are for the exclusive use of county and school taxing units.

(b) The county treasurer shall deposit the money from subsection (7)(a) allocated to county levies to the oil and *natural* gas ~~tax~~ accelerated *tax* fund.

(c) The trustees of a school district may allocate any payment received under subsection (7)(a) to any budget fund of the district or to the miscellaneous programs fund established in 20-9-507. The trustees shall direct the county treasurer to deposit the local government severance tax payments under this section to the funds of the district in accordance with the allocations determined by the trustees.

(8) Local government severance tax payments to a county pursuant to this section are not subject to the limitations of Title 15, chapter 10, part 4. Payments of local government severance tax pursuant to this section may not be used for county classification purposes under 7-1-2111 and may not be considered in the determination of bonding limits under 7-7-2101, 7-7-2203, 7-14-2524, and 7-16-2327."

**Section 79.** Section 15-38-104, MCA, is amended to read:

**"15-38-104. Tax on mineral production.** (1) Except as provided in subsections (2) through ~~(4)~~ *(5)*, the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is $25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing:

(a) talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4% of the gross value of product in excess of $625; and

(b) coal is $25 plus an additional amount computed on the gross value of product for coal produced in Montana during the calendar year immediately preceding at the rate of 0.4% of the gross value of product in excess of $6,250.

(3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing vermiculite is $25 plus an additional amount computed on the gross value of product for vermiculite derived from the

HeinOnline -- 1997 vol. I 161 1997

business work or operation within this state during the calendar year immediately preceding at the rate of 2% of the gross value of product in excess of $1,250.

(4) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing limestone for the production of quicklime is $25 plus an additional amount computed on the gross value of product for limestone derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 10% of the gross value of product in excess of $250.

(5) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing industrial garnets and associated byproducts is $25 plus an additional amount computed on the gross value of product for industrial garnets and associated byproducts derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1% on the gross value of product in excess of $2,500."

**Section 80.** Section 15-38-106, MCA, is amended to read:

**"15-38-106. Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501~~(6)~~, deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905;

(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104.

(3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

**Section 81.** Section 15-38-201, MCA, is amended to read:

HeinOnline -- 1997 vol. I 162 1997

"15-38-201. **Creation of resource indemnity trust fund.** For the purpose of carrying out this chapter, there is a resource indemnity trust fund in the nonexpendable trust fund type *in the amount of $100 million*. The resource indemnity fund ~~shall~~ *must* be credited with all ~~moneys~~ *money* received as ~~herein~~ provided *in this part*."

**Section 82.** Section 15-38-202, MCA, is amended to read:

"15-38-202. **Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. ~~All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only~~ *Only* the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts ~~must~~ *may* be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) ~~beginning in fiscal year 1996,~~ $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iv) ~~beginning in fiscal year 1996,~~ $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(v) ~~beginning in fiscal year 1996,~~ $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

HeinOnline -- 1997 vol. I 163 1997

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to tbe hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by tbe legislature or the executive branch that proposes to appropriate ~~funds from~~ the resource indemnity trust interest ~~account~~ other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is propesed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recoinmendation, an introduced bill, or a bill developed during tbe legislative appropriation process or otherwise during a legislative session."

**Section 83.** Section 15-70-125, MCA, is amended to read:

"**15-70-125. Highway nonrestricted account.** There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501~~(6)~~, be placed in the highway nonrestricted account."

**Section 84.** Section 15-70-235, MCA, is amended to read:

"**15-70-235. Tribal motor fucls administration account.** (1) There is a special revenue account called the tribal motor fuels administration account.

(2) The administrative expenses and refund amounts deducted by the department of transportation under ~~15-70-234(3)~~ *an agreement* must be deposited in tbe tribal motor fuels administration account.

(3) The tribal motor fuels adminiistration account may be expended by the department of transpertation or by the department of justice only for tbe purposes of administering the moter fuels tax and providing refunds under ~~15-70-234~~ *an agreement*."

**Section 85.** Section 15-70-236, MCA, is amended to read:

"**15-70-236. Tribal motor fuels tax account.** (1) There is a special revenue account called the tribal motor fuels tax account.

(2) The tax collected under 15-70-234, except the administrative expenses and refund amounts deducted under ~~15-70-234(3)~~ *an agreement*, must be deposited in the tribal motor fuels tax account.

(3) The money in the tribal motor fuels tax account must be disbursed to the tribe, as provided for in the agreement entered into pursuant to 15-70-234, on a quarterly basis."

HeinOnline -- 1997 vol. I 164 1997

**Section 86.** Section 16-1-106, MCA, is amended to read:

**"16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified.

(10) "Immediate family" means a spouse, dependent children, or dependent parents.

(11) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(12) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.~~

~~(13)~~*(12)* "Liquor" means an alcoholic beverage except beer and table wine.

~~(14)~~*(13)* "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products

HeinOnline -- 1997 vol. I 165 1997

prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

~~(15)~~*(14)* "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(16)~~*(15)* "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

~~(17)~~*(16)* "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~(16)~~*(17)* "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

~~(16)~~*(18)* "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

~~(20)~~*(19)* "Rules" means rules adopted by the department or the department of justice pursuant to this code.

~~(21)~~*(20)* "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(22)~~*(21)* "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which *building or* structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(23)~~*(22)* "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a sito in Montana other than the site of the beer wholesaler's or teble wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(24)~~*(23)* "Table wine" means wine that contains not more than 16% alcohol by volume.

~~(25)~~*(24)* "Tahle wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(20)~~*(25)* "Warehouse" means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(27)~~*(26)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct

natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

**Section 87.** Section 16-1-201, MCA, is amended to read:

**"16-1-201. Acts not covered by code.** (1) Nothing in this code ~~shall prevent~~ *prevents* any brewer, distiller, or other person, ~~duly~~ licensed under the provisions of any statute of the United States of America for the manufacture of alcoholic beverages, from having or keeping alcoholic beverages in a place and in the manner authorized by or under any such statute.

(2) It is ~~hereby declared to be~~ the policy of the state of Montana that the manufacture of alcoholic beverages, including the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of the United States, ~~shall be~~ *is* authorized and permitted by any brewer, distiller, rectifier, or other person ~~duly~~ licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States~~, provided the~~. *The* department may ~~make such~~ *adopt* rules ~~as~~ *that* the department ~~deems~~ *considers* necessary with respect ~~thereto~~ *to the manufacture of alcoholic beverages. The rules may* not *be* inconsistent with this code or with the statutes of the United States of America or regulations issued under the provisions of the Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, inclusive, or regulations issued under the provisions *of chapter 51* of the Internal Revenue Code~~, 26 U.S.C 5001 through 5603, inclusive~~.

(3) Nothing in this code ~~shall prevent~~ *prevents*:

(a) the sale of liquor or table wine by any person to the department;

(b) the purchase, impertation, and sale of liquor and table wine by the department for the purposes of and in accordance with this code."

**Section 88.** Section 16-1-202, MCA, is amended to read:

**"16-1-202. Preparations not subject to code.** (1) Subject to the provisions of this section, nothing in this code ~~shall~~, by reason only that ~~such~~ *a* preparation contains alcohol, ~~prevent~~ *prevents* the manufacture, sale, purchase, or consumption of any:

(a) extract, essence, or tincture or other preparation containing alcohol ~~which~~ *that* is prepared according to a formula of the United States Pharmacopoeia or according to a formula approved of by the department; or

(b) proprietary or patent medicine prepared according to a formula approved of by the department.

(2) The department, if of *the* opinion that any ~~such~~ proprietary or patent medicine, extract, essence, tincture, or preparation ~~which~~ *that* contains alcohol or any other preparation of a solid, semisolid, or liquid nature ~~containing~~ *that contains* alcohol ~~which,~~ *can be used* or ~~any~~ *that an* extract from ~~which,~~ *the substance* can be used as a beverage or as the ingredient of ~~any~~ *a* beverage, may prohibit the *retail* sale ~~thereof by retail within the state or the possession of the~~

HeinOnline -- 1997 vol. I 167 1997

~~same~~ *or the possession of the substance* for *retail* sale ~~by retail~~ within the state, except by ~~a state~~ *an agency* liquor store or by persons ~~duly~~ licensed by the department to keep and sell the ~~same~~ *substance* by retail in accordance with this code and the regulations made ~~thereunder~~ *under this code*.

(3) The department shall notify the manufacturer or vendor of ~~such~~ *the* proprietary or patent medicine, extract, essence, tincture, or preparation of the prohibition."

**Section 89.** Section 16-2-101, MCA, is amended to read:

**"16-2-101. Establishment and closure of agency liquor stores — agency franchise agreement — kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes, varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate in the state agency franchise agreement and less the agency liquor store's weighed average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. ~~Thereafter, the~~ *The* weighted discount ratio must be computed on the store's first 12 months of operation.

(C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

(c) An agency liquor store may sell table wine at retail for off-premises consumption.

(3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with populations over 3,000.

HeinOnline -- 1997 vol. I 168 1997

(4) Agency *liquor* stores must receive commissions payable as follows:

(a) a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted pursuant to subsection (6) or (8);

(b) a commission established by competitive bidding unless adjusted pursuant to subsection (6) or (8) for agencies in communities with 3,000 or more in population.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and may be renewed every 10 years if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement.

(c) provide that upon termination by the department for cause or upon mutual termination, the agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriato time, the department may immediately repossess all liquor inventory, wherever located.

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) (a) The commission percentage that the department pays the agent under an agency franchise agreement may be reviewed on July 1, 1998, and every 3 years thereafter at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement or until the next time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement, to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(i) the agent's commission percentage is less than the average; and

(ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

(b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the average commission paid agents with similar sales volume:

(i) if the agent demonstrates that:

(A) the agent has experienced cost increases that are beyond the agent's control, including but not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

(B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and

(ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified in the agent's franchise agreement that will eliminate the impact of cost increases.

(7) The liability insurance requirement may be reviewed every 3 years after July 1, 1995, at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the department of administration.

(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negetiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this chaptor with a person who accepted the adjusted commission percentage.

(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that

the adjusted commission percentage is inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate.

(9) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement because the agent:

(i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(c) In the case of failure to make timely payments to the department for liquor purchased, the department may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination and request a hearing within 30 days of the department's repossession of the liquor. The agency *liquor* store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(10) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(11) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days

HeinOnline -- 1997 vol. I 171 1997

before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(12) A person or entity may not hold an ownership interest in more than one agency liquor store.

(13) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

**Section 90.** Section 16-2-103, MCA, is amended to read:

"**16-2-103. Duplicate invoices of sales required.** (1) ~~The state~~ *An agency* liquor store shall, upon each sale of liquor or table wine to any licensee, issue a duplicate invoice of the liquor or table wine purchased, as provided by the department, a copy of which ~~shall~~ *must* be delivered to the licensee and one copy retained at ~~such~~ *the* store.

(2) The invoice ~~shall~~ *must* show the date of purchase, *the* name of *the* employee making the sale, the quantity of each kind of liquor or table wine purchased, the price paid ~~therefor~~ *for the liquor or table wine*, the name of the licensee, and the number of the license, with ~~such~~ *any* other information ~~as~~ *that* may be required by the department.

(3) The licensee shall keep and retain ~~his~~ *the* duplicate invoice of all purchases made ~~by him~~ from ~~the state~~ *an agency* liquor store, which ~~shall~~ *must* at all times be subject to inspection by the duly authorized officers, agents, and employees of the department."

**Section 91.** Section 16-3-220, MCA, is amended to read:

"**16-3-220. Wholesalers' service obligations — applicability.** (1) A wholesaler appointed to distribute a brand of beer within a territory specified by agreement pursuant to ~~16-3-221(3)~~ *16-3-222* shall call on and offer that brand to at least 75% of the retailers within that territory at least every 3 weeks. However, if the brand of beer for which the wholesaler is appointed is a product of a brewer or beer importer whose products are not generally available, the wholesaler shall, at least every 3 weeks, call on and offer that brand to as many retailers within that territory as is reasonably possible given the amount of that brand that is available to the wholesaler.

(2) If a retailer's account with a wholesaler is current as required under 16-3-243, the wholesaler may not refuse to sell the retailer any generally available brand of beer for which the wholesaler has been appointed for the territory in which the retailer is located. The wholesaler shall offer to deliver the beer to the retailer at least every 3 weeks.

(3) For the purposes of this section, a brewer or beer importer's products are not generally available if:

(a) all of the brands of a brewer or beer importer shipped to a wholesaler during the most recent calendar quarter total less than 600 barrels;

(b) all of the brands of a brewer or beer importer shipped into the state total less than 1,200 barrels in each of the 2 consecutive preceding calendar quarters; and

HeinOnline -- 1997 vol. I 172 1997

(c) all of the brands produced by the brewer at all of its facilities total less than 150,000 barrels per year.

(4) This section applies to all beer distribution agreements entered into, assigned, or amended after July 1, 1986. It does not apply to a distribution agreement for a named brand entered into before July 1, 1986, but does not prohibit a brewer who is a party to an agreement from requiring the appointed wholesaler to fulfill similar service obligations in the territory."

**Section 92.** Section 16-6-106, MCA, is amended to read:

**"16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing.** (1) If an alcoholic beverage is found by a department of justice investigator or a peace officer in any place in quantities that satisfy the investigator or peace officer that the alcoholic beverage is being kept contrary to this code, the investigator or peace officer may seize and remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was kept and immediately turn the alcoholic beverage over to the department.

(2) The department shall determine if the seized alcoholic beverage is suitable for resale in ~~a state~~ *an agency* liquor store. If the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale in ~~a state~~ *an agency* liquor store must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county.

(4) The notice must show the date and place of seizure, the name of the person or persons actually or apparently in possession or control of the alcoholic beverage if the person was present at the time of the seizure, and the reasons the department claims the right to the possession of the alcoholic beverage. The notice must also demand that all persons who claim any right to the possession of the alcoholic beverage show the nature of their claim or claims, that the hearing examiner declare the alcoholic beverage contraband, and that the hearing examiner order *that* the alcoholic beverage be forfeited to the state."

**Section 93.** Section 17-2-107, MCA, is amended to read:

**"17-2-107. Accurate accounting records and interentity loans.** (1) The department of administration shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each accounting entity. The department of administration shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) When the expenditure of an appropriation from a fund designated in 17-2-102(1)(a) through (1)(c) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department of

HeinOnline -- 1997 vol. I 173 1997

administration may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(1)(d)~~(i)(A) through (1)(d)(vi)~~ is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4), of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(1)(d)~~(i)(A) through (1)(d)(vi)~~ must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department of administration or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, other than investment earnings on student activity fees used to support student governments at units of the university system, are credited to the state general fund.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department of administration or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

HeinOnline -- 1997 vol. I 174 1997

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(1)(d)~~(i) through (1)(d)(vi)~~ has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee hy September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1)(a) through (1)(c) may not have a negative cash balance at fiscal yearend. The department of administration may, however, allow an accounting entity to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii), a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(1)(d)~~(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi)~~.

(ii) If a fund or subfund inadvertently has a negative cash balance, the department of administration may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department of administration may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed upon reimbursements from federal, private, or other governmental entity sources for disbursements made. The department of administration may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions ~~as~~ *that* may be determined hy the department of administration or by specific legislative authorization."

**Section 94.** Section 17-3-221, MCA, is amended to read:

**"17-3-221. State treasurer to be custodian of ~~moneys~~ *money* received under Taylor Grazing Act.** The state treasurer ~~shall be~~ *is* the custodian of all ~~moneys~~ *money* that the treasurer of the United States ~~may transfer~~ *transfers* to the state of Montana under the terms of section 10 of the Taylor Grazing Act, *43 U.S.C. 315i,* ~~approved June 28, 1934, (Public No. 482), which provides that the secretary of the United States treasury pay one-half of the moneys received from each grazing district each year to the state where collected,~~ to be expended as the legislature may prescribe."

**Section 95.** Section 17-5-202, MCA, is amended to read:

**"17-5-202. Definitions.** ~~The following terms, wherever used or referred to in this part, have the following meanings~~ *As used in this part, the following definitions apply*:

HeinOnline -- 1997 vol. I 175 1997

(1) "Bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body, including all instruments or obligations payable from a special fund.

(2) "Public body" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state or any commission, authority, or agency of a political or governmental subdivision, and also includes the board of public education, the board of regents of higher education, the board of examiners, the ~~board~~ *department* of natural resources and conservation, the state transportation commission, or any other governmental agency of this state."

**Section 96.** Section 17-6-103, MCA, is amended to read:

**"17-6-103. Security for deposits of public funds.** The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration;

(i) federal housing administration; and

(j) federal home loan mortgage corporation;

(4) securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

HeinOnline -- 1997 vol. I 176 1997

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(5) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(6) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of the subdivision or when the revenue pledged to the payment of the bonds is derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenue equal to at least 125% of the average annual principal and interest due on all bonds payable from the revenue during the outstanding term of the bonds;

(7) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount that, with all other claims on the same fund, does not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(8) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency of the United States providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. The bonds and other obligations made eligible for investment in 7-15-4505 and 32-1-424~~(3)(a)~~*(1)(a)* may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(9) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(10) undertaking or guarantees issued by a surety company authorized to do business in the state;

(11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real proporty are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

(13) bonds issued pursuant to Title 90, chapter 6, part 1;

(14) revenue bonds issued by any unit of the university system of the state of Montana; and

(15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow."

HeinOnline -- 1997 vol. I 177 1997

**Section 97.** Section 17-6-212, MCA, is amended to read:

**"17-6-212. State purchase of general fund warrants.** (1) The state reserves a preference right, prior to the right of any person, company, or corporation, to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.

(2) When the board of investments has under its control any funds subject to investment that in its judgment it would be advantageous to invest in state general fund warrants and there are not sufficient funds in the state general fund to pay warrants issued against the fund at the time that they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be invested and fixing the amount or amounts to be invested. State general fund warrants registered by the state treasurer pursuant to 17-8-304(1) and purchased by the board of investments must bear interest at a rate determined by the board. When determining the interest rate, the board shall consider:

(a) the duration of the investment by estimating the time at which the warrants will be redeemed pursuant to 17-8-304(1); and

(b) the interest rate of the investments liquidated to provide the funds te purchase the warrants.

(3) The state treasurer shall attach to or stamp, write, or print upon each general fund warrant issued after the receipt of notice, until warrants totaling the amounts designated have been issued, a notice that the state will exercise its preference right to purchase the warrant.

(4) The state treasurer shall, when the marked warrant is presented, pay it out of the proper fund as designated by the board, and the warrant purchased must be registered as other state warrants and must bear interest as provided by law.

(5) When the designated amounts have been invested, the state treasurer shall notify the board of investments, which shall issue orders upon the proper funds addressed to the state ~~auditor~~ *treasurer* for warrants to be issued in favor of the treasurer."

**Section 98.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — rcquisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

HeinOnline -- 1997 vol. I 178 1997

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; ~~17-5-424;~~ 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all honds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies tbat have entered into agreements autborized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 99.** Section 17-8-101, MCA, is amended to read:

**"17-8-101. Appropriation and disbursement of money from treasury.** (1) ~~Except as provided in subsection (5), money~~ *Money* deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (3), must be paid out of the treasury only on appropriation made by law.

(2) ~~Money~~ *Subject to the provisions of subsection (8), money* deposited in the enterprise fund type, internal service fund type, debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, and agency fund type may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting the disbursement.

(3) ~~Subject to the provisions of subsection (8), money~~ *Money* paid into the state treasury through error or under circumstances, such tbat the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration.

(4) Authority to expend appropriated money may be transferred from one state agency to another, provided tbat the original purpose of the appropriation is maintained. The office of budget and program planning shall report

HeinOnline -- 1997 vol. I 179 1997

semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(5) Fees and charges for services deposited in the internal service fund type must he hased upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(6) The office of budget and program planning shall include in the budget suhmitted to the legislature a report on:

(a) enterprise funds, including retained earnings and contributed capital, projected oporations and charges, and projected fund balances; and

(b) internal service fund type fees and charges, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Internal service fund type fees and cbarges must be approved by the legislature in the general appropriations act. Fees and cbarges in any biennium may not exceed the level approved by the legislature in tlie general appropriations act effective for that biennium.

(7) Any accounts *created* in the enterprise fund or the internal service fund ~~created after July 1, 1995,~~ must be approved hy the department, using conformity witb generally accepted accounting principles as the primary approval criteria. The departinent shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in tbe enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and otherwise requires an appropriation."

**Section 100.** Section 18-1-103, MCA, is amended to read:

"**18-1-103. Resident defined.** (1) For the purpose of 18-1-102, ~~18-1-103, and~~ 18-1-111, *and this section,* the word "resident" ~~shall include~~ *includes* actual residence of an individual within this state for a period of more than 1 year immediately prior to hidding.

(2) In a partnership enterprise or an association, the majority of all partners or association inembers ~~shall~~ *must* have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may he set aside and a successful hid disallowed ~~where~~ *when* it is sbown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of ~~such~~ *the* contract that ~~said~~ *the* corporation is a wholly owned subsidiary of a foreign corporation or that ~~said~~ *the* corporation was formed for the purpose of circumventing the provisions relating to residence.

(4) Notwithstanding the foregoing, any bidder on a contract for tbe purchase of goods, whether an individual, partnership, or corporation, foreign or domestic

HeinOnline -- 1997 vol. I 180 1997

and regardless of ownership thereof, whose offered goods are Montana-made is a resident for the purpose of 18-1-102, ~~18-1-103, and~~ 18-1-111, *and this section.*"

**Section 101.** Section 19-1-104, MCA, is amended to read:

"**19-1-104. Retirement systems to be considered separate.** (1) Pursuant to section 218(d)(6) of the Social Security Act *(42 U.S.C. 418(d)(6))*, the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered ~~thereby~~ *by the system.*

(2) Pursuant to section ~~218(p)(1)~~ *218(l)(1)* of the Social Security Act *(42 U.S.C. 418(l)(1))*, the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' retirement system, the highway patrol officers' retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered ~~thereby~~ *by those systems.*"

**Section 102.** Section 19-1-402, MCA, is amended to read:

"**19-1-402. Contents of federal-state agreement.** The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health and human services shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, the agreement must provide in effect that:

(1) benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury of the United States, at a time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes that would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section ~~218(f)~~ *218(e)* of the Social Security Act *(42 U.S.C. 418(e))*;

(4) all services that constitute employment and are performed in the employ of the state by employees of the state must be covered by the agreement; and

HeinOnline -- 1997 vol. I 181 1997

(5) all services that constitute employment, are performed in the employ of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and *that* has been approved by the state agency under part 5 must be covered by the agreement."

**Section 103.** Section 19-1-503, MCA, is amended to read:

"**19-1-503. Required provisions of plan.** A plan may not be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services that constitute employment and that are performed in the employ of the political subdivisions hy employees of the political subdivisions will be covered by the plan, except that it may exclude services performed by individuals to whom section ~~218(e)(3)(C)~~ *218 (c)(3)(B)* of the Social Security Act *(42 U.S.C. 418(c)(3)(B))* is applicable;

(3) it specifies the sources from which the funds necessary to make the payments required hy 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate to make the payments;

(4) it provides for methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make reports, in a form and containing information, as the state agency may require and will comply with the provisions that the state agency or the secretary of health and human services finds necessary to ~~assure~~ *ensure* the correctness and verification of the reports;

(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan. The termination is to take effect at the expiration of any notice and on conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act."

**Section 104.** Section 19-3-1104, MCA, is amended to read:

"**19-3-1104. Cancellation of disability retirement benefit upon reemployment.** Any person receiving a *disability* retirement benefit who becomes an employee is considered reinstated to service from retirement, and the person's retirement henefit is canceled."

**Section 105.** Section 19-3-1205, MCA, is amended to read:

"**19-3-1205. Amount of survivorship benefit.** The survivorship henefit payable to a member's designated beneficiary is the actuarial equivalent of:

(1) the accrued portion of the early retirement benefit *pursuant to 19-3-906* that would have been payable to the member commencing at age 50 ~~pursuant to 19-3-906,~~ if the member had not attained age 50 or earned 25 years of service credit at the time of death;

HeinOnline -- 1997 vol. I 182 1997

(2) if the deceased member had attained age 50 or earned 25 years of service credit at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(3) if the deceased member had attained age 60 or earned 30 years of service credit at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death."

**Section 106.** Section 19-9-411, MCA, is amended to read:

"**19-9-411. Election to purchase additional service.** (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(3) A member may elect to qualify no more than a combined total of 5 years of service under 19-2-705, ~~19-13-403~~ *19-9-403*, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

**Section 107.** Section 19-9-1101, MCA, is amended to read:

"**19-9-1101. Preretirement death benefits.** (1) Upon the death of a member before retirement, the member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average ~~salary~~ *compensation* as provided in 19-9-804.

(2) Upon the death of an inactive nonvested member, the member's surviving spouse or dependent child is eligible for a refund of the member's accumulated contributions."

**Section 108.** Section 19-20-302, MCA, is amended to read:

"**19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

HeinOnline -- 1997 vol. I 183 1997

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) any person employed as a ~~speech therapist~~ *speech-language pathologist*, school nurse, or school psychologist or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d) since the time of the election, and who may elect to become a member of the retirement system.

(2) A person elected to the office of county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher:

(i) may elect to become an active member of the retirement system on the first day of employment in any fiscal year; or

(ii) is required to become an active member of the retirement system on the 31st day of employment in any fiscal year if the substitute teacher has not elected membership under subsection (4)(a)(i).

(b) The employer shall give written notification to a substitute teacher on the first day of employment in any fiscal year of the option to elect membership under subsection (4)(a)(i).

(5) A substitute teacher who did not elect membership under subsection (4)(a)(i) and who subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes:

HeinOnline -- 1997 vol. I 184 1997

(a) an amount equal to the combined employee and employer contributions that would have been made if the substitute teacher had elected membership; plus

(b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

(6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike."

**Section 109.** Section 19-50-102, MCA, is amended to read:

**"19-50-102. Deferred compensation programs permitted — rules.** (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954 *(26 U.S.C. 457)*, as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of ~~his~~ *the employee's* compensation for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The amount of compensation deferred under this chapter may be used to purchase:

(a) shares in a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund ~~shall~~ *must* be credited to the fund. These funds may be commingled with other state investment funds, but separate accounts must be maintained for participants in the state deferred compensation investment fund. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner; or

(d) any combination of ~~subsections (a), (b), or (c) above~~ *the items in subsection (4)(a), (4)(b), or (4)(c)*, as specified by the participant. The shares, accounts, or contracts so purchased are the exclusive property of and stand in the name of the

state of Montana or a political subdivision until distributed to an employee in a manner provided in the plan agreement established by the administrator.

(5) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(6) The department or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

**Section 110.** Section 20-1-301, MCA, is amended to read:

**"20-1-301. School fiscal year.** The school fiscal year ~~shall begin~~ *begins* on July 1 and ~~end~~ *ends* on June 30. At least 180 school days of pupil instruction ~~shall~~ *must* be conducted during each school fiscal year, except that 175 days of pupil instruction for graduating seniors may be sufficient as provided in 20-9-313, or unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title. For any elementary or high school district that fails to provide for at least 180 school days of pupil instruction, the superintendent of public instruction shall reduce the county equalization as defined in 20-9-334 and the state equalization *aid* as defined in 20-9-343 for the district for that school year by 1/90th for each school day less than 180 school days."

**Section 111.** Section 20-7-504, MCA, is amended to read:

**"20-7-504. State traffic education account — proceeds earmarked for the account — *transmittal.*** (1) There is a traffic education account in the treasury of the state of Montana.

(2) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities.

*(3) When a court is required to transmit fees directly to the state treasurer, the gross proceeds including the portion of the fees to be credited to the traffic education account must be transmitted to the state treasurer and the appropriate portion must be deposited in the traffic education account."*

**Section 112.** Section 20-9-115, MCA, is amended to read:

**"20-9-115. Notice of preliminary budget filing and final budget meeting.** Between July 10 and July 20 of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in the clerk's office and open to inspection by all taxpayers. The notice must also state the time and place that the trustees will meet on the ~~fourth~~ *second* Monday in Augnst for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption

HeinOnline -- 1997 vol. I 186 1997

of the district's budget, and that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget."

**Section 113.** Section 20-9-341, MCA, is amended to read:

**"20-9-341. Definition of interest and income ~~moneys~~ *money*.** (1) As used in this title, the term "interest and income ~~moneys~~ *money*" means the total of the following ~~revenues~~ *revenue*, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of or sale of timber from state school lands after any deductions that may be made under the provisions of Title 77, chapter 1, part 6; and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of ~~such revenues shall~~ *the revenue described in subsections (1)(a) through (1)(d) must* be annually credited to the public school fund."

**Section 114.** Section 20-9-347, MCA, is amended to read:

**"20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program — exceptions.** (1) The superintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a monthly report of the payment of BASE aid in support of the BASE funding program of each district of the county;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the basic county tax fund as provided in 20-9-331 and for the basic special tax fund as provided in 20-9-333;

(c) adopt rules to implement the provisions of subsection (1)(b).

(2) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the BASE aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(8).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. This section may not be construed to authorize the superintendent of public instruction to exceed a district's annual payment for BASE aid.

HeinOnline -- 1997 vol. I 187 1997

(3) The superintendent of public instruction shall:

(a) distribute special education allowable cost payments to districts; and

(b) supply the county treasurer and the county superintendent of ~~public instruction~~ *schools* with a report of payments for special education allowable costs to districts of the county."

**Section 115.** Section 20-9-466, MCA, is amended to read:

**"20-9-466. School district bonds — state loan — qualifications for state loan.** (1) The department of administration shall make a loan from the coal severance tax school bond contingency loan fund, established in 17-5-703, to a school district in an amount equal to the principal and interest payment on qualifying bonds when due in accordance with the provisions contained in the bonds. In order to receive a loan, the school district must:

(a) have issued bonds between January 21, 1992, and January 1, 1993, pursuant to 20-9-421 ~~and~~ *through* 20-9-464;

(b) be prevented from making principal and interest payments on the bonds because the debt service levy for the bonds:

(i) has been declared invalid or unenforceable under Article II, section 4, or Article X, section 1, of the Montana constitution by a final court order; or

(ii) is prevented by an injunction;

(c) have exhausted the debt service reserve for the bonds; and

(d) have complied with all the requirements for the bonds contained in 20-9-467 and this section.

(2) To qualify for the state loan described in subsection (1), a school district, before issuing its bonds, must have:

(a) received voter approval for bonds pursuant to 20-9-421;

(b) following voter approval, received a certificate of eligibility from the board of public education stating that after consultation with the superintendent of public instruction, the board has determined that a minimum of 75% of the principal amount of the proposed bonds will be used to:

(i) restore, rebuild, or replace a destroyed or severely damaged school building;

(ii) correct one or more building deficiencies that affect the health and safety of school children;

(iii) correct one or more deficiencies that prevent the school district from meeting current accreditation standards; or

(iv) address any combination of circumstances described under subsections (2)(h)(i) through (2)(h)(iii); and

(c) received a final certificate of allocation from the department of administration pursuant to subsection (5).

HeinOnline -- 1997 vol. I 188 1997

(3) The board of public education shall:

(a) maintain a record of the total principal amount of bonds for which certification has been issued; and

(b) immediately furnish to the department a copy of each certificate issued.

(4) Upon receipt of a copy of the certificate from the board of puhlic education, the department shall temporarily allocate loan authority to the school district equal to the principal amount of bonds indicated in the board's certificate. The principal amount of bonds for which final certification is issued may be less than the principal amount of bonds approved by the voters pursuant to subsection (2)(a).

(5) To obtain a final certificate of allocation, a school district shall provide the department, on a form provided by the department, the following information:

(a) the tentative date of sale of the school district's bonds;

(b) the principal amount of the bonds to be issued;

(c) the name and addresses of bond counsel and the financial advisor; and

(d) other information as requested by the department.

(6) Upon issuance of the bonds, a school district shall forward to the department a copy of tbe district's bond resolution, the final opimion of bond counsel on the bonds, and a schedule of principal and interest payments on the bonds to maturity. The bond resolution must include a covenant agreeing te:

(a) defend any lawsuit challenging the school district's authority to sell and issue the bonds and to levy a tax for payment of tbe principal of and interest on the bonds;

(b) provide to the department before August 1 of each year a report of the school district's outstanding principal balance as of the preceding June 30 on the bonds secured by state loans;

(c) refund tbe bonds on any normal call date if, during the tenn of the bonds, the school district can refund its bonds without the state loan security and without increasing its total debt service costs on the bonds; and

(d) enter into a contract with the department establishing a schedule to repay the state if the state loans the school district money te make payments on district bonds. Notwithstanding other provisions of law, the loan must be repaid by the school district at a rate equivalent to the average yield of the pooled investment fund established in 17-6-203(3), commonly known as the short-term investment pool, for the period of the loan. ~~Repayment must begin no later than January 1, 1994, and the~~ *The* loan must be repaid in full within 10 years from the date the first loan is issued to a school district. Repayment must be paid from the sources desiguated for repayment of the bonds or from any other revenue and assets of the school district, including state equalization funds currently distributed or which may be distributed to the district. Loan repayments received by the department must be deposited in the coal severance tax school bond contingency loan fund.

HeinOnline -- 1997 vol. I 189 1997

(7) The department shall maintain a record of the total principal amount of bonds secured by state loans.

(8) A school district issuing bonds subject to 20-9-467 and this section may apply to the attorney general for a determination as to whether its bonds are affected by a court order declaring that the bonds of another district are invalid or unenforceable.

(9) A school district whose authority to levy a property tax to pay principal of and interest on bonds has been challenged shall, upon notification of the challenge, immediately notify the attorney general and the department."

**Section 116.** Section 20-15-326, MCA, is amended to read:

**"20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget.** (1) After the last day of the fiscal year for which an emergency budget has been adopted, the board of trustees shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's yearend cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial cash status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of county commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are registered against each fund of the district; and

(b) the additional amount of money that is required to finance the registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection ~~(2)(c)~~ *(2)(b)*, the board of county commissioners shall, at the time all other district and county taxes are fixed and levied, levy a tax on the taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer."

**Section 117.** Section 20-15-404, MCA, is amended to read:

**"20-15-404. Trustees to adhere to certain other laws.** Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

(1) the teachers' retirement provisions of Title 19, chapter 20;

(2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;

(3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;

HeinOnline -- 1997 vol. I 190 1997

(4) the adult education provisions of ~~20-7-701 through 20-7-713~~ *Title 20, chapter 7, part 7*;

(5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;

(6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465;

(7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;

(8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;

(9) the school elections provisions of Title 20, chapter 20;

(10) the students' rights provisions of 20-25-511 through 20-25-516; and

(11) the health provisions of 50-1-206."

**Section 118.** Section 20-25-501, MCA, is amended to read:

**"20-25-501. Definitions.** (1) Terms used in this part are defined as follows:

(a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.

~~(b) "Emancipated minor" means a person under the age of 18 years who is self-supporting from personal earnings or is married. A person who received more than 25% of the cost of support from any person other than an agency of the government may not be considered an emancipated minor.~~

~~(c)~~*(b)* "Minor" means a male or female person who has not obtained the age of 18 years.

~~(d)~~*(c)* "Qualified person" means a person legally qualified to determine the person's own domicile.

~~(e)~~*(d)* "Resident student" means:

(i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education is not alone sufficient to qualify for residence in Montana.

(ii) any graduate of a Montana high school who is a citizen or resident alien of the United States and whose parents, parent, or guardian has resided in Montana at least 1 full year of the 2 years immediately preceding the student's graduation from high school. The classification continues for not more than 4 academic years if the student remains in continuous attendance at a unit; or

(iii) a member of the armed forces of the United States assigned to and residing in Montana, the member's spouse, or the member's dependent children.

HeinOnline -- 1997 vol. I 191 1997

(2) In the event that the definition of residency or any portion ~~thereof~~ *of the definition* is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system may make rules on what constitutes adequate evidence of residency status not inconsistent with those court decisions."

**Section 119.** Section 22-1-412, MCA, is amended to read:

"**22-1-412. Purpose.** It is the purpose of ~~22-1-412 and~~ 22-1-413 *and this section* to establish a program whereby state funds may be appropriated to the Montana state library commission to provide the benefits of quality public library service to all residents of Montana by developing and strengthening local public libraries through library federations as defined in 22-1-402."

**Section 120.** Section 22-3-429, MCA, is amended to read:

"**22-3-429. Requests for consultation — public notice — appeal of findings.** (1) A federal or state entity that acts upon a proposed federal or state action or an application for a federal, state, or local permit, license, lease, or funding may request the views of the historic preservation officer concerning:

(a) the recommended eligibility for a register listing of any heritage property or paleontological remains;

(b) the effects of a proposed action, activity, or undertaking on heritage property or remains that are found to be eligible for register listing; and

(c) the appropriateness of a proposed plan for the avoidance or mitigation of effects.

(2) A request for comment pursuant to 16 U.S.C. ~~470(f)~~ *470f* may be made simultaneously with a request pursuant to subsection (1). The historic preservation officer shall respond in writing to a request within 30 calendar days of receiving the request and shall address each property in the request and each topic of the request. In the event that an agency requests simultaneous consultation for two or more criteria under this section, the agency and historic preservation officer may extend the 30-day review period by mutual agreement. If the historic preservation officer fails to comment within that time, that failure is construed as concurrence with the agency's recommendation. In the event of failure to comment on a specific undertaking, the historic preservation officer may not change a finding for a heritage property at a later date.

(3) If the proposed finding is that a heritage property or paleontological remains are involved and that a proposed activity will have an adverse impact on the property or remains, the proposed finding must address all properties or remains involved and describe the characteristics that illustrate the qualities that make the property or remains eligible for inclusion in the register. If the proposed finding includes a conclusion that a property or remains may be eligible but additional information or study is needed to reach an eligibility finding, the finding must specify the type and amount of information required in accordance with standards and guidelines as provided in 22-3-428.

(4) At the time that the state or federal agency requests the views of the historic preservation officer as provided in subsection (1), the agency shall provide notice to the applicant, affected property owners, and other interested

HeinOnline -- 1997 vol. I 192 1997

persons of the request for consultation and shall identify locations where the submitted materials may be reviewed.

(5) The applicant and any affected property owners have 20 days in which to appeal the historic preservation officer's finding to the director. The appeal notice must include a written statement of reasons for the appeal and any additional supporting information.

(6) The director of the historical society shall issue a final finding within 30 days of the expiration of the 20-day appeal period provided for under subsection (5). The issuance of this finding does not limit the rights of any applicant or affected property owner to challenge a finding under an existing federal law, regulation, or regulatory or administrative process.

(7) If the applicant or an affected property owner is not satisfied with the finding of the director of the historical society concerning the eligibility of the property or remains for listing in the register or a finding of adverse effect to the proporty, the entity or property owner may appeal tlie fmding to the district court in either Lewis and Clark County or a county in which affected property is located. Appeal may be taken by filing a petition with the district court citing the decision by the director of the historical society and the evidence upon which the director relied. On appeal, the district court may consider any documents supporting or not supporting the finding, the written comments received by the director of the historical society, and any additional evidence that may be submitted to the court. The district court may substitute its judgment for the judgment of the director of the historical society as to tlie weight of the evidence."

**Section 121.** Section 22-3-603, MCA, is amended to read:

"**22-3-603. Management of historic sites and buildings — contracts.** (1) The Montana historical society may accept gifts, grants, bequests, or contributions of money, property, labor, or materials for use in the operation, maintenance, repair, preservation, or renovation of any historic site or building owned by the state of Montana.

(2) The Montana historical society may contract with a local nonprofit corporation for the operation, maintenance, preservation, repair, or renovation of any historic site or huilding owned by the state. The nonprofit corporation may not be considered a public agency for purposes of Title 18, except for the provisions in chapter 2, part 2, or for the purposes of other statutes applicable to the historical society if 25% of the total annual expenses for all costs of operation, maintenance, repair, preservation, and renovation of the historic sito or building is provided by in-kind or donated labor or materials by or on bebalf of the contracting local nonprofit corporation. Tlie nonprofit corporation must conform to the provisions of Title 18, chapter 2, part 2, and Title 35, chapter 2.

(3) ~~No~~ *A* contract may *not* be entered into ~~nor~~ *or* any other obligation incurred for the purposes in subsection (1) until money bas been appropriated by tlie legislature or is otherwise available. If funds are otherwise available, Title 18, chapter 2, parts 1, 3, and 4, are not applicable.

(4) The Montana historical society may require a corporation managing a property pursuant to subsection ~~(3)~~ *(2)* to deposit in a local financial institution all profits, ~~revenues~~ *revenue*, royalties, or fees received or all gifts, grants,

HeinOnline -- 1997 vol. I 193 1997

bequests, or other contrihutions collected by the corporation for the benefit of the property. All funds must be accounted for pursuant to the management contract and audited quarterly by the society or its designee, and expenditures of the funds may be used only for the operation, maintenance, preservation, repair, renovation, and management of the pi operty."

**Section 122.** Section 23-2-523, MCA, is amended to read:

**"23-2-523. Prohibited operation and mooring — enforcement.** (1) A person may not operate or knowingly permit a person to operate a motorboat or vessel or manipulate water skis, a surfboard, or a similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of a person by:

(a) engaging in maneuvers that unreasonably or unnecessarily endanger life, limb, or property, including but not limited te weaving through congested vessel traffic or jumping the wake of another vessel unreasonably or unnecessarily close to the other vessel or when visibility around the other vessel is ohstructed and including swerving at the last possible moment to avoid collision, following directly behind a waterskier, speeding in confined or restricted areas, and buzzing or wetting down others, which constitute reckless operation of a vessel;

(b) crossing or jumping the wake of another vessel when within 100 yards of the vessel or within 100 yards of a waterskier being towed by the vessel, except when directly entering or leaving a public or private marina, waterski facility, or other watercraft docking or loading area.

(2) A person may not operate a motorboat, including a sailboat propelled by a motor of any kind, or manipulate water skis, a surfboard, or a similar device attached to a motorboat while under the influence of alcohol, drugs, or a combination of the two.

(3) It is unlawful for the owner of a motorboat or vessel or a person having the motorboat or vessel in charge or in control to authorize or knowingly permit the ~~same~~ *motorboat or vessel* to be operated by a person who by reason of physical or mental disability is incapable of operating the watercraft under the prevailing circumstances.

(4) A person may not operate or knowingly permit a person to operate a motorboat or vessel at a rate of speed greater than will permit the person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. However, nothing in this part is intended to prevent the operator of a vessel actually competing in a regatta that is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) A person may not make a reckless approach to, departure from, or passage by a dock, ramp, diving hoard, or float.

(6) Skiers being pulled by motorboats must have on their person a United States coast guard approved personal flotation device in good and serviceahle condition.

(7) A person may not moor a vessel to buoys or heacons placed in any waters of this state by the authority of the United States, an agency of the United States,

HeinOnline -- 1997 vol. I 194 1997

or the department or in any manner hang on with a vessel to a huoy or beacon, except in the act of maintenance work on the buoy or beacon, nor may any person deface, remove, or destroy a huoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce ~~the sections of~~ this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in the officer's judgment the use creates an especially hazardous condition, the officer may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those ahoard the vessel, including directing the operator to return to a mooring or launching site and to remain there until the situation creating the hazard is corrected or ended.

(9) The population density and heavy recreational use of certain lakes require a noise standard more restrictive than the standard set in 23-2-526~~,~~ in order to protect the puhlic health and safety. Unless operated on a river or stream in compliance with a ~~commission~~ rule adopted under 23-2-521~~(8)~~, a person may not operate a motorhoat or personal watercraft on Fiathead Lake, situated in Lake and Flathead Counties, Echo Lake, situated in Flathead County, or Swan Lake, situated in Lake County, in proximity to the shoreline if the noise emitted is greater than 75 dhA measured at the shoreline in accordance with the shoreline sound level measurement procedure (SAE J1970).

(10) Unless accompanied hy a person 18 years of age or older, a person 12 years of age or younger may not operate a motorboat or a personal watercraft that is powered hy a motor rated at more than 10 horsepower. A person 13 or 14 years of age may not operate a vessel or personal watercraft powered by a motor rated at more than 10 horsepower without possessing a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course or unless accompanied by a person 18 years of age or older.

(11) A person who owns or has charge or control of a motorboat or personal watercraft powered hy a motor rated at more than 10 horsepower may not authorize or knowingly permit the motorboat or personal watercraft to be operated:

(a) by a person 12 years of age or younger unless accompanied hy a person 18 years of age or older; or

(b) hy a person 13 or 14 years of age unless tbe person possesses a valid Montana motorboat operator's safety certificate or evidence of completion of a Montana-approved water safety course or is accompanied by a person 18 years of age or older.

(12) A person may not rent a motorboat or a personal watercraft powered by a motor rated at more than 10 horsepower to a person under 18 years of age."

**Section 123.** Section 23-2-536, MCA, is amended to read:

**"23-2-536. (Temporary) Creation of boating advisory council — appointment of members — duties.** (1) The department director appointed under 2-15-3401 shall appoint a boating advisory council to advise the department on the expenditure of funds in the motorboat account in the state special revenue fund.

HeinOnline -- 1997 vol. I 195 1997

(2) The boating advisory council must be composed of at least five members of the public, each of whom must be interested in boating activities and the use of public boating facilities.

(3) The boating advisory council is attached to the department in an advisory capacity only, as defined in 2-15-102~~(8)~~.

(4) All costs associated with the boating advisory council must be paid from the motorboat account in the state special revenue fund. Council members are not entitled to compensation or travel expenses as provided in 2-15-122. (Terminates June 30, 2002—sec. 9, Ch. 476, L. 1995.)"

**Section 124.** Section 23-2-622, MCA, is amended to read:

"**23-2-622. Registration of racing snowmobile not required.** A snowmobile built or used exclusively for racing in sanctioned competitive events or organized races, including testing areas designated by the sponsoring entity, is exempt from the certificate of ownership requirements of ~~23-6-611~~ *23-2-611* and registration under 23-2-616."

**Section 125.** Section 23-2-717, MCA, is amended to read:

"**23-2-717. Credit for overpayment — interest on overpayment.** (1) If the department of commerce determines that the amount of the assessment, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any assessment, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is provided in 23-2-716~~(2)~~ from the due date of the return or from the date of overpayment, whichever is later, to the date the department of commerce approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of commerce for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the dato the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable."

**Section 126.** Section 23-2-736, MCA, is amended to read:

"**23-2-736. Skier's conduct — inherent risks.** (1) A skier has the duty to ~~conduct himself~~ *ski* at all times ~~so~~ *in a manner* that ~~he~~ avoids injury to ~~himself~~ *the skier* and others and to be aware of the inherent risks of the sport.

(2) A skier:

(a) must know the rang~ of ~~his~~ *the skier's* ability and safely ~~conduct himself~~ *ski* within the limits of tbat ability and ~~his~~ *the skier's* equipment so as to negotiate any section of terrain or ski trail safely and without injury or damage. A skier must know that ~~his~~ *the skier's* ahility may vary because of trail changes caused hy weather, grooming changes, or skier use.

(h) shall maintain control of speed and course so as to prevent injury to ~~himself~~ *the skier* or others;

(c) ~~must~~ *shall* abide by the requirements of tlie skier responsibility code that is published by the national ski areas association and that is ~~current on April 4, 1989~~ *posted as provided in 23-2-733*; and

(d) shall obey all posted or other warnings and instructions of tbe ski area operator.

(3) A person may not:

(a) place an object in the ski area or on tlie uphill track of a passenger tramway tliat may cause a passengor or skier to fall;

(h) cross the track of a passengor tramway except at a designated and approved point; or

(c) if involved in a skiing accident, depart from the scene of the accident witliout:

(i) leaving personal identification; or

(ii) notifying the proper authorities and obtaining assistance when ~~he~~ *the person* knows tliat a person involved in tbe accident is in need of medical or other assistance.

(4) A skier ~~must~~ *shall* accept all legal responsihility for injury or damage of any kind to the extent that the injury or damage results froni risks inherent in the sport of skiing. Risks inherent in the spert of skiing are:

(a) variations in skiing terrain, including surface and suhsurface snow or ice conditions naturally occurring or resulting from weather changes, skier use, or grooming or snowmaking oporations;

(b) hare spots and thin snew cover caused by limited snowfall, melting, wind erosion, skier action, grooming, or unconsolidated hase;

(c) forest growth on designated trails; .

(d) skiing in an area not designated as a ski trail;

(e) clearly visible or plainly marked improvements or equipment;

(f) clearly visible or plainly marked mobile equipment and attachments, whetlier moving or stationary, used hy the ski area oporater; and

(g) avalanches, except on open, designated ski trails."

HeinOnline -- 1997 vol. I 197 1997

**Section 127.** Section 23-5-406, MCA, is amended to read:

**"23-5-406. Exempt charitable organizations and facilities.** (1) (a) An organization granted an exemption under 26 U.S.C. 501(c)(3), (c)(4), (c)(8), or (c)(19):

(i) on or before January 15, 1989, is exempt from taxation and the permit fee imposed by this part;

(ii) after January 15, 1989, is exempt from taxation and one-half the permit fee imposed hy this part if the organization carries on ganibling activities for no more than 60 days a calendar year.

(b) An organization provided for in subsection (1)(a) shall:

(i) limit its live bingo and keno activities to its main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity;

(ii) comply with other statutes and rules relating to the operation of live bingo and keno; and

(iii) apply to the department for a permit to conduct charitable live bingo or keno games.

(2) A long-term care facility, as defined in 50-5-101, or a retirement home, as defined in subsection (4) of this section, that has obtained an operator's license and a permit from the department to operate live bingo or keno is exempt from taxation and the permit fee imposed by this part if the facility:

(a) limits participation in live bingo and keno ganies to persons using the facility and their guests;

(b) limits live bingo or keno activities to its main premises or place of operation; and

(c) complies with other statutes and rules relating to the operatiou of live bingo and keno.

(3) The department may revoke or suspend the permit of an organization or a facility provided for in subsection (1) or (2) if, after investigation, the department determines that the organizatiou or facility is operating or has contracted with a nonqualified organization that is operating live bingo or keno in a predominantly commercial manner.

(4) For purposes of this section, "retirement home" means a building in whicb sleeping rooms without cooking facilities in each room are rented to three or more persous who are 60 years of ago or older and who do not need skilled nursing care, intermediate nursing care, or personal ~~nursing~~ care, as defined in 50-5-101."

**Section 128.** Section 23-7-103, MCA, is amended to read:

**"23-7-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Commission" means the state lottery commission created by 23-7-201.

HeinOnline -- 1997 vol. I 198 1997

(2) "Director" means the director appointed by the governor under 23-7-210 to administer and manage the state lottery.

(3) "Lottery" or "state lottery" means the Montana stato lottery created and oporated pursuant to this chapter.

(4) *(a)* "Lottery game" means any procedure, including any ~~on-line~~ *online* or other procedure using a machine or electronic device, by which one or more prizes are distributed among porsons who have paid for a chance to win a prize and includes but is not limited to weekly (or other, longer time period) winner games, instant winner games, daily numbers games, and sports pool games~~, except~~.

*(b) The term does not mean* games prohibited by Title 23, chapter 5, part 1; ~~lotteries prohibited~~ *Calcutta pools governed* by Title 23, chapter 5, part 2; card games regulated by Title 23, chapter 5, part 3; raffles and bingo games governed by Title 23, chapter 5, part 4; and sports pools governed by Title 23, chapter 5, part 5."

**Section 129.** Section 23-7-211, MCA, is amended to read:

**"23-7-211. Powers and duties of direetor.** (1) The director shall:

(a) administer the operation of the state lottery in accordance with this chapter and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottory ticket or chance sales agonts and suspend or revoke licenses pursuant to this chapter and commission rules; and

(d) maintain, with the assistant director for security, the security of the stato lottery.

(2) (a) With the concurrence of the commission or pursuant to commission rules, the director may enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery, for the desigu and installation of games, for consultant services, for promotion of the lottery, for the sale of tickets and chances, and for other services. The state shall provide for management, security, and internal audit control.

(b) When a contract is awarded, a performance bond satisfactory to and in an amount determined by the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission must he delivered to the commission. The requirements for this hond must he at least as stringont as those stated in 18-4-312~~(4)~~*(3)*."

**Section 130.** Section 23-7-301, MCA, is amended to read:

**"23-7-301. Ticket or chance sales agents — licenscs.** (1) Lottery tickets or chances may be sold only hy ticket or chance sales agents licensed hy the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may he sold.

HeinOnline -- 1997 vol. I 199 1997

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and ~~his~~ *the applicant's* business or activity;

(ii) the accessibility of ~~his~~ *the applicant's* place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) ~~No~~ *A* person under 18 years of age may *not* sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temperary licenses upon conditions ~~he~~ *that the director* considers necessary.

(5) License applicants shall pay a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display ~~his~~ *the* license or a copy ~~thereof~~ *of the license* conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) An employee of a ticket or chance sales agent may not be required to sell lottery game tickets or chances if the sale is against ~~his~~ *the employee's* religious or moral beliefs.

(10) Sales agents are entitled to a commission of no more than 10% of the face value of tickets and chances that they purchase from the lottery and do not return. However, to further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales. Commissions may not come from that part of all gross revenue that is net revenue and is paid to the ~~superintendent of public instruction~~ *general fund*. The commissions are statutorily appropriated, as provided in 17-7-502, to the lottery.

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing ~~his~~ *the agent's* sales and provide it for inspection upon request of the commission, the director, the department of commerce, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic ~~fund~~ *funds* transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this

chapter or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing."

**Section 131.** Section 25-10-206, MCA, is amended to read:

**"25-10-206. Secretary of state's fee for accepting service of process.** The fee ~~of $5~~ paid by the plaintiff to the secretary of state pursuant to part 6 of chapter 3 and Rule 4D(6), M.R.Civ.P., ~~shall~~ *must* be taxed as part of ~~his~~ *the plaintiff's* costs if ~~he~~ *the plaintiff* prevails in the action."

**Section 132.** Section 27-1-307, MCA, is amended to read:

**"27-1-307. Definitions.** As used in ~~27-1-307 and~~ 27-1-308 *and this section*:

(1) "Collateral source" means a payment for something that is later included in a tort award and ~~which~~ *that* is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(a) for medical expenses and disability payments under the federal Social Security Act, any federal, state, or local income disability act, or any other public program;

(b) under any health, sickness, or income disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(c) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions or assistance;

(d) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(e) any other source, except the assets of the plaintiff or of ~~his~~ *the plaintiff's* immediate family if ~~he~~ *the plaintiff* is obligated to repay a member of ~~his~~ *the plaintiff's* immediate family.

(2) "Person" includes individuals, corporations, associations, societies, firms, partnerships, joint-stock companies, government entities, political subdivisions, and any other entity or aggregate of individuals.

(3) (a) "Plaintiff" means a person who alleges ~~that he~~ *to have* sustainod bodily injury, or on whose behalf recovery for bodily injury or death is sougbt, or who would have a beneficial, legal, or equitable interest in a recovery.

(b) The term includes:

(i) a legal representative;

(ii) a person with a wrongful death or surviving cause of action;

(iii) a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services; and

HeinOnline -- 1997 vol. I 201 1997

(iv) any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death."

**Section 133.** Section 27-1-718, MCA, is amended to read:

"**27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor~~, as defined in 20-25-501,~~ who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the taker's own use without having paid the purchase price of the goods is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, in the amount of the greater of $100 or the retail value of the goods, not to exceed $500. This amount is in addition to actual damages.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the minor's own use without having paid the purchase price of the geods, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of $100 or the retail value of the goods, not to exceed $500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agoncy that has been assigned responsibility for the minor child pursuant to court order or action of the department of corrections or the department of public health and human services.

(3) Judgments, but not claims, arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section.

*(5) For purposes of this section, the term "emancipated minor" means a person under 18 years of age who is self-supporting from personal earnings or is married. A person who received more than 25% of the cost of support from any person other than an agency of the government may not be considered an emancipated minor."*

**Section 134.** Section 30-4-213, MCA, is amended to read:

"**30-4-213. Final payment of item by payor bank — when provisional debits and credits become final — when certain credits become available for withdrawal.** (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without having a right to revoke the settlement under statute, clearinghouse rule, or agreement; or

(c) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule, or agreement.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item

are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsections (3) and (4) of 30-4-211 and subsection (2) of ~~30-4-213~~ *this section*) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to applicable law stating a time for availability of funds and any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(a) if the bank has received a provisional settlement for the item, when such settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(b) if the bank is both the depositary bank and the payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(5) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit."

**Section 135.** Section 30-10-103, MCA, is amended to read:

"**30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

HeinOnline -- 1997 vol. I 203 1997

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(h) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale hy the owner.

(4) "Commodity Exchange Act" means the federal statute of that name ~~as amended on the effective date of this subsection~~.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(h) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject te a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

HeinOnline -- 1997 vol. I 204 1997

(b) The term does not include an eption traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(9) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (9)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (9)(a) te others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (9)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance ef the services described in subsection (9)(a) is solely incidental to the practice of the person's profession; or

(viii) other persons not within the intent of this subsection (9) as the commissioner may by rule or order designate.

(10) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar

functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(iv) supervises employees who perform any of the foregoing.

(b) Investment adviser representative does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (10)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser.

(11) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(12) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

*(13) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.*

~~(13)~~*(14)* "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

~~(14)~~*(15)* "Precious metal" means the following, in coin, hullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

~~(13)~~*(16)* "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

~~(16) (a)~~*(17)* "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

~~(b) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.~~

~~(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as each sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.~~

~~(17)~~*(18)* "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition. Salesperson does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(b) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

~~(18)~~*(19)* "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names ~~as amended before or after July 1, 1961~~.

~~(19)~~*(20)* (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

HeinOnline -- 1997 vol. I 207 1997

~~(20)~~*(21)* "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

~~(21)~~*(22)* "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

**Section 136.** Section 30-10-110, MCA, is amended to read:

**"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer, but for the purpose of 30-10-202, an offer to sell ~~which~~ *that* is not directed to or received by the offeree in this stato is not made in this state.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to tbe offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on ~~his~~ *the publisher's* behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation ~~which~~ *that* is:

(i) not published in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

*(7) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or offer of a warrant or right to purchase or subscribe to another security of the same*

*or another issuer, as well as each sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.*"

**Section 137.** Section 32-1-381, MCA, is amended to read:

"**32-1-381. Purpose.** (1) The purpose of 32-1-381 through 32-1-384 is to:

(a) authorize interstate banking by the acquisition of existing banks within the framework of the "Douglas amendment" to the Bank Holding Company Act of 1956 *(12 U.S.C. 1841 through 1850)*, as amended;

(b) provide a variety of banking alternatives in Montana in terms of the numbers and ownership of banks; and

(c) conform Montana statutes with the provision of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, 108 Stat. 2338, effective September 29, ~~1995~~ *1994*. Any inconsistencies between the provisions of 32-1-381 through 32-1-384 and Public Law 103-328 must be resolved in favor of Public Law 103-328.

(2) Sections 32-1-381 through 32-1-384 do not authorize the establishment of a branch bank in Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions or transactions authorized in 32-1-381 through 32-1-384."

**Section 138.** Section 32-1-453, MCA, is amended to read:

"**32-1-453. Calculation of profits.** Interest or commissions unpaid, although due or accrued, on debts owing to any bank ~~shall~~ *may* not be included in calculation of its profits, unless ~~any~~ *the* bank ~~shall keep~~ *keeps* its books on a complete accrual basis in which event ~~any such~~ *the* bank shall show on its books accrued interest receivable on notes, bonds, and other investments, unless the same ~~shall be~~ *is* past due ~~as defined by 32-1-452~~, and shall also carry on its books accrued interest, taxes, and expenses payable."

**Section 139.** Section 32-1-1005, MCA, is amended to read:

"**32-1-1005. Bond.** Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee, guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department of commerce, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of a sufficient amount to meet the requirements of 32-1-307~~(3)~~ for a trust company organized under the laws of this state. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under this part. A foreign trust company ~~does~~ *is* not ~~have~~ *required* to file a bond or certify the deposit of its capital with respect to a trust, created other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee."

**Section 140.** Section 32-3-803, MCA, is amended to read:

HeinOnline -- 1997 vol. I 209 1997

**"32-3-803. Voting representative — confliet of interest.** (1) Each credit union that is a member of a corporate credit union may designate one person to be its voting representative in the corporate credit union. The person must be designated by the board of directors of the member credit union. The voting representative ~~must be~~ *is* eligible to hold office in the corporate credit union as if the person were a member of the corporate credit union.

(2) (a) A director, committee member, officer, agent, or employee may not in any manner participate in the deliberation or determination of any question affecting that person's personal pecuniary interest.

(b) A director, officer, agent, or employee may not in any manner participate in the determination of any matter material in amount, as defined by rule by the department, affecting the pecuniary interest of any corporation, partnership, or association, other than the corporate credit union, in which that person has a direct or indirect interest, except for matters involving payment of dividends to the membership.

(3) The department shall adopt rules implementing this section in substantial conformance with Title 12, part 704, Code of Federal Regulations."

**Section 141.** Section 32-6-102, MCA, is amended te read:

**"32-6-102. Electronie funds transfer systems — applicability.** The legislature has determined that electronic funds transfer systems are technologies offered by all types of financial depository institutions. These technologies provide the consumer with both convenience and efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act *(15 U.S.C. 1693, et seq.)* addresses many of the consumer issues relating to these systems. This chapter applies to financial institutions chartered under the Umted States Code or Title ~~39~~ *32*, chapter 1, parts 1 through 5, to the extent that those laws permit."

**Section 142.** Section 33-2-523, MCA, is amended to read:

**"33-2-523. Contracts on or after ~~the~~ operative date of 33-20-213 — valuation.** (1) This section applies to only those policies and contracts issued on or after the operative date of 33-20-213, except as otherwise provided in 33-2-524 for group annuity and pure endowment contracts issued prior to that date.

(2) Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all the pelicies and contracts issued prior to October 1, 1995, niust be the standard provided by the laws in effect prior to October 1, 1995. Except as otherwise provided in 33-2-524, 33-2-525, and 33-2-537(2), the minimum standard for the valuation of all policies and contracts must be the commissioner's reserve valuation methods defined in 33-2-525, ~~32-2-526(3)~~ *33-2-526(3)* and (4), and 33-2-537, 5% intorest for group annuity and pure endowment contracts, and 3 1/2% intorest for all other policies and contracts or, in the case of life insurance policies and contracts other than annuity and pure endowment contracts issued on or after March 17, 1973, 4% intorest for all other policies issued prior to July 1, 1979, 5 1/2% interest for single-premium life insurance policies, and 4 1/2% interest for all other policies issued on or after July 1, 1979, and the following tables:

HeinOnline -- 1997 vol. I 210 1997

(a) for all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in tbe policies:

(i) tbe commissioner's 1941 standard ordinary mortality table for policies issued prior to the operative date of 33-20-206, as amended, and the commissioner's 1958 standard erdinary mortality table for policies issued on or after tbat operative date but prior to January 1, 1989, except that for any category of the policies issued on female risks, modified net premiums and present values, referred to in 33-2-525 and 33-2-526, may be calculated, at the option of the insurer, with tbe approval of the commissioner, according to an age younger than the actual age of the insured; or

(ii) for policies issued on or after January 1, 1989:

(A) the commissioner's 1980 standard ordinary mortality table;

(B) at the election of the company for any one or more specified plans of life insurance, tlie commissioner's 1980 standard ordinary mortality table with 10-year select mortality factors; or

(C) any ordinary mortality table adopted after 1980 by tbe national association of insurance commissioners tbat is approved by tho commissioner by rule for use in determining the minimum standard of valuation for policies;

(b) for all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies, the 1941 standard industrial mortality table for policies issued prior to the operative date of 33-20-207 and, for policies issued on or after that operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after 1980 by tbe national association of insurance commissioners that is approved by tlie commissioner by rule for use in determining tbe minimum standard of valuation for tlie policies;

(c) for individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies, the 1937 standard annuity mortality table or, at tbe option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of tbese tables approved by the commissioner;

(d) for group annuity and pure endowment contracts, excluding any disabiiity and accidental deatb benefits in the policies, the group annuity mortaiity table for 1951, any modification of the table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) (i) for total and permanent disability benefits in or supplementary to ordinary policies or contracts:

(A) for policies or contracts issued on or after January 1, 1966, tbe tables of period 2 disablement rates and tbe 1930 to 1950 termination rates of tbe 1952 disability study of the society of actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the national association of insurance commissioners that are approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

HeinOnline -- 1997 vol. I 211 1997

(B) for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either the tables or, at the option of the insurer, the class 3 disability table (1926); and

(C) for policies issued prior to January 1, 1961, the class 3 disability table (1926);

(ii) any table must, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) (i) for accidental death benefits in or supplementary to policies:

(A) for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table adopted after 1980 by the national association of insurance commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for the policies;

(B) for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the insurer, the intercompany double indemnity mortality table; and

(C) for policies issued prior to January 1, 1961, the intercompany double indemnity mortality table;

(ii) either table must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for group life insurance, life insurance issued on the substandard basis, and other special benefits, the tables as may be approved by the commissioner."

**Section 143.** Section 33-2-830, MCA, is amended to read:

**"33-2-830. Real estate mortgages.** (1) An insurer may invest any of its funds in bonds, notes, or other evidences of indebtedness ~~which~~ *that* are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada or ~~which~~ *that* are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms ~~which~~ *that* may be provided by enforceable options of renewal, in improved real property located in the United States or Canada. In all cases the security for the loan must be a first lien upon ~~such~~ *the* real property~~,~~ and there ~~must~~ *may* not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, ~~such~~ *the* lien ~~can~~ *may* be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. ~~Nothing herein shall prohibit~~ *This section does not prohibit* any investment by reason of the existence of any prior lien for ground rents, taxes, assessments, or other similar charges not yet delinquent. This section ~~shall not be deemed~~ *may not be considered* to prohibit investment in mortgages or similar obligations when made under 33-2-828.

(2) "Improved real ~~estate~~ *property*" means all farm lands used for tillage, crop, pasture, or timberlands and all real estate on which permanent improvements suitable for residential, institutional, commercial, or industrial use are situated.

HeinOnline -- 1997 vol. I 212 1997

(3) (a) ~~No such~~ *A* mortgage loan or loans made or acquired by an insurer on any one property ~~shall~~ *may not*, at the time of investment by the insurer, exceed the larger of the following amounts as applicable:

(i) 80% of the value of the real property or leasehold securing the same~~, provided, however,~~ *or*, if ~~said~~ *the* real property or leasehold consists of one- or two-family residential property, 90% of ~~said~~ *the* value;

(ii) the amount of any insurance or guaranty of ~~such~~ *the* loan by the United States of America or by any agency or instrumentality ~~thereof~~ *of the United States*; or

(iii) the amounts provided in subsection (3)(a)(i), plus the amount by which the excess of ~~such~~ *the* loan over ~~such~~ *the* amount is insured or guaranteed by the United States of America or by any agency or instrumentality ~~thereof~~ *of the United States*.

(b) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount ~~so~~ loaned or invested ~~shall~~ *may* not exceed the unpaid portion of the purchase price.

(4) ~~No such~~ *A* mortgage loan or loans ~~shall~~ *may not* be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of such an investment.

(5) ~~No such~~ *A* mortgage loan made or acquired by an insurer ~~which~~ *that* is a participation or a part of a series or issue secured by the same mortgage or deed of trust ~~shall be~~ *is not* a lawful investment under this section unless the entire series or issue ~~which~~ *that* is secured by the same mortgage or deed of trust is held by ~~such~~ *the* insurer or unless the insurer holds a senior participation in ~~such~~ *the* mortgage or deed of trust, giving it substantially the rights of a first mortgagee.

(6) ~~No~~ *A* mortgage loan upon a leasehold ~~shall~~ *may not* be made or acquired pursuant to this section unless the terms ~~thereof shall~~ *of the loan* provide for amortization payments to be made by the borrower on the principal ~~thereof~~ *of the loan* at least once in each year in amounts sufficient *to* completely ~~to~~ amortize the loan within a period of four-fifths of the term of the leasehold, inclusive of the term ~~which~~ *that* may be provided by an enforceable option of renewal, ~~which~~ *that* is unexpired at the time the loan is made, but ~~in no event~~ *not* exceeding 35 years."

**Section 144.** Section 33-4-511, MCA, is amended to read:

**"33-4-511. Insurance of schools, community houses, and churches.** (1) ~~No~~ *A* contract of insurance effected upon the property of any school district, rural community house, rural church, or rural public building pursuant to 33-4-501 ~~shall be deemed to~~ *does not* constitute ~~such~~ *the* school district or the owners of ~~any such~~ *the* community house, church, or public building a member of the insurer.

(2) ~~No~~ *A* contract of insurance effected upon any rural school building, rural community house, rural church, or other rural public building referred to in 33-4-501~~(1)(c)~~*(1)(d)* ~~shall be~~ *is not* invalid because the directors or any director or officer of the insurer at the time of effecting the insurance coverage was a

trustee, director, insurance producer, custodian, or manager or in any way in control, supervision, or management of any or all of the property ~~so~~ insured."

**Section 145.** Section 33-10-202, MCA, is amended to read:

**"33-10-202. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means ~~any~~ *either* of the ~~three~~ *two* accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scopo of this part under ~~subsections (4) through (6) of~~ 33-10-201*(4) through (6)*.

(5) "Impaired insurer" means:

(a) an insurer ~~which~~ *that* after July 1, 1974, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer considered by the commissioner after July 1, 1974, to be unable or potentially unable to fulfill its contractual obligations.

(6) (a) "Member insurer" means ~~any~~ *an* insurer that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under 33-2-201 and includes any insurer whose license or certificato of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The term does not include:

(i) a health service corporation;

(ii) a health maintenance organization;

(iii) a fraternal benefit society;

(iv) a mandatory state pooling plan;

(v) a mutual assessment company or any entity that operates on an assessment basis;

(vi) an insurance exchange; or

(vii) an entity similar to any of the entities listed in subsections (6)(b)(i) through (6)(b)(vi).

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) *(a)* "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and

HeinOnline -- 1997 vol. I 214 1997

considerations on premiums and dividends paid or credited to policyholders on the direct business.

*(b)* "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers.

*(c)* As used in 33-10-227, "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Resident" means ~~any~~ *a* person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

(10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

**Section 146.** Section 33-16-1026, MCA, is amended to read:

"**33-16-1026. Rate filings.** (1) A workers' compensation advisory organization shall file with the commissioner:

(a) workers' compensation rates and rating plans that are limited to prospective loss costs;

(b) each workers' compensation policy form to be used by its members or subscribers;

(c) the uniform classification plan and rules of the advisory organization;

(d) the uniform experience rating plan and rules of the advisory organization; and

(e) any other information that the commissioner requests and is entitled to receive under this part.

(2) Each insurer shall file with the commissioner all rates, supplementary rate information, and any changes and amendments made by it for use in this state as required by the commissioner under 33-16-1027(2).

(3) An insurer may establish rates and supplementary rate information based upon the factors in 33-16-1021. An insurer may adopt by reference, with or without deviation, the prospective loss costs filed by the advisory organization designated under 33-16-1023 or the rates and supplementary rate information filed by another insurer.

(4) An insurer may not make or issue a contract or policy of insurance under this part, except in accordance with the filings that are in effect for the insurer as provided in this part.

(5) In addition to other prohibitions in this part, an advisory organization may not file rates, supplementary rate information, or supporting information on behalf of an insurer.

(6) If each rate in a schedule of workers' compensation rates for specific classifications of risks filed by an insurer is not lower than the prospective loss costs contained in the schedule of workers' compensation rates for those

HeinOnline -- 1997 vol. I 215 1997

classifications filed by the designated advisory organization under ~~33-16-1026(1)~~ *subsection (1)*, the schedule of rates filed by the insurer is not subject to 33-16-1027(1) but becomes effective upon filing."

**Section 147.** Section 33-16-1035, MCA, is amended to read:

"**33-16-1035. Penalties — suspension of license.** (1) The commissioner may impose upon a person or organization that violates ~~33-16-1008 or~~ 33-16-1020 through 33-16-1036 a penalty of not more than $500 for each violation.

(2) If the commissioner determines that the violation is willful, the commissioner may impose a penalty of not more than $1,000 for each violation in addition to any other penalty provided by law.

(3) The commissioner may suspend the license of an insurer or an advisory organization that fails to comply with any order within the time set hy the order or extension granted by the commissioner. The commissioner may not suspend a license for failure to comply with an order until the time prescribed for appeal from the order has expired or, if appealed, until the order has been affirmed. The commissioner may determine the period of a suspension, which remains in effect for the period unless modified or rescinded or until the order upen which the suspension is based is modified, rescinded, or reversed.

(4) Unless a consent decree has been entored, a penalty may not he imposed nor may a license be suspended or revoked unless the commissioner, following a hearing, issues a written order with findings of fact. The hearing must be held at least 10 days after written notice to the person or organization specifying the alieged violation.

(5) A party aggrieved by an order or decision of the commissioner may, within 30 days after receiving the commissioner's notice, make a written request for a hearing."

**Section 148.** Section 33-17-603, MCA, is amended to read:

"**33-17-603. Certificate of registration.** (1) Except as provided in 33-17-604, a person may not act as or represent to the public that the person is an administrator in this state unless the person holds a certificate of registration as an administrator.

(2) An application for a certificato of registration must be accompanied by a fee of $100. The commissioner shall issue the certificate unless the commissioner finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for a license denied for cause within 5 years.

(3) A certificate of registration must be renewed each year by the administrator paying a continuation fee of $100 on or before July 1. Upon payment, the ~~license~~ *certificate* continues in force unless suspended, revoked, or otherwise terminated. The commissioner shall deposit the fee with the stato treasurer to he credited to the general fund.

(4) A certificate of registration may he susponded or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of

the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

(5) Unless a certification requirement is waived, a person who acts as an administrator without a certificate of registration is subject to a fine of not less than $500 or more than $1,500."

**Section 149.** Section 33-19-104, MCA, is amended to read:

"**33-19-104. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution ~~which~~ *that* the insurance producer represents and ~~which~~ *that* is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution ~~which~~ *that* specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis; or

(ii) a declination of insurance coverage solely because ~~such~~ *that* coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

HeinOnline -- 1997 vol. I 217 1997

(4) "Consumer report" means any written, oral, or other communication of information hearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living ~~which~~ *that* is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means ~~any~~ *a* person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) *(a)* "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit

society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

*(b)* "Insurance institution" does not include insurance producers or insurance-suppert organizations.

(11) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(12) (a) "Insurance-support organization" means a person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural porsons for the primary purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reperts or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, insurance institutions, medical care institutions, and medical professionals.

(13) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than *for* business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(14) "Investigative consumer report" means a consumer report or portion thereof containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning such items of information.

(15) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(16) "Medical professional" means a person licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or ~~speech therapist~~ *speech-language pathologist.*

HeinOnline -- 1997 vol. I 219 1997

(17) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(18) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(19) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

(20) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(21) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone ~~he is not~~ *else*;

(b) pretends to represent a person ~~he~~ *that the interviewer* is not in fact representing;

(c) misrepresents the true purpose of the interview; or

(d) refuses to ~~identify himself~~ *provide identification* upon request.

(22) "Privileged information" means any individually identifiable information that:

(a) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection ~~will be~~ *is* considered ~~"~~personal information~~"~~ under this chapter if it is disclosed in violation of 33-19-306.

(23) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

HeinOnline -- 1997 vol. I 220 1997

(24) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(25) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insuranco in this state."

**Section 150.** Section 33-22-703, MCA, is amended to read:

"33-22-703. **Coverage for mental illness, alcoholism, and drug addiction.** Insurers, health service corporations, or any employees' health and welfare fund that provides accident and health insurance benefits to residents of this state under group health insurance or group health plans shall provide, for Montana residents covered under hospital and medical expenses incurred insurance group policies and under hospital and medical service plan group contracts, the level of benefits specified in this section for the necessary care and treatment of mental illness, alcoholism, and drug addiction, subject to the right of the applicant to select any alternative level of benefits above the ~~minimum~~ level of benefits described in subsections (1)(c), (2)(a), (2)(c), (2)(d), and (2)(e) as may be offered hy tlie insurer or health service corporation:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness, alcoliolism, and drug addiction is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital; and

(c) inpatient treatment for alcoholism and drug addiction is subject to a maximum benefit of $4,000 in any 24-month period and a maximum lifetime benefit of $8,000;

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness, alcoholism, and drug addiction is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a henefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program tliat are published by the American association for partial hospitalization if tlie program is operated by a hospital;

HeinOnline -- 1997 vol. I 221 1997

(c) inpatient treatment for alcoholism and drug addiction may be subject to a maximum benefit of $4,000 in any 24-month period and a maximum lifetime benefit of $8,000;

(d) outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000; and

(e) outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of $1,000."

**Section 151.** Section 33-22-1108, MCA, is amended to read:

"**33-22-1108. Preexisting condition — definition.** (1) A long-term care insurance policy or certificate other than a policy or certificate issued to a group as ~~defined~~ *described* in 33-22-1107~~(3)(a)~~*(4)(a)* may not use a definition of preexisting condition ~~which~~ *that* is more restrictive than the definition in 33-22-1107.

(2) A long-term care insurance policy or certificato may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within 6 months following the effective date of coverage of an insured person.

(3) The commissioner may extend the limitation periods in subsections (1) and (2) as to specific age group categories in specific policy forms if extending the limitation periods is in the best interests of the public.

(4) An insurer may use an application form designed to elicit the complete health history of an applicant and on the basis of the answers on that application perform underwriting in accordance with the insurer's established underwriting standards. Unless otherwise provided in the long-term care insurance policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in suhsection (2) expires. A long-term care insurance policy or certificate may not exclude or use a waiver or rider of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (2)."

**Section 152.** Section 33-22-1521, MCA, is amended to read:

"**33-22-1521. Association plan — minimum benefits.** A plan of health coverage must be certified as an association plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting part 7), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) (a) The minimum benefits for an insured must, suhject to the other provisions of this section, be equal to at least 50% of the covered expenses required hy this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but the maximums may not be less than $100,000.

(b) One association plan must be offered with coverage for 80% of the covered expenses provided in this section in excess of an annual deductible that does not exceed $1,000 per person. This association plan must provide a maximum lifetime benefit of $500,000.

(2) Covered expenses must be the usual and customary charges for the following medically necessary services and articles when prescribed by a physician or other licensed health care professional and when designated in the contract:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of durable medical equipment, which must be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental;

(l) services of a licensed home health agency, up to a maximum of 180 visits per year;

(m) drugs requiring a ~~physicians~~ *physician's* prescription that are approved for use in human beings in the manner prescribed by the United States food and drug administration, covered at 50% of the expense, up to an annual maximum of $1,000;

(n) medically necessary, nonexperimental transplants of the kidney, pancreas, heart, heart/lung, lungs, liver, cornea, and high-dose chemotherapy bone marrow transplantation, limited to a lifetime maximum of $150,000, with an additional benefit not to exceed $10,000 for expenses associated with the donor;

(o) pregnancy, including complications of pregnancy;

(p) newborn infant coverage, as required by 33-22-301;

(q) sterilization;

HeinOnline -- 1997 vol. I 223 1997

(r) immunizations;

(s) outpatient rehabilitation therapy;

(t) foot care for diabetics;

(u) services of a convalescent home, as an alternative to hospital services, limited to a maximum of 60 days per year; and

(v) travel, other than transportation by a licensed ambulance service, to the nearest facility qualified to treat the patients medical condition when approved in advance by the insurer.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) home and office calls, except as specifically provided in subsection (2);

(ii) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(iii) the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

(iv) oral surgery, except as specifically provided in subsection (2);

(v) tbat part of a charge for services or articles that exceeds the prevailing charge in the locality where the service is provided; or

(vi) care that is primarily for custodial or domiciliary purposes tbat would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease ~~either~~ arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition, except as provided by subsection (2);

(iv) confinement in a private room to the extent that it is in excess of the institution's charge for its most common semiprivate room, unless the privato room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering tbe services or articles;

(vi) room and board for a nonemergency admission on Friday or Saturday;

(vii) routine well baby care;

(viii) complications to a newborn, unless no other source of coverage is available;

(ix) reversal of sterilization;

(x) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xi) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xii) artificial insemination or treatment for infertility; or

(xiii) breast augmentation or reduction."

**Section 153.** Section 33-31-311, MCA, is amended to read:

**"33-31-311. Insurance producer license required — application, issuance, renewal, fees — penalty.** (1) ~~No~~ *An* individual, partnership, or corporation may *not* act as or ~~hold himself out to be~~ *represent to the public that the individual, partnership, or corporation is* an insurance producer of a health maintenance organization unless ~~he~~ *the individual, partnership, or corporation* is:

(a) licensed as a disability insurance producer by the commissioner pursuant to chapter 17, parts 1, 2, and 4 of this title or licensed as an insurance producer ~~under~~ *as provided in* 33-30-311 ~~through 33-30-313~~; and

(b) appointed or authorized by the health maintenance organization to solicit health care service agreements on its behalf.

(2) Application, appointment, and qualification for a health maintenance orgenization insurance producer license, fees applicable to and the issuance of a health maintenance organization insurance producer license, and renewal of a health maintenance organization insurance producer license must be in accordance with the provisions of chapter 17 that apply to a disability insurance producer.

(3) An individual, partnership, or corporation who holds a disability insurance producer license on October 1, 1987, need not requalify by an examination to be licensed as a health maintenance organization insurance producer.

(4) The commissioner may, in accordance with 33-1-313, 33-1-317, 33-17-411, and chapter 17, part 10, suspend, revoke, refuse to issue or renew a health maintenance organization insurance producer license, or impose a fine upon the licensee."

**Section 154.** Section 35-1-933, MCA, is amended to read:

**"35-1-933. Articles of dissolution.** (1) *(a)* At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state, for filing, articles of dissolution setting forth:

~~(a)~~*(i)* the name of the corporation;

~~(b)~~*(ii)* the date dissolution was authorized; *and*

~~(c)~~*(iii)* if dissolution was approved hy the shareholders:

~~(i)~~*(A)* the number of votes entitled to be cast on the proposal to dissolve; and

~~(ii)~~*(B)* either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval~~; and~~.

~~(d)~~*(b)* ~~if~~ *If* voting by voting groups is required, the information required by subsection ~~(1)(c)~~ *(1)(a)(iii)* must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) A corporation is dissolved upon the effective date of its articles of dissolution."

**Section 155.** Section 35-1-934, MCA, is amended to read:

**"35-1-934. Revocation of dissolution.** (1) A corporation may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholders' action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directers revoked a dissolution authorized by the shareholders, a statement that revocation was permitted on action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, the information required by 35-1-933~~(1)(c) or (1)(d)~~*(1)(a)(iii) or (1)(b)*.

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution~~,~~ and the corporation resumes carrying on its business as if dissolution had never occurred."

**Section 156.** Section 35-1-1107, MCA, is amended to read:

HeinOnline -- 1997 vol. I 226 1997

"**35-1-1107. Inspection of records by shareholders.** (1) Subject to 35-1-1108(3), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in 35-1-1106(5) if the shareholder gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under ~~35-1-1107(1)~~ *subsection (1)*;

(b) accounting records of the corporation; and

(c) the record of shareholders.

(3) A shareholder may inspect and copy the records identified in subsection (2) only if:

(a) the demand is made in good faith and for a proper purpose;

(b) the shareholder describes with reasonable particularity the purpose and the records the shareholder desires to inspect;

(c) the records are directly connected with ~~his~~ *the shareholder's* purpose; and

(d) the shareholder has been a shareholder of record for at least 6 months preceding the demand or the shareholder is a holder of record of at least 5% of all the outstanding shares of the corporation.

(4) The right of inspection granted by this section may not he abolished or limited by a corporation's articles of incorporation or hylaws.

(5) This section does not affect:

(a) the right of a shareholder to inspect records under 35-1-523 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on ~~his~~ *the shareholder's* behalf."

**Section 157.** Section 37-25-305, MCA, is amended to read:

HeinOnline -- 1997 vol. I 227 1997

**"37-25-305. Representation to public as nutritionist — limitation on use of title.** ~~No~~ *A* person may *not* represent ~~himself~~ to the public by any title, sign, or advertisement or description of services ~~as~~ *that the person is* a nutritionist or a licensed nutritionist unless ~~he~~ *the person* has been licensed under this chapter or has met tbe requirements of 37-25-102~~(10)(b)~~*(9)(b)*."

**Section 158.** Section 37-29-302, MCA, is amended to read:

**"37-29-302. Exceptions.** The provisions of this chapter do not apply to:

(1) a person interning under the direct supervision of a licensed denturist as required by 37-29-303(2), provided that ~~no~~ *a* denturist may *not* supervise more than one ~~such person~~ *intern* at any one time;

(2) the practice of dentistry or medicine by persons authorized to do so by the state of Montana; or

(3) a student of denturitry in pursuit of clinical studies under a school program or internship as required by 37-29-303~~(2)~~."

**Section 159.** Section 37-29-305, MCA, is amended to read:

**"37-29-305. Examinations.** The board shall administer the examinations for licensure, subject to the following requirements:

(1) Examinations must be of ~~such~~ *a* character ~~as to determine~~ *that determines* the qualifications, fitness, and ability of the applicant to practice denturitry. The form of the test must include written and oral examinations and a practical demonstration of skills.

(2) Examinations must be held at least annually on the second Monday in July. An applicant must obtain an average percentage score of 75% or better to qualify for licensure. The written and practical examinations ~~shall~~ *must* carry equal weight. The oral examination results may adjust an average score only two percentage points.

(3) The written examination must include coverage of the following subjects:

(a) head and oral anatomy and physiology;

(b) oral pathology;

(c) partial denture construction and design;

(d) microbiology;

(e) radiology;

(f) clinical dental technology;

(g) dental laboratory technology;

(h) asepsis;

(i) clinical jurisprudence;

(j) medical emergencies.

HeinOnline -- 1997 vol. I 228 1997

(4) Applicants who fail to score a 75% average on the written and practical examinations may, upon payment of the appropriate fee, have a second opportunity to take the written or practical examinations, or both~~, provided that all applicants under 37-29-303(1) are examined on or before April 1, 1985~~."

**Section 160.** Section 39-3-406, MCA, is amended to read:

**"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) ~~any~~ persons *who are* not regular employees of a nonprofit organization *and* who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing producta or services in the food distribution industry for a food broker, wholesaler, or association;

HeinOnline -- 1997 vol. I 229 1997

(n) a direct seller as defined in 26 U.S.C. 3508.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. ~~304~~ *31502*;

(b) an employee of an employer subject to *49 U.S.C. 10501 and 49 U.S.C. 60501,* the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways *that are* not owned or operated for profit, ~~and~~ *that are* not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and servicos used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's speuse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if tbe number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county goverument who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

HeinOnline -- 1997 vol. I 231 1997

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 *(29 U.S.C. 206)* and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town."

**Section 161.** Section 39-8-207, MCA, is amended to read:

**"39-8-207. Requirements of licensee.** (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, dischargo fiduciary respensibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several liability for any wages, workers' compensation premiums, *and* payroll-related taxes~~,~~ and *for* any benefits left unpaid by the professional employer organization or group and that, in the event that the liconsee's license is suspended or revoked, this liahility is retroactive to the client's entering into a contract with the licensee; and

(d) a statement that the client is respensible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:

HeinOnline -- 1997 vol. I 232 1997

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter.

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating an employee leasing arrangement or professional employer arrangement.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state. When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.

HeinOnline -- 1997 vol. I 233 1997

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of workers' compensation coverage for all employees assigned to any client location in this state.

(5) A professional employer organization or group is the employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974 *(29 U.S.C. 1001, et seq.)*, as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

(a) the client employer's corporate or business name;

(b) the client employer's taxpayer or employer identification number;

(c) the client employer's risk identification number;

(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee *welfare* benefit ~~program~~ *plan* as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515."

**Section 162.** Section 39-29-101, MCA, is amended to read:

**"39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

HeinOnline -- 1997 vol. I 235 1997

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs.

(3) "Disabled veteran" means a person:

(a) whether or not the person is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and bas established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the department of veterans affairs or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's speuse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not reinarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(5) "Position" means a permanent, temporary, or seasonal pesition as defined in 2-18-101 for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appeintment by a mayor, city managor, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable dischargos and general discharges but does not include dishonorable dischargos or other administrative dischargos characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training; or

(b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. ~~672(a), (d), or (g)~~ *12301(a), (d), or (g)*, 10 U.S.C. ~~673~~ *12302*, or 10 U.S.C. ~~673b~~ *12304* served on active duty during a period of war or in a campaign or expedition for which a campaign badge is autherized and was discharged or released from duty under honorable conditions."

**Section 163.** Section 39-51-307, MCA, is amended to read:

"**39-51-307. Department to create employment service.** (1) The department shall establish and maintain free public employment offices in ~~such~~ *the* number and in ~~such~~ places ~~as~~ *that* may be necessary for the proper administration of this chapter and for the purpose of performing ~~such~~ *the* duties ~~as~~ *that* are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 ~~(48 Stat. 113; U.S.C. Title 29, Sec. 49 (c))~~ *(29 U.S.C. 49)*, as amended.

(2) The department ~~shall be~~ *is* charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

HeinOnline -- 1997 vol. I 237 1997

(3) The provisions of the act of congress, as amended, are ~~hereby~~ accepted hy this state in conformity with section 4 of ~~said~~ *that* act, and this state ~~will~~ *shall* observe and comply with the requirements ~~thereof~~ *of the act*. The department is ~~hereby~~ designated and constituted the agency of this state for the purpose of ~~said~~ *the* act.

(4) For the purposo of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization, and as a part of ~~any~~ such *an* agreement, the department may accept money, services, or quarters as a contribution to the employment service account."

**Section 164.** Section 39-51-401, MCA, is amended to read:

**"39-51-401. Unemployment insurance fund — establishment and control.** There is ~~hereby~~ established separate and apart from all public money or funds of this state a fund in the expendable trust fund type known as the unemployment insurance fund, which ~~shall~~ *must* be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in this code means the unemployment insurance expendable trust fund. All money in the fund ~~shall~~ *must* he mingled and undivided. This fund ~~shall consist~~ *consists* of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities; and

(5) all money credited to this stato's account in the unemployment trust fund pursuant to ~~section~~ *sections* 903 *and 904* of the Social Security Act *(42 U.S.C. 1103 and 1104)*, as amended."

**Section 165.** Section 39-51-402, MCA, is amended to read:

**"39-51-402. Unemployment insurance fund — custodian — accounts and deposits.** (1) The commissioner of labor and industry is the ex officio treasurer and custodian of the unemployment insurance fund and shall administer ~~such~~ *that* fund in accordance with this chapter. ~~He~~ *The commissioner* shall maintain within the fund three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment insurance fund, upon receipt by the department, must be immediately depesited in the clearing account. Refunds payable pursuant to 39-51-1110 may he paid from the clearing account. After clearance ~~thereof~~, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of

HeinOnline -- 1997 vol. I 238 1997

the account of this state in the unemployment trust fund, estahlished and maintained pursuant to section 904 of the Social Security Act *(42 U.S.C. 1104)*, as amended.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as ~~herein~~ otherwise provided, money in the clearing and benefit accounts may be deposited in any bank or public depository in which general funds of tbe state may be deposited, but ~~no~~ *a* public deposit insurance charge or premium may *not* be paid out of tlie unemployment insurance fund."

**Section 166.** Section 39-51-403, MCA, is amended to read:

**"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception.** (1) Money ~~shall~~ *must* be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to ~~section~~ *sections* 903 *and 904* of the Social Security Act (42 U.S.C. 1103 *and 1104*), as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter.

(2) The department shall from time to time requisition from the unemployment trust fund ~~such~~ amounts, not exceeding the amounts standing to this state account ~~therein~~, as it ~~deems~~ *considers* necessary for the payment of benefits for a reasonable future period. Upon receipt ~~thereof~~ *of the money*, the treasurer shall deposit ~~such~~ *the* money in the benefit account and shall issue ~~his~~ warrants for the payment of benefits solely from ~~such~~ *the* benefit account.

(3) Expenditures of ~~such~~ money in the benefit account and refunds from the clearing account ~~shall~~ *are* not ~~be~~ subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund ~~which~~ *that* remains unclaimed or unpaid in the benefit account after tbe expiration of the period for which ~~such~~ *the* sums were requisitioned ~~shall either~~ *must* be deducted from estimates for and may be ~~utilized~~ *used* for the payment of benefits during succeeding periods or, in the discretion of the department, ~~shall~~ *must* be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402."

**Section 167.** Section 39-51-404, MCA, is amended to read:

**"39-51-404. Administrative expenses.** (1) Money credited te the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to ~~section~~ *sections* 903 *and 904* of the Social Security Act (42 U.S.C. 1103 *and 1104*), as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

HeinOnline -- 1997 vol. I 239 1997

(a) specifies the purposes for which the money is appropriated and the amounts appropriated;

(b) limits the period within which the money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to ~~section~~ *sections* 903 *and 904* of the Social Security Act (42 U.S.C. 1103 *and 1104*), as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.

(2) For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds depesited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the poriod specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) An assessment equal to ~~.1%~~ *0.1%* of all taxable wages provided for in 39-51-1108 and ~~.05%~~ *0.05%* of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers. All assessments and investment income must be deposited in the employment security account provided for in 39-51-409."

**Section 168.** Section 39-51-407, MCA, is amended to read:

**"39-51-407. Reimbursement of fund by state.** This state recognizes its obligation to replace~~,~~ and ~~hereby~~ pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received from the United States or any agency ~~thereof~~ *of the United States* under Title III of the Social Security Act *(now Subchapter III)*, any unencumbered balances in the unemployment insurance administration account, any money granted to this state pursuant to the provisions of the Wagner-Peyser Act *(29 U.S.C. 49, et seq.)*, and any money made available by the state or its political subdivisions and matched by ~~such~~ money granted to this state pursuant to the provisions of the Wagner-Peyser Act ~~which~~ *that* the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the

HeinOnline -- 1997 vol. I 240 1997

proper administration of this chapter. ~~Such~~ *The* money ~~shall~~ *must* be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature, by a letter to the speaker of the house of representatives and the president of the senate, the amount required for ~~such~~ replacement *of the money*."

**Section 169.** Section 39-51-501, MCA, is amended to read:

"**39-51-501. State-federal cooperation.** (1) In the administration of this chapter, the department shall:

(a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;

(b) make ~~such~~ reports in ~~such~~ *a* form and containing ~~such~~ *the* information ~~as~~ *that* the secretary of labor may ~~from time to time~~ require and shall comply with ~~such~~ *the* provisions ~~as~~ *that* the secretary of labor may ~~from time to time~~ find necessary to ~~assure~~ *ensure* the correctness and verification of ~~such~~ *the* reports; and

(c) comply with the regulations prescribed by the secretary of labor governing the expenditures of ~~such~~ *the* sums ~~as may be~~ *that are* allotted and paid to this state under Title III of the Social Security Act *(now Subchapter III)*, as amended, for the purpose of assisting in the administration of this chapter.

(2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in ~~such~~ *a* manner ~~as may be deemed~~ *considered* advisable and expedient in order to carry out the purpose of this chapter.

(3) The department is ~~hereby~~ authorized ~~and empowered~~ to perform any ~~and all~~ acts, including the execution of agreements and contracts ~~which~~ *that* may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion ~~deems~~ *considers* it advisable to perform such acts.

(4) Upon request ~~therefor~~, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and ~~such~~ *the* recipient's rights to further benefits under this chapter."

**Section 170.** Section 39-51-503, MCA, is amended to read:

"**39-51-503. Agreements with railroad retirement board.** The department is ~~hereby~~ authorized to cooperate with and enter inte agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities and to make available to the railroad retirement board the records of the department relating to employer's status and

HeinOnline -- 1997 vol. I 241 1997

contributions received from employers covered by the Railroad Unemployment Insurance Act *(45 U.S.C. 351, et seq.)*, together with employee wage records and ~~such~~ other data ~~as~~ *that* the railroad retirement board ~~may deem~~ *considers* necessary or desirable for the administration of the Railroad Unemployment Insurance Act ~~(52 Stat. 1094)~~. Any money received by the department from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities ~~shall~~ *must* be paid into and credited *to* the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407."

**Section 171.** Section 39-51-1110, MCA, is amended to read:

**"39-51-1110. Refunds to employers.** (1) If not later than 3 years after the date on which any taxes or interest ~~thereon~~ *on the taxes* became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid ~~such~~ taxes or interest ~~thereon~~ *on the taxes* ~~shall make application~~ *applies* for an adjustment ~~thereof~~ *of the taxes or interest* in connection with subsequent tax payments or *applies* for a refund ~~thereof~~ *of the taxes or interest* because ~~such~~ *an* adjustment cannot be made and *if* the department ~~shall determine~~ *determines* that ~~such~~ *the* taxes or interest or any portion ~~thereof~~ *of the taxes or interest* was erroneously collected, the department shall allow ~~such~~ *the* employer to make an adjustment ~~thereof~~, without interest, in connection with subsequent tax payments by ~~him~~ *the taxpayer* ~~or, if such~~. *If an* adjustment cannot be made, the department shall refund ~~said~~ *the* amount, without interest, from the fund. For like cause and within the same period, *an* adjustment or refund may be ~~so~~ made on the department's own initiative.

(2) If the department ~~shall determine~~ *determines* that an employer has paid taxes to this state under this chapter when ~~such~~ *the* taxes should have been paid to another state under a similar act of ~~such~~ *the* other state, transfer of ~~such~~ *the* taxes to ~~such~~ *the* other state ~~shall~~ *must* be made upon discovery or, upon proof of payment that ~~such~~ *the* other state has been fully paid, ~~then~~ *a* refund to ~~such~~ *the* employer ~~shall~~ *must* be made ~~at any time~~ upon application without limitation of time.

(3) In the event that this chapter is not certified by the secretary of labor under ~~section 1603 of~~ the Internal Revenue Code, *26 U.S.C. 3304*, as amended, ~~1939,~~ for any year, then ~~and in that event~~ refunds ~~shall~~ *must* be made of all taxes required under this chapter from employers for that year."

**Section 172.** Section 39-51-1304, MCA, is amended to read:

**"39-51-1304. Lien for payment of unpaid taxes — levy and execution.** (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer~~,~~ or *against the* liable corporate officer or employee or liable member or manager of a limited liability company referred to in 39-51-1105, arising at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as

HeinOnline -- 1997 vol. I 242 1997

prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the ~~provisions of~~ *methods provided in* 25-13-102.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer, liable corporate officer or employee, or liable member or manager of a limited liability company referred to in 39-51-1105 under 39-51-1303 or this section, or both, to collect the delinquent taxes, penalties, and interest.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that tho release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

**Section 173.** Section 39-51-2106, MCA, is amended to read:

**"39-51-2106. Certain wages not to be used in determining benefit eligibility or amount.** Wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act ~~(52 Stat. 1094)~~ *(45 U.S.C. 351, et seq.)* or for services performed for an employor as defined in ~~said~~ *that* act ~~shall~~ *are* not ~~be~~ included for the purposes of determining eligibility or weekly benefit amount under this chapter."

**Section 174.** Section 39-51-2110, MCA, is amended to read:

**"39-51-2110. Payment of benefits to aliens.** (1) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of ~~section 212(d)(5)~~ ~~of~~ the Immigration and Nationality Act, *8 U.S.C. 1152.*

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to the individuals because of the

HeinOnline -- 1997 vol. I 243 1997

individuals' alien status must be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, a determination that benefits to the individual are not payable because of the individual's alien status may not be made except upon a preponderance of the evidence."

**Section 175.** Section 39-51-2508, MCA, is amended to read:

**"39-51-2508. Eligibility requirements for extended benefits —disqualifications — acceptance of suitable work.** (1) An individual is eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds with respect to the week that the individual:

(a) is an exhaustee, as defined in 39-51-2501;

(b) has been paid total wages for employment in the base period, as defined in 39-51-201, in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the base period;

(ii) 40 times the individual's most recent weekly benefit amount; or

(iii) insured wages for 20 weeks of work;

(c) is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if disqualified, the individual satisfies the requirements for requalification in that part; and

(d) has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(c), an individual is disqualified for extended benefits if the individual fails to seek work. The disqualification continues for the week in which the failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of the individual's weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless the individual has earned at least eight times the weekly benefit amount after the date of the disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), requalifies for regular benefits may not be paid extended benefits unless the individual has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". The definition must be in accordance with the ~~definition required by the Omnibus Reconciliation Act~~

HeinOnline -- 1997 vol. I 244 1997

~~of 1980, Public Law 96-499, and as may be amended after March 19, 1981~~ *requirements of 26 U.S.C. 3304.*"

**Section 176.** Section 39-51-2602, MCA, is amended to read:

"**39-51-2602. Approved training under federal programs.** (1) Notwithstanding any other provisions of this chapter, ~~no~~ *an* otherwise eligible individual may *not* be denied benefits for any week:

(a) because of participation in training approved under Section 236(a)(1) of the federal Trade Act of 1974 *(19 U.S.C. 2296)* or under Title III of the federal Job Training Partnership Act *(29 U.S.C. 1501, et seq.)*;

(b) because of participation in approved training described in subsection (1)(a) by reason of leaving work to enter the training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act."

**Section 177.** Section 39-51-3106, MCA, is amended to read:

"**39-51-3106. Child support interception of unemployment benefits.** (1) For purposes of this section, the following definitions apply:

(a) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in section 454 of the Social Security Act ~~which~~ *(42 U.S.C. 654) that* has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act *(now Subchapter IV).*

(b) "State or local child support enforcement agency" means any agency of a state or political subdivision ~~thereof~~ operating pursuant to a plan provided for in subsection (1)(a).

(c) "Unemployment benefits" means any benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law providing for benefits, assistance, or allowances with respect to unemployment.

(2) An individual filing a new claim for unemployment benefits shall, at the time of filing the claim, disclose whether or not ~~he~~ *the individual* owes child support obligations. If an individual discloses that ~~he~~ *the individual* owes child support obligations and the individual is determined to be eligible for unemployment benefits, the department shall notify the state or local child

HeinOnline -- 1997 vol. I 245 1997

support enforcement agency enforcing ~~such~~ *the* obligation that the individual has been determined to be eligible for unemployment benefits.

(3) The department shall deduct and withhold from any unemployment benefits payable to an individual owing child support obligations:

(a) the amount specified by the individual to the department to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the department under section ~~454(20)(B)(i)~~ *454(19)(B)(i)* of the Social Security Act *(42 U.S.C. 654(19)(B)(i))* by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be ~~so~~ deducted and withheld from ~~such~~ unemployment benefits pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act *(42 U.S.C. 662(e))*, properly served upon the department.

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and paid by ~~such~~ *the* individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations."

**Section 178.** Section 39-71-431, MCA, is amended to read:

**"39-71-431. Assigned risk plan.** (1) ~~Following the date on which the provisions of 39-71-2311 through 39-71-2320 and 39-71-2337 are implemented but no later than December 31, 1990, the~~ *No later than December 31, 1990, the* commissioner of the department of labor and industry may ~~order the establishment of~~ *order the establishment of* and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods. In determining whether to ~~order~~ *establish* an assigned risk plan ~~to be established~~, the commissioner shall consider the effect a plan would have on the availability of workers' compensation insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the

HeinOnline -- 1997 vol. I 246 1997

insurer's authority to issue workers' compensation insurance policies in this state.

(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage."

**Section 179.** Section 39-71-501, MCA, is amended to read:

"**39-71-501. Definition of uninsured employer.** For the purposes of 39-71-501 through 39-71-511 and 39-71-515 through ~~39-71-519~~ *39-71-520*, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401."

**Section 180.** Section 39-71-517, MCA, is amended to read:

"**39-71-517. Requirement to serve papers.** In pursuing remedies under 39-71-501 through 39-71-511 and 39-71-515 through ~~39-71-519~~ *39-71-520*, an injured employee or ~~his~~ *the employee's* beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured employer, regardless of whether the department or the uninsured employer is a party to the particular action to which the papers relate."

**Section 181.** Section 39-71-519, MCA, is amended to read:

"**39-71-519. Settlement.** The department, the uninsured employer, the injured employee or ~~his~~ *the employee's* beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under 39-71-501 through 39-71-511 and 39-71-515 through ~~39-71-519~~ *39-71-520* of any or all of the parties. ~~Such a~~ *The* settlement is subject to department approval in accordance with 39-71-741."

**Section 182.** Section 39-71-703, MCA, is amended to read:

"**39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is established by objective medical findings; and

(ii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

HeinOnline -- 1997 vol. I 247 1997

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection ~~(4)~~ *(5)* by 350 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (3) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

**Section 183.** Section 40-5-161, MCA, is amended to read:

"**40-5-161. Duties of initiating tribunal.** (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) The department of public health and human services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 5 *6*. In all other cases, the district court is the initiating tribunal."

**Section 184.** Section 40-5-164, MCA, is amended to read:

"**40-5-164. Duties of support enforcement agency.** (1) A support enforcement agency of this state, upon application, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly send a copy of the notice by first-class mail to the petitioner;

(e) after receipt of a written communication from the respondent or the respondent's attorney, promptly send a copy of the communication by first-class mail to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

HeinOnline -- 1997 vol. I 249 1997

(4) For purposes of this part, the department of public health and human services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and 5 *6*. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency."

**Section 185.** Section 40-5-201, MCA, is amended to read:

**"40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Alleged father" means a porson who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a porson who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States~~;~~, any person under 19 years of age and still in high school~~;~~, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, *the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act* or under Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "~~hearing~~ *hearings* examiner" means the hearings officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

HeinOnline -- 1997 vol. I 250 1997

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order; or

(b) a support order for speusal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child; and

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedinge under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated under the act."

HeinOnline -- 1997 vol. I 251 1997

**Section 186.** Section 40-5-701, MCA, is amended to read:

**"40-5-701. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, *the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act* or under Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of public health and human services.

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, *the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act* or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege

to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future suppert.

(11) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the custodial parent.

(12) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(13) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

HeinOnline -- 1997 vol. I 253 1997

(d) an administrative agency of another state with a hearing function and process similar to those of the department."

**Seetion 187.** Section 40-5-821, MCA, is amended to read:

**"40-5-821. Penalty imposed by tribunal.** (1) In addition to any other penalty provided by this part or other law, a tribunal, after a hearing, may impose a civil penalty not to exceed $25 for each day that a parent, health benefit plan, employer, union, or other payor is found to have knowingly violated a medical support order or a provision of or a rule adopted under this part.

(2) ~~The civil penalty must be deposited as provided in 40-5-813.~~

~~(3)~~ Imposition of a civil penalty under this section may be appealed if the tribunal is a court or may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department."

**Section 188.** Section 41-1-402, MCA, is amended to read:

**"41-1-402. Validity of consent of minor for health services.** (1) The consent to the provision of medical or surgical care or services by a hospital or public clinic or to the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from ~~his~~ *the minor's* parent, parents, or legal guardian for whatever reason and is ~~supporting himself~~ *providing self-support* by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent ~~only~~ applies *only* to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, ~~and~~ *or* drug and substance abuse also obliges the health professional, if ~~he~~ *the health professional* accepts the responsibility for treatment, to counsel the minor ~~by himself~~ or ~~by referral~~ *to refer the minor* to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which ~~his~~ *the minor's* health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian ~~shall~~ *must* be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for ~~his~~ *the* child.

(3) A minor may give consent for health care for ~~his~~ *the minor's* spouse if ~~his~~ *the* spouse is unable to give consent by reason of physical or mental incapacity."

**Section 189.** Section 41-3-204, MCA, is amended to read:

HeinOnline -- 1997 vol. I 254 1997

"41-3-204. **Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) ~~Any~~ *A* person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section must be paid by the department.

(3) When ~~any~~ *a* person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, the person shall include in the report either a written description or photographs of the evidence.

(4) A physician, either in the course of providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after the report is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in 41-3-202~~(3)(b)~~*(5)(b)*."

**Section 190.** Section 41-4-102, MCA, is amended to read:

"41-4-102. **Financial responsibility.** Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children ~~shall~~ *must* be determined in accordance with the provisions of Article V ~~thereof~~ *of that compact* in the first instance. However, in the event of partial or complete default of performance ~~thereunder~~ *under the compact*, the provisions of Title 40, chapter 5, *part 1* ~~(Revised Uniform Reciprocal Enforcement of Support Act)~~ *(Uniform Interstate Family Support Act)*, 41-3-406, and 41-3-1122 also may be invoked."

**Section 191.** Section 41-5-103, MCA, is amended to read:

"41-5-103. **Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

HeinOnline -- 1997 vol. I 255 1997

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(5) "Court", when used without further qualification, means the youth court of the district court.

(6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(7) "Delinquent youth" means a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of probation.

(8) "Department" means the department of corrections provided for in 2-15-2301.

(9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case.

(10) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

(12) "Foster home" means a private residence licensed by the department for placement of a youth.

(13) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(14) *(a)* "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

*(b)* The term does not include a jail.

(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(16) "Judge", when used without further qualification, means the judge of the youth court.

(17) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

HeinOnline -- 1997 vol. I 256 1997

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(18) "Necessary parties" includes the youth, the youth's parents, guardian, custodian, or spouse.

(19) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(20) "Probable cause hearing" means the hearing provided for in 41-5-303.

(21) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-811.

(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(23) "Secure detention facility" means ~~any~~ *a* public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(24) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(25) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(26) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).

(27) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

(28) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City ~~and the Mountain View school in Helena~~.

HeinOnline -- 1997 vol. I 257 1997

(29) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardian.

(30) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(31) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

(32) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

(33) "Youth in need of care" has the meaning provided for in 41-3-102.

(34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) continues to exhibit behavior beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision."

**Section 192.** Section 41-5-1008, MCA, is amended to read:

"**41-5-1008. Rulemaking authority.** The board may adopt rules necessary to implement the provisions of 41-5-103~~(13)~~*(14)*, 41-5-812, and 41-5-1001 through 41-5-1008."

**Section 193.** Section 45-2-311, MCA, is amended to read:

"**45-2-311. Criminal responsibility of corporations.** (1) A corporation may be prosecuted for the commission of an offense *only* if~~, but only if~~:

(a) the offense is a misdemeanor, ~~and~~ is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, 82-1-201, or 82-10-104, or *is defined* by another statute ~~which~~ *that* clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct ~~which~~ *that* is an element of the offense while acting within the scope of ~~his~~ *the agent's* office or employment and in behalf

of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of ~~his~~ *that agent's* employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct ~~which~~ *that* is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity."

**Section 194.** Section 45-5-624, MCA, is amended to read:

"**45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance — interference with sentence or court order.** (1) A person under the age of 21 years commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. The person need not be consuming or in possession of the intoxicating substance at the time of arrest to violate this subsection. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) In addition to any disposition by the youth court under 41-5-523, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance shall:

(a) for the first offense, be fined an amount not to exceed $100 and:

(i) have the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) be ordered to perform community service if a community service program is available; and

(iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

HeinOnline -- 1997 vol. I 259 1997

(b) for a second offense, be fined an amount not to exceed $200 and:

(i) have the person's driver's license suspended for not less than 60 days and not more than 120 days;

(ii) be ordered to perform community service if a community service program is available; and

(iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(c) for a third or subsequent offense, be fined an amount not less than $300 or more than $500 and:

(i) have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;

(ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of ~~corrections~~ *public health and human services*, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance shall:

(a) for a first offense, be fined an amount not to exceed $50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, be fined an amount not to exceed $100 and:

(i) be ordered to perform community service if a community service program is available; and

(ii) have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, be fined an amount not to exceed $200 and:

(i) be ordered to perform community service if a community service program is available;

(ii) have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of ~~corrections~~ *public health and*

*human services*, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under ~~the age of~~ 21 *years of age* commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed $50 if the person was 18 years of age or older at the time the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for contingent termination of certain text.)"

**Section 195.** Section 45-8-317, MCA, is amended to read:

"**45-8-317. Exceptions.** *(1)* Section 45-8-316 ~~and, except for a person referred to in subsection (7), 45-8-328 do~~ *does* not apply to:

~~(1)~~*(a)* any peace officer of the state of Montana;

~~(2)~~*(b)* any officer of the United States government authorized to carry a concealed weapon;

~~(3)~~*(c)* a person in actual service as a national guardsman;

~~(4)~~*(d)* a person summoned to the aid of any of the persons named in subsections (1)*(a)* through ~~(3)~~ *(1)(c)*;

~~(5)~~*(e)* a civil officer or ~~his~~ *the officer's* deputy engaged in the discharge of official business;

~~(6)~~*(f)* a probation and parole officer authorized to carry a firearm under 46-23-1002;

~~(7)~~*(g)* a person issued a permit under 45-8-321;

~~(8)~~*(h)* an agent of the department of justice or a criminal investigator in a county attorney's office;

~~(9)~~*(i)* a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, hackpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; or

~~(10)~~*(j)* the carrying of arms on one's own premises or at one's home or place of business.

*(2) Except with regard to a person issued a permit under 45-8-321, the provisions of 45-8-328 do not apply to this section.*"

**Section 196.** Section 45-9-208, MCA, is amended to read:

"**45-9-208. Mandatory dangerous drug information course.** A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, he sentenced to complete a dangerous drug information course offered hy a chemical dependency facility approved hy the department of ~~corrections~~ *public health and human services* under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a certified chemical dependency counselor working with the person recommends treatment."

**Scction 197.** Section 45-10-108, MCA, is amended to read:

"**45-10-108. Mandatory dangerous drug information course.** A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved hy the department of ~~corrections~~ *public health and human services* under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a certified chemical dependency counselor working with the person recommends treatment."

**Section 198.** Section 46-6-211, MCA, is amended to read:

"**46-6-211. Issuance of arrest warrant or summons.** (1) Upon the filing of a charge, the court may issue a summons or an arrest warrant as provided in ~~46-11-110 and~~ 46-11-201. A summons may be issued to a corporation upon the filing of a charge against it. More than one warrant or summons may he issued on the same charge.

(2) A summons may be served personally or hy first-class mail."

**Section 199.** Section 46-14-101, MCA, is amended to read:

"**46-14-101. Mental disease or defect.** As used in ~~46-14-204, 46-14-312, 46-14-313, and~~ this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial behavior."

HeinOnline -- 1997 vol. I 262 1997

**Section 200.** Section 46-18-130, MCA, is amended to read:

**"46-18-130. (Temporary) Commission on sentencing.** (1) There is a commission on sentencing. The commission is allocated to the department of corrections for administrative purposes only, as provided in 2-15-121.

(2) The commission consists of:

(a) two members of the house of representatives, selected by the speaker of the house of representatives, no more than one of whom may be from the same political party;

(b) two members of the senate, selected by the president of the senate, no more than one of whom may be from the same political party;

(c) two district court judges selected by the chief justice of the Montana supreme court;

(d) the director of the department of corrections or the director's designee; and

(e) the following persons appointed by the governor:

(i) a county attorney;

(ii) a criminal defense attorney;

(iii) a probation and parole officer;

(iv) a county sheriff;

(v) a chief of police;

(vi) a member of the board of pardons *and parole*;

(vii) an employee of the department of justice; and

(viii) two members of the public, one of whom must be a victim of a crime for which a sentence of death or of imprisonment for more than 1 year was imposed.

(3) Appointments under subsection (2) must be made within 60 days after March 31, 1995.

(4) The commission shall select a presiding officer from its members.

(5) The commission shall meet at least quarterly. (Terminates May 31, 1997—sec. 5, Ch. 306, L. 1995.)"

**Section 201.** Section 46-18-801, MCA, is amended to read:

**"46-18-801. Effect of conviction — civil disabilities.** (1) Conviction of an offense does not deprive the offender of a civil or constitutional right, except as provided in the Montana constitution or as specifically enumerated by the sentencing judge as a necessary condition of the sentence directed toward the objectives of rehabilitation and the protection of society. If the sentencing judge incorporates by reference in the sentencing order rules of the department of corrections or the board of pardons *and parole* setting conditions of probation, parole, or supervised release with which the offender is required to comply, the

HeinOnline -- 1997 vol. I 263 1997

incorporation by reference constitutes a specific enumeration of the conditions for purposes of this section.

(2) Except as provided in the Montana constitution, if a person has been deprived of a civil or constitutional right by reason of conviction for an offense and the person's sentence has expired or the person has been pardoned, the person is restored to all civil rights and full citizenship, the same as if the conviction had not occurred."

**Section 202.** Section 46-20-701, MCA, is amended to read:

**"46-20-701. Elements of record court considers on review — errors noticed.** (1) Whenever the record on appeal ~~shall contain~~ *contains* any order, ruling, or proceeding of the trial court against the ~~respondent [convicted person]~~ *convicted person* affecting ~~his~~ *the convicted person's* substantial rights on the appeal of ~~said~~ *the* cause, together with any required objection of ~~such respondent~~ *the convicted person*, the supreme court on ~~such~~ *that* appeal shall consider ~~such~~ *the* orders, rulings, or proceedings and the objections thereto and shall reverse or affirm the cause on ~~said~~ *the* appeal according to the substantial rights of the respective parties, as shown upon the record. ~~No~~ *A* cause ~~shall~~ *may not* be reversed by reason of any error committed by the trial court against the ~~appellant [convicted person]~~ *convicted person* unless the record shows that the error was prejudicial.

(2) Any error, defect, irregularity, or variance ~~which~~ *that* does not affect substantial rights ~~shall~~ *must* be disregarded. ~~No~~ *A* claim alleging an error affecting jurisdictional or constitutional rights may *not* be noticed on appeal~~,~~ if the alleged error was not objected to as provided in 46-20-104, unless the ~~defendant [convicted person]~~ *convicted person* establishes that the error was prejudicial as to ~~his~~ *the convicted person's* guilt or punishment and that:

(a) the right asserted in the claim did not exist at the time of the trial and has been determined to be retroactive in its application;

(b) the prosecutor, the judge, or a law enforcement agency suppressed evidence from the ~~defendant [convicted person]~~ *convicted person* or ~~his~~ *the convicted person's* attorney that prevented the claim from being raised and disposed of; or

(c) material and controlling facts upon which the claim is predicated were not known to the ~~defendant [convicted person]~~ *convicted person* or ~~his~~ *the convicted person's* attorney and could not have been ascertained by the exercise of reasonable diligence."

**Section 203.** Section 46-24-212, MCA, is amended to read:

**"46-24-212. Information concerning confinement.** Upon request of a victim of a felony offense, the department of corrections or the board of pardons *and parole*, as applicable, shall:

(1) promptly inform the victim of the estimated dato of the prisoner's release from confinement in the Montana state prison, if reasonably ascertainable;

HeinOnline -- 1997 vol. I 264 1997

(2) promptly inform the victim of the time and place of a parole hearing concerning the prisoner and of the victim's right to suhmit a statement to the board of pardons *and parole* under 46-23-202;

(3) provide reasonable advance notice to tbe victim before release of the defendant on furlougb or to a work-release program, half-way bouse, or other community-based program or correctional facility; and

(4) promptly inform the victim of tbe occurrence of any of the following events concerning the prisoner:

(a) an escape from a correctional or mental health facility or community program;

(b) a recapture;

(c) a decision of the board of pardons *and parole*;

(d) a decision of the governor to commute the sentence or to grant executive clemency;

(e) a release from confinement and any conditions attached to the release; and

(f) the prisoner's death."

**Section 204.** Section 46-30-401, MCA, is amended to read:

"**46-30-401. Application for issuance of requisition.** (1) When the return to this state of a person chargod with a crime in tbis state is required, the prosecuting attorney shall present to the governor ~~his~~ *a* written application for a requisition for the return of the person charged. The application ~~shall~~ *must* state the name of the person charged, the crime charged against ~~him~~ *the person*, the approximate time, place, and circumstances of its commission, and the state in which ~~he~~ *the person* is believed to be, including the location of tbe accused ~~therein~~ *in that state* at the time the application is made. ~~It shall~~ *The application must* certify that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not being instituted te enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of ~~his~~ bail, probation, or parole, the prosecuting atterney of the county in wbich the offense was committed, the ~~parole~~ board *of pardons and parole*, or the warden of the institution or sheriff of the county from whicb the escape was made shall present to tbe governor a written application for a requisition for tbe return of the person. The application ~~shall~~ *must* state the name of the person, the crime of which ~~he~~ *the person* was convicted, the circumstances of ~~his~~ *the person's* escape from confinement or of the breach of the terms of ~~his~~ bail, probation, or parole, and the state in which ~~he~~ *the person* is believed to be, including the location of the person ~~therein~~ *in that state* at the time the application is made.

(3) The application ~~shall~~ *must* be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the:

HeinOnline -- 1997 vol. I 265 1997

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or

(e) sentence.

(4) The prosecuting officer, ~~parole~~ board *of pardons and parole*, warden, or sheriff may also attach ~~such~~ further affidavits and other documents in duplicate ~~as he considers~~ *that are considered* proper to he suhmitted with the application.

(5) One copy of tbe application, with the action of the governor indicated hy endorsement ~~thereon~~ *on the application*, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence ~~shall~~ *must* be filed in the office of tbe secretary of state to remain of record in that office. The other copies of all papers ~~shall~~ *must* be forwarded with the gevernor's requisition."

**Section 205.** Section 50-4-504, MCA, is amended to read:

**"50-4-504. Definitions.** As used in this part, the following definitions apply:

(1) "Data base" means tbe health care data base created pursuant to 50-4-502.

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Health care" includes both physical health care and mental health care.

(4) "Health care advisory council" means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403.

(5) "Health care facility" means all facilities and institutions, whether puhlic or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in *the definition of health care facility contained in* 50-5-101~~(19)~~. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(6) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(7) "Healtb insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."

**Section 206.** Section 50-4-605, MCA, is amended to read:

HeinOnline -- 1997 vol. I 266 1997

"50-4-605. **Definitions.** For tho purposes of this part, the following definitions apply:

(1) "Certificate of public advantage" or "certificate" means a written certificate issued by the department as evidence of the department's intention that the implementation of a cooperative agreement, when actively supervised by the department, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(2) "Cooporative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

(4) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatery care to two or more unrelated persons. The term includes all facilities and institutions included in *the definition of health care facility contained in* 50-5-101~~(19)~~. The term does not apply to a facility oporated by religious groups relying solely on spiritual means, through prayer, for healing."

**Section 207.** Section 50-5-101, MCA, is amended to read:

"50-5-101. **Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled hasis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home that offers light personal care or custodial care te four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner of the home.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a porson as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific porson is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Ligbt personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair

HeinOnline -- 1997 vol. I 267 1997

grooming, and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Ambulatory surgical facility" means a facility that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(6) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(7) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(10) "College of American pathologists" means the organization nationally recognized by that name, with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Department" means the department of public health and human services provided for in 2-15-2201.

(14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(15) "Federal acts" means federal statutes for the construction of health care facilities.

(16) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes ambulatory surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(18) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(19) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engeged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(21) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation,

HeinOnline -- 1997 vol. I 269 1997

and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff tbat is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

*(25) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.*

*(26) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.*

~~(25)~~*(27)* "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(25)~~*(28)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a tetal of two or more individuals or that provides personal care.

*(b)* The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.~~

~~(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.~~

~~(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with~~

~~developmental disabilities, as defined in 53-20-102(4), or for individuals with related problems.~~

~~(c) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.~~

~~(27)~~*(29)* "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions that is used to provide medical or other health services and that costs a substantial sum of money.

~~(28)~~*(30)* "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(28)~~*(31)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(30)~~*(32)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(31)~~*(33)* "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

~~(32)~~*(34)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(32)~~*(35)* "Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

~~(34)~~*(36)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(35)~~*(37)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

*(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.*

~~(30)~~*(39)* "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(37)~~*(40)* "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

HeinOnline -- 1997 vol. I 271 1997

~~(38)~~*(41)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(38)~~*(42)* "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(40)~~*(43)* "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(41)~~*(44)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(42)~~*(45)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(42)~~*(46)* "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

*(47) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.*

~~(44)~~*(48)* "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

**Section 208.** Section 50-5-228, MCA, is amended to read:

**"50-5-228. Limited licensing.** The department may grant a license that is provisional upon the correction of noncompliance with provisions of 50-5-225 through ~~50-5-230~~ *50-5-228* or rules adopted pursuant to 50-5-225 through ~~50-5-230~~ *50-5-228*. A provisional license may be granted only for a specific period of time and may not be renewed."

**Section 209.** Section 50-5-1104, MCA, is amended to read:

**"50-5-1104. Rights of long-term care facility residents.** (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. ~~1395x(j) and 1396d(c)~~ *1395i-3(a) and 1396r(a)*, as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

HeinOnline -- 1997 vol. I 272 1997

(a) A resident or ~~his~~ *the resident's* authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or ~~his~~ *the resident's* authorized representative is entitled, upon request, to receive and examine an explanation of ~~his~~ *the resident's* monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of the councils.

(d) A resident has the right to present a grievance on ~~his~~ *the resident's* own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During ~~his~~ *a resident's* stay in a long-term care facility, ~~a~~ *the* resident retains the prerogative to exercise decisionmaking rights in all aspects of ~~his~~ *the resident's* health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, chapter 3, part 8.

(i) Each resident has the right to privacy in ~~his~~ *the resident's* room or portion of the room. If a resident is seeking privacy in ~~his~~ *the resident's* room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for ~~his~~ personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in ~~his~~ *the resident's* room or in another part of the facility where ~~he~~ *the resident* must have reasonable access to the items.

HeinOnline -- 1997 vol. I 273 1997

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance."

**Section 210.** Section 50-31-103, MCA, is amended to read:

"**50-31-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with another substance) of imparting color ~~thereto~~ *to the human body*.

(b) The term does not include material that has been or is exempted under the federal act.

HeinOnline -- 1997 vol. I 274 1997

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant ~~thereto~~ *to the federal act*. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act *(7 U.S.C. 136, et seq.)* or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157), commonly known as the Virus-Serum-Toxin Act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act *(21 U.S.C. 353(b)(1) and 356)*;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and that contains not more than 10 parts per million total solids.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their compenents, parts, and accessories, intended:

HeinOnline -- 1997 vol. I 275 1997

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(b) to affect the structure or function of the body of humans or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of humans or other animals;

(d) articles intended for use as components of any article specified in subsection (18)(a), (18)(b), or (18)(c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for humans or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not gonerally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

HeinOnline -- 1997 vol. I 276 1997

(b) The term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. ~~71~~ *603*, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. "Immediate container" does not include package liners.

HeinOnline -- 1997 vol. I 277 1997

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means a list presented to the patron that states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the compositien of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but that has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.

(b) The term does not include:

(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(ii) shipping containers or outer wrappinga used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter portaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. ~~135 through 135k~~ *136, et seq.*), as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

HeinOnline -- 1997 vol. I 278 1997

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of the food in a package.

(39) "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the ~~pharmacopoeia~~ *Pharmacopoeia* of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(43) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

(44) "Water-bottling plant" means a facility in which bottled water is produced.

(45) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device using external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."

**Section 211.** Section 50-31-202, MCA, is amended to read:

**"50-31-202. When food adulterated.** A food ~~shall be deemed~~ *is considered* to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance ~~which~~ *that* may render it injurious to health~~; but in case~~. *If* the *poisonous or deleterious* substance is not an added substance, ~~such~~ *the* food ~~shall~~ *may* not be considered adulterated under this subsection if the quantity of ~~such~~ *the* substance in ~~such~~ *that* food does not ordinarily render it injurious to health~~;~~.

(2) it bears or contains any added poisonous or added deleterious substance, other than one ~~which~~ *that* is:

HeinOnline -- 1997 vol. I 279 1997

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

(c) a color additive~~, which~~ *that* is unsafe within the meaning of 50-31-109;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical ~~which~~ *that* is unsafe within the meaning of section 408(a) of the federal act *(21 U.S.C. 346a(a))*, as amended;

(4) it is or it bears or contains any food additive ~~which~~ *that* is unsafe within the meaning of section 409 of the federal act *(21 U.S.C. 348)* as amended~~; provided that where~~. *However, if* a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 408 of the federal act *(21 U.S.C. 346)* and ~~such~~ *the* raw agricultural commodity has been subjected to processing, such as canning, cooking, freezing, dehydrating, or milling, the residue of ~~such~~ *the* pesticide chemical remaining in or on ~~such~~ *the* processed food ~~shall~~ *may*, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be ~~deemed~~ *determined* unsafe if ~~such~~ *the* residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of ~~such~~ *the* residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity~~;~~.

(5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(6) it has been produced, prepared, packed, or held under unsanitary conditions ~~whereby~~ *under which* it may have become contaminated with filth or ~~whereby~~ *under which* it may have been rendered diseased, unwholesome, or injurious to health;

(7) it is the product of a diseased animal or an animal ~~which~~ *that* has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

(8) its container is composed in whole or in part of any poisonous or deleterious substance ~~which~~ *that* may render the contents injurious to health;

(9) any valuable constituent has been in whole or in part omitted or abstracted ~~therefrom~~ *from the food*;

(10) any substance has been substituted wholly or in part ~~therefor~~ *for the food*;

(11) damage or inferiority has been concealed in any manner;

(12) any substance has been added ~~thereto~~ *to the food* or mixed or packed ~~therewith~~ *with the food* so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of ~~.4%~~ *0.4%*, harmless natural wax not in excess of ~~.4%~~ *0.4%*, or harmless natural gum and pectin~~; provided that~~. *However,* this paragraph ~~shall~~ *does* not apply to any confectionery by reason of its containing

HeinOnline -- 1997 vol. I 280 1997

less than ~~.5%~~ *0.5%* by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances~~;~~.

(14) it is or bears or contains any color additive ~~which~~ *that* is unsafe within the meaning of the federal act."

**Section 212.** Section 50-31-203, MCA, is amended to read:

**"50-31-203. When food misbranded.** A food ~~shall be deemed~~ *is considered* to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately ~~thereafter~~ *after that word*, the name of the food imitated;

(4) its container is ~~so~~ made, formed, or filled ~~as to be~~ *in a manner that is* misleading;

(5) *it is* in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations ~~shall~~ *must* be permitted and exemptions as to small packages ~~shall~~ *must* be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed ~~thereon~~ *on the label or labeling* with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in ~~such~~ terms ~~as to~~ *that* render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to ~~such~~ *that* definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, ~~insofar~~ as may be required by ~~such~~ *the* regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in ~~such~~ *the* food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below ~~such~~ *that* standard, unless

HeinOnline -- 1997 vol. I 281 1997

its label bears, in ~~such~~ *a* manner and form ~~as such~~ *that the* regulations specify, a statement that it falls below ~~such~~ *that* standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in ~~such~~ *a* manner and form ~~as such~~ *that the* regulations specify, a statement that it falls below ~~such~~ *that* standard;

(9) it is not subject to the provisions of subsection (7) ~~of this section~~ unless it bears labeling clearly giving:

(a) the common or usual name of the food, if ~~any there be~~ *there is one*; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each ~~such~~ ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each~~; provided that to~~. *To* the extent that compliance with the requirements of *this* subsection (9)(b) is impractical or results in deception or unfair competition, exemptions ~~shall~~ *must* be established by regulations promulgated by the department~~; and provided further that the~~. *The* requirements of *this* subsection (9)(b) ~~shall~~ *do* not apply to food products ~~which~~ *that* are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department~~;~~.

(10) it purports to be or is represented for special dietary uses, unless its label bears ~~such~~ information concerning its vitamin, mineral, and other dietary properties ~~as~~ *that* the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for ~~such~~ *special dietary* uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact~~; provided that~~. *To* the extent that compliance with the requirements of this subsection is impracticable, exemptions ~~shall~~ *must* be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as ~~defined~~ *described* in 81-22-101 ~~shall be~~ *are* exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with ~~such~~ packaging and labeling requirements applicable to ~~such~~ *that* color additive prescribed under the provisions of the federal act;

(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in 50-31-222."

**Section 213.** Section 50-31-301, MCA, is amended to read:

HeinOnline -- 1997 vol. I 282 1997

**"50-31-301. Definitions.** As used in this part, the following definitions apply:

(1) "Antibiotic drug" means any drug intended for use hy ~~man~~ *humans* containing any quantity of any chemical substance ~~which~~ *that* is produced by a microorganism and ~~which~~ *that* has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of ~~any~~ such *a* substance).

(2) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, marks or monograms unique to the manufacturer or distributor of the drug, or both.

(3) "Distributor" means a person who distributes for resale a drug in solid dosage form under ~~his~~ *the person's* own label whether or not ~~he~~ *the person* is the manufacturer of the drug.

(4) "Established name", with respect to a drug or ingredient ~~thereof~~ *of the drug*, means:

(a) the applicable official name designated pursuant to section 508 of the federal act *(21 U.S.C. 358)*;

(b) if there is no ~~such~~ *official* name and ~~such~~ *the* drug or ~~such~~ *the* ingredient is an article recognized in an official compendium, then the official title ~~thereof~~ *of the drug or ingredient* in ~~such~~ *the* compendium~~; or provided that where~~. *If* this subsection ~~(b)~~ *(4)(b)* applies to an article recognized in the United States Pharmacopoeia, the official title used in the United States Pharmacopoeia ~~shall apply;~~ *applies.*

(c) if neither subsection (4)(a) nor (4)(b) applies, then the common or usual name, if any, of ~~such~~ *the* drug or of ~~such~~ *the* ingredient.

(5) "Legend drug" means any drug defined by section 503(b) of the federal ~~Food, Drug and Cosmetic Act~~ *act (21 U.S.C. 353(b))*, as amended on January 15, 1980, under which its label is required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

(6) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

(7) "Solid dosage form" means capsules or tablets intended for oral use."

**Section 214.** Section 50-31-306, MCA, is amended to read:

**"50-31-306. When drug or device misbranded.** (1) A drug or device ~~shall be deemed~~ *is considered* to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

HeinOnline -- 1997 vol. I 283 1997

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation ~~shall~~ *may* be permitted and exemptions as to small packages ~~shall~~ *may* be allowed in accordance with regulations prescribed by the department or issued under tbe federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed ~~thereon~~ *on the label or labeling* with ~~such~~ conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in ~~such~~ terms ~~as to~~ *that* render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by ~~man~~ *humans* and contains any quantity of tbe narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, sulfonmethane, or any chemical derivative of ~~such~~ *the* substance ~~which~~ *that*, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of tbe federal act *(21 U.S.C. 352(d))*, unless its label bears the name and quantity or proportion of ~~such~~ *the* substance or derivative ~~and~~ in juxtaposition ~~therewith~~ *to* the statement "Warning—May be babit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systeinatic chemical name or the cbemical formula):

(i) the established name (as defined in 50-31-301) of the drug, if ~~such there be~~ *there is one*; and

(ii) in case ~~it~~ *the drug* is fabricated from two or more ingredients, the established naine and quantity of each active ingredient, including tbe kind and quantity or proportion of any alcohol and also including, whether active or not, tbe established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyo..cine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained ~~therein; provided that~~ *in the drug. However,* the requirement for stating the quantity of the active ingredients, other than tbe quantity of those specifically named in this subsection (1)(e)(ii), ~~shall apply~~ *applies* only to prescription drugs~~; provided further that~~, *and* to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions ~~shall~~ *may* be allowed under regulations proinulgated by the department or under the federal act~~;~~.

(f) unless its labeling bears:

(i) adequate directions for use; ~~provided that, where~~ *however, if* any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, tbe departinent shall promulgate regulations exempting ~~such~~ *the* drug or device from ~~such~~ *the* requirements~~; provided further that~~, *and* articles exeinpted under regulations

issued under section 502(f) of the federal act *(21 U.S.C. 352(f))* may also be exempt; and

(ii) ~~such~~ adequate warnings against use in those pathological conditions or by children ~~where~~ *when* its use may be dangerous to health~~,~~ or *adequate warnings* against unsafe dosage or methods or duration of administration or application, in ~~such~~ *a* manner and form ~~as~~ *that* are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed ~~therein, provided that the~~ *in the compendium. The* method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection *(1)(g)* and those of subsection ~~(e)~~ *(1)(e)* as to the name by which the drug or its ingredients ~~shall~~ *must* be designated, the requirements of subsection ~~(e) shall~~ *(1)(e)* prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in ~~such~~ *a* form and manner and its label bears a statement of ~~such~~ precautions ~~as~~ *that* the regulations issued by the department or under the federal act require as necessary for the protection of public health. ~~No such regulation shall~~ *A regulation may not* be established for any drug recognized in an official compendium until the department ~~shall have~~ *has* informed the appropriate body charged with the revision of ~~such~~ *the* compendium of the need for ~~such~~ *the* packaging or labeling requirements and ~~such~~ *the* body ~~shall have~~ *has* failed within a reasonable time to prescribe ~~such~~ *the* requirements.

(i) if it is a drug and its container is ~~so~~ made, formed, or filled ~~as to be~~ *in a way that is* misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling ~~thereof~~;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act *(21 U.S.C. 356)*; and

(ii) ~~such~~ *the* certificate or release is in effect with respect to ~~such~~ *the* drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act *(21 U.S.C. 357)*; and

(ii) ~~such~~ *the* certificate or release is in effect with respect to ~~such~~ *the* drug~~; provided that subsection~~. *This subsection* (1)(n) ~~shall~~ *does* not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act~~;~~ *(21 U.S.C. 357(c) or (d)).*

HeinOnline -- 1997 vol. I 285 1997

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with ~~such~~ *the* packaging and labeling requirements applicable to ~~such~~ *the* color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor ~~thereof~~ *of the drug* includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301;

(ii) the formula showing quantitatively each ingredient of ~~such~~ *the* drug to the extent required for labels under section 502(e) of the federal act *(21 U.S.C. 352(e))*; and

(iii) ~~such~~ other information in brief summary relating to side effects, contraindications, and effectiveness ~~as shall be~~ *that is* required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed ~~thereon~~ *on the drug* or upon its container with intent to defraud.

(2) A drug ~~which~~ *that* is subject to 50-31-307 ~~shall be deemed~~ *is considered* to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply ~~shall be deemed~~ *is considered* to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence."

**Section 215.** Section 50-31-307, MCA, is amended to read:

**"50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by humans that is included in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling a written or oral prescription if the refilling is authorized by the practitioner, either in the original prescription or by an oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

HeinOnline -- 1997 vol. I 286 1997

(c) is limited by an approved application under section 505 of the federal act *(21 U.S.C. 355)* or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or hy a registered nurse employed by a family planning clinic under contract with the department of public health and human services pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug heing misbranded while held for sale."

**Seetion 216.** Section 50-31-311, MCA, is amended to read:

**"50-31-311. New drug application required.** (1) Except as provided in Title 50, chapter 42, ~~no~~ *a* person may *not* sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(a) an application with respect ~~thereto~~ *to the drug* has been approved and ~~said~~ *the* approval has not been withdrawn under section 505 of the federal act *(21 U.S.C. 355)*; or

(b) when not subject to the federal act, ~~such~~ *the* drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling ~~thereof~~ *of the drug* and, prior to selling or offering for sale ~~such~~ *the* drug, there has heen filed with the department an application setting forth:

(i) full reperts of investigations ~~which~~ *that* have heen made to show wbether or not ~~such~~ *the* drug is safe for use and whether ~~such~~ *the* drug is effective in use;

(ii) a full list of the articles used as components of ~~such~~ *the* drug;

(iii) a full statement of the composition of ~~such~~ *the* drug;

(iv) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of ~~such~~ *the* drug;

(v) ~~such~~ samples of ~~such~~ *the* drug and of the articles used as components ~~thereof as~~ *of the drug that* the department may require; and

(vi) specimens of the laheling proposed to be used for ~~such~~ *the* drug.

(2) An application provided for in subsection (1)(b) ~~shall become~~ *becomes* effective on the 180th day after the filing ~~thereof, except that, if~~ *of the application. However, if* the department fmds, after due notice to the applicant and giving ~~him~~ *the applicant* an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling ~~thereof~~ *of the drug*, ~~it~~ *the department* shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) An order refusing to perinit an application under this section to become effective may be revoked by the department."

HeinOnline -- 1997 vol. I 287 1997

**Section 217.** Section 50-31-312, MCA, is amended to read:

**"50-31-312. Exemptions from new drug application requirement.** (1) Section 50-31-311 ~~shall~~ *does* not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act *(21 U.S.C. 355(i) or 357(d))*;

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug ~~which~~ *that* is *manufactured by an establishment* licensed under ~~the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, chapter 6A, sec. 262)~~ *42 U.S.C. 262*; or

(d) any drug ~~which~~ *that* is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103(30) ~~shall~~ *do* not apply to any drug, when ~~such~~ *the* drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to ~~such~~ *the* drug, ~~which~~ *that* on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103(30) as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act *(21 U.S.C. 355)."*

**Section 218.** Section 50-53-201, MCA, is amended to read:

**"50-53-201. License required — exemption — validation.** (1) Except as provided in subsection (3), a person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

(2) A separate license is required for each public swimming pool or public bathing place unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required for all public swimming pools on the premises.

(3) The state or a political subdivision of the state owning or operating a public swimming pool or public bathing place is not required to obtain a license under subsection (1) but ~~must~~ *is required to* comply with the health and safety requirements in ~~50-53-101 through 50-53-109 and~~ *part 1*, this part, and ~~the rules of the~~ department *rules*.

(4) A license issued by the department is not valid unless signed in accordance with 50-53-206 or in accordance with 50-53-207, in the case of an appeal."

**Section 219.** Section 50-53-202, MCA, is amended to read:

HeinOnline -- 1997 vol. I 288 1997

"**50-53-202. Application for and right to license.** (1) An application for both an original and renewal license to operate a public swimming pool or public bathing place must be made to the department, must contain the information required by the department, and must be accompanied by the fee provided for in 50-53-203.

(2) A license must be issued to an applicant who has satisfied the requirements for a license provided in ~~50-53-101 through 50-53-109~~ *part 1*, this part, and department rules.

(3) Upon issuing a license, the department shall forward the license to the appropriate local health officer for validation as provided in 50-53-206."

**Section 220.** Section 50-53-203, MCA, is amended to read:

"**50-53-203. License fee and late fee — disposition.** (1) (a) Except as provided in subsection (1)(b), each application for an original or renewal license must be accompanied by a license fee of $75.

(b) The fee for an original or renewal license for a public swimming pool or public bathing place operated in conjunction with a campground, trailer court, work camp, youth camp, hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home is $50.

(2) An operator of a public swimming pool or public bathing place who fails to renew a license by the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing place in the license year for which a renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of $25 in addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for any operation without a license.

(3) The department shall deposit 85% of the fees collected under subsection (1) in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money deposited in the local board inspection fund account is subject to appropriation by the legislature for the purposes of 50-53-218.

(4) The department shall deposit 15% of the fees collected under subsection (1) and all the fees collected under subsection (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of ~~50-53-101 through 50-53-109~~ *part 1* and this part."

**Section 221.** Section 50-53-204, MCA, is amended to read:

"**50-53-204. License expiration — nontransferability.** (1) A license issued under ~~50-53-101 through 50-53-109~~ *part 1* and this part expires on December 31 of the year of issuance unless it is suspended or canceled by the department before that date.

(2) A license issued under ~~50-53-101 through 50-53-109~~ *part 1* and this part is not transferable."

**Section 222.** Section 50-53-206, MCA, is amended to read:

HeinOnline -- 1997 vol. I 289 1997

**"50-53-206. Validation of license required — validation by local officer.** (1) A license issued by the department under ~~50-53-101 through 50-53-109~~ *part 1* and this part is not valid until it is signed by the local health officer of the jurisdiction in which the public swimming pool or public bathing place is located.

(2) The local health officer shall, within 15 days of receipt of the license, validate or refuse to validate the license. Failure of the officer to validate a license is a refusal for the purposes of 50-53-207."

**Section 223.** Section 50-53-207, MCA, is amended to read:

**"50-53-207. Refusal of health officer to validate — appeal to board.** (1) A local health officer may refuse to validate a license issued by the department under ~~50-53-101 through 50-53-109~~ *part 1* and this part only if the officer determines that the license applicant has not met the requirements for the issuance of a license under ~~50-53-101 through 50-53-109~~ *part 1*, this part, and ~~the rules of the~~ department *rules*. If the local health officer refuses to validate a license, the officer shall notify the license applicant and the department of the refusal within 5 days of ~~his~~ *the officer's* decision. The notice must state the grounds for the refusal.

(2) The license applicant may appeal the decision of the local health officer to the local board of health by filing a written notice of appeal with the officer and the board within 30 days of the officer's refusal or within 30 days of the expiration of the period for the officer's decision under 50-53-206, whichever is first.

(3) Upon filing the notice of appeal, the license applicant is entitled to a hearing before the board to determine the applicant's eligibility for a license under ~~50-53-101 through 50-53-109~~ *part 1*, this part, and ~~the rules of the~~ department *rules*. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the board finds that the applicant is entitled to a validated license, the ~~chairman~~ *presiding officer* of the board shall validate the license by signing the license."

**Section 224.** Section 50-53-211, MCA, is amended to read:

**"50-53-211. Denial, suspension, or cancellation of license — multiple pool facility.** (1) The department may deny, suspend, or cancel a license if it finds that the license applicant or licensee has violated ~~50-53-101 through 50-53-109~~ *part 1*, this part, or ~~the rules of the~~ department *rules* and has failed or refused to remedy or correct the violation in accordance with the procedure provided in 50-53-213.

(2) If the license of an operator who operates more than one public swimming pool under one license is denied, suspended, or canceled, the use of all of the public swimming pools on the premises must cease unless the department determines that the violation for which the license was denied, suspended, or canceled does not affect the operation or the use of all of the public swimming pools on the premises."

**Section 225.** Section 50-53-212, MCA, is amended to read:

HeinOnline -- 1997 vol. I 290 1997

"**50-53-212. Administrative enforcement — notice — department hearing.** (1) A license may not be denied, suspended, or canceled or corrective action may not be ordered by the department unless the department delivers to the license applicant or licensee a written notice of violation that contains a written statement of the facts constituting the violation and a citation to the statute or rule of the department alleged to have been violated. ~~No further~~ *Further* administrative enforcement action may *not* be taken by the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or licensee complies with the provisions of 50-53-213.

(2) The department may combine with any notice issued under subsection (1) an order for the suspension or cancellation of a license or for corrective action as the department finds necessary to remedy the violation evidenced in the notice. The order becomes final 10 days after service unless within that time the license applicant or licensee requests a hearing pursuant to subsection (4) or submits a corrective action plan in accordance with 50-53-213.

(3) The department may combine with any notice or order issued under subsection (1) or (2) an order for the license applicant or licensee to appear before the department within a time specified by the department and show cause why the department should not deny, suspend, or cancel the license or otherwise order compliance with ~~50-53-101 through 50-53-109~~ *part 1*, this part, and the rules of the department.

(4) A hearing request by a license applicant or licensee must be made in writing to the department and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to this section must be held in accordance with the contested case procedure of the Montana Administrative Procedure Act. Following a hearing, the department may issue an appropriate order. Service of notice or an order mailed by the department is complete upon mailing."

**Section 226.** Section 50-53-216, MCA, is amended to read:

"**50-53-216. Civil penalties — other enforcement not barred.** (1) A person who violates a provision of ~~50-53-101 through 50-53-109 and~~ *part 1*, this part, ~~the rules of the~~ department *rules* implementing those sections, an order of the department, or any condition of a license issued by the department is subject to a civil penalty not to exceed $500 for each violation.

(2) An action for collection of a civil penalty under this section does not bar administrative enforcement under 50-53-212, an action for injunctive relief under 50-53-104, or enforcement under 50-53-109."

**Section 227.** Section 50-53-217, MCA, is amended to read:

"**50-53-217. Recovery of costs by department or local jurisdiction.** In a civil or criminal action brought by the department or a local jurisdiction to enforce the requirements of ~~50-53-101 through 50-53-109~~ *part 1* and this part, the rules of the department, or any condition of a license or to assess civil penalties and in an action brought by the department to enforce an order of the department, the court may, in the case of an intentional violation of ~~50-53-101 through 50-53-109~~ *part 1* and this part, assess the operator of the public swimming pool

HeinOnline -- 1997 vol. I 291 1997

or public bathing ~~facility~~ *place* for the costs of any investigation and the costs of the civil or criminal action, including reasonable attorney fees."

**Section 228.** Section 50-53-218, MCA, is amended to read:

**"50-53-218. Department to pay board for inspections or enforcement, or both.** (1) By June 30 of each year, the department shall pay to a local board of health established under 50-2-104, 50-2-106, or 50-2-107 an amount from the local board inspection fund account, created by 50-2-108, for the purpose of inspecting public swimming pools and public bathing places licensed under ~~50-53-101 through 50-53-109~~ *part 1* and this part or for taking appropriate enforcement action with respect to the public swimming pools and public bathing places, or for both inspection and enforcement. The payment required by this section must be made to a board only if the board and any local health officer and sanitarian for the jurisdiction of the board meet the program performance standards established by department rules.

(2) Money received by the board pursuant to subsection (1) may be used only for the purpose of inspections and enforcement under ~~50-53-101 through 50-53-109~~ *part 1* and this part and must be used to supplement and not supplant other money received by the board for the same purpose.

(3) The department may use money in the local board inspection fund account appropriated to the department for the enforcement of ~~50-53-101 through 50-53-109~~ *part 1*, this part, and the rules of the department and for inspections to determine compliance with those sections and rules in any local jurisdiction not receiving payment under subsection (1)."

**Section 229.** Section 50-60-101, MCA, is amended to read:

**"50-60-101. Definitions.** As used in parts 1 through 4 and ~~part~~ 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The ~~word "building" shall~~ *term must* be construed as though followed by the words "or part or parts thereof".

(2) *(a)* "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

*(b)* The term does not include zoning ordinances.

(3) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

HeinOnline -- 1997 vol. I 292 1997

(5) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) *(a)* "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

*(b)* ~~"Factory-built building"~~ *The term* does not include manufactured housing constructed after June 15, 1976, under the ~~HUD,~~ National Mobile Home Construction and Safety *Standards* Act of 1974 *(42 U.S.C. 5401, et seq.).*

(7) "Local building department" means the agency or agencies of ~~any~~ *a* municipality charged with the administration, supervision, or enforcement of building regulations, *the* approval of plans, *the* inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(8) "Local legislative body" means the council or commission charged with governing the municipality.

~~(9) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (10) of this section.~~

~~(10)~~*(9)* (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the department may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;

(ii) all of any platted subdivision ~~which~~ *that* is partially within 4 1/2 miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, ~~which~~ *that* is partially within 4 1/2 miles of the corporate limits of a municipality.

(c) Distances ~~shall~~ *must* be measured in a straight line in a horizontal plane.

*(10) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (9).*

(11) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(12) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use~~, which~~ *that* either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

HeinOnline -- 1997 vol. I 293 1997

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

(13) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(14) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

**Section 230.** Section 52-2-523, MCA, is amended to read:

"**52-2-523. Federal participation.** Consistent with federal law, the department of public health and human services, in connection with the administration of services provided and compacts entered into under authority of 52-2-521 through 52-2-528, shall apply for and administer all federal aid for adoption assistance and medical assistance costs in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), Titles ~~IV-(e)~~ *IV-E* and XIX of the Social Security Act, or any other applicable federal laws."

**Section 231.** Section 52-5-101, MCA, is amended to read:

"**52-5-101. Establishment of state youth correctional facilities — prohibitions.** (1) The department of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate youth in need of these services. The youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited to the state youth correctional ~~facilities~~ *facility* at ~~the Mountain View school in Helena and~~ the Pine Hills school in Miles City.

(2) A youth alleged or found to be a youth in need of supervision may not be placed in a state youth correctional facility as defined in 41-5-103."

**Section 232.** Section 52-5-108, MCA, is amended to read:

"**52-5-108. Medical examination before admission — records required to accompany child committed.** (1) Before a child is admitted for any purpose or for any length of time to ~~the Mountain View school,~~ the Pine Hills school~~,~~ or ~~other~~ *another* facility under an order of commitment to the department of corrections, the child must be examined by a licensed physician. A child committed to ~~one of the schools~~ *the Pine Hills school* or the department must be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must be a current, complete physical examination of the child."

**Section 233.** Section 52-5-109, MCA, is amended to read:

HeinOnline -- 1997 vol. I 294 1997

**"52-5-109. Commitment expenses — arrangement for transportation.** The expenses of committing a child to ~~the Mountain View school,~~ the Pine Hills school~~,~~ or the department of corrections and transporting the child to ~~the Mountain View school,~~ the Pine Hills school~~,~~ or the place designated by the department for it to receive custody, ~~and~~ *as well as* the expense of returning the child to the county of residence, must be borne by the county of residence. The district judge shall arrange for transportation of the child to the place where the department has directed that it will receive custody of the child."

**Section 234.** Section 52-5-112, MCA, is amended to read:

**"52-5-112. University aid to residents of schools.** The department of corrections may, on the recommendation of the suporintendent, authorize a resident of ~~the Mountain View school or Pine Hills school~~ *a state youth correctional facility* who has completed high school and who is otherwise eligible to receive up to $800 per year toward the resident's expenses incurred in attending a unit of the Montana university system. The money may be used for transportation, clothing, books, board, and room and must be paid in the same manner as other expenses of the school. The board of regents of higher education may waive fees and tuition for these residents pursuant to 20-25-421. No more than eight residents of each ~~school~~ *state youth correctional facility* may receive these benefits each year. The department shall notify the board of regents before Augnst 1 of each year of the residents that it has designated to receive the benefits for the next school year."

**Section 235.** Section 52-5-113, MCA, is amended to read:

**"52-5-113. Apprehension and return of youth leaving youth correctional facility without permission.** A youth who has left a youth correctional facility of the department of corrections without permission may be apprehended and returned by any citizen. The term "youth correctional facility of the department" means any facility under the supervision and control of the department of corrections that has as its primary function the care, training, custody, and control of youth and specifically includes the Pine Hills school ~~for boys and the Mountain View school for girls~~."

**Section 236.** Section 53-1-104, MCA, is amended to read:

**"53-1-104. Release of arsonist — notification of department of justice.** (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever the person is admitted or released by it:

(a) Montana state hospital;

(b) *Montana* state prison;

(c) ~~Mountain View school~~ *women's correctional system*;

(d) Pine Hills school; or

(e) any county or city detention facility.

(2) The notification must disclose:

HeinOnline -- 1997 vol. I 295 1997

(a) the name of the person;

(h) where the person is or will he located; and

(c) the type of fire the person was involved in."

**Section 237.** Section 53-1-202, MCA, is amended to read:

**"53-1-202.** (Temporary) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following institutional compenents to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(a) the Montana state prison;

(b) the Montana women's correctional system; and

(c) appropriate community-hased programs for the placement, supervision, and rehahilitation of adult felons who meet the criteria developed hy the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs.

(3) Youth correctional services consist of the following institutional components to diagnose, care for, train, educate, and rehabilitate youth pursuant to Title 52, chapter 5:

~~(a) Mountain View school;~~

~~(b)~~*(a)* Pine Hills school; and

~~(c)~~*(b)* any other institution that provides care and services for delinquent youth.

(4) A state institution may not he moved, discontinued, or ahandoned without the consent of the legislature.

**53-1-202.** (Effective on occurrence of contingency) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following institutional components to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(a) the Montana state prison;

(b) the Montana women's correctional system;

(c) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(d) the forensic unit at Warm Springs.

(3) Youth correctional services consist of the following institutional components to diagnose, care for, train, educate, and rehabilitate youth pursuant to Title 52, chapter 5:

~~(a) Mountain View school;~~

~~(b)~~*(a)* Pine Hills school; and

~~(c)~~*(b)* any other institution that provides care and services for delinquent youth.

(4) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature."

**Section 238.** Section 53-6-110, MCA, is amended to read:

**"53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information required in 17-7-111, the department of public health and human services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan ~~prepared pursuant to 42 U.S.C. 300m-2(a)(2)~~.

(2) As an integral part of the report, the department of public health and human services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

HeinOnline -- 1997 vol. I 297 1997

(3) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(4) Whenever the department of public health and human services establishes an estimato of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting."

**Section 239.** Section 53-6-708, MCA, is amended to read:

"**53-6-708. Waiver.** The department may seek and obtain any necessary authorization provided under federal law to implement the program, including the waiver of any federal statutes or regulations. The department may not expand eligibility requirements unless authorized by the legislature. The department may seek a waiver of the federal requirement that the combined membership of medicare and medicaid enrollees in a managed health care entity may not exceed 75% of the managed health care entity's total enrollment. The department may not seek a waiver of the inpatient hospital reimbursement methodology in 42 U.S.C. ~~1396(a)(13)~~ *1396a(a)(13)* even if the federal agency responsible for administering Title XIX determines that 42 U.S.C. ~~1396(a)(13)~~ *1396a(a)(13)* applies to managed health care systems."

**Section 240.** Section 53-7-101, MCA, is amended to read:

"**53-7-101. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(3) "Maintenance" means money payments made in accordance with 53-7-108.

(4) "Occupational license" means a license, permit, or other written authority required by any gevernmental unit to engage in an occupation.

(5) "Person with an employment handicap" means the same as "individual with ~~handicaps~~ *a disability*" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(8)(A), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.

(6) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce the employment handicap of a person within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory medical

HeinOnline -- 1997 vol. I 298 1997

conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(7) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(8) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with employment handicaps. The barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(9) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with an employment handicap to become independent and productive or employable.

(10) "Rehabilitation training" means training provided to a person with an employment handicap to rehabilitate the person's employment handicap. The term includes but is not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(11) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with an employment handicap to enable the person ~~insofar as~~ *to the extent* possible to become independent and productive or employable.

(12) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person."

**Section 241.** Section 53-7-301, MCA, is amended to read:

**"53-7-301. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Blindness" means a visual disability in which:

(i) a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses; or

(ii) a person's visual field at the widest diameter subtends an angle no greater than 20 degrees.

(b) The term includes any visual disability that, in the determination of the department, renders vision seriously defective or causes blindness.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

HeinOnline -- 1997 vol. I 299 1997

(3) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(4) "Low vision" means a visual impairment that, even with correction, remains so severe as to make performance of daily tasks difficult.

(5) "Maintenance" means money payments made in accordance with 53-7-310.

(6) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

(7) "Person with an employment handicap" means the same as "individual with ~~handicaps~~ *a disability*" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(8)(A), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.

(8) (a) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce an employment handicap caused by blindness or low vision within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances.

(b) The term does not include curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(9) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(10) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with blindness or low vision. The barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(11) "Rehabilitation plan" means a plan, developod with the participation of the recipient, for providing services to assist a person with blindness or low vision to become independent and productive or employable.

(12) "Rehabilitation training" means training provided to a person with blindness or low vision to rehabilitate the person's employment handicap, including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(13) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with blindness or low vision to enable the person ~~insofar as~~ *to the extent* possible to become independent and productive or employable.

(14) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational

placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person."

**Section 242.** Section 53-19-102, MCA, is amended to read:

**"53-19-102. Definitions.** As used in this part, the following definitions apply:

(1) "Community home for persons with severe disabilities" means a facility licensed by the department, as provided for in 52-4-201 through 52-4-205.

(2) "Department" means the department of public health and human services established in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973, 29 U.S.C. 796, et seq., as may be amended.

(4) "Live and function independently" means to have control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(5) "Person with severe disabilities" means the same as "individual with *a* severe ~~handicaps~~ *disability*" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(15)(B), as may be amended. The term includes an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of the physical or mental disability that the services provided under this part are required in order for the individual to achieve a greater level of independence in functioning in family or community or in engaging in or continuing in employment."

**Section 243.** Section 60-2-208, MCA, is amended to read:

**"60-2-208. Seeding along highways.** (1) After a federal-aid or state highway is constructed, the department shall seed borrow pits, slopes, and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed ~~shall~~ *must* be certified.

(2) The department shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices, and grass species from the Montana extension service, the experiment station, and the ~~soil~~ *natural resources* conservation service.

(3) After a right-of-way in open range has been fenced pursuant to 60-7-103, the department may seed the land within the fence ~~to~~ *with* a grass ~~which~~ *that* may be cropped for hay and may lease ~~such lands~~ *the land* or sell the right to take ~~such~~ *the* hay to qualified persons."

**Section 244.** Section 60-11-121, MCA, is amended to read:

HeinOnline -- 1997 vol. I 301 1997

"**60-11-121. Legislative findings.** (1) The legislature finds that it is in the interests of the state of Montana to preserve and encourage, whenever possible, Montana's railroad transportation infrastructure, especially:

(a) those railroads classified as Class III carriers under 49 CFR, chapter ~~10~~ *X*, that operate mainly within the state; and

(b) those railroads within the state that are eligible for rail freight assistance programs under 49 U.S.C. 1654.

(2) The legislature further finds that:

(a) the railroad transportation infrastructure of the state is enhanced by the development and improvement of intermodal transportation facilities by port authorities created under Title 7, chapter 14, part 11; and

(b) abandonment of railroad branch lines and the increased demands for shipping have a negative impact on the highways of the state.

(3) The legislature further finds that the preservation of those railroads described in subsection (1)(b) and the development and improvement of intermodal transportation facilities are necessary to enhance access to markets, to mitigate rural isolation and long-term negative impacts on the highways of the state, and to promote the efficiency and effectiveness of the state's transportation system.

(4) The legislature declares that loans and grants made available under 60-11-120 to railroads and to port authorities are in the interest of the state."

**Section 245.** Section 61-2-108, MCA, is amended to read:

"**61-2-108. Funding allocation for programs to prevent or reduce drinking and driving.** If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in 61-2-106, the department shall transmit the county portion of the proceeds of the license reinstatement fees collected in that county to the county treasurer, as provided in 61-2-107(2)~~(a)~~, at the end of each quarter."

**Section 246.** Section 61-3-446, MCA, is amended to read:

"**61-3-446. Retention of special license plates.** If during a registration year the holder of special license plates issued under 61-3-332(10)(b) through ~~(10)(f)~~*(10)(g)* disposes of the vehicle to which the plates are affixed, ~~he~~ *the holder* shall retain the plates and may affix them to another vehicle."

**Section 247.** Section 61-3-463, MCA, is amended to read:

"**61-3-463. Collegiate license plates.** (1) Subject to the provisions of 61-3-332(3) and the requirement that collegiate license plates must have a white reflectorized background, the department shall design, cause to be manufactured, and issue collegiate license plates as provided in 61-3-464 through 61-3-466.

(2) After consultation with each institution, the department shall prescribe the color and insignia to be displayed on the collegiate license plates for each institution.

HeinOnline -- 1997 vol. I 302 1997

(3) In addition to each institution's distinctive color and insignia provided in subsection ~~(1)~~ *(2)*, each collegiate license plate must:

(a) he imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A through Z, or a combination of numerals and letters; and

(b) bear a nonremovable sticker denoting the correct county designation under 61-3-332.

(4) The department shall determine the minimum and maximum number of characters, including both numerals and letters, on the collegiate license plates.

(5) ~~No~~ *An* issue of collegiate license plates may *not* be ordered ~~and~~ *or* manufactured for any individual institution unless at least 400 sets of plates are ordered and prepaid."

**Section 248.** Section 61-3-502, MCA, is amended to read:

**"61-3-502. Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when the purchaser applies for an original Montana license through the county treasurer. For purposes of this section, "new motor vehicle" means a new motor vehicle for which original registration is sought or a motor vehicle previously furnished without charge by a dealer to a school district for use in a state-approved traffic education program, whether or not titled by the dealer or the school district, and for which original registration is sought.

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 1/8% of the list price during the second quarter of the year;

(c) 3/4 of 1% during the third quarter of the year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) The proceeds from this tax must be remitted to the state treasurer every 30 days for credit to the highway nonrestricted account of the state special revenue fund. The county treasurer shall retain 5% of the taxes collected to pay for the cost of administration.

HeinOnline -- 1997 vol. I 303 1997

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) A *new* motor vehicle may not be registered or licensed unless the application for registration is accompanied by a statement of origin that is furnished by the dealer selling the vehicle and that shows that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, firm, corporation, or association other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from the provisions of subsection (1).

(b) Motor vehicles brought or driven into Montana by nonresident, migratory, bona fide agricultural workers who are temporarily employed in agricultural work in this state, when those motor vehicles are used exclusively for transportation of agricultural workers, are also exempt from the provisions of subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from the provisions of subsection (1):

(i) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only; and

(ii) in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business.

(d) Motor vehicles owned or controlled by a special district, as defined in 18-8-202, are exempt from subsection (1).

(e) A vehicle registered under 61-3-456 is exempt from the provisions of subsection (1)."

**Section 249.** Section 61-4-310, MCA, is amended to read:

**"61-4-310. Single movement permit — fee — limitation — county treasurer to issue.** (1) *(a)* A vehicle, subject to license under this title, *or a mobile home* may be moved unladen upon the highways of this state from a point within the state to a point of destination. The county treasurer at the point of the origin of the movement shall issue a special permit for the vehicle in lieu of fees required under 61-3-321 and part 2 of chapter 10 of this title, upon application presented to the county treasurer in a form provided by the department, upon exhibiting to the county treasurer proof of ownership and evidence that the personal property taxes on the vehicle, if any are due, have been paid, and upon payment of a fee of $5. The permit ~~must~~ *is* not ~~be~~ in lieu of fees and permits required under 61-4-301 and 61-4-302.

*(b) For purposes of this section, a mobile home is considered unladen when all items are removed except the equipment originally installed by the manufacturer and the personal effects of the owners.*

(2) The permit ~~must be~~ *is* for the transit of the vehicle *or mobile home* only, and the vehicle *or mobile home* may not at the time of the transit be used for the

transportation of any persons, except the driver, or *any* property for compensation or otherwise and ~~must be~~ *is* for one transit only between the points of origin and destination as set forth in the application and shown on the permit.

(3) A junk vehicle being driven or towed to a motor vehicle wrecking facility or a motor vehicle graveyard for disposal is exempt from the provisions of this section. The definitions in 75-10-501 apply to this subsection."

**Section 250.** Section 61-5-121, MCA, is amended to read:

**"61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses ~~provided for in 61-5-111(7)(a)~~, motorcycle endorsements ~~provided for in 61-5-111(7)(b)~~, *and* commercial driver's licenses provided for in 61-5-111~~(7)(c),~~ and *from* duplicato driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the general fund.

(d) The amount of 26.25% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.55% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each cemmercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the stato special revenue fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in

HeinOnline -- 1997 vol. I 305 1997

subsection (1)(a) and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

**Section 251.** Section 61-5-126, MCA, is amended to read:

**"61-5-126. Providing information to selective service system.** At the request of the director of the selective service system, provided for in 50 *App.* U.S.C. 460, the department shall provide a list of persons born in specified years who are holders of driver's licenses for the exclusive purpose of ~~assuring~~ *ensuring* compliance with the military draft registration requirements of the federal Military Selective Service Act (50 *App.* U.S.C. 451, et seq.). The department shall notify the persons that information regarding them was released to the selective service system. The department may not provide the selective service system *with* the social security or driver's license numbers of persons on the list for any purpose."

**Section 252.** Section 61-8-356, MCA, is amended to read:

**"61-8-356. Prohibition against parking or leaving vehicles on public property — presumption of ownership.** (1) A vehicle may not be parked or left standing upon the right-of-way of a public highway for a period longer than 48 hours~~,~~ *or* upon a city street~~, or upon~~ *or* state, county, or city property for a period longer than 5 days.

(2) The abandonment of a motor vehicle on a public highway, a city street, public property, or private property creates a prima facie presumption that the last-registered owner of the motor vehicle is responsible for the abandonment and is liable for the costs incurred in removing, storing, and disposing of the abandoned vehicle, less the amount realized if the moter vehicle is sold.

(3) The filing of a verified theft report with a law enforcement agency prior to the abandonment relieves the last-registered owner of liability under subsection (2)."

**Section 253.** Section 61-8-407, MCA, is amended to read:

**"61-8-407. Definition of alcohol concentration.** For purposes of 16-6-305, ~~61-8-401, and 61-8-406~~ *23-2-535, 67-1-211, and this title*, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath, or grams of alcohol per 75.3 milliliters of urine."

**Section 254.** Section 61-8-422, MCA, is amended to read:

**"61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture — penalty.** (1) It is unlawful for the owner

of a vehicle subject to actions under 61-5-212(3) ~~or (6)~~ or forfeiture under 61-8-714 or 61-8-722 to transfer, sell, or encumber the owner's interest in that vehicle from the time of the owner's arrest or the filing of the underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved by the sentencing court, or the underlying charge is otherwise terminated.

(2) The prohibition against transfer of title may not be stayed pending the determination of an appeal from the conviction on the underlying charge.

(3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the county jail for not more than 2 years, fined an amount not more than $20,000, or both."

**Section 255.** Section 61-8-722, MCA, is amended to read:

**"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject te forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been cemmitted or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful pessession, use, or other act on which the forfeiture is sought.

(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished by imprisonment for a torm of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence imposed under this

HeinOnline -- 1997 vol. I 307 1997

subsection, the imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(6) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both, in accordance with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(7) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in ~~45-5-103~~ *44-5-103*, and public access to the information may only be obtained by district court order upon good cause shown.

(8) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

(9) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

(11) A court may not defer imposition of sentence under this section."

**Section 256.** Section 61-12-201, MCA, is amended to read:

"**61-12-201. Appointment of employees and out-of-state personnel as peace officers — *definition.*** (1) The director of transportation may appoint employees of the department as peace officers to carry out this part. The employees appointed may include only those employees of the department who are employed in the administration of the motor carrier services functions of the department and employees of other states. Out-of-state personnel may be appointed only for the purpose of enforcing gross vehicle weight laws at joint weigh station facilities. Each employee appointed must he issued a certificate of appointment and execute an oath of office, which must he entered into the records of the department.

(2) The department may enter into joint weigh station agreements with other states. If the department enters into a joint weigh station agreement with another state, the department may not reduce staff levels in the motor carrier services division of the department as a result of the agreement but may reassign staff. However, this subsection does not apply to a reduction in force for the department as a whole.

*(3) As used in this part, "department" means the department of transportation."*

**Section 257.** Section 69-1-224, MCA, is amended to read:

"**69-1-224. Determination of fee.** (1) On or hefore August 31 of each year, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies for the previous fiscal year;

(b) compute the percentage, subject to revision as provided in subsection (2), of the amount determined in subsection (1)(a) that will produce an amount equal to the current appropriation to the office of the consumer counsel, except that a regulated company owned and operated by any municipal corporation within this state may not be required to pay a sum in excess of ~~.06~~ *0.06* of 1% of its gross operating revenue;

(c) adjust the percentage multiplier computed in subsection (1)(b) to ensure that sufficient funds are generated to meet the appropriation and that excess funds are not generated or retained by:

(i) determining the appropriation to the office of the consumer counsel for the previous fiscal year and comparing it to the fees collected from the previous fiscal year;

(ii) reducing or increasing the percentage determined in subsection (1)(b) for the current year in order to account for any difference determined in subsection (1)(c)(i); and

(iii) if necessary, reducing the revenue to be collected for the current year by any funds remaining unspent at the close of the prior fiscal year; and

(d) give notice by mail to each regulated company of the percentage to be applied to the gross operating revenue reported under 69-1-223(2) to determine the amount of the fee to be paid.

HeinOnline -- 1997 vol. I 309 1997

(2) (a) The department of revenue shall adjust the percentage multiplier if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in tbe actual gross operating revenue subject to the fee; or

(ii) submission and approval of a budget amendment authorizing the spending of money from a contingency appropriation included in the appropriation measure for the office of the consumer counsel and authorized to be raised by means of the fee.

(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated regulated companies.

(c) Regulated companies must be given at least 30 days' notice of any change in the porcentage multiplier.

(d) Any cbange in the percentage multiplier is effective at the beginning of the next calendar quarter.

(3) In the event that the fee charged in 1 year is in excess of the amount actually expended in that year, tbe excess must be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money remaining unspent at the close of the fiscal year must be used to reduce the percentage calculated in ~~69-1-224~~ *subsection (1)* in the subsequent fiscal year.

(4) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after tbe issuance by the department of revenue of the notice required by subsection (1), the public service commission shall hy separate order autborize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part."

**Section 258.** Section 69-12-314, MCA, is amended to read:

"**69-12-314. Class D motor carrier certificate.** (1) Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transpertation of the commodities described in 69-12-301(5). Class D carriers when applying for a new or additional autbority sball file an application with the commission in accordance with the requirements of this cbapter and tbe rules of the commission.

(2) A motor carrier may not possess a Class D motor carrier certificate or operate as a Class D motor carrier unless the motor carrier actually engages in the transportation of ~~ashes, trash, waste, refuse, rubbish,~~ garbage~~, and organic and inorganic matter~~ on a regular basis as part of the motor carrier's usual business operation."

**Section 259.** Section 69-12-406, MCA, is amended to read:

"**69-12-406. Restriction on transportation of certain waste.** Except as provided in 69-12-324, ~~no~~ *a* Class A, B, or C carrier ~~will~~ *may not* be authorized or permitted to transport ~~ashes, trash, waste, refuse, rubbish,~~ garbage~~, or organic~~

HeinOnline -- 1997 vol. I 310 1997

~~and inorganic matter~~ within the state. This restriction does not apply to recyclables."

**Section 260.** Section 72-16-331, MCA, is amended to read:

**"72-16-331. Definitions for alternate valuation purposes.** As used in 72-16-331 through 72-16-349, the following definitions apply:

(1) "Active management" means ~~the~~ making ~~of~~ management decisions of a business, other than the daily operating decisions.

(2) "Adjusted value" means:

(a) in the case of a gross estate, the gross value of all transfers subject to the tax imposed by this part, determined without regard to 72-16-331 through 72-16-349, reduced by the amount of unpaid mortgages and indebtedness;

(b) in the case of real or personal property, the value of the property for the purposes of this part, determined without regard to 72-16-331 through 72-16-349, reduced by the amount of unpaid mortgages and indebtedness.

(3) "Agreement" means a written agreement signed by each person in being who has an interest, whether or not ~~he~~ *the person* is in possession, in any property designated in ~~such~~ *the* agreement consenting to the application of 72-16-333 with respect to ~~such~~ *the* property.

(4) "Department" means the department of revenue.

(5) "Disabled" means an individual who has a mental or physical impairment that renders ~~him~~ *the person* unable to materially participate in the operation of a farm or other business.

(6) "Eligible qualified heir" means a qualified heir who:

(a) is the surviving spouse of the decedent;

(b) has not attained 21 years of age;

(c) is disabled; or

(d) is a student.

(7) "Farm" means truck farms, ranches, nurseries, ranges, greenhouses, orchards, woodlands, or structures used primarily for raising agricultural or horticultural commodities. The term includes stock, dairy animals, poultry, fur-bearing animals, and fruit.

(8) "Farming purposes" means:

(a) cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and managing of animals on a farm;

(b) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; or

HeinOnline -- 1997 vol. I 311 1997

(c) (i) planting, cultivating, caring for, or cutting trees; or

(ii) preparing, other than milling, trees for market.

(9) "Internal Revenue Code" means the Internal Revenue Code of 1954. A reference to a specific section of that code is a reference to that section as it may be labeled or amended.

(10) "Involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033 of the Internal Revenue Code *(26 U.S.C. 1033).*

(11) "Material participation" is determined in a manner similar to the manner used for the purposes of section 1402(a)(1) of the Internal Revenue Code *(26 U.S.C. 1402(a)(1)).*

(12) (a) "Member of the family" means, with respect to any individual, ~~the individual's~~:

(i) *the individual's* ancestor;

(ii) *the individual's* spouse and the lineal descendants of the individual's spouse;

(iii) *the individual's* lineal descendant;

(iv) *the* lineal descendants of the individual's parents.

(b) "Member of the family" also includes a spouse of:

(i) the individual's lineal descendants;

(ii) the lineal descendants of the individual's spouse; or

(iii) the lineal descendants of the individual's parents.

(c) For purposes of this subsection (12), a legally adopted child of an individual is treated as a child of the individual by blood.

(13) "Net share rental" means the excess of:

(a) the value of the produce received hy a lessor of land on which ~~such~~ *the* produce is grown;

(b) divided by the cash operating expenses of growing such produce ~~which~~ *that*, under the lease, are paid by the lessor.

(14) "Qualified exchange property" means real property that is to be used for the qualified use set forth in subsection (18).

(15) "Qualified heir" means, with respect to any property, a memher of the decedent's family who acquired the property or to whom the property passed from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of ~~his~~ *the qualified heir's* family, ~~such~~ *the* member ~~shall~~ *must* thereafter be treated as the qualified heir with respect to ~~such~~ *the* interest.

(16) "Qualified real property" means real property located in this state that was acquired from or passed from the decedent to a qualified heir of the decedent

HeinOnline -- 1997 vol. I 312 1997

and that on the date of the decedent's death was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(a) 50% or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property that:

(i) on the date of the decedent's death was being used for a qualified use by the decedent or a member of the decedent's family; and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent;

(b) 25% or more of the adjusted value of the gross estate consists of the adjusted value of real property that meets the requirements of ~~(a)(ii) and (c) of this subsection~~ *subsections (16)(a)(ii) and (16)(c)*;

(c) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which:

(i) the real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business;

(d) the real property is designated in the agreement referred to in subsection (3) ~~of this section~~; and

(e) if an election is made with respect to qualified woodland, trees growing on ~~such~~ *the* woodland may not be treated as a crop.

(17) (a) "Qualified replacement property" means:

(i) in the case of an involuntary conversion as described in section 1033(a)(1) of the Internal Revenue Code *(26 U.S.C. 1033(a)(1))*, any real property into which the real property is converted;

(ii) in the case of an involuntary conversion as described in section 1033(a)(2) of the Internal Revenue Code *(26 U.S.C. 1033(a)(2))*, any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(A) of the Internal Revenue Code *(26 U.S.C. 1033(a)(2)(A))* for the purpose of replacing the qualified real property.

(b) ~~"Qualified replacement property" only~~ *The term* includes *only* property that is to be used for the qualified use set forth in ~~(a) or (b) of~~ subsection (18)*(a) or (18)(b)* of this section under which the qualified real property qualified under 72-16-333.

(18) (a) "Qualified use" means devotion of the property to any of the following:

(i) use as a farm for farming purposes; or

(ii) use in a trade or business other than the trade or business of farming.

HeinOnline -- 1997 vol. I 313 1997

(b) In the case of real property that meets the requirements of subsection (16)(c), residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use ~~shall~~ *must* be treated as real property devoted to the qualified use.

(19) "Qualified woodland" means any real property that:

(a) is used in timber operations; and

(b) is an identifiable area of land, such as an acre or other area, for which records are normally maintained in conducting timber operations.

(20) "Student" means an individual as defined by section 151(e)(4) of the Internal Revenue Code *(26 U.S.C. 151(e)(4))*.

(21) "Timber operations" means:

(a) the planting, cultivating, caring for, or cutting of trees; or

(b) the preparation, other than milling, of trees for market."

**Section 261.** Section 72-16-479, MCA, is amended to read:

**"72-16-479. Priorities.** (1) A lien filed under 72-16-472 is not valid:

(a) as against real property tax and special assessment liens;

(b) in the case of real property subject to a lien for repair or improvement, as against a construction lienor; or

(c) as against a security interest set forth in ~~paragraph 3 of~~ section 6323(c)*(3)* of the Internal Revenue Code *(26 U.S.C. 6323(c)(3))*, whether the security interest came into effect before or after the tax lien filing.

(2) Subsections (1)(b) and (1)(c) of this section do not apply to any security interest that came into existence after the date on which the department filed notice that payment of the deferred amount has been accelerated under 72-16-464."

**Section 262.** Section 72-17-213, MCA, is amended to read:

**"72-17-213. Routine inquiry and required request — search and notification.** (1) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to 72-17-214(1). The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in 72-17-202 or if there are medical or emotional conditions under which the request would contribute to severe emotional distress. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request and the

HeinOnline -- 1997 vol. I 314 1997

name, response, and relationship to the patient of the person to whom the request was made. The department shall adopt rules to implement this subsection.

(2) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(a) a law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes is dead or near death; and

(b) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(3) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection ~~(3)(a)~~ *(2)(a)* and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

(4) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to 72-17-214(1) or a release and removal of a part has been permitted pursuant to 72-17-215~~,~~ or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(5) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions."

**Section 263.** Section 75-1-1101, MCA, is amended to read:

"**75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, allocation ~~will~~ *may* not be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

HeinOnline -- 1997 vol. I 315 1997

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development;

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the ~~resource indemnity trust interest account~~ *general fund.*

(5) The governor shall submit, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report."

**Section 264.** Section 75-2-101, MCA, is amended to read:

**"75-2-101. Short title.** ~~This~~ *Parts 1 through 4 of this* chapter ~~shall be~~ *are* known and may be cited as the "Clean Air Act of Montana"."

**Section 265.** Section 75-3-103, MCA, is amended to read:

**"75-3-103. Definitions.** The definitions used in this chapter are intended to be consistent with those used in 10 CFR ~~1-199~~ *1-171* and 49 CFR ~~173.389-173.399~~ *173.401 through 173.478, subpart I.* Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Byproduct material" means:

(a) any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or using special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Department" means the department of environmental quality.

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

HeinOnline -- 1997 vol. I 316 1997

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment using quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" ~~is that quantity of radioactive material~~ *means highway route controlled quantity as* defined in 49 CFR ~~173.389(b)~~ *173.403*.

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency of a political subdivision, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor, or federal agencies licensed by the nuclear regulatory commission.

(8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material that the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in a concentration that the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in that concentration to be source material.

(10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the department or the United States nuclear regulatory commission or any successor declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment using quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially."

**Section 266.** Section 75-5-621, MCA, is amended to read:

**"75-5-621. Emergencies.** (1) Notwithstanding other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under this chapter that, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department may order the person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order is effective immediately

HeinOnline -- 1997 vol. I 317 1997

upon receipt by the person to whom it is directed, unless the department provides otherwise.

(2) Notice of the order must conform to the requirements of 75-5-611(1) so far as practicable. The notice must indicate that the order is an emergency order.

(3) Upon issuing an order, the department shall fix a place and time for a hearing before the board, not later than 5 days after issuing the order unless the person to whom the order is directed requests a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing must be conducted in the manner specified in 75-5-611. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board must he accompanied by the ~~statement specified~~ *information required* in 75-5-611~~(5)~~*(6)*. An action for review of the order of the board may be initiated in the manner specified in 75-5-641. The initiation of an action or taking of an appeal may not stay the effectiveness of the order unless the court finds that the board did not have reasonable cause to issue an order under this section."

**Seetion 267.** Section 75-5-1113, MCA, is amended to read:

"**75-5-1113. Loans.** (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private concern to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private concern complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ~~assure~~ *ensure* sufficient ~~revenues~~ *revenue* to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than 20 years;

(c) agreeing to maintain proper financial records in accordance with recognized government accounting procedures and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

HeinOnline -- 1997 vol. I 318 1997

(g) complying with plan and specification requirements for public wastewater systems established by the board; and

(h) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(a) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(b) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private concern, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private concern. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the administration account. Money deposited in the administration account established in ~~75-6-211~~ *75-5-1106* must be used for the payment of administrative costs of the program. Money deposited in the special administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program."

**Section 268.** Section 75-6-205, MCA, is amended to read:

**"75-6-205. Rulemaking authority.** The board and the ~~board~~ *department* of natural resources and conservation may adopt rules within their respective authorities established within the provisions of this part, including rules:

HeinOnline -- 1997 vol. I 319 1997

(1) prescribing the form and content of applications for loans and grants;

(2) governing the application of the criteria for awarding loans and grants;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements;

(4) establishing ceilings on the amount of individual loans and grants to be made if considered appropriate and necessary for the successful administration of the program;

(5) regarding other matters that may be required to ensure compliance of the program with the provisions and the federal act and rules promulgated under the federal act, unless these matters are specifically governed by this part; and

(6) to maintain the financial integrity of the program."

**Section 269.** Section 75-6-211, MCA, is amended to read:

"**75-6-211. Revolving fund.** (1) There is established in the state treasury a separate account designated as the safe drinking water treatment revolving fund. The corpus of the fund must be available in perpetuity for providing assistance under this part. There are established within the revolving fund a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of or improvements to public water systems;

(b) the state allocation account the net proceeds of bonds of the state issued pursuant to 75-6-225 and other money appropriated by the legislature;

(c) the administration account 4% of the federal capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs;

(d) the investment account all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account the interest portion of loan repayments.

(3) Each loan made as authorized by ~~75-6-225~~ *75-6-224* must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-6-225 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

HeinOnline -- 1997 vol. I 320 1997

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with the federal act and this part."

**Section 270.** Section 75-10-707, MCA, is amended to read:

**"75-10-707. Information gathering and access.** (1) The department may undertake any investigative or other information-gathering action that it considers necessary or appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise enforcing the provisions of this part.

(2) Any authorized officer, employee, or representative of the department may require a person who has or may have information relevant to a release or threatened release of a hazardous or deleterious substance to furnish, upon request, any information or documents relating to but not limited to the following matters:

(a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is being generated, treated, stored, or disposed of at or transported from a facility;

(b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at or from a facility;

(c) information relating to the ability of a person to pay for or to perform a cleanup; and

(d) any other information relevant to the department's determination of the appropriate remedial action to be taken or to the enforcement of this part.

(3) For purposes of assisting the department in acquiring information relevant to the need for, the determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any authorized officer, employee, or representative of the department is authorized to:

(a) enter or have access at reasonable times to any facility or other place or property where:

(i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of, or transported from;

(ii) there has been or may be a release of a hazardous or deleterious substance;

(iii) records or other relevant information regarding a release or threatened release is located;

(iv) entry is necessary to determine the need for any appropriate remedial action; or

(v) entry is necessary to effectuate a remedial action under this part; and

(b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a) or from any location where a suspected hazardous or deleterious substance may be located. Any authorized officer, employee, or

HeinOnline -- 1997 vol. I 321 1997

representative of the department is authorized to inspect and obtain samples of containers or labeling for suspected hazardous or deleterious substances. Each ~~such~~ inspection must be completed with reasonable promptness. If the authorized officer, employee, or representative obtains samples, before leaving the premises ~~he~~ *that person* shall give to the owner, operator, tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of ~~such~~ *the* samples must be furnished promptly to the owner, operator, tenant, or other person in charge if ~~such~~ *that* person can be located.

(4) The department may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents relating to the matters in ~~75-10-707(2)(a)~~ *subsections (2)(a)* through (2)(d). The method for service of subpoenas and payment of witness fees and mileage is the same as that required in civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a person pursuant to this subsection, the district court for a district in which the person is found, resides, or transacts business, upon application of the department and after notice to the person, has jurisdiction to issue an order requiring the person to appear and either give testimony or produce documents, or both, before a hearings officer. A failure to obey the order of the court may be punished by the court as a contempt.

(5) If consent is not granted regarding a request made by an authorized officer, employee, or representative under this section, the director of the department may issue an order directing compliance with the request.

(6) The department may commence a civil action to compel compliance with an order issued pursuant to this section.

(7) In any action commenced pursuant to subsection (6) when the court determines that there may be an imminent and substantial threat to public health, safety, or welfare or the environment, the court shall enjoin any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless, under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with law.

(8) Persons subject to the requirements of this section may make a written claim of confidentiality for information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials at the time they are obtained by the department. If the department accepts the characterization, it shall maintain that information as confidential. Information describing physical or chemical characteristics of hazardous or deleterious substances that have been or may be released into the environment are not considered confidential. The department has access to and may use any trade secret information in carrying out the activities of this part as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential."

**Section 271.** Section 75-10-806, MCA, is amended to read:

**"75-10-806. State government procurement of recycled supplies and materials.** (1) The department of administration shall write purchasing specifications that incorporate requirements for the purchase of materials and

HeinOnline -- 1997 vol. I 322 1997

supplies made from recycled materials if the use is technologically practical and reasonably cost-effective. ~~By January 1, 1992, these~~ *These* requirements must be incorporated into the purchase of:

(a) paper and paper products;

(b) plastic and plastic products;

(c) glass and glass products;

(d) automobile and truck tires;

(e) motor oil and luhricants; and

(f) other materials and supplies as determined hy the department of administration.

(2) It is the goal of the state that ~~by January 1, 1996,~~ 95% of the paper and paper products used by state agencies, universities, and the legislature must be made from recycled material that maximizes postconsumer material content.

(3) ~~Prior to January 1, 1996, the~~ *The* state shall, to the maximum extent possible, purchase for use by state agencies paper and paper products that contain postconsumer material rather than new material.

(4) To the extent practical, guidelines for the recycled material content of paper should be consistent with nationwide standards for recycled paper.

(5) The department and the department of administration shall estahlish a joint recycling market development task force. Task force membership must include but is not limited to representatives of the recycling industry, wholesalers, state agencies, and citizen and environmental organizations, as well as other interested persons. The task force shall:

(a) assist the department of administration in developing purchasing specifications as required in subsection (1);

(b) develop additional mechanisms for state government to develop markets for recycled materials;

(c) identify procurement barriers that discriminate against the purchase of supplies and products that contain recycled material; and

(d) develop recommendations for an informational program designed to educate state employees on how to reduce waste and recycle in the workplace."

**Section 272.** Section 75-11-313, MCA, is amended to read:

**"75-11-313. Petroleum tank release cleanup fund.** (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

HeinOnline -- 1997 vol. I 323 1997

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature; and

(d) all interest earned on money in the fund.

(3) The fund may be used only:

(a) to administer this part, including payment of board and department expenses associated with administration;

(b) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

(c) for repayment of any advance made under subsection (4), plus interest earned on the advance.

~~(4) (a) The legislature may appropriate to the fund repayable advances as necessary to carry out the purposes of this part. The outstanding total of repayable advances may not exceed the amount the board estimates will be received by the fund from the petroleum storage tank cleanup fee during the next 24 months.~~

~~(b) Advances to the fund must be repaid and interest earned on advances must be paid to the general fund when determined appropriate by the board. However, all advances to the fund plus the interest earned must be repaid on or before December 31, 1995.~~"

**Section 273.** Section 75-20-304, MCA, is amended to read:

"**75-20-304. Waiver of provisions of certification proceedings.** (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of 75-20-301(2)(c), (3)(b), and (3)(c) and the requirements of 75-20-211(1)(a)(iv) and (1)(a)(v)~~,~~ *and* 75-20-216(3)~~, and 75-20-303(3)(a)(iv)~~ relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in 75-20-104(8)(b), (8)(c), (8)(d), or (8)(e), for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in 75-20-104(8)(a) to the extent that the process or portion of the facility is not subject to an air or water quality permit issued by the department or board.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection must be credited toward the fee paid under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

**Section 274.** Section 76-2-202, MCA, is amended to read:

**"76-2-202. Establishment of zoning districts — regulations.** (1) (a) Within the unincorporated portions of a jurisdictional area ~~which~~ *that* has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced ~~by October 1, 1994, or~~ within 5 years after the date of the order by the board of county commissioners creating the district~~, if the district was created after October 1, 1989~~.

(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that

HeinOnline -- 1997 vol. I 325 1997

placement of a manufactured home will not adversely affect property values of conventional housing.

(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings must be limited and future building setback lines must be established.

(5) All regulations must be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home~~, as defined in 61-4-309,~~ or ~~a~~ housetrailer, as defined in 61-1-501.

(7) Nothing contained in this section may be construed to limit conditions impesed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

**Section 275.** Section 76-2-222, MCA, is amended to read:

**"76-2-222. Membership and term of board members — vacancies.** (1) ~~Except as provided in subsection (3), the~~ *The* board of adjustment ~~shall consist~~ *consists* of five members, each to be appointed for a term of 2 years and removable for cause by the board of county commissioners upon written charges and after public hearing. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of 76-2-321 through 76-2-328.

(2) Vacancies ~~shall~~ *must* be filled for the unexpired term of any member whose term becomes vacant.

~~(3) Within 30 days after January 1, 1988, the board of county commissioners shall designate two members of the board of adjustment whose terms must end in 1988 and three members whose terms must end in 1989. Subsequent appointments must be made for a term of 2 years.~~"

**Section 276.** Section 76-2-302, MCA, is amended to read:

**"76-2-302. Zoning districts.** (1) For the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of the number, shape, and area as are considered best suited to carry out the purposes of this part. Within the districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All regulations must be uniform for each class or kind of buildings throughout each district, but the regnlations in one district may differ from those in other districts.

HeinOnline -- 1997 vol. I 326 1997

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on sito-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home~~, as defined in 61-4-309,~~ or a bousetrailer, as defined in 61-1-501.

(5) ~~Nothing contained in this~~ *This* section may *not* be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

**Section 277.** Section 76-3-305, MCA, is amended to read:

**"76-3-305. Vacation of plats — utility easements.** (1) Any plat prepared and recorded as provided in this ~~section~~ *part* may be vacated either in whole or in part as provided by 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the governing body or the district court, as provided in 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The governing body or the district court, as provided in 7-5-2502, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted, or conveyed; the reasons stated in the petition requesting tbe vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to tbe streets and alleys of the vacated portions may revert to one or more of the owners of tbe properties within the platted area adjacent to the vacated portions.

(2) However, when any poleline, pipeline, or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of tbe public utility facility."

**Section 278.** Section 76-3-511, MCA, is amended to read:

**"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) ~~After April 14, 1995, except~~ *Except* as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a rule under 76-3-501 or 76-3-504~~(5)(e)~~*(6)(c)* that is more stringent than tlie comparable state regulations or guidelines that address the same circumstances. The governing body may incorporate by reference comparable state regulations or guidelines.

(2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504~~(5)(e)~~*(6)(c)* that is more stringent than comparable state regulations or

HeinOnline -- 1997 vol. I 327 1997

guidelines only if the governing body makes a written finding, after a public hearing and public comment and based on evidence in the record, that:

(a) the proposed local standard or requirement protects public health or the environment; and

(b) the local standard or requirement to be imposed can mitigate harm to the public health or environment and is achievable under current technology.

(3) The written finding must reference information and peer-reviewed scientific studies contained in the record that forms the basis for the governing body's conclusion. The written finding must also include information from the hearing record regarding the costs to the regulated community that are directly attributable to the proposed local standard or requirement.

(4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and before April 14, 1995, that that person believes to be more stringent than comparable state regulations or guidelines may petition the governing body to review the rule. If the governing body determines that the rule is more stringent than comparable state regulations or guidelines, the governing body shall comply with this section by either revising the rule to conform to the state regulations or guidelines or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an amount not to exceed $250.

(b) A person may also petition the governing body for a rule review under subsection (4)(a) if the governing body adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines existed and the state government subsequently establishes comparable regulations or guidelines that are less stringent than the previously adopted governing body rule."

**Section 279.** Section 76-6-105, MCA, is amended to read:

**"76-6-105. Construction of chapter.** (1) ~~Insofar as~~ *To the extent that* the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter ~~shall be~~ *are* controlling. The powers conferred by this chapter ~~shall be~~ *are* in addition and supplemental to the powers conferred by any other law.

(2) This ~~subsection shall~~ *chapter may* not be construed to imply that any easement, covenant, condition, or restriction ~~which~~ *that* does not have the benefit of this chapter ~~shall on account of~~ *is not enforceable based on* any provisions ~~hereof be unenforceable~~ *of this chapter*. ~~Nothing in this~~ *This* chapter ~~shall~~ *does not* diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain, or otherwise and to use land for public purposes."

**Section 280.** Section 76-14-113, MCA, is amended to read:

**"76-14-113. Eligibility for loans.** (1) Any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who:

(a) is a resident of Montana;

HeinOnline -- 1997 vol. I 328 1997

(b) is engaged in farming or ranching; and

(c) possesses the necessary expertise to make a rangeland loan practical.

(2) All loans must be for rangeland improvement or development exclusively.

(3) An application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States ~~soil~~ *natural resources* conservation service."

**Section 281.** Section 76-15-541, MCA, is amended to read:

**"76-15-541. Conservation practice loan program — definition.** (1) A conservation district may establish and administer a conservation practice loan program pursuant to 76-15-541 through 76-15-547.

(2) A conservation practice loan may be made to a land occupier who is an agriculture producer within the exterior boundaries of the district. The conservation practice must be constructed, operated, developed, and maintained within the district.

(3) A conservation practice is the construction, operation, development, or maintenance of an erosion control and prevention operation, a work of improvement for flood prevention, and the conservation, development, use, and disposal of water within a district in furtherance of the purposes and policies of this chapter. Conservation practices include those practices pertaining to acceptable land use conversion as determined by a majority of the district supervisors with the advice of the United States ~~soil~~ *natural resources* conservation service."

**Section 282.** Section 76-15-543, MCA, is amended to read:

**"76-15-543. Application for loan.** (1) An application for a loan must be in the form prescribed by the district supervisors and contain or be accompanied by any information necessary to adequately describe the proposed conservation practice and necessary for evaluation of the proposed conservation practice under the criteria contained in 76-15-544 and 76-15-545.

(2) The application must include a conservation plan, which may be prepared in consultation with the United States ~~soil~~ *natural resources* conservation service."

**Section 283.** Section 76-15-546, MCA, is amended to read:

**"76-15-546. Terms and conditions of loan.** A conservation practice loan is subject to the following terms and conditions:

(1) The district shall obtain ~~such~~ *a* security interest in real estate as would be obtained by a reasonable, careful, and prudent lender.

(2) The term of the loan may not be greater than the life of the project, and in no case may it exceed 30 years.

(3) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at ~~his~~ *the*

HeinOnline -- 1997 vol. I 329 1997

*borrower's* expense. All costs incident to the loan and loan closing, other than administrative costs of the district, must be paid by the borrower.

(4) A conservation practice must be completed according to United States ~~soil~~ *natural resources* conservation service standards and specifications, if applicable."

**Section 284.** Section 77-1-804, MCA, is amended to read:

**"77-1-804. Rules for recreational use of state lands — penalty.** (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local offices of the department to administer this program whenever practical.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. ~~Such action~~ *Action* by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing in the area of the proposed closure, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary access points, with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or status is incompatible with recreational use. Categerical or blanket closures may be imposed on state lands due to:

(a) cabin site and homesite leases and licenses;

(b) the seasonal presence of growing crops; and

(c) active military, commercial, or mineral leases.

(4) The board shall adopt rules that provide an opportunity for any individual, organization, or gevernmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

(a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;

(b) damago to surface improvements of the lessee;

(c) the presence of threatened, endangered, or sensitive species or plant communities;

(d) the presence of unique or special natural or cultural features;

(e) wildlife protection;

(f) noxious weed control; or

HeinOnline -- 1997 vol. I 330 1997

(g) the presence of buildings, structures, and facilities.

(6) Rules adopted under this section may impose restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on state lands is restricted to federal, state, and dedicated county roads and to those roads designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational special use license for recreational use that is not commercial, concentrated, or within the definition of general recreational use.

(8) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to $1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in 87-1-601~~(6)~~*(7)*."

**Section 285.** Section 77-2-402, MCA, is amended to read:

"**77-2-402. Hearing requirements.** Any hearing required under 77-2-401 must be held in a county in which the land involved in the proposed sale or transfer is located and must be held according to procedural rules ~~which shall~~ *that must* be adopted by the ~~commissioner~~ *director of the department* in accordance with the Montana Administrative Procedure Act."

**Section 286.** Section 77-2-403, MCA, is amended to read:

"**77-2-403. Action by ~~commissioner~~ *director*.** The ~~commissioner~~ *director of the department* shall take ~~such~~ action ~~as he may consider~~ *that the director considers* appropriate, consistent with federal jurisdiction, to address concerns and issues raised during the hearing. ~~Such~~ *The* action may include but is not limited to:

(1) the filing of formal requests for action by the appropriate federal agency that would alleviate concerns expressed at the hearing;

(2) the filing of a formal protest to the proposed sale or transfer."

**Section 287.** Section 77-3-444, MCA, is amended to read:

"**77-3-444. Limitation on overriding royalties and payments out of production.** (1) ~~No~~ *A* person, partnership, or association may *not* enter into an agreement ~~which~~ *that* in the aggregate creates overriding royalties or payments out of the production of oil and gas in excess of 5% above the landowner's royalty payable to the state of Montana unless that agreement expressly provides that the obligation to pay overriding royalties or payments out of production may be suspended by the ~~commissioner~~ *director of the department* at any time upon a

HeinOnline -- 1997 vol. I 331 1997

determination that the excess overriding royalties or payments out of production constitute a burden on lease operations to the extent that:

(a) proper and timely development may be retarded;

(b) continued operation of the lease may be impaired; or

(c) premature abandonment of the wells may occur.

(2) This section applies separately to any zone or portion of a lease segregated for computing a royalty due to the state of Montana.

(3) All agreements of any kind creating overriding royalties or payments out of production of oil and gas must be filed with the department within 30 days of their creation by the lessee."

**Section 288.** Section 77-6-202, MCA, is amended to read:

"**77-6-202. Lease by competitive bidding — full market value required.** When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract must be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in 77-6-205(2). The board may not accept a bid that is below full market value ~~determined by taking into account recommendations of the state land board advisory council~~. If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease may be issued, at a rental *rate* to be determined by the board, to the first bidder *who is* willing to pay the ~~board determined rental~~ *board-determined rate* whose name is selected through a random selection process from all bidders on the tract."

**Section 289.** Section 80-7-123, MCA, is amended to read:

"**80-7-123. Nursery account — investment of funds.** (1) There is an account in the state special revenue fund. All inspection and license fee revenue authorized under ~~80-7-105,~~ 80-7-106, 80-7-108, ~~80-7-109, 80-7-121,~~ 80-7-122, 80-7-135, and this section must be deposited in this account.

(2) Revenue received under ~~80-7-105,~~ 80-7-106, 80-7-108, ~~80-7-109, 80-7-121,~~ 80-7-122, 80-7-135, and this section not immediately required for the purpose of 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-121, 80-7-122, 80-7-135, and this section must be invested in accordance with the unified investment program established in Title 17, chapter 6, part 2. Income from the investments must be deposited in the account."

**Section 290.** Section 80-8-111, MCA, is amended to read:

"**80-8-111. (Temporary) Waste pesticide and pesticide container collection, disposal, and recycling program.** (1) The department shall establish a waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.

HeinOnline -- 1997 vol. I 332 1997

(2) The department may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, dispesal, and recycling program.

(3) (a) The department shall establish a collection program for waste pesticides and pesticide containers. In order to participate in this program, a person shall:

(i) notify the department in advance of the type and amount of waste pesticide or pesticide containers that will be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and location designated by the department.

(b) A person may not be subject to an admimistrative or judicial penalty or action under this chapter as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program pursuant te this section.

(4) The department may designate types of waste pesticides or pesticide containers that it will not collect for disposal and recycling under this program.

(5) The department shall provide pesticide applicators, dealers, and operators who participate in the waste pesticide and pesticide container collection, disposal, and recycling program and who are suhject to a license or permit fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213 with a credit against the fees levied pursuant to 80-8-105(2)(s), provided that:

(a) the credit does not exceed the amount of the license or pormit fee paid hy the applicator, dealer, or operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213; and

(b) each applicator, dealer, or operator may receive only one credit for each permit or license period.

(6) The department shall consult affected local gevernments hefore implementing the collection program under this section. (Terminates June 30, 1999—sec. 14, Ch. 465, L. 1993.)

**80-8-111. (Effective July 1, 1999) Voluntary waste pesticide reporting system — proposed program — pesticide information.** (1) The department shall establish a voluntary reporting system to encourage pesticide applicators and other persons te report:

(a) the types and volume of waste pesticides in their possession; and

(b) the county where the waste pesticides are stored.

(2) The department shall inventery the waste pesticide information reported under subsection (1) and develop a proposed waste pesticide dispesal program for consideration by the legislature ~~in 1993~~.

(3) All waste pesticide information reperted te the department under subsection (1) is confidential. The department may summarize the information for purposes of preparing a waste pesticide inventory report that is public information. If a waste pesticide disposal program is not approved by the

HeinOnline -- 1997 vol. I 333 1997

legislature ~~in 1993~~, the department shall destroy the waste pesticide information received under subsection (1)."

**Section 291.** Section 81-22-101, MCA, is amended to read:

**"81-22-101. Definitions.** For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for that other person in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass that also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

~~(4) "Cheese factory" means a place where cheese, including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese, either cultured or directly acidified, is made for commercial purposes.~~

~~(5)~~*(4)* "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

~~(5)~~*(5)* "Code of Federal Regulations" refers especially but is not limited to Title 21, which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health and human services.

~~(7)~~*(6)* "Cream" means the milk fat that rises to the surface when milk is allowed to stand or that is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

~~(8)~~*(7)* "Creamery" means a place where butter is made for commercial purposes.

~~(9)~~*(8)* "Culture" means the harmless lactic acid fermenting bacteria that are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and similar products.

~~(10)~~*(9)* "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

~~(11)~~*(10)* The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

HeinOnline -- 1997 vol. I 334 1997

~~(12)~~*(11)* ~~"Direct acidification", "directly~~ *"Directly* acidified"~~,~~ and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

~~(13)~~*(12)* "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

~~(14)~~*(13)* "French ice cream", "French custard ice cream", ~~"cooked ice cream", "ice custard", "parfaits",~~ and similar frozen products, except sherbets and water ices, are varieties of ice cream.

~~(15) "Frozen dessert plant" means a place where products named in subsections (27)(a)(iii) through (27)(a)(ix) are made for commercial purposes.~~

~~(16) "Fruit ice cream" must conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat.~~

~~(17)~~*(14)* "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

~~(18) "Ice" or "ice sherbet" is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring or added stabilizer composed of wholesome edible material, and must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid. It may not contain milk solids.~~

~~(19)~~*(15)* "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. A frozen milk or milk product may not be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

~~(20) An "ice cream factory" is a place where ice cream mix is frozen into ice cream for commercial purposes.~~

~~(21)~~*(16)* (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

HeinOnline -- 1997 vol. I 335 1997

(h) "Mix" includes the liquid, unfrozen product from which those frozen products listed under ~~subsection (27)(a)(iii) through (27)(a)(v) and (27)(a)(vii) through (27)(a)(xii)~~ *subsections (21)(a)(iii) through (21)(a)(xii)* are made.

~~(22) An "ice cream mix factory" is a place where ice cream mix is made.~~

~~(23)~~*(17)* "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

~~(24)~~*(18)* "Manufactured dairy product" means an item enumerated in subsection ~~(27)~~ *(21)* or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, "manufactured dairy product" includes but is not limited to:

(a) ice cream or its mix;

(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;

(c) sherbets of all kinds or their mixes;

(d) animal or vegetable fat frozen desserts or their mixes;

(e) frozen confections or their mixes when made in a manufactured dairy products plant;

(f) water ices or their mixes;

(g) frozen dessert sandwiches, bars, cones, and similar novelties;

(h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufacturod dairy products plant;

(i) ice milk or its mix;

(j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;

(k) sour cream when cultured or directly acidified;

(l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

(m) buttermilk, cultured or from churned butter or directly acidified;

(n) butter;

(o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

~~(25)~~*(19)* "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or that manufactures those products listed in

HeinOnline -- 1997 vol. I 336 1997

subsection ~~(27)~~ *(21)*. If only products of semblance or imitation of dairy products are made, the plant is not considered a manufactured dairy products plant.

~~(26)~~*(20)* "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis-free by the United States department of agriculture or in the process of heing accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

~~(27)~~*(21)* (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

(i) butter;

(ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either cultured or directly acidified, and cheese dressings;

(iii) ice cream or its mix;

(iv) frozen dessert or its mix;

(v) sherbets of all kinds or their mixes;

(vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

(vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

(viii) frozen confections or their mixes;

(ix) water ices or their mixes;

(x) ice milk or its mix;

(xi) French ice cream, French custard, or their mixes;

(xii) frozen custard or its mix and frozen yogurt;

(xiii) yogurt, flavored yogurt, and low-fat yogurt;

(xiv) sour cream, either cultured or directly acidified;

(xv) cream cheese, either cultured or directly acidified;

(xvi) buttermilk, either cultured, from churned butter, or directly acidified;

(xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;

(xviii) dry or powdered milk; and

(xix) condensed milk products.

HeinOnline -- 1997 vol. I 337 1997

(b) The items specified in subsection ~~(27)(a)~~ *(21)(a)* must conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products must be in accordance with the Montana Food, Drug, and Cosmetic Act.

~~(28)~~*(22)* "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

~~(29) "Milk sherbet" is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than 4% by weight of solids.~~

~~(30)~~*(23)* "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perisbable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

~~(31)~~*(24)* "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

~~(30)~~*(25)* "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment that is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners must be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process that has been recognized by the United States public health service to be equally effective and that is approved by the department.

~~(33)~~*(26)* "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

~~(34)~~*(27)* "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

~~(35) "Raw milk" or "raw milk products" means milk or milk products that have not been treated by a process of pasteurization.~~

~~(36) "Renovated butter" or "processed butter" is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than 80% of milk fat.~~

~~(37)~~*(28)* "Safe temperature" means 45 degrees F or less unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

~~(38) "Skimmed-milk cheese" is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.~~

~~(39)~~*(29)* "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

~~(40)~~*(30)* "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients."

**Section 292.** Section 82-4-232, MCA, is amended to read:

**"82-4-232. Area mining required — bond — alternative plan.** (1) Area strip mining, a method of operation ~~which~~ *that* does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall ~~shall~~ *may* be no greater than 20 degrees from the horizontal. Highwall reduction ~~shall~~ *must* be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading ~~shall~~ *must* eliminate all highwalls and spoil peaks. The area of land affected ~~shall~~ *must* be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading ~~such~~ diversion ditches, depressions, or terraces ~~as~~ *that* will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure ~~whatsoever~~ to accomplish the purpose of this part.

(3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal, storage, replacement, and reconstruction, and the operator ~~shall~~ *must* as a minimum be required to:

(a) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not ~~utilized~~ *used* immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(b) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not ~~utilized~~ *used* immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by acid or toxic material;

HeinOnline -- 1997 vol. I 339 1997

(c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction and uniform depth over the regraded spoil material; and

(d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

(4) All available topsoil ~~shall~~ *must* be removed in a separate layer, guarded from erosion and pollution, and kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, provided that the oporator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit of material ~~which~~ *that* is best able to support vegetation ~~shall~~ *must* be returned as the top layer.

(5) As determined by rules of the board, time limits ~~shall~~ *must* be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling ~~shall~~ *must* be completed before necessary equipment is moved from the operation.

(6) (a) The permittee may file a request with the department for the release of all or part of a performance bond or deposit. Within 30 days after any application for bond or deposit release has been filed with the department, the permittee shall submit a copy of an advertisement notice placed at least once a week for 4 successive weeks in a newspaper of general circulation in the locality of the prospecting or mining operation. The notice is considered part of any bond release application and must contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention to seek release from the bond.

(b) Upon receipt of the request and copies of the notification made under subsection (6)(a), the department shall, within 30 days, conduct an inspection and evaluation of the reclamation work involved. In the evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of ~~such~~ *the* pollution, and the estimated cost of abating ~~such~~ *the* pollution. The department shall notify the permittee in writing of its decision to release or not to release all or part of the performance bond within 60 days of the filing of the request if no public hearing is held pursuant to subsection (6)(f) or, if a public hearing is held pursuant to that subsection, within 30 days ~~thereafter~~ *after the hearing*.

(c) The department may release the bond or deposit in whole or in part if it is satisfied the reclamation covered by the bond or deposit or portion ~~thereof~~ *of*

*the bond or deposit* has been accomplished as required by this part according to the following schedule:

(i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded area in accordance with the approved reclamation plan, the department shall release 60% of the hond or collateral for the applicahle permit area.

(ii) After revegetation has been established on the regraded lands in accordance with the approved reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestahlishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this subsection (6)(c)(ii) if provisions for sound future maintenance by the operator or the landowner have been made with the department. No part of the bond or deposit may be released under this subsection (6)(c)(ii):

(A) as long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside tlie permit area in excess of the requirements of 82-4-231(10)(k); or

(B) before soil productivity for prime farm lands to which tlie release would be applicable has returned to equivalent levels of yield as noamined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey.

(iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities, the department shall release tlie remaining portion of tlie bond, but not before the expiration of the period specified for responsibility and not until all reclamation requirements of this part are fully met.

(d) If the department disapproves the application for release of the bond or *a* portion ~~thereof~~ *of the bond*, it shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing opportunity for a public hearing.

(e) When an application for total or partial bond release is filed with the department, it shall notify tlie municipality in which a prospecting or mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest that might be adversely affected by release of the hond or the responsible officer or head of any federal, state, or local gevernmental agency ~~which~~ *that* has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or is authorized to develop and enforce environmental standards with respect to ~~such~~ *the* operations has the right to file written ohjections to the proposed release from bond to tlie department within 30 days after the last publication of the notice provided for in subsection (6)(a). If written objections are filed and a hearing *is* requested, the department shall inform all tlie interested parties of the time and place of the hearing and, within 30 days of the request for ~~such~~ *the* hearing, hold a public hearing in the locality of the operation proposed for bond release. The date, time, and location of the public hearing must be

HeinOnline -- 1997 vol. I 341 1997

advertised by the department in a newspaper of general circulation in the locality for 2 consecutive weeks, and the hearing must be held in the locality of the oporation proposed for bond release or at the state capital, at the option of the objector, within 30 days of the request for ~~such~~ *the* hearing.

(g) Without prejudice to the rights of the objectors or the permittee or the responsibilities of the department pursuant to this section, the department may establish an informal conference to resolve ~~such~~ written objections.

(h) For the purpose of the hearing under subsection (6)(f), the department may administer oaths; subpoena witnesses or written or printed materials; compel the attendance of witnesses or the production of materials; and take evidence, including but not limited to site inspections of the land affectod and other operations carried on by the permittoe in the general vicinity. A verbatim record of each public hearing required by this section must be made, and a transcript must be made available on the motion of any party or by order of the department.

(7) An operator may propose alternative plans other than backfilling, grading, highwall reduction, topsoiling, or seeding to a permanent diverse vegetative cover if the restoration will be consistent with the purpose of this part. These plans ~~shall~~ *must* be submitted to the department, and after consultation with the landowner, if the plans are approved by the department and complied with within the time limits ~~as may be~~ determined by the department as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, topsoiling, or revegetation requirements of this part may be modified by the department. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of 82-4-222~~(1)(k)~~*(1)(l)*.

(8) If alternate revegetation is proposed, a management plan must be submitted showing how the area will be ~~utilized~~ *used* and any data necessary to show that the alternate postmining land use can be achieved. Any plan must require the operation ~~as~~ *at* a minimum to:

(a) restore the land affected to a condition capable of supporting the use ~~which~~ *that* it was capable of supporting prior to any mining operation or to a higher or better use of which there is a reasonable likelihood, if the use or uses do not present any actual or probable threat of water diminution or pollution, and if the pormit applicant's proposed land use following reclamation is not ~~deemed~~ *determined* to be impractical, unreasonable, or inconsistent with applicable land use policies and plans, would not involve unreasonable delay in implementation, and would not violate federal, stato, or local law; and

(b) prevent soil erosion to the extent achieved prior to mining."

**Section 293.** Section 82-4-253, MCA, is amended to read:

**"82-4-253. Suit for damage to water supply.** (1) An owner of an interest in real property who obtains all or part of ~~his~~ *a* supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel may sue an operator to recover damages for contamination, diminution,

or interruption of the water supply, proximately resulting from strip mining or underground mining.

(2) Prima facie evidence of injury in a suit under this ~~subsection~~ *section* is established by the removal of coal or disruption of overlying aquifer from designated ground water areas as prescribed in Title 85, chapter 2, part 5. If the area is not a designated ground water area, a showing that the coal or overlying strata is an aquifer in that geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden to *the* defendant (operator) to show that *the* plaintiff's (owner's) water supply was not injured thereby.

(3) An owner of water rights adversely affected may file a complaint detailing the loss of ~~his~~ water in quality and quantity with the department. Upon receipt of this complaint the department shall:

(a) investigate the complaint using all available information including monitoring data gathered at the mine site;

(b) require the defendant (operator) to install ~~such~~ monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

(c) issue within 90 days a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

(d) order the mining operator in compliance with chapter 2 of Title 85 to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time, replace the water in like quality, quantity, and duration, if the loss is caused by the surface coal mining operation; and

(e) order the suspension of the operator's permit for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining or underground mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining or underground mining on the dominant tract.

(5) This section and 82-4-252 do not create, modify, or affect any right, liability, or remedy other than as expressly provided."

**Section 294.** Section 82-4-254, MCA, is amended to read:

**"82-4-254. Violation — penalty — waiver.** (1) Except as provided in subsection (2), a person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than $100 or more than $5,000 for the violation and an additional civil penalty of not less than $100 or more than $5,000 for each day during which a violation continues and may be enjoined from continuing ~~such~~ *the* violations as ~~hereinafter~~ provided in this section. Any person or operator who fails to correct a violation within the period

permitted by law, rule of the board, or order of the department shall be assessed a penalty of not less than $750 for each day, up to 30 days, during which ~~such~~ *the* failure or violation continues. The period permitted for correction of a violation ~~shall~~ *does* not, in the case of any review proceeding under 82-4-251(6), end until entry of a final order suspending the abatement requirements or until entry of an order of court ordering suspension of the abatement requirements. If the failure to abate continues for more than 30 days, the department shall, within 30 days after ~~such~~ *the* 30-day period, take appropriate action pursuant to 82-4-251(3) or request action under subsection (4) or (6) *of this section*.

(2) The department may waive the civil penalty for a minor violation of this part, a rule or order adopted under this part, or a term or condition of a permit if the department determines ~~such~~ *that the* violation is not of potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. ~~The person or operator shall by~~ *By* filing a written request within 20 days of receipt of the notice of violation, *the person or operator is* ~~be~~ entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the department shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this suhsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or ponalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

(4) The attorney general shall, upon request of the ~~commissioner~~ *director of environmental quality*, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order or temporary or permanent injunction against an operator or other person who:

(a) violates, threatens to violate, or fails or refuses to comply with any order or decision issued under this part;

(b) interferes with, hinders, or delays the department in carrying out the provisions of this part;

(c) refuses to admit an authorized representative of the department to the permit area;

HeinOnline -- 1997 vol. I 344 1997

(d) refuses to permit inspection of the permit area by an authorized representative of the department;

(e) refuses to furnish any information or report requested by the department in furtberance of the provisions of this part;

(f) refuses to permit access to and copying of ~~such~~ records ~~as~~ *that* the department determines to be necessary in carrying out the provisions of this part.

(5) Any relief granted by a court under subsection (4)(a) continues in effect until the completion or final termination of all proceedings for review of ~~such~~ *relief granted* under this part unless, prior ~~thereto~~ *to the final determination*, the district court granting the relief sets it aside or modifies it.

(6) A person who violates any of the provisions of this part or any determination or order adopted under this part or who willfully violates any permit condition issued under this part is guilty of a misdemeanor and shall be fined not less than $500 and not more than $10,000 or imprisoned for not more than 1 year, or both. Each day on which the violation occurs constitutes a separate offense.

(7) Any person who knowingly makes any false statement, representation, or certification or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than $10,000 or by imprisonment for not more than 1 year, or both.

(8) Any person who except as permitted by law willfully resists, prevents, impedes, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than $5,000 or by imprisonment for not more than 1 year, or both.

(9) ~~No~~ *An* employee of the department performing any function or duty under this part ~~shall~~ *may not* have a direct or indirect financial interest in any strip- or underground-coal-mining operation. ~~Whoever~~ *A person who* knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than $2,500 or by imprisonment of not more than 1 year, or both."

**Section 295.** Section 82-4-337, MCA, is amended to read:

**"82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision.** (1) (a) The department shall review all applications for operating permits for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The department shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Unless the review period is extended as provided in this section, the department shall review the adequacy of the proposed reclamation plan and plan

HeinOnline -- 1997 vol. I 345 1997

of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the department does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time poriod, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond that will he required.

(c) A permit may not be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) tbe information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341~~(6)~~*(7)*.

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible because of extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed for analysis to determine whether a detailed environmental impact statement is necessary under 75-1-201, the department and the applicant shall negotiate te extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the poriod prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review. The applicant may by written waiver extend this time period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contracters from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the department to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is

completed or abandoned unless the permit is suspended or revoked by the department as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the department, upon proper application of the permittee or after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so that they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operater may not apply for an amendment to delete disturbed acreage from the permit.

(5) Applications for major amendments must be processed in the same manner as applications for new permits.

(6) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The board may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(7) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for minor amendments and other revisions must be processed within 30 days of receipt of an application."

**Section 296.** Section 82-4-360, MCA, is amended to read:

"**82-4-360. Activity prohibited if bond forfeited — exception.** (1) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business association of which that person was a principal or controlling member had a bond forfeited under this part.

(2) A person described in subsection (1) may apply for an operations permit or an exploration license or may conclude a written agreement under 82-4-305 if that person first pays to the department:

(a) the full amount of the necessary expenses incurred by the department under 82-4-341~~(5)~~*(6)* for reclamation of the area for which the bond was forfeited;

(b) the full amount of any penalties assessed under this part; and

(c) interest on these amounts and penalties incurred at the rato of 6% per year."

HeinOnline -- 1997 vol. I 347 1997

**Section 297.** Section 85-1-604, MCA, is amended to read:

**"85-1-604. Renewable resource grant and loan program state special revenue account created — revenue allocated — limitations on appropriations from account.** (1) There is created a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) all revenue of the works and other money as provided in 85-1-332;

(b) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619;

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; and

(e) the resource indemnity *and ground water assessment* tax proceeds as provided in 15-38-106(2)(b).

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for the following purposes and subject to the following conditions:

(a) The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b)(iii) must be used for renewable resource grants.

(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection ~~(b)~~ *(3)(b)* is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).

(c) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(h) and only that amount may be appropriated from the account for expenditures that meet the policies and objectives of the renewable resource grant and loan program. If the amount of money available for appropriation under this subsection ~~(c)~~ *(3)(c)* is greater than that necessary for oporation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(d).

(d) An amount less than or equal to that paid into the account from the sources provided for in subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be appropriated from the account for loans and grants for renewable resource projects; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment,

HeinOnline -- 1997 vol. I 348 1997

and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants."

**Section 298.** Section 85-2-701, MCA, is amended to read:

**"85-2-701. Legislative intent.** (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. ~~Therefore, it~~ *It* is the intent of the legislature that the ~~attorney general's petition required in 85-2-211~~ *unified proceedings* include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by 85-2-218 its highest priority. In negotiations, the commission is acting on behalf of the governor."

**Section 299.** Section 85-2-905, MCA, is amended to read:

**"85-2-905. Ground water assessment account.** (1) There is a ground water assessment account within the ~~state~~ special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, 14.1% of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and 2.2% of the proceeds from the metalliferous mines license taxes, as authorized by 15-37-117, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds $666,000, in which case no allocation ~~will~~ *may* be made and the funds must be deposited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than $666,000, in which case an amount equal to the difference between the unobligated cash balance and $666,000 must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;

HeinOnline -- 1997 vol. I 349 1997

(b) funds provided hy federal or state government agencies and by local governments to carry out the purposes of this part; and

(c) funds provided by any other public or private sector organizatiou or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

**Section 300.** Section 85-3-211, MCA, is amended to read:

"**85-3-211. Proof of financial responsibility by applicant.** Proof of financial responsibility may be furnished by an applicant by ~~his~~ showing, to the satisfaction of the ~~board~~ *department, the applicant's* ability to respond in damages for liability ~~which~~ *that* might reasonably be attached to or result from ~~his~~ *the applicant's* weather modification and control activities."

**Section 301.** Section 85-5-407, MCA, is amended to read:

"**85-5-407. Appointment of water commissioner after final decree.** When the rights of the respective parties in ~~said~~ *an* action to the use of the waters flowing in ~~said~~ *a* ditch ~~shall be~~ *are* adjudicated, the judgo of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 10% of the waters of ~~said~~ *the* ditch, may, in the exercise of ~~his~~ *the judge's* discretion, appoint a water commissioner to divide, apportion, and distribute the waters of ~~said~~ *the* ditch to the respective parties according to their respective rights as set forth in ~~such~~ *the* decree. When a commissioner is appointed under the provisions of ~~85-5-101 through 85-5-301~~ *this chapter* to apportion and distribute the waters of the stream from which the water flowing in ~~said~~ *a* ditch is taken, ~~such~~ *the* commissioner shall, when ~~so~~ directed by the judge or court, apportion and distribute the waters of ~~said~~ *the* ditch according to the decree by which the rights of the respective owners were adjudicated."

**Section 302.** Section 85-5-408, MCA, is amended to read:

"**85-5-408. Apportionment of costs.** (1) When a commissioner is appointed upon the application of an owner or owners of ~~such~~ *a* ditch, the court may fix the compensation of ~~such~~ *the* commissioner and the term of ~~his~~ *the commissioner's* employment. The court shall make an order apportioning the amount of ~~such~~ compensation among the several owner or owners, tenants in common, or stockholders of ~~said~~ *the* ditch according to their respective rights and interest~~, which~~. *The* order ~~shall have~~ *has* the ~~force and~~ effect of a judgment against the person to whom the water was admeasured and for whose benefit it was used. When, in the discretion of the court, ~~such~~ *an* order of apportionment of expense is made against the land for which ~~such~~ *the* water was used, it ~~shall have~~ *has* the ~~force and~~ effect of a lien against ~~said~~ *the* land to which ~~such~~ *the* apportionment was made. Execution may issue upon ~~such~~ *the* order as upon a judgment by direction of the court, upon the application of any person interested ~~therein~~ *in the order*.

(2) When a commissioner is appointed under the provisions of ~~85-5-101 through 85-5-301~~ *this chapter* to distribute the waters of the stream from which the waters flowing in ~~said~~ *a* ditch are taken and to apportion and distribute tlie waters of ~~said~~ *the* ditch according to the rights of the respective owners ~~thereof~~ *of the waters*, the judge, in ~~his~~ *the judge's* discretion, may, in addition to the apportionment taxed against the respective owners of the waters of ~~said~~ *the*

stream, apportion and tax the amount, if any, *that* the owners of ~~such~~ *the* ditch shall pay in addition to the amount taxed under the provisions of ~~85-5-101 through 85-5-301~~ *this chapter.*"

**Section 303.** Section 85-6-109, MCA, is amended to read:

"**85-6-109. Operation of projects with water users' association — definitions.** (1) As used in this section, *the following definitions apply:* ~~"department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33, and~~

*(a)* ~~"association"~~ *"Association"* means a water users' association.

*(b) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.*

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association must be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the district court in any county where all or part of the project works is located or to the district court in Lewis and Clark County.

(3) If ~~a complaint~~ *an appeal* is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon, sell, or otherwise dispose of a project that involves a water users' association, the department shall notify the association. Before the department may take further action to abandon, sell, or otherwise dispose of a project that involves a water users' association, the department must receive a petition approving the abandonment, sale, or disposition. The petition must be signed by stockholders of the association who represent 66 2/3% or more of the issued and outstanding stock of the association. If, within 30 days of receipt of the final proposal of abandonment, sale, or other disposal, stockholders of the association who represent 30% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned, sold, or otherwise disposed of without the consent of the legislature."

**Section 304.** Section 85-7-1910, MCA, is amended to read:

"**85-7-1910. Board power to dispose of district property.** (1) The board of commissioners may, with the written consent of a majority in number and acreage of the owners of the lands in the district or, if the leased property

HeinOnline -- 1997 vol. I 351 1997

substantially benefits a subdistrict in the district, of a majority in number and acreage of the owners of lands within the subdistrict, ~~to~~ lease in whole or in part the system of canals and works or water belonging to the district, whenever the leasing is considered for the benefit of the district or subdistrict, if the leased property substantially benefits the subdistrict. When the board contemplates the leasing of the canals or works or water of a district or subdistrict, it shall declare the availability of the lease by resolution or order and give notice ~~thereof~~ by publication in ~~some~~ *a* newspaper published in the county in which the office of that irrigation district is situated at least 2 calendar weeks prior to the making of any lease. A lease may not be made unless a majority in number and acreage of the holders of title or evidence of title to the lands in the district or, if the lease substantially benefits a subdistrict, a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict, file with the board a written consent to make the lease. The lease may not interfere with any rights that have been established by law at the time the lease is made, nor may the lease operate to deprive any owner or owners of land in the district of the use of water from ~~such~~ *the* works upon the lands. The board of commissioners shall require a ~~good and~~ sufficient bond to secure the faithful performance of the lease by the lessee.

(2) In addition to all other powers granted *to* any irrigation district existing under the laws of Montana, for the purpose of securing financial aid in any form from the department of natural resources and conservation, an irrigation district may convey, assign, transfer, and set over to the department all or any part of its property, including all water rights, rights-of-way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and headgates, ~~as~~ *that* may be required by the department as a condition to furnishing financial aid or assistance.

(3) If an irrigation district has ceased operation, the district prior to its dissolution may convey, assign, transfer, and set over to any person or association of persons all or any part of its property described in subsection (2), for the purpose of irrigating and reclaiming any or all other land ~~which~~ *that* can be served and irrigated."

**Section 305.** Section 85-7-2159, MCA, is amended to read:

**"85-7-2159. Issuance of tax deed.** When there has been no redemption of the lands ~~so~~ sold at tax sale to an irrigation district or any other person or of the lands struck off to the county for which certificate of sale has been assigned to an irrigation district or any other person in the manner and within the time allowed ~~by 85-7-2163~~ for the redemption of lands from ~~such~~ tax sales, the county treasurer of the county within which ~~such~~ *the* lands are situated shall issue *a* tax deed ~~therefor~~ *for the lands* to ~~such~~ *the* irrigation district or other holder of certificate of sale."

**Section 306.** Section 87-2-803, MCA, is amended to read:

**"87-2-803. Disabled persons.** (1) Disabled persons are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk

HeinOnline -- 1997 vol. I 352 1997

licenses at one-half the fee paid by a resident who is 15 years of age or older and who is under 62 years of age.

(3) A resident or nonresident disabled person who is certified as disabled by the department and who is not residing in an institution may carry a permit on a form prescribed by the department. A disabled person issued a permit under this subsection is entitled to have the department stamp the permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that the person is permanently physically handicapped and nonambulatory or that the person's mobility is substantially impaired.

(4) A disabled person carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle", may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. ~~Nothing in this~~ *This* subsection ~~allows~~ *does not allow* a disabled person to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A disabled person who hunts as authorized in this subsection must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the disabled hunter by hunting a game animal that has been wounded by the disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal. Any vehicle from which a disabled person is hunting must be conspicuously marked with an orange-colored international symbol of the handicapped on the front, rear, and each side of the vehicle.

(5) A resident of Montana who is certified by the department as ~~a blind individual~~ *suffering from blindness*, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure."

**Section 307.** Section 87-5-112, MCA, is amended to read:

"**87-5-112. Construction.** ~~None of the provisions of this~~ *This* part ~~shall~~ *may not* be construed to apply retroactively or to prohibit importation into the state of wildlife ~~which may be~~ *that are* lawfully imported into the United States or lawfully taken or removed from another state or to prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale, or shipment of any wildlife whose species or subspecies is ~~deemed~~ *determined* to be threatened with statewide extinction in this state but not in the state where originally taken, if the person engaging therein demonstrates by substantial evidence that ~~such~~ *the* wildlife was lawfully taken or removed from ~~such~~ *the* state~~; provided that~~. *However,* this ~~subsection shall~~ *section may* not be construed to permit the possession, transportation, exportation, processing, sale or offer for sale, or shipment within this state of wildlife on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5), except as permitted in the provision by 87-5-107(3) and (4) and 87-5-109(1)."

HeinOnline -- 1997 vol. I 353 1997

**Section 308.** Section 90-2-1104, MCA, is amended to read:

**"90-2-1104. Reclamation and development grants account.** (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity ~~trust~~ *and ground water assessment* tax under the provisions of 15-38-106; and

(c) the metal mines license tax proceeds as provided in 15-37-117(1)(e).

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded prior to funding of projects."

**Section 309.** Section 90-2-1121, MCA, is amended to read:

**"90-2-1121. Prohibited compensation to public officers or employees — penalty.** (1) ~~No member,~~ *An* officer, attorney, or other employee of ~~the board or~~ the department may *not* directly or indirectly be the beneficiary of or receive any fee, commission, gift, or other consideration in connection with any transaction or business under the reclamation and development grants program other than the salary, fee, or other compensation ~~that he may receive~~ *received* as ~~a member,~~ *an* officer, attorney, or employee.

(2) A person convicted of violating any provision of this section shall be punished by a fine not to exceed $2,000 plus the value of any consideration illegally received or by imprisonment for a term not to exceed 2 years, or both. Any fines collected under this section must be depesited in the reclamation and development grants account."

**Section 310.** Section 90-4-1002, MCA, is amended to read:

**"90-4-1002. Definitions.** As used in 90-4-1003 ~~and 90-4-1004~~, the following definitions apply:

(1) "Council" means the environmental quality council established in 5-16-101.

(2) "Department" means the department of environmental quality established in 2-15-3501."

**Section 311.** Section 90-6-127, MCA, is amended to read:

HeinOnline -- 1997 vol. I 354 1997

**"90-6-127. Allocation of state limit.** (1) All of the aggregate amount of qualified mortgage bonds that may be issued during any calendar year in accordance with section ~~103A(g)~~ *146* of the Internal Revenue Code of 1954 *(26 U.S.C. 146)*, as amended, is allocated to the board of housing.

(2) The board of housing may adopt standards for determining and may designate areas of chronic economic distress within the meaning of section ~~103A(g)~~ *143(j)(3)* of the Internal Revenue Code of 1954 *(26 U.S.C. 143(j)(3))*, as amended."

**Section 312.** Section 90-6-210, MCA, is amended to read:

**"90-6-210. Coal area highway reconstruction program.** (1) The department of transportation, within the area designated as the eastern Montana coal field economic growth center as certified to the secretary of transportation by the governor under 23 U.S.C. 143, shall prepare a special construction program for the reconstruction of deficient sections of these highways in consultation with the governing bodies of the counties in the area.

(2) The department of transportation shall expedite the planning and reconstruction program for projects on the designated portions within this area by using funds allocated under this ~~subsection~~ *section* and any federal funds that may be made available to match ~~such~~ *those* funds. Until federal funds are made available to match the funds allocated under this ~~subsection~~ *section*, the department of transportation may, upon approval of the Montana state transportation commission, expend ~~such~~ funds for planning and reconstruction projects with or without assurance from the federal government that unmatched state expenditures will be retroactively recognized for matching purposes.

(3) Funds allocated under this ~~subsection shall~~ *section may* not be used to match apportionments made for primary and secondary highways under the Federal-Aid Highway Acts; however, ~~nothing in~~ this ~~subsection should~~ *section may not* be construed to prohibit the implementation of projects otherwise funded by apportionments made under the Federal-Aid Highway Acts~~; furthermore~~. *In addition*, planning and reconstruction projects may be financed in whole or in part by public and private funds provided ~~such~~ *that the* projects conform to the applicable standards, regulations, and procedures of the department of transportation and the federal highway administration."

**Section 313.** Section 90-8-301, MCA, is amended to read:

**"90-8-301. Qualified investments — penalty — extension permissible.** (1) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the department approves the amended application;

HeinOnline -- 1997 vol. I 355 1997

(b) at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the department approves the amended application; and

(c) at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the department approves the amended application.

(2) The qualified Montana small business investment capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) of its capital base raised through investments for which tax credits were taken:

(i) 30% within 3 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the department or within 3 years of its designation as a small business investment corporation by the small business administration, whichever is later;

(ii) 50% within 4 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the department or within 4 years after its designation as a small business investment corporation by the small business administration, whichever is later; and

(iii) 70% within 5 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the department or within 5 years after its designation as a small business investment corporation by the small business administration, whichever is later; or

(b) of its capital base, in the case of capital raised through a loan from the small business administration pursuant to 13 CFR 107, as provided under this chapter except as provided in subsection (2)(a).

(3) Following each annual examination, the department shall notify the department of revenue of any companies that are not in compliance with this section.

(4) A qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) or the qualified Montana small business investment capital company that fails to make qualified investments pursuant to subsection (2) shall pay to the department of revenue a penalty equal to all of

the tax credits allowed to the investors investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to the qualified Montana capital company or to the qualified Montana small business investment capital company. The department of revenue may abate the penalty if the capital company or the Montana small business investment capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) or (2) and if the failure was not due to neglect on the part of the company.

(5) The department of revenue may grant an extension of time in which to make qualified investments pursuant to subsection (1) or (2) upon application by a capital company or the Montana small business investment capital company showing reasonable cause for an extension.

(6) The department of revenue shall deposit any amount received under this ~~subsection~~ *section* to the credit of the state general fund.

(7) A capital company may invest tax credit funds in an existing profitable business only if a substantial portion of the investment is to be used for expansion of the business. The department may limit the amount of the investment to be counted toward the investment percentage criteria set forth in this section to the amount to be used for the expansion of the business."

**Section 314. Code commissioner instructions.** (1) The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 55th legislature.

(2) The code commissioner shall renumber 2-15-231 as an integral part of Title 2, chapter 15, part 22, and shall change all affected references accordingly.

(3) The code commissioner shall renumber 53-2-804 as an integral part of Title 53, chaptor 3, part 1, and shall change all affected references accordingly.

**Section 315. Repealer.** (1) Sections 2-18-314, 2-89-201, 2-89-202, 2-89-205, 2-89-206, 2-89-208, 2-89-209, 3-5-516, 13-13-279, 15-6-212, 15-16-802, 15-16-803, 16-2-401, 16-2-402, 16-2-403, 16-2-404, 16-2-405, 16-2-406, 16-2-408, 20-7-505, 39-7-601, 39-7-602, 39-7-603, 39-7-604, 39-7-605, 39-7-606, 61-1-122, 61-4-309, 70-1-311, 77-1-221, and 85-2-211, MCA, are repealed.

(2) Section 16-2-407, MCA, is repealed.

**Section 316. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 315(2)] is effective July 1, 1999.

Approved March 12, 1997

HeinOnline -- 1997 vol. I 357 1997

# CHAPTER NO. 43

[SB 52]

AN ACT CLARIFYING THE AUTHORITY OF THE FISH, WILDLIFE, AND PARKS COMMISSION TO ALLOW AND REGULATE MOUNTAIN LION AND BOBCAT CHASE SEASONS; AMENDING SECTION 87-3-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-3-124, MCA, is amended to read:

"**87-3-124. Restrictions on hunting with dogs.** (1) (a) Except as provided in 87-3-127 *and subsection (2) of this section,* ~~no~~ *a* person may *not* chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state.

(b) A person may take game birds during the appropriate open season with the aid of a dog or dogs. Any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(c) Any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses any dog attacking or killing hooved game animals may destroy that dog without criminal or civil liability.

(2) The ~~department shall have~~ *commission has* authority to allow and regulate the use of dogs for hunting *and chasing* mountain lion and bobcat."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 12, 1997

# CHAPTER NO. 44

[SB 59]

AN ACT EXTENDING THE PERIOD FOR SUSPENSION OF ADJUDICATION PROCEEDINGS DURING NEGOTIATIONS OF FEDERAL INDIAN AND NON-INDIAN RESERVED WATER RIGHTS; AMENDING SECTIONS 85-2-217 AND 85-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-217, MCA, is amended to read:

"**85-2-217. Suspension of adjudication.** While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies ~~which~~ *that* are negetiating are suspended. The obligation to file water rights claims for those reserved rights is also suspended. This suspension ~~shall be~~ *is* effective until July 1, ~~1999~~ *2005*, as long as negotiations are continuing or ratification of a completed compact is being

HeinOnline -- 1997 vol. I 358 1997

sought. If approval by the state legislature and tribes or federal agencies has not been accomplished hy July 1, ~~1999~~ *2005*, the suspension ~~shall~~ *must* terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies ~~shall be~~ *are* subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their reserved water rights are subject to tlie full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

**Section 2.** Section 85-2-702, MCA, is amended to read:

"**85-2-702. Ncgotiation with Indian tribes.** (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings ~~shall~~ *must* he commenced by the commission. The commission shall serve by certified mail directed to the governing bedy of each tribe a written request for the initiation of negetiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. ~~Upon~~ *Compact negotiations commence upon* receipt of ~~such~~ *the* written designation from the governing body of a tribe~~, compact negotiations shall be considered to have commenced~~.

(2) When the compact commission and the Indian trihes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval hy the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the trihe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of tlie compact must be included in the final decree without alteration. However, if approval of the state legislature and the trihe has not been accomplished hy July 1, ~~1999~~ *2005*, all Indian claims for reservod water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings ~~shall~~ *must* he used in the formulation of the preliminary decree and ~~shall~~ *must* be given treatment similar to that given to all other filings."

**Section 3. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

**Section 4. Effective datc.** [This act] is effective on July 1, 1997.

Approved March 12, 1997

HeinOnline -- 1997 vol. I 359 1997

# CHAPTER NO. 45

[SB 72]

AN ACT FORMALIZING THE OPERATION OF THE WATER INFORMATION SYSTEM WITHIN THE NATURAL RESOURCE INFORMATION SYSTEM AT THE STATE LIBRARY; AND AMENDING SECTIONS 85-2-105, 85-2-112, AND 90-15-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-105, MCA, is amended to read:

**"85-2-105. Environmental quality counell — water policy duties.** (1) The environmental quality council shall meet as often as necessary, including during the interim hetween sessions, to perform the duties specified within this section.

(2) On a continuing basis, the environmental quality council shall:

(a) advise the legislature on tbe adequacy of the state's water policy and on important stato, regional, national, and international developments that affect Montana's water resources;

(h) oversee tbe policies and activities of the departinent, other state executive agencies, and other state institutions as those policies and activities affect tho water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the environmental quality council shall:

(a) analyze and comment on the stato water plan required by 85-1-203, when filed hy the departinent;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyzo, verify, and comment on the adequacy of and information contained in the water ~~resources data management~~ *information* systeni maintained hy the ~~department~~ *natural resource information system* under ~~85-2-112~~ *[section 3]*; and

(e) report to the legislature as provided in 5-11-210.

(4) The legislative services division shall provide staff assistanco to the environmental quality council to carry out its water policy duties."

**Section 2.** Section 85-2-112, MCA, is amended to read:

**"85-2-112. Department duties.** The department shall:

(1) enforce and administer this chapter and rules adopted under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

~~(4) in cooperation with other state agencies, institutions, colleges, and universities, establish and maintain a centralized and efficient water resources data management system sufficient to make available and readily accessible, in a usable format, to state agencies and other interested persons, information on the state's water resources, out-of-state water resources that affect the state, existing and potential uses, and existing and potential demand. All other state agencies, institutions, and colleges and universities shall cooperate with the department in the development and maintenance of this system.~~

~~(5)~~*(4)* cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

~~(6)~~*(5)* upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a district court under this chapter;

~~(7)~~*(6)* adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319."

**Section 3. Water information system.** (1) There is a Montana water information system, to be operated within the natural resource information system referred to in 90-15-301 and that is to be considered a part of the system.

(2) The Montana water information system shall make available and readily accessible, in a usable format, to state agencies and other interested persons, information on the state's water resources, out-of-state water resources that affect the state, existing and potential uses, and the existing and potential demand.

**Section 4.** Section 90-15-303, MCA, is amended to read:

**"90-15-303. Interagency cooperation.** (1) State agencies shall cooperate with the library and the committee in the planning of the natural resource information system.

(2) Within the limits of available resources, state agencies shall provide data requested by the library for purposes of the *natural resource information system and the* Montana natural heritage program. If an agency does not possess requested data or is unable to locate requested data, the agency shall inform the library. It is not necessary for an agency to conduct fieldwork or literature searches to obtain requested data."

HeinOnline -- 1997 vol. I 361 1997

**Section 5. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 90, chapter 15, part 3, and the provisions of Title 90, chapter 15, part 3, apply to [section 3].

Approved March 12, 1997

# CHAPTER NO. 46

[SB 77]

AN ACT PROVIDING FOR REQUESTS FOR ASSISTANCE WITH AN INCIDENT, EMERGENCY, OR DISASTER BY POLITICAL SUBDIVISIONS, FIRE DISTRICTS, FIRE SERVICE AREAS, OR FIRE COMPANIES IN UNINCORPORATED AREAS THAT HAVE NOT CONCLUDED MUTUAL AID AGREEMENTS; ELIMINATING THE REQUIREMENT THAT REQUESTS FOR ASSISTANCE MAY ONLY BE MADE TO STATE AGENCIES WITH FIRE PREVENTION SERVICES; REQUIRING THE DIVISION OF DISASTER AND EMERGENCY SERVICES OF THE DEPARTMENT OF MILITARY AFFAIRS TO ENCOURAGE MUTUAL AID AGREEMENTS FOR PURPOSES OF AND TO ASSIST IN INCIDENTS; PROVIDING FOR IMMUNITY OF FIRE DISTRICTS, FIRE SERVICE AREAS, OR FIRE COMPANIES PROVIDING OR REFUSING TO PROVIDE ASSISTANCE; AND AMENDING SECTIONS 7-33-2108, 7-33-2202, 7-33-2208, 7-33-2313, 7-33-2405, 7-33-4112, AND 10-3-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-33-2108, MCA, is amended to read:

**"7-33-2108. Mutual aid agreements — *request if no agreement exists* — *definitions*.** (1) A mutual aid agreement is an agreement for protection against natural ~~or man-made~~ disasters, *incidents, or emergencies or disasters, incidents, or emergencies caused by persons*.

(2) Fire district trustees may enter mutual aid agreements with the proper authority of:

(a) other fire districts;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies ~~which have fire-prevention services~~;

(e) private fire-prevention agencies;

(f) federal agencies; ~~and~~

(g) fire service areas; *and*

*(h) governing bodies of other political subdivisions.*

*(3) If the fire district trustees have not concluded a mutual aid agreement, then the trustees, a representative of the trustees, or an incident commander may request assistance pursuant to [section 8].*

*(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ascribed to the term in 10-3-103."*

**Section 2.** Section 7-33-2202, MCA, is amended to read:

**"7-33-2202. Functions of county governing body.** The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties ~~hereinafter~~ imposed *in this section*:

(1) The governing body shall:

(a) provide for the organization of volunteer rural fire control crews; and

(b) provide for the formation of county volunteer fire companies.

(2) The governing body shall appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as it considers necessary.

(3) The county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, protect the range, farm, and forest lands within the county from fire.

(4) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with ~~federal, state, local, and other fire protection agencies, including governing bodies of adjoining counties~~:

*(a) other fire districts;*

*(b) unincorporated municipalities;*

*(c) incorporated municipalities;*

*(d) state agencies;*

*(e) private fire-prevention agencies;*

*(f) federal agencies;*

*(g) fire service areas; or*

*(h) governing bodies of other political subdivisions.*

*(5) If the county governing body has not concluded a mutual aid agreement, the county governing body, a representative of the county governing body, or an incident commander may request assistance pursuant to [section 8]."*

**Section 3.** Section 7-33-2208, MCA, is amended to read:

**"7-33-2208. Fire control powers — liability.** (1) Any county rural fire chief, district rural fire chief or ~~his~~ deputy, or fire service area or fire company fire chief or ~~his~~ deputy may enter private property or direct the entry of fire control crews for the purpose of suppressing fires.

HeinOnline -- 1997 vol. I 363 1997

(2) A chief or deputy and the county, rural district, fire company, or fire service area are immune from suit for injury to persons or property resulting from actions taken to suppress fires under *[section 8] or* this section. *An entity or individual listed in this section is also immune from suit for injury to persons or property resulting from a determination not to provide assistance requested pursuant to [section 8].*"

**Section 4.** Section 7-33-2313, MCA, is amended to read:

"**7-33-2313. ~~Duties~~ *Powers and duties* of chief — *request for assistance — definitions.*** (1) The chief of every fire department ~~must~~ *shall* inquire into the cause of every fire occurring in the town in which ~~he is~~ *the* chief *serves as the chief* and *must* keep a record ~~thereof~~ *of every fire.* ~~He~~ *The chief* must aid in the enforcement of all ~~duly enacted~~ fire ordinances, examine buildings in the process of erection, report violations of ordinances relating to prevention or extinguishment of fires and, when directed hy the proper authorities, institute prosecutions ~~therefor~~ *for the violation of those ordinances*, and perform ~~such~~ other duties as may be imposed upon ~~him~~ *the chief* by proper authority. ~~His~~ *The chief's* compensation, if any, must be fixed and paid by the city or town authorities. ~~He~~ *The chief* must attend all fires, with ~~his~~ *the chief's* badge of office conspicuously displayed. ~~He~~ *The chief* ~~must~~ *shall* prevent injury to, take charge of, and preserve all property rescued from fires and return it to the owner on the payment of the expenses incurred in saving and keeping it. The amount of the expenses, when not agreed to, ~~shall~~ *must* be fixed by a justice of the peace.

(2) ~~He must~~ *The chief shall* devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of ~~his~~ *the chief's* department not less than 30 hours of instruction per year in matters pertaining to firefighting, and ~~he must~~ *the chief shall* supervise the operation of ~~such~~ *the* plan or program.

*(3) If thc county commissioners, trustees of a fire district, or governing body of a fire service area have not concluded a mutual aid agrecment to protect an unincorporated town or village against natural incidents, emergencies, or disasters or incidents, emergencies, or disasters caused by pcrsons, the chief may request assistance pursuant to [section 8].*

*(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ascribed to the term in 10-3-103.*"

**Section 5.** Section 7-33-2405, MCA, is amended to read:

"**7-33-2405. Mutual aid agrcemcnts — *request if no agreement exists — definitions.*** (1) A mutual aid agreement is an agreement for protection against natural ~~or manmade~~ disasters, *incidents, or emergencies or disasters, incidents, or emergencies caused by persons.*

(2) The governing body of a fire service area may enter mutual aid agreements with the proper authority of:

(a) other fire service areas;

(b) unimcorporated municipalities;

(c) incorporated municipalities;

HeinOnline -- 1997 vol. I 364 1997

(d) state agencies ~~that have fire prevention services~~;

(e) private fire-prevention agencies;

(f) federal agencies; ~~and~~

(g) fire districts; *and*

*(h) governing bodies of other political subdivisions.*

*(3) If the governing body of a fire service area has not concluded a mutual aid agreement, the governing body, a representative of the governing body, or an incident commander may request assistance pursuant to [section 8].*

*(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ascribed to the term in 10-3-103."*

**Section 6.** Section 7-33-4112, MCA, is amended to read:

**"7-33-4112. Mutual aid agreements — *request if no agreement exists — definitions.*** (1) A mutual aid agreement is an agreement for protection against natural *disasters, incidents, or emergencies* or ~~man~~made disasters, *incidents, or emergencies caused by persons.*

(2) Councils or commissions of incorporated municipalities may enter mutual aid agreements with the proper authority of:

(a) other incorporated municipalities;

(b) fire districts;

(c) unincorporated municipalities;

(d) state agencies ~~which have fire protection services~~;

(e) private fire-prevention agencies;

(f) federal agencies; ~~and~~

(g) fire service areas; *or*

*(h) the governing body of other political subdivisions.*

*(3) If the council or commission has not concluded a mutual aid agreement, the council or commission, a representative of the council or commission, or an incident commander may request assistance pursuant to [section 8].*

*(4) As used in this section, "incidents", "disasters", or "emergencies" has the meaning ascribed to the term in 10-3-103."*

**Section 7.** Section 10-3-202, MCA, is amended to read:

**"10-3-202. Mutual aid — coopcration.** (1) Political subdivisions ~~shall~~, *fire districts, fire service areas, and fire companies in unincorporated places must* be encouraged and assisted by the division to conclude mutual aid arrangements with other public and private agencies within this state for reciprocal aid and assistance in coping with *incidents,* emergencies, and disasters.

HeinOnline -- 1997 vol. I 365 1997

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal mutual aid agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions ~~thereof~~ *of adjoining states* and shall carry out arrangements of any ~~such~~ *of the* agreements relating to the local and political subdivision.

(4) In providing assistance under parts 1 through 4 of this chapter, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American national red cross~~, but nothing contained in parts~~ *Parts* 1 through 4 of this chapter ~~lists~~ *do not list* or in any way ~~affects~~ *affect* the responsibilities of the American national red cross under the act approved January 5, 1905 (33 Stat. 559), as amended."

**Section 8. Political subdivision requests for assistance — application to fire districts, fire service areas, and fire companies in unincorporated places — immunity.** (1) If an incident, emergency, or disaster occurs in a political subdivision that has not concluded a mutual aid agreement pursuant to 10-3-202, the local or interjurisdictional agency, incident commander, or principal executive officer of the political subdivision may request assistance from another public or private agency.

(2) (a) The following individuals or entities may request assistance with an incident, emergency, or disaster if a mutual aid agreement has not been concluded for protection of the area within the jurisdiction of these individuals or entities:

(i) the trustees of a rural fire district created pursuant to Title 7, chapter 33, part 21, a representative of the trustees, or an incident commander for the district;

(ii) the chief of a rural fire company organized pursuant to 7-33-2311 or an incident commander for the chief;

(iii) the governing body of a fire service area created pursuant to Title 7, chapter 33, part 24, a representative of the governing body, or an incident commander for the area.

(b) A request for assistance by an individual or entity under subsection (2)(a) may be made to any of the following:

(i) a fire district;

(ii) an unincorporated municipality;

(iii) an incorporated municipality;

(iv) a state agency;

(v) a private fire prevention agency;

(vi) an agency of the federal government;

HeinOnline -- 1997 vol. I 366 1997

(vii) a fire service area; or

(viii) the governing body of a political subdivision.

(3) A public or private agoncy receiving a request pursuant to subsection (1) or (2) shall determine if it will provide the requested assistance, or will provide other assistance, and shall inform the requesting local or interjurisdictional agency, principal executive officer, incident commander, or other individual or entity making the request, as soon as possible, of that determination. The nature and extent of assistance provided by a public or private agoncy may be determined only by that public or private agency.

(4) The incident commander of the local or interjurisdictional agency making a request for assistance has overall responsibility for command of the resources provided by a public or private agency responding to a request. However, operational control of individual pieces of equipment and personnel furnished by the responding public or private agency remains with that agency.

(5) This section does not waive an immunity or limitation on liability applicable to any of the following entities or individuals requesting or receiving assistance pursuant to this section:

(a) a fire district;

(b) a fire service area;

(c) a fire company;

(d) an unincorporated municipality, town, or village;

(e) a political subdivision; or

(f) an agent, employee, representative, or volunteer of an entity listed in this subsection.

**Seetion 9. Two-thirds vote required.** Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

**Section 10. Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 10, chapter 3, part 2, and the provisions of Title 10, chapter 3, part 2, apply to [section 8].

Approved March 12, 1997

# CHAPTER NO. 47

[SB 76]

AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITTEES AND ARGUMENTS FOR BALLOT ISSUES; PROVIDING FOR FILLING VACANCIES ON COMMITTEES; REVISING THE DEADLINES FOR APPOINTING COMMITTEES; REVISING THE LENGTH AND FORMAT OF ARGUMENTS AND REBUTTALS; AMENDING SECTIONS 13-27-402,

HeinOnline -- 1997 vol. I 367 1997

13-27-403, 13-27-406, AND 13-27-407, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-27-402, MCA, is amended to read:

**"13-27-402. Committees to prepare arguments for and against ballot issues.** (1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments ~~shall~~ *must* be submitted to the secretary of state by committees appointed as provided in this section.

(2) The ~~following~~ committees ~~shall~~ *must* be composed of:

*(a)* one senator known to favor the measure, appointed by the president of the senate;

*(b)* one representative known to favor the measure, appointed by the speaker of the house of representatives; and

*(c)* one individual who need not be a member of the legislature, appointed by the first two members *from*:

~~(a)~~*(i)* the committee advocating approval of an act referred to the people or of a constitutional amendment proposed by the legislature; or

~~(b)~~*(ii)* the committee advocating approval of an act referred to the people by referendum petition.

(3) *(a)* The committee advocating rejection of an act referred to the people or of a constitutional amendment proposed by the legislature ~~shall~~ *must* be composed of:

*(i)* one senator appointed by the president of the senate;

*(ii)* one representative appointed by the speaker of the house of representatives; and

*(iii)* one individual who need not be a member of the legislature, appointed by the first two members.

*(b)* Whenever possible, the members ~~shall~~ *must* be known to have opposed the issue.

(4) The following ~~shall~~ *must* be three-member committees and ~~shall~~ *must* be appointed by the person submitting the petition to the secretary of state under the provisions of 13-27-202:

(a) the committee advocating approval of a ballot issue proposed by any type of initiative petition; and

(b) the committee advocating rejection of any ballot issue that is a legislative act referred to the people by referendum petition.

(5) A committee advocating rejection of a ballot issue proposed by any type of initiative petition ~~shall~~ *must* be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of

HeinOnline -- 1997 vol. I 368 1997

representatives shall each appoint one member, and the fifth member ~~shall~~ *must* be appointed by the first four members. All members ~~shall~~ *must* be known to favor rejection of the issue.

(6) ~~No~~ *A* person may *not* be required to serve on any committee under this section, and the person making an appointment must have written acceptance of appointment from the appointee. *If an appointment is not made by the required time, the committee members that have been appointed may fill the vacancy by unanimous written consent up until the deadline for filing the arguments.*"

**Section 2.** Section 13-27-403, MCA, is amended to read:

"**13-27-403. Appointment to committee.** (1) Except as provided in subsection (2), appointments to committees advocating approval or rejection of an act referred to the people, a constitutional amendment proposed by the legislature, or a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition ~~shall~~ *must* be made no later than ~~6 months before the election at which~~ *1 week prior to the deadline for filing arguments on* the ballot issue ~~will be voted on by the people~~ *under 13-27-406*.

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition ~~that is approved less than 7 months before the election at which the ballot issue will be voted on by the people shall~~ *must* be made no later than ~~30 days after the measure is approved for circulation by the secretary of state~~ *1 week before the deadline for filing arguments on the ballot issue under 13-27-406*. All persons responsible for appointing members to the committee shall submit to the secretary of state the names and addresses of the appointees no later than the date set by this subsection. ~~Such~~ *The* submission must include the written acceptance of appointment from each appointee required by section 13-27-402(6). *If an appointment is not made by the required time, the committee members that have been appointed may fill the vacancy by unanimous written consent up until the deadline for filing the arguments.*

(3) ~~All~~ *Within 5 days after receiving notice under subsection (2), but not later than 5 days after the deadline set for appointment of committee members, the secretary of state shall notify the* appointees to a committee *appointed* pursuant to subsection (1) *or (2)* ~~must be notified by the secretary of state~~ by certified mail, with return receipt requested, ~~no later than 5 days after the deadline set for appointment of committee members,~~ of the deadlines for submission of the committee's arguments.

~~(4) All appointees to a committee pursuant to subsection (2) must be notified by the secretary of state by certified mail, with return receipt requested, no later than 35 days after the petition has been approved for circulation, of the deadlines for submission of the committee's arguments.~~

~~(5) Committees appointed under subsections (2)(b), (4), and (5) of 13-27-402 must be vacated and have no further obligation if the ballot measure for which they were appointed fails to receive sufficient signatures to place it on the ballot. The secretary of state shall notify the committee members of the failure of a ballot measure to receive sufficient signatures no later than 3 days after the filing deadline set in 13-27-104.~~"

HeinOnline -- 1997 vol. I 369 1997

**Section 3.** Section 13-27-406, MCA, is amended to read:

**"13-27-406. Limitation on length of argument — time of filing.** An argument advocating approval or rejection of a ballot issue is limited to ~~500 words~~ *a single 7 1/2-inch by 10-inch page* and must be filed, in ~~typewritten form~~ *a black-and-white, camera-ready format*, with the secretary of state no later than 105 days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation shall approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline."

**Section 4.** Section 13-27-407, MCA, is amended to read:

**"13-27-407. Rebuttal arguments.** The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue ~~in his office~~. The committees may prepare rebuttal arguments no longer than ~~250 words~~ *one-half the size of the arguments under 13-27-406* that ~~shall~~ *must* be filed, in ~~typewritten form~~ *in a black-and-white, camera-ready format*, with the secretary of state no later than 10 days after the deadline for filing the original arguments. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument ~~shall~~ *must* be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments."

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved March 13, 1997

# CHAPTER NO. 48

[HB 23]

AN ACT GENERALLY REVISING THE ACCOUNTING LAWS OF STATE GOVERNMENT TO ACCOMMODATE INTEGRATED STATE MANAGEMENT TECHNOLOGY FOR THE TWENTY-FIRST CENTURY AS REQUIRED BY SENATE JOINT RESOLUTION NO. 23, LAWS OF 1995; ELIMINATING CERTAIN REPORTS AND PLANS; ELIMINATING UNNECESSARY DUTIES OF THE STATE AUDITOR, THE STATE TREASURER, AND THE DEPARTMENT OF ADMINISTRATION; ELIMINATING THE REQUIREMENT THAT CERTAIN DUPLICATE WARRANTS MAY BE ISSUED ONLY AFTER A BOND IS PROVIDED; ELIMINATING THE REQUIREMENT FOR A STOP-PAYMENT ORDER EACH TIME A DUPLICATE WARRANT IS ISSUED; AMENDING SECTIONS 15-1-501, 17-1-102, 17-1-111, 17-2-110, 17-2-201, 17-3-102, 17-3-106, 17-4-101, 17-6-212, 17-8-201, 17-8-202, AND 17-8-306, MCA; REPEALING SECTIONS 17-1-123 AND 17-8-307, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-1-102, MCA, is amended to read:

HeinOnline -- 1997 vol. I 370 1997

**"17-1-102. Uniform accounting system and expenditure control.** (1) The department shall establish a system of financial control so that the functioning of the various agencies of the state may be improved, duplications of work by different state agencies and employees may be eliminated, public service may be improved, and the cost of government may be reduced.

(2) The department shall prescribe and install *a* uniform accounting and reporting *system* for all state agencies and institutions, ~~showing~~ *reporting* the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles~~, and shall develop plans for improvements and economies in the organization and operation of state agencies and institutions, which must be submitted to the respective heads of agencies and institutions. Copies of all plans must be delivered to the governor, and additional copies must be retained in the office of the department for inspection by the members of the legislature~~.

(3) The uniform accounting and reporting system must contain three levels of expenditure. The first level must include general categories, such as personal services, operating expenses, equipment, capital outlay, local assistance, grants, benefits and claims, transfers, and debt service. The second level of expenditure must include specific categories of expenditures within each first-level category. The third level of expenditure must include specific items of expenditure within each category of the second level.

(4) ~~The department shall examine all financial affairs of each state agency and institution for the purpose of developing plans for improvements and economies in the organization and operation of the agencies and institutions and for the purpose of enabling the department to properly perform any of the duties imposed upon the department by this part.~~

~~(5)~~ All state agencies, including units of the university system but excluding community colleges, shall input all necessary transactions to the accounting system prescribed in subsection (2) before the accounts are closed at the end of the fiscal year in order to present the receipt, use, and disposition of all money and property for which the agency is accountable in accordance with generally accepted accounting principles, except that for budgetary control purposes, encumbrances that are required by generally accepted accounting principles to be reported as a reservation of fund balance must be recorded as expenditures and liabilities on the accounting records."

**Section 2.** Section 17-1-111, MCA, is amended to read:

**"17-1-111. General fiscal duties of state treasurer.** (1) The state treasurer is the custodian of all money and securities of the state unless otherwise expressly provided by law.

(2) It is the duty of the state treasurer to:

(a) receive and account for all money belonging to the state, not expressly required by law to be received and kept by some other person;

(b) pay warrants out of the funds upon whicb they are drawn;

(c) upon payment of any warrant, ~~take upon the back of the warrant~~ *record* the receipt of the person to wbom it is paid;

HeinOnline -- 1997 vol. I 371 1997

(d) keep an account of all money received and disbursed;

(e) at the request of either house of the legislature or of any legislative committee, give information in writing as to the condition of the treasury or on any subject relating to the duties of the office of state treasurer;

(f) superintend the fiscal concerns of the state;

(g) suggest plans for the improvement and management of the public revenue;

(h) keep an account of all warrants drawn upon the treasury and of other appropriation records that the treasurer determines to be essential for the support of the accounting records maintained in the department;

(i) ~~charge the outgoing state treasurer with the balance that was in the treasury when the outgoing treasurer came into office and with all money received and credit the outgoing treasurer with all warrants drawn on and paid;~~

~~(j)~~ keep a register of warrants, showing the fund upon which each warrant is drawn, each warrant's number, who received the warrant, and the date issued;

~~(k)~~*(j)* require all persons who have received money belonging to the state but who have not accounted for it to settle their accounts;

~~(l)~~*(k)* draw warrants on the state treasury for the payment of money directed by law to be paid out of the treasury, except that a warrant may not be drawn unless authorized by law;

~~(m)~~*(l)* authenticate with the official seal of the state all warrants drawn and all copies of papers issued from the office of state treasurer;

~~(n)~~*(m)* collect and pay into the state treasury all fees received; and

~~(o)~~*(n)* discharge other duties as may be imposed upon the state treasurer by law."

**Section 3.** Section 17-2-110, MCA, is amended to read:

**"17-2-110. Fiscal year and financial reports.** (1) The fiscal year for state purposes commences on July 1 of each year and ends on June 30 of each year.

(2) At the ~~close~~ *end* of each fiscal year, the fiscal records of each state office, department, bureau, commission, institution, university unit, and agency (collectively referred to as "state agency") must be closed ~~as of the end of the fiscal year~~. Each state agency shall prepare the financial ~~statements~~ *records* and reconciliations for the fiscal year as the department of administration may prescribe. ~~These~~ *The* financial reports *of the uniform accounting and reporting system prescribed in 17-1-102(2)* are to be completed and distributed not more than 31 days following the ~~close~~ *end* of each fiscal year. The department of administration may extend this time limit if a state agency can show necessity for the extension.

(3) The reports are to be distributed to the department of administration and the legislative auditor and any other state agency that the department of administration may prescribe. It is the intent of this provision that these reports

HeinOnline -- 1997 vol. I 372 1997

accurately and comprehensively present the financial activities of the reporting state agency in accordance with generally accepted accounting principles so that the reports can be effectively used by the executive and legislative branches of state government.

(4) Upon consolidation of the reports, the annual financial report by the department of administration must be available for other individuals and organizations interested in the financial affairs of the state of Montana."

**Section 4.** Section 17-2-201, MCA, is amended to read:

"**17-2-201. Contingent revolving accounts — when established.** (1) The department of administration may authorize the establishment and maintenance at ~~any and all of~~ the state ~~institutions~~ *agencies* or in ~~any of~~ the departments, boards, or commissions ~~of Montana~~ of contingent revolving accounts, transferring in trust to the business offices of ~~said~~ *the* institutions ~~such~~ sums of money as may appear necessary~~,~~ to be used by ~~said~~ *the* institutions for the payment of demands requiring immediate cash payment~~,~~. ~~such~~ *Demands include the* ~~as~~ payment of minor invoices, invoices for which *the* discount period is too short to take advantage of the discount if payment is made by warrant, freight and express charges, travel advances, postage, publications requiring remittance to accompany the order, and the establishment of cash change funds, all under specific regulations to be established by the department of administration.

(2) Each ~~and every~~ state ~~institution~~ *agency* granted a contingent revolving account shall report to the department of administration ~~monthly~~ *upon request* all transactions involving ~~such~~ *the* contingent revolving accounts, with proper vouchers for every payment ~~made therefrom~~. The department of administration may cancel ~~such~~ *the* authorizations and recall ~~such~~ *the* funds ~~at pleasure~~ *as it determines appropriate*."

**Section 5.** Section 17-3-102, MCA, is amended to read:

"**17-3-102. Definitions.** As used in this part, the following definitions apply:

(1) "Application" means ~~a written request to a~~ *the form specified by a* federal agency ~~for federal assistance program funds~~.

(2) "Federal assistance programs" means any financial assistance made to a state agency by an agency of the United States government, whether a grant, loan, gift, contract, or in any other form.

(3) "Grantee agency" means any agency of state government receiving federal funds.

(4) "Indirect costs" means costs ~~which~~ *that* benefit more than one agency or program and *that* are not readily assignable to the agency or program specifically benefiting.

(5) "Service agency" means state agencies ~~which~~ *that* provide goods, facilities, and services to a grantee agency.

(6) "State agency" means any agency of state government eligible to apply for and receive federal funds."

HeinOnline -- 1997 vol. I 373 1997

**Section 6.** Section 17-3-106, MCA, is amended to read:

**"17-3-106. Fiscal officer for receipt of federal grants.** (1) The state treasurer is designated as the fiscal officer of the state to receive from the United States government or any of its agencies all funds that may he made availahle as a grant to the state of Montana under any act of congress, or otlierwise, for any purpose or use. The state treasurer shall, upon receipt of the funds, deposit the funds in the proper fund in the state treasury.

(2) ~~The state treasurer~~ *A state agency* may return ~~to the federal government any~~ *from the state treasury, through the state treasurer, any* federal funds and the interest earned on the funds that may not he retained by the state according to federal law or the terms of the federal grant that made tbe funds available. The funds are statutorily appropriated, as provided in 17-7-502, to the state treasurer for the purpose of returning the funds under the provisions of this subsection."

**Section 7.** Section 17-4-101, MCA, is amended to read:

**"17-4-101. Definitions.** In this part, tbe *following definitions apply*:

(1) ~~term "agency"~~ *"Agency"* includes:

(a) all state offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, and other entities or instrumentalities of state government; and

(b) with respect to delinquent taxes that the ~~state auditor~~ *department* is requested to collect, state and local entities whose personal property taxes are collected by the county treasurer~~;~~.

(2) ~~word "department"~~ *"Department"* means the department of administration."

**Section 8.** Section 17-6-212, MCA, is amended to read:

**"17-6-212. State purchase of general fund warrants.** (1) Tbe state reserves a preference right, prior to the right of any person, company, or corporation, to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.

(2) When the board of investments has under its control any funds subject to investment that in its judgment it would be advantageous to invest in state general fund warrants and there are not sufficient funds in the state general fund to pay warrants issued against the fund at tbe time that they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating tbe fund or funds to be invested and fixing the amount or amounts to be invested. State general fund warrants registered by the state treasurer pursuant to 17-8-304(1) and purchased by the board of investments must bear interest at a rate determined by the board. When determining the interest rate, the board shall consider:

(a) the duration of the investment by estimating the time at which the warrants will be redeemed pursuant to 17-8-304(1); and

(b) the interest rate of the investments liquidated to provide the funds to purchase the warrants.

HeinOnline -- 1997 vol. I 374 1997

(3) The state treasurer shall attach to or stamp, write, or print upon each general fund warrant issued after the receipt of notice, until warrants totaling the amounts designated have been issued, a notice that the state will exercise its preference right to purchase the warrant.

(4) The state treasurer shall, when the marked warrant is presented, pay it out of the proper fund as designated by the board, and the warrant purchased must be registered as other state warrants and must bear interest as provided by law.

(5) When the designated amounts have been invested, the ~~state treasurer~~ *department* shall notify the board of investments, which shall issue orders ~~upon the proper funds addressed to the state auditor~~ for warrants to be issued in favor of the treasurer."

**Section 9.** Section 17-8-201, MCA, is amended to read:

**"17-8-201. Authorizations for disbursements — submission of claim to department of administration.** (1) All authorizations for disbursements ~~shall~~ *must* be given by the agency concerned, and a record ~~shall~~ *must* be kept by the agency of all the authorizations and expenditures. Claims for any disbursement must be submitted to the department of administration.

(2) The department may prescribe the claim form and may establish, in writing, rules governing the preparation, submittal, and processing of claims. All claims ~~shall~~ *must* be processed in the order of their presentation, and ~~all claims disapproved by~~ the department shall *notify* ~~be returned to~~ the ~~operating~~ agency ~~with an explanation in writing of why the claim was disapproved~~ *of any disapproved claim.*"

**Section 10.** Section 17-8-202, MCA, is amended to read:

**"17-8-202. Preaudit and transmittal of claims.** (1) The department of administration is not required to preaudit a liquidated claim against the state. However, the department ~~of administration~~ may preaudit those claims it considers necessary. The agency shall retain the original of all documents that support claims sent to the department. These documents are subject to postaudit by the legislative auditor.

(2) An office or entity of the executive, legislative, or judicial branch of state government may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If ~~no~~ *an* appropriation is *not* available for the payment of a claim, the ~~department shall audit it and, if it is a valid claim,~~ *agency shall* transmit ~~it~~ *the claim* to the governor for presentation to the legislature."

**Section 11.** Section 17-8-306, MCA, is amended to read:

**"17-8-306. Issuance of duplicate warrant.** (1) The state treasurer may issue a duplicate warrant whenever any warrant drawn by the state is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate". ~~A duplicate warrant may not be issued or delivered unless the person entitled to receive it deposits with the state treasurer a bond in double the amount for which~~

HeinOnline -- 1997 vol. I 375 1997

~~the duplicate warrant is issued indemnifying the state and its officers and employees from any loss resulting from the issuance of the duplicate warrant.~~

~~(2) A bond of indemnity is not required when:~~

~~(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;~~

~~(b) the owner or custodian is the state of Montana or any agency or officer of the state;~~

~~(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;~~

~~(d) the state treasurer has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;~~

~~(e) the amount of the lost or destroyed warrant is less than $300;~~

~~(f) it can be established that a crime has been committed and that as a result a Montana warrant has been stolen or destroyed;~~

~~(g) it can be established that a Montana warrant has been mailed to an incorrect payee;~~

~~(h) the payee is a vendor or contractor doing business with the state of Montana;~~

~~(i) the payee is a recipient of public assistance under Title 53;~~

~~(j) the payee is a recipient of a monthly annuity under Title 19;~~

~~(k) the payee is a recipient of student financial assistance administered or insured by the guaranteed student loan program pursuant to Title 20, chapter 26; or~~

~~(l) a state agency approves the issuance of the duplicate warrant and agrees to assume the risk of the original warrant being cashed.~~

~~(3)~~*(2)* Whenever ~~the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l)~~ *a duplicate warrant is issued, the state treasurer may place* a stop-payment order ~~must be placed~~ on the original warrant ~~by the state treasurer~~.

~~(4)~~*(3)* Whenever the owner or custodian applies ~~under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l)~~ *for the issuance of a duplicate warrant*, the application must include an agreement to indemnify the state and its officers and employees from any loss resulting from the issuance of a duplicate warrant. *An indemnity agreement is not required if:*

*(a) the payee is:*

*(i) the United States government;*

*(ii) a state of the United States;*

*(iii) any agency, instrumentality, or officer of the United States government or of a state, county, city, consolidated government, town, district, or other political subdivision of a state or any officer thereof; or*

*(b) the owner or custodian is the state of Montana or any agency or officer of the state.*

*(4)* Any loss incurred in connection with the issuance of a duplicate warrant must be charged against the account from which the payment was derived."

**Section 12.** Section 15-1-501, MCA, is amended to read:

**"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (6) all money received from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) liquor license taxes under Title 16;

(d) telephone company license taxes under chapter 53; and

(e) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 91.3% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 89.5% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(4) The department of revenue shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

HeinOnline -- 1997 vol. I 377 1997

(5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the general fund.

(6) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and ~~(5)~~ *(4)*, in accordance with generally accepted accounting principles.

(7) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

**Section 13. Repealer.** Sections 17-1-123 and 17-8-307, MCA, are repealed.

**Section 14. Effective date.** [This act] is effective July 1, 1997.

Approved March 13, 1997

# CHAPTER NO. 49

[HB 70]

AN ACT EXEMPTING RECREATIONAL LEASES FROM THE BENEFICIAL USE PROPERTY TAX; AMENDING SECTIONS 15-1-101 AND 15-24-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-1-101, MCA, is amended to read:

**"15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means property used or owned hy a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held hy a distrihutor or dealer of trailers or mobile homes as stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) (i) "Department", except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home or housetrailer has heen established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently locatod only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term "leasehold improvements" means improvements to mohile homes and mobile homes located on land owned hy another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

HeinOnline -- 1997 vol. I 379 1997

(k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(l) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(m) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(n) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(o) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(p) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

*(q) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.*

~~(q)~~*(r)* "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

~~(r)~~*(s)* The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

HeinOnline -- 1997 vol. I 380 1997

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board."

**Section 2.** Section 15-24-1203, MCA, is amended to read:

**"15-24-1203. Privilege tax on industrial, trade, or other business use of tax-exempt property — exceptions.** *(1)* There is imposed and must be collected a tax upon the possession or other beneficial use for industrial, trade, or other business purposes enjoyed by any private individual, association, or corporation of any property, real or personal, that for any reason is exempt from taxation. ~~The tax may not be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on public airport property are subject to tax. The tax may not be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates.~~ The tax is imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts are not subject to the tax.

*(2)* The tax may not be imposed upon:

*(a)* the possession or other beneficial use of railroad right-of-way or track owned by the United States or acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state or the United States retains ownership and the right-of-way or track is used exclusively for rail transportation~~.~~;

*(b)* ~~The tax may not be imposed on~~ the beneficial use by a person of property held by a port authority, created under Title 7, chapter 14, part 11, or by a port authority owned by the United States or an agency of the United States~~,~~ unless the port authority provides for the exclusive use of the property by the person;

*(c) the possession or other beneficial use of public lands occupied under the terms of recreational, mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates; or*

*(d) the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on public airport property are subject to taxation.*"

**Section 3. Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

Approved March 13, 1997

HeinOnline -- 1997 vol. I 381 1997

# CHAPTER NO. 50

[HB 71]

AN ACT INCREASING THE EMERGENCY LOAN CAP FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM FROM $1 MILLION TO $10 MILLION; AMENDING SECTION 85-1-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-1-605, MCA, is amended to read:

**"85-1-605. Grants, loans, and bonds for state and local government assistance.** (1) The department may recommend to the legislature that grants and loans be made from revenue deposited in the renewable resource grant and loan program state special revenue account, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government or to a city, county, or other political subdivision or local government body of the state. The legislature may approve by appropriation or other appropriate means those grants and loans *that* it finds consistent with the policies and purposes of the program.

(2) Nothing in this part creates or expands the state's or a local government's authority to incur debt, and the legislature may authorize loans only to state and local government entities otherwise structured to incur debt.

(3) Loans may not be authorized except to a state or local government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department may request up to 10% of the grant funds available and up to ~~$1~~ *$10* million for loans from the renewable resource grant and loan program state special revenue account and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state or local government applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding, or both, that, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative finance committee of the legislature.

(5) The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation; for assessing feasibility or planning; for implementing renewable resource projects; and for similar purposes approved by the legislature."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 13, 1997

HeinOnline -- 1997 vol. I 382 1997

# CHAPTER NO. 51

[HB 82]

AN ACT GENERALLY REVISING THE LAWS GOVERNING CORPORATE TAXES; REDUCING THE PERIODS OF LIMITATION APPLICABLE TO CORPORATIONS FOR TAXATION AND REFUND PURPOSES; REPLACING THE 10 PERCENT PENALTY ON DELINQUENT CORPORATE TAX RETURNS WITH A GRADUATED PERCENTAGE; AMENDING SECTIONS 15-31-111, 15-31-509, 15-31-510, 75-2-220, AND 75-5-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Graduated delinquent penalty for corporate taxpayers.** If the tax for any corporation is not paid on or before the due date of the return, as provided in 15-31-111(2), or if the tax is not paid on or before the due date of the return, as provided in 15-31-111(3), there is assessed a penalty of 1% of the tax due, increasing by 1% for each 30-day period that the tax or any fraction of the tax remains unpaid, up to a maximum penalty of 25% of the tax due. This penalty must be assessed unless it is shown that the failure was due to a reasonable cause and was not due to neglect.

**Section 2.** Section 15-31-111, MCA, is amended to read:

**"15-31-111. Return to be filed.** (1) Each corporation subject to the license tax imposed under this chapter shall for each tax period file a true and accurate return of its net income for the tax period in the manner and form prescribed by the department of revenue. The return must contain all of the facts, data, and information that are appropriate and in the opinion of the department necessary to determine the correctness of the net income returned and to carry out the provisions of this chapter. The return must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting officer.

(2) If the corporation is reporting on a calendar year basis, the return must be filed with the department on or before May 15 following the close of the calendar year. If the corporation is reporting on a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month following the close of its fiscal year.

(3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6 months following the date prescribed for filing of its tax return. The tax and interest must be paid when the return is filed. Interest must be added to the tax due as provided in 15-31-510~~(3)~~.

(b) The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.

(4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a corporation subject to the license tax imposed by this chapter shall make the return in the same manner and form as the corporation is required to make the return. Any license tax due on the basis of the return is assessed and collected in the same manner as if assessed directly against the corporation of whose business or property the receiver, trustee, or assignee has custody and

HeinOnline -- 1997 vol. I 383 1997

control. The receiver, trustee, or assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or stockholders."

**Section 3.** Section 15-31-509, MCA, is amended to read:

**"15-31-509. Periods of limitation.** (1) Except as otherwise provided in ~~this section and in~~ 15-31-544 *and this section*, ~~no~~ *a* deficiency ~~shall~~ *may not* be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within ~~5~~ *3* years from the date *that* the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing ~~shall be~~ *is* considered as filed on ~~such~~ *the* last day. ~~Where~~ *When*, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax ~~shall~~ *may* not apply when:

(a) the taxpayer bas by written agreement suspended the federal statute of limitations for collection of federal tax~~, provided~~ *if* the suspension of the limitation set forth in this section ~~shall last~~ *lasts*:

(i) only so long as the suspension of the federal statute of limitation; or

(ii) until 1 year after any federal changes have become final or any amended federal return is filed as a result of ~~such~~ *the* suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return, as required by 15-31-506, until ~~5~~ *3* years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) ~~No~~ *A* refund or credit ~~shall~~ *may not* be allowed or paid with respect to the year for which a return is filed after ~~5~~ *3* years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of ~~such~~ *the* period the taxpayer files a claim ~~therefor~~ *for the refund or credit* or the department ~~of revenue~~ has determined the existence of the overpayment and has approved the refund or credit ~~thereof~~. If the taxpayer has agreed in writing under the provisions of subsection (1) ~~of this section~~ to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event ~~no~~ *a* claim is *not* filed ~~shall~~ *must* automatically be ~~so~~ extended.

*(3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of the net loss that results in the carryback.*

*(4) If the year of the net operating loss is open under either state or federal waivers, the year to which the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."*

HeinOnline -- 1997 vol. I 384 1997

**Section 4.** Section 15-31-510, MCA, is amended to read:

**"15-31-510. Estimated payments — interest penalty — tax returns — penalty — interest.** (1) For corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there is assessed a 20% a year underpayment interest penalty calculated as follows:

(a) The amount of underpayment is the amount of the required installment set forth in 15-31-502 that exceeds the amount, if any, of the installment paid on or hefore the last date prescribed for payment.

(b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or hefore the last date prescribed for the payment of the installment equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax were an amount equal to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

(i) for the first 3 months of the taxable year in the case of the installment required to be paid in the 4th month;

(ii) for the first 3 months or for the first 5 months of the taxable year in the case of the installment required to be paid in the 6th month;

(iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment required to be paid in the 9th month; and

(iv) for the first 9 months or for the first 11 months of tlie taxable year in the case of the installment required to be paid in the 12th month of the taxable year.

(c) For purposes of subsection (1)(b), the taxahle income must be placed on an annualized basis by:

(i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

(ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subsection (1)(b).

(d) Notwitlistanding the provisions of suhsections (1)(a) through (1)(c), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds 80% of the amount determined under subsection (1)(e).

(e) To determine the amount for any installment:

(i) take the taxable income for all months during the taxable year preceding the filing month;

(ii) divide the amount by the base period percentage for all months during the taxahle year preceding the filing month;

(iii) determine the tax on tlie amount calculatod under subsection (1)(e)(ii); and

HeinOnline -- 1997 vol. I 385 1997

(iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(f) For purposes of this subsection (1):

(i) the base period percentage for any period of months is the average percentage that the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income of the 3 preceding years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70%; and

(iv) the department of revenue may by rule provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(2) ~~If the tax for any corporation is not paid on or before the due date of the return as provided in 15-31-111(2) or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3), there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was due to reasonable cause and not to neglect.~~

~~(3)~~ If any tax due under this chapter is not paid when due ~~under 15-31-111(2)~~ *as provided in [section 1]*, by reason of extension or otherwise, interest is added to the tax due at the rate of 12% a year from the due date until paid."

**Section 5.** Section 75-2-220, MCA, is amended to read:

"**75-2-220. Fees — special assessments — late payment assessments.** (1) Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements in this chapter, including:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit. This amount does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

HeinOnline -- 1997 vol. I 386 1997

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) In recovering the costs described in subsection (1), the department may assess an application fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fee required under subsection (1), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(5) (a) If the applicant or permitholder fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at the rate contained in 15-31-510~~(3)~~; or

(ii) revoke the permit consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant or permitholder has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The board shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The board may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

HeinOnline -- 1997 vol. I 387 1997

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more than one fee annually to a source of air pollutants for the costs identified in subsection (1)."

**Section 6.** Section 75-5-516, MCA, is amended to read:

**"75-5-516. Fees authorized for recovery — process — rulemaking.** (1) The board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board's and department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

HeinOnline -- 1997 vol. I 388 1997

(2) The rules promulgated by the board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for those points according to board rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for those points according to board rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may bo given to facilities tbat consistently discbarge effluent at levels between 50% and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a pormittee with a violation of any effluent limit during the previous calendar year is not eligible for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(a) the fees collected under subsection (2)(a);

(b) state general fund appropriations for functions administered under this chapter; and

(c) federal grants for functions administered under this chapter.

(4) For purposes of subsection (3), tlie department's estimated cost of conducting tbe tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after tbe date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed at the rate established under 15-31-510~~(3)~~; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if tlie holder has paid all outstanding fees, including all penalties, assessments, and interest impesed under subsection (5)(a).

HeinOnline -- 1997 vol. I 389 1997

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (7). The appeal to the board must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111."

**Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 5, and the provisions of Title 15, chapter 31, part 5, apply to [section 1].

**Section 8. Retroactive applicability.** [Sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

**Section 9. Effective date.** [This act] is effective on passage and approval.

Approved March 13, 1997

# CHAPTER NO. 52

[SB 56]

AN ACT REGULATING PRIVATELY OWNED, FOR-PROFIT, PERPETUALLY MAINTAINED CEMETERIES; REGULATING PRIVATE CEMETERY PERPETUAL CARE AND MAINTENANCE TRUST FUNDS; ADDING A SIXTH MEMBER TO THE BOARD OF FUNERAL SERVICE; AMENDING SECTIONS 2-15-1853 AND 37-19-101, MCA; AND REPEALING SECTIONS 35-21-101, 35-21-102, 35-21-103, 35-21-201, 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207, 35-21-208, 35-21-209, 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215, 35-21-216, 35-21-217, 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306, 35-21-307, 35-21-401, 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407, 35-21-408, 35-21-409, 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414,

HeinOnline -- 1997 vol. I 390 1997

35-21-415, 35-21-416, 35-21-417, 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423, 35-21-424, 35-21-425, 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431, 35-21-432, 35-21-433, 35-21-501, 35-21-502, 35-21-503, 35-21-601, 35-21-602, 35-21-603, 35-21-604, 35-21-605, 35-21-606, 35-21-607, 35-21-608, 35-21-609, 35-21-610, 35-21-611, 35-21-612, 35-21-613, 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619, 35-21-620, 35-21-621, 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701, 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710, 35-21-711, 35-21-712, AND 35-21-713, MCA.

STATEMENT OF INTENT

This bill requires a statement of intent because it requires rulemaking by the board of funeral service. The board shall adopt rules setting forth the information that must be included in an application to establish or expand a cemetery, rules setting forth the information that must be included in an application for a permit for an existing cemetery, rules determining the fee schedules for the permits required by [sections 3 through 16], rules determining the information required to build structures on a cemetery covered by [sections 3 through 16], and rules setting forth the information that must be included in the reports submitted to the board by a cemetery company covered under [sections 3 through 16]. Recognizing the sensitive nature of cemetery services and the potential for abuse to those in need of cemetery services, the legislature considers it necessary to provide guidelines for the operation of for-profit cemeteries. However, protection of the public must be balanced against the right of a business to conduct its affairs in a private manner. All rules promulgated by the board must be narrowly tailored to require only such disclosure as is necessary to effectuate the intent of this legislation without violating the people's constitutional right to know. The intent of this legislation includes ensuring that for-profit cemeteries are operated in a fiscally sound and prudent manner to protect the public's interest in well-maintained cemeteries, both now and in the future.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-1853, MCA, is amended to read:

"**2-15-1853. Board of funeral service.** (1) There is a board of funeral service.

(2) The board consists of ~~five~~ *six* members appointed by the governor with the consent of the senate. Three members must be licensed morticians. One member must be a representative of the public who is not engaged in the practice of mortuary science or funeral directing. One member must be a licensed crematory operator or crematory technician or a mortician who is engaged in a crematory operation. *One member must be a representative of a cemetery company governed by [sections 3 through 16].*

(3) Board members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

**Section 2.** Section 37-19-101, MCA, is amended to read:

"**37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

HeinOnline -- 1997 vol. I 391 1997

(1) "Authorizing agent" means a person legally entitled to order the cremation of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

(2) "Board" means the board of funeral service provided for in 2-15-1853.

*(3) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.*

*(4) "Cemetery company" means an individual, partnership, corporation, or association that:*

*(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or*

*(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.*

~~(3)~~*(5)* "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

*(6) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.*

~~(4)~~*(7)* "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

~~(5)~~*(8)* "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

~~(5)~~*(9)* "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

~~(7)~~*(10)* "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

HeinOnline -- 1997 vol. I 392 1997

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

~~(8)~~*(11)* "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

~~(9)~~*(12)* "Crematory operator" means the person in charge of the licensed crematory facility.

~~(10)~~*(13)* "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

*(14) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.*

~~(11)~~*(15)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(10)~~*(16)* "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

~~(13)~~*(17)* "Funeral directing" includes:

(a) supervising funerals, including the making of preneed or at-need contractual arrangements for funerals;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(d) representing to the public that one is a funeral director.

~~(14)~~*(18)* "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operater and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

~~(15)~~*(19)* "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

HeinOnline -- 1997 vol. I 393 1997

*(20) "Interment" means any lawful disposition of cremated remains or human remains.*

*(21) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.*

*(22) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.*

~~(16)~~*(23)* "Mortician" means a person licensed under this chapter to practice mortuary science.

~~(17)~~*(24)* "Mortuary" means a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents that the person is engaged in the profession of mortuary science or funeral directing.

~~(16)~~*(25)* "Mortuary science" means the profession or practice of funeral directing and embalming.

*(26) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.*

*(27) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.*

~~(16)~~*(28)* "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

~~(20)~~*(29)* "Urn" means a receptacle designed to permanently encase the cremated remains."

**Section 3. Title.** [Sections 3 through 16] may be referred to as the "Perpetually Maintained Cemeteries Act".

**Section 4. Purpose.** The legislature declares that it is the public policy of this state to regulate privately owned, for-profit cemeteries to protect public health and promote financial stability through perpetual care and maintenance trusts.

**Section 5. Application of [sections 3 through 16] — exceptions.** [Sections 3 through 16] apply to all cemeteries and burial grounds located in the state of Montana unless the cemetery is owned and operated by:

(1) a church or similar religious organization;

(2) a municipality or county government;

(3) a family, as a private family burial ground where lots are not offered for sale; or

(4) a community nonprofit association in which persons other than the bookkeeper and maintenance crew are not entitled to receive any pecuniary profit.

HeinOnline -- 1997 vol. I 394 1997

**Section 6. Powers and duties of board.** The board is charged with administering [sections 3 through 16]. The board may:

(1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, including but not limited to an examination of the physical condition or appearance of the cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by the cemetery company, and any other examinations the board considers necessary or appropriate in the public interest. The board may also order examinations in response to public complaints. The examinations must be made by members or representatives of the board that may include a certified or registered public accountant or any other person designated by the board.

(2) issue or amend permits to operate a cemetery in accordance with the provisions of [sections 3 through 16];

(3) adopt rules and forms to enforce the provisions of [sections 3 through 16];

(4) require a cemetery company to observe minimum accounting principles and practices and to keep books and records in accordance with the principles and practices for the period of time the board may by rule prescribe; and

(5) require a cemetery company to provide additional contributions to the perpetual care and maintenance fund of the cemetery as provided for in [sections 3 through 16], including but not limited to contributions not to exceed $1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.

**Section 7. Authority to inspect cemeteries and audit cemetery companies.** (1) The board may order an inspection of a cemetery or may audit a cemetery company. For each cemetery examined or cemetery company audited in accordance with [sections 3 through 16], the cemetery company shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an examination is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends in examining the physical condition or appearance of a cemetery. Once audited, a cemetery company may not be required to submit to an audit at the request of the board for a period of 5 years unless complaints have resulted in a formal notice of disciplinary action by the department against the cemetery company.

(2) (a) In lieu of any financial examination that the board is authorized to make, the board may accept the audit of an independent certified or registered public accountant if the board has notified the cemetery company that the audit would be acceptable and the cemetery company has notified the board in writing that the audit will be prepared.

(b) The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery company, and the scope of the audit must be at least equal to the scope of the examination required by the board.

**Section 8. Permit — application.** (1) By January 1, 1998, a person operating a cemetery or a cemetery company governed by [sections 3 through 16] must have a permit issued by the board. The permit must be displayed in a conspicuous place at the cemetery.

HeinOnline -- 1997 vol. I 395 1997

(2) A cemetery permit expires on the date set by board rule and may be renewed for a 5-year period upen payment of a fee set by the board. An application for a permit or renewal of a permit must designate a responsible person, including that person's address and telephone nuinber, who is availahle to act on hehalf of the ceinetery company with regard to the requirements of [sections 3 through 16]. A cemetery coinpany may designate a different person with boiard approval. An application for renewal of a permit inust contain:

(a) the name of the ceinetery company, the location of the cemetery, the name of the person in charge of the records of the cemetery company, and tbe telephone numher of the ceinetery coinpany;

(b) the number and dollar amount of sales of cemetery lots, grave spaces, mausoleums, crypts, niches, and burial rights for which payment has been made in full and the nuinber of certificates or deeds of conveyance issued during tbe preceding 5 calendar years;

(c) an accounting of the amounts paid into the perpetual care and maintenance fund and the income received from the fund during the preceding 5 calendar or fiscal years, including the total amount due to the fund whether paid in or not, the amount due to the fund at the date of the report, and the amount expended for maintenance of the cemetery;

(d) the names and addresses of the owners of the cemetery company or the officers and directors of the ceinetery company, any change in control of the cemetery company that has occurred during the past 5 calendar or fiscal years, the date of incorporation, if applicahle, and tbe resident agent and address of tbe registered agent's office if the cemetery company is a corporation; and

(e) any other information that the hoard requires by rule.

(3) The hoard may set a penalty fee for late renewal of a permit.

**Section 9. Permit — amendment.** (1) Whenever a cemetery company that is subject to the provisions of [sections 3 through 16] proposes to amend its present permit for construction of a mausoleuin, reduction or increase in percentage of gross sales proceeds to be placed in the perpetual care and maintenance fund, expansion of a ceinetery, or other changes in its operation, the cemetery company shall file an application for amendment of the permit with the board.

(2) The application must be accompanied by a fee and other information tbat the board requires by rule.

**Section 10. Permit — transfer of ownership.** (1) If a cemetery coinpany that is suhject to the provisions of [sections 3 through 16] is to be sold, if the ownership is to be otberwise transferred, or if a controlling interest in the company is to be sold or otberwise transferred, the proposed purchaser or transferee shall file an application for the issuance of a new permit with the board.

(2) The application must be accompanied hy a fee and other inforination that the board requires by rule.

**Section 11. Perpetual care and maintenance fund.** (1) A perpetual care and maintenance fund establisbed pursuant to the provisions of [sections 3

through 16] for the purpose of administration, care, and maintenance of a cemetery, including lots, grave spaces, crypts, niches, burial rights, or other land or buildings, is a trust fund.

(2) The net income from the fund must be used by the owners, managers, or officers and directors of a cemetery company exclusively for the care and maintenance of the cemetery and may not be used for any other purpose.

(3) The principal of a perpetual care and maintenance fund must in all cases remain intact and inviolate and must be administered with the same care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person would use to accomplish the purpose of the trust as required by this section and reflected in the trust document.

(4) Each cemetery company shall maintain at a minimum the following:

(a) a general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the perpetual care and maintenance fund;

(b) documents supperting and verifying each asset of the fund; and

(c) a trust agreement.

(5) The board may require a cemetery company to provide an accounting or audit of its perpetual care and maintenance fund.

(6) Each cemetery company shall deposit not less than 15% of the gross proceeds of each sale of a lot, grave space, crypt, niche, or burial right, as determined by the board, inte the perpetual care and maintenance fund.

(7) In establishing a perpotual care and maintenance fund, a cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

(8) A perpotual care and maintenance fund may receive, take, and hold any real or personal property that is bequeathed, devised, granted, given, or otherwise contributed to it.

**Section 12. Records required.** (1) A cemetery company shall make and keep accounts and records confirming that it has made the required contributions to its perpetual care and maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

(2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery company must be numbered prior to their execution by the cemetery company and must contain those items the board prescribes by rule.

**Section 13. Conveyance.** (1) An instrument of conveyance or deed for a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the purchaser upon complete payment of the purchase price.

(2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1). However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery company at the purchase price then

HeinOnline -- 1997 vol. I 397 1997

heing charged by the cemetery company for a similar item and the cemetery company has not accepted the offer within 30 days of the offer.

(3) The secretary or other responsible person of a cemetery company shall file and record in the cemetery company's books all instruments of conveyance and deeds.

(4) An instrument of conveyance or deed must be signed on behalf of a cemetery company by the person having proper authority to sign the instrument of conveyance or deed.

**Section 14. Preexisting cemcterics.** A cemetery or cemetery company that is in existence on January 1, 1998, shall obtain the necessary permits required by [sections 3 through 16] in order to continue operation and is suhject as of January 1, 1998, to the provisions of [sections 3 through 16].

**Section 15. Prearranged funeral plans.** Where applicable, the provisions of Title 72, chapter 37, part 1, apply to persons subject to the provisions of [sections 3 through 16].

**Section 16. Penalty — injunction.** (1) A person who violates a provision of [sections 3 through 16] is guilty of a misdemeanor and upon conviction shall be fined not more than $500 or imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of [sections 3 through 16] by injunction or any other appropriate proceeding.

**Section 17. Repealer.** Sections 35-21-101, 35-21-102, 35-21-103, 35-21-201, 35-21-202, 35-21-203, 35-21-204, 35-21-205, 35-21-206, 35-21-207, 35-21-208, 35-21-209, 35-21-210, 35-21-211, 35-21-212, 35-21-213, 35-21-214, 35-21-215, 35-21-216, 35-21-217, 35-21-301, 35-21-302, 35-21-303, 35-21-304, 35-21-305, 35-21-306, 35-21-307, 35-21-401, 35-21-402, 35-21-403, 35-21-404, 35-21-405, 35-21-406, 35-21-407, 35-21-408, 35-21-409, 35-21-410, 35-21-411, 35-21-412, 35-21-413, 35-21-414, 35-21-415, 35-21-416, 35-21-417, 35-21-418, 35-21-419, 35-21-420, 35-21-421, 35-21-422, 35-21-423, 35-21-424, 35-21-425, 35-21-426, 35-21-427, 35-21-428, 35-21-429, 35-21-430, 35-21-431, 35-21-432, 35-21-433, 35-21-501, 35-21-502, 35-21-503, 35-21-601, 35-21-602, 35-21-603, 35-21-604, 35-21-605, 35-21-606, 35-21-607, 35-21-608, 35-21-609, 35-21-610, 35-21-611, 35-21-612, 35-21-613, 35-21-614, 35-21-615, 35-21-616, 35-21-617, 35-21-618, 35-21-619, 35-21-620, 35-21-621, 35-21-622, 35-21-623, 35-21-624, 35-21-625, 35-21-626, 35-21-701, 35-21-702, 35-21-703, 35-21-704, 35-21-705, 35-21-706, 35-21-707, 35-21-708, 35-21-710, 35-21-711, 35-21-712, and 35-21-713, MCA, are repealed.

**Section 18. Codification instruction.** [Sections 3 through 16] are intended to be codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to [sections 3 through 16].

**Section 19. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [tbis act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 13, 1997

HeinOnline -- 1997 vol. I 398 1997

# CHAPTER NO. 53

[SB 80]

AN ACT PROHIBITING UNDERWRITING ON OR AFTER THE ISSUE DATE OF THE POLICY, CERTIFICATE, OR SUBSCRIBER CONTRACT EXCEPT UNDER CERTAIN CONDITIONS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Postclaim underwriting prohibited — condition.** An insurer, health service corperation, or health maintenance organization may not place an eliminatien rider on or rescind coverage provided by a disability policy, certificate, or suhscriher contract after a policy, certificate, or contract has been issued unless the insured has made a material misrepresentation or fraudulent misstatement on the application or has failed to pay the premium when due.

**Seetion 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

Approved March 13, 1997

# CHAPTER NO. 54

[SB 183]

AN ACT PROVIDING FOR THE REGULATION OF BRUCELLOSIS VACCINATION THROUGH THE DEPARTMENT OF LIVESTOCK'S PRESENT ADMINISTRATIVE RULEMAKING AUTHORITY BY SUSPENDING THE PRESENT BRUCELLOSIS VACCINATION STATUTES UNTIL OCTOBER 1, 1999; AMENDING SECTION 81-2-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Department of Livestock has authority under section 81-2-102(1)(d), MCA, to "adopt rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock in this state and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state before it may be imported into this state"; and

WHEREAS, the Department's rulemaking authority under section 81-2-102(1)(e), MCA, allows it to "adopt rules and orders which it considers necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state"; and

WHEREAS, the statutes regarding brucellosis vaccination of imported livestock do not provide the Department sufficient flexibility to address the many contingencies and situations that may arise concerning contrel of brucellosis, which can more effectively be addressed through the administrative process pursuant to the Department's current rulemaking authority in section 81-2-102, MCA.

HeinOnline -- 1997 vol. I 399 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 81-2-801, MCA, is amended to read:

**"81-2-801. Required brucellosis vaccination.** (1) Except as provided in subsections (2) and (3), *beginning October 1, 1999,* no female cattle over the age of 4 months may be imported into the stato of Montana for any purpose other than immediate slaughter unless they have been officially vaccinated, by a licensed veterinarian approved in ~~his~~ *the veterinarian's* state to administer the vaccination, with a Brucella abortus vaccine approved by the veterinary biologics division, U.S. department of agriculture.

(2) Cattle being transported or moved through Montana with no intent to unload in the state are exempt from this section. In an emergency situation they may be unloaded in compliance with quarantine rules promulgated by the department of livestock pursuant to 81-2-102.

(3) Cattle ~~which~~ *that* have been spayed are exempt from subsection (1)."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 13, 1997

# CHAPTER NO. 55

[HB 11]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS; AUTHORIZING TREASURE STATE ENDOWMENT PROGRAM LOANS TO BE ADMINISTERED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1. Appropriations from the treasure state endowment special revenue account.** (1) There is appropriated to tbe department of commerce the interest earnings of the treasure state endowment special revenue account to finance grants autborized by this section.

(2) The funds appropriated in this section must he used by the department to make grants to the local gevernment entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 1 through 3] and described in the treasure state endowment program January 1997 report to the 55th legislature. The legislature, pursuant to 90-6-710, approves the grants listed in subsection (3), in the order indicated in the list of projects. The department shall award funds up to the amounts approved in this section based on the manner of disbursement set forth in [section 3] until available funds are expended. The department shall provide funds not accepted

HeinOnline -- 1997 vol. I 400 1997

or used by local governments to other local governments whose projects have been authorized for grants as listed in subsection (3). When additional funds become available for the grants listed in subsection (3), they must be awarded to projects as set forth in [section 3].

(3) The following are tbe authorized projects for grants in the order of their priority:

| Applicant/Project | Matching Grant |
|---|---|
| 1. Cascade (wastewater) | $500,000 |
| 2. Fort Peck Water and Sewer Dist. (water) | 500,000 |
| 3. Terry (wastewater) | 500,000 |
| 4. Judith Gap (wastewater) | 130,000 |
| 5. Glendive (water) | 500,000 |
| 6. Twin Bridgos (water) | 500,000 |
| 7. East Missoula (wastewater) | 500,000 |
| 8. Glasgow (wastewater) | 500,000 |
| 9. Helena (wastewater) | 500,000 |
| 10. Richey (water) | 264,340 |
| 11. Hill County/Box Elder (wastewater) | 462,000 |
| 12. Valier (wastewater) | 500,000 |
| 13. Roundup (wastewater) | 500,000 |
| 14. Lewis and Clark County (bridgo) | 64,125 |
| 15. Hamilton (wastewater) | 500,000 |
| 16. Missoula/Neighborhood (wastewater) | 500,000 |
| 17. Chinook (water) | 313,555 |
| 18. Fort Benton (water) | 480,244 |
| 19. Miles City (water) | 136,000 |
| 20. Lakeside (water) | 500,000 |
| 21. Neihart (water) | 261,028 |
| 22. Coram (water) | 500,000 |
| 23. Cbouteau County/Highwood (water/wastewater) | 420,000 |
| 24. Billings/Neigbborhood (wastewater) | 280,000 |
| 25. Jefferson County (solid waste) | 128,915 |

HeinOnline -- 1997 vol. I 401 1997

| | |
|---|---|
| 26. Red Lodge (water) | 500,000 |
| 27. Chester (water) | 417,000 |
| 28. Hardin (water/storm drain) | 350,000 |
| 29. Thompson Falls (water) | 400,000 |
| 30. Big Timber (wastewater) | 500,000 |
| 31. Ekalaka (wastewater) | 85,150 |
| 32. Culbertson (wastewater) | 313,259 |
| 33. Great Falls/Neighborhood (water) | 440,000 |
| 34. Bainville (water) | 360,000 |
| 35. Harlem (water/wastewater) | 472,920 |

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the entities listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 1999 biennium under 17-7-302. However, a local government's entitlement to receive funds is dependent on the local government's compliance with the conditions described in [section 3] and on the availability of funds.

**Section 2. Approval of grants — completion of appropriation.** (1) The legislature, pursuant to 90-6-701, approves grants for the projects identified in [section 1(3)].

(2) The approval of these grants completes an appropriation from the special revenue account provided for in 17-5-703(4)(b).

**Section 3. Conditions and manner of disbursement of grant funds.** (1) The disbursement of grant funds under [sections 1 through 3] for the grants specified in [section 1(3)] is subject to the following conditions:

(a) The local government recipient must have a scope of work and budget for the project approved by the department. The department may not approve amendments to the scope of work or budget affecting priority activities or improvements that would materially alter the intent and circumstances under which the application was originally ranked by the department and approved by the legislature.

(b) The local government recipient shall document that other matching funds required for completion of the project have been firmly committed before the disbursement of the funds appropriated in [section 1].

(c) The local government recipient must have satisfactorily complied with any conditions described in the recommendation section of the project narrative in the treasure state endowment program project evaluations and recommendations report submitted to, and approved by the 55th legislature, and with conditions specified by the department in the notification of grant approval.

(d) The local government recipient must have executed a grant agreement with the department.

HeinOnline -- 1997 vol. I 402 1997

(e) The local government recipient must have satisfied other specific requirements considered necessary hy the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) The department shall disburse grant funds in the order of priority listed in [section 1] and subject to the conditions in suhsection (1), as treasure state endowment special revenue account interest income is received during the 1999 biennium.

(3) A project approved in [section 1] may not receive grant funds until sufficient revenue has heen deposited in the treasure state endowment special revenue account and is available for that purpose.

(4) The department shall dishurse funds as they become available each quarter in the order of priority, for projects that have met the conditions in suhsection (1), until all availahle funds are expended.

(5) In the event that construction bids received for a project are for an amount lower than the projected cost of the project, the department shall estahlish a final project budget at the hid price, plus a 10% contingency. The department may, at its discretion, reduce the amount of funding to be provided in proportion to all other project funding sources. In the alteruative, the department may authorize the construction of additional, directly related project components to enhance the overall project, in amounts not to exceed the originally approved project hudget.

(6) The department shall disburse grant funds on a reimburseinent basis as grantees incur eligible project costs.

**Section 4. Approval of treasure state loans.** The legislature approves four treasure state endowment program loans for treasure state endowment program projects to he administered by the department of natural resources and conservation pursuant to House Bill No. 8.

**Section 5. Effective dates.** (1) [Sections 2 through 4 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 1997.

Approved March 17, 1997

# CHAPTER NO. 56

[HB 22]

AN ACT EXPANDING THE MEMBERSHIP AND DUTIES OF THE STATE INFORMATION TECHNOLOGY ADVISORY COUNCIL TO INCLUDE LOCAL GOVERNMENT MEMBERS AND TO PROVIDE A FORUM FOR TECHNOLOGICAL MATTERS INVOLVING BOTH STATE AGENCIES AND LOCAL GOVERNMENTS; AND AMENDING SECTION 2-17-502, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-17-502, MCA, is amended te read:

HeinOnline -- 1997 vol. I 403 1997

"2-17-502. **State information technology advisory council.** (1) The department of administration shall create a state information technology advisory council under 2-15-122.

(2) The members of the advisory council must be selected from a diverse group in order to adequately represent the interests of state agencies, including the university system, *and local governments.*

(3) In addition to the advisory functions assigned by the department, the ~~information technology~~ advisory council shall review statewide information and data processing policies, make recommendations regarding the application of new information processing technology in state government, and advise the department on long-term strategic planning for the use of information processing technology in state government.

*(4) The advisory council shall also provide a forum to:*

*(a) guide state agencies and local governments in the development and deployment of intergovernmental information resources;*

*(b) encourage cooperative efforts among state agencies and local governments in the development of information resources;*

*(c) develop and recommend to the department standards and policies for intergovernmental information resources; and*

*(d) advise the department in the development of cooperative contracts for the purchase of information resources."*

Approved March 17, 1997

# CHAPTER NO. 57

[HB 92]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO BYPASS THE COMPETITIVE BIDDING PROCESS IN THE RESTORATION AND PRESERVATION OF HISTORIC SITES AT BANNACK IF IT IS COST-EFFECTIVE AND NECESSARY TO PREVENT DEGRADATION AND LOSS; AMENDING SECTION 18-2-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-2-301, MCA, is amended to read:

"18-2-301. **Bids required — advertising.** (1) It is unlawful for any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is $25,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county

HeinOnline -- 1997 vol. I 404 1997

where the work is to be performed, calling for sealed bids to perform the work and stating the time and place bids will be considered.

(2) All work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done hy inmates at an institution in the department of corrections.

*(5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply when the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources that it owns at Bannack if:*

*(i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state; and*

*(ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic buildings and resources from degradation and loss.*

*(b) For the preservation or restoration of historic buildings and resources at Bannack when the conditions listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the preservation or restoration through:*

*(i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization when the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or restore historic resources;*

*(ii) the use of qualifisd and trained department of fish, wildlife, and parks employees and volunteers;*

*(iii) a training program in historic preservation and restoration conducted by a qualified local, state, or federal entity or a qualified nonprofit organization; or*

*(iv) any combination of the options described in subsection (5)(b)."*

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved March 17, 1997

# CHAPTER NO. 58

[HB 97]

AN ACT ALLOWING FOR A LENGTH OF 61 FEET FOR A SEMITRAILER AND TRAILER OR TWO SEMITRAILERS IN A COMBINATION; AND AMENDING SECTION 61-10-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-10-104, MCA, is amended to read:

HeinOnline -- 1997 vol. I 405 1997

**"61-10-104. Length — definitions.** (1) A single truck, bus, or ~~any~~ self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 55 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 1/2 feet each in length *or 61 feet in combined trailer length*, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), ~~nor may~~ *and* this combination *may not* have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, ~~nor may~~ *and* this combination *may not* have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck-tractor and one pole trailer or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection *(5)*(a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck-tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle combination, as provided in 61-10-124(3), does not apply to the vehicle combination described in this subsection *(5)*(a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except by special, single-trip permit. Overhang is measured from the center of the rear-most axle to the most distant end of the logs being hauled.

HeinOnline -- 1997 vol. I 406 1997

(c) The provisions in subsections (5)(a) and (5)(b) do not apply to a vehicle combination bauling utility poles.

(6) As used in this chapter, the following definitions apply:

(a) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(b) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to tbe back of the last trailer, including the connection tongues and loads.

(c) "Length", except as provided in subsection (5)(a), means tbe total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(d) "Rocky Mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a sborter trailer."

Approved Marcb 17, 1997

# CHAPTER NO. 59

[HB 105]

AN ACT CLARIFYING THE AUTHORITY AND RESPONSIBILITY OF THE DEPARTMENT OF AGRICULTURE FOR THE CONTROL AND PREVENTION OF THE SPREAD OF CONTAGIOUS DISEASE IN SEED POTATO STOCK; EXTENDING TO ALL COUNTIES CERTAIN RESTRICTIONS REGARDING THE PLANTING OR PROPAGATION OF NONCERTIFIED SEED POTATOES; DEFINING "COMMERCIAL PURPOSE"; REVISING CERTIFICATION RECORD COMPILATION AND PUBLICATION REQUIREMENTS; AND AMENDING SECTIONS 80-5-402, 80-5-403, 80-5-404, AND 80-5-405, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 80-5-402, MCA, is amended to read:

"**80-5-402. Definitions.** As used in this part, the following definitions apply:

(1) "Certified seed potatoes" means potato seed stock that has passed limited field and storage inspections and *that* has been grown in accordance with the certification rules and regulations of an official seed potato certifying agency of the state or country of origin and certified as such.

(2) *"Commercial purpose" means planting or propagating potatoes for the purpose of selling, trading, or otherwise exchanging for profit.*

*(3)* "Department" means the department of agriculture provided for in 2-15-3001.

~~(3)~~*(4)* "Person" means an individual, firm, partnership, corporation, company, association, or separate business or legal entity.

~~(4)~~*(5)* "Seed potatoes" or "potato seed" means all varieties of potato tubers, stems, and other plant parts of the herb plant known as Solanum tuberosum that are intended or used for seed purposes, planting, propagation, or reproduction."

**Section 2.** Section 80-5-403, MCA, is amended to read:

"**80-5-403. Imported seed potatoes — restrictions — exceptions — ~~quarantine~~.** (1) To control and prevent the spread of contagious diseases among seed potato stock~~:~~,

~~(a)~~ seed potatoes may not be imported into this state for any commercial ~~or agricultural~~ purpose unless the seed potatoes are:

~~(i)~~*(a)* from seed stock produced as a part of a certified seed potato crop in the state or country of origin and certified as being from that stock;

~~(ii)~~*(b)* ~~inspected~~ *subject to inspection* at the Montana receiving point by a federal or state-federal standard grade inspector;

~~(iii)~~*(c)* shipped in a clean, disinfected container or transpertation carrier; and

~~(iv)~~*(d)* accompanied by a United States department of agriculture or state of origin certification of inspection describing the seed variety, seed class, standard grade, quality or condition, and seed source and have affixed to each inspection certificate an official state of origin seed potato certification tag or label~~;~~ ~~and~~

~~(b) seed or commercial potatoes, equipment, machinery, bags, or containers known to be diseased or contaminated with bacterial ring rot, nematode, or tuber moth may not be brought into this state~~.

(2) The provisions of ~~this section~~ *subsection (1)* do not apply to any unit of the Montana university system when it is importing inte this state potato seed for research or educational purposes.

(3) ~~The department shall quarantine seed potatoes imported into the state in violation of this section. The department shall adopt rules governing quarantines and regulating the use or disposition of quarantined seed potatoes.~~ *Seed or commercial potatoes, equipment, machinery, bags, or containers known to be diseased or contaminated with bacterial ring rot, golden nematode, or other diseases designated by department rule may not be brought into this state.*"

**Section 3.** Section 80-5-404, MCA, is amended to read:

"**80-5-404. Planting noncertificd seed potatoes prohibited ~~in certain counties — restrictions~~ — exceptions.** (1) To control and prevent the spread of contagious diseases and viruses among seed potato stock, it ~~shall be~~ *is* unlawful ~~after January 1, 1990,~~ for any person te plant or produce petatees, either seed or commercial, from any seed potate stock unless the seed potatoes are:

(a) from seed stock produced as a part of a certified seed potato crop in the state or country of origin and certified as being from that stock;

(b) ~~inspected~~ *subject to inspection* at the receiving point by a federal or state-federal standard grade inspector if from a source outside the county;

(c) shipped in a clean, disinfected container or transportation carrier; and

(d) for each individual lot of seed potatoes, accompanied by a United States department of agriculture or state of origin certificate of inspection describing the seed variety, seed class, standard grade, quality or condition, and seed source and have affixed to each inspection certificate an official state of origin seed potato certification tag or label.

(2) ~~The provisions of this section apply only to counties where Montana certified seed potatoes are produced and certified by Montana state university-Bozeman during the preceding crop year as provided for in 80-5-301 through 80-5-305. On or before November 15 of each year, the department shall compile from official certification records at Montana state university-Bozeman a list of counties affected by this section and shall publish the provisions of this section throughout those counties.~~

~~(3)~~ The provisions of this section do not apply to:

(a) potatoes grown in home gardens;

(b) potatoes grown by any unit of the Montana university system for research or educational purposes."

**Section 4.** Section 80-5-405, MCA, is amended to read:

**"80-5-405. Enforcement — penalty.** (1) The department shall administer and enforce the provisions of this part.

(2) *When potatoes are found to be in violation of this part, the department may issue orders:*

*(a) restricting transportation of the potatoes;*

*(b) requiring treatment or destruction of the potatoes; or*

*(c) requiring other disease prevention or suppression measures.*

*(3) The department may adopt rules governing quarantines to prevent the intrastate or interstate movement of diseases of potatoes from infested areas and adjacent areas. Quarantines may restrict or prohibit the transportation of plants, seed potatoes, machinery, equipment, soil, or other material capable of transporting the disease in any stage of development.*

*(4)* ~~Any~~ *A* person violating any provision of this part is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212."

Approved March 17, 1997

HeinOnline -- 1997 vol. I 409 1997

# CHAPTER NO. 60

[HB 115]

AN ACT PROVIDING FOR VOLUNTARY WITHHOLDING OF TAXES FROM UNEMPLOYMENT INSURANCE BENEFITS; PROVIDING FOR DEDUCTIONS FROM UNEMPLOYMENT BENEFITS TO REPAY OVERISSUANCE OF FOOD STAMP COUPONS; ADDING PARTNERS IN A LIMITED LIABILITY PARTNERSHIP TO THE TYPES OF EMPLOYING ENTITIES SUBJECT TO PENALTIES FOR UNPAID TAXES; CHANGING THE CRITERIA FOR DISQUALIFYING AN INDIVIDUAL FOR UNEMPLOYMENT BENEFITS; AMENDING SECTIONS 39-51-201, 39-51-204, 39-51-403, 39-51-1213, 39-51-1303, 39-51-1304, 39-51-2302, 39-51-3105, AND 39-51-3201, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Voluntary and other withholding of taxes from benefits — procedures.** (1) The department shall advise an individual at the time the individual files a new claim for unemployment compensation that:

(a) unemployment compensation is subject to federal income tax;

(b) requirements exist pertaining to estimated tax payments;

(c) the individual may elect to have federal income tax deducted and withheld from the individual's unemployment compensation at the rate or amount specified in the Internal Revenue Code; and

(d) the individual may change a previously elected withholding status in a manner and at a frequency prescribed by the department.

(2) Funds deducted and withheld from unemployment compensation must remain in the unemployment insurance fund provided for in 39-51-401 until the funds are transferred as income tax payments to the internal revenue service.

(3) The department shall:

(a) follow all procedures specified hy the United States department of labor and the internal revenue service pertaining to the voluntary deduction and withholding of income tax from unemployment compensation; and

(b) deduct and withhold from unemployment compensation amounts of federal income tax other than those specified in subsection (1)(c) in accordance with the priorities established by the department by rule.

**Section 2. Deduction and withholding of unemployment benefits to repay overissuance of food stamps — definitions.** (1) For the purposes of this section, the following definitions apply:

(a) "State food stamp agency" means any agency of a state or a political subdivision of a state that is responsible for enforcing the repayment of an obligation for overissuance of food stamp coupons.

HeinOnline -- 1997 vol. I 410 1997

(b) "Unemployment benefits" means benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law that provides for benefits, assistance, or allowances with respect to unemployment.

(2) An individual filing a new claim for unemployment benefits shall disclose at the time of filing the claim whether or not the individual owes for an uncollected overissuance of food stamp coupons as defined in section 13(c)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(1)). If an individual discloses that the individual has an uncollected obligation for overissuance of food stamp coupons and if the department finds that the individual is eligible for unemployment benefits, the department shall notify the state food stamp agency that the individual is eligible for unemployment benefits.

(3) The department shall deduct and withhold from any unemployment benefits payable to an individual who has an obligation for an uncollected overissuance of food stamp coupons:

(a) the amount specified by the individual to the department to be deducted and withheld, in which case subsections (3)(b) and (3)(c) are not applicable;

(b) the amount, if any, determined by a state food stamp agency for enforcing obligations for overissuance of food stamp coupons, pursuant to an agreement submitted to the department under section 13(c)(3)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2022(c)(3)(A)), unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be deducted and withheld from unemployment benefits pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2022 (c)(3)(B)).

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state food stamp agency responsible for enforcing an obligation for overissuance of food stamp coupons.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and then paid by the individual to the state food stamp agency in satisfaction of the individual's uncollected overissuance of food stamp coupons.

**Section 3.** Section 39-51-201, MCA, is amended to read:

**"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to

HeinOnline -- 1997 vol. I 411 1997

meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 *completed calendar* quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization (including the state government and any of its political subdivisions or instrumentalities), partnership, association, trust, estate, joint-stock company, insurance company, limited liability company *or limited liability partnership* that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for ~~all~~ the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or ~~such~~ other free public employment offices

operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanten disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in tbe course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificato of graduation from a high school or tlie recognized equivalent of a certificate;

(ii) is legally authiorized in this state to provide a program of education beyond high schiool;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding subsection (15)(a), all universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and ~~the Dominion of~~ Canada.

(17) "Taxes" means contributions and assessments required under this cbapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

HeinOnline -- 1997 vol. I 413 1997

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability under a workers' compensation law;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by a county welfare office from public assistance funds for services performed at the direction and request of the county welfare office; or

(iii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

**Section 4.** Section 39-51-204, MCA, is amended to read:

**"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

HeinOnline -- 1997 vol. I 414 1997

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law may not be entitled to exemption under this subsection and are subject to this chapter the same as state banks, provided that the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act (26 U.S.C. 3306(c)(7));

(f) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

HeinOnline -- 1997 vol. I 415 1997

(i) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of tbe spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual wbo is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution tbat combines academic instruction witb work experience if the service is an integral part of the program and the institution bas certified tbat fact to the employer, except that this subsection does not apply to service performed in a program established for or on hehalf of an employer or group of employers;

(k) service performed in tbe employ of a hospital if the service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barher who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or harher is not covered hy unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barhershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for services from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetology salon or barhershop may not he construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or husiness performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed hy the employer to perform the service. "Regularly employed" means that the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors, working members of a partnership, ~~or~~ members of a member-managed limited liability company that has filed with the secretary of state, *or partners in a limited liability partnership that has filed with the secretary of state*;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(p) employment of a direct seller as defined in 26 U.S.C. 3508;

(q) services performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negetiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for tbe exploration or development of minerals;

(ii) is paid for services tbat are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(2) Employment does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by ago or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be

readily absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

(4) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(5) This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act."

**Section 5.** Section 39-51-403, MCA, is amended to read:

**"39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception.** (1) Money ~~shall~~ *may* be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act (42 U.S.C. 1103), as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter. *Money withheld by the department from a benefits payment at the request of an individual or in accordance with the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant to [section 1] or money withheld for repayment of an overissuance of food stamp coupons pursuant to [section 2] must be considered benefits for the purposes of this subsection.*

(2) The department shall from time to time requisition from the unemployment trust fund ~~such~~ *the* amounts, not exceeding the amounts ~~standing to~~ *in* this state account ~~therein~~ *in the fund*, as it ~~deems~~ *considers* necessary for the payment of benefits for a reasonable future period. Upon receipt ~~thereof~~ *of a requisition*, the treasurer shall deposit ~~such~~ *the* money in the benefit account and shall issue ~~his~~ warrants for the payment of benefits ~~solely~~ from ~~such~~ *the* benefit account.

(3) Expenditures of ~~such~~ money in the benefit account and refunds from the clearing account ~~shall~~ *are* not ~~be~~ subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund ~~which~~ *that* remains unclaimed or unpaid in the benefit account after the expiration of the period for which ~~such~~ *the* sums were requisitioned ~~shall~~ *must* either be deducted from estimates for and may be ~~utilized~~ *used* for the payment of benefits during succeeding periods or, in the discretion of the department, ~~shall~~ *must* be redeposited with the secretary of the treasury of the United States to the

HeinOnline -- 1997 vol. I 418 1997

credit of this state's account in the unemployment trust fund, as provided in 39-51-402."

**Section 6.** Section 39-51-1213, MCA, is amended to read:

**"39-51-1213. Classification of employers for experience rating purposes.** (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year ~~shall~~ *must* be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor", which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" ~~shall~~ *must* be to six decimal places.

(b) Schedules ~~shall~~ *must* be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There ~~shall~~ *must* be listed on ~~such~~ *the* schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 ~~shall~~ *must* be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group ~~shall~~ *must* be identified by the rate class number listed in the table ~~which~~ *that* represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are ~~so~~ required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is ~~so~~ required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such

HeinOnline -- 1997 vol. I 419 1997

employers are included in and assigned the contribution rate specified for ~~such~~ *the* class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount, ~~or~~ the experience factor, or both ~~such taxable payroll amount and experience factor~~ of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules ~~which~~ *that* the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance~~, but such~~. *However, the* change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

(6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and interest due by the cutoff date must be assigned ~~the maximum~~ *a* contribution rate in effect for the taxable year for ~~his~~ *the employer's* classification as an eligible, deficit, or new employer, *plus an additional assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/10 of 1%.*"

**Section 7.** Section 39-51-1303, MCA, is amended to read:

"**39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer, liable corporate officer or employee, ~~or~~ liable member or manager of a limited liability company referred to in 39-51-1105, *or partner in a limited liability partnership* defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department may initiate a civil action in the name of the department to collect the amount due and the employer, liable corporate officer, ~~or~~ liable member or manager of a limited liability company referred to in 39-51-1105, *or partner in a limited liability partnership* adjudged in default shall pay the costs of the action.

(2) An action for the collection of taxes due must be brought within 5 years after the due date of the taxes or it is barred.

(3) The department may pursue its remedy under ~~either~~ 39-51-1304, ~~or~~ this section, or both."

**Section 8.** Section 39-51-1304, MCA, is amended to read:

"**39-51-1304. Lien for payment of unpaid taxes — levy and execution.** (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, ~~or~~ *the* liable corporate officer or employee or liable member or manager of a limited liability company referred to in 39-51-1105, *or a partner in a limited liability partnership,* arising at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect

HeinOnline -- 1997 vol. I 420 1997

the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant te this section may be renewed for another 10-year period pursuant to the provisions of 25-13-102.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject te the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed ~~against the employer, liable corporate officer or employee, or liable member or manager of a limited liability company referred to in 39-51-1105~~ under 39-51-1303, ~~or~~ this section, or hoth, to collect the delinquent taxes, penalties, and interest *from the:*

*(a) employer;*

*(b) liable corporate officer or employee;*

*(c) liable member or manager of a limited liability company referred to in 39-51-1105; or*

*(d) partner in a limited liability partnership.*

(5) The lien provided for in subsection (1) must he released upen payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

**Section 9.** Section 39-51-2302, MCA, is amended to read:

**"39-51-2302. Disqualification for leaving work without good cause.** (1) An individual ~~shall~~ *must* be disqualified for benefits if ~~he~~ *the individual* has left work without good cause attributable te ~~his~~ *the individual's* employment.

(2) ~~He~~ *The individual* may not be disqualified if the *individual* ~~department finds that he left his~~ *leaves:*

*(a)* employment hecause of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician and, after recovering from ~~his~~ *the* illness or injury when recovery is certified hy a licensed and practicing physician, ~~he~~ *the individual* returned to ~~his~~ *and offered service to the individual's* employer ~~and offered his service~~ and ~~his~~ *the individual's* regular or comparable suitable work was not available, ~~if so found~~ *as determined* hy the department, provided ~~he~~ *the individual* is otherwise eligible*; or*

HeinOnline -- 1997 vol. I 421 1997

*(b) temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons.*

(3) To requalify for benefits, an individual ~~must~~ *shall* perform services other than self-employment for which remuneration is received equal to or in excess of six times ~~his~~ *the individual's* weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless ~~he~~ *the individual* has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of ~~his~~ *the individual's* enrollment."

**Section 10.** Section 39-51-3105, MCA, is amended to read:

**"39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception.** Any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void, and the rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt~~, and benefits~~. *Benefits* received by ~~any~~ *an* individual, ~~so~~ *as* long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except as provided in 39-51-3106, *[section 1], [section 2],* and 39-51-3206. Any waiver of ~~any~~ *an* exemption provided for in this section is void."

**Section 11.** Section 39-51-3201, MCA, is amended to read:

**"39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy.** (1) A person who makes a false statement or representation knowing it to be false or *who* knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for ~~himself~~ *the individual* or for any other person, is:

(a) disqualified for benefits ~~thereafter~~ for a period of not more than 52 weeks, beginning with the first compensable week following the date of ~~such~~ determination by the department~~,~~ ~~the~~, *with the* length of time of the disqualification ~~as herein described~~ to be determined by the department in accordance with the severity of each case; and

(b) required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which ~~he~~ *the individual* may be entitled, or by a combination of both ~~such~~ methods, a sum equal to the amount wrongfully received by ~~him~~ *the individual*, plus the department may assess a penalty not to exceed 100% of the fraudulently obtained benefits~~, except that future~~ *. Future* benefits may not be used to offset the penalty due. However, ~~he~~ *the individual* is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that ~~he~~ *the individual* made false statements, willful nondisclosure, or misrepresentation.

HeinOnline -- 1997 vol. I 422 1997

(2) *An individual, other than a person with a bona fide disability that prevents the individual from making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person to make or file a claim for benefits on the individual's behalf is subject to the penalties prescribed in subsection (1).*

*(3)* All money accruing from the penalty under subsection (1)(b) must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

**Section 12. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 51, and the provisions of Title 39, chapter 51, apply to [sections 1 and 2].

**Section 13. Retroactive applicability.** [Sections 1, 5, and 10] apply retroactively, within the meaning of 1-2-109, to January 1, 1997, in order to comply with federal requirements.

**Section 14. Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Section 2] is effective Octoher 1, 1997.

(3) [Section 6] is effective January 1, 1998.

Approved March 17, 1997

# CHAPTER NO. 61

[HB 148]

AN ACT ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE INCLUDE INHERITANCE TAX MATTERS IN ITS BIENNIAL REPORT TO THE GOVERNOR AND THE LEGISLATURE; AMENDING SECTION 15-1-205, MCA; REPEALING SECTION 72-16-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-1-205, MCA, is amended to read:

**"15-1-205. Biennial report — contents.** (1) The department shall transmit to the governor 20 days before the meeting of the legislature and make available to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value. The department shall follow the provisions of 5-11-210 in preparing the report.

(2) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(3) The data described in subsection (2), if reported, must be related to the income and age of the taxpayer whenever the information is available.

(4) (a) When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(5) In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(6) The department shall identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(7) The department may include a report, prepared by the department of transportation, showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

~~(8) The department shall include the inheritance tax information required by 72-16-202 in a separate section of the report.~~"

**Section 2. Repealer.** Section 72-16-202, MCA, is repealed.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 17, 1997

HeinOnline -- 1997 vol. I 424 1997

# CHAPTER NO. 62

[HB 200]

AN ACT CRIMINALIZING THE SURREPTITIOUS TAKING OF A PERSON'S PICTURE IN CERTAIN ROOMS IN A BUSINESS ESTABLISHMENT.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Surreptitious visual recordation — penalty.** An owner, manager, or employee of a business or a landlord who knowingly surreptitiously records a visual image of a person in a restroom, washroom, shower, bedroom, fitting room, or other room used by a customer, guest, tenant, or member of the public to, with a reasonable expectation of privacy, change or try on clothes, bathe, perform intimate bodily functions, or appear nude or partially nude or in underclothes commits the offense of surreptitious visual recordation. A person convicted of the offense of surreptitious visual recordation shall be fined an amount not to exceed $1,000 or incarcerated for a term not to exceed 6 months, or both, if the victim was an adult and shall be fined an amount not to exceed $5,000 or incarcerated for a term not to exceed 2 years, or both, if the victim was a minor.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, and the provisions of Title 45 apply to [section 1].

Approved March 17, 1997

# CHAPTER NO. 63

[HB 215]

AN ACT EXPANDING THE DEFINITION OF POLICE DOG TO INCLUDE DOGS TRAINED FOR SEARCH AND RESCUE THAT ARE USED IN CONJUNCTION WITH OFFICIAL LAW ENFORCEMENT EFFORTS; IMPOSING A PENALTY FOR INTENTIONALLY HARMING A SEARCH AND RESCUE DOG THAT IS USED IN CONJUNCTION WITH OFFICIAL LAW ENFORCEMENT EFFORTS; AND AMENDING SECTION 45-8-209, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-8-209, MCA, is amended to read:

**"45-8-209. Harming a police dog — penalty — *definition*.** (1) A person commits the offense of harming a police dog if ~~he~~ *the person* purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a:

*(a)* law enforcement officer in discharging or attempting to discharge ~~any~~ *a* legal duty in a reasonable and proper manner; *or*

*(b) person while the person is under the control of and acting under the direction of an officer of an official law enforcement agency during the performance of the agency's law enforeement or search and rescue duties.*

HeinOnline -- 1997 vol. I 425 1997

(2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) As used in this section, the following definitions apply:

(a) "Law enforcement officer" means a person who is a peace officer, as defined in 46-1-202, *or any other agent of a criminal justice agency.*

(b) "Police dog" means a dog that is:

(i) used by a law enforcement agency, as defined in ~~7-32-201~~ *44-11-303*, in the exercise of its authority;

(ii) specifically trained for ~~law enforcement~~ *law enforcement or search and rescue* work; and

(iii) under the control of a law enforcement officer."

Approved March 17, 1997

# CHAPTER NO. 64

[HB 239]

AN ACT PROHIBITING A NOTARY PUBLIC FROM NOTARIZING THE NOTARY'S OWN SIGNATURE; AND AMENDING SECTION 1-5-416, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 1-5-416, MCA, is amended to read:

"**1-5-416. Powers and duties.** *(1)* A notary public shall:

~~(1)~~ *(a) subject to subsection (2),* take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of ~~such~~ *the* proof or acknowledgment, endorsed on or attached to the instrument;

~~(2)~~*(b)* take depositions and affidavits and administer oaths and affirmations in all matters incident to the duties of ~~his~~ *the notary public's* office or to be used before any court, judge, officer, or board in this state;

~~(3)~~*(c)* whenever requested and upon payment of ~~his~~ *the required* fees ~~therefor~~, make and give a certified copy of any record in ~~his~~ *the notary public's* office;

~~(4)~~*(d)* provide and keep an official seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the surname of the notary *public* and at least the initials of ~~his~~ *the notary public's* given name;

~~(5)~~*(e)* authenticate with ~~his~~ *the notary public's* official seal all official acts. Whenever the notary public signs ~~his name~~ officially as a notary public, ~~he~~ *the notary public* shall add to ~~his~~ *the* signature the words "Notary Public for the State of Montana, residing at.... (stating the name of ~~his~~*the notary public's* post office)" and shall endorse upon the instrument the date of the expiration of ~~his~~ *the notary public's* commission.

*(2) The notary public may not notarize the notary's own signature."*

Approved March 17, 1997

# CHAPTER NO. 65

[HB 274]

AN ACT ELIMINATING CERTAIN NUISANCE TAXES BY ELIMINATING THE $10 FILING FEES FOR SMALL BUSINESS CORPORATIONS, ELIMINATING THE RURAL COOPERATIVE UTILITIES ANNUAL FEE, AND REPEALING THE LICENSE TAX ON SALES OF CEMENT AND BYPRODUCTS; AMENDING SECTIONS 15-31-202 AND 35-18-503, MCA; REPEALING SECTIONS 15-31-204, 15-59-201, 15-59-203, 15-59-204, 15-59-205, 15-59-206, 15-59-207, 15-59-208, 15-59-209, 15-59-210, 15-59-212, 15-59-213, 15-59-214, 15-59-221, 35-18-504, 35-18-505, 35-18-506, AND 35-18-510, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-31-202, MCA, is amended to read:

**"15-31-202. Small business corporation not subject to chapter.** ~~(1)~~ A small business corporation is not subject to the taxes imposed by this chapter. The corporate net income or loss of the corporation is included in the stockholders' adjusted gross income as defined in 15-30-111.

~~(2) Each small business corporation is required to pay the minimum fee of $10 required by 15-31-204.~~"

**Section 2.** Section 35-18-503, MCA, is amended to read:

**"35-18-503. ~~Annual fee to department of revenue — exemption~~ *Exemption* from ~~other~~ taxes.** Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter ~~shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions thereof to whom electricity or telephone service was supplied during the previous calendar year within the state and~~, except as provided in 10-4-201, ~~shall be~~ *are* exempt from all ~~other~~ excise and income taxes ~~of whatsoever kind or nature~~."

**Section 3. Repealer.** (1) Section 15-31-204, MCA, is repealed.

(2) Sections 15-59-201, 15-59-203, 15-59-204, 15-59-205, 15-59-206, 15-59-207, 15-59-208, 15-59-209, 15-59-210, 15-59-212, 15-59-213, 15-59-214, and 15-59-221, MCA, are repealed.

(3) Sections 35-18-504, 35-18-505, 35-18-506, and 35-18-510, MCA, are repealed.

**Section 4. Effective date.** [This act] is effective July 1, 1997.

HeinOnline -- 1997 vol. I 427 1997

**Section 5. Applicability.** (1) [Sections 1 and 3(1)] apply retroactively, within the meaning of 1-2-109, to tax periods beginning after December 31, 1996.

(2) [Section 3(2) and (3)] applies to tax periods beginning after June 30, 1997.

Approved March 17, 1997

# CHAPTER NO. 66

[HB 289]

AN ACT PROVIDING FOR 4-DAY FREE FISHING PERMITS FOR MEMBERS OF THE LEGION OF VALOR PARTICIPATING IN A CONVENTION IN MONTANA FROM AUGUST 27, 1997, TO AUGUST 31, 1997; AND PROVIDING A TERMINATION DATE.

WHEREAS, the Legion of Valor is comprised of recipients of the Congressional Medal of Honor, the Army Distinguished Service Cross, the Navy Cross, and the Air Force Cross; and

WHEREAS, members of the Legion of Valor have bravely served their country above and beyond the call of duty; and

WHEREAS, there are 800 members of the Legion of Valor, five of whom reside in Montana; and

WHEREAS, Legion of Valor members from all over the country plan to convene in Montana from August 27, 1997, to August 31, 1997, to participate in a convention; and

WHEREAS, pursuant to Article II, section 35, of the Montana Constitution, special considerations that the Legislature may give the five Montana Legion of Valor members should be extended to their distinguished out-of-state guests; and

WHEREAS, the people of Montana can show their appreciation to these medal recipients by granting them 4 days of fishing without having to obtain licenses.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Legion of valor — free fishing — requirement to comply with regulations.** (1) The department of fish, wildlife, and parks shall issue to members of the legion of valor applications for 4-day free fishing permits. The application must require validation that the applicant is an official member of the legion of valor.

(2) Each recipient of a 4-day free fishing permit shall comply with all state fishing regulations as published by the department.

**Section 2. Termination.** [This act] terminates September 1, 1997.

Approved March 17, 1997

HeinOnline -- 1997 vol. I 428 1997

# CHAPTER NO. 67

[HB 290]

AN ACT PROHIBITING THROWING AWAY LIGHTED OR BURNING MATERIAL ON PUBLIC AND PRIVATE ROADS AND RAILROAD RIGHTS-OF-WAY IN THIS STATE; PROHIBITING DUMPING ASHTRAYS CONTAINING MATCHES, ASHES, OR CIGARETTE OR CIGAR REFUSE ON PUBLIC AND PRIVATE ROADS AND RAILROAD RIGHTS-OF-WAY; PROVIDING A PENALTY; ALLOWING ADMINISTRATIVE ENTITIES OF ROADS AND PUBLIC TRANSIT OPERATORS TO POST COPIES OF THIS ACT IN CONSPICUOUS LOCATIONS; AND AMENDING SECTIONS 7-5-2109, 7-5-4104, AND 61-8-365, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited — penalty — posting.** (1) A person may not throw away lighted matches, tobacco, cigarettes, cigars, or other lighted material on a forest road, private road, city street, county road, public highway, or railroad right-of-way, except lighted materials used as safety signaling devices, in this state.

(2) A person may not empty an ashtray containing matches, ashes, cigarette or cigar refuse, or other related material on a forest road, private road, city street, county road, public highway, or railroad right-of-way in this state.

(3) A person convicted of violating subsection (1) or (2) shall be fined a minimum of $100.

(4) Municipalities, the forest service, county governments, property owners, public transit operators, federal highway administrators, and any other appropriate entity may, at their discretion, post copies of this section in conspicuous locations.

**Section 2.** Section 7-5-2109, MCA, is amended to read:

**"7-5-2109. County control of litter.** (1) (a) ~~The~~ *Except as provided in [section 1], a* governing body of a county may regulate, control, and prohibit littering on any county road and on land within the county by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107. The ordinance may apply to portions of the county and may apply to persons other than the owners of the property on which littering occurs.

(b) The ordinance does not apply to lead, copper, or brass deposits directly resulting from shooting activities at a shooting range.

(c) The ordinance does not apply to a "notice of violation" card placed on a motor vehicle illegally parked in a disability parking space.

(2) ~~The~~ *Except as provided in [section 1], the* governing body of a county may establish a fine not to exceed $200 as a penalty for violation of the ordinance referred to in subsection (1). A violation of the ordinance may not be punishable by imprisonment."

HeinOnline -- 1997 vol. I 429 1997

**Section 3.** Section 7-5-4104, MCA, is amended to read:

**"7-5-4104. Control of nuisances — exception.** (1) The city or town council has power to:

(a) define and abate nuisances and impese fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises ~~which~~ *that* they occupy or control;

(b) regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement; *and*

*(c) enforce the penalty for violations of [section 1] and post copies of [section 1] in conspicuous locations in the municipality.*

(2) The city or town council may not prohibit the placing of a "notice of violation" card on a motor vehicle illegally parked in a disability parking space."

**Section 4.** Section 61-8-365, MCA, is amended to read:

**"61-8-365. Putting refuse on highway prohibited.** (1) ~~No~~ *A* person ~~shall~~ *may not* throw or deposit upen ~~any~~ *a* highway ~~any~~ glass hottles, glass, nails, tacks, wire, cans, paper, or any other substance likely to injure any person, aniinal, or vehicle upen ~~such~~ *the* highway.

(2) ~~Any~~ *A* person who drops or permits to be dropped or thrown upon ~~any~~ *a* highway ~~any~~ destructive or injurious material shall immediately remove the ~~same~~ *material* or cause it to be reinoved.

(3) ~~Any~~ *A* person removing a wrecked or damaged vehicle from a highway shall remove ~~any~~ glass or otber injurious substance dropped upon the highway from ~~such~~ *the* vehicle.

(4) ~~A~~ *Except as provided in [section 1], a* person convicted of violating this section shall be fined not less than $50. Except for the minimum fine of $50 as provided in this subsection~~;~~ *and except for the minimum fine of $100 as provided in [section 1],* the penalty provisions of 61-8-711 apply to this section."

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of:

(1) Title 7, chapter 5, part 21, and tlie provisions of Title 7, chapter 5, part 21, apply to [section 1];

(2) Title 7, cbapter 5, part 41, and the provisions of Title 7, chapter 5, part 41, apply to [section 1]; and

(3) Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [section 1].

Approved March 17, 1997

HeinOnline -- 1997 vol. I 430 1997

# CHAPTER NO. 68

[HB 292]

AN ACT PROVIDING FOR CERTIFICATION OF A PEACE OFFICER WHO LEAVES FULL-TIME OR PART-TIME EMPLOYMENT AND GOES ON ACTIVE RESERVE STATUS OR RETURNS TO FULL-TIME OR PART-TIME EMPLOYMENT.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Certification of peace officer who leaves full-time or part-time employment.** A peace officer who leaves full-time or part-time employment and enters an active reserve status within 36 to 60 months retains basic certification status after entering reserve status for as long as the peace officer remains an active reserve officer. If 36 or more months have passed since the peace officer's last full-time or part-time employment and tbe peace officer returns to full-time or part-time employment, the peace officer shall, upon return to full-time or part-time employment, comply witb 7-32-303(5)(c).

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, part 2, and the provisions of Title 7, cbapter 32, part 2, apply to [section 1].

Approved March 17, 1997

# CHAPTER NO. 69

[HB 321]

AN ACT MAKING IT AN OFFENSE TO OBSTRUCT A PERSON SERVING PROCESS; AMENDING SECTION 45-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Person serving proeess — penalty for obstruction.** A process server registered under chapter 1, part 11, a licensed attorney, or a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of the person's employment while serving process is a public servant for the purpose of determining the offense of obstructiug a public servant as provided in 45-7-302. A person who obstructs a person serving process is guilty of obstruction of a public servant and is punishable as provided in 45-7-302.

**Section 2.** Section 45-7-302, MCA, is amended to read:

**"45-7-302. Obstructing ~~a~~ peace officer or other public servant.** (1) A person commits the offense of obstructing a peace officer or public servant if ~~he~~ *the person* knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function, *including service of process.*

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided *that* ~~he~~ *the peace officer* was acting under ~~color of his~~ *the peace officer's* official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant, *including a person serving process,* shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 25, chapter 3, part 1, and the provisions of Title 25, chapter 3, part 1, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved March 17, 1997

# CHAPTER NO. 70

[HB 358]

AN ACT CLARIFYING THE DEPOSIT AND USE OF NONRESIDENT INSURANCE PRODUCERS' ANNUAL RENEWAL OF LICENSE FEES; AMENDING SECTION 33-2-708, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall collect and tbe persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation, except original articles of incorporation of domestic insurers as provided in subsection (1)(b), and otber charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with tbe application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers . . . . . $600.00

(B) foreign insurers . . . . . 600.00

(ii) annual continuation of certificate of authority . . . . . 600.00

(iii) reinstatement of certificate of authority . . . . . 25.00

(iv) amendment of certificate of authority . . . . . 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to he paid hy the corporation to the secretary of state . . . 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation . . . . . 25.00

(c) filing bylaws or amendment to bylaws when required . . . . . 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority . . . . . 25.00

(e) insurance producer's license:

(i) application for original license, including issuance of license, if issued . . . . . 15.00

(ii) appointment of insurance producer, each insurer, electronically filed . . . . . 10.00

(iii) appointment of insurance producer, each insurer, nonelectronically filed . . . . . 15.00

(iv) temporary license . . . . . 15.00

(v) amendment of license, excluding additions to license, or reissuance of master license . . . . . 15.00

(vi) termination of insurance producer, each insurer, electronically filed . . . . . 10.00

(vii) termination of insurance producer, each insurer, nonelectronically filed . . . . . 15.00

(f) nonresident insurance producer's license:

(i) application for original license, including issuance of license, if issued . . . . . 100.00

(ii) appointment of insurance producer, each insurer, electronically filed . . . . . 10.00

(iii) appointment of insurance producer, each insurer, nonelectronically filed . . . . . 15.00

(iv) annual renewal of license . . . . . 10.00

(v) amendment of license, excluding additions to license, or reissuance of master license . . . . . 15.00

(vi) termination of insurance producer, each insurer, electronically filed . . . . . 10.00

(vii) termination of insurance producer, each insurer, nonelectronically filed . . . . . 15.00

(g) examination, if administered by the commissioner, for license as insurance producer, each examination . . . . . 15.00

HeinOnline -- 1997 vol. I 433 1997

(h) surplus lines insurance producer license:

(i) application for original license and for issuance of license, if issued . . . . . 50.00

(ii) annual renewal of license . . . . . 50.00

(i) adjuster's license:

(i) application for original license and for issuance of license, if issued . . . . . 15.00

(ii) annual renewal of license . . . . . 15.00

(j) insurance vending machine license, each machine, each year . . . 10.00

(k) motor club representative's license:

(i) application for original license and issuance of license, if issued . . 15.00

(ii) annual renewal of license . . . . . 15.00

(l) commissioner's certificate under seal, except when on certificates of authority or licenses . . . . . 10.00

(m) copies of documents on file in the commissioner's office, per page . . . . . .50

(n) policy forms:

(i) filing each policy form . . . . . 25.00

(ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks . . . 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days, provided that all additional forms relate to the same policy . . . . . 100.00

(2) The commissioner shall establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205.

(3) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority.

(4) (a) Except as provided in subsection (4)(b), the commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33, except that all fees for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205 must be deposited in the state special revenue fund pursuant to 33-17-1207.

HeinOnline -- 1997 vol. I 434 1997

(b) The accreditation fee required by subsection (3) *and the annual renewal of license fee established in subsection (1)(f)(iv)* must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money *and the renewal fee.*

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved March 17, 1997

# CHAPTER NO. 71

[SB 9]

AN ACT MODIFYING WHEN REPLACEMENT VALUE IS USED AS A MEASURE OF DAMAGES FOR A MOTOR VEHICLE; ALLOWING THE USE OF BOOK VALUE AS A MEASURE OF DAMAGES; AMENDING SECTIONS 27-1-306 AND 33-23-202, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-1-306, MCA, is amended to read:

**"27-1-306. When replacement value to be allowed.** The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value ~~shall be~~ *is* the actual replacement value of the motor vehicle rather than its ~~"book value"~~ *"book" value unless, after the damages arise, the parties agree to use the "book" value. "Book" value must be determined by referring to the used car guides listed in 61-3-503(1)(c).* Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage. *"Book" value may be used to assist in determining the actual replacement value of the motor vehicle."*

**Section 2.** Section 33-23-202, MCA, is amended to read:

**"33-23-202. Reimbursement for total loss of motor vehicle based on actual replacement value.** Each motor vehicle insurance policy issued to residents of this state ~~which provides~~ *that provides* that reimbursement for total loss of a motor vehicle ~~must~~ be based on a "book" value rather than on the actual replacement value *is void as to that provision, and reimbursement must be made for actual replacement value except as provided in 27-1-306* ~~is void as to such provision, and reimbursement must be made for actual replacement value~~."

**Section 3. Applicability.** The amendments in [section 2] apply to motor vehicle insurance policies issued or renewed after [the effective date of this act].

Approved March 17, 1997

HeinOnline -- 1997 vol. I 435 1997

# CHAPTER NO. 72

[SB 12]

AN ACT CHANGING THE REGISTRATION PERIOD FOR TRAILERS AND SEMITRAILERS REGISTERED THROUGH A PROPORTIONAL REGISTRATION AGREEMENT FROM AN ANNUAL REGISTRATION TO A 5-YEAR REGISTRATION; AMENDING SECTIONS 61-3-321, 61-3-332, AND 61-3-721, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors or trucks, $10;

(f) buses, which are classed as motortrucks, licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds declared weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds declared weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds declared weight, $10, except trailers and semitrailers registered in other jurisdictions ~~and registered~~ through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers that are not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except a passenger car, that is used for towing a trailer or semitrailer.

(4) If ~~any~~ *a* motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration

or license fee for the remainder of the year is one-half of the regular fee *except for trailers or semitrailers registered as provided in 61-3-721(6).*

(5) An additional fee of $5.25 a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions ~~and registered~~ through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall distribute 25 cents from the motor vehicle registration fee for payment of supplemental benefits provided for in 19-6-709.

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335. (See compiler's comments for contingent termination of certain text.)"

**Section 2.** Section 61-3-332, MCA, is amended to read:

**"61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive lettors "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section.

HeinOnline -- 1997 vol. I 437 1997

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A

HeinOnline -- 1997 vol. I 438 1997

registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

HeinOnline -- 1997 vol. I 439 1997

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ten or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) Except as provided in subsection (10)(c), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed te indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a vetoran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upen submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

HeinOnline -- 1997 vol. I 440 1997

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsection (10)(c), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person.

*(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."*

**Section 3.** Section 61-3-721, MCA, is amended to read:

**"61-3-721. Proportional registration of fleet vehicles, ~~annual~~ registration periods, application, fee formula, and payment — *transfer of ownership — transfer of license plates.*** (1) An owner of one or more fleets may register and license each fleet for operation in this state by filing an application with the department of transportation. The application must contain the information pertinent to vehicle registration that is required by the department of transportation.

(2) Each fleet subject to the provisions of 61-3-711 through 61-3-733 must, except as provided in 61-3-318(1) *and subsection (6) of this section*, be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter"

HeinOnline -- 1997 vol. I 441 1997

means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31. The periods are:

(a) January 1 through March 31 . . . . . 1st period

(b) April 1 through June 30 . . . . . 2nd period

(c) July 1 through September 30 . . . . . 3rd period

(d) October 1 through December 31 . . . . . 4th period

(4) Registration of a fleet of apportionable vehicles under subsection (2) must be renewed on or before the last day of the month for the designatod annual registration period, unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of appertionable vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying tbe sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

(6) *(a) Subject to [section 4], each trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.*

*(b)* ~~Each~~ *Subject to [section 4], each* trailer and semitrailer in the fleet for which registration is requested ~~will~~ *must* be assessed ~~annual license or registration fees as~~ *a registration fee equal to five times the amount* prescribed by 61-3-321.

*(c) Each trailer or semitrailer must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.*

*(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.*

*(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.*

*(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the*

HeinOnline -- 1997 vol. I 442 1997

*original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.*

*(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.*

*(c) Upon transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.*

*(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate.*

~~(7)~~*(9)* Applications submitted with fees may be recomputed by the department *of transportation*. The department *of transportation* sball furnish a statement showing the overpayment or balance due.

~~(8)~~*(10)* Applications submitted without fees must be computed by the department *of transportation*. The department *of transportation* shall furnish a statement showing the amount of fees due."

**Section 4. Staggered implementation.** The transition from annual trailer and semitrailer registrations to a 5-year registration for trailers and semitrailers must be accomplished in the first registration year after January 1, 1998. One-fiftb of the trailer and semitrailer fleets proportionally registered must be registered for 1 year. One-fifth of the trailer and semitrailer fleets must be registered for 2 years. One-fifth of the trailer and semitrailer fleets must be registered for 3 years. One-fifth of the trailer and semitrailer fleets must he registered for 4 years. One-fifth of the trailer and semitrailer fleets must be registered for 5 years. Fees under 61-3-721 must be prorated to reflect the registration period.

**Section 5. Termination date.** [Section 4] terminates December 31, 1998.

**Section 6. Effcctive date.** [This act] is effective January 1, 1998.

Approved March 17, 1997

## CHAPTER NO. 73

[SB 14]

AN ACT GENERALLY AMENDING LAWS PERTAINING TO THE DEPARTMENTS OF PUBLIC HEALTH AND HUMAN SERVICES AND ENVIRONMENTAL QUALITY BY TRANSFERRING CERTAIN RESPONSIBILITIES RELATED TO LABORATORY LICENSING, RADIOACTIVE SUBSTANCES, VECTOR-BORNE ILLNESS, AND PESTICIDE REGISTRATION FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; CLARIFYING THAT THE STATE LABORATORY IS LOCATED WITHIN THE DEPARTMENT OF PUBLIC

HeinOnline -- 1997 vol. I 443 1997

HEALTH AND HUMAN SERVICES; ALLOWING THE DEPARTMENT TO SET FEES WHEN NECESSARY INSTEAD OF ANNUALLY; AMENDING SECTIONS 7-22-2403, 7-22-2409, 7-22-2418, 40-1-206, 50-1-202, 75-3-103, 75-3-502, 75-6-103, 75-6-106, 75-6-109, AND 80-8-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-22-2403, MCA, is amended to read:

**"7-22-2403. Petition to create mosquito control district — hearing required.** (1) When a petition, signed by ~~not less than~~ *at least* 25% of the qualified electors of the proposed district or 25% of the owners of any property within the boundaries whose names appear as property owners ~~upon~~ *on* the last-completed assessment roll of the county in which the proposed district is situated, is presented to the board of commissioners of the county asking for the creation of a mosquito control district, the commissioners shall set a day for a hearing on the petition and order notice of the hearing to be given to all persons interested.

(2) The commissioners by resolution shall fix a time for a hearing ~~upon~~ *on* the petition at not less than 2 or more than 4 weeks from the time of presentation of the petition unless additional time is needed to prepare a survey and study as authorized by this subsection. Before setting a time for a hearing, the commissioners may cause a survey and study of the area sought to be included in the district to be made by competent personnel and may submit a report of the study to the department of ~~environmental quality~~ *public health and human services* for its review and recommendations."

**Section 2.** Section 7-22-2409, MCA, is amended to read:

**"7-22-2409. Adjournment of hearing.** (1) The hearing may be adjourned for determination of facts, but an adjournment may not exceed *a total of* 2 weeks ~~in all~~ from ~~and after~~ the date originally noticed and published for the hearing.

(2) (a) If at the time of the hearing the commissioners find that a geographical area desires exclusion from the area contained within the boundaries of the proposed district, the hearing may be adjourned to permit the commissioners to consult the department of ~~environmental quality~~ *public health and human services* to determine if it would be advisable to exclude the geographical area from the district.

(b) Upon reconvening, the commissioners shall define and establish the boundaries that are advisable."

**Section 3.** Section 7-22-2418, MCA, is amended to read:

**"7-22-2418. Relationship of mosquito control districts and boards with department of ~~environmental quality~~ *public health and human services* and department of agriculture.** (1) The department of ~~environmental quality~~ *public health and human services* shall advise the commissioners of a county with regard to the creation of mosquito control districts within the county and upon request advise the boards of the districts in connection with their control programs.

(2) On or before February 1 of each year, the board of each district shall submit to the department of ~~environmental quality~~ *public health and human services* and the department of agriculture, for their review and advice, a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year."

**Section 4.** Section 40-1-206, MCA, is amended to read:

**"40-1-206. Premarital test — approved laboratories — rules.** (1) For the purpose of 40-1-203 through 40-1-209, a standard serological test is a test for rubella immunity that is approved by the department of public health and human services.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department of ~~environmental quality~~ *public health and human services*;

(b) a laboratory approved by the department of public health and human services;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

(3) The standard serological test may be made on request at the laboratory of the department of ~~environmental quality~~ *public health and human services*.

(4) The department of public health and human services shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital serological test."

**Section 5.** Section 50-1-202, MCA, is amended to read:

**"50-1-202. General powers and duties.** The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

HeinOnline -- 1997 vol. I 445 1997

(5) after each inspection made under subsection (4), submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) conduct health education programs;

(10) provide consultation to school and local community health nurses in the performance of their duties;

(11) consult with the superintendent of public instruction on health measures for schools;

(12) develop, adopt, and administer rules setting standards for a program to provide services to handicapped children, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(13) provide consultation to local boards of health;

(14) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) accept and expend federal funds available for public health services;

(16) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) adopt rules imposing fees for the tests and services performed by the *department's* laboratory ~~of the department of environmental quality~~. Fees~~, established on an annual basis,~~ should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.

(18) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases;

HeinOnline -- 1997 vol. I 446 1997

(19) adopt and enforce rules regarding the transportation of dead human bodies; ~~and~~

*(20) adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems; and*

~~(20)~~*(21)* adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease."

**Section 6.** Section 75-3-103, MCA, is amended to read:

**"75-3-103. Definitions.** The definitions used in this chapter are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR 173.389-173.399. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Byproduct material" means:

(a) any radioactive material (except special nuclear material) yielded in, or made radioactive by exposure to the radiation incident to, the process of producing or using special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) "Department" means the department of ~~environmental quality~~ *public health and human services.*

(3) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(4) "General license" means a license effective pursuant to rules promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment using quantities of byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(5) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared, or ultraviolet light.

(6) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389(b).

(7) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency of a political subdivision, and any legal successor, representative, agent, or agency of the foregoing, other than the United States nuclear regulatory commission, any successor, or federal agencies licensed by the nuclear regulatory commission.

HeinOnline -- 1997 vol. I 447 1997

(8) "Registration" means the registering with the department by the legal owner, user, or authorized representative of sources of ionizing radiation in the manner prescribed by rule.

(9) "Source material" means uranium, thorium, or any other material that the department or the United States nuclear regulatory commission declares by order to be source material or ores containing one or more of the foregoing materials in a concentration that the department or the nuclear regulatory commission declares by order to be source material after the nuclear regulatory commission has determined the material in that concentration to be source material.

(10) "Special nuclear material" means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the department or the United States nuclear regulatory commission or any successor declares by order to be special nuclear material or any material artificially enriched by any of the foregoing but does not include source material.

(11) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment using quantities of byproduct, special nuclear materials, or other radioactive material occurring naturally or produced artificially."

**Section 7.** Section 75-3-502, MCA, is amended to read:

**"75-3-502. Administration of compact — fees.** (1) The department of ~~environmental quality~~ *public health and human services*, as the state radiation control agency, shall administer the provisions of the compact.

(2) The department may assess and collect fees for services rendered in inspecting and regulating low-level radioactive waste generators, transporters, and disposal facilities. The fees must cover the department's costs for those services and must be deposited in the state special revenue fund for use by the department. State and local government agencies, including the university system, are exempt from the payment of fees.

(3) The department may adopt rules under the authority contained in 75-3-201(3)(b) to implement the provisions of this compact."

**Section 8.** Section 75-6-103, MCA, is amended to read:

**"75-6-103. Duties of board.** (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

HeinOnline -- 1997 vol. I 448 1997

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) ~~the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;~~

~~(f)~~ the siting, construction, operation, and modification of a public water supply system or public sewage system;

~~(g)~~*(f)* the review of financial viability of a proposed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

~~(h)~~*(g)* the collection and analysis of samples of water used for drinking or domestic purposes;

~~(i)~~*(h)* the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

~~(j)~~*(i)* administrative enforcement procedures and administrative penalties authorized under this part;

~~(k)~~*(j)* standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and

~~(l)~~*(k)* any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part."

**Section 9.** Section 75-6-106, MCA, is amended to read:

**"75-6-106. ~~Licensing of laboratories.~~ *Laboratory license required.*** ~~(1) No~~ *A* laboratory analysis of water taken from a public water supply system or any report of ~~such~~ an analysis required by this part or a rule adopted under this part may *not* be accepted by the department or board unless the analysis or report is made by the *department of public health and human services'* laboratory ~~of the department~~ or by a laboratory licensed by the department *of public health and human services* for ~~such~~ *water analysis* purposes. ~~The department shall issue a license to any laboratory that can meet criteria for licensing established in the rules adopted by the board.~~

~~(2) An application for a license under this section shall be made on forms furnished by the department.~~

~~(3) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.~~"

**Section 10.** Section 75-6-109, MCA, is amended to read:

HeinOnline -- 1997 vol. I 449 1997

"**75-6-109. Administrative enforcement.** (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) An action initiated under this part may include an administrative penalty not to exceed $500 for each day of violation. Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103~~(2)(i)~~*(2)(i)*.

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

**Section 11.** Section 80-8-201, MCA, is amended to read:

"**80-8-201. Registration.** (1) Each pesticide distributed, sold, or offered for sale within the state or delivered for transportation or transported in intrastate commerce or between points within the state must be registered with the department. The registration must be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees

HeinOnline -- 1997 vol. I 450 1997

and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement that includes:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the lahel, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement is required only for information that is different from that furnished when the pesticide was registered or last reregistered.

(3) A pesticide imported into the state that is subject to and has been registered under the provisions of a federal act providing for the registration of pesticides must be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in 80-8-105(3) and in subsection (8) of this section. The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of $70 for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticido. If it appears to the department that the composition of the pesticide warrants the proposed claims for it and if the pesticide, its labeling, and other material required to be submitted comply with the requirements of 80-8-202, the department shall register the pesticide.

(6) If it does not appear to the department that the pesticide warrants the proposed claims for it or if the pesticide, its labeling, and other material required to be submitted do not comply with this chapter, the department shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with the chapter to provide the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the pesticide. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the pesticide or its labeling comply with this chapter or whenever scientific evidence proves that the pesticide endangers humans or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

HeinOnline -- 1997 vol. I 451 1997

(7) Registration is not required in the case of a pesticide shipped from one plant in the state to another plant in the state by the same person.

(8) (a) The department, the department of ~~environmental quality~~ *public health and human services*, and the department of fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of $70 for a special local need or experimental-use permit registration. The departments shall ~~utilize~~ *use* the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted under the act. The department shall provide the departments of ~~environmental quality~~ *public health and human services* and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department's proposed action on the application. The department, the department of ~~environmental quality~~ *public health and human services*, and the department of fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the department, the department of ~~environmental quality~~ *public health and human services*, and the department of fish, wildlife, and parks are in agreement with the proposed registration, the department shall issue the registration.

(b) The department shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department shall issue the registration.

(c) The registrant applying for registration must be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, ~~environmental quality~~ *public health and human services*, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration must be accepted by the departments and implemented by the department of agriculture.

(9) (a) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency respensible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. Except as provided in subsection (9)(b), if the federal cancellation allows existing stock to be used past the final date of cancellation, the sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of the products to ensure their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements

HeinOnline -- 1997 vol. I 452 1997

for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated."

**Section 12. Licensing of laboratories.** (1) To authorize a laboratory to submit analyses and reports to the department of environmental quality under Title 75, chapter 6, part 1, the department shall issue a license to any laboratory that intends to conduct analysis of public water supply systems and that files a license application, on a form furnished by the department, demonstrating that it meets the criteria for licensing established by department rules.

(2) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the decision under the contested case provisions of the Montana Administrative Procedure Act.

**Section 13. Codification instructions.** (1) Title 75, chapter 3, parts 1 through 5, are intended to be renumbered and codified as an integral part of Title 50.

(2) [Section 12] is intended to be codified as an integral part of Title 50, chapter 1, part 2, and the provisions of Title 50, chapter 1, part 2, apply to [section 12].

**Section 14. Effective date.** [This act] is effective July 1, 1997.

Approved March 17, 1997

# CHAPTER NO. 74

[SB 35]

AN ACT PROVIDING PROCEDURES AND STANDARDS FOR MAKING BUDGET COMPARISONS AND DETERMINING BUDGET PERFORMANCE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [section 2], the following definitions apply:

(1) "Current biennium" means the biennium during which the legislature is meeting in regular session.

(2) "Next biennium" means the biennium for which the regular session of the legislature makes appropriations.

(3) (a) "State resources" means:

(i) the general fund;

(ii) state special revenue funds other than private funds;

(iii) federal special revenue funds;

(iv) proprietary funds that require an appropriation;

(v) long-range building program appropriations; and

(vi) agency funds distributed to local governments.

(b) The term does not include:

(i) debt service funds;

(ii) capital project funds other than those appropriated;

(iii) internal service or proprietary funds that do not require an appropriation;

(iv) fund transfers;

(v) enterprise funds;

(vi) unrestricted or other university funds;

(vii) agency funds not distributed to local governments;

(viii) expendable trust funds;

(ix) nonexpendable trust funds;

(x) pension trust funds;

(xi) noncash accounting entries; and

(xii) private funds deposited in state special revenue accounts.

**Section 2. Budget performance — comparison.** (1) The measure of budget performance is the total actual or estimated expenditure of state resources that reflects the cost of general government operations funded by taxes and fees.

(2) In preparing budget comparisons, the office of budget and program planning and the legislative fiscal division shall compare actual expenditures of state resources in the first year of the current biennium plus appropriations of state resources in the second year of the current biennium to appropriations of state resources in the next biennium. Anticipated reversions may be deducted from appropriated amounts per agreement between the two offices.

(3) The legislative fiscal analyst and the budget director shall enter into an agreement on measurement standards for budget comparisons. The office of budget and program planning and the legislative fiscal division shall use the same methodology to estimate the amounts of statutory appropriations. If there are differences in estimates of revenue or amounts of statutory appropriations, the legislative fiscal analyst shall explain the differences as part of the independent analysis of the executive budget.

(4) Budget comparisons must include the same attributes and methods of calculation. Items that are not appropriated at the beginning of a biennium, such as budget amendments, supplemental appropriations, and emergency appropriations, must be included in budget comparisons, but must be segregated and indicated as noncomparable items.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 17, chapter 7, and the provisions of Title 17, chapter 7, apply to [sections 1 and 2].

Approved March 17, 1997

HeinOnline -- 1997 vol. I 454 1997

# CHAPTER NO. 75

[SB 101]

AN ACT PROVIDING THAT CERTAIN VETERINARY MEDICAL STUDENTS WHO WORK UNDER THE DIRECT SUPERVISION OF A LICENSED VETERINARIAN ARE EXEMPT FROM VETERINARY LICENSURE; ALLOWING AN EMPLOYEE OF A LICENSED VETERINARIAN TO PERFORM CERTAIN VETERINARY FUNCTIONS, INCLUDING EMERGENCY SERVICES, AS DETERMINED BY RULE OF THE BOARD OF VETERINARY MEDICINE; AND AMENDING SECTIONS 37-18-104 AND 37-18-202, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because 37-18-104(6) and (7) and 37-18-202(1)(c) grant authority to the board of veterinary medicine to adopt rules regarding the limited exemption of certain veterinary support personnel from the practice of veterinary medicine. It is intended that the board be allowed to define by rule the scope of treatments that support personnel may render when working under the supervision of a veterinarian. It is also intended that, in its discretion, the board be allowed to further define situations that constitute emergencies during which support personnel may provide limited care to a veterinarian's animal patients.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-18-104, MCA, is amended to read:

"**37-18-104. Exemptions — rules.** (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws ~~thereof~~ *of that state* to practice veterinary medicine ~~therein~~, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment ~~as assistants to veterinarians licensed and registered under this chapter~~ of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association ~~and authorized by law to confer degrees~~, *if the*

*students are employed by and work under the immediate supervision of a veterinarian licensed and registered under this chapter*; or

(f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) ~~(a)~~ Nonsurgical embryo transfers in bovines may be performed~~,~~ under the supervision of a veterinarian licensed and residing in Montana~~, by individuals who attest to the board that they possess a combination of 3 years' education, experience, and training in that procedure.~~

~~(b) Exemption under subsection (3)(a) remains in effect until testing and certification procedures, as determined by board rule, are implemented on or before July 1, 1991.~~ At a minimum, board rules *regarding nonsurgical embryo transfers in bovines* must address:

~~(i)~~*(a)* minimum education requirements;

~~(ii)~~*(b)* minimum requirements of practical experience;

~~(iii)~~*(c)* continuing education requirements;

~~(iv)~~*(d)* limitations on practices and procedures that may be performed by certified individuals;

~~(v)~~*(e)* the use of specific drugs necessary for safe and proper practice of certified procedures;

~~(vi)~~*(f)* content and administration of the certification test, including written and practical testing;

~~(vii)~~*(g)* application and reexamination procedures; *and*

~~(viii)~~*(h)* conduct of certified individuals, including rules for suspension, revocation, and denial of certification~~; and~~

~~(ix) establishment of an advisory committee. The committee:~~

~~(A) must consist of:~~

~~(I) one member of the board who is a veterinarian;~~

~~(II) one member of the Montana state university Bozeman reproductive physiology department;~~

~~(III) one member representing the Montana stockgrowers association animal health committee;~~

~~(IV) one member representing the Montana woolgrowers association;~~

~~(V) one reproductive specialist with practical experience in embryo transfers; and~~

~~(VI) a veterinarian who is a member of the American college of theriogenologists;~~

~~(B) shall make recommendations regarding the testing and certification procedures. The committee may not adopt rules.~~

~~(C) in cooperation with the board, shall conduct a study of the practice of bovine pregnancy testing and ovine pregnancy testing with the use of ultrasound equipment. The study must include but is not limited to:~~

~~(I) federal laws governing the practice of pregnancy testing;~~

~~(II) education and experience requirements for the practice of pregnancy testing; and~~

~~(III) pregnancy testing by nonveterinarians.~~

~~(D) terminates July 1, 1991.~~

(4) This chapter does not prohibit a person from caring for and treating ~~his~~ *the person's* own farm animals or being assisted in this treatment by ~~his~~ *the person's* full-time employees, as defined in 2-18-601, employed in the conduct of ~~his~~ *the person's* business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at ~~his~~ *the pharmacist's* regular place of business.

*(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.*

*(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses."*

**Section 2.** Section 37-18-202, MCA, is amended to read:

**"37-18-202. Powers of board and department — examinations.** (1) The board may adopt rules and orders necessary for the performance of its duties, including but not limited to:

(a) prescribing of forms for application for examination and license; ~~and~~

(b) preparation of examinations*; and*

*(c) clarifying the use of support personnel and the provision of emergency services.*

(2) The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses."

Approved March 17, 1997

# CHAPTER NO. 76

[SB 107]

AN ACT REVISING CERTAIN PROVISIONS REGARDING AGRICULTURAL COMMODITY STANDARDS, STORAGE, AND MERCHANDISING; EXEMPTING REVENUE COLLECTED FROM THE ADMINISTRATION OF THE STATE GRAIN LABORATORY FROM BUDGET AMENDMENT REQUIREMENTS; REVISING APPLICABLE PENALTIES; CLARIFYING THAT THE ANNUAL COMMODITY DEALER LICENSE FEE IS COLLECTIBLE FOR EACH FACILITY COVERED UNDER THE LICENSE; REVISING PROCEDURES FOR SUBMITTING SAMPLES TO THE STATE GRAIN LABORATORY AND FOR APPEALING ANALYSIS RESULTS; AMENDING SECTIONS 17-7-402, 80-4-402, 80-4-405, 80-4-409, 80-4-421, 80-4-429, 80-4-501, 80-4-536, 80-4-602, 80-4-701, 80-4-702, 80-4-703, 80-4-704, 80-4-705, 80-4-706, 80-4-708, 80-4-721, 80-4-722, 80-4-724, AND 80-4-725, MCA; REPEALING SECTIONS 80-4-301, 80-4-302, 80-4-303, 80-4-304, 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707, 80-4-710, 80-4-723, AND 80-4-727, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-7-402, MCA, is amended to read:

**"17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (6), a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue depesited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91; ~~or~~

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections; *or*

*(vii) revenue collected for the administration of the state grain laboratory under the provisions of Title 80, chapter 4, part 7;*

(b) hy the approving authority if the hudget amendment contains any significant ascertaimable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure;

(d) by the approving authority unless it will provide additional services;

(e) hy the approving authority for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation suhcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except wben the legislative finance committee is given specific notice by the approving authority that significant identifiable events, spocific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration hy the legislature; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments must itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst.

(4) Money from nonstate or nonfederal sources that would be deposited in the state spocial revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(5) An appropriation that would usually be the subject of a budget amendment that is submitted to the legislature for approval during a legislative session may not include authority to spend money heyond the first fiscal year of the next biennium.

(6) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

**Section 2.** Section 80-4-402, MCA, is amended to read:

"**80-4-402. Definitions.** As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means ~~any~~ *a* person who contracts for or solicits any agricultural commedities from a producer or warehouse operator or negetiates the consignment or purchase of any agricultural commodity on behalf of ~~any~~ *a* commodity dealer.

(2) "Agricultural commodity" means any grain, ~~beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed,~~

HeinOnline -- 1997 vol. I 459 1997

~~and other agricultural commodities~~ *oil seed crops, seed, or other crops* designated by rule of the department.

(3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(4) "Commodity dealer" means ~~any~~ *a* person who engages in a business involving or, as part of the business, participates in huying, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(b) a person who buys agricultural commodities from a licensed commodity dealer;

(c) a person who does not purchase more than $30,000 worth of agricultural commodities from producers during a licensing year; however, once a person exceeds the $30,000 exemption, the person shall obtain a license and is not eligible for the exemption for the succeeding year;

(d) a person who is the producer of agricultural commodities that the person actually plants, nurtures, and harvests;

(e) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange; or

(f) a person who buys agricultural commodities used exclusively for the feeding of livestock and not for resale.

(5) "Delayed payment contract" means a written contract for the sale of an agricultural commodity when the ~~sale~~ *purchase* price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does not include those contracts in which the parties intend payment to be made immediately upon determination of weights and grades.

(6) "Department" means the department of agriculture provided for in 2-15-3001.

(7) "Depositor" means ~~any~~ *a* person who *delivers an agricultural commodity to a commodity dealer for sale, who* depesits an agricultural commodity in a warehouse for storage, processing, handling, or shipment, ~~or~~ who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural commodity.

(8) "Director" means the director of the department of agriculture.

*(9) "FGIS" means the federal grain inspection service, a program administered by the federal grain inspection, packers, and stockyards administration (GIPSA).*

HeinOnline -- 1997 vol. I 460 1997

~~(9)~~*(10)* "Grain" means all grains for which standards have been established under the ~~United States~~ Grain Standards Act~~, 7 U.S.C. 71 through 87,~~ and all other agricultural commodities, such as mustard, oil seed crops, or other crops, ~~which~~ *that* may be designated by rule of the department.

*(11) "Grain standards" means the official standards of quality and condition of grain that establish the grades defined by the Grain Standards Act or those standards adopted by department rule.*

~~(10)~~*(12)* "Grain Standards Act" means the United States Grain Standards Act, 7 U.S.C. 71 through 87.

~~(11)~~*(13)* "Inspector" means ~~any~~ *a* person designated by the director to assist in the administration of parts 4 through ~~6~~ 7 of this chapter. The term includes warehouse auditors or examiners.

~~(12)~~*(14)* "Official ~~grain~~ *agricultural commodity* inspectors" means ~~any~~ official personnel who perform or supervise the performance of official inspection services and certify the results of inspections, including the grade of ~~the grain~~ *agricultural commodities*.

~~(13)~~*(15)* "Official ~~grain~~ *agricultural commodity* samplers" or "samplers" means ~~any~~ official personnel who perform or supervise the performance of official sampling services and certify the results of the sampling.

~~(14) "Official grain standards" means the standards of quality and condition of grain that establish the grades defined by the Grain Standards Act.~~

~~(15)~~*(16)* "Official ~~grain~~ *agricultural commodity* weighers" means ~~any~~ official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results ~~thereof~~ *of the services*, including the weight of the ~~grain~~ *agricultural commodity*.

~~(16)~~*(17)* "Person" means ~~any~~ *an* individual, firm, association, corporation, partnership, or any other form of business enterprise.

~~(17)~~*(18)* "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

~~(13)~~*(19)* "Public warehouse" or "warehouse" means ~~any~~ *an* elevator, mill, warehouse, subterminal grain warehouse, puhlic warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities ~~which~~ *that* commingle commodities belonging to different lots of agricultural commodities.

~~(10)~~*(20)* "Purchase contract" means a delayed payment contract or other written contract for the purchase of agricultural commodities by a commodity dealer.

~~(20)~~*(21) "Purchase price" means the final price after premiums and discounts are assessed.*

*(22)* "Receipt" means a warehouse receipt.

HeinOnline -- 1997 vol. I 461 1997

~~(21)~~*(23)* "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

~~(22)~~*(24)* "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

~~(23)~~*(25)* "Subterminal warehouse" means ~~any~~ *a* warehouse ~~at which~~ *where* an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

~~(24)~~*(26)* "Terminal grain warehouse" means ~~any~~ *a* warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

~~(23)~~*(27)* "Warehouse operator" means a person operating or controlling a public warehouse.

~~(26)~~*(28)* "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouse operator, except scale weight tickets."

**Section 3.** Section 80-4-405, MCA, is amended to read:

"**80-4-405. Maximum bond amount.** The maximum amount of any public warehouse operator bond may not exceed $1 million and the maximum amount of a commodity dealer bond may not exceed $1 million, except:

(1) any bonds compensating for net asset deficiencies prescribed in parts 5 and 6 of this chapter must be added to the maximum bond amount. *In the event that the public warehouse operator is also licensed as a commodity dealer, only one net asset deficiency amount is required;* ~~and~~

(2) the maximum bond amount must be adjusted each year based upon the percentage increase or decrease in the annual average index of prices received by Montana farmers for food and feed grains as computed by the Montana crop and livestock reporting service."

**Section 4.** Section 80-4-409, MCA, is amended to read:

"**80-4-409. Confidentiality of records.** All financial statements of warehouse operators and commodity dealers required under the provisions of parts 5 and 6 of this chapter ~~shall~~ *must* be kept confidential by the department and are not subject to disclosure except:

(1) upon written permission of the licensee;

(2) in actions or administrative proceedings commenced under the provisions of parts 4 through ~~6~~ 7 of this chapter;

(3) when required by subpoena or court order;

(4) when disclosed to law enforcement agencies in connection with the investigation or prosecution of criminal offenses; or

HeinOnline -- 1997 vol. I 462 1997

(5) when released to a bonding company approved hy the department."

**Section 5.** Section 80-4-421, MCA, is amended to read:

"**80-4-421. License suspension and revocation — renewal.** (1) The department may revoke, suspend, or modify a license when it has reasonable cause to believe that the licensee has committed any of the following acts, each of which is a violation of parts ~~5 and 6~~ *4 through 7* of this chapter:

(a) failure to maintain all initial licensing requirements, including insurance, bonding, and net asset requirements. In determining compliance with net asset requirements, the department may consider the licensee's status under any prior or current bankruptcy proceedings, as well as any outstanding civil settlements or judgments.

(b) aiding or abetting another person in the violation of the licensure or any other provisions of parts ~~5 and 6~~ *4 through 7* of this chapter;

(c) conviction of any criminal offense defined under Title 45, *after considering Title 37, chapter 1, part 2*;

(d) failure or refusal to allow inspection or maintain and provide records, reports, and other information required by the department;

(e) failure or refusal to post storage and other charges as filed with the department;

(f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;

(g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-525 and 80-4-527;

(h) failure of a warehouse oporator to maintain and deliver upon request sufficient agricultural commodities to cover outstanding warehouse receipts as required under 80-4-531;

(i) discrimination in charges by a warehouse operator as provided in 80-4-524;

(j) failure to provide payment for any agricultural commodity; ~~or~~

(k) *failure to satisfy a judgment entered as a result of a violation of this chapter; or*

*(l)* violation of or failure or refusal to comply with any other provision of parts 4 through ~~6~~ 7 of this chapter or *any* rule adopted by the department *pursuant to parts 4 through 7.*

(2) The department may refuse to issue or renew a license if the applicant or licensee:

(a) has a license as a warehouse operator or commodity dealer that was previously or is currently suspended or revoked. In determining the sufficiency of cause ~~hereunder~~, the department sball consider the nature and length of the action and any suhsequent licensure or other evidence of rehabilitation.

HeinOnline -- 1997 vol. I 463 1997

(b) does not satisfy the bonding, insurance, or net asset requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant ~~which~~ *that* the department subsequently determines incorrect ~~must be considered~~ *is* void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631."

**Section 6.** Section 80-4-429, MCA, is amended to read:

"80-4-429. **Penalty.** (1) Except as otherwise provided, ~~any~~ *a* person who violates any provision of parts 4 through ~~6~~ 7 of this chapter or rules promulgated under parts 4 through ~~6~~ 7 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized representative in the performance of a duty under parts 4 through ~~6~~ 7 of this chapter is guilty of a misdemeanor ~~and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than $1,000, or both~~.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouse operator who knowingly sells warehouse-receipted agricultural commodities that the person is not authorized to sell or who fails te pay for purchased agricultural commodities is guilty of a felony.

(4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(4)(f) who fails to pay in full all amounts due to a ~~commodity dealer~~ *producer* for the sale of agricultural commodities is guilty of a felony and is also subject te any additional administrative penalty authorized by this chapter.

*(5) A person is guilty of a felony if that person knowingly delivers to a commodity dealer or warehouse operator or upon the exercise of reasonable diligence should have known of the delivery to that person of an agricultural commodity that contains:*

*(a) a nitrogen fertilizer added to harvested grain;*

*(b) a poisonous, deleterious, or other substance not registered or approved by federal or state statutes, regulations, or rules; or*

*(c) a registered or approved substance that has not been used or applied according to label directions or other government standards.*"

HeinOnline -- 1997 vol. I 464 1997

**Section 7.** Section 80-4-501, MCA, is amended to read:

**"80-4-501. Liceuse necessary to operate public warehouse.** (1) ~~No~~ *A* person may *not* act as a warehouse operator without first having obtained an annual license from the department. This requirement ~~does~~ *and other requirements in parts 4 through 6 that regulate the activities of a warehouse operator do* not apply to operators of warehouses that are federally licensed under the United States Warehouse Act. *However, if a federally licensed warehouse operator engages in business as a commodity dealer, the provisions of parts 4 through 7 apply to the commodity dealer activity.*

(2) If a warehouse operator operates two or more warehouses in the same city or immediately adjacent ~~thereto~~ *to the city* or in the same immediate area, in conjunction with each other and with the same ~~work force~~ *workforce*, ~~and~~ *if* one set of books and records is kept for all ~~such~~ *the* warehouses ~~and~~, cash slips, scale weigbt tickets, *and* warehouse receipts, and *if* checks of one series are used for agricultural commodities stored ~~therein~~ *in the warehouse*, only ono warehouse operator's license is required for the operation of all ~~such~~ *the* warehouses."

**Section 8.** Section 80-4-536, MCA, is amended to read:

**"80-4-536. Termination of storage contract — sale of agricultural commodities for charges — notice requlred.** (1) Storage of agricultural commodities may be terminated by the depositor at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the agricultural commodities or a notice to the warehouse operator to sell the commodities.

(2) In the absence of a demand for delivery, order to sell, or mutual agreement for tbe renewal of the storage contract entered into prior to the expiration of the storage contract, the warehouse operator ~~shall~~ *may*, upon the expiration of the storage contract, sell so much of tbe stored agricultural commodities at the local market price at the close of business on that day as is sufficient to pay the accrued storage charges. ~~He~~ *The warehouse operator* shall then issue new warehouse receipts for the balance of the agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts. *If the warehouse receipt is not returned, the warehouse operator may apply for an encumbrance to the grain settlement records for outstanding storage in lieu of reissuance of the warehouse receipt subject to the provisions of subsection (3).* The warehouse operator shall notify all warehouse receipt holders *who are subject to the provisions of subsection (3)* of the provisions of this section 30 days prior to the end of the ~~storage period~~ *license year.*

*(3) All storage contracts on agricultural commodities evidenced by a warehouse receipt must be terminated within 3 license years. The termination date for those storage contracts must be calculated by considering the license year during which the contract was issued as the first license year, plus 2 additional license years, for a total of 3 license years."*

**Section 9.** Section 80-4-602, MCA, is amended to read:

**"80-4-602. License fees.** (1) Except as provided in subsection (3), the department shall collect an annual fee of $232 *per facility* for each commodity dealer license.

HeinOnline -- 1997 vol. I 465 1997

(2) If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed $500 for a facility.

(3) The license fee for a commodity dealer who is licensed as a seed dealer under 80-5-202(4) is $100 a year if the majority of the dealer's annual expenditures for agricultural commodities is for agricultural seed intended for resale as agricultural seed.

(4) All fees collected under this section must be placed in the commodity dealer/public warehouse operators account."

**Section 10.** Section 80-4-701, MCA, is amended to read:

"**80-4-701. Official ~~grain~~ *agricultural commodity* inspectors, samplers, and weighers — designation of seasonal inspection points — assignment of inspectors.** (1) The department shall provide inspectors, samplers, and weighers to enforce this part. At all inspection points designated by the department, the department shall provide sufficient official ~~grain~~ *agricultural commodity* inspectors, samplers, and weighers to inspect and weigh all ~~grain~~ *agricultural commodities* subject to state inspection.

(2) The department may, during the grain-marketing season, appoint inspectors to visit the grain-growing districts to investigate the grading, dockage, and weighing of grain and to enforce the rules of the department.

(3) Expenditures for the inspection and weighing at the points designated by the department may not exceed total fee receipts at those points."

**Section 11.** Section 80-4-702, MCA, is amended to read:

"**80-4-702. Qualifications of official ~~grain~~ *agricultural commodity* inspcetors, samplers, and weighers.** Official ~~grain~~ *agricultural commodity* inspectors, samplers, and weighers must be qualified in accordance with the Grain Standards Act. Official ~~grain~~ *agricultural commodity* inspectors, samplers, and weighers may not be directly or indirectly interested in the handling, sorting, shipping, purchasing, or selling of *agricultural commodities,* grain, or grain commodities."

**Section 12.** Section 80-4-703, MCA, is amended to read:

"**80-4-703. Penalty for misconduct.** (1) ~~Any~~ *An* official ~~grain~~ *agricultural commodity* inspector, sampler, or weigher *who is* guilty of neglect of duty, ~~or~~ who knowingly or carelessly inspects, samples, or weighs ~~grain~~ *agricultural commodities* improperly, or who directly or indirectly accepts any money or other consideration for neglect of duty or improper performance of duty is guilty of official misconduct and is punishable as provided in 45-7-401.

(2) ~~Any~~ *A* person who improperly influences or attempts to improperly influence ~~any~~ *an* official ~~grain~~ *agricultural commodity* inspector, sampler, or weigher in the performance of ~~his~~ *the inspector's, sampler's, or weigher's* duties is guilty of bribery and is punishable as provided in 45-7-101.

HeinOnline -- 1997 vol. I 466 1997

(3) Upon conviction of an offense described in subsection (1), an ~~officer~~ *official agricultural commodity inspector, sampler, or weigher* must be removed by the department pursuant to procedures established by department rule."

**Section 13.** Section 80-4-704, MCA, is amended to read:

**"80-4-704. Establishment of standard ~~grain~~ *agricultural commodity* grades.** (1) The department ~~shall~~ *may* by rule establish standard grades to apply to all ~~grain~~ *agricultural commodities for which a United States department of agriculture grade has not been established and that are* bought *by commodity dealers and stored* or handled by warehouses in this state. The department shall adopt as state grade *and dockage* standards all grades for ~~grain~~ *agricultural commodities* established by the United States department of agriculture. *For purposes of this chapter, any reference to a grade also includes a reference to a protein analysis or any other factor provided by department rule if the analysis affects the purchase price.*

(2) ~~Grain~~ *Agricultural commodity* standards adopted by the department do not apply to ~~grain~~ *agricultural commodities* contracted for before the effective date of the adoption of ~~such~~ *the* standards."

**Section 14.** Section 80-4-705, MCA, is amended to read:

**"80-4-705. Rules governing dockage — sample inspection.** The department shall adopt rules governing the dockage on inferior grades, which shall apply in all executory contracts entered into after their adoption. If the *purchase* price ~~or amount to be paid~~ depends on terminal weight or grade, the rules ~~shall~~ control the dockage insofar as dockage affects the *purchase* price ~~to be paid~~. The department shall also provide for sample inspection of ~~grain~~ *agricultural commodities*, adopt rules governing sample inspection, and provide that the sample inspection, when made, is final."

**Section 15.** Section 80-4-706, MCA, is amended to read:

**"80-4-706. Special inspection of ~~grain~~ *agricultural commodities*.** (1) If ~~grain is~~ *agricultural commodities are* sold based on Montana grade and ~~is~~ *are* to be shipped from places not provided with state inspection, the buyer, seller, or person making the delivery may have ~~it~~ *the agricultural commodities* inspected by notifying an inspector, who shall have ~~the grain~~ *them* inspected. After inspection, the inspector shall issue, on request of the buyer, seller, or person delivering the ~~grain~~ *agricultural commodity*, an inspector's certificate showing the grade of the ~~grain~~ *agricultural commodity*. The person calling for the inspection shall pay a reasonable fee fixed by department rule.

(2) ~~Grain~~ *An agricultural commodity* that is shipped to points in this state where no inspection is maintained may be inspected on request of either the buyer or seller, and a certificate may be issued showing the grade of the ~~grain~~ *agricultural commodity*. The charge for the service ~~shall~~ *must* at least equal the entire cost of providing it and ~~shall~~ *must* be paid by the party calling for the inspection."

**Section 16.** Section 80-4-708, MCA, is amended to read:

**"80-4-708. Examination of ~~grain~~ *agricultural commodity* cars *or trucks* at destination.** (1) An official ~~grain~~ *agricultural commodity* inspector,

HeinOnline -- 1997 vol. I 467 1997

sampler, or weigher, before opening the doors *or lids* of a car *or truck* containing ~~grain~~ *agricultural commodities* upon its arrival at any of the places designated by the department for inspection, shall first ascertain the condition of the car *or truck* and determine whether any leakages have occurred while the car *or truck* was in transit, determine whether the doors *or lids* were properly secured and sealed at the point of shipment, and make a record of those facts in all cases, giving seal numbers.

(2) After examinations have been made, the official ~~grain~~ *agricultural commodity* inspector, sampler, or weigher shall securely close and reseal the opened doors *or lids*, using the special seal of the department.

(3) A record must be kept by the official ~~grain~~ *agricultural commodity* inspectors, samplers, or weighers of all original seals broken, the number of seals, and the date when broken. An official ~~grain~~ *agricultural commodity* inspector, sampler, or weigher shall break the seal, weigh, and superintend the loading of all cars *or trucks* of ~~grain~~ *agricultural commodities* subject to inspection. Any other person who breaks the seal or officially weighs the cars *or trucks* of ~~grain~~ *agricultural commodities* is guilty of a misdemeanor."

**Section 17.** Section 80-4-721, MCA, is amended to read:

"**80-4-721. Fees for inspection, testing, and weighing ~~grain~~ *agricultural commodities* — disposition — investment.** (1) The department shall by rule fix the fees for inspection, testing, and weighing of ~~grain~~ *agricultural commodities*.

(2) ~~Payment of the fees referred to in subsection (1) must be divided equally between the warehouse operator and the holder of the warehouse receipt.~~

~~(3) Those fees or proceeds are a lien upon the grain until paid.~~

~~(4)~~ All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of ~~grain~~ *agricultural commodities*, ~~shall~~ *must* reflect as nearly as possible the actual cost of the services.

~~(5)~~*(3)* All those fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the state special revenue fund ~~may~~ *must* be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of ~~grain~~ *agricultural commodities*.

~~(6)~~*(4)* The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from ~~such~~ *the* investments must be credited to the proper department account in the state special revenue fund."

**Section 18.** Section 80-4-722, MCA, is amended to read:

"**80-4-722. Records of inspection.** (1) The official ~~grain~~ *agricultural commodity* inspectors, samplers, and weighers have exclusive control at places provided for state inspection of the weighing and grading of ~~grain~~ *agricultural commodities* to be inspected. Suitable books and records must be kept in which must be entered an accurate record of every carload or truckload of ~~grain~~

HeinOnline -- 1997 vol. I 468 1997

*agricultural commodities* inspected or weighed by them. The records must show for each car or truck:

(a) the number or other designation of the car or truck;

(b) the net weight of the ~~grain~~ *agricultural commodity*;

(c) the kind of ~~grain~~ *agricultural commodity* and its grade and, if graded below standard No. 1 grade, the reason for ~~such~~ *the* grade.

(2) For each carload or truckload of ~~grain~~ *agricultural commodities*, the official ~~grain~~ *agricultural commodity* inspector shall give a certificate of inspection, showing the kind and grade of the ~~grain~~ *agricultural commodity*, the reason for all grades below No. 1, and the amount to be allowed for dockage, if any. For each carload or truckload weighed, the weigher shall give a weight certificate showing the true weight ~~thereof~~ and containing a statement on the condition of the car or truck and evidences of leakage or damage, if any.

(3) The inspection and weight certificates must be made available to the warehouse loading or unloading the ~~grain~~ *agricultural commodity*, the shipper or ~~his~~ *the shipper's* agent, and the railroad company or other carrier by which the ~~grain~~ *agricultural commodity* was shipped or carried.

(4) Official ~~grain~~ *agricultural commodity* inspectors and weighers shall also keep an accurate record of all appeals and decisions and a complete record of every official act, which books and records must be open to inspection by any party of interest."

**~~Section~~ 19.** Section 80-4-724, MCA, is amended to read:

**"80-4-724. Coloration of ~~grain~~ *agricultural commodities* treated with injurious or toxic substances — *exception.*** *(1)* Any ~~grain~~ *agricultural commodity* treated with any injurious or toxic substance or chemical must at the same time be colored or dyed a color contrasting with the natural color of the ~~grain~~ *agricultural commodity* so that the treated ~~grain~~ *agricultural commodity* is readily identifiable as having been treated with an injurious or toxic substance or chemical. *This subsection does not apply to the application of pesticides to agricultural commodities according to label directions for the treatment of pests that might be present in the agricultural commodity.*

*(2) A person who fails to comply with the requirements of this section is subject to the penalty provisions of 80-4-429."*

**Section 20.** Section 80-4-725, MCA, is amended to read:

**"80-4-725. Sale or offering for sale of treated product prohibited.** ~~No~~ *A* person may *not* sell or offer for sale ~~grain~~ *an agricultural commodity* that has been treated with any injurious or toxic substance or chemical unless the ~~grain~~ *agricultural commodity* has been colored or dyed a color contrasting with the natural color of the ~~grain~~ *agricultural commodity*. Section 80-4-724 and this section do not apply to the treatment of ~~grain~~ *an agricultural commodity* solely for the killing of insects ~~which~~ *that* might be present ~~therein~~. A person violating this section is guilty of a misdemeanor."

**Section 21. Agrieultural commodity sampling — appeal procedure.** (1) At the time of delivery of an agricultural commodity to a warehouse operator

HeinOnline -- 1997 vol. I 469 1997

or commodity dealer for storage or sale, each warehouse operator or commodity dealer shall take a representative sample from each load of agricultural commodity delivered and preserve the sample in a moistureproof container with the owner's name marked on the container. A composite sample consisting of a minimum of 1 1/2 quarts or 1,050 grams of the representative sample must, upon written request of the depositor, be suhmitted directly to the state grain laboratory for analysis as to grade, dockage, protein, and other factors that the laboratory is able to analyze that affect the purchase price. The warehouse operator or commodity dealer shall retain a minimum of 1 1/2 quarts or 1,050 grams of the remaining sample for 60 days.

(2) If a request for a state grain laboratory analysis is not made pursuant to subsection (1) and the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a private analysis, the depositor, warehouse operator, or commodity dealer may appeal to the state grain laboratory. When an appeal is made, the warehouse operator or commodity dealer shall submit 1 1/2 quarts or 1,050 grams of the representative sample to the stato grain laboratory for appeal analysis.

(3) If the depositor, warehouse operator, or commodity dealer is dissatisfied with the results of a state grain laboratory analysis, as provided in subsection (1) or (2), the depositor, warehouse operator, or commodity dealer may appeal to the FGIS, United States department of agriculture. A FGIS appeal must be made within 10 working days of the state grain laboratory's analysis. The sample for FGIS appeal must be a portion of tbat agricultural commodity retained by the state grain laboratory when it conducted its analysis. The results on the state grain laboratory appeal sample are final and binding. In the absence of an appeal to FGIS or in the case of an agricultural commodity for which there are no FGIS standards, the state grain laboratory's analysis is final and binding.

(4) Each warehouse operator or commodity dealer shall post in a conspicuous place a placard, issued by the department, stating the procedures provided for in this section.

(5) All samples submitted for analysis are the property of the state grain laboratory and subject to its disposition.

(6) An agricultural commodity purchased for resale as seed is exempt from the requirements of this section.

(7) A producer of malting barley may by contract waive the right to submit a sample to the state grain laboratory provided in this section.

**Section 22. Repealer.** Sections 80-4-301, 80-4-302, 80-4-303, 80-4-304, 80-4-305, 80-4-306, 80-4-307, 80-4-308, 80-4-423, 80-4-535, 80-4-707, 80-4-710, 80-4-723, and 80-4-727, MCA, are repoaled.

**Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 24. Codification instruction.** [Section 21] is intended to be codified as an integral part of Title 80, chapter 4, part 7, and the provisions of Title 80, chapter 4, part 7, apply to [section 21].

HeinOnline -- 1997 vol. I 470 1997

**Section 25. Effective date.** [This act] is effective July 1, 1997.

Approved March 17, 1997

# CHAPTER NO. 77

[SB 115]

AN ACT ALLOWING SUPERVISED RESIDENTS OF LICENSED LONG-TERM CARE FACILITIES, NURSING CARE FACILITIES, PERSONAL CARE FACILITIES, AND COMMUNITY HOMES FOR PERSONS WITH DISABILITIES TO FISH WITHOUT A LICENSE UPON ANNUAL APPLICATION BY MANAGERS OR DIRECTORS OF THE FACILITIES AND HOMES; AMENDING SECTION 87-2-802, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-802, MCA, is amended to read:

"87-2-802. **Veterans in VA hospitals and residents of state institutions *and long-term care facilities, nursing care facilities, personal care facilities, and community homes for persons with disabilities.*** *(1)* Any veteran who is a patient residing at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all institutions under the jurisdiction of the department of corrections and the department of public health and human services, except the Montana state prison at Deer Lodge or the women's correctional system, ~~will be~~ *are* entitled to fish without a license. The residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license.

*(2) Upon annual application by managers or directors of licensed long-term care facilities and personal care facilities as defined in 50-5-101, community homes for persons with developmental disabilities licensed under 53-20-305, and community homes for persons with severe disabilities licensed under 52-4-203, the department shall allow supervised residents to fish without the otherwise required license during any activities approved by the facilities and homes."*

**Section 2. Applicability.** [Section 1] applies to license years beginning March 1, 1998.

Approved March 17, 1997

# CHAPTER NO. 78

[SB 121]

AN ACT ALLOWING THE REVENUE FROM CERTAIN COUNTY LEASES TO BE DEPOSITED IN THE COUNTY GENERAL FUND; ALLOWING THE REVENUE FROM CERTAIN COUNTY LEASES TO BE USED FOR ANY COUNTY PURPOSE; AMENDING SECTION 7-8-2232, MCA; AND PROVIDING AN EFFECTIVE DATE.

HeinOnline -- 1997 vol. I 471 1997

WHEREAS, the Board of County Commissioners has jurisdiction and power to purchase or receive by donation any real property for the use of the county; and

WHEREAS, the Board of County Commissioners has jurisdiction and power to lease and demise county property, however acquired, that is not necessary to the conduct of the county's business or the preservation of county property; and

WHEREAS, counties must preserve, take care of, manage, and control these properties.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-8-2232, MCA, is amended to read:

**"7-8-2232. Distribution of lease revenue.** *(1)* All revenue derived from leases authorized by 7-8-2231, except as otherwise provided, must be paid ~~into~~ *to* the county ~~treasury~~ *treasurer and may be deposited in the county general fund.* ~~Upon receipt of funds, the county treasurers shall distribute the revenue as collected to the several county and trust and agency funds on the basis of the tax levy for the current year.~~

*(2) The revenue described in subsection (1) may be used for any county purpose, including maintaining or preserving leased property."*

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved March 17, 1997

# CHAPTER NO. 79

[SB 131]

AN ACT INCREASING THE NUMBER OF ACRES OF STATE LAND THAT THE BOARD OF LAND COMMISSIONERS MAY SELL OR LEASE TO A SCHOOL DISTRICT FOR USE AS A SCHOOL SITE TO 25 ACRES FOR AN ELEMENTARY SCHOOL AND 50 ACRES FOR A HIGH SCHOOL; AMENDING SECTION 20-6-621, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-6-621, MCA, is amended to read:

**"20-6-621. Selection of school sites, approval election, and lease of state lands.** (1) *(a)* ~~The~~ *Except as provided in subsection (1)(b), the* trustees of a district may select the sites for school buildings or for other school purposes, but the selection must first be approved hy the qualified electors of the district before a contract for the purchase of a site is entered into by the trustees~~,~~.

*(b)* ~~except the~~ *The* trustees may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. The trustees may take an option on a site prior to the site approval election.

HeinOnline -- 1997 vol. I 472 1997

(2) The election for the approval of a site must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees may purchase the site. A site approval election is not required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and human services; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

(4) The board of land commissioners may sell, at the appraised value, or lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than:

*(a)* ~~10~~ *25* acres to be used as a ~~school~~ site in the district *for an elementary school; or*

*(b) 50 acres to be used as a site in the district for a high school."*

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 17, 1997

# CHAPTER NO. 80

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 54TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Approval of renewable resource projects and authorizations to provide loans.** The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local gevernments listed below

in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(1) GROUP A: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group must be at the rate at which the state bonds are sold for the anticipated 20-year term of the loan. The projects in this group are eligible for grants authorized under House Bill No. 6. If a grant is authorized but available grant funds are insufficient, the applicant must be offered the opportunity to receive a loan for up to the total amount of the authorized loan under [sections 1 through 8] plus the amount of the authorized grant approved in House Bill No. 6.

| Loan | Amount |
|---|---|
| THOMPSON FALLS, CITY OF<br>Water Distribution System Improvements | $100,000 |
| THOMPSON FALLS, CITY OF<br>Water Supply System Improvements | 200,000 |
| TWIN BRIDGES, TOWN OF<br>Water Storage and Distribution System Improvements | 200,000 |
| CHOTEAU, TOWN OF (TSEP)<br>Wastewater System Improvements | 110,000 |

(2) GROUP B: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group is 1% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

| Loan | Amount |
|---|---|
| LIVINGSTON, CITY OF (TSEP)<br>Water System Improvements | $300,000 |

(3) GROUP C: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group is 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

| Loan | Amount |
|---|---|
| FORT BENTON, CITY OF<br>Water Distribution System Improvements | $520,480 |
| LAKESIDE WATER DISTRICT<br>Water Supply and Distribution System Improvements | 600,000 |
| CHINOOK, CITY OF<br>Water Treatment Plant Improvements | 294,000 |
| CORAM WATER AND SEWER DISTRICT (TSEP)<br>Water System Improvements | 170,000 |

(4) GROUP D: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group is 3% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

HeinOnline -- 1997 vol. I 474 1997

| Loan | Amount |
|---|---|
| FORT PECK RURAL COUNTY WATER DISTRICT (TSEP) | |
| Regional Water System | $1,325,000 |

(5) GROUP E: Notwithstanding the provisions of [section 5], the interest rate for the project in this group is 0% for up to 20 years.

| Loan | Amount |
|---|---|
| MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION | |
| East Fork of Rock Creek Dam Rebabilitation | $1,000,000 |

(6) GROUP F: Notwithstanding the provisions of [section 5], the interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

| Loan | Amount |
|---|---|
| GLEN LAKE IRRIGATION DISTRICT | |
| Repair Costich Dam | $195,405 |

**Section 2. Projects not eomplcting requirements — projccts rcauthorized.** The legislature finds that the following renewable resource projects that were approved by the 54th legislature in Chapter 400, Laws of 1995, may not complete the requirements necessary to obtain the loan funds prior to June 30, 1997. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed below in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(1) GROUP A: Notwithstanding the provisions of [section 5], the interest rate for projects in tlus group must be at the rate at which the bonds are sold for the anticipated 20-year term of the loan.

| Loan | Amount |
|---|---|
| MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVA ïION | |
| Deadman's Basin Project Improvements | $111,081 |
| BOZEMAN, CITY OF | |
| Separator Waste Collection Facility | 158,850 |
| HYSHAM, TOWN OF | |
| Wastewater System Improvements | 200,000 |
| SUN RIVER WATER DISTRICT | |
| Sun River Water System | 250,000 |
| EAST GLACIER WATER AND SEWER DISTRICT | |
| Midvale Diversion Structure | 76,537 |

(2) GROUP B: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group may be 1% helow the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for tbe remaining 15 years.

HeinOnline -- 1997 vol. I 475 1997

| Loan | Amount |
|---|---|
| WHITEHALL, TOWN OF | |
| Water Storage and Distribution System Improvements | $509,000 |
| ENNIS, TOWN OF | |
| Water Storage and Distribution System Improvements | 350,000 |

(3) GROUP C: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

| Loan | Amount |
|---|---|
| HILL COUNTY WATER DISTRICT | |
| Water Treatment Plant | $ 400,000 |
| FORSYTH, CITY OF | |
| Water Treatment Plant Improvements | 1,218,916 |
| GLENDIVE, CITY OF | |
| Water Treatment Plant Improvements | 2,240,762 |
| SEELEY LAKE-MISSOULA COUNTY WATER DISTRICT | |
| Water Treatment Plant | 1,600,000 |
| WHITEFISH, CITY OF | |
| Water Supply, Storage, and Treatment System | 5,535,800 |

(4) GROUP D: Notwithstanding the provisions of [section 5], the interest rate for the project in this group is 3.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

| Loan | Amount |
|---|---|
| HUNTLEY PROJECT IRRIGATION DISTRICT | |
| Irrigation System Improvements | $3,500,440 |

(5) GROUP E: Notwithstanding the provisions of [section 5], the interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

| Loan | Amount |
|---|---|
| MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION | |
| North Fork of the Smith River Dam Rehabilitation | $1,035,467 |
| TIN CUP IRRIGATION DISTRICT | |
| Tin Cup Lake Dam Rehabilitation | 304,204 |

**Section 3. Coal severance tax bonds authorized.** (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, as amended in House Bill No. 71, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), may also be used for the projects approved in [sections 1 through 8]. The board of examiners is authorized to issue coal

severance tax bonds in an amount not to exceed $24,976,536, of which $22,505,942 is to be used to finance the projects approved in [sections 1 and 2], $200,000 is to be used to finance additional loans in lieu of grants for projects listed in [section 1] (if grant funds are not sufficient), and up to $2,270,594 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enbance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan state special revenue account.

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

**Section 4. Creation of state debt — appropriation of coal severance tax — bonding provisions.** (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

**Section 5. Condition of loans.** (1) Disbursement of funds under [sections 1 through 8] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

HeinOnline -- 1997 vol. I 477 1997

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the 1999 biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

**Section 6. Interest rates on loans.** Loans made from proceeds of coal severance tax bonds must be at interest rates specified in [sections 1 through 3], except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource grant and loan program project evaluations and recommendations report submitted to the 55th legislature for the 1999 biennium. If the bonds or notes bear interest at an adjustable rate, the department of natural resources and conservation shall establish, at the time of the sale of each bond, an assured rate of interest as if the bond bore interest at a fixed rate. The assured rate of interest must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to [sections 1 through 3].

**Section 7. Private and discount purchase of loans.** Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

**Section 8. Appropriations established.** For any entity of state government that receives a loan under [sections 1 through 7], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

**Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 10. Effective date.** [This act] is effective on passage and approval.

Approved March 19, 1997

# CHAPTER NO. 81

[HB 12]

AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION

HeinOnline -- 1997 vol. I 478 1997

PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 1998 AND 1999; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; REAPPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Stripper-well payments — reappropriation — definition — priority.** (1) There is reappropriated from the stripper-well payments contained in the federal special revenue fund to the department of environmental quality $100,000 to fulfill duties authorized by 90-4-605 and 90-4-607. The original appropriation was contained in section 9, Chapter 597, Laws of 1989. The reappropriation is a biennial appropriation.

(2) (a) "Stripper-well payments" means the oil overcharge payments made to the United States treasury for distribution to the state of Montana as the result of the final settlement agreement in Cause No. M.D.L. 378, United States district court for the district of Kansas, and any interest accrued on the payments.

(b) The term does not include stripper-well payments that have been expended or legally obligated or have been incorporated into any of the existing federal energy programs as the result of prior appropriations by the legislature.

(3) The stripper-well payments reappropriated in this section have a higher priority than any other appropriation of stripper-well payments for fiscal years 1998 and 1999.

**Section 2. Appropriation of bond proceeds.** There is appropriated from bond proceeds authorized by Chapter 571, Laws of 1991, Chapter 350, Laws of 1993, Chapter 61, Laws of 1995, and [section 4] $625,000 to the department of environmental quality to fulfill duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation.

**Section 3. Approval of energy conservation projects — definition.** (1) Pursuant to Title 90, chapter 4, part 6, the legislature approves the following energy conservation projects for fiscal years 1998 and 1999.

Department of Administration
- Scott Hart Building
- State Capitol
- Fish, Wildlife, and Parks Headquarters Building
- Walt Sullivan Building (Labor and Industry)
- Capitol Complex Lighting Upgrades

Montana State University-Billings
- College of Technology Building
- Physical Education Building

Department of Corrections
- State Prison

HeinOnline -- 1997 vol. I 479 1997

State Board of Education
School for Deaf and Blind Lighting Project

(2) In addition to the energy conservation projects listed in subsection (1), the department of environmental quality may expend funds appropriated under [section 4] to respond to lost energy saving opportunities. This includes coordination of energy conservation improvement projects witb the long-range building program's capital improvement projects.

(3) For purposes of this section, a "lost energy saving opportunity" means an opportunity to improve energy use that would provide significant energy and cost savings to the state and that will be technically infeasible or uneconomical if the department of environmental quality is delayed in providing the necessary funds until specific legislative approval can be obtained.

(4) The department of environmental quality shall encourage and use, when appropriate, performance contracting and guaranteed savings arrangements with private energy service companies. These arrangements must be coordinated by the departments of environmental quality and administration. Agencies may arrange financing other than state bonds for energy efficiency improvements in buildings supported by student fees and revenue. Whenever these improvements are financed in whole or in part using state general obligation bonds, resulting energy cost savings must be transferred to the energy conservation program account as provided in 90-4-614. Whenever these improvements are financed in wbole or in part using other state financing, including revenue bonds and the intercap program operated by the board of investments, resulting energy cost savings in excess of debt service, as determined by the department of environmental quality, must be transferred to the energy conservation program account as provided in 90-4-614. Whenever these improvements are financed entirely by private sources, the financing terms for these buildings must be provided for in a performance contract developed jointly by the agency and the departments of environmental quality and administration, and any resulting energy cost savings in these buildings in excess of debt service and program costs may not be transferred from the agency's budget.

(5) If the costs of the projects authorized in subsections (1) and (2) are substantially below the bond amount authorized in [section 4], the department of environmental quality may fund projects that otherwise would be proposed as part of the state building energy conservation package for fiscal years 2000 and 2001.

**Section 4. Bond authorization — appropriation of bond proceeds.** (1) Tbe board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed $5 million for fiscal years 1998 and 1999 for the projects approved in [section 3] and to fulfill duties authorized by 90-4-605 and 90-4-607, as provided in [section 2]. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the

HeinOnline -- 1997 vol. I 480 1997

energy conservation program account may be used to pay the costs of issuing the bonds, to fulfill duties authorized by 90-4-605 and 90-4-607, and to fund the projects approved in [section 3]. For purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds must be available to the department of environmental quality and may be used for the purposes authorized in this section without further budgetary authorization.

**Section 5. Requirements for approval of state debt.** Because [section 4] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 4].

**Section 6. Effective date.** [This act] is effective July 1, 1997.

Approved March 19, 1997

# CHAPTER NO. 82

[HB 40]

AN ACT EXTENDING FOR 2 YEARS THE ATTORNEY GENERAL'S DUTY TO REPRESENT THE STATE IN BANKRUPTCY PROCEEDINGS IN WHICH THE STATE'S INTEREST MAY BE AFFECTED; AMENDING SECTION 4, CHAPTER 196, LAWS OF 1995; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 4, Chapter 196, Laws of 1995, is amended to read:

**"Section 4. Termination.** [This act] terminates June 30, ~~1997~~ *1999*."

**Section 2. Effective date.** [This act] is effective June 30, 1997.

Approved March 19, 1997

# CHAPTER NO. 83

[HB 60]

AN ACT EXTENDING TO ALL CLASSES OF COUNTIES THE OPTION OF FINANCING A CITY-COUNTY BOARD OF HEALTH BY MUTUAL AGREEMENT BETWEEN THE COUNTY AND THE CITIES FORMING THE CITY-COUNTY BOARD OF HEALTH; AMENDING SECTION 50-2-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-2-111, MCA, is amended to read:

**"50-2-111. City-county board appropriations.** If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

HeinOnline -- 1997 vol. I 481 1997

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money ~~shall~~ *must* be deposited with the county treasurer who shall disburse ~~them~~ *the money* as county funds.

(2) (a) ~~In first- and second-class counties, the~~ *The* county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) The county's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23. If the 5-mill levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Each participating city's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money ~~shall~~ *must* be depesited with the county treasurer who shall disburse ~~them~~ *the money* as county funds.

(e) The special levies authorized by this subsection are in addition to all other levies authorized by law."

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved March 19, 1997

# CHAPTER NO. 84

[HB 162]

AN ACT REQUIRING THAT FEES COLLECTED FOR THE REGISTRATION OF HAZARDOUS WASTE GENERATORS AND FEES FOR THE REISSUANCE OR MODIFICATION OF PERMITS FOR HAZARDOUS WASTE MANAGEMENT FACILITIES BE PLACED IN THE HAZARDOUS WASTE FEE ACCOUNT WITHIN THE STATE SPECIAL REVENUE FUND; AMENDING SECTION 75-10-434, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-434, MCA, is amended to read:

HeinOnline -- 1997 vol. I 482 1997

**"75-10-434. Deposit of hazardous waste management fees.** (1) There must be credited to an account within the state special revenue fund established in 17-2-102:

(a) all fees collected under 75-10-432; ~~and~~

(b) all fees collected under 75-10-433, except fees paid to a county.~~;~~

*(c) all fees collected for the registration of hazardous waste generators; and*

*(d) all fees collected for the reissuance or modification of hazardous waste management facility permits.*

(2) Money in the account may be used by the department only for the administration of the hazardous waste provisions of this part."

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved March 19, 1997

# CHAPTER NO. 85

[HB 182]

AN ACT RELATING TO GENERAL ELECTIONS IN WHICH A CANDIDATE DIES SHORTLY BEFORE THE ELECTION; PROVIDING FOR ELECTION OF THE GOVERNOR OR LIEUTENANT GOVERNOR WHEN THERE IS A VACANCY IN THE CANDIDACY; PROVIDING METHODS FOR CORRECTION OF BALLOTS; PROVIDING A METHOD OF CORRECTING AND VOTING ABSENTEE BALLOTS; PROVIDING FOR REQUEST OF AN ABSENTEE BALLOT; AND AMENDING SECTIONS 13-10-327, 13-10-328, 13-12-204, 13-13-204, 13-13-212, AND 13-25-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-10-327, MCA, is amended to read:

**"13-10-327. Vacancy after primary and prior to general election.** (1) ~~If~~ *Except as provided in 13-10-328 for a vacancy in the candidacy of either governor or lieutenant governor caused by the death of a candidate, if* a party candidate dies or withdraws after the primary and before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment ~~shall~~ *must* be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment ~~shall~~ *must* be made under rules adopted by the county central committee.

HeinOnline -- 1997 vol. I 483 1997

(2) ~~Appointments~~ *Except as provided in this section, appointments* to fill vacancies must be made no later than 75 days before the election. A candidate may not officially withdraw 85 days or less before a general election. However, if a candidate for partisan office dies less than 85 days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. ~~The~~ *One of the* procedures provided in 13-12-204 ~~shall~~ *must* be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot."

**Section 2.** Section 13-10-328, MCA, is amended to read:

**"13-10-328. Vacancy in governor or lieutenant governor candidacy.** ~~The~~ *(1) Except as provided in this section,* death or withdrawal of a candidate for governor or lieutenant governor does not affect the candidacy of the other joint candidate.

*(2) If a candidate for the office of governor dies less than 85 days before a general election, the candidate for lieutenant governor must be advanced on the ballot to the candidacy for governor and the candidate for governor shall select an individual to be a candidate for lieutenant governor. If a candidate for the office of lieutenant governor dies less than 85 days before a general election, the candidate for governor shall select an individual to be a candidate for lieutenant governor. The name of a candidate for governor or a candidate for lieutenant governor, or both, designated or selected pursuant to this section, must be certified to the election administrators by the secretary of state, and one of the procedures provided in 13-12-204 must be used to place the name of the new candidate on the ballot."*

**Section 3.** Section 13-12-204, MCA, is amended to read:

**"13-12-204. ~~Labels to be printed and distributed where vacancy has been filled~~ *Method of correction of ballot.*** ~~(1)~~ If an appointment has been made to replace a candidate, as provided in 13-10-326 ~~or~~, 13-10-327, *or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy for governor, as provided in 13-10-328,* after the ballots have been printed but before the election, the election administrator *may:*

*(1)* ~~shall~~ order labels printed containing the name of the new ~~nominee~~ *candidate* and any other information required to ge on the ballot.

~~(2) The~~ *If labels are printed, the* election administrator shall affix the labels in the propor place on each ballot or deliver the labels to the chief election judges to be affixed in the proper place on each ballot before it is given to the elector.

*(2) have the entire ballot reprinted; or*

HeinOnline -- 1997 vol. I 484 1997

*(3) have a separate ballot prepared only for the office for which the new candidate is a candidate."*

**Section 4.** Section 13-13-204, MCA, is amended to read:

**"13-13-204. Authority to vote in person — printing error or ballot destroyed — failure to receive ballot — effect of absentee elector's death.** (1) If an elector has voted by absentee ballot but the absentee ballot contains printing errors or omissions, *except that the name of a candidate who has died since the printing of the ballot and that appears on the ballot does not constitute an error or omission,* the elector may vote in person in any manner at ~~his~~ *the elector's* polling place.

(2) If an elector does not receive ~~his~~ *an* absentee ballot or if the absentee ballot was destroyed, ~~he~~ *the elector* may appear at ~~his~~ *the appropriate* polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that ~~his~~ *the elector's* ballot has not been received or was destroyed. Before the ballot is given to the elector, the election judge shall write upon the back of the ballot the number of the ballot. The ballot may be cast out if it appears to the court to have been wrongfully or illegally voted.

(3) If an elector votes by absentee ballot and dies between the time of balloting and election day, ~~his~~ *the deceased elector's* ballot does not count."

**Section 5. Counting of absentee ballot for deceased joint candidate in general election.** (1) An absentee ballot voted in a general election, as provided in subsection (2) or (3), for a candidate for governor or lieutonant governor who dies after printing of the ballot but before the election must be counted as provided in subsection (2) or (3).

(2) A vote for a deceased candidate for gevernor must be counted as a vote for the lieutenant governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant gevernor.

(3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor.

**Section 6.** Section 13-13-212, MCA, is amended to read:

**"13-13-212. Application for absentee ballot.** (1) Application for absentee ballots ~~shall~~ *must* be made by a written request signed by the applicant and addressed to or transmitted by facsimile to the election administrator of the applicant's county of residence.

(2) Application for an absentee ballot may be made by any elector in the United States service by the federal ~~post-card~~ *postcard* application or by any written request signed by the applicant and addressed to or transmitted by facsimile to the election administrator of the applicant's county of residence.

(3) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time *that* the ballot is delivered in person by the special absentee election board provided for in 13-13-225. ~~Such~~ *The* elector may request by telephone, facsimile transmission, or other means to have a ballot

HeinOnline -- 1997 vol. I 485 1997

and application personally delivered ~~to him~~ by the special absentee election board at ~~his~~ *the elector's* place of confinement, hospitalization, or residence within the county. ~~Such a~~ *A* request may be made no later than noon on election day.

*(4) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator."*

**Section 7.** Section 13-25-101, MCA, is amended to read:

**"13-25-101. Nomination of electors — ballot.** (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state in a form prescribed by the secretary of state no later than 75 days before the general election, in the manner and number provided by law. *However, in the event of the death of a candidate for president or vice president, a new candidate for president or vice president, or both, may be nominated for the affected political party and certificates of election may be filed with the secretary of state less than 75 days before a general election.*

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which must be ~~printed~~ *placed* on the ballot *by one of the methods provided in 13-12-204. If the name of a new candidate for president or vice president, or both, is certified to the secretary of state in less than 75 days pursuant to subsection (1), the secretary of state shall immediately certify the new name or names to the election administrators and the new name or names must be placed on the ballot by one of the methods provided in 13-12-204.*

(3) The names of candidates for electors of president and vice president may not be printed upon the ballot."

Approved March 19, 1997

## CHAPTER NO. 86

[HB 288]

AN ACT CLARIFYING THE LIABILITY PROVISIONS FOR PERSONS WHO MAKE VOLUNTARY CONTRIBUTIONS TO A SPECIFIC REMEDIATION ACCOUNT; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-704, MCA, is amended to read:

**"75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is

HeinOnline -- 1997 vol. I 486 1997

authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may he used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), estahlish and implement a system for prioritizing sites for remedial action hased on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, aud remedial action costs recovered pursuant to 75-10-715;

(b) all administrative ponalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budgot amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingoncy account established pursuant to 75-1-1101.

(7) (a) There is established a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account the interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to this account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until the balance of the donated or granted funds is sufficient, as determined by the department, to remediate the facility pursuant to the requirements of 75-10-721 for which the funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

HeinOnline -- 1997 vol. I 487 1997

(d) If the balance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended *to delay,* to interfere with, or to diminisb the authority or actions of the department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state. ~~Subsections (7) and (8) do not pertain to facilities where the department has initiated actions under this part.~~

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person ~~that~~ *who* donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) ~~This subsection does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance~~ *When a person is liable under 75-10-715 for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance, the person may not avoid that liability or responsibility under 75-10-711 by subsequent donations of money or in-kind services under the provisions of subsection (7) and this subsection (8).*

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action."

**Section 2. Effective date.** [This act] is effective on passage and approval.

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to private funds or in-kind services donated after April 14, 1995.

Approved March 19, 1997

HeinOnline -- 1997 vol. I 488 1997

# CHAPTER NO. 87

[SB 103]

AN ACT PROVIDING FOR THE IMMUNITY OF THE STATE, ITS OFFICERS, EMPLOYEES, AND AGENTS, AND MEMBERS OF THE MILITIA IN A CIVIL ACTION FOR DAMAGES WHILE ENGAGED IN FEDERAL ACTIVITIES.

WHEREAS, Article VI, section 13, of the Montana Constitution provides that the "governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States"; and

WHEREAS, section 10-1-101, MCA, defines "militia" as "all the military forces of this state, whether organized or active or inactive"; and

WHEREAS, section 10-1-101, MCA, defines "national guard" as "the army national guard and the air national guard"; and

WHEREAS, section 10-1-102, MCA, recognizes that the Department of Military Affairs performs duties and functions required by federal laws and regulations; and

WHEREAS, section 10-1-104, MCA, recognizes the application of federal laws, regulations, forms, precedents, and usages relating to and governing the armed forces of the United States to the military forces of this state; and

WHEREAS, the Army National Guard and the Air National Guard perform a uniquely federal mission and role except when ordered by the Governor into state active duty as provided for in Article VI, section 13, of the Montana Constitution; and

WHEREAS, the federal government has established comprehensive administrative programs to compensate military forces for injuries that they may incur while performing training for the nation's defense; and

WHEREAS, the federal government has established comprehensive administrative programs to compensate those who make claims for death, personal injury, or damago to real or personal property under the Federal Tort Claims Act, 28 U.S.C. 2671, et seq.

NOW, THEREFORE, the Legislature finds it appropriate to enact [section 1] for the purpose of limiting liability of this state, its officers, employees, and agents, and members of the militia for the performance of the uniquely federal functions of the Army National Guard and the Air National Guard.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Immunity from liability.** The state, an officer, employee, or agent of the state, or a member of the militia may not be held liable in a civil action for damages that result from an action that occurs while the officer, employee, agent, or member is considered an employee of the federal government under the Federal Tort Claims Act, 28 U.S.C. 2671, et seq.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, and the provisions of Title 10 apply to [section 1].

HeinOnline -- 1997 vol. I 489 1997

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 4. Two-thirds vote required.** Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Approved March 19, 1997

# CHAPTER NO. 88

[SB 106]

AN ACT GENERALLY REVISING DRIVING UNDER THE INFLUENCE LAWS WITH RESPECT TO THE TESTS USED TO DETECT, ESTIMATE, AND MEASURE ALCOHOL OR DRUGS, OR BOTH, IN A PERSON'S BODY; AUTHORIZING ADMISSION OF PRELIMINARY ALCOHOL SCREENING TEST RESULTS AND PHYSICAL, PSYCHOMOTOR, AND PHYSIOLOGICAL ASSESSMENTS OF ALCOHOL OR DRUG PRESENCE OR IMPAIRMENT IN DRIVING UNDER THE INFLUENCE AND OTHER PROCEEDINGS, INCLUDING CERTAIN CRIMINAL PROSECUTIONS AND CIVIL PROCEEDINGS IN WHICH ALCOHOL OR DRUG-PRESENCE OR IMPAIRMENT IS AT ISSUE; ELIMINATING USE OF URINE TESTING UNDER THE IMPLIED CONSENT LAW; PERMITTING SUBMISSION OF CERTIFIED, RATHER THAN SWORN, STATEMENTS FROM PEACE OFFICERS CONCERNING TESTING REFUSALS; AUTHORIZING USE OF BLOOD OR BREATH ANALYSIS TEST RESULTS IN CERTAIN CRIMINAL PROSECUTIONS AND CIVIL ACTIONS; AND AMENDING SECTIONS 61-5-212, 61-8-401, 61-8-402, 61-8-403, 61-8-404, 61-8-405, 61-8-407, 61-8-409, 61-8-805, AND 61-8-806, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked — penalty — seizure of vehicle or rendering vehicle inoperable.** (1) A person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when the person's privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's driver's license was suspended or revoked shall extend the period of suspension or revocation for an additional like period.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended or revoked for violating the provisions of 61-8-401, 61-8-402~~(5)~~, 61-8-406, 61-8-409, or 61-8-410 must,

HeinOnline -- 1997 vol. I 490 1997

upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

**Section 2.** Section 61-8-401, MCA, is amended to read:

**"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable, as provided in 61-8-714, ~~and 61-8-723~~ for ~~any~~ *a* person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination ~~thereof~~ *of alcohol and drugs*, a person's ability to safely operate a motor vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time ~~alleged~~ *of a test*, as shown by analysis of *a sample of* the person's blood~~, urine,~~ or breath *drawn or taken within a reasonable time after the alleged act*, ~~shall give~~ *gives* rise to the following inferences:

(a) If there was at that time an alcohol concentration of ~~0.05~~ *0.04* or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of ~~0.05~~ *0.04* but less than 0.10, that fact ~~shall~~ *may* not give rise to any inference that the person was or was not under the influence of alcohol, but ~~such~~ *the* fact may be

HeinOnline -- 1997 vol. I 491 1997

considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence hearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of ~~the two~~ *alcohol and drugs*.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, *61-8-410*, 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties ~~therein~~ provided *in the ordinance*.

(7) Ahsolute liability as provided in 45-2-104 will be imposed for a violation of this section."

**Section 3.** Section 61-8-402, MCA, is amended to read:

"61-8-402. **Blood*,or* breath~~, or urine~~ tests *for alcohol, drugs, or both*.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent~~, subject to the provisions of 61-8-401,~~ to a test or tests of the person's blood~~,~~ *or* breath~~, or urine~~ for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body ~~if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two.~~.

*(2)(a)* The test or tests must be administered at the direction of a peace officer ~~who~~ *when:*

*(i) the officer* has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this stato open to tbe public while under the influence of alcohol, drugs, or a combination of the two *and the person has been placed under arrest for a violation of 61-8-401;*

*(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or*

*(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.*

*(b)* The arresting *or investigating* officer may designate which test or tests are administered. ~~A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for drugs may not be given.~~

~~(2)~~*(3)* A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

HeinOnline -- 1997 vol. I 492 1997

~~(3)~~*(4)* If ~~a driver under arrest~~ *an arrested person* refuses ~~upon the request of a peace officer~~ to submit to ~~a test or~~ *one or more* tests *requested and* designated by the ~~arresting~~ officer as provided in subsection ~~(1)~~ *(2), a the refused* test *or tests* may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a ~~sworn~~ report *certified under penalty of law* ~~noting that the peace officer had reasonable grounds to believe that the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and noting~~ *stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming* that the person refused to submit to ~~the test or~~ *one or more* tests ~~upon the request of~~ *requested and designated by* the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection ~~(5)~~ *(6)*.

~~(4)~~*(5)* Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 5 days following the date of issuance and shall provide the driver with written notice of the license suspension or revocation and the right to a hearing provided in 61-8-403.

~~(5)~~*(6)* The following suspension and revocation periods are applicable upon refusal to submit to ~~a test or~~ *one or more* tests:

(a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

~~(3)~~*(7)* A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to ~~a test or~~ *one or more* tests.

~~(7)~~*(8)* The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

~~(3)~~*(9)* ~~All suspensions are~~ *A suspension under this section is* subject to review as provided in this part.

*(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part.*"

**Section 4.** Section 61-8-403, MCA, is amended to read:

"**61-8-403. Right of appeal to court.** (1) Within 30 days after notice of the right to a hearing has been given by a peace officer, a person may file a petition

HeinOnline -- 1997 vol. I 493 1997

to challenge the license suspension or revocation in the district court in the county where the person resides or in the county where the arrest was made.

(2) The court has jurisdiction and shall set the matter for hearing. The court shall give at least 10 days' written notice of the hearing to the county attorney of the county where the appeal is filed and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court. The county attorney or city attorney may represent the state. If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state.

(3) Upon request of the petitioner, the court may order the department to return the seized license or issue a stay of the suspension or revocation action pending the hearing.

(4) (a) The court shall take testimony and examine the facts of the case, except that the issues are limited to whether:

(i) a peace officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two *and the person was placed under arrest for violation of 61-8-401*;

(ii) the person ~~was placed under arrest; and~~ *is under the age of 21 and was placed under arrest for a violation of 61-8-410;*

*(iii) the officer had probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person was involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death; and*

~~(iii)~~*(iv)* the person refused to submit to ~~the test or~~ *one or more* tests *designated by the officer.*

(b) ~~The~~ *Based on the above issues and no others, the* court shall determine whether the petitioner is entitled to a license or whether the petitioner's license is subject to suspension or revocation.

(5) This section does not grant a right of appeal to a state court if a driver's license is initially seized, suspended, or revoked pursuant to a tribal law or regulation that requires alcohol or drug testing of motor vehicle operators."

**Section 5.** Section 61-8-404, MCA, is amended to read:

**"61-8-404. Evidence admissible — conditions of admissibility.** (1) Upon the trial of ~~any~~ *a* criminal action or other proceeding arising out of acts alleged to have been committed by ~~any~~ *a* person in violation of 61-8-401, ~~or~~ 61-8-406, *61-8-410, or 61-8-805*:

(a) evidence of any measured amount or detected presence of alcohol, ~~or~~ drugs, *or a combination of alcohol and drugs* in the person at the time of the act alleged, as shown by an analysis of the person's blood~~,~~ *or* breath, ~~or urine,~~ is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent

HeinOnline -- 1997 vol. I 494 1997

evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of ~~any test or~~ *one or more* tests of a person's blood~~,~~ *or* breath~~, or urine administered under 61-8-402~~ is admissible in evidence if:

(i) ~~the~~ *a* breath test *or preliminary alcohol screening test* was performed by a person certified by the forensic sciences division of the department to administer ~~breath tests or~~ *the test;*

*(ii)* ~~the~~ *a* blood ~~or urine test~~ *sample* was ~~a laboratory analysis and the analysis was done~~ *analyzed* in a laboratory operated *or certified* by the department ~~or by any other~~ *or in a* laboratory ~~or facility certified or~~ exempt from certification under the rules of the department~~; and~~

~~(ii) the test was on a blood sample, the person withdrawing~~ *and* the blood was *withdrawn from the person by a person* competent to do so under 61-8-405(1)~~;~~

*(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.*

(2) If the person under arrest refused to submit to ~~the test or~~ *one or more* tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have heen committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcobol, drugs, or a combination of ~~the two~~ *alcohol and drugs.*

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of ~~the two~~ *alcohol and drugs.*"

**Section 6.** Section 61-8-405, MCA, is amended to read:

"**61-8-405. Administration of tests.** (1) Only a physician or registered nurse, or other qualified person *acting* under the supervision and direction of a physician or registered nurse ~~acting~~, *may,* at the request of a peace officer, ~~may~~ withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, *drugs, or any combination of alcohol and drugs* in the person. This limitation does not apply to the ~~taking~~ *sampling* of breath ~~or urine specimens~~.

(2) ~~The person may, at the person's own expense, have a physician or registered nurse of the person's own choosing administer a test, in~~ *In* addition to any *test* administered at the direction of a peace officer, *a person may request that an independent blood sample be drawn by a physician or registered nurse* for the purpose of determining any measured amount or detected presence of alcohol, ~~or~~ drugs, *or any combination of alcohol and drugs* in the person ~~at the time alleged, as shown by analysis of the person's blood, breath, or urine~~. *The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or*

HeinOnline -- 1997 vol. I 495 1997

*otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test.* The failure or inability to obtain an ~~additional~~ *independent* test by a person does not preclude the admissibility in evidence of ~~the~~ *any* test ~~or tests taken~~ *given* at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning ~~the~~ *any* test ~~or tests taken~~ *given* at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician or registered nurse, or other qualified person *acting* under the supervision and direction of a physician or registered nurse, does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

~~(5) If a test given under 61-8-402 or 61-8-806 is a test of urine, the person tested must be given privacy in the taking of the urine specimen that will ensure the integrity of the specimen and, at the same time, maintain the dignity of the individual involved.~~

~~(6)~~*(5)* The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary."

**Section 7.** Section 61-8-407, MCA, is amended to read:

**"61-8-407. Definition of alcohol concentration.** For purposes of 16-6-305~~, 61-8-401, and 61-8-406~~ *and this chapter*, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood~~,~~ *or* grams of alcohol per 210 liters of breath~~, or grams of alcohol per 75.3 milliliters of urine~~."

**Section 8.** Section 61-8-409, MCA, is amended to read:

**"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical control of a vehicle upen ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410.

~~(2) The results of a screening test may be used for determining whether probable cause exists to believe a person has violated 61-8-401, 61-8-406, or 61-8-410.~~

~~(3)~~*(2)* The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test pursuant to this section.

~~(4)~~*(3)* The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test will result in the suspension or revocation for up to 1 year of that person's driver's license.

HeinOnline -- 1997 vol. I 496 1997

~~(5)~~*(4)* If the person refuses to submit to a test under this section, a test will not be given. However, the refusal is sufficient cause to suspend or revoke the person's driver's license as provided in 61-8-402.

~~(6)~~*(5)* A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the test.

~~(7)~~*(6)* The provisions of 61-8-402~~(2) through (7)~~ *(3) through (8)* that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension or revocation under 61-8-402.

~~(6)~~*(7)* A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405~~(6)~~*(5)*."

**Section 9.** Section 61-8-805, MCA, is amended to read:

"**61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or more — hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. If the department receives a ~~sworn~~ report *certified under penalty of law* from a peace officer that the person was operating a commercial motor vehicle while the person's alcohol concentration was 0.04 or more, the department shall suspend the person's commercial driver's license:

(a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension must be for 3 years; and

(b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of a second or subsequent report at any time as determined from the records of the department, unless a restricted license or endorsement is allowed by federal rules governing commercial drivers.

(2) A peace officer who determines that a commercial motor vehicle operator has any measured amount or detected presence of alcohol in the operator's body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions of subsection (1).

(4) The department shall immediately notify in writing any person whose commercial driver's license is suspended under this section. The person may file a petition within 30 days after the notice is given for a hearing in the matter in

HeinOnline -- 1997 vol. I 497 1997

the district court in the county in which the finding of alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appoal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while the person's alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section."

**Section 10.** Section 61-8-806, MCA, is amended to read:

**"61-8-806. Blood, *and* breath, ~~or urine~~ tests of commercial vehicle operators — procedure — suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent, ~~subject to the provisions of 61-8-401 and 61-8-805,~~ to ~~a test~~ *one or more tests* of the operator's blood, *or* breath, ~~or urine~~ for the purpose of determining any measured or detected amount of alcohol in the operator's body if the operator is requested to submit to the test *or tests* by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while having any measurable or detectable alcohol concentration. The peace officer may designate ~~a~~ *the* blood, *or* breath, ~~or urine~~ test *or tests* to be administered.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a commercial motor vehicle oporator who is a resident of Montana refuses upon the request of a peace officer te submit to ~~a test~~ *one or more tests* designated by the officer as provided in subsection (1), the test *or tests* may not be given. On behalf of the department, the officer shall immediately seize the person's commercial driver's license and forward the license to the department, along with a ~~sworn~~ report *certified under penalty of law* that the officer had reasonable grounds to believe that the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having any measurable or detectable alcohol concentration and that the person had refused to submit to ~~the test~~ *one or more tests* upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upen seizure of a resident's commercial driver's license, the peace officer shall issue, on behalf of the department, a temporary noncommercial driving permit. The temporary driving permit is valid for 72 hours after issuance.

(5) If a commercial motor vehicle operator refuses to submit to ~~a test~~ *one or more tests* as provided in subsection (3), the department shall suspend the operator's commercial driver's license:

(a) upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first refusal must be for 3 years;

HeinOnline -- 1997 vol. I 498 1997

(b) upon a second or subsequent refusal at any time as determined from the records of the department, for life, with no provision for a restricted probationary license or endorsement unless allowed by federal rules governing commercial drivers.

(6) A nonresident commercial motor vehicle operator who refuses to submit to ~~a test~~ *one or more tests* as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and must he given a temperary driving permit as provided in subsection (4)."

Approved March 19, 1997

# CHAPTER NO. 89

[SB 126]

AN ACT INCREASING THE MAXIMUM AMOUNT OF AN EDUCATIONAL DEBT PAYMENT THAT A RURAL PHYSICIAN MAY RECEIVE FROM THE BOARD OF REGENTS; AND AMENDING SECTION 20-26-1503, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-26-1503, MCA, is amended to read:

**"20-26-1503. Use of rural physician incentive trust fund.** (1) The rural physician incentive trust fund is statutorily appropriated, as provided in 17-7-502, to the board of regonts of higher education to be used to pay:

(a) the educational debts of rural physicians who practice in medically underserved areas of the state that demonstrate a need for assistance in physician recruitment; and

(b) the expenses of administering the rural physician incentive program. The expenses of administering the program may not exceed 10% of the annual fees assessed pursuant to 20-26-1502.

(2) The board of regents sball establish procedures for determining the areas of the state that qualify for assistance in physician recruitment. An eligible area must demonstrate that a physician shortago exists or that the area has been unsuccessful in recruiting physicians by other mechanisms.

(3) A physician from an area determined to be eligible under subsection (2) may apply to the board of regents for payment of an educational debt directly related to a professional school, as provided in subsection (4). Physicians who have paid the fee authorized in 20-26-1502 must be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board of regents. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area during the contract period.

(4) The maximum amount of educational debt payment that a rural physician may receive is ~~$30,000~~ *$45,000* over a ~~4-year~~ *5-year* period or a proportionally reduced amount for a shorter period.

HeinOnline -- 1997 vol. I 499 1997

(5) The amount contractually committed in a year may not exceed the annual amount deposited in the rural physician incentive trust fund."

Approved March 19, 1997

# CHAPTER NO. 90

[SB 152]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ESTABLISH A PILOT PROGRAM FOR THE ELECTRONIC FILING AND PERFECTION OF MOTOR VEHICLE LIENS; AMENDING SECTION 61-3-103, MCA; AND PROVIDING A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this hill hecause [section 1] requires the department of justice to adopt rules implementing a pilot program for the electronic filing and perfection of motor vehicle liens. The rules must provide procedures that will constitute constructive notice of the electronically filed and perfected lien to suhsequent purchasers or encumbrancers.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Electronic lien filing.** (1) The department shall implement a pilot program allowing electronic filing and perfection of liens on motor vehicles.

(2) The department shall adopt rules to implement the pilot program. The rules must include procedures designed to constitute constructive notice of electronically filed and perfected liens to subsequent purchasers or encumbrancers from the date of a lien's perfection.

**Section 2.** Section 61-3-103, MCA, is amended to read:

"**61-3-103. Filing of security interests, — perfection, — rights, — procedure, — fees.** (1) *Except as provided in [section 1], the* ~~The~~ department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must he retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, *and the* amount of *the* lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificato of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer ~~where~~ *in the county in which* the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

HeinOnline -- 1997 vol. I 500 1997

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under the provisions of 61-4-101, must be perfected in accordance with Title 30, chapter 9.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "*NOTICE.* This motor vehicle is subject to additional security interests on file with the Department of Justice." ~~No other~~ *Other* information regarding ~~such~~ *the* additional security interests need *not* be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in *[section 1] and* subsection (6) *of this section*, a voluntary security interest or lien is perfected on the date *that* the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) ~~Voluntary~~ *Except as provided in [section 1], voluntary* security interests or lien filings that do not require transfer of ownership are perfected on the date *that* the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date *that* the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file ~~such~~ *the* satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of ~~any thereof~~ *the owner, conditional sale vendor, or mortgagees* a notice showing the name and address of the lien claimant, *the* amount of the lien, *the* date of execution of *the* lien, and, in the case of attachment, the full title of the court and the action and the ~~name~~ *names* of the attorneys for the plaintiff and attaching creditor.

HeinOnline -- 1997 vol. I 501 1997

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time *that* this law takes effect.

(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. Tho $4 fee ~~shall include and cover~~ *includes* the cost of filing a satisfaction or release of the security interest and also the cost of entering ~~such~~ *the* satisfaction or release on the records of the department and *of* deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must he paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 1, and the provisions of Title 61, chapter 3, part 1, apply to [section 1].

**Section 4. Termination.** [This act] terminates June 30, 2000.

Approved March 19, 1997

# CHAPTER NO. 91

[HB 64]

AN ACT ELIMINATING THE REQUIREMENT FOR AN AUDIT OF A LOCAL GOVERNMENT ENTITY RECEIVING FEDERAL FINANCIAL ASSISTANCE IN EXCESS OF $25,000; AMENDING SECTION 2-7-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-7-503, MCA, is amended to read:

**"2-7-503. Financial reports and audits of local government entities — exception.** (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, he in a form prescribed by the department, and be completed within 4 months of the end of the reporting period. The local gevernment entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reperting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered

HeinOnline -- 1997 vol. I 502 1997

by the financial report in excess of $200,000 ~~or federal financial assistance in excess of $25,000~~ shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completod and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of tbe financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency witb the information *that* it requires to carry out its responsibilities under state or federal law or regulation, the state agency sball rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of tbe affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge basod upon the costs incurred by the department in relation to tbe special audit or review. The audit fee must he paid by the local government entity to the state treasurer and *must be* deposited in the enterprise fund to the credit of the departinent.

(7) Subsections (1) through (3) do not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

**Section 2. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to audits of local government entities for fiscal years beginning after June 30, 1996.

**Section 3. Effcctive date.** [This act] is effective on passage and approval.

Approved March 19, 1997

# CHAPTER NO. 92

[HB 98]

AN ACT ELIMINATING HANGING AS A MEANS OF EXECUTION; REVISING THE REQUIREMENTS FOR APPLICATIONS FOR EXECUTIVE CLEMENCY; REQUIRING APPLICATION FOR EXECUTIVE CLEMENCY IN CAPITAL CASES TO BE MADE WITHIN 10 DAYS AFTER AN EXECUTION

HeinOnline -- 1997 vol. I 503 1997

DATE IS SET; CLARIFYING THAT THERE IS NO APPEAL FROM THE GOVERNOR'S GRANT OR DENIAL OF CLEMENCY; AMENDING SECTIONS 46-19-103 AND 46-23-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-19-103, MCA, is amended to read:

"**46-19-103. Execution of death sentenee.** (1) In pronouncing the sentence of death, the court shall set the date of execution, which ~~must~~ *may* not be less than 30 days or more than 60 days from the dato the sentonce is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to ~~the~~ *a* state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflictod by ~~hanging the defendant by the neck until he is dead or, at the election of the defendant, by~~ administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturato in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice. ~~A defendant who wishes to choose execution by lethal injection shall do so at the hearing at which an execution date is set, and if he does not, the option to choose death by lethal injection is waived.~~

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the ~~warden of the state prison~~ *director of the department of corrections*. The warrant must be directed to the ~~warden~~ *director* and recite the conviction, judgment, ~~method of execution,~~ appointed dato of execution, and ~~the~~ duration of the warrant.

(5) The warden of tbe Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the stato prison, and shall provide all implementa necessary to the execution. The warden shall, subject to subsection (6), select the porson to perform the execution, and tbe warden or ~~his~~ *the warden's* designee shall supervise tbe execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the executioner must remain confidential.

(6) An execution ~~carried out by lethal injection~~ must be performed by a person selected by the warden and trained to administer ~~the~~ *a lethal* injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registored under the laws of this or any other state. The warden ~~must~~ *shall* allow the execution to be observed hy 12 witnesses, 3 of whom may be designated by the person to be executed.

HeinOnline -- 1997 vol. I 504 1997

(7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of the court from which it was issued, noting on the warrant the time~~, mode, and manner in which~~ it was executed."

**Section 2.** Section 46-23-301, MCA, is amended to read:

**"46-23-301. Cases of executive clemency — application for clemency — definitions.** (1) (a) "Clemency" means kindness, mercy, or leniency that may be exercised by the governor ~~towards~~ *toward* a convicted person. The governor may grant clemency in the form of:

(i) the remission of fines or forfeitures;

(ii) the commutation of a sentence to one ~~which~~ *that* is less severe;

(iii) respite; or

(iv) pardon.

(b) "Pardon" means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.

(2) A person convicted of a crime need not exhaust judicial or administrative remedies before ~~he files~~ *filing* an application for clemency, *except that an application may not be filed with respect to a sentence of death while an automatic review proceeding is pending before the Montana supreme court under 46-18-307 through 46-18-310.* The board shall consider cases of executive clemency only upen application. All applications for executive clemency must be made to the board. *An application for executive clemency in capital cases may be filed with the board no later than 10 days after the district court sets a date of execution.* Applications may be filed only by the person convicted of the crime, by ~~his~~ *the person's* attorney acting on ~~his~~ *the person's* behalf and with ~~his~~ *the person's* consent, or by a court-appointed next friend, guardian, or conservator acting on ~~his~~ *the person's* behalf. The board shall cause an investigation to be made of and base any recommendation it makes on:

(a) all the circumstances surrounding the crime for which the applicant was convicted; and

(b) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(3) The board shall advise the governor and recommend action to be taken. The board may recommend that clemency be granted or denied. In noncapital cases, if the board recommends that clemency be denied, the application ~~must~~ *may* not be forwarded to the governor and the governor may not take action on the case. In capital cases, the board shall transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the board, but ~~he~~ *the governor* shall review the record of the hearing and the board's recommendation before ~~he grants~~ *granting* or ~~denies~~ *denying* clemency. The governor has the final authority to grant or deny clemency in those cases forwarded to ~~him~~ *the governor. An appeal may not be taken from the governor's decision to grant or deny clemency.*"

HeinOnline -- 1997 vol. I 505 1997

**Section 3. Effective date.** [This act] is effective on passage and approval.

**Section 4. Applicability.** [This act] applies to death warrants issued by a court on or after [the effective date of this act].

Approved March 19, 1997

# CHAPTER NO. 93

[HB 108]

AN ACT GENERALLY REVISING CERTIFICATE OF NEED STATUTES; ELIMINATING THE CERTIFICATE OF NEED REQUIREMENT FOR RESIDENTIAL TREATMENT FACILITIES, MEDICAL ASSISTANCE FACILITIES, MENTAL HEALTH CENTERS, MAJOR MEDICAL EQUIPMENT, AND INPATIENT MENTAL HEALTH CARE PROVIDED BY HOSPITALS; DELETING THE REQUIREMENT FOR LICENSURE OF PUBLIC HEALTH CENTERS; PROVIDING THAT THE STATEWIDE HEALTH COORDINATING COUNCIL IS APPOINTED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; CLARIFYING WHEN A CHANGE IN BED CAPACITY REQUIRES A CERTIFICATE OF NEED; REVISING THE PROHIBITION AGAINST REQUIRING A HEALTH CARE FACILITY TO OBTAIN A CERTIFICATE OF NEED FOR AN ACTION THAT WOULD NOT BE SUBJECT TO A REVIEW IF UNDERTAKEN BY A PERSON OTHER THAN A HEALTH CARE FACILITY SO THAT IT REFERS TO A NONREVIEWABLE SERVICE RATHER THAN AN ACTION; DELETING THE AUTHORITY FOR THE ADOPTION OF RULES GOVERNING ABBREVIATED CERTIFICATE OF NEED REVIEW; REVISING THE CERTIFICATE OF NEED APPLICATION PROCESS; DELETING THE REQUIREMENT THAT A HOLDER OF AN UNEXPIRED CERTIFICATE OF NEED REPORT TO THE DEPARTMENT EVERY 6 MONTHS; ALLOWING THE PARTIES TO A RECONSIDERATION HEARING TO AGREE TO AN EXTENSION OF THE DECISION DEADLINE BEYOND 30 DAYS; EXEMPTING FROM THE CERTIFICATE OF NEED REQUIREMENT THE CONSTRUCTION OF A STATE-OWNED FACILITY AND RECONSTRUCTION OF A DAMAGED FACILITY UNDER CERTAIN CIRCUMSTANCES; DELETING RECONSIDERATION HEARING FEES; AMENDING SECTIONS 7-34-2102, 7-34-2201, 50-5-101, 50-5-301, 50-5-302, 50-5-304, 50-5-305, 50-5-306, 50-5-308, 50-5-309, 50-5-310, 50-10-101, 50-16-701, 50-60-205, 50-60-301, 50-78-103, 53-6-106, 53-6-110, AND 90-7-104, MCA; REPEALING SECTION 50-5-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-34-2102, MCA, is amended to read:

**"7-34-2102. Definition.** As used in this part, unless the context requires otherwise, ~~"hospital facilities"~~ *the following definitions apply:*

*(1) "Hospital facilities"* means a hospital or a hospital-related facility, including outpatient facilities, ~~public health centers,~~ rehabilitation facilities,

long-term care facilities, infirmaries, and health care facilities, all as defined in 50-5-101. *The term includes public health centers.*

*(2) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices."*

**Section 2.** Section 7-34-2201, MCA, is amended to read:

**"7-34-2201. Erection and management of county health care facilities — definition — provision of health care services.** (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.

(2) The board of county commissioners of a county that has or may acquire title to a site and building or buildings suitable for county health care purposes has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and operate the building or buildings for health care purposes as provided by this section.

(3) As used in parts 21, 23, 24, and 25 and this part, unless the context clearly requires otherwise, the term "health care facility" means a hospital, a medical assistance facility, an ambulatory surgical facility, a hospice, a kidney treatment center, an outpatient facility, ~~a public health center,~~ a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, *a public health center, as defined in 7-34-2102,* or any combination and related medical facilities including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

**Section 3.** Section 50-5-101, MCA, is amended to read:

**"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home that offers light personal care or custodial care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner of the home.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

HeinOnline -- 1997 vol. I 507 1997

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected hy the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in tbe area affected by the proposal.

(5) "Ambulatory surgical facility" means a facility that provides surgical treatment to patients uot requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(6) "Capital expenditure" means:

(a) an expenditure made hy or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(7) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(10) "College of American pathologists" means the organization nationally recognized by that name, with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications tbat are determined by the department to be competitive in tbat the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

HeinOnline -- 1997 vol. I 508 1997

(13) "Department" means the department of public health and human services provided for in 2-15-2201.

(14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(15) "Federal acts" means federal statutes for the construction of health care facilities.

(16) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes ambulatory surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, ~~public health centers,~~ rehabilitation facilities, residential care facilities, and residential treatment facilities.

(18) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(19) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(21) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

HeinOnline -- 1997 vol. I 509 1997

(b) a residential hospice facility, which is a facility managed directly by a licensed bospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed pbysicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides eutpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of ~~hospitals~~ *healthcare organizations*" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upen their requests and grants accreditation status te a health care facility that it finds meets its standards and requirements.

(26) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102(4), or for individuals with related problems.

(e) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

HeinOnline -- 1997 vol. I 510 1997

~~(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions that is used to provide medical or other health services and that costs a substantial sum of money.~~

~~(28)~~*(27)* "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(28)~~*(28)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(30)~~*(29)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(31)~~*(30)* "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

~~(32)~~*(31)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(32)~~*(32)* "Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds. *An ambulatory surgical facility is also an outpatient facility.*

~~(34)~~*(33)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(35)~~*(34)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(35)~~*(35)* "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.~~

~~(38)~~*(36)* "Rebabilitation facility" means a facility that is oporated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(39)~~*(37)* "Resident" means an individual who is in a long-term care facility or in a residential care facility.

HeinOnline -- 1997 vol. I 511 1997

~~(40)~~*(38)* "Residential care facility" means an adult day-care center, an adult foster care homo, a personal-care facility, or a retirement home.

~~(41)~~*(39)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed te achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(42)~~*(40)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(42)~~*(41)* "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommedations as their primary residence.

~~(44)~~*(42)* "State health *care facilities* plan" means tlie plan prepared by the department to project the need for health care facilities within Montana and approved by the ~~statewide health coordinating council and the~~ governor *and a statewide health coordinating council appointed by the director of the department.*"

**Section 4.** Section 50-5-301, MCA, is amended to read:

**"50-5-301. When certificate of need is required — definitions.** (1) Unless a person bas submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure *that exceeds $1.5 million*, other tban to acquire an existing health care facility ~~or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4)~~. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant ~~or equipment~~ with respect te which an expenditure is inade inust be included in determining if the expenditure exceeds ~~the expenditure thresholds~~ *$1.5 million.*

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever fignre is snialler, ~~in any 2-year period~~ *and no beds have been added or relocated during the 2 years prior to the date the letter of intent for the proposal is received*;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines *that* the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health *care facilities* plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

~~(d) the acquisition by any person of major medical equipment, provided the acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;~~

~~(e)~~*(d)* the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

~~(f)~~*(e)* the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

~~(g)~~*(f)* the expansion of the geographical service area of a home health agency;

~~(h)~~*(g)* the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

~~(i)~~*(h)* the provision by a hospital of services for ambulatory surgical care, home health care, long-term care~~, inpatient mental health care~~, inpatient chemical dependency treatment, or inpatient rehabilitation.

~~(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.~~

~~(3)~~*(2)* For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, ~~medical assistance facility, mental health center with inpatient services,~~ inpatient chemical dependency facility, *or* rehabilitation facility with inpatient services~~, or residential treatment facility~~. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection ~~(1)(i)~~ *(1)(h)*; or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

HeinOnline -- 1997 vol. I 513 1997

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.~~

~~(4) Expenditure thresholds for certificate of need review are established as follows:~~

~~(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.~~

~~(b) For construction of health care facilities, the expenditure threshold is $1,500,000.~~

~~(5) This section may not be construed to require a health care facility to obtain a certificate of need to undertake any activity that would not be subject to a certificate of need if undertaken by a person other than a health care facility.~~

*(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility.*"

**Section 5.** Section 50-5-302, MCA, is amended to read:

"**50-5-302. Letter of intent — application and review process.** (1) The department may adopt rules including but not limited te rules for:

(a) the form and content of letters of intent and applications;

(b) the scheduling of reviews;

~~(c) the abbreviated review of a proposal that:~~

~~(i) does not significantly affect the cost or use of health care;~~

~~(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;~~

~~(iii) is necessary to comply with licensure or certification standards; or~~

~~(iv) would add a health service that is subject to a certificate of need review under 50-5-301(1)(c);~~

~~(d)~~*(c)* the format of public informational hearings and reconsideration hearings;

~~(e)~~*(d)* the circumstances under which applications may be comparatively reviewed; and

~~(f)~~*(e)* the circumstances under which a certificate of need may be approved for the use of hospital beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients or residents needing only that level of care.

(2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50% or more of an existing health care facility, they shall submit to the department a letter noting intent te acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to imitiate an activity for which a certificate of need is required sball submit a letter of intent to the department.

(4) The department may determine that the proposals should be comparatively reviewed with similar proposals ~~unless, in the case of beds, the proposal is determined to be exempt from review~~ *that are also subject to review.*

(5) On the 10th day of each month, the department shall publish in a newspapor of general circulation in the area to he served by the proposal a description of each letter of intent received by the department during the preceding calendar month. Within 30 days of the publication, any person who desires comparative review with a proposal described in the publication must submit a letter of intent requesting comparative review.

(6) The department shall give to each person submitting a letter of intent written notice of the deadline for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent.

(7) Within 20 working days after receipt of an application, the department shall determine whether it is completo and, if the application is found incomplete, shall send a written request to the applicant ~~for~~ *specifying* tlie necessary additional information *and a date by which the additional information must be submitted to the department. The department shall allow at least 15 days after the mailing of its written request for the submission of the additional information.* Upon receipt of tlie additional information from the applicant, tlie department ~~shall have~~ *has* an additional 15 working days to determine if the application is complete and, *if the application is still incomplete,* to send a notice to the applicant that the application is ~~complete or~~ incomplete.

(8) If ~~a proposal is to undergo comparative review with another proposal but~~ the applicant fails to submit the necessary additional information requested by tlie department by tbe deadline prescribed by *the* department ~~rules~~, tlie application is considered witlidrawn.

(9) If the department fails to send ~~the notices~~ *either the request for additional information or the notice of incompleteness required by subsection (7)* within tlie ~~periods~~ *period* prescribed in subsection (7), the application is considered to be complete on the last day of tlie time poriod during which the notice should have been sent.

HeinOnline -- 1997 vol. I 515 1997

(10) The review period for an application may he no longer than 90 calendar days after the application is initially received or, if the application is to he comparatively reviewed as provided in subsection (5), within 90 days after all applications to be comparatively reviewed are received. A longer period is permitted with tlie consent of all affected applicants.

(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities ~~or equipment~~ affecting the same health service area.

(13) The department shall, after considering all comments received during tlie review peried, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period.

(14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of tlie department's discretion, the applicant may apply to district court for a writ of mandamus to force tho department to issue the certificate of need."

**Section 6.** Section 50-5-304, MCA, is amended to read:

**"50-5-304. Review criteria, required findings, and standards.** The department shall hy rule promulgate and use, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the degree to which the proposal being reviewed:

(a) demonstrates that the servico is needed by the population within the service area defined in the proposal;

(b) provides data that demonstrates the need for services contrary to tbe current state health *care facilities* plan, including but not limited to waiting lists, projected service volumes, differences in cost and quality of services, and availability of services; or

(c) is consistent witb the current state health *care facilities* plan;

(2) the need that the population served or te be served by the proposal has for tlie services;

(3) tho availability of less costly quality-equivalent or more effective alternative methods of providing the services;

(4) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(5) the relationship and financial impact of the services proposed to bo provided to the existing health care system of the area in which ~~such~~ *the* services are proposed to be provided;

HeinOnline -- 1997 vol. I 516 1997

(6) the consistency of the proposal with joint planning efforts by health care providers in the area;

(7) the availability of resources, including health ~~manpower,~~ *and* management personnel, and funds for capital and oporating needs, for the provision of services proposed to be provided and the availability of alternative uses of the resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the porson proposing the construction project;

(10) the distance, convenience, cost of transportation, and accessibility of health services for porsons who live outside urban areas in relation to the proposal; and

(11) in the case of a project to add long-term care facility beds:

(a) the need for the beds that takes into account the current and projected occupancy of long-term care beds in the community;

(b) the current and prejected population over 65 years of age in the community; and

(c) other appropriate factors."

**Section 7.** Section 50-5-305, MCA, is amended to read:

**"50-5-305. Period of validity of approved application.** (1) ~~Unless an extension is granted pursuant to subsection (3), a~~ *A* certificate of need ~~shall expire~~ *expires*:

(a) 1 year after the decision to issue it is final if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a preject not requiring construction;

(b) 1 year after the date the project is commenced plus the estimated period of time for completion shown in the application if the approved project is not complete; ~~or~~ *or*

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted ~~hereunder~~ *under this chapter*, or the terms of the certificate of need.

(2) For purposes of subsection (1)(a), if a reconsideration hearing is grantod or an appeal filed under 50-5-306, the final decision will be that following the hearing or resolving the appeal.

(3) The holder of an unexpired certificate of need *subject to expiration under the circumstances specified in subsection (1)(a) or (1)(b)* may apply to the department to extend the term of the certificato of need for one additional poriod

HeinOnline -- 1997 vol. I 517 1997

not to exceed 6 months. The department may grant ~~such~~ an extension upon the applicant's demonstrating good cause as defined by department rule.

~~(4) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 6 month period after being granted a certificate of need until completion of the project for which the certificate of need was issued.~~"

**Section 8.** Section 50-5-306, MCA, is amended to read:

"**50-5-306. Right to hearing and appeal.** (1) An affected person may request a contested case hearing before the department under the provisions of Title 2, chapter 4, by filing a written request with the department within 30 days after receipt of the notification required in 50-5-302(13). The written request for a hearing must include:

(a) a statement describing each finding and conclusion in the department's initial decision that will be contested at the hearing and why each finding and conclusion is objectionable or in error; and

(b) a summary of the evidence that will be suhmitted to contest the findings and conclusion identified in subsection (1)(a).

(2) The hearing must be limited te the issues identified under subsection (1) and any other issues identified through discovery.

(3) The public hearing must be held within 30 calendar days after the request is received unless the hearings examiner extends the time limit for good cause.

(4) The department shall make its final decision and serve the appellant with written findings of fact and conclusions of law in support of the decision within 30 days after the conclusion of the hearing *unless the parties to the hearing agree to a different date.*

(5) Any adversely affected person who was a party to the hearing may appeal the department's final decision to the district court as provided in Title 2, chapter 4, part 7.

(6) On application by a person whose propesal has been approved under the procedure provided for in 50-5-302, a district court may order a person who requested a contested case hearing to pay the successful applicant's costs and attorney fees incurred in the hearing and on appeal, if the court determines that the reasons for requesting the contested case hearing were frivolous.

(7) The department may by rule prescribe in greater detail the hearing and appellate procedures."

**Section 9.** Section 50-5-308, MCA, is amendod to read:

"**50-5-308. Special circumstances.** The department shall issue a certificate of need for a proposed capital expenditure if:

(1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and

HeinOnline -- 1997 vol. I 518 1997

(2) the department has determined that the facility or service for which the capital expenditure is proposed is needed and that the obligation of the capital expenditure is consistent with the state health *care facilities* plan."

**Section 10.** Section 50-5-309, MCA, is amended to read:

"**50-5-309. Exemptions from certificate of need review.** *The following are exempt from a certificate of need review:* ~~A project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, is exempt from certificate of need review~~

*(1) construction of a state-owned facility; and*

*(2) repair or replacement of a facility damaged or destroyed as a result of fire, storm, civil disturbance, or an act of God if the use of the facility after repair or replacement is within the scope of the facility's original license issued pursuant to Title 50, chapter 5, part 2."*

**Section 11.** Section 50-5-310, MCA, is amended to read:

"**50-5-310. Fees.** (1) There is no fee for filing a letter of intent.

(2) An application for certificate of need approval must be accompanied by a fee that is at least equal to 0.3% of the capital expenditure projected in the application, except that the fee may not be less than $500.

~~(3) With the exception of the department and an applicant whose proposal is approved and who does not request the hearing, each affected person who is a party in a reconsideration hearing held pursuant to 50-5-306(1) shall pay the department $500.~~

~~(4)~~*(3)* Fees collected under this section must be deposited in the general fund."

**Section 12.** Section 50-10-101, MCA, is amended to read:

"**50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor is a qualified patient, as defined in 50-9-102, or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

HeinOnline -- 1997 vol. I 519 1997

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101 *and includes a public health center as defined in 7-34-2102.*

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

**Section 13.** Section 50-16-701, MCA, is amended to read:

**"50-16-701. Definitions.** As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.

(4) "Emergency services provider" means a person employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(6) "Health care facility" has the meaning provided in 50-5-101 *and includes a public health center as defined in 7-34-2102.*

(7) "Infectious disease" means a communicable disease transmittable through an exposure, including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency

services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

**Section 14.** Section 50-60-205, MCA, is amended to read:

"**50-60-205. When state building code applies — health care facility *and public health center* doors.** (1) If a municipality or county does not adopt a building code as provided in 50-60-301, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 *or to a public health center as defined in 7-34-2102*."

**Section 15.** Section 50-60-301, MCA, is amended to read:

"**50-60-301. Municipal and county building codes authorized — health care facility *and public health center* doors.** (1) The local legislative body of a municipality or county may adopt a building code by ordinance to apply to the municipal or county jurisdictional area.

(2) A municipal or county building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101 *or to a public health center as defined in 7-34-2102*."

**Section 16.** Section 50-78-103, MCA, is amended to read:

"**50-78-103. Applicability — exemptions.** (1) The provisions of this chapter do not apply to:

(a) any consumer product intended for personal consumption or use by an employee;

(b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;

(c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;

(d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 75-3-202 and implementing 75-3-104 and 75-3-202;

(e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or

(f) sealed containers of hazardous chemicals:

HeinOnline -- 1997 vol. I 521 1997

(i) during transportation or while in sterage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals; or

(ii) at a facility of a distrihutor, ~~so~~ *as* long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-78-203(1).

(2) Employers operating the following workplaces are in compliance with this chapter if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4), and 50-78-305 are met:

(a) a teaching, research, or testing laboratery, including any associated storeroom;

(b) a clinical laboratory or health care facility as defined in 50-5-101;

(c) a pharmacy as defined in 37-7-101; ~~or~~

*(d) a public health center as defined in 7-34-2102; or*

~~(d)~~*(e)* an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed under Title 37.

(3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., except that a chemical manufacturer predueing ~~such~~ *the* hazardous chemicals must comply with all provisions of this chapter."

**Section 17.** Section 53-6-106, MCA, is amended to read:

**"53-6-106. Health care facility standards — definitions.** (1) For purposes of 53-6-106 through 53-6-108, the following definitions apply:

(a) "Department" means the department of public health and human services.

(b) "Health care facility" means a health care facility as defined in 50-5-101 *and includes a public health center as defined in 7-34-2102.*

(2) The department may enter into agreements with appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department may adopt rules as necessary to prescribe minimum standards for the maintenance and operation of health care facilities. Standards for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program must be consistent with those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and by the implementing regulations contained in Title 42 of the Code of Federal Regulations, as may be amended. The

HeinOnline -- 1997 vol. I 522 1997

authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department pursuant to Title 50, chapter 5.

(4) Standards adopted by the department may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care planning, training, medication, health services, rehabilitation services, and social services and activities."

**Section 18.** Section 53-6-110, MCA, is amended to read:

"**53-6-110. Report and recommendations on medicaid funding.** (1) As a part of the information required in 17-7-111, the department of public health and human services shall submit a report concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections must identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health *care facilities* plan ~~prepared pursuant to 42 U.S.C. 300m-2(a)(2)~~.

(2) As an integral part of the report, the department of public health and human services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health *care facilities* plan.

(3) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

(4) Whenever the department of public health and human services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting."

**Section 19.** Section 90-7-104, MCA, is amended to read:

"**90-7-104. Eligible health facility.** (1) Eligible health facility means any structure or building used as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; *public health center, as defined in 7-34-2102;* center for persons with developmental disabilities; center for the handicapped; chemical dependency treatment center; nursing school; medical teaching facility;

HeinOnline -- 1997 vol. I 523 1997

laboratory; dental care facility; or other structure or facility related to any of the foregoing or required or useful for the operation of a health facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the foregoing.

(2) An eligible health facility does not include such items as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and eligible health facility does not include a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship."

**Section 20. Repealer.** Section 50-5-316, MCA, is repealed.

**Section 21. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 22. Effective date.** [This act] is effective on passage and approval.

Approved March 19, 1997

# CHAPTER NO. 94

[HB 143]

AN ACT LIMITING THE AMOUNT OF ITS ASSETS AN INSURER MAY INVEST IN MORTGAGE LOANS; AND AMENDING SECTION 33-2-830, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-2-830, MCA, is amended to read:

"**33-2-830. Real estate mortgages.** (1) An insurer may invest ~~any of its funds~~ in bonds, notes, or other evidences of indebtedness ~~which~~ *that* are secured by first mortgages or deeds of trust upon improved real property located in the United States or Canada or ~~which~~ *that* are secured by first mortgages or deeds of trust upon leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms ~~which~~ *that* may be provided by enforceable options of renewal, in improved real property located in the United States or Canada. In all cases, the security for the loan must be a first lien upon ~~such~~ *the* real property, and there ~~must~~ *may* not be any condition or right of reentry or forfeiture not insured against, under which, in the case of real property other than leaseholds, ~~such~~ *the* lien can be cut off or subordinated or otherwise disturbed or under which, in the case of leaseholds, the insurer is unable to continue the lease in force for the duration of the loan. Nothing ~~herein shall prohibit~~ *in this section prohibits* ~~any~~ *an* investment by reason of the existence of any prior lien for ground rents, taxes, assessments, or other similar charges not yet delinquent. This section ~~shall~~ *may* not be ~~deemed~~ *considered* to prohibit investment in mortgages or similar obligations when made under 33-2-828.

HeinOnline -- 1997 vol. I 524 1997

(2) "Improved real estate" means, *for the purposes of this part,* all farm lands used for tillage, crop, pasture, or timberlands and all real estate on which permanent improvements suitable for residential, institutional, commercial, or industrial use are situated.

(3) (a) ~~No such~~ *A* mortgage loan or loans made or acquired by an insurer on any one property ~~shall~~ *may not*, at the time of investment by the insurer, exceed the larger of tbe following amounts as applicable:

(i) 80% of the value of tbe real property or leasehold securing the ~~same, provided, however,~~ *loan or loans, but* if ~~said~~ *the* real property or leasehold consists of one- or two-family residential property, 90% of ~~said~~ *the* value;

(ii) the amount of any insurance or guaranty of ~~such~~ *the* loan by the United States ~~of America~~ or by any agency or instrumentality ~~thereof~~ *of the United States*; or

(iii) the ~~amounts~~ *amount* provided in subsection (3)(a)(i), plus tbe amount by which the excess of ~~such~~ *the* loan over ~~such~~ *that* amount is insured or guaranteed by the United States ~~of America~~ or by any agency or instrumentality ~~thereof~~ *of the United States.*

(b) In the case of a purchase money mortgage given te secure tbe purchase price of real estate sold by the insurer, the amount ~~so~~ loaned or invested ~~shall~~ *may* not exceed the unpaid portion of the purchase price.

(4) ~~No such~~ *A* mortgage loan or loans ~~shall~~ *may not* be made or acquired by an insurer except after an appraisal made by a qualified appraiser for the purpose of ~~such~~ *that* investment.

(5) ~~No such~~ *A* mortgage loan made or acquired by an insurer ~~which~~ *that* is a participation or a part of a series or issue secured by the same mortgage or deed of trust ~~shall be~~ *is not* a lawful investment under this section unless the entire series or issue ~~which~~ *that* is secured by the same mortgage or deed of trust is held by ~~such~~ *the* insurer or unless the insurer holds a senior participation in ~~such~~ *the* mortgege or deed of trust, giving ~~it~~ *the insurer* substantially the rights of a first mortgagee.

(6) ~~No~~ *A* mortgage loan upon a leasehold ~~shall~~ *may not* be made or acquired pursuant to this section unless the terms ~~thereof shall~~ *of the loan* provide for amortization payments te be made by the borrower ou the principal ~~thereof~~ at least once in each year in amounts sufficient completely te amortize the loan within a period of four-fifths of the term of the leasehold, inclusive of the term ~~which~~ *that* may be provided by an enforceable option of renewal~~, which is~~. *The term of the leasehold must be* unexpired at the time *that* the loan is made~~, but in no event exceeding~~ *and may not exceed* 35 years.

*(7) Except with the commissioner's consent, an insurer may not invest or have invested at any one time more than 20% of its assets in mortgage loans."*

Approved March 19, 1997

HeinOnline -- 1997 vol. I 525 1997

# CHAPTER NO. 95

[HB 206]

AN ACT PROVIDING FOR DISSOLUTION OF A K-12 SCHOOL DISTRICT IF CREATION OR CONTINUATION OF THE K-12 DISTRICT RESULTS IN THE LOSS OF FEDERAL FUNDING; AMENDING SECTIONS 20-6-701 AND 20-6-704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-6-701, MCA, is amended to read:

**"20-6-701. K-12 school districts required — definition — procedure for creation — exception.** (1) Except as provided in subsection (4), ~~by the school fiscal year beginning July 1, 1995,~~ each elementary district with the same district boundaries as a high school district shall attach to the high school district for the purpose of establishing a K-12 school district.

(2) For the purposes of this title, unless the contoxt clearly indicatos otherwise, "K-12 school district" means a high school district with an elementary district that has been attached to the high school district under the procedures provided in this section, with the high school district remaining an organized district under the provisions of 20-6-101 and other provisions of law and the elementary district becoming an inactive district under the provisions of 20-6-101.

(3) The attachment of an elemeutary district to a high school district to form a K-12 school district must be conducted under the following procedure:

(a) The trustees of each district shall pass a resolution requesting the county superintendent to order an attachment involving their districts.

(b) When tbe county superintendent receives a resolution from each of the districts, the county superintendent shall, within 10 days after receipt of the last resolution, order the attachment of the elementary district to the high school district to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the districts included in the attachment order, and the superintendent of public instruction.

(4) This section does not apply to a school district receiving ~~Public Law 81-874~~ *federal* funding if creation *or continuation* of a K-12 district ~~would result~~ *has resulted in or will result* in the loss of ~~Public Law 81-874~~ *federal* funding."

**Section 2.** Section 20-6-704, MCA, is amended to read:

**"20-6-704. Dissolution of K-12 school district.** (1) ~~In~~ *Except as provided in subsection (2), in* order to dissolve a K-12 district under the provisions of this section, *the trustees of a district shall submit for approval to* the electors of the K-12 district ~~shall approve~~ a propesition dissolving the K-12 district for the purpose of annexing or consolidating the K-12 district's elementary or high school program with an adjacent school district or districts in an ensuing school fiscal year under the provisions of 20-6-203 through 20-6-208 or 20-6-315 through 20-6-319.

HeinOnline -- 1997 vol. I 526 1997

*(2) If the trustees of the school district determine that the creation or continuation of the K-12 district has resulted in or will result in the loss of federal funding for the elementary or high school programs and that it is in the best interest of the district to dissolve into the original elementary district and high school district that existed prior to the formation of the K-12 district, the trustees may dissolve the district under the following procedure:*

*(a) The trustees of the district shall pass a resolution requesting the county superintendent to order a dissolution of the district.*

*(b) When the county superintendent receives the resolution from the district, the county superintendent shall, within 10 days, order the dissolution of the K-12 district into the* original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the district, and the superintendent of public instruction.

~~(2)~~*(3)* If the entire territory of the dissolving K-12 district will be annexed or consolidated with an adjacent district or districts, the resolution or petition required in subsection (1) *or (2)* must contain a description of the manner in which the real and personal property and funds of the district are to be apportioned in the dissolution of the district and the subsequent annexation or consolidation with one or more other districts. If a portion of the dissolving K-12 district will not be annexed or consolidated with another district or districts ~~and the resolution or petition does not contain a description of the apportionment of funds and property, the provisions of subsection (4)(c) must be used to determine the disposition of property and funds~~, *the resolution or petition must contain a description of the manner in which the property, funds, and financial obligations, including bonded indebtedness, of the K-12 district are to be apportioned to the district or districts whose territory is not consolidated or annexed to another district.*

~~(3)~~*(4)* After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the K-12 district and from each district included in a consolidation proposition, the county superintendent shall determine whether the dissolution and annexation or consolidation proposition or propositions have been approved. If the K-12 district has approved the dissolution proposition and each district involved in a consolidation has approved the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the election certificate, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the dissolution order to the board of county commissioners, the trustees of the district included in the dissolution order, and the superintendent of public instruction.

~~(4)~~*(5)* Whenever a K-12 district is dissolved ~~for the purpose of annexing or consolidating the high school or elementary program with one or more other districts~~, the following provisions apply:

(a) ~~The trustees of the K-12 district are the trustees of the district whose territory is not consolidated or annexed to one or more adjacent districts upon dissolution of the K-12 district.~~

HeinOnline -- 1997 vol. I 527 1997

~~(b)~~ The trustees of the *elementary* district whose territory is not annexed or consolidated upon dissolution of the K-12 district are responsible for the execution of remaining financial obligations of the K-12 district~~, including tuition~~ *and for the apportionment between the elementary and high school programs of any obligations not identified in the resolution required under subsection (3).*

~~(c) Unless otherwise provided for in the proposition for dissolution of the K-12 district, all the tangible property, real and personal, of the K-12 district and all cash and receivables remaining to the credit of the K-12 district after providing for payment of outstanding debts, except bonded indebtedness, become the property of the district whose territory is not annexed or consolidated with one or more adjacent districts.~~

~~(d)~~*(b)* The provisions of 20-6-410 apply for tenure teachers in the dissolution of a K-12 district.

~~(e)~~*(c)* For purposes of applying the budget limitation provisions of 20-9-308, the budget of a K-12 district during its last year of oporations as a K-12 district will be prorated based on rules promulgated by the superintondent of public instruction."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 19, 1997

# CHAPTER NO. 96

[HB 211]

AN ACT ALLOWING THIRD-CLASS CITIES OR TOWNS TO CONTRACT FOR FIRE PROTECTION SERVICES; ALLOWING THIRD-CLASS CITIES OR TOWNS TO CONSOLIDATE FIRE PROTECTION SERVICES; AND AMENDING SECTION 7-33-4101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-33-4101, MCA, is amended to read:

"**7-33-4101. Fire department authorized and required.** In every city and town of this state there ~~shall~~ *must* be a fire department, which ~~shall~~ *must* be organized, managed, and controlled as provided in this part *except that a third-class city or town may contract for fire protection services or consolidate its fire department with another fire protection provider created under this part.*"

Approved March 19, 1997

# CHAPTER NO. 97

[HB 227]

AN ACT CLARIFYING THAT ELECTION MATERIAL PACKAGES MAY BE DISPOSED OF AFTER THEY HAVE BEEN OPENED; CLARIFYING THAT ELECTION MATERIALS MUST BE DISPOSED OF AS PROVIDED IN THE

HeinOnline -- 1997 vol. I 528 1997

ELECTION ADMINISTRATOR'S PLAN; AND AMENDING SECTION 13-1-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-1-303, MCA, is amended to read:

**"13-1-303. Disposition of ballots and other election materials.** (1) The voted ballots, detached stubs, unvoted ballots, and unused ballots from an election ~~shall~~ *must* be kept in the unopened packages received from the election judges for a period of 12 months. ~~Such~~ *The* packages may be opened only when an order for opening is given by the proper official for a recount procedure. After 12 months, if there is no contest begun, recount pending, or appeal of a decision relating to a contest or recount, an election administrator may ~~destroy~~ *dispose of* the ballots ~~without opening the packages~~ *according to a plan approved by the secretary of state.*

(2) The secretary of state, in consultation with the state records committee, shall prepare a suggested plan for retention and destruction of all other election records. Each election administrator shall prepare a plan for retention and destruction of election records in the county and shall submit it to the secretary of state for approval. After approval of ~~such~~ a plan, records may be ~~destroyed~~ *disposed of* as provided in the plan."

Approved March 19, 1997

## CHAPTER NO. 98

[HB 350]

AN ACT REVISING THE AUTHORITY FOR THE SIZE OF LOANS THAT ENHANCE ECONOMIC DEVELOPMENT AND CREATE JOBS IN THE BASIC SECTOR OF THE ECONOMY; PROVIDING A 4-YEAR PERIOD OVER WHICH TO ASSESS THE CREATION OF JOBS; EXTENDING TO 4 YEARS THE PERIOD FOR MEASURING JOBS TO CALCULATE INTEREST RATE REDUCTIONS FOR INFRASTRUCTURE LOANS; AND AMENDING SECTIONS 17-6-311 AND 17-6-318, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-6-311, MCA, is amended to read:

**"17-6-311. Limitation on size of investments.** (1) Except as provided in subsections (2) through (4), an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund.

(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such debentures purchased by the

HeinOnline -- 1997 vol. I 529 1997

board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(4) The total amount of loans made pursuant to 17-6-309(2) may not exceed $20 million, and a single loan may not be less than $500,000. ~~Loans must be made in $250,000 increments.~~ A loan may not exceed $10,000 per job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project *within a 4-year period from the time that the loan is made* and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes; and

(d) other matters that the board considers necessary."

**Section 2.** Section 17-6-318, MCA, is amended to read:

**"17-6-318. Job credit interest rate reduction for small business loan participations.** (1) A borrower who uses the proceeds of a small business loan participation funded under the provisions of this part to croate jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created over a 2-year period to employ a Montana resident. *A borrower who used the proceeds of a loan made pursuant to 17-6-309(2) to create jobs is entitled to a job credit interest rate reduction for each job created in the 4-year period provided for in 17-6-311(4)(a).* The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the ~~last completed~~ *last-completed* fiscal year. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of tbe job created:

(a) exceeds the average weekly wage, as defmed in 39-71-116, the amount of the job credit interest rate reduction may be increased propertionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the joh credit interest rate reduction is reduced proportionately for each 25% increment below tbe average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower usmg the proceeds of the loan for which the salary or wage is less than the minunum wage provided for in 39-3-409.

(4) ~~No~~ *A* job credit ~~will~~ *may not* be given unless one whole job is created.

HeinOnline -- 1997 vol. I 530 1997

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and make application in writing, through its financial institution, to the board when the loan is delivered to the board or not later than 45 days after the ~~first and second~~ *applicable* anniversary dates of the loan."

Approved March 19, 1997

# CHAPTER NO. 99

[HB 359]

AN ACT RELATING TO HEALTH CARE FACILITIES; ALLOWING A MEDICAL ASSISTANCE FACILITY TO PROVIDE INPATIENT CARE TO PERSONS FOR MORE THAN 96 HOURS IN CERTAIN CASES; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY LICENSE ONLY HOSPITALS WITHIN THE STATE ON THE BASIS OF ACCREDITATION BY THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE ORGANIZATIONS; AMENDING SECTIONS 50-5-101 AND 50-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-5-101, MCA, is amended to read:

**"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home that offers light personal care or custodial care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner of the home.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

HeinOnline -- 1997 vol. I 531 1997

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the propesal.

(5) "Ambulatory surgical facility" means a facility that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(6) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(7) "Certificato of need" means a written authorization by the department for a person to proceed with a propesal subject to 50-5-301.

(8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunoheinatological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, provention, or treatment of a disease or assessment of a medical condition.

(10) "College of American pathologists" means the organization nationally recognized by that name, with headquarters in Traverse City, Michigan, tbat surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of tbe applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Department" means the department of public health and human services provided for in 2-15-2201.

(14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(15) "Federal acts" means federal statutes for the construction of health care facilities.

HeinOnline -- 1997 vol. I 532 1997

(16) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, oporated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes ambulatory surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential care facilities, and residential treatment facilitles.

(18) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(19) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in tbe places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(21) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services te an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(22) "Hospice" means a coordinated program of home and inpatient bealth care that provides or coordinates palliative and supportive care to meet the needs of a terminally ili patient and the patient's family arising out of physical, psychological, spiritual, social, and ecenomic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The terin includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the suporvision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and

HeinOnline -- 1997 vol. I 533 1997

available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care hy licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retardod, and tuhercular patients.

(24) "Infirmary" ıneans a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with tlie following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of liospitals" means the organization nationally recognized by tliat name with headquarters in Chicago, Illinois, that surveys healtli care facilities upen their requests and grants accreditation status to a liealth care facility tliat it finds meets its standards and requirements.

(26) (a) "Long-terni care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developınental disability care to a total of two or niore individuals or tliat provides personal care. The term does not include community homes for persons with developınental disahilities licensed under 53-20-305; community homes for persons witli severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, ınotels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional liealth care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(b) "Skilled nursing care" nieans the provision of nursing care services, lieaith-related services, and social services under the supervision of a licensed registered nurse on a 24-hour hasis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediato developnıental disability care" means the provision of nursing care services, liealth-related services, and social services for persons with developmental disabilities, as defined in 53-20-102(4), or for individuals witli related problems.

(e) "Personal care" means tho provision of services and care for residents who need some assistance in performing tlie activities of daily living.

(27) "Major medical equipment" means a single unit of medical equipnıent or a single system of compenents witli related functions that is used te provide medical or otlier liealth services and that costs a substantiai suın of money.

(28) "Medical assistance facility" ıneans a facility that *meets both of the following*:

(a) provides inpatient care to ill or injured individuals ~~prior to~~ *before* their transportation to a liospital or *that* provides inpatient medical care te individuals needing that care for a period of no longor tlian 96 liours *unless a longer period*

HeinOnline -- 1997 vol. I 534 1997

*is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction on a case-by-case basis.*~~; and~~

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(29) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(30) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(31) "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

(32) "Offer" means the representation by a health care facility that it can provide specific health services.

(33) "Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(34) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(35) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(36) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(40) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(41) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction

HeinOnline -- 1997 vol. I 535 1997

of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(42) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(43) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(44) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

**Section 2.** Section 50-5-103, MCA, is amended to read:

**"50-5-103. Rules and standards — accreditation by joint commission.** (1) The department shall ~~promulgate and~~ adopt rules and minimum standards for implementation of parts 1 and 2.

(2) Any facility covered by this chapter ~~shall~~ *must* comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) Any hospital *located in this state* that furnishes written evidence required by the department, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process. The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility *located in this state*, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of health care organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 19, 1997

HeinOnline -- 1997 vol. I 536 1997

# CHAPTER NO. 100

[HB 367]

AN ACT REMOVING THE REQUIREMENT THAT EXPERIENCE FOR CONSTRUCTION BLASTERS BE OBTAINED IN A PERIOD FOLLOWING AND NOT DURING TRAINING; CHANGING THE EXPERIENCE REQUIREMENT FROM 1 YEAR TO 2 YEARS; AND AMENDING SECTION 37-72-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-72-302, MCA, is amended to read:

"**37-72-302. Training and experience requirements.** (1) A person applying for licensure as a construction blaster shall furnish proof, under oath, on a form provided by the department, that ~~he~~ *the person* has:

(a) successfully completed a training program in construction blasting that has been recognized by the explosives or construction industry and approved by the department; and

(b) at least ~~1 year~~ *2 years* of ~~posttraining~~ experience in construction blasting and because of that experience is familiar with the practical aspects of construction blasting.

(2) ~~No~~ *A* training program may *not* be approved by the department ~~that does not offer~~ *unless the program offers* comprehensive instruction in types of explosives, methods and purposes of their use, and safety and storage. The department shall by rule adopt a list of approved training programs."

Approved March 19, 1997

# CHAPTER NO. 101

[HB 370]

AN ACT AMENDING THE TUMOR REGISTRY ACT TO EXPAND REPORTING REQUIREMENTS TO CERTAIN HEALTH CARE PRACTITIONERS AND CERTAIN HEALTH CARE FACILITIES OTHER THAN HOSPITALS; ALLOWING RELEASE OF TUMOR REGISTRY INFORMATION TO CERTAIN HEALTH CARE PRACTITIONERS AND ALLOWING RELEASE PURSUANT TO THE GOVERNMENT HEALTH CARE INFORMATION ACT AND NOT THE UNIFORM HEALTH CARE INFORMATION ACT; PROVIDING PROTECTION FROM LIABILITY FOR PERSONS REPORTING TUMORS AND PERSONS LAWFULLY USING TUMOR INFORMATION IN COMPLIANCE WITH THE TUMOR REGISTRY ACT; AND AMENDING SECTIONS 50-15-702, 50-15-703, AND 50-15-704, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-15-702, MCA, is amended to read:

HeinOnline -- 1997 vol. I 537 1997

"**50-15-702. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

*(2) "Health care practitioner" means a person licensed pursuant to Title 37, chapter 3, to practice medicine or pursuant to Title 37, chapter 4, to practice dentistry.*

~~(2)~~*(3)* "Hospital" means a facility that provides, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

~~(3)~~*(4)* "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a ~~physician licensed under Title 37, chapter 3, to practice medicine in Montana~~ *health care practitioner.*"

**Section 2.** Section 50-15-703, MCA, is amended to read:

"**50-15-703. Duty to report tumors.** ~~A hospital that provides to any person medical services relating to a tumor designated as reportable by the department or a clinical laboratory, as defined in 50-5-101, that is not owned or operated by a hospital and that provides laboratory services relating to such a tumor shall make available~~ *The following persons or entities shall report* to the department *on forms provided by the department* all medical and personal information *as specified in rules of the department* and laboratory results ~~relevant~~ *pertaining* to ~~that person's~~ *the* treatment and condition ~~on forms provided by the department~~ *of a person with a reportable tumor:*

*(1) a hospital that provides medical services relating to the tumor;*

*(2) a clinical laboratory, as defined in 50-5-101, that is not owned or operated by a hospital and that provides laboratory services relating to the tumor; and*

*(3) a health care practitioner or health care facility, not covered by subsection (1) or (2), providing medical services relating to the tumor.*"

**Section 3.** Section 50-15-704, MCA, is amended to read:

"**50-15-704. Confidentiality.** Information received by the department pursuant to this part may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of Title 50, chapter 16, part ~~5~~ *6*, are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information; ~~or~~

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state; *or*

*(5) the release is to a health care practitioner or health care facility that is providing or has provided medical services to a person who has or has had a reportable tumor.*"

HeinOnline -- 1997 vol. I 538 1997

**Section 4. Immunity from liability.** A person other than the department may not be held liable in a civil or criminal action for complying with the reporting requirements of 50-15-703 or for lawfully using information provided by the tumor registry in a manner that does not violate the Tumor Registry Act.

**Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 50, chapter 15, part 7, and the provisions of Title 50, chapter 15, part 7, apply to [section 4].

Approved March 19, 1997

# CHAPTER NO. 102

[HB 392]

AN ACT INCREASING THE NUMBER OF PERSONS WHO SERVE ON THE MONTANA MINT COMMITTEE; REQUIRING THAT ONE MEMBER REPRESENT THE MINT INDUSTRY RESEARCH COUNCIL; AND AMENDING SECTION 2-15-3006, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-3006, MCA, is amended to read:

**"2-15-3006. Montana mint committee — composition — allocation.** (1) There is a Montana mint committee composed of ~~five~~ *six* members. The members include the director of the department of agriculture and ~~four~~ *five* members appointed by the governor.

(2) Each of the ~~four~~ *five* appointed members must be a citizen of Montana who is actively involved in the growing of mint in this state, *and one of the appointed members must be a member of or otherwise represent the mint industry research council.* The qualifications of members must continue during their terms of office.

(3) A list of nominees for appointment must be submitted to the governor by Montana associations representing mint growers. Names of nominees must be submitted at least 91 days before the expiration of a committee member's term. The governor shall appoint members from among the persons nominated.

(4) Appointed members shall serve staggered terms of 3 years. Initial appointment must be as follows:

(a) one member for a 1-year term;

(b) two members for 2-year terms; and

(c) ~~one member~~ *two members* for a 3-year term.

(5) The committee is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121."

Approved March 19, 1997

# CHAPTER NO. 103

[SB 8]

AN ACT INCLUDING EPHEDRINE IN THE SCHEDULE IV LIST OF DANGEROUS DRUGS; AND AMENDING SECTION 50-32-229, MCA.

WHEREAS, the Legislature finds it appropriate to address the availahility and sale of "look-alike" or "act-alike" drugs, which are over-the-counter suhstances that both look and act like illegal stimulants; and

WHEREAS, the Legislature considers "look-alike" or "act-alike" drugs to be dangerous because those drugs not only have an effect on the body similar to illegal stimulants, such as amphetamines, but tbey are relatively inexpensive and readily available for purchase by anyone of any age; and

WHEREAS, ephedrine is an over-the-counter stimulant drug sold primarily in convenience stores and truck stops as a broncbodilator in the treatment of asthma, but it is also a drug with a history of abuse and growing misuse among young people; and

WHEREAS, epbedrine is the primary ingredient in the illicit manufacture of a Schedule II prescription drug, methamphetamine, and an illegal and highly addictive drug, methcathinone; and

WHEREAS, the Legislature finds it appropriate to place single entity ephedrine products in the schedule of dangerous drugs to limit their sale to legitimate, medically related prescription sale only.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-32-229, MCA, is amended to read:

**"50-32-229. Specific dangerous drugs included in Schedule IV.** Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as tbe free anbydrous base or alkaloid in the following limited quantities:

(a) not more tban 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(b) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(2) Depressants. Unless specifically excepted or listed in another scbedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;

(b) barbital;

(c) bromazepam;

(d) camazepam;

(e) chloral betaine;

(f) chloral hydrate;

(g) chlordiazepoxide;

(h) clobazam;

(i) clonazepam;

(j) clorazepate;

(k) clotiazepam;

(l) cloxazolam;

(m) delorazepam;

(n) diazepam;

(o) estazolam;

(p) ethchlorvynol;

(q) ethinamate;

(r) ethyl loflazepate;

(s) fludiazepam;

(t) flunitrazepam;

(u) flurazepam;

(v) halazepam;

(w) haloxazolam;

(x) ketazolam;

(y) loprazolam;

(z) lorazepam;

(aa) lormetazepam;

(bb) mebutamate;

(cc) medazepam;

(dd) meprobamate;

(ee) methohexital;

(ff) methylphenobarbital (mephobarbital);

HeinOnline -- 1997 vol. I 541 1997

(gg) midazolam;

(hh) nimetazepam;

(ii) nitrazepam;

(jj) nordiazepam;

(kk) oxazepam;

(ll) oxazolam;

(mm) paraldehyde;

(nn) petrichloral;

(oo) phenobarbital;

(pp) pinazepam;

(qq) prazepam;

(rr) quazepam;

(ss) temazepam;

(tt) tetrazepam; and

(uu) triazolam.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

(a) fenfluramine.

(4) Stimulants. Unless spocifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) cathine;

(b) diethylpropion;

(c) fencamfamin;

(d) fenproporex;

(e) mazindol;

(f) mefenorex;

(g) pemoline, including organometallic complexes and chelates thereof;

(h) phentermine;

(i) pipradrol; and

(j) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) *Ephedrine.*

*(a) Except as provided in subsection (5)(b), any material, compound, mixture, or preparation that contains any quantity of ephedrine having a stimulant effect on the central nervous system, including its salts, enantiomers (optical isomers), and salts of enantiomers (optical isomers) when ephedrine is the only active medicinal ingredient or is used in combination with therapeutically insignificant quantities of another active medicinal ingredient.*

*(b) Ephedrine does not include materials, compounds, mixtures, or preparations labeled in compliance with the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. 321, et seq., that contain only natural ephedra alkaloids or extracts of natural ephedra alkaloids.*

*(6)* Other substances. Unless specifically excepted or listed in another schedule, any material, compeund, mixture, or preparation that contains any quantity of the following substances, including its salts:

(a) pentazocine."

Approved March 19, 1997

# CHAPTER NO. 104

[SB 38]

AN ACT REVISING THE MONTANA LEGISLATIVE INTERN PROGRAM TO ACCOMMODATE THE ACADEMIC YEAR STRUCTURE WITHIN THE MONTANA UNIVERSITY SYSTEM; AND AMENDING SECTION 5-6-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-6-103, MCA, is amended to read:

"**5-6-103. Term of service.** Each legislative intern shall serve for ~~10 weeks during the regular session of the legislature~~ *a period to be specified by the legislative council prior to each regular legislative session.*"

Approved March 19, 1997

# CHAPTER NO. 105

[SB 81]

AN ACT GENERALLY REVISING THE LAWS PERTAINING TO THE LICENSING AND OPERATION OF COMMERCIAL MOTOR VEHICLES; CLARIFYING THE DEFINITION OF "MOTOR VEHICLE"; AMENDING THE DEFINITION OF "COMMERCIAL MOTOR VEHICLE" TO INCLUDE COMBINATION VEHICLES WITH TOWED UNITS RATED GREATER THAN 10,000 POUNDS; EXCLUDING FROM LICENSURE CERTAIN VEHICLES OPERATED IN INTRASTATE COMMERCE; ALLOWING RELEASE OF

HeinOnline -- 1997 vol. I 543 1997

ACCIDENT REPORTS TO GOVERNMENTAL AGENCIES FOR MOTOR CARRIER SAFETY MONITORING AND ROADWAY DESIGN PURPOSES; ALLOWING RELEASE OF AN ACCIDENT REPORT TO THE INSURANCE CARRIER OF A PERSON NAMED IN THE REPORT; CLARIFYING LICENSE SUSPENSION FOR SERIOUS TRAFFIC VIOLATIONS; REVISING PROCEDURAL ASPECTS OF COMMERCIAL MOTOR VEHICLE IMPLIED CONSENT AND 0.04 ALCOHOL CONCENTRATION STATUTES; INCREASING THE LICENSE SUSPENSION PERIOD FOR SECOND OR SUBSEQUENT VIOLATIONS OF OUT-OF-SERVICE ORDERS; AND AMENDING SECTIONS 61-1-102, 61-1-134, 61-5-104, 61-7-114, 61-8-803, 61-8-805, 61-8-806, 61-8-808, AND 61-8-812, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-1-102, MCA, is amended to read:

**"61-1-102. Motor vehicle.** "Motor vehicle" means a vehicle propelled by its own power and designed ~~primarily~~ *or used* to transport persons or property upon the highways of the state~~, except that for~~. *For* the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. For the purpose of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined in 61-1-123."

**Section 2.** Section 61-1-134, MCA, is amended to read:

**"61-1-134. Commercial motor vehicle defined — exceptions.** (1) Except as provided in subsection (2), "commercial motor vehicle" means a motor vehicle *or combination of motor vehicles* used *in commerce* to transport passengers or property if the vehicle:

(a) *has a gross combination weight rating or, in the absence of a gross combination weight rating, a declared weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;*

*(b)* has a gross vehicle weight or manufacturer's rated capacity of 26,001 pounds or more;

~~(b)~~*(c)* is designed *or used* to transport ~~more than 15~~ *16* passengers *or more*, including the driver;

~~(c)~~*(d)* is a school bus as defined in 20-10-101; or

~~(d)~~*(e)* is *of any size and is* used to transport *any quantity or form of* hazardous material *required to be placarded pursuant to Title 49, Code of Federal Regulations.*

(2) The following vehicles are not commercial motor vehicles:

(a) a vehicle exempt from taxation, used for firefighting, and bearing Montana tax-exempt plates;

(b) a police emergency response vehicle; or

(c) a vehicle:

(i) controlled and operated by a farmer or person employed by a farmer;

(ii) used to transport farm products, farm machinery, or farm supplies within Montana or within 150 miles of the farm headquarters; and

(iii) not used to transport goods for compensation or hire.

(3) For purposes of this section, "farmer" means a person who operates a farm or who is directly involved in the cultivation of land or crops or the raising of livestock owned by or under the direct control of that person."

**Section 3.** Section 61-5-104, MCA, is amended te read:

**"61-5-104. Exemptions.** (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issuod by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person ~~while driving or operating any~~ *who temporarily drives, operates, or moves a* road machine, farm tractor, or implement of husbandry ~~temporarily operated or moved~~ *for use in intrastate commerce* on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as describod in this suhsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) A nonresident not otherwise exempt from the licensing requirements of 49 CFR, part ~~391~~ *383*, and in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home state or country may operate a commercial moter vehicle in this state.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a moter vehicle as an operator only, for a peried of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

HeinOnline -- 1997 vol. I 545 1997

(5) A driver's license issued under this chapter to ~~any~~ *a* person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is ~~sooner~~ suspended, revoked, or canceled for a cause as provided by law, and for ~~not~~ *up* to ~~exceed~~ 30 days following the date on which the licensee is honorably separated from the service. During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

**Section 4.** Section 61-7-114, MCA, is amended to read:

**"61-7-114. Accident reports confidential.** (1) All required accident reports and supplemental reports ~~shall~~ *must* be without prejudice to the individual reporting and ~~shall~~ *must* be for the confidential use of the department or other ~~state~~ *governmental* agencies ~~having use for the records~~ for accident prevention, *roadway design, motor carrier safety monitoring* purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles. The department may disclose the identity of a person involved in an accident when ~~such~~ *the* identity is not otherwise known or when ~~such~~ *the* person denies ~~his presence~~ *being present* at the accident.

(2) Except as provided in this section, all accident reports and supplemental information filed as required by this part ~~shall be~~ *are* confidential and not open to general public inspection~~, nor shall copying~~. *Copying* of lists of ~~such~~ reports ~~be~~ *is not* permitted. The report and supplemental information filed by law enforcement personnel, as required by this part, may be examined and copied, without obtaining a court order, by:

*(a)* ~~any~~ *a* person named in the report ~~or reports or by any~~ *or involved in the accident;*

*(b)* ~~driver, passenger, or pedestrian involved in the accident or by his~~ *the* representative *of the person referred to in subsection (2)(a),* designated in writing~~, by~~, *or the insurance carrier of that person;*

*(c)* a party to a civil action arising from the accident~~,~~; or

*(d)* ~~if the person is deceased, by his~~ *the* executor, ~~or~~ *the* administrator, or ~~by~~ the attorney representing ~~his~~ *the* executor or administrator *if the person is deceased.*"

**Section 5.** Section 61-8-803, MCA, is amended to read:

**"61-8-803. Suspension of commercial driver's license — serious traffic violations.** *(1)* If ~~a commercial motor vehicle operator's record shows that the operator~~ *the department receives notice from a court or another licensing jurisdiction that a person holding a commercial driver's license* has been convicted of ~~a~~ *more than one* serious traffic violation ~~as defined in federal regulations~~ *in separate incidents within a 3-year period,* the department shall suspend the *person's* commercial driver's license:

~~(1)~~*(a)* for 60 days ~~if the operator was convicted of two hazardous moving violations within 3 years~~ *upon receipt of notice of the second conviction*; or

HeinOnline -- 1997 vol. I 546 1997

~~(2)~~*(b)* for 120 days ~~if the operator was convicted of three hazardous moving violations within 3 years~~ *upon receipt of notice of the third or subsequent conviction.*

*(2) For purposes of this section, "serious traffic violation" means conviction, when operating a commercial motor vehicle, of:*

*(a) speeding in excess of 15 miles an hour above a posted speed limit;*

*(b) reckless driving;*

*(c) improper or erratic traffic lane changes;*

*(d) following too closely; or*

*(e) a violation of a state law or local ordinance relating to the operation of a motor vehicle, excluding a parking, weight, or equipment violation, that arises in connection with a fatal accident."*

**Section 6.** Section 61-8-805, MCA, is amended to read:

**"61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or more — hearing.** (1) A person whose alcohol concentration is 0.04 or more while the person drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of the person's commercial driver's license. ~~If the department receives a sworn report from a peace officer that the person was operating a commercial motor vehicle while the person's alcohol concentration was 0.04 or more, the department shall suspend the person's commercial driver's license~~ *The peace officer who determines that the person is operating a commercial motor vehicle with an alcohol concentration of 0.04 or more shall immediately seize the person's commercial driver's license and, on behalf of the department, give the person written notice of the license suspension and the right to a hearing under 61-8-808. Upon receipt of a certified report from the peace officer that the person was operating a commercial motor vehicle with an alcohol concentration of 0.04 or more, the department shall suspend the license, with no provision for a restricted probationary commercial license, for:*

(a) ~~for~~ 1 year~~, with no provision for a restricted probationary license or endorsement~~, upon receipt of the first report *of a 0.04 or more alcohol concentration violation*, except that if the ~~offense~~ *violation* occurred in a commercial motor vehicle transporting *placardable* hazardous materials, the suspension must be for 3 years; and

(b) ~~for~~ life, ~~with no provision for a restricted probationary license or endorsement,~~ upon receipt of a second or subsequent *0.04 or more alcohol concentration violation* report at any time as determined from the records of the department, ~~unless a restricted license or endorsement is allowed by federal rules governing commercial drivers~~ *subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.*

(2) A peace officer who determines that a commercial motor vehicle operator has ~~any~~ *a* measured amount or detected presence of alcohol in the operator's body

while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact tbat ~~any~~ *a* person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against ~~any~~ *a* charge of violating the provisions of subsection (1).

~~(4) The department shall immediately notify in writing any person whose commercial driver's license is suspended under this section. The person may file a petition within 30 days after the notice is given for a hearing in the matter in the district court in the county in which the finding of alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while the person's alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section.~~"

**Section 7.** Section 61-8-806, MCA, is amended to read:

"**61-8-806. Blood, breath, or urine tests of commercial vehicle operators — procedure — suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent~~, subject to the provisions of 61-8-401 and 61-8-805,~~ to a test of the ~~operator's~~ *person's* hlood, breath, or urine for the purpose of determining ~~any~~ *a* measured ~~or detected~~ amount *or detected presence* of alcohol in the ~~operator's~~ *person's* body if the ~~operator~~ *person* is requested to submit to the test by a peace officer ~~having~~ *who has* reasonable grounds to believe *that* the person ~~to have been~~ *was* driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while having ~~any measurable or detectable~~ *a measured* alcohol concentration *or detected presence of alcohol*. The peace officer may designate a blood, breath, or urine test to be administered *and may request that the person submit to a preliminary alcohol screening test before a blood, breath, or urine test is taken.*

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a ~~commercial motor vehicle operator who is a resident of Montana~~ *person* refuses ~~upon the request of a peace officer~~ to submit to a test designated by the officer ~~as provided in subsection (1)~~, the test may not be given~~. On behalf of the department~~, *but* the officer shall immediately seize the person's commercial driver's license and forward the license to the department, along with a ~~sworn~~ report *certified under penalty of law* that the officer had reasonable grounds to believe that the person ~~had been~~ *was* driving or was in actual physical control of a commercial motor vehicle upen ways of this state open to the public while having ~~any~~ *a* measurable ~~or detectable~~ alcohol concentration *or detected presence of alcohol* and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the repert, the department shall suspond the license for a period provided in subsection (5).

HeinOnline -- 1997 vol. I 548 1997

(4) Upon seizure of a ~~resident's~~ *person's* commercial driver's license, the peace officer shall issue, on behalf of the department, a temporary *5-day* noncommercial driving permit. ~~The temporary driving permit is valid for 72 hours after issuance~~, *effective 12 hours after the time of issuance, and shall provide the person with written notice of the license suspension and the right to a hearing under 61-8-808.*

(5) ~~If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3), the department shall suspend the operator's commercial driver's license~~ *Upon receipt of the officer's certified report, the department shall suspend the person's commercial driver's license, with no provision for a restricted probationary commercial driver's license, for:*

(a) ~~upon first refusal, for~~ 1 year, ~~with no provision for a restricted probationary license or endorsement~~ *upon a first refusal*, except that if the ~~offense~~ *violation* occurred in a commercial motor vehicle transporting *placardable* hazardous materials, the susponsion for a first refusal must he for 3 years;

(b) *life,* upon a second or suhsequent refusal at any time as determined from the records of the department, ~~for life, with no provision for a restricted probationary license or endorsement unless allowed by federal rules governing commercial drivers~~ *subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension.*

~~(6) A nonresident commercial motor vehicle operator who refuses to submit to a test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be given a temporary driving permit as provided in subsection (4).~~"

**Seetion 8.** Section 61-8-808, MCA, is amended to read:

"**61-8-808. Right of appeal to court.** *(1)* ~~The department shall immediately notify in writing any person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the person may, within~~ *Within* 30 days after ~~receipt of notification~~ *notice of the suspension and the right to a hearing has been given by the peace officer under 61-8-805 or 61-8-806, the person may* file a petition ~~for a hearing on the matter in the district court in the county where the person resides or~~ *to challenge the suspension* in the district court in the county where the finding of *0.04 or more alcohol concentration or* refusal was made.

*(2)* The court has jurisdiction and shall set the matter for hearing ~~upon~~. *The court shall give at least* 10 days' written notico to the county atterney of the county where the appeal is filed. The county atterney shall represent the state.

*(3)* The court shall take testimony and examine the facts of the case, except that:

*(a) with regard to a suspension under 61-8-805,* the issue is limited to whether *the person was driving or had actual physical control of a commercial motor vehicle while the person's alcohol concentration was 0.04 or more; and*

*(b) with regard to a suspension under 61-8-806, the issues are limited to whether* a peace officer had reasonahle grounds to helieve that the person had

HeinOnline -- 1997 vol. I 549 1997

been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while the person had ~~any~~ *a* measurable or detectable alcohol concentration, whether the person was ordered to submit to a test, and whether the person refused to submit to the test.

*(4)* The court shall determine whether the petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this part."

**Section 9.** Section 61-8-812, MCA, is amended to read:

**"61-8-812. Suspension of commercial driver's license — operation of out-of-service vehicle.** (1) Upon receipt of ~~information that a commercial motor vehicle operator~~ *notice from a court of competent jurisdiction or another licensing jurisdiction that a person holding a commercial driver's license* has been convicted of ~~a violation of operating a commercial motor vehicle that has been placed~~ *violating an* ~~out of service~~ *out-of-service order*, the department shall suspend the ~~operator's~~ *person's* commercial driver's license for:

*(a)* 6 months for a first conviction ~~and for~~;

*(b)* 1 year for a second ~~or subsequent~~ conviction *if the vehicle being operated by the person at the time of the violation was not transporting placardable hazardous materials or was not designed or being used to transport more than 15 passengers, inclusive of the driver; and*

*(c) 3 years:*

*(i) for a second conviction if the vehicle:*

*(A) being operated at the time of the violation was transporting placardable hazardous materials; or*

*(B) was designed or being used to transport more than 15 passengers, inclusive of the driver; and*

*(ii) for a third or subsequent conviction.*

(2) *For purposes of this section, an offender is considered to have been previously convicted if less than 10 years have elapsed between the commission of the present offense and a previous conviction.*

*(3)* A temperary or probationary commercial driver's license may not be issued while a commercial driver's license is suspended under subsection (1)."

Approved March 19, 1997

# CHAPTER NO. 106

[SB 86]

AN ACT CLARIFYING THE RULE OF RIGHT-OF-WAY AT AN INTERSECTION; AND AMENDING SECTION 61-8-339, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-339, MCA, is amended to read:

HeinOnline -- 1997 vol. I 550 1997

**"61-8-339. Vehicle approaching or entering intersection.** (1) When two *or more* vehicles enter or approach an intersection from different highways ~~at approximately the same time~~, the driver of the vehicle on the left shall yield the right-of-way to ~~the vehicle on the right~~ *all vehicles approaching from the right that are close enough to constitute an immediate hazard.*

(2) The right-of-way rule declared in subsection (1) is modified at through highways and otherwise as stated in this chapter."

Approved March 19, 1997

# CHAPTER NO. 107

[SB 303]

AN ACT ALLOWING A JUDGE TO REQUIRE A PERSON TO HAVE AN IGNITION INTERLOCK DEVICE INSTALLED WHEN THE PERSON IS CONVICTED TWO OR MORE TIMES OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR IS CONVICTED FOR THE FIRST TIME OF OPERATING A MOTOR VEHICLE WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.18 PERCENT OR MORE; PROVIDING A PENALTY FOR TAMPERING WITH OR ATTEMPTING TO CIRCUMVENT THE DEVICE; ALLOWING THE DEPARTMENT OF JUSTICE TO REINSTATE THE DRIVING PRIVILEGES OF AN IGNITION-INTERLOCK RESTRICTED OFFENDER UPON PROOF OF INSTALLATION OF THE DEVICE; REQUIRING IGNITION INTERLOCK RESTRICTIONS TO RUN PARALLEL TO TIME PERIODS AND CONDITIONS FOR LICENSE SUSPENSION OR REVOCATION FOR DUI AND BAC OFFENDERS; DIRECTING THE DEPARTMENT OF JUSTICE TO ADOPT RULES PROVIDING FOR APPROVAL OF IGNITION INTERLOCK DEVICES; AMENDING SECTIONS 61-2-302, 61-5-208, 61-8-401, AND 61-8-406, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, since the early 1980s, strict laws and extensive public awareness campaigns have helped reduce the traffic death toll attributed to drunken driving; and

WHEREAS, despite the progress that has been made in the battle against drunken driving, there remain on Montana's roads and highways a small group of hard-core drinkers who regularly drink te high levels of intoxication (over 0.15%) and still drive; and

WHEREAS, on a weekend night, these hard-core drunk drivers make up only 1% of all drivers, yet account for almost half of the driving fatalities; and

WHEREAS, approximately 80% of all drunk drivers killed on the nation's highways in 1995 had a blood alcohol concentration of 0.15% or higher, and to get to that level, a 160-peund man would have to consume more than six drinks in 1 hour; and

WHEREAS, approximately 50% of all fatally injured drunk drivers in 1995 had a bloed alcohol concentration of 0.20% or higher, more than twice the legal limit in Montana; and

HeinOnline -- 1997 vol. I 551 1997

WHEREAS, these hard-core drinkers continue to drive even after steps have been taken, including license suspensions, fines, and incarceration, to remove them from the road; and

WHEREAS, proven technological approaches, such as court-ordered ignition interlocks, exist for limiting the opportunity of hard-core drinkers to drink and drive; and

WHEREAS, ignition interlock devices prevent a car from starting if the driver fails a car-mounted Breathalyzer test, and ignition interlock devices are a reliable, fair, and effective means of reducing repeat driving under the influence (DUI) offenses; and

WHEREAS, reduction of repeat DUI offenses will, over time, reduce one of the growing pressures for increased incarceration expenses impacting our local and state corrections systems; and

WHEREAS, ignition interlock devices can be an effective complement to treatment of alcohol-dependent persons and their families who also drive on the roads and highways of this state; and

WHEREAS, the incidence of recidivism is lower among offenders with ignition interlock devices in their vehicles; and

WHEREAS, the device serves as a constant reminder to a driver of the driver's drinking problem and the difficulties that have arisen from it; and

WHEREAS, having an ignition interlock device installed forces a driver to develop and practice strategies to avoid drinking and driving; and

WHEREAS, the device allows an offender to re-enter the driver licensing system legally, soher, and with insurance; and

WHEREAS, ignition interlock devices allow more offenders the oppertunity to maintain employment; and

WHEREAS, regnlar maintenance of the ignition interlock device facilitates the monitoring of offenders and allows for periodic checks on attempts to circumvent the device; and

WHEREAS, the use of ignition interlock devices is legal in Montana, but the devices are not currently available throughout the state nor will they be consistently used in the state until installation of these devices is required by Montana courts responsihle for sentencing DUI offenders.

STATEMENT OF INTENT

A statement of intent is required for this hill because [section 4] delegates authority to the department of justice to adopt rules regarding ignition interlock devices. The legislature intends that the department model rules after rules that have implemented similar statutes adopted in Washington, Idaho, Oregon, North Dakota, and 31 other states. The legislature further intends that the rules adopted governing approval of the ignition interlock devices he based on federal standards issued by the national highway traffic safety administration on "niodel specifications for breatli alcohol ignition interlock devices", puhlished in the Federal Register on Aprii 7, 1992. Any changos in the federal standards regarding

standards for alcohol ignition interlock devices must be reflected in the department's rules.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Ignition interlock device — definition.** "Ignition interlock device" means ignition equipment that:

(1) analyzes the hreath to determine blood alcohol concentration;

(2) is approved by the department pursuant to [section 4]; and

(3) is designed to prevent a moter vehicle from being operated by a person who has consumed a specific amount of an alcoholic heverage.

**Section 2. Ignition interlock device — assisting in starting and operating — circumvcnting — penalty.** (1) It is unlawful for a person who is subject to a restriction under [section 8] to operate a motor vehicle not equipped with an ignition interlock device.

(2) A person may not knowingly assist a person who is restricted to tlie use of an ignition interlock device to start and operate the restricted person's vehicle.

(3) A person may not knowingly circumvent the operation of an ignition interlock device.

(4) A person convicted of a violation of this section shall be punished hy a fine of not more than $500 or by imprisonment for not more than 6 months or hoth.

(5) This section does not apply if:

(a) the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle; and

(b) the person subject to the restriction does not operate tlie vehicle.

**Section 3. Department rules regarding ignition interlock devices.** (1) The department shall adopt rules providing for the approval of ignition interlock devices and the installation, calibration, repair, and removal of approved devices.

(2) The department's rules must he based upon federal standards issued for similar devices.

(3) An ignition interlock device that is approved by the department must also:

(a) be designed so it does not impede safe operation of the vehicle;

(b) correlate well with tlie level estahlished for alcohol impairment;

(c) work accurately and reliahly in an unsupervised environment and under extreme weather conditions;

(d) require a deep lung breath sample or use an equally accurate measure of blood alcohol concentration equivalence;

(e) resist tampering and show evidence of tampering if it is attempted;

HeinOnline -- 1997 vol. I 553 1997

(f) be difficult to circumvent;

(g) minimize inconvenience of a sober user;

(h) operate reliably over the range of automobile environments and in connection with various manufacturing standards;

(i) be manufactured by a person who is adequately insured for product liability; and

(j) have a label affixed in a prominent location warning that a person who knowingly tampers with, circumvents, or otherwise misuses the device is subject to criminal prosecution.

**Section 4.** Section 61-2-302, MCA, is amended to read:

"**61-2-302. Establishment of driver improvement program — participation by offending drivers.** (1) The department may establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons *who are not subject to an ignition interlock restriction imposed under [section 8] and* whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, a violation of 45-5-624; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered ~~prior to~~ *before* the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to

HeinOnline -- 1997 vol. I 554 1997

meet the attendance or other requirements established for participation in the program.

(6) ~~Nothing in this~~ *This* part *does not* ~~creates~~ *create* a right to be included in any program established under this part.

(7) The department may establish a schedule of fees that may be charged those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or a hearing examiner of the department.

(9) The department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to the person under this section."

**Section 5.** Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) A person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed. After the expiration of the period of the revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year, except that if the 1-year period passes and the person has not completed an alcohol information course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both are completed.

*(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with any ignition interlock restriction imposed*

HeinOnline -- 1997 vol. I 555 1997

*under [section 8], the department shall stay the license suspension or revocation of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension or revocation has expired and any required alcohol information course, treatment, or both, have been completed.*

*(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the ignition interlock restriction by, including but not limited to, operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension or revocation for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension or revocation has been reinstated due to violation of an ignition interlock restriction.*

~~(3)~~*(4)* The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

~~(4)~~*(5)* The period of revocation for any person convicted of any offense which makes mandatory the revocation of the driver's license commences from date of conviction or forfeiture of bail.

~~(5)~~*(6)* If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and subsection (2) of this section."

**Section 6.** Section 61-8-401, MCA, is amended to read:

"**61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as provided in 61-8-714, ~~and~~ 61-8-723, *and [section 8]* for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of

HeinOnline -- 1997 vol. I 556 1997

alcohol in the person at the time alleged, as shown by analysis of the person's blood, urine, or breath, shall give rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any inference that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence hearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of the two.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

**Section 7.** Section 61-8-406, MCA, is amended to read:

"**61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is unlawful and punishable as provided in 61-8-722, ~~and~~ 61-8-723, *and [section 8]*, for any person to drive or be in actual physical control of a vehicle upen the ways of this state opon to the public while the person's alcohol concentration, as shown by analysis of the porson's blood, breath, or urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

**Seetion 8. Driving under the influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device required.** (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of dispesition, the court may restrict a defendant to only driving a motor vehicle equippod with a functioning iguition interlock device and require the defendant to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) the court determines that approved ignition interlock devices are reasonably available; and

(b) (i) the defendant's blood alcohol concentration at the time of the arrest was 0.18% or greater; or

(ii) the defendant previously has been convicted of a violation of 61-8-401 or 61-8-406.

HeinOnline -- 1997 vol. I 557 1997

(2) Any restriction imposed under this section must he included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(3) The duration of a restriction imposed under this section must run parallel tc the time peried for suspension or revocation of the driver's license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and must be monitored by the department.

**Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 1, part 5, and the provisions of Title 61, chapter 1, part 5, apply to [section 1].

(2) [Sections 2, 3, and 8] are intended to be cedified as an integral part of Title 61. chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 2, 3, and 8].

**Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1997.

(2) [Section 3 and this section] are effective on passage and approval.

Approved March 19, 1997

# CHAPTER NO. 108

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 454, LAWS OF 1995; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriations for reclamation and development grants.** (1) The amount of $3 million is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account frem funds allocated for appropriation from the interest income of the resource indemnity trust fund set forth in Title 15, chapter 38.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

**Section 2. Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by

HeinOnline -- 1997 vol. I 558 1997

grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation reclamation and development grants program report to the 55th legislature for the 1999 biennium.

(2) The following are the grants program prioritized projects and activities:

| Applicant/Project | Grant Amount |
|---|---|
| MONTANA BOARD OF OIL AND GAS CONSERVATION<br>Balco Disposal Facility, Plug and Abandonment and Site Restoration | $600,000 |
| NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF<br>Reliance Refinery Soils and Sludge Cleanup #1 | 300,000 |
| NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF<br>Reliance Refinery Soils and Sludge Cleanup #2 | 282,300 |
| ENVIRONMENTAL QUALITY - ABANDONED, DEPARTMENT OF<br>Nancy Lee Mine Complex Reclamation | 286,914 |
| ENVIRONMENTAL QUALITY - ABANDONED, DEPARTMENT OF<br>Nellie Grant Mine Reclamation Project | 288,040 |
| POWELL COUNTY<br>Charter Oak Mine and Mill Reclamation | 300,000 |
| MILE HIGH CONSERVATION DISTRICT<br>Highland Mill Reclamation | 258,070 |
| BUTTE-SILVER BOW LOCAL GOVERNMENT*<br>Upper Clark Fork Basin: Suporfund Technical Assistance | 91,532 |
| MONTANA BOARD OF OIL AND GAS CONSERVATION*<br>1996 "A" Orphaned Well Plug and Abandonment and Site Restoration | 164,222 |
| CARBON COUNTY<br>Dry Hydrant Demonstration Project | 157,579 |
| TOOLE COUNTY*<br>North Toole County Reclamation Project | 40,000 |
| MONTANA BOARD OF OIL AND GAS CONSERVATION*<br>1996 "B" Orphaned Well Plug and Abandonment and Site Restoration | 0 |

The board of oil and gas conservation is authorized to expend remaining funds from grants to the board in this subsection (2) and remaining funds from grants previously awarded to the board to pay for the proper plugging of additional abandoned oil and gas wells. This may include funding the seven priority wells identified in the 1996 "B" orphaned well plug and abandonment project. In determining which wells to plug, abandoned wells that represent the greatest threat to the environment and public health and safety should be given priority over all others.

HeinOnline -- 1997 vol. I 559 1997

| | |
|---|---|
| BUTTE-SILVER BOW LOCAL GOVERNMENT | |
| Butte Mine Subsidence Reclamation | 81,250 |
| ROSEBUD CONSERVATION DISTRICT | |
| Hydrologic & Geologic Feasibility — Coal Mine Pits as Water Impounds | 150,000 |
| DEER LODGE VALLEY CONSERVATION DISTRICT | |
| Development of Acid- and Heavy Metal-Tolerant Cultivars | 100,000 |

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1999 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered hy the department of environmental quality.

**Section 3. Coordination of fund sources for grants program projects.** A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

**Section 4. Condition of grants.** Disbursement of grant funds under [sections 1 tbrough 6] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendations section of the project narrative of the reclamation and development grants program report for the 1999 biennium.

(4) An agreement between the department and the grant applicant must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

**Section 5. Other appropriations.** There is appropriated te any entity of state government that receives a grant under [sections 1 through 6] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

**Section 6.** Section 2, Chapter 454, Laws of 1995, is amended to read:

HeinOnline -- 1997 vol. I 560 1997

The appropriations for reclamation and development grants on page 2158, Laws of 1995, is amended to read:

"PETROLEUM COUNTY CONSERVATION DISTRICT*
Petroleum County Artesian Basin Ground
Water Project ~~300,000~~ *232,247*"

**Section 7. Reversion of funds.** All funds appropriated from the reclamation and development grants special revenue account under [sections 1 through 6] that are unspent and unencumbered on June 30, 1999, revert to that account.

**Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 9. Effective date.** [This act] is effective July 1, 1997.

Approved March 20, 1997

# CHAPTER NO. 109

[HB 18]

AN ACT REQUIRING THE BOARD OF VETERANS' AFFAIRS TO DEVELOP A REQUEST FOR PROPOSALS FROM TOWN, CITY, COUNTY, AND TRIBAL GOVERNMENTS IN EASTERN MONTANA FOR THE SITING OF AN EASTERN MONTANA STATE VETERANS' CEMETERY; SPECIFYING CERTAIN CRITERIA FOR THE SITE OF THE CEMETERY; DESIGNATING THE BOARD TO EVALUATE THE PROPOSALS; PROVIDING FOR THE EVALUATION OF THE PROPOSALS AND SELECTION OF A SITE; APPROPRIATING MONEY TO THE BOARD FOR THE PURPOSES OF SITE SELECTION; AMENDING SECTIONS 10-2-601, 10-2-602, 10-2-603, AND 61-3-332, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Legislative findings.** The legislature finds that Article II, section 35, of the Montana constitution states that the legislature may give Montana veterans special consideration. Accordingly, there are geographical requirements for veterans' cemeteries for proper interment. Therefore, it is necessary to provide guidelines for the siting and construction of an eastern Montana state veterans' cemetery.

**Section 2. Request for proposals.** (1) The board of veterans' affairs shall request that proposals for the siting of a new state veterans' cemetery be submitted to the board from town, city, county, and tribal governments in the counties enumerated in [section 4]. The request must:

(a) be made in the form of a request for proposals;

HeinOnline -- 1997 vol. I 561 1997

(b) specify 90 days from the date on which the requests for proposals are mailed as the date on which all proposals are to be received by the board; and

(c) contain the information required under subsection (2) and other information determined necessary by the board.

(2) The request for proposal must:

(a) require that information he submitted by a tewn, city, county, or tribal government as part of any proposal according to the requirements in 38 U.S.C. 2408, 38 CFR, part 39, and the most recent departinent of veterans affairs National Cemetery System Program Guide 40-1, state cemetery grants program;

(b) include the oxtent to which land is donated to the state for an eastorn Montana state veterans' cemetery; and

(c) state the proximity to tbe veterans' affairs field offices and department of military affairs support facilities.

**Section 3. Board to select site.** (1) Proposals submitted in response to the request for proposals required by [section 2] must be evaluated by the board of veterans' affairs.

(2) Except as provided in subsection (3), the board must be compensatod, reimbursed, and otberwise governed by tbe provisions of 2-15-122 regarding advisory councils.

(3) 'I he board memhers must receive an honorarium of $50 for each day spent porforming the duties required in [sections 2 through 6] that does not constitute a regular board meeting.

(4) The board sball meet as often as necessary to perform the duties assigned by [sections 2 through 6]. The board shall consider, evaluato, and select the location for the eastern Montana stato veterans' cemetery according to the procedure and criteria provided for in [sections 2 through 6].

(5) The department of military affairs shall provide staff and budgotary, administrative, and clerical services to the board as the board or its presiding officer requests.

(6) The board must receive assistance and information, as requested, from the department of administration, architecture and engineering division, and otber executive agencies that may have information relevant to siting and supporting a state veterans' cemetery.

(7) Tbe board's site selection function terminates on the date of the announcement by tbe governor of the winning proposal, in accordance with [section 6].

**Section 4. Site selection procedure and criteria.** (1) The board of veterans' affairs may not consider a proposal unless the propesal:

(a) is submitted within the time required by the request for proposal;

(b) contains the criteria and additional information required by [section 2]; and

HeinOnline -- 1997 vol. I 562 1997

(c) is submitted by a town, city, county, or tribal government located in Big Horn, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosehud, Sheridan, Treasure, Valley, Wibaux, or Yellowstone County.

(2) The board shall determine a maximum numeric value for each of the criteria required in [section 2] and the tie-breaker criteria described in [section 6(2)]. Criteria that the board determines to he of more relative importance must he awarded a greater maximum value. The hoard sball rate each proposal considered by it by using a weighted-scale process that assigns a numeric score for each criterion and then totals the score for each proposal. The score for each criterion and proposal must be determined by the extent to which each criterion is satisfied, based upon a documented demonstration.

**Section 5. Site visitations and hearings required.** The board of veterans' affairs shall determine the three proposals with the highest numeric scores. The hoard shall eliminato the other proposals from further consideration. As soon as possible after elimination of the other sites, the board shall conduct onsite reviews of the remaining candidate sites by both conducting an onsite tour of each of the candidato sites and holding a public hearing on the subject of the cemetery in the community where each proposed site is located. The purpose of the tour and hearing is te receive information concerning the extent to which each candidate site satisfies the criteria provided in [section 2]. The hearings must be conducted under procedures determined by the board, and the board shall give notice of each hearing by advertisement in a newspaper of general circulation in the county of each candidate site.

**Section 6. Site selection.** (1) After completing the onsite reviews required by [section 5], the board shall again score each of the candidate sites by applying the criteria and scoring method provided in [section 4].

(2) If two or more proposals receive the same tetal score, the board shall determine the leading proposal by scoring tbose proposals on the following criteria for the community in which the cemetery would be located:

(a) the extent to which land is donated to the state for an eastern Montana veterans' cemetery; and

(b) the proximity to the veterans' affairs division field offices and department of military affairs support facilities.

(3) The cemetery must be located at the proposed site that receives the highest numeric score using the procedure provided in this section. Upon selection of the winning proposal by the board, the board shall inform the governor of its selection. The hoard shall suhmit its selection to the governor no later than 250 days after [the effective date of this section]. The gevernor shall review the selection process to ensure that the board has not made an error in process or in fact. If the governor determines tbat an error has been made, the governor shall remand the recommendation to the board for further evaluation. The governor shall make a public announcement of the board's selection upon determining that no errors have been made.

**Section 7.** Section 10-2-601, MCA, is amended to read:

HeinOnline -- 1997 vol. I 563 1997

**"10-2-601. State veterans' ~~cemetery~~ *cemeteries*.** The department of military affairs shall establish ~~a~~ state veterans' ~~cemetery~~ *cemeteries*. ~~The~~ *A* cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana, *and at the location chosen pursuant to [sections 1 through 6]*."

**Section 8.** Section 10-2-602, MCA, is amended to read:

**"10-2-602. Rulemaking authority.** The department of military affairs shall adopt rules that provide criteria for determining which veterans may be buried in ~~the~~ *a* state veterans' cemetery. The criteria must include~~,~~ but are not limited to~~,~~ discharge status and length of service."

**Section 9.** Section 10-2-603, MCA, is amended to read:

**"10-2-603. Special revenue account — use of funds — solicitation.** (1) There is an account in the special revenue fund to the credit of the department of military affairs for the state veterans' ~~cemetery~~ *cemeteries*.

(2) Plot allowances, donations, and, as provided in 61-3-332, revenue from veterans' license plate sales must be deposited into the account.

(3) As appropriated by the legislature, money in the account may he used only for the construction, maintenance, operation, and administration of the state veterans' ~~cemetery~~ *cemeteries*.

(4) The department of military affairs may solicit veterans' license plate sales and donations on behalf of the state veterans' ~~cemetery~~ *cemeteries*."

**Section 10.** Section 61-3-332, MCA, is amended to read:

**"61-3-332. Number piates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the lettor "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the pesition that the department designates.

(2) All numher plates for motor vehicles must be issued for a minimum period of 4 years, hear a distinctive marking, and be furnished hy the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates iii use.

HeinOnline -- 1997 vol. I 564 1997

(3) Subject to the provisions of this section, the department shall create a new design for numher plates as provided in this section.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive horder on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distmctive markings:

(a) For vehicles owned by the state, the department may designate tbe prefix number for the various state departments. All numbered plates issued te state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates reqnires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and tbat are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the departnent may designate, the letter "X" or the word "EXEMPT". Distmctive registration numbers for plates assigned to motor vehicles of each of tbe counties in the state and those of the nunicipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or tbe word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

HeinOnline -- 1997 vol. I 565 1997

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flatbead, 7; Fergns, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by tbe department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant helongs. Unless otherwise specifically stated in this section, the special plates are subject te the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned hy the person who is eligible to receive them, and must be removod upon sale or other disposition of the vehicle. The special license plates must be issued to national gnard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of tbe Pearl Harbor attack, veterans of tbe armed services, or veterans of the armed services who were awarded the purple heart modal, who comply with the following provisions:

(a) An active member of the Montana national gnard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national gnard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America wlio is a resident of this state may be issued special license plates witli a design or decal displaying the following: United States army reserve, AR (syinbol); United States naval reserve, NR (anclior); United States air force reserve, AFR (syinbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit sliall issue to each eligible member of the reserve unit a certificate autliorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates te the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been

determined by the department of veterans affairs to he service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) Except as provided in subsection (10)(c), upen payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection *(10)*(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of tbe Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If spocial license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled te replacement plates upon request and witbout charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of tlie United States may he issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must he issued to the

HeinOnline -- 1997 vol. I 567 1997

applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsection (10)(c), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' ~~cemetery~~ *cemeteries*.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person."

**Section 11. Appropriation.** There is appropriated from the veteran's license plate fee account in the state special revenue fund $10,000 to the board of veterans' affairs for expenses incurred in selecting a site for the eastern Montana state veterans' cemetery and for support and travel costs for members and staff and honoraria for members. This appropriation is effective through the fiscal year ending June 30, 1999.

**Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the four Montana reservations in eastern Montana located in the counties set forth in [section 4(1)(c)].

**Section 13. Effective dates.** (1) [Sections 1 through 10, 12, and 14 and this section] are effective on passage and approval.

(2) [Section 11] is effective July 1, 1997.

HeinOnline -- 1997 vol. I 568 1997

**Section 14. Termination.** [Sections 1 through 6] terminate June 30, 1999.

Approved March 20, 1997

# CHAPTER NO. 110

[HB 42]

AN ACT REQUIRING AN AGENCY PRESENTED WITH A PETITION FOR RULEMAKING TO ISSUE ITS DECISION IN WRITING, BASED ON THE RECORD; REQUIRING THE AGENCY TO INCLUDE THE REASONS FOR THE DECISION IN THE WRITTEN DECISION; PROVIDING THAT AN AGENCY IS NOT REQUIRED TO HOLD A HEARING ON A PETITION FOR RULEMAKING; AND AMENDING SECTION 2-4-315, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-4-315, MCA, is amended to read:

"**2-4-315. Petition for adoption, amendment, or repeal of rules.** An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall *determine and* prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing ~~(stating its reasons for the denial)~~ or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305. *A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence. The written decision must include the reasons for the decision. Record evidence must include any evidence submitted by the petitioner on behalf of the petition and by the agency and interested persons in response to the petition. An agency may, but is not required to, conduct a hearing or oral presentation on the petition in order to develop a record and record evidence and to allow the petitioner and interested persons to present their views.*"

Approved March 20, 1997

# CHAPTER NO. 111

[HB 107]

AN ACT REVISING THE INDIVIDUAL INCOME TAX DEDUCTION FOR LONG-TERM CARE INSURANCE PREMIUMS; ALLOWING A DEDUCTION FOR PREMIUMS PAID FOR INSURANCE POLICIES OR CERTIFICATES THAT PROVIDE COVERAGE FOR LONG-TERM CARE SERVICES FOR THE BENEFIT OF THE TAXPAYER OR THE TAXPAYER'S PARENTS OR GRANDPARENTS WHO RESIDE IN MONTANA; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, it is the public policy of this state to encourage individuals to plan and provide for their long-term health care needs through the purchase of

HeinOnline -- 1997 vol. I 569 1997

insurance and other private means rather than relying on publicly funded programs, such as Medicaid, to meet tbeir needs.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 15-30-121, MCA, is amended to read:

**"15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(c) one-half of premium payments for medical care as provided in subsection ~~(9)~~ *(7)(a)*;

*(d) long-term care insurance premiums paid;*

(2) federal income tax paid within the tax year;

(3) expenses of household and dependent care services as outlined in suhsections (3)(a) through (3)(c) and (9) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f), as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can he claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(iii) a spouse who is unable to provide self-care because of physical or mental illness;

(b) employment-related expenses incurred for the following services, hut only if the expenses are incurred to enahle the taxpayer to be gainfully employed:

(i) household services that are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished hy an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(d) the amounts deductible in subsections (3)(a) through (3)(c), subject to the following limitations:

HeinOnline -- 1997 vol. I 570 1997

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent that the expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the tax year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(7) ~~one-half of~~ *insurance* premium payments~~, except premiums deducted in determining Montana adjusted gross income, for~~ *as follows*:

(a) *one-half of premium payments, except premiums deducted in determining Montana adjusted gross income, made directly by the taxpayer for* insurance *that provides payment* for medical care ~~made directly by the taxpayer~~ *as defined by 26 U.S.C. 213(d)*; and

(b) ~~long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner~~ *except as provided in 15-30-128(7), all premium payments made directly by the taxpayer for long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for the benefit of the taxpayer for tax years beginning after December 31, 1994, or of the taxpayer's parents or grandparents, or both, for tax years beginning after December 31, 1996, provided that the beneficiary is a Montana resident*; and

(8) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159.

~~(9) For the purpose of subsection (7)(a), deductible medical insurance premiums are those premiums that provide payment for medical care as defined by 26 U.S.C. 213(d).~~

~~(10)~~*(9)* (a) Subject to the conditions of subsection (3), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (3)(d)(ii).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection ~~(10)~~ *(9)*. (Subsection (8) terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)"

**Section 2. Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Approved March 20, 1997

# CHAPTER NO. 112

[HB 152]

AN ACT SEPARATING THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT INTO TWO ACTS BY TRANSFERRING THE UNDERGROUND STORAGE TANK PROVISIONS INTO A SEPARATE ACT; AMENDING SECTIONS 75-2-216, 75-10-401, 75-10-402, 75-10-403, 75-10-404, 75-10-405, 75-10-409, 75-10-410, 75-10-411, 75-10-413, 75-10-415, 75-10-416, 75-10-420, 75-10-423, 75-10-424, 75-11-203,

HeinOnline -- 1997 vol. I 572 1997

75-11-302, AND 75-11-309, MCA; AND REPEALING SECTION 75-10-210, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 15] shall be known and may be cited as the "Montana Underground Storage Tank Act".

**Seetion 2. Findings and purpose.** The legislature finds that petroleum products and hazardous substances stored in underground tanks are regulatod under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the stato under [sections 1 through 15]. It is the purpose of [sections 1 through 15] to autborize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in [sections 8 through 13] and other appropriate authority provided by law to remedy violations of requirements established under [sections 1 through 15].

**Section 3. Definitions.** Unless the context requires otherwise, in [sections 1 through 15], the following definitions apply:

(1) "Board" means tbe board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discbarge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance into or onto the land or water so that the regulated substance or any constituent of the regulated substance may enter the environment or be emitted into the air or discharged into any waters, including ground wator.

(4) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local gevernmental entity, or any other governmental or private entity, whether orgenized for profit or not.

(5) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

(6) "Storage" means the actual or intended containment of regulated substances, either on a tomporary basis or for a period of years.

(7) "Underground storage tank":

HeinOnline -- 1997 vol. I 573 1997

(a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport moter fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or (7)(b)(v)(B), if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix).

**Section 4. Powers of department.** (1) The department may:

(a) administer and enforce the provisions of [sections 1 through 15], rules implementing [sections 1 through 15], and orders and permits issued pursuant to [sections 1 through 15];

HeinOnline -- 1997 vol. I 574 1997

(b) accept and administer grants from the federal government and from other sources, public and private; and

(c) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any regulated substance.

(2) The department shall integrate all provisions of [sections 1 through 15] with other laws administered by the department to avoid unnecessary duplication.

**Section 5. Administrative rules.** The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) standards for design, construction, installation, and closure;

(5) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not te exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program;

(6) a penalty schedule and a system for assessment of administrative ponalties, notice, and appeals under 75-10-423; and

(7) delegation of authority and funds te local agonts for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing autbority for implementation of rules adopted by the department of justice that relate to underground sterage tanks.

**Section 6. Underground storage tank leak report — inspections — sampling.** (1) If an owner or operator of an underground storage tank discovers or is provided with evidence that a tank may bave leaked, the owner or operator shall immediately notify the department that a leak may exist.

(2) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

(i) regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of [sections 1 through 15] or rules adopted under [sections 1 through 15]; or

(ii) records pertinent to the regulated substances activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the regulated substances for the purposes of developing rules under [sections 1 through 15] or enforcing the provisions of

HeinOnline -- 1997 vol. I 575 1997

[sections 1 through 15], rules adopted under [sections 1 through 15], or a permit or an order issued under [sections 1 through 15].

(3) In the course of an inspection under this section, the employee or agent of the department may take samples of any regulated substance or suspected regulated substance, including samples from any soil or ground water. If the employee or agent of the department takes a sample of any regulated substance or suspected regulated substance, the employee or agent shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis must be furnished to the owner, operator, or agent in charge.

**Section 7. Regulated substance inventory.** (1) The department is authorized to conduct an inventory of sites and locations in the state where regulated substances have been stered or disposed of at any time.

(2) If the department determines that the presence of a regulated substance or the release of the regulated substance may present a substantial hazard to the public health or to the environment, it may issue an order requiring the owner or operator of the site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) An order issued under subsection (2) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reperting.

(4) If the department determines that the owner or operator referred to in subsection (2) is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct the activities.

(5) For the purposes of carrying out this section, the department may exercise the powers set forth in [section 6].

**Section 8. Administrative enforcement.** (1) When the department believes that a violation of [sections 1 through 15] or a rule adopted under [sections 1 through 15] has occurred, it may serve written notice of the violation porsonally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of [sections 1 through 15] or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or hy the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

HeinOnline -- 1997 vol. I 576 1997

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator te appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential iinpact on the public health and welfare or the environment;

(b) initiate action under [section 9, 10, 12, or 13]; or

(c) assess administrative penalties and issue corrective action orders under 75-10-423.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material mattor with regard to which the witness ınay be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct comınitted in the course of civil actions in district court.

(5) This section does not prevent the board or department froın ınaking efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

**Section 9. Injunctions.** The department may institute and maintain, in the name of the state, actions for injunctive relief as provided in Title 27, chaptor 19, to:

(1) immediately restrain any person from engaging in any unauthorized activity that is endangering or causing damage to the public health or to the environment;

(2) enjoin a violation of [sections 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board; or

(3) require compliance with [sections 1 througli 15], a rule adopted under [sections 1 through 15], or an order of the department or the board.

**Section 10. Imminent hazard.** Upon receipt of evidence that the storage or disposal of any regulated substance may present an imminent and substantial danger to the public health or to the environment, tlie department may commence legal proceedings to immediately restrain or enjoin any person who has contributed to or who is contributing to the storage or disposal from engaging in these activities or order the person to take otber action as may be necessary, or botli. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect the public health and the environment.

**Section 11. Cleanup orders.** The department may issue a cleanup order to any person who has discharged, deposited, or spilled any regulated substance

HeinOnline -- 1997 vol. I 577 1997

into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any regulated substance into or onto any land or water so as to result in unlawful or unapproved disposal of a regulated substance. The order must direct the person te clean up and remove the regulated substance, to treat the regulated substance, or to take other actions as may be considered reasonable hy the department.

**Seetion 12. Civil penalties.** (1) A person who violates any provision of [sections 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board is subject to a civil penalty not to exceed $10,000 for each violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, tbe attorney general or the county attorney of the county of violation shall petition the district court te impose, assess, and recover the civil penalty.

(3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted under [sections 1 through 15], or orders of the department or tbe board.

(4) Money collected under this section must be deposited in the state general fund.

**Section 13. Civil penalties.** (1) A person who violates any provision of [sections 1 through 15], a rule adopted under [sections 1 through 15], or an order of the department or the board is subject to a civil penalty not to exceed $10,000 for each violation. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upen request of the department, tbe attorney general or the county attorney of the county of violation shall petition tbe district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar enforcement of [sections 1 through 15], rules adopted under [sections 1 through 15], or orders of the department or the board.

(4) Money collected under this section must be depesited in the state special revenue fund and creditod to the environmental rehabilitation and prevention account created pursuant to [section 1 or 2 of LC 823].

**Seetion 14. Venue for legal aetions.** All legal actions affecting underground sterage tanks or the dispesal of regulated substances must be brought in the county in which the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial district, Lewis and Clark County.

**Seetion 15. Construction in event of conflict.** The provisions of [sections 1 through 15] and rules promulgated pursuant to [sections 1 through 15] gevern if they conflict with other provisions of Montana law or any action taken by tbe department under those provisions.

**Seetion 16.** Section 75-2-216, MCA, is amended to read:

HeinOnline -- 1997 vol. I 578 1997

~~"75-2-216. Moratorium on certain solid and hazardous waste incinerator permits. (1) Except for remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-405(2)(c) or 75-10-416, until October 1, 1993, the department may not issue a permit to a solid or hazardous waste incinerator subject to the requirements of 75-2-215.~~

~~(2) Notwithstanding the provisions of (1), the~~ ***Adoption of rules for solid or hazardous waste incinerator permits.*** *The* department shall proceed in a reasonable and timely manner in adopting rules implementing 75-2-215 ~~and in processing air quality permit applications required under 75-2-211 for solid or hazardous waste incinerators.~~"

**Section 17.** Section 75-10-401, MCA, is amended to read:

"**75-10-401. Short title.** This part shall be known and may be cited as the "Montana Hazardous Waste ~~and Underground Storage Tank~~ Act"."

**Section 18.** Section 75-10-402, MCA, is amended to read:

"**75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management of hazardous wastes and used oil, the permitting of hazardous waste facilities, and the siting of facilities are matters for statewide regulation and are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes and used oil; to establish a program of regulation over used oil and the generation, storage, transportation, treatment, and disposal of hazardous wastes; to ~~assure~~ *ensure* the safe and adequate management of hazardous wastes and used oil within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended.

~~(3) The legislature also finds that petroleum products and hazardous substances stored in underground tanks are a separate category of substances that are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in 75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of underground storage tank requirements established under this part.~~"

**Section 19.** Section 75-10-403, MCA, is amended to read:

"**75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

HeinOnline -- 1997 vol. I 579 1997

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any ~~regulated substance or~~ hazardous waste into or onto the land or water so that the ~~regulated substance,~~ hazardous waste~~,~~ or any constituent of the ~~regulated substance or~~ hazardous waste may entor the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(5) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(6) "Generation" means the act or process of producing waste material.

(7) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(8) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(9) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(10) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary sterage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(11) "Manifest" means the shipping document that is originated and signed by the generator and that is used to identify the hazardous waste and its quantity, origin, and destination during its transportation.

(12) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local gevernmental

HeinOnline -- 1997 vol. I 580 1997

entity, or any other governmental or private entity, whether organized for profit or not.

~~(13) "Regulated substance":~~

~~(a) means:~~

~~(i) a hazardous substance as defined in 75-10-602; or~~

~~(ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);~~

~~(b) does not include a substance regulated as a hazardous waste under this part.~~

~~(14)~~*(13)* "Storage" means the actual or intended containment of ~~regulated substances,~~ hazardous wastes~~, or both~~, either on a temporary hasis or for a period of years.

~~(15)~~*(14)* "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally te the point of ultimato storage or disposal.

~~(15)~~*(15)* "Transporter" means a person engeged in the offsite transportation of hazardous waste by air, rail, highway, or water.

~~(17)~~*(16)* "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or hiological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

~~(18) "Underground storage tank":~~

~~(a) means, except as provided in subsections (18)(b)(i) through (18)(b)(xi):~~

~~(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and~~

~~(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely aboveground, partially aboveground, or entirely underground;~~

~~(b) does not include:~~

~~(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing motor fuel for noncommercial purposes;~~

~~(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is stored;~~

~~(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial~~

~~purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;~~

~~(iv) a septic tank;~~

~~(v) a pipeline facility, including gathering lines, regulated under:~~

~~(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;~~

~~(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or~~

~~(C) state law comparable to the provisions of law referred to in subsection (18)(b)(v)(A) or (18)(b)(v)(B), if the facility is intrastate;~~

~~(vi) a surface impoundment, pit, pond, or lagoon;~~

~~(vii) a storm water or wastewater collection system;~~

~~(viii) a flow-through process tank;~~

~~(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;~~

~~(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or~~

~~(xi) any pipe connected to a tank described in subsections (18)(b)(i) through (18)(b)(ix).~~

~~(19)~~*(17)* "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities."

**Section 20.** Section 75-10-404, MCA, is amended to read:

**"75-10-404. Powers of department.** (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate stata agency research programs portaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; and

(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste ~~or regulated substance~~.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore,

the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of environmental quality related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act. The intogration and coordination must be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

**Section 21.** Section 75-10-405, MCA, is amended to read:

**"75-10-405. Administrative rules.** (1) The department may, subject to the provisions of 75-10-107, adopt, amend, or repeal rules governing hazardous waste and used oil, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, reissuance, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel, for financial assurance of facility owners and operators, and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) establishing a schedule of fees and procedures for the collection of fees for:

(i) the filing and review of hazardous waste management facility permits as provided in 75-10-432;

(ii) hazardous waste management as provided in 75-10-433;

(iii) the reissuance and modification of hazardous waste management facility permits; and

(iv) the registration of hazardous waste generators;

HeinOnline -- 1997 vol. I 583 1997

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes;

(l) procedures for the assessment of administrative penalties as authorized by 75-10-424;

(m) identification and classification of used oil that is subject to regulation and used oil that is not subject to regulation;

(n) requirements for the proper management of used oil; and

(o) other rules that are necessary to obtain and maintain authorization under the federal program.

(2) Notwithstanding the provisions of 75-10-107, the department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require hazardous waste generators and hazardous waste management facilities to report on an annual rather than on a biennial basis;

(c) ~~may adopt requirements for the prevention and correction of leakage from underground storage tanks, including:~~

~~(i) reporting by owners and operators;~~

~~(ii) financial responsibility;~~

~~(iii) release detection, prevention, and corrective action;~~

~~(iv) standards for design, construction, installation, and closure;~~

~~(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program;~~

~~(vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-10-423; and~~

~~(vii) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.~~

~~(d)~~ may adopt regulatory requirements for hazardous waste transfer facilities;

~~(e)~~*(d)* shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

~~(f)~~*(e)* may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations."

**Section 22.** Section 75-10-409, MCA, is amended to read:

**"75-10-409. Compliance monitoring and reporting ~~— underground storage tank leak report~~.** (1) The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with this part, rules adopted under this part, any order of the board or department, and permit conditions.

(2) The department may require the owner or operator of a facility to submit reports on ~~such~~ *the* compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under this part, the provisions of this part, or any orders of the department or board.

~~(3) If an owner or operator of an underground storage tank discovers or is provided with evidence that the tank may have leaked, he must immediately notify the department that a leak may exist.~~"

**Section 23.** Section 75-10-410, MCA, is amended to read:

**"75-10-410. Inspections — sampling.** (1) (a) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

(i) ~~regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part;~~

~~(ii)~~ hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation;

~~(iii)~~*(ii)* used oil is or has been generated, stored, treated, disposed of, or loaded for transportation; or

~~(iv)~~*(iii)* records pertinent to the ~~regulated substances,~~ used oil~~,~~ or hazardous waste activities are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to the ~~regulated substances,~~ used oil~~,~~ or hazardous wastes for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any substances, used oil, or wastes,

HeinOnline -- 1997 vol. I 585 1997

including samples from any soil or ground water or from any vehicle in which used oil or wastes are transported, or samples of any containers or labeling for the substances, used oil, or wastes. If the employee or agent of the department takes a sample of any used oil, hazardous waste, or suspected hazardous waste, the employee or agent shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis must be furnished to the owner, operator, or agent in charge."

**Section 24.** Section 75-10-411, MCA, is amended to read:

"**75-10-411. ~~Regulated substance and hazardous~~ *Hazardous* waste site inventory.** (1) The department is authorized to conduct an inventory of sites and locations in the state where ~~regulated substances or~~ hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a ~~regulated substance or~~ hazardous waste or the release of the ~~regulated substance or~~ waste or any waste constituent may present a substantial hazard to *the* public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) In the case of any facility or site not in operation at the time *that* a determination is made under subsection (2) with respect to the facility or site, if the department finds that the owner of ~~such~~ *the* facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at ~~such~~ *the* facility or site and of its potential for release, it may issue an order requiring the most recent previous owner or operator of the facility or site who could reasonably be expected to have ~~such~~ actual knowledge to carry out the actions referred to in subsection (2).

(4) An order issued under subsection (2) or (3) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(5) If the department determines that the owner or operator referred to in subsection (2) or (3) is not able to conduct monitering, testing, and analysis in a satisfactory manner, the department may conduct ~~such~~ *the* activities.

(6) For the purposes of carrying out this section, the department may exercise the powers set forth in 75-10-410."

**Section 25.** Section 75-10-413, MCA, is amended to read:

"**75-10-413. Administrative enforcement.** (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On

HeinOnline -- 1997 vol. I 586 1997

receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order ~~previously issued~~. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment; *or*

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418~~; or~~

~~(c) for underground storage tank violations, assess administrative penalties and issue corrective action orders under 75-10-423~~.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

**Section 26.** Section 75-10-415, MCA, is amended to read:

"**75-10-415. Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any ~~regulated substance~~, used oil, or hazardous waste may present an imminent and substantial danger to *the* public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person (including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who has contributed to or who is contributing to the handling, storage, treatment, transportation, or disposal from engaging in these activities or order the person to take other action as may be necessary, or both. The department may also take appropriate action as may be necessary under this section, including issuing orders necessary or appropriate to protect *the* public health and the environment."

**Section 27.** Section 75-10-416, MCA, is amended to read:

HeinOnline -- 1997 vol. I 587 1997

"**75-10-416. Cleanup orders.** The department may issue a cleanup order to any person who has discharged, deposited, or spilled any ~~regulated substance,~~ used oil, or hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved disposal of ~~a regulated substance,~~ used oil, or hazardous waste. The order must direct the person to clean up and remove the ~~regulated substance,~~ used oil, or hazardous waste, to treat the ~~regulated substance,~~ used oil, or hazardous waste so as to render it nonhazardous, or to take other actions as may be considered reasonable by the department."

**Section 28.** Section 75-10-420, MCA, is amended to read:

"**75-10-420. Venue for legal actions.** All legal actions affecting hazardous waste management facilities in the state must be brought in the county in which the facility is located. ~~All legal actions affecting underground storage tanks or the disposal of regulated substances must be brought in the county where the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial district, Lewis and Clark County.~~"

**Section 29.** Section 75-10-423, MCA, is amended to read:

"**75-10-423. Administrative penalties for ~~underground storage tank~~ violations — appeals — venue for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of ~~this chapter~~ *[sections 1 through 15]* or any ~~underground storage tank~~ rules promulgated under the authority of ~~this chapter~~ *[sections 1 through 15]* may be assessed and ordered by the department to pay an administrative penalty not to exceed $500 ~~per~~ *for each* violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day *that* it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by ~~Title 75, chapter 11, or by~~ this chapter.

(2) When the department assesses an administrative ponalty under this section, it must have written notice served personally or by certified mall on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision alleged to he violated;

(b) the facts alleged to constitute the violation;

(c) the amount of the administrative penalty assessed under this section;

(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;

(e) the nature of any corrective action *that* the department requires, whether or not a portion of the penalty is to be suspended;

HeinOnline -- 1997 vol. I 588 1997

(f) as applicable, the time within which tbe corrective action is to be taken and the time within which tbe administrative penalty is to be paid;

(g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and

(h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an oppertunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Adminimistrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county ~~where~~ *in which* the alleged violation occurred. This subsection does not apply until the departmient gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service hy mail is coniplete on the day of receipt. The notice must state:

(a) the provision allegedly violated;

(b) the facts tbat constituto the alleged violation;

(c) the specific nature of any corrective action *that* the departmient requires, estimated costs of compliance with tbe action, and where to receive help to correct the alleged violation; and

(d) a timetable that a reasonable person would consider appropriato for compliance with the alleged violations.

(4) The department shall publish a schedule of maxinium and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to *the* public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upen correction of the condition that caused the penalty assessmient, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any pertion of an administrative penalty assessed under this section, the department niay take action in district court to recover the penalty amount and any additional amounts assessed or sought under ~~Title 75, chapter 11, or~~ this chapter.

(6) Action under this section does not bar action under ~~Title 75, chapter 11, or~~ this cbapter, or any other romedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the state general fund."

**Section 30.** Section 75-10-423, MCA, is amended to read:

HeinOnline -- 1997 vol. I 589 1997

**"75-10-423. Administrative penalties for ~~underground storage tank~~ violations — appeals — venue for hearings.** (1) A person who violates any of the ~~underground storage tank~~ provisions of ~~this chapter~~ *[sections 1 through 15]* or any ~~underground storage tank~~ rules promulgated under the authority of ~~this chapter~~ *[sections 1 through 15]* may be assessed and ordered by the department to pay an administrative penalty not to exceed $500 ~~per~~ *for each* violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day *that* it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by ~~Title 75, chapter 11, or by~~ this chapter.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision alleged te be violated;

(b) the facts alleged to constitute the violation;

(c) the amount of tbe administrative penalty assessed under this section;

(d) the amount, if any, of the penalty te be suspended upon correction of the condition that caused the assessment of the penalty;

(e) the nature of any corrective action *that* the department requires, whether or not a portion of the penalty is to be suspended;

(f) as applicable, the time within which the corrective action is te be taken and the time within which the administrative penalty is to be paid;

(g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and

(h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section. If a hearing is held imder this section, it must be held in Lewis and Clark County or the county ~~where~~ *in which* the alleged violation occurred. This subsection does not apply until the department gives written notice, served porsonally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by niail is complete on the day of receipt. The notice must state:

(a) the provision allegedly violated;

(b) the facts that constitute the alleged violation;

HeinOnline -- 1997 vol. I 590 1997

(c) the specific nature of any corrective action *that* the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and

(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to *the* public health or the environment. In determining the appropriate amount of ponalty, if any, to he suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under ~~Title 75, chapter 11, or~~ this chapter.

(6) Action under this section does not bar action under ~~Title 75, chapter 11, or~~ this chapter~~,~~ or any other remedy available to the department for violations of underground storage tank laws or rules promulgatod under those laws.

(7) Administrative penalties collected under this section must be deposited in the state ~~general~~ *special revenue* fund *and be credited to the environmental rehabilitation and prevention account created pursuant to [section 1 or 2 of LC 823].*"

**Section 31.** Section 75-10-424, MCA, is amended to read:

"**75-10-424. Administrative penalty.** (1) The department may assess a person who violates a ~~used oil or hazardous waste~~ provision of this part, or a ~~used oil or hazardous waste~~ rule adopted under this part, an administrative penalty, not to exceed $10,000 ~~per~~ *for each* violation. Each day of violation constitutes a separate violation, hut the maximum penalty may not exceed $100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and oppertunity for a hearing before the hoard pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriato amount of an administrative penalty, the department shall consider:

(a) the gravity and the number of violations;

(b) the degree of care exercised by the alleged violator;

HeinOnline -- 1997 vol. I 591 1997

(c) whether significant harm resulted to *the* public health or the environment; and

(d) the degree of potential significant harm to *the* public health or the environment.

(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative ponalty as determined by the department, the department may seek to recover the amount in an appropriate district court.

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund."

**Section 32.** Section 75-11-203, MCA, is amended to read:

**"75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Closure" or "to close" means the process of proporly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitering systems. Installation also means installation, repair, or modification of a leak detection devico that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a catbodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

(5) "Installer" means an individual who installs or closes underground storage tank systems.

(6) "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground sterage tank systems and the installation of leak detection devices or cathodic protection systems.

(7) "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

HeinOnline -- 1997 vol. I 592 1997

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank system.

(9) "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in ~~75-10-403~~ *[section 3]*.

(12) "Underground storage tank" or "underground sterage tank system" means an underground storage tank, as defined in ~~75-10-403~~ *[section 3]*, and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system."

**Section 33.** Section 75-11-302, MCA, is amended to read:

**"75-11-302. Definitions.** Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operater, of petroleum or petroleum products from a storago tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum sterage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engeges in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

HeinOnline -- 1997 vol. I 593 1997

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distrihution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separatod by an interstitial space and that is capable of being monitered for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid te be stered in the system, and the system must be designed te prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means te transpert out of the state of Montana, by means other than in the fuel supply tank of a moter vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a moter vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum sterage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel seld te a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means te receive inte a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

HeinOnline -- 1997 vol. I 594 1997

(18) "Operator" means a person in control of or having respensibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means a person who holds title to, controls, or possesses an intorest in a petroleum storage tank.

(b) The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other relatod actions the holder of a security interest has taken pessession of the tank.

(20) "Person" means an individual, firm, trust, estato, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of stato or local government.

(21) "Petroleum" or "petroleum products" means crudo oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained potroleum or petroleum products and that is:

(a) an underground storago tank as defined in ~~75-10-403~~ *[section 3]*;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storago tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associatod with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excludod:

(i) the Natural Gas Pipoline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) stato law comparable to the provisions of law referred te in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastato.

(23) "Property damage" means:

(a) physical injury to tangible proporty, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of potroleum or petroleum products from a petroleum storage tank into ground wator, surfaco water, surface soils, or subsurface soils.

(25) "Spocial fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American potroleum institute) gravity test, except liquid petroleum gas. For the purposes

HeinOnline -- 1997 vol. I 595 1997

of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

**Section 34.** Section 75-11-309, MCA, is amended to read:

"**75-11-309. Procedures for reimbursement of eligible costs.** (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from the owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect *the* public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (~~where~~ *when* applicable), and federal corrective action requirements.

(c) (i) The department shall review the corrective action plan and forward a copy to a local government office and, ~~where~~ *when* applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operater. A plan finally approved by the department through any process provided in this subsection *(1)*(c) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(d) The department shall notify the owner or operator and the board of its approval of a corrective action plan.

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, ~~parts 4 and~~ *part* 7, *[sections 1 through 15]*, and other applicable law and rules.

(f) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board. The board shall forward each claim and appropriate documentation to the department. The department shall notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2).

HeinOnline -- 1997 vol. I 596 1997

The department shall inform the owner or operator of any notification given to the board.

(g) The owner or operator shall document, in tho manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed to have originated from a double-walled tank system, the owner or operator shall document, in tbe manner required by the board, the following:

(i) the date *that* the release was discovered;

(ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations.

(2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for hodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant te this section.

(3) If an owner or operater disagrees with a board determination under subsection (2), the owner or operator may submit a written request for a hearing before the board. The hearing must be held at a meeting of the hoard or as otherwise permitted under the Montana Administrative Procedure Act no lator than 120 days following receipt of the request or at a time mutually agreed te hy tbe board and the owner or operator.

(4) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(5) (a) The hoard may, at the request of an ownor or operater, guarantee in writing tbe reimbursement of eligible costs that have been approved by the hoard but for which money is not currently available from the fund for reimbursement.

HeinOnline -- 1997 vol. I 597 1997

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

**Section 35. Repealer.** Section 75-10-210, MCA, is repealed.

**Section 36. Codification instruction.** (1) [Sections 1 through 15] are intended to be codified as an integral part of Title 75, chapter 11, and the provisions of Title 75, chapter 11, apply to [sections 1 through 15].

(2) The code commissioner shall renumber 75-10-423 and 75-10-447 to Title 75, chapter 11.

**Section 37. Coordination instruction.** (1) If [LC 823] is passed and approved and if it creates an environmental rehabilitation and prevention account in the state special revenue fund, then [sections 12 and 29] are void.

(2) If [LC 823] is not passed and approved or if [LC 823] as passed and approved does not create an environmental rehabilitation and prevention account in the state special revenue fund, then [sections 13 and 30] are void.

**Section 38. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

(2) Rules adopted pursuant to 75-10-405 that are in effect on [the effective date of this act] continue in effect until amended or repealed pursuant to 75-10-405 or [section 5].

Approved March 20, 1997

# CHAPTER NO. 113

[HB 165]

AN ACT PROVIDING FOR REVISION OF CONTROLLED SUBSTANCES SCHEDULES; AUTHORIZING THE BOARD OF PHARMACY TO ADOPT RULES MORE OFTEN THAN ANNUALLY TO MAKE CHANGES TO STATUTORILY CONTROLLED SUBSTANCES SCHEDULES; REVISING STATUTORILY CONTROLLED SUBSTANCES SCHEDULES TO INCLUDE AMENDMENTS AND ADDITIONS TO THE SCHEDULES MADE BY THE FEDERAL FOOD AND DRUG ADMINISTRATION; AMENDING SECTIONS 50-32-209, 50-32-222, 50-32-224, 50-32-226, 50-32-229, AND 50-32-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-32-209, MCA, is amended to read:

HeinOnline -- 1997 vol. I 598 1997

**"50-32-209. ~~Annual republication~~ *Republication* of schedules.** The board shall revise and the department shall republish *additions, deletions, or other changes to* the schedules of dangerous drugs ~~annually~~ *at times determined by the board*. For the purposes of this section, the mandate to republish ~~may be~~ *additions, deletions, or other changes is* satisfied by publication in the Administrative Rules of Montana pursuant to Title 2, chapter 4."

**Section 2.** Section 50-32-222, MCA, is amended to read:

**"50-32-222. Specific dangerous drugs included in Schedule I.** Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following *are* opiates, including ~~its~~ isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of ~~such~~ *those* isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl;

(b) acetylmethadol;

(c) allylprodine;

(d) alphacetylmethadol, *except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM*;

(e) alphameprodine;

(f) alphamethadol;

(g) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

*(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide and;*

~~(h)~~*(i)* benzethidine;

~~(i)~~*(j)* betacetylmethadol;

~~(j)~~*(k)* beta-hydroxyfentanyl, *also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide*;

~~(k)~~*(l)* beta-hydroxy-3-methylfentanyl, *also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide*;

~~(l)~~*(m)* betameprodine;

~~(m)~~*(n)* betamethadol;

~~(n)~~*(o)* betaprodine;

~~(o)~~*(p)* clonitazene;

~~(p)~~*(q)* dextromoramide;

~~(q)~~*(r)* diampromide;

~~(r)~~*(s)* diethylthiambutene;

~~(s)~~*(t)* difenoxin;

~~(t)~~*(u)* dimenoxadol;

~~(u)~~*(v)* dimepheptanol;

~~(v)~~*(w)* dimethylthiambutene;

~~(w)~~*(x)* dioxaphetyl butyrate;

~~(x)~~*(y)* dipipanone;

~~(y)~~*(z)* ethylmethylthiambutene;

~~(z)~~*(aa)* etonitazene;

~~(aa)~~*(bb)* etoxeridine;

~~(bb)~~*(cc)* furethidine;

~~(cc)~~*(dd)* hydroxypethidine;

~~(dd)~~*(ee)* ketobemidone;

~~(ee)~~*(ff)* levomoramide;

~~(ff)~~*(gg)* levophenacylmorphan;

~~(gg)~~*(hh)* 3-methylfentanyl, *also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide*;

~~(hh)~~*(ii)* 3-methylthiofentanyl, *also known as N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide*;

~~(ii)~~*(jj)* morpheridine;

~~(jj)~~*(kk)* MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

~~(kk)~~*(ll)* noracymethadol;

~~(ll)~~*(mm)* norlevorphanol;

~~(mm)~~*(nn)* normethadone;

~~(nn)~~*(oo)* norpipanone;

~~(oo)~~*(pp)* para-fluorofentanyl, *also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide*;

~~(pp)~~*(qq)* PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

~~(qq)~~*(rr)* phenadoxone;

~~(rr)~~*(ss)* phenampromide;

~~(ss)~~*(tt)* phenomorphan;

~~(tt)~~*(uu)* phenoperidine;

~~(uu)~~*(vv)* piritramide;

~~(vv)~~*(ww)* proheptazine;

~~(ww)~~*(xx)* properidine;

~~(xx)~~*(yy)* propiram;

~~(yy)~~*(zz)* racemoramide;

~~(zz)~~*(aaa)* thiofentanyl, *also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide*;

~~(aaa)~~*(bbb)* tilidine; and

~~(bbb)~~*(ccc)* trimeperidine.

*(2) For the purposes of subsection (1)(hh), the term "isomer" includes the optical, position, and geometric isomers.*

~~(2)~~*(3)* Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following *are* opium derivatives, ~~its~~ *including* salts, isomers, and salts of isomers whenever the existence of ~~such~~ *those* salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine;

(b) acetyldihydrocodeine;

(c) benzylmorphine;

(d) codeine methylbromide;

(e) codeine-n-oxide;

(f) cyprenorphine;

(g) desomorphine;

(h) dihydromorphine;

(i) drotebanol;

(j) etorphine, *except hydrochloride salt*;

(k) heroin;

(l) hydromorphinol;

(m) methyldesorphine;

(n) methyldihydromorphine;

(o) morphine methylbromide;

(p) morphine methylsulfonate;

(q) morphine-n-oxide;

(r) myrophine;

(s) nicocodeine;

(t) nicomorphine;

(u) normorphine;

(v) pholcodine; and

(w) thebacon.

~~(3)~~*(4)* Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following *is a* hallucinogenic ~~substances or any of its~~ *substance, including* salts, isomers, and salts of isomers whenever the existence of ~~such~~ *those* salts, isomers, and salts of isomers is possible within the specific chemical designation:

~~(a) 3,4 methylenedioxy amphetamine;~~

~~(b) 3,4 methylenedioxymethamphetamine (MDMA);~~

~~(c) 5 methoxy 3,4 methylenedioxy amphetamine;~~

~~(d) 3,4,5 trimethoxy amphetamine;~~

~~(e) bufotenine;~~

~~(f) doet (2,5 dimethoxy 4 ethalamphetamine);~~

~~(g) diethyltryptamine;~~

~~(h) dimethyltryptamine;~~

~~(i) 4 methyl 2,5 dimethoxy amphetamine;~~

~~(j) ibogaine;~~

~~(k) lysergic acid diethylamide;~~

~~(l) marijuana;~~

~~(m) mescaline;~~

~~(n) parahexyl;~~

~~(o) peyote;~~

~~(p) PCE (N ethyl 1 phenylcyclohexylamine);~~

~~(q) PHP 1 (1 phenylcyclohexyl)pyrrolidine (pcp analog);~~

~~(r) n ethyl 3 piperidyl benzilate;~~

~~(s) n methyl 3 piperidyl benzilate;~~

~~(t) psilocybin;~~

~~(u) psilocin;~~

~~(v) tetrahydrocannabinols;~~

~~(w) 2,5-dimethoxyamphetamine;~~

~~(x) 4-bromo-2,5-dimethoxy-amphetamine;~~

~~(y) 4-methoxyamphetamine;~~

~~(z) ethylamine analog of phencyclidine;~~

~~(aa) pyrrolidine analog of phencyclidine; and~~

~~(bb) thiophene analog of phencyclidine.~~

*(a) alpha-ethyltryptamine. Trade or other names include etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.*

*(b) 4-bromo-2,5-dimethoxy-amphetamine. Trade or other names include 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine and 4-bromo-2,5-DMA.*

*(c) 4-bromo-2,5-dimethoxyphenethylaminc. Trade or other names include 2-(4-bromo-2, 5-dimethoxyphenyl)-1-aminoethane, alpha-desmethylDOB, and 2C-B,Nexus.*

*(d) 2,5-dimethoxyamphetamine. Trade or other names include 2,5-dimethoxy-alpha-methylphenothylamine and 2,5-DMA.*

*(e) 3,4-methylenedioxy amphetamine;*

*(f) 2,5-dimethoxy-4-ethylamphetamine. A trade or other name is DOET.*

*(g) 4-methoxyamphetamine. A trade or other name is 4-methoxy-alpha-methylphenethylamine.*

*(h) 5-methoxy-3,4-methylenedioxy amphetamine;*

*(i) 4-methyl-2,5-dimethoxy-amphetamine. Trade or other names include 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine, DOM, and STP.*

*(j) 3,4-methylenedioxy amphetamine;*

*(k) 3,4-methylenedioxymethamphetamine (MDMA);*

*(l) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;*

*(m) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine and N-hydroxy MDA;*

*(n) 3,4,5-trimethoxy amphetamine;*

*(o) bufotenine. Trade and other names include 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine.*

HeinOnline -- 1997 vol. I 603 1997

*(p) diethyltryptamine. Trade and other names include N,N-diethyltryptamine and DET.*

*(q) dimethyltryptamine. A trade or other name is DMT.*

*(r) ibogaine. Trade or other names include 7-ethyl-6,6beta,7,8,9,10,12, 13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga.*

*(s) lysergic acid diethylamide;*

*(t) marijuana;*

*(u) mescaline;*

*(v) parahexyl. Trade or other names include 3-hexyl-1-hydroxy-7,8,9, 10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl.*

*(w) peyote, meaning all parts of the plant presently classified botanically as lophophora williamsii lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salts, derivatives, mixture, or preparation of the plant, its seed, or extracts;*

*(x) n-ethyl-3-piperidyl benzilate;*

*(y) n-methyl-3-piperidyl benzilate;*

*(z) psilocybin;*

*(aa) psilocyn;*

*(bb) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections (4)(bb)(i) through (4)(bb)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:*

*(i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;*

*(ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and*

*(iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;*

*(cc) ethylamine analog of phencyclidine. Trade or others names include N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE.*

*(dd) pyrrolidine analog of phencyclidine. Trade or other names include 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP.*

*(ee) thiophene analog of phencyclidine. Trade or other names include 1-[1-(2-thienyl)-cyclohexyl]-piperidinc, 2-thienylanalog of phencyclidine, TPCP, and TCP.*

*(ff) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. A trade or other name is TCPy.*

HeinOnline -- 1997 vol. I 604 1997

*(5) For the purposes of subsection (4), the term "isomer" includes the optical, position, and geometric isomers.*

~~(4)~~*(6)* Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following ~~substance~~ *substances is a depressant* having a depressant effect on the central nervous system, including ~~its~~ salts, isomers, and salts of isomers whenever the existence of ~~such~~ *those* salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) mecloqualone; and

(b) methaqualone.

~~(5)~~*(7)* Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances *is a stimulant* having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

~~(a) fenethylline; and~~

~~(b) n-ethylamphetamine.~~

*(a) aminorex. Trade or other names include aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine.*

*(b) cathinone. Trade or other names include 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.*

*(c) fenethylline;*

*(d) methcathinone. Trade or other names include 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers.*

*(e) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine;*

*(f) N-ethylamphetamine;*

*(g) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethamine and N,N-alpha-trimethylphenethylamine.*

*(8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:*

*(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and*

*(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers).*

HeinOnline -- 1997 vol. I 605 1997

~~(6) For purposes of subsection (3) only, the term "isomer" includes the optical, position, and geometric isomers.~~

~~(7)~~*(9)* If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection ~~(3)~~ *(4)* ~~shall~~ *must* automatically be rescheduled from Schedule I to Schedule II."

**Section 3.** Section 50-32-224, MCA, is amended to read:

**"50-32-224. Specific dangerous drugs included in Schedule II.** Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, *are included in this category*:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, *thebaine-derived butorphanol,* dextrorphan, nalbuphine, *nalmefene,* naloxone, and naltrexone and their respective salts, but including the following:

(i) raw opium;

(ii) opium extracts;

(iii) opium fluid ~~extracts~~;

(iv) powdered opium;

(v) granulated opium;

(vi) tincture of opium;

(vii) codeine;

(viii) ethylmorphine;

(ix) etorphine hydrochloride;

(x) hydrocodone;

(xi) hydromorphone;

(xii) metopon;

(xiii) morphine;

(xiv) oxycodone;

(xv) oxymorphone; and

(xvi) thebaine;

(b) any salt, compound, derivative, or preparation ~~thereof~~ *of them* that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a) ~~of this section~~, except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, *including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives*, and any salt, compound, derivative, or preparation ~~thereof~~ *of them* that is chemically oquivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) Opiates. Unless spocifically excepted or listed in another schedule, any of the following *are* opiates, including ~~its~~ isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of ~~such~~ *those* isomers, esters, ethers, and salts is possible within the spocific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) alfentanil;

(b) alphaprodine;

(c) anileridine;

(d) bezitramide;

*(e) bulk dextropropoxyphene (nondosage forms);*

*(f) carfentanil;*

~~(e)~~*(g)* dihydrocodeine;

~~(f)~~*(h)* diphenoxylate;

~~(g)~~*(i)* fentanyl;

~~(h)~~*(j)* isomethadone;

*(k) levo-alphacetylmethadol. Other names include levo-alpha-acetylmethadol, levomsthadyl acetate, and LAAM.*

~~(i)~~*(l)* levomethorphan;

~~(j)~~*(m)* levorphanol;

~~(k)~~*(n)* metazocine;

~~(l)~~*(o)* methadone;

~~(m)~~*(p)* methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

~~(n)~~*(q)* moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;

~~(o)~~*(r)* pethidine ~~(meperidine)~~, *also known as meperidine*;

~~(p)~~*(s)* pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

~~(q)~~*(t)* pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

~~(r)~~*(u)* pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

~~(s)~~*(v)* phenazocine;

~~(t)~~*(w)* piminodine;

~~(u)~~*(x)* racemethorphan;

~~(v)~~*(y)* racemorphan; *and*

~~(w)~~*(z)* sufentanil~~; and~~

~~(x) bulk dextropropoxyphene (nondosage forms)~~.

(3) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances *is a stimulant* having a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) methamphetamine, its salts, isomers, and salts of its isomers; and

(d) methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances *is a depressant* having a depressant effect on the central nervous system, including ~~its~~ salts, isomers, and salts of isomers whenever the existence of ~~such~~ *those* salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) amobarbital;

*(b) glutethimide;*

~~(b)~~*(c)* pentobarbital;

~~(c)~~*(d)* phencyclidine; and

~~(d)~~*(e)* secobarbital.

(5) ~~Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:~~

~~(a) immediate precursor to amphetamine and methamphetamine:~~

~~(i) phenylacetone;~~

~~(b) immediate precursors to phencyclidine (PCP):~~

~~(i) 1-phenylcyclohexylamine; and~~

~~(ii) 1-piperidinocyclohexanecarbonitrile (PCC).~~

~~(6)~~ Hallucinogenic substances *include the following*:

(a) dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration-approved drug product~~; and~~. *Other names for dronabinol include (6aR-trans)-6a,7,8,10a-tetrahydro-6,6, 9-trimcthyl-3-pentyl-6H-dibenzo [b, d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.*

(b) nabilone. *Another name for nabilone is (levo-dextro)-trans-3-(1, 1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-diben zo[b, d] pyran-9-one.*

*(6) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is an immediate precursor:*

*(a) phenylacetone, an immediate precursor to amphetamine and methamphetamine. Trade or other names for phenylacetone include phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone.*

*(b) 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC), immediate precursors to phencyclidine (PCP)."*

**Section 4.** Section 50-32-226, MCA, is amended to read:

**"50-32-226. Specific dangerous drugs included in Schedule III.** Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances *is a stimulant* having a stimulant effect on the central nervous system, including ~~its~~ salts, isomers (whether optical, position, or geometric), and salts of ~~such~~ isomers whenever the existence of ~~such~~ *those* salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;

(b) chlorphentermine;

(c) clortermine; and

(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compeund, mixture, or preparation that contains any quantity of the following substances *is a depressant* having a depressant effect on the central nervous system:

~~(a) any substance that contains any quantity of a derivative of barbituric acid or any salt thereof;~~

~~(b) chlorhexadol;~~

~~(c) glutethimide;~~

*(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;*

*(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository;*

*(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;*

*(d) chlorhexadol;*

~~(d)~~*(e)* lysergic acid;

~~(e)~~*(f)* lysergic acid amide;

~~(f)~~*(g)* methyprylon;

~~(g)~~*(h)* sulfondiethylmethane;

~~(h)~~*(i)* sulfonethylmethane;

~~(i)~~*(j)* sulfonmethane; *and*

~~(j)~~*(k)* tiletamine and zolazepam or any of their salts~~;~~. *A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon.*

~~(k) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule; and~~

~~(l) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository.~~

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following *is a* narcotic ~~drugs or~~ *drug, including* its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone *(hydrocodone)* per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone *(hydrocodone)* per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Anabolic steroids. ~~Any~~ *The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any* material, compound, mixture, or preparation containing ~~an anabolic steroid, including but not limited to the following:~~ *any quantity of the following substances is an anabolic steriod, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:*

(a) ~~androisoxazole;~~

~~(b) androstendiol;~~

~~(c) bolandiol;~~

~~(d) bolasterone;~~

~~(e)~~ boldenone;

~~(f) chlormethandienone;~~

*(b) chlorotestosterone, also known as 4-chlortestosterone;*

~~(g)~~*(c)* clostebol;

*(d) dihydrochlormethyltestosterone;*

*(e) dihydrotestosterone, also known as 4-dihydrotestosterone;*

*(f) drostanolone;*

~~(h) dihydromesterone;~~

~~(i)~~*(g)* ethylestrenol;

~~(j)~~*(h)* fluoxymesterone;

*(i) formebulone, also known as formebolone;*

~~(k) formyldienolone;~~

~~(l) 4 hydroxy 19 nortestosterone;~~

~~(m)~~*(j)* mesterolone;

*(k) methandienone;*

*(l) methandranone;*

~~(n)~~*(m)* methandriol;

~~(o)~~*(n)* methandrostenolone;

~~(p)~~*(o)* methenolone;

~~(q) 17 methyltestosterone~~

*(p) methyltestosterone;*

~~(r) methyltrienolone;~~

*(q) mibolerone;*

~~(s)~~*(r)* nandrolone;

~~(t) norbolethone;~~

~~(n)~~*(s)* norethandrolone;

~~(v) normethandrolone;~~

~~(w)~~*(t)* oxandrolone;

~~(x)~~*(u)* oxymestrone;

~~(y)~~*(v)* oxymetholone;

~~(z) quinbolone;~~

~~(aa)~~*(w)* stanolone;

~~(bb)~~*(x)* stanozolol;

~~(cc) stenbolone;~~

*(y) testolactone;*

~~(dd)~~*(z)* testesterone; or

~~(ee)~~*(aa)* trenbolone."

**Section 5.** Section 50-32-229, MCA, is amended to read:

**"50-32-229. Specific dangerous drugs included in Schedule IV.** Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following *is a* narcotic ~~drugs or~~ *drug, including* its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(b) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances *is a depressant*, including ~~its~~ salts, isomers, and salts of isomers whenever the existence of ~~such~~ *those* salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;

(b) barbital;

(c) bromazepam;

(d) camazepam;

(e) chloral betaine;

(f) chleral hydrate;

(g) chlordiazepoxide;

(h) clobazam;

(i) clonazepam;

(j) clorazepate;

(k) clotiazepam;

(l) cloxazolam;

(m) delorazepam;

(n) diazepam;

(o) estazolam;

(p) ethchlorvynol;

(q) ethinamate;

(r) ethyl loflazepate;

(s) fludiazepam;

(t) flunitrazepam;

(u) flurazepam;

(v) halazepam;

(w) haloxazolam;

(x) ketazolam;

(y) loprazolam;

(z) lorazepam;

(aa) lormetazepam;

(bh) mebutamate;

(cc) medazepam;

(dd) meprobamate;

(ee) methohexital;

(ff) methylphenobarbital ~~(mephobarbital)~~, *also known as mephobarbital*;

(gg) midazolam;

(hh) nimetazepam;

(ii) nitrazepam;

(jj) nordiazepam;

(kk) oxazepam;

(ll) oxazolam;

(mm) paraldehyde;

(nn) petrichloral;

(oo) phenobarbital;

(pp) pinazepam;

(qq) prazepam;

(rr) quazepam;

(ss) temazepam;

(tt) tetrazepam; ~~and~~

(uu) triazolam*; and*

*(vv) zolpidem.*

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of ~~th.e following substance~~ *fenfluramine*, including its salts, isomers (whether optical, position, or geometric), and salts of ~~such~~ isomers whenever the existence of ~~such~~ *those* salts, isomers, and salts of isomers is possible~~:~~.

~~(a) fenfluramine.~~

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances *is a stimulant* having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) cathine;

(b) diethylpropion;

(c) fencamfamin;

(d) fenproporex;

(e) mazindol;

(f) mefenorex;

(g) pemoline, including organometallic complexes and chelates thereof;

(h) phenterinine;

(i) pipradrol; and

(j) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Other substances. Uuless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts:

(a) pentazocine."

**Section 6.** Section 50-32-232, MCA, is amended to read:

"**50-32-232. Specific dangerous drugs included in Schedule V.** Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or hrand name designated, listed in this section.

*(1) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine and its salts is included in this category.*

~~(1)~~*(2)* Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following *is a* narcotic ~~drugs or~~ *drug, including* its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections ~~(1)(a)~~ *(2)(a)* through ~~(1)(f)~~ *(2)(f)*, which include one or more nonnarcotic, active medicinal ingredients

in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

~~(2) Buprenorphine.~~

(3) ~~Propylhexedrine~~ *Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers*

~~(4) Pyrovalerone~~."

**Section 7. Exempt anabolic steroid products.** The following anabolic steroid-containing compounds, mixtures, or preparations are exempt from this chapter:

(1)androgyn L.A.;

(2)andro-estro 90-4;

(3)depandrogyn;

(4)DEPO-T.E.;

(5)deptestrogen;

(6)duomone;

(7)duratestrin;

(8)duo-span II;

(9)estratest;

(10)estratest HS;

(11)pan estra test;

(12)premarin with methyltestosterone;

(13)synovex H pellets in process;

(14)synovex H pellets in process granulation;

(15)test-estro cypionates;

(16)testagen;

(17)testosterone cyp 50 estradiol cyp 2;

(18)testosterone, cypionate-estradiol, cypionate injection;

(19)testosterone, enanthate-estradiol, valerate injection; and

(20)tilapia sex reversal feed (investigational).

**Section 8. Codification instruction.** [Section 7] is intended to he codified as an integral part of Title 50, chapter 32, part 2, and the provisions of Title 50, chapter 32, part 2, apply to [section 7].

**Section 9. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 10. Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1997

# CHAPTER NO. 114

[HB 205]

AN ACT ADDING HEALTH SERVICES AND HEALTH DEPARTMENT FUNCTIONS TO THE SERVICES A MULTIJURISDICTIONAL SERVICE DISTRICT MAY PROVIDE; AND AMENDING SECTION 7-11-1102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-11-1102, MCA, is amended to read:

**"7-11-1102. Services that may be provided.** (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 16, part 24;

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails;

(e) dog control programs;

HeinOnline -- 1997 vol. I 617 1997

(f) ambulance service; ~~and~~

(g) dispatch service; *and*

*(h) health services and health department functions.*"

Approved March 20, 1997

# CHAPTER NO. 115

[HB 214]

AN ACT REVISING THE FUNDING AND COST REIMBURSEMENT PROVISIONS OF THE PETROLEUM TANK RELEASE COMPENSATION LAWS; CLARIFYING AND IMPOSING LIMITATIONS ON COST REIMBURSEMENT; AUTHORIZING LOANS BY THE BOARD OF INVESTMENTS TO THE PETROLEUM TANK RELEASE COMPENSATION BOARD; PLEDGING THE PETROLEUM STORAGE TANK CLEANUP FEES FOR LOAN REPAYMENT; AMENDING SECTIONS 75-11-307, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Loans to petroleum tank release compensation board.** (1) The board of investments may loan funds to the petroleum tank release compensation board to cover temporary cash shortfalls. The total of all loans may not exceed the greater of $15 million or 80% of the fees that the office of budget and program planning projects will be collected under 75-11-314 during the next 3 fiscal years. A loan must be amortized, based on projected fee revenue, over a period of not more than 10 years.

(2) The board shall establish the interest rate on the loan, considering the security and the term of the loan.

**Section 2.** Section 75-11-307, MCA, is amended to read:

"**75-11-307. Reimbursement for expenses caused by a release.** (1) Subject to the availability of money from the fund under subsection (5), an owner or oporator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs *as required by a department-approved corrective action plan except if the corrective action plan addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank*; and

(b) compensation paid to third parties for bodily injury or property damage. *The board may not reimburse for property damage until the corrective action is completed.*

(2) An owner or eperator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other gevernment entities involving judicial or adıninistrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, the operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of otber ınaterials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement froın the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing beating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100 gallons or less that is used for stering moter fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4); and

(h) expenses for work completed by or on behalf of the owner or operater more than 2 years prior to the owner's or operator's request for reimbursement. This limitation does not apply te claims for compensation paid to third parties for bodily injury or property damago.

(3) An owner or operator may designate a person as an agent to receive the reimbursement~~, provided that~~ *if* the owner or operator remains legally respensible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund tbat are discovered and reperted on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it ls stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum tetal reimbursement of $495,000:

(A) for single-walled tank system releases; and

HeinOnline -- 1997 vol. I 619 1997

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or oporator for:

(i) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

**Section 3.** Section 75-11-313, MCA, is amended to read:

**"75-11-313. Petroleum tank release cleanup fund.** (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature; ~~and~~

*(d) money loaned to the board by the board of investments; and*

~~(d)~~*(e)* all interest earned on money in the fund.

(3) The fund may be used only:

(a) to administor this part, including payment of board and department expenses associated with administration;

(b) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

(c) for repayment of any advance made under subsection (4) *and any loan made pursuant to [section 1]*, plus interest earned on the advance *or loan*.

(4) (a) The legislature may appropriato to tlie fund repayable advances as necessary to carry out the purposes of this part. Tlie outstanding total of repayable advances may not exceed the amount *that* the board estimates will be received by the fund from tlie petroleum storage tank cleanup fee during the next 24 months.

(b) Advances to the fund must be repaid, and interest earned on advances must be paid to tlie general fund when determined appropriate by tlie board. However, all advances to the fund plus tlie interest earned must be repaid ~~on or before December 31, 1995~~ *by the board within 24 monthe of receipt of the advance*.

*(5) Whenever the board accepts a loan from the board of investments pursuant to [section 1], the receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year."*

**Section 4.** Section 75-11-318, MCA, is amended to read:

**"75-11-318. Powers and duties of board.** (1) The board shall admimster tlie petroleum tank release cleanup fund in accerdance witli the provisions of this part, including the payment of reimbursement to owners and operaters.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), sliall obligato money from the fund for approved costs, and shall act on requests for the guarantee of payments through tlie procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, liold hearings, undertake legal action, and conduct other business as may be necessary to admimster its respensibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board may hire staff, and the department sliall provide staff suppert to the board as the department determines it is able. The board shall use the fund to pay its staff expenses, to pay for department staff ~~utilized~~ *used* for the review or preparation of corrective action plans and for the oversight of corrective action undertaken by owners and operators for the purposes of this part, and to pay for department of transportation staff ~~utilized~~ *used* for tlie collection of tbe petroleum storage tank cleanup fee.

(5) Tlie board shall adopt rules to admimster this part, including:

(a) rules governing submission of claims by owners or operaters to the department and board;

HeinOnline -- 1997 vol. I 621 1997

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part; and

(e) other rules necessary for the administration of this part.

*(6) The board may apply for, accept, and repay loans from the board of investments pursuant to [section 1]."*

**Section 5. Nonimpairment by state.** In accordance with the constitutions of the United States and the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement between the board and the board of investments by repealing the petroleum storage tank cleanup fee imposed by 75-11-314 or by reducing it below the amount necessary to make annual loan payments.

**Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 17, chapter 6, part 2, and the provisions of Title 17, chapter 6, part 2, apply to [section 1].

(2) [Section 5] is intended to be codified as an integral part of Title 75, chapter 11, part 3, and the provisions of Title 75, chapter 11, part 3, apply to [section 5].

**Section 7. Effective date.** [This act] is effective July 1, 1997.

Approved March 20, 1997

# CHAPTER NO. 116

[HB 225]

AN ACT ALLOWING THE INSTALLATION OF ABOVEGROUND STORAGE TANKS IN SMALL COMMUNITIES; AMENDING SECTION 50-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-3-103, MCA, is amended to read:

**"50-3-103. Rules promulgated by department.** (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. They must include but are not limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire extinguishers, fire alarm systems, and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture

HeinOnline -- 1997 vol. I 622 1997

film; combustible fibers; hazardous chemicals or materials; rubbish; open-flame devices; parking of vehicles; dust explosions; lightning protection; storage of smokeless pewder and small arms primers; and otber special fire hazards.

(2) If rules relato to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of commerce and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

*(5) Rules promulgated by the department may not prevent the installation of an aboveground storage tank in a community, city, or town with a population of 1,500 or less if the tank is installed in conformance with all other applicable laws and regulations.*

~~(5)~~*(6)* A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

**Section 2. Effcctive date.** [This act] is effective on passage and approval.

Approved March 20, 1997

# CHAPTER NO. 117

[HB 262]

AN ACT GENERALLY REVISING STATE BANKING LAW PERTAINING TO BRANCH BANKS; TRANSFERRING CERTAIN POWERS AND DUTIES FROM THE STATE BANKING BOARD TO THE DEPARTMENT OF COMMERCE; REQUIRING THE STATE BANKING BOARD TO CONDUCT A HEARING AT THE REQUEST OF PERSONS PROTESTING CERTAIN TRANSACTIONS PERTAINING TO BRANCH BANKS AND BANKS; MODIFYING THE PAYMENT OF ADMINISTRATIVE FEES BY BANKS, INVESTMENT COMPANIES, AND TRUST COMPANIES; ELIMINATING TRUST COMPANY EXAMINATION FEES; REVISING CONSOLIDATION OR MERGER PROVISIONS RELATING TO BANKS; REVISING PROVISIONS PERTAINING TO ACQUISITION OF FINANCIAL INSTITUTIONS BY A BANK HOLDING COMPANY NOT LOCATED IN THIS STATE; PROHIBITING INTERSTATE MERGER TRANSACTIONS UNTIL OCTOBER 1, 2001; AMENDING SECTIONS 32-1-104, 32-1-109, 32-1-202, 32-1-203, 32-1-204, 32-1-213, 32-1-218, 32-1-362, 32-1-371, 32-1-372, 32-1-376, 32-1-377, 32-1-383, 32-1-384, AND 32-1-423, MCA; REPEALING SECTIONS 32-6-304, 32-6-401, AND 32-6-402, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-1-104, MCA, is amended to read:

**"32-1-104. Number of persons necessary to form corporation.** Corporations may be formed by any number of natural persons ~~not less than~~

~~three~~ *or by a corporation or other entity authorized to own or control banks and organized* under the laws of this state to conduct, as provided in this chapter, ~~and not otherwise, any one or more or all of~~ the businesses mentioned in 32-1-102."

**Section 2.** Section 32-1-109, MCA, is amended to read:

**"32-1-109. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

*(1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).*

~~(1)~~*(2)* "Bank holding company" means a bank holding company registered under the federal Bank Holding Company Act of 1956, as amended.

~~(2)~~*(3)* "Board" means the state banking board provided for in 2-15-1803.

~~(2)~~*(4)* "Branch bank" means:

*(a)* a banking house, other than the main banking house, maintained and operated by a bank doing business in the state *and at which deposits are received, checks are paid, or money is lent,* but does not include ~~a detached facility, as provided for in 32-1-372, or~~ a satellite terminal, as defined in 32-6-103, *or the office of an affiliated depository institution acting as an agent; and*

*(b) in the case of a trust company, any office at which trust services are provided.*

~~(4)~~*(5)* "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

~~(5) "City" means a city, town, or municipality, incorporated or unincorporated, that is an aggregation of inhabitants and structures sufficient to constitute a distinct place.~~

~~(6) "City limits" means, in the case of:~~

~~(a) an incorporated city, the corporate limits as provided for in 7-2-4101; or~~

~~(b) an unincorporated place, the boundaries that under the circumstances define the city as a distinct place.~~

~~(7) "Common ownership" means the ownership, directly or indirectly, of 80% or more of the voting stock of each of two or more banks by an individual, group of individuals, entity, or corporation.~~

~~(8) "Community advisory board" means a group of citizens to advise the management of a branch bank, a majority of whom must be residents of the county in which the branch bank is located.~~

~~(2)~~*(6)* "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

~~(10)~~*(7)* "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

~~(11)~~*(8)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

*(9) "Depository institution" means a bank or savings association organized under the laws of a state or the United States.*

~~(12)~~*(10)* "Division" means the division of banking and financial institutions of the department.

*(11) "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.*

~~(13)~~*(12)* "Main banking house" means the *designated* principal place of business of a bank in the state.

~~(14)~~*(13)* "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any ~~one~~ *1* year.

~~(15)~~*(14)* "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

~~(15)~~*(15)* "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

*(16) "Savings association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.*

*(17) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.*

~~(17)~~*(18)* "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits ~~which~~ *that*, when set apart and designated as ~~such~~ *surplus*, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as ~~such~~ *the* bank has undivided profits.

~~(15)~~*(19)* "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

~~(19)~~*(20)* "Undivided profits" means the credit balance of the profit and loss account of a bank."

**Section 3.** Section 32-1-202, MCA, is amended to read:

**"32-1-202. Powers and duties of board.** The board shall:

(1) make final determinations upon applications for certificates of authorization for new banks~~, branch banks, sales of branch banks, mergers, consolidations, and relocations of banks and branch banks~~;

HeinOnline -- 1997 vol. I 625 1997

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the department as the duties and powers relate to banking;

*(3) upon request of an applicant or the department, review a decision of the department on an application for the formation or closure of branch banks, sales of branch banks, or the consolidation, merger, or relocation of banks and branch banks; and*

*(4) conduct hearings as provided in 32-1-204.*"

**Section 4.** Section 32-1-203, MCA, is amended to read:

"**32-1-203. Rules adopted by board — new banks.** The board ~~shall~~ *may* adopt rules necessary for the administration of 32-1-201 through 32-1-206~~, 32-1-371, and 32-1-372~~ in accordance with the Montana Administrative Procedure Act. In particular, the board shall adopt rules concerning the authorization of new banks organized under the laws of this state~~, establishment of new branches of banks organized under the laws of this state, and approval of the consolidation or merger of banks organized under the laws of this state~~. Rules ~~shall~~ *must* contain minimum standards under which an application for a new bank ~~or for establishment of a branch bank shall~~ *must* be determined, including the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank ~~or branch bank~~ at the proposed location;

(2) that the bank ~~or branch bank~~ will be owned and managed by persons of good moral character and financial integrity and will be safely and soundly operated;

(3) a persuasive showing that the new bank ~~or branch bank~~ will have a sufficient volume of business to ~~assure~~ *ensure* solvency and that establishment of the new bank organized under the laws of this state ~~or the establishment of a branch bank organized under the laws of this state~~ will be in the public interest."

**Section 5.** Section 32-1-204, MCA, is amended to read:

"**32-1-204. Hearings — notice.** (1) *(a)* A hearing must be conducted upon all applications for new bank certificates of authorization, in accordance with the Montana Administrative Procedure Act relating to a contested case, whether or not any protest to the application is filed.

~~(2)~~*(b)* A notice of the filing of an application for a new bank certificate of authorization must be mailed to all banks within 100 miles of the proposed location, measured in a straight line.

~~(3)~~*(c)* A hearing ~~must~~ *may not* be conducted ~~no~~ sooner than 30 days ~~and not~~ *or* later than 90 days following the mailing of the notice.

~~(4)~~*(d)* A bank filing a written protest with the board prior to the date of the hearing must be admitted as a "party", as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of subpoena of witnesses and written materials, the right of cross-examination, the right to have a transcript, the right to receive all notices, a copy of the application, and all orders, and the right of judicial review and appeal.

HeinOnline -- 1997 vol. I 626 1997

~~(5) All applications for mergers, consolidations, sales of branch banks, or relocations of banks or branch banks also require a hearing, and all of the rights and procedures in subsection (4) apply to these matters.~~

~~(6)~~*(e)* Notwithstanding the requirements of subsections (1)*(a)* through ~~(5)~~ *(1)(d)*, when the deposit liability of any closed bank is to be transferred to or assumed by a state bank being organized for that purpose, the board may issue a certificate of authorization without notice or hearing, according to rules adopted by the board.

*(2) (a) A hearing must be conducted by the board upon the request of a person timely protesting an application for the formation, relocation, closure, or sale of a branch bank or for the consolidation, merger, or relocation of a bank if the application is approved by the department and if the board determines that there is a substantial basis for the protest. A person requesting a hearing under this subsection (2)(a) is entitled to judicial review of a denial of a hearing by the board.*

*(b) If a hearing is required under this subsection (2), the hearing may not be held sooner than 30 days or later than 90 days following the filing of the request for a hearing by the protesting party. A protesting party must be admitted as a party, as defined in the Montana Administrative Procedure Act, with full rights of a party, including the right of judicial review and appeal."*

**Section 6.** Section 32-1-213, MCA, is amended to read:

**"32-1-213. Payments to be made by banks, investment companies, and trust companies.** ~~(1) On or before January 31 and July 31 of each year, each~~ *Each* bank, trust company, or investment company under the supervision of the department shall pay to the department ~~a semiannual assessment fee. The~~ fees ~~shall be~~ set *by the department by rule* to recover all of the costs of administering the program for the supervision of banks, trust companies, and investment companies. The department ~~shall establish such assessment fee by rule~~ *may amend the rule setting the fees* on or before June 1 *and December 1* of each year. The funds ~~so~~ collected ~~shall~~ *must* be deposited in the state special revenue fund for the use of the department in its examination function.

~~(2) In addition to the above assessment, trust companies shall pay to the department an examination fee of $200 per day for each examiner involved in examining the trust assets under the control, safekeeping, or fiduciary responsibility of the trust company. Such fees shall be deposited by the department in the state special revenue fund for the use of the department in its examination function.~~"

**Section 7.** Section 32-1-218, MCA, is amended to read:

**"32-1-218. Department to make rules.** (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of banks and trust companies and prescribe the form in which banks and trust companies ~~shall~~ report their assets, liabilities, and reserves.

HeinOnline -- 1997 vol. I 627 1997

*(3) The department may promulgate reasonable rules concerning applications for and determinations on applications for the formation, relocation, closure, and sale of branch banks and applications for the formation, consolidation, and merger of shell banks.*

~~(3)~~*(4)* The department may adopt rules, issue orders and declaratory statements, disseminate information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter."

**Section 8.** Section 32-1-362, MCA, is amended to read:

**"32-1-362. National bank powers extended to state banks.** (1) ~~With the consent of the department, every~~ *A* bank organized under the laws of the state ~~shall have power to and~~ may engage in any activity or business in which ~~such~~ *the* bank could engage if it were operating as a national bank~~.~~ *if the power or activity is not expressly prohibited or limited by the laws of this state and:* ~~The department may prescribe, amend, and repeal regulations affecting and controlling the exercise of the powers granted by this section, provided that, subject to subsection (2), such regulations and powers shall not apply to activities which are expressly prohibited or limited by the statutes of the state.~~

*(a) if the power or activity is clearly authorized to national banks by federal statute or by regulations adopted by a federal banking regulator having jurisdiction over national banks; and*

*(b) upon application to and approval by the department.*

(2) ~~If the United States congress allows national banks to establish branches without regard to state prohibitions, a bank organized under the laws of Montana may, with the consent of the department, establish a branch under the same conditions allowed national banks, despite the restrictions imposed by 32-1-372~~ *The department may adopt rules to govern the application procedure under this section. The department shall act upon an application under this section within 15 days of receipt of the application. The department may, for good cause, extend the time period for processing an application under this section for an additional 15 days."*

**Section 9.** Section 32-1-371, MCA, is amended to read:

**"32-1-371. Consolidation or merger of banks.** (1) *(a)* ~~The words "bank" or "banks" as used in 32-1-372 and this section include commercial banks, savings banks, trust companies, investment companies, and other corporations carrying on the business of banking, of a trust company, or of an investment company under the laws of this state or~~ *Any two or more banks* doing business in this state ~~under the national banking laws of the United States.~~

~~(2) (a) Any two or more banks doing business in this state and under common ownership~~ may, with the approval of the ~~state banking board~~ *department* in the case of *a resulting* state ~~banks~~ *bank*, consolidate or merge into one bank, on terms and conditions lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. *Except as otherwise expressly provided in this chapter, the consolidation or merger of a state bank is governed by Title 35, chapter 1.* ~~Before a consolidation or merger becomes effective, it must be approved by the shareholders of each merging bank by a vote of not less than two-thirds of the outstanding shares of each class of voting stock entitled to vote~~

HeinOnline -- 1997 vol. I 628 1997

~~on the merger proposal at a meeting called to consider the merger. The approval by the shareholders must be provided in writing or reflected in the minutes of the shareholders' meeting. The capital stock of the consolidated or merged bank may not be less than that required under existing law for the organization of a bank of the class of the largest of the consolidating banks. If upon the completion of the merger the resulting bank has a main banking house and a branch bank or branch banks as defined in 32-1-109, then all banks involved must have conducted business in this state for a continuous period of at least 5 years prior to the effective date of the merger.~~

(b) This section does not permit a bank or bank holding company located in another state to acquire by consolidation~~,~~ *or* merger~~, or otherwise~~ any bank *or branch bank* ~~doing business~~ in this state ~~in contravention of 12 U.S.C. 1842~~.

(c) ~~Two or more banks under common ownership may not consolidate or merge unless all banks under the common ownership are parties to the consolidation or merger. Subject to approval of the state banking board, nothing contained in parts 1 through 5 of this chapter or in this section may be construed to prohibit consolidation or merger of banks that come under common ownership with banks that have been previously merged or consolidated.~~ *A bank organized under the laws of this state may, with the approval of the department in the case of a resulting bank, consolidate or merge with a savings association located in this state and may, upon the consolidation or merger, maintain the branch banks and other offices previously maintained by both the bank and the savings association.*

~~(3)~~*(2)* Upon consolidation or merger, the corporate franchise, the corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, *and* guardian~~,~~ and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed of the consolidating or merging banks, are, without the necessity of any instrument of transfer, consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged bank. The consolidated or merged bank has the right equal with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to the consolidation or merger and by which will or instrument the consolidating or merging bank was nominated by the maker to the office.

~~(4)~~*(3)* Upon consolidation or merger, the consolidated or merged bank shall designate and operate one of the prior main banking houses of the consolidating or merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other consolidating or merging banks as a branch bank.

~~(5) A branch bank shall offer all services offered at a main banking house.~~

~~(6) (a)~~*(4)* Upon consolidation or merger, ~~and subject to the provisions of subsection (6)(b), the banks involved~~ *the resulting bank, including all depository institutions that are affiliates of the resulting bank,* may not directly or indirectly control more than ~~10% of all~~ *22% of the total amount of* deposits ~~in federally~~ *of* insured ~~banks, savings associations,~~ *depository institutions* and credit unions located in this state.

HeinOnline -- 1997 vol. I 629 1997

~~(b) On October 1, 1995, and on October 1 of each succeeding year, the percentage limitation contained in subsection (6)(a) must be increased by 1% until the limit reaches 22%.~~

~~(7) A branch bank may be relocated with the approval of the state banking board in the city or within 3,000 feet of the city limits in which it is located. Upon relocation, the branch may not be closer than 200 feet to a branch or detached facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurements to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection in relation to a branch or detached facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a branch or detached facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurements to be made in a straight line from the closest points of the closest structures involved.~~"

**Section 10.** Section 32-1-372, MCA, is amended to read:

"**32-1-372. Branch bank ~~— detached facilities~~.** (1) A bank may establish and maintain a branch ~~bank only~~ *banks*, as provided in 32-1-371 and this section ~~and~~, *at any place within the state.* ~~in the case of~~ *The formation and operation of a branch bank by* a bank organized under the laws of this state~~, with~~ *require* the prior approval of the ~~state banking board, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks~~ *department*.

(2) ~~(a) With the prior approval of the department, a bank or branch bank, but not a detached facility, doing business in this state may establish and maintain:~~

~~(i) one detached drive-in and walk-up facility consisting of one or more teller windows; or~~

~~(ii) if the bank or branch bank is doing business in a city or consolidated government with a population of more than 20,000 as indicated in the most recent United States census, two drive-in or walk-up facilities consisting of one or more teller windows.~~

~~(b) A detached facility must be in the city or within 3,000 feet of the city limits of the city in which the main banking house or branch bank is located. A facility~~ *A branch bank formed under this section* may not be closer than 200 feet to a ~~facility~~ *branch bank* operated by any other *commercial* bank or closer than 300 feet to the main banking house of any other *commercial* bank, the measurement to be made in a straight line from the closest points of the closest structures involved. ~~The distances specified in this subsection in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved.~~ *The distances specified in this subsection may be decreased by written agreement of the banks involved.*

~~(c)~~*(3)* A ~~detached facility~~ *branch bank* may *but is not required to* offer all services and conduct all business authorized to be offered or conducted by the bank.

~~(d) A detached facility authorized under this subsection (2) may not be considered a branch bank.~~

~~(3)~~*(4)* A bank autborized to do banking business in this state may use a satellite terminal, as defined in the Montana Electronic Funds Transfer Act, ~~and~~ at any location permitted by the Montana Electronic Funds Transfer Act. ~~The use of satellite terminals is not subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.~~

~~(4)~~*(5)* ~~A bank, other than a bank owned by a holding company not located in Montana, may establish, maintain, and operate a branch bank in a city in which no bank or branch bank is located at the time the branch bank is to be established if that city is in the county or a county adjoining the county in which the main banking house of the branch bank is located.~~ *A bank may continue to maintain and operate all branch banks and other banking offices, including detached facilities, that are in existence or authorized on [the effective date of this section] without further consent, authorization, or approval of the department or the board. All offices established and maintained by a bank, other than the main banking house, at which deposits are received, checks are paid, or money is lent must be considered branch banks for all purposes under this title.*

~~(5)~~*(6)* ~~Common ownership notwithstanding, a~~ *A* bank located in this state may ~~acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority~~ *provide services for other banks located in this state, whether or not those banks are affiliates.*

~~(3)~~*(7)* ~~A branch bank must have a community advisory board~~ *This section may not be interpreted to authorize a bank not located in this state to establish, operate, or maintain a branch bank in this state.*"

**Section 11.** Section 32-1-376, MCA, is amended to read:

"**32-1-376. Sale of branch bank.** ~~Notwithstanding the provisions of 32-1-371 and 32-1-372, a~~ *A* bank located and doing business in this state may, with the approval of the ~~state banking board~~ *department* in the case of a state bank, buy from any other bank also located and doing business in this state all or substantially all of the business, assets, and liabilities of the selling bank's branch bank or branch banks~~, including the right to own and operate any detached facilities or satellite terminals, upon compliance with the provisions of this part~~. Upon completion of the sale, the purchasing bank may operate a branch bank at the selling bank's former branch bank location."

**Section 12.** Section 32-1-377, MCA, is amended to read:

"**32-1-377. Agreement of purchase and sale.** (1) The selling and purchasing banks shall enter into an agreement that must contain all the terms and conditions of the sale and that must contain:

HeinOnline -- 1997 vol. I 631 1997

(a) proper provision for the assumption, payment, transfer, or retention of all the liabilities of the selling bank as to the hranch assets and business sold;

(b) proper provision for the assumption, payment, transfer, or retention of the purchasing bank of all fiduciary obligations of the branch or branch business sold.

(2) The agreement for purcbase and sale of a state bank must be authorized and approved by the ~~state banking board~~ *department*. The agreement of purchase and sale of a national bank must be in accordance with the laws applicable to national banks. ~~After approval, a notice of the sale must be published once a week for 3 consecutive weeks in a newspaper of general circulation in the county where the branch is located. The purchasing bank shall provide proof to the department that the notice has been published in accordance with this section.~~"

**Section 13.** Section 32-1-383, MCA, is amended to read:

"**32-1-383. Acquisition of financial institution by bank holding company not located in this state — limitations.** (1) A bank holding company with headquarters in another state may acquire control of a bank located in this state through acquisition of a financial institution if the bank holding company complies with 32-1-381 through 32-1-384. The bank to be acquired must:

(a) have been conducting business for a continuous period of at least 5 years prior to the effective date of the acquisition; or

(b) be *a shell bank* organized *solely* for the purpose of purchasing the assets of a bank that has conducted business for a continuous period of at least 5 years prior to the acquisition.

(2) A bank holding company may acquire control of a bank located in this state by purchase of stock in or by merger with a bank holding company.

(3) ~~(a) Subject to the provisions of subsection (3)(b), a~~ *A* bank, a bank holding company, or a subsidiary of the bank or bank holding company may not acquire control of a bank located in this state if the bank, bank holding company, or subsidiary *together with its affiliates* would directly or indirectly control more than ~~18% of all deposits in federally insured banks, savings associations, and credit unions~~ *22% of the total amount of deposits of insured depository institutions and credit unions* located in this state.

~~(b) On October 1 of each year, the percentage limitation contained in subsection (3)(a) must be increased by 1% until the limit reaches 22%.~~

~~(4) A bank holding company that is not located in this state or that does not have headquarters in this state may not acquire control of a bank located in this state if the acquisition of control would result in the aggregate direct or indirect control, by all bank holding companies that do not have headquarters in this state, of more than 40% of all deposits in all federally insured banks and savings associations located in this state.~~

~~(5)~~*(4)* The determination of the ~~limits~~ *limit* contained in ~~subsections~~ *subsection* (3) ~~and (4)~~ must be based upon public reports filed with the appropriate regulatory agency as of the December 31 preceding the submission to the

HeinOnline -- 1997 vol. I 632 1997

appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition of control of the bank."

**Section 14.** Section 32-1-384, MCA, is amended to read:

"**32-1-384. Federal applications — comments.** (1) A bank holding company shall file with the department a copy of applications submitted to a federal banking regulatory agency seeking prior approval of the proposed acquisition of a financial institution located in this state. The bank holding company shall also file a statement verifying that the acquisition will not result in a violation of the ~~limits~~ *limit* in 32-1-383(3) ~~and (4)~~.

(2) The applications and statement are public records, and the department shall allow public inspection of all nonconfidential portions of the applications and statements. The department shall solicit public comment on the applications by promptly publishing notice of the applications in a newspaper of general circulation in the county in which the financial institution to be acquired is located. The department shall send the comments to the appropriate federal banking regulatory agency. The department may intervene in or take other action in a federal banking regulatory authority proceeding."

**Section 15.** Section 32-1-423, MCA, is amended to read:

"**32-1-423. Real estate that banks may purchase, hold, or convey.** (1) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate that:

(a) is for its accommodation in the transaction of its business, but it may not invest an amount exceeding ~~50%~~ *100%* of its paid-up capital and surplus in the lot and building in which the business of the company is or is projected to be carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business~~, provided that~~ *if* property held for future use as a bank office site is held pursuant to a business plan adopted by the directors of the bank;

(b) is mortgaged to it in good faith by way of security for loans previously made or money due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) may not be held longer than 5 years from the date of acquisition, unless special written permission ~~to do so~~ is granted by the department. The real estate must be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title."

**Section 16. Interstate merger of banks.** (1) (a) A bank located in this state may not enter into a merger transaction with a bank not located in this state if the merger transaction would be effective on or before September 30, 2001.

HeinOnline -- 1997 vol. I 633 1997

(b) After September 30, 2001, a bank located in this state that has been in existence at least 5 years is authorized to enter into a merger transaction with a bank not located in this state.

(c) Prior approval of the department is required if the resulting bank in a merger transaction authorized by this section is a bank organized under the laws of this state.

(2) This section implements 12 U.S.C. 1831u(a)(2) and prohibits until October 1, 2001, interstate merger transactions involving banks located in this state.

**Section 17. Repealer.** Sections 32-6-304, 32-6-401, and 32-6-402, MCA, are repealed.

**Section 18. Codification instruction.** [Section 16] is intended to be codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [section 16].

**Section 19. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 10] is effective July 1, 1997.

Approved March 20, 1997

# CHAPTER NO. 118

[HB 340]

AN ACT CLARIFYING THE PLACE OF REGISTRATION OF A DEATH CERTIFICATE; CLARIFYING THE PLACE AND TIME OF DEATH TO BE ENTERED ON A DEATH CERTIFICATE WHEN THE PLACE OR TIME IS UNKNOWN OR UNCERTAIN; REQUIRING MEDICAL CERTIFICATION TO BE COMPLETED WITHIN THE TIME SET BY RULE BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING A CERTIFICATE TO SHOW THE DATE OF FILING RATHER THAN THE DATE OF REGISTRATION; AMENDING SECTIONS 50-15-121 AND 50-15-403, MCA; AND REPEALING SECTION 50-15-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-15-121, MCA, is amended to read:

"**50-15-121. Copies from system of vital statistics.** (1) Except as provided in subsections (4), (6), and (7), the department and county clerk and recorders shall, upon receipt of an application, issue a certified copy or copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights. The department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter.

(2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the state must be uniform and prepared or approved by

the department. All certified copies must contain security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection that there have been these changes to the document.

(3) Each copy issued must show the date of ~~registration~~ *filing*. Copies issued from amended records must be marked and must show the effective date of the amendment. Copies issued from delayed records must be marked, must include the date of ~~registration~~ *filing*, and must contain a statement of the evidence used to establish the delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the date of birth (if known), must show the actual place of birth, and must state that the certificate is not proof of United States citizenship for the adoptive child.

(4) A certified copy or other copy of a death certificate containing information or data that would identify any person or institution named in a certificate or report and the cause of death information may not be issued, except as follows:

(a) upon specific request of the spouse, children, parents, or other next of kin of the decedent or their respective authorized representatives, as specified by department rule;

(b) when a documented need for the cause of death to establish a legal right or claim has been demonstrated, as specified by department rule;

(c) when the request for the copy is made by or on behalf of a person or entity that provides monetary benefits to the decedent's survivors or beneficiaries, as may be specified by department rule;

(d) upon specific request by federal, state, or local agencies for research or administrative purposes and when approved for release by the department;

(e) when needed for research activities and approved for release by the department; or

(f) upon receipt by the department of an order directed to the department from a court of competent jurisdiction ordering the release.

(5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate or vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has been amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(6) This section may not be construed to permit disclosure of confidential information contained in a birth certificate for medical or health use or of information for statistical purposes only contained in a certificate of marriage or report of dissolution of marriage unless disclosure is specifically authorized by law for statistical or research purposes or unless ordered by a court.

(7) (a) When the department receives information that a certificate may have been registered through fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending issuance of an order after

HeinOnline -- 1997 vol. I 635 1997

an administrative contested case hearing before the department to determine whether fraud or misrepresentation has occurred.

(b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's authorized representative and provide the registrant or the representative the opportunity to be heard.

(c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue the certificate or copies of the certificate in question.

(d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not register the certificate unless ordered to do so by a court.

(e) An affected person may appeal the department's decision to the district court as provided in Title 2, chapter 4, part 7.

(8) A person may not prepare or issue any certificate that purports to be an original or certified copy, except as authorized in this chapter or rules adopted to implement this chapter.

(9) The department may, by rule, prescribe details for the hearing and appellate procedures contained in this section."

**Section 2.** Section 50-15-403, MCA, is amended to read:

**"50-15-403. Preparation and filing of death or fetal death certificate.** (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. *The medical certification must be completed by the physician or the coroner within the timeframe established by the department by rule.* The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or *the* coroner and shall, within the time that the department may ~~by rule~~ prescribe *by rule*, file the death or fetal death certificate with the local registrar in the registration area where the death occurred *or, if the place of death is unknown, where the dead body was discovered.*

*(3) If a dead body is found in this state but the place of death is unknown, the place where the body is found must be shown as the place of death on the death certificate. If the date of death is unknown, then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that the body was found must be entered as the date of death, and the certificate must indicate that fact.*

*(4) When a death occurs in a moving vehicle, as defined in 45-2-101, in the United States and the body is first removed from the vehicle in this state, the death*

*must be registered in this state and the place where the body is first removed is considered the place of death. When a death occurs in a moving vehicle while in international air space or in a foreign country or its air space and the body is first removed from the vehicle in this state, the death must be registered in this state, but the actual place of death, insofar as it can be determined, must be entered on the death certificate."*

**Section 3. Repealer.** Section 50-15-401, MCA, is repealed.

Approved March 20, 1997

# CHAPTER NO. 119

[HB 385]

AN ACT CLARIFYING WHEN A DRIVER BEING OVERTAKEN BY A VEHICLE ON THE LEFT SHALL GIVE WAY TO THE RIGHT; ALLOWING FOR A LEFT TURN INTO A PUBLIC OR PRIVATE PARKING LOT OR A ROADWAY ACROSS DOUBLE YELLOW LINES UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 61-8-323 AND 61-8-328, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-323, MCA, is amended to read:

**"61-8-323. Overtaking a vehicle on ~~the~~ left.** The following rules ~~shall~~ govern the overtaking and passing of vehicles proceeding in the same direction, subject to ~~those~~ *the* limitations, exceptions, and special rules ~~hereinafter stated~~ *provided in this part*:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left ~~thereof~~ *of the other vehicle* at a safe distance and ~~shall~~ *may* not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle ~~on~~ *upon an* audible signal *or the use of signal lamps, as provided in 61-9-218,* and ~~shall~~ *may* not increase the speed of ~~his~~ *the* vehicle until completoly passed by the overtaking vehicle. When giving way to the right on a two-lane highway, ~~he~~ *the driver of the vehicle being overtaken* may travel upon the shoulder at a safe speed until passed if the shoulder is wide enough and is in a condition allowing safe travel."

**Seetion 2.** Section 61-8-328, MCA, is amended to read:

**"61-8-328. Driving on roadways laned for traffic.** Whenever ~~any~~ *a* roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all ~~others~~ *other* consistent ~~herewith~~ *rules*, ~~shall~~ apply:

(1) A vehicle ~~shall~~ *must* be driven as nearly as practicable entirely within a single lane and ~~shall~~ *may* not be moved from ~~such~~ *the* lane until the driver has first ascertained tbat ~~such~~ *the* movement can be made with safety.

HeinOnline -- 1997 vol. I 637 1997

(2) Upon a roadway ~~which~~ *that* is divided into three lanes, a vehicle ~~shall~~ *may* not be driven in the center lane except:

*(a)* when overtaking and passing another vehicle where the roadway is clearly visible and ~~such~~ *the* center lane is clear of traffic within a safe distance~~, or~~;

*(b)* in preparation for a left turn; or

*(c)* ~~where such~~ *when the* center lane is at the time allocated exclusively to traffic moving in the direction *that* the vehicle is proceeding and is signposted to give notice of ~~such~~ *the* allocation.

(3) Official signs may he erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway. ~~and drivers~~ *Drivers* of vehicles shall obey the directions of every ~~such~~ *official* sign *that designates use of specific lanes.*

*(4) A person may turn a vehicle left across a lane marked with two yellow lines into a public or private parking lot or a roadway if the turn can be made safely and if the person does not hinder the flow of oncoming traffic."*

Approved March 20, 1997

# CHAPTER NO. 120

[SB 7]

AN ACT GENERALLY REVISING THE ALLOCATION OF THE METAL MINES LICENSE TAX; CORRECTING AN OVERALLOCATION OF THE METAL MINES LICENSE TAX; PROVIDING THAT 15.5 PERCENT OF THE METAL MINES TAX IS DISTRIBUTED IN THE SAME MANNER AS THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 20-9-231, 85-2-905, AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-2225, MCA, is amended to read:

**"7-6-2225. County hard-rock mine trust reserve account — expenditure restrictions.** (1) The governing body of a county receiving an allocation under 15-37-117~~(1)(f)~~*(1)(d)* shall establish a county hard-rock mine trust reserve account.

(2) Money received by a county pursuant to 15-37-117 or 90-6-331 must remain in the account and may not be appropriated by the governing body until:

(a) a mining operation has permanently ceased all mining related activity; or

(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

HeinOnline -- 1997 vol. I 638 1997

(3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county ~~must~~ *shall* allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county~~,~~ and may use the remaining funds in the account to:

(a) pay for outstanding capital project bonds or other expenses incurrod prior to the end of mining activity or the reduction in the mining ~~work force~~ *workforce* described in subsection (2)(b);

(b) decrease proporty tax mill levies tbat are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within tbe jurisdiction of a local government unit;

(d) attract new industry to the inipact area;

(e) provide cash incentives for expanding tbe employment base of the area impacted by the changes in mining activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the account may not be considered as casb balance for tbe purpose of reducing mill levies.

(5) Money in the reserve account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account."

**Section 2.** Section 7-6-2226, MCA, is amended to read:

**"7-6-2226. Metal mines tax reserve account.** (1) The governing body of a county receiving tax collections under 15-37-117~~(1)(f)~~*(1)(d)* may establish a metal mines tax reserve account to be used to hold tbe collections. The governing body may hold money in the account for any time period considerod appropriato by tbe geverming body. Money held in the account may not be considerod as cash balance for the purpose of reducing mill levies.

(2) Money may be expendod from the account for any purpose provided by law.

(3) Money in the account must be invested as provided by law. Interest and income from tbe investment of the metal mines tax reserve account must be credited to the account."

**Section 3.** Section 15-37-117, MCA, is amended to read:

**"15-37-117. (Temporary) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of tbe state, 58% of total collections each year;

HeinOnline -- 1997 vol. I 639 1997

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to tho abandoned mines state special revenue account provided for in section 19, Chapter 584, Laws of 1995, 8.5% of total collections each year;

(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;

(e) to the reclamation and development grants program state special revenue account, 4.8% of total collections each year; and

(f) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory appropriation pursuant to 17-7-502. (Terminates June 30, 1997—sec. 27, Ch. 584, L. 1995.)

**15-37-117. (Effective July 1, 1997) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of tho general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the state resource indemnity trust fund *and to the accounts described in 15-38-106(2)*, 15.5% of total collections each year *to be distributed as provided in 15-38-106(2)*;

~~(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;~~

~~(e) to the reclamation and development grants program state special revenue account, 4.8% of total collections each year;~~ and

~~(f)~~*(d)* to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan~~,~~ or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection ~~(1)(f)(i)~~ *(1)(d)(i)* to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection ~~(1)(f)~~ *(1)(d)* in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection ~~(1)(f)~~ *(1)(d)*. The allocation to the county described by subsection ~~(1)(f)~~ *(1)(d)* is a statutory appropriation pursuant to 17-7-502."

**Section 4.** Section 20-9-231, MCA, is amended to read:

**"20-9-231. Metal mines tax reserve fund.** (1) The governing body of a local school district receiving tax collections under 15-37-117~~(1)(f)~~*(1)(d)* may establish a metal mines tax reserve fund to be used to hold the collections. The governing body may hold money in the fund for any time period considered appropriate by the governing body. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose provided by law.

HeinOnline -- 1997 vol. I 641 1997

(3) Money in the fund must be invested as provided hy law. Interest and income from the investment of the metal mines tax reserve fund must he credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title."

**Section 5.** Section 85-2-905, MCA, is amended to read:

**"85-2-905. Ground water assessment account.** (1) There is a ground water assessment account within the state special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana hureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local gevernments to accomplish the purposes of this part.

(4) There must be deposited in tbe account:

(a) at the beginning of each fiscal year, ~~14.1% of~~ the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, ~~and 2.2% of the proceeds from the metalliferous mines license taxes, as authorized by 15-37-117,~~ unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds $666,000, in whicli case ~~no~~ *an* allocation ~~will~~ *may not* be made and the ~~funds~~ *proceeds* must be deposited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than $666,000, in which case an amount equal to the difference between the unobligated cash balance and $666,000 must he allocated to the ground water assessment account and any remaining amount must he deposited in the resource indemnity trust fund established by 15-38-201;

(b) funds provided by federal or state government agoncies and hy local governments to carry out the purposes of this part; and

(c) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

**Seetion 6.** Section 90-2-1104, MCA, is amended to read:

**"90-2-1104. Reclamation and development grants account.** (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and developmient grants account money allocated from:

HeinOnline -- 1997 vol. I 642 1997

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202; *and*

(b) the resource indemnity ~~trust~~ *and ground water assessment* tax under the provisions of 15-38-106~~; and~~

~~(c) the metal mines license tax proceeds as provided in 15-37-117(1)(c).~~

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded prior to funding of projects."

**Section 7. Effective date.** [This act] is effective July 1, 1997.

Approved March 20, 1997

# CHAPTER NO. 121

[SB 26]

AN ACT GENERALLY REVISING THE CLASSIFICATION AND TAXATION OF CERTAIN TRAILERS, CAMPERS, AND TRUCK TOPPERS; IMPOSING A FEE IN LIEU OF AD VALOREM TAXES ON ALL TRAILERS, POLE TRAILERS, AND SEMITRAILERS HAVING A DECLARED WEIGHT OF LESS THAN 26,000 POUNDS; EXEMPTING FROM PROPERTY TAXATION ALL CAMPERS AND TRUCK TOPPERS; AMENDING SECTIONS 7-1-2111, 15-6-138, 15-6-201, 61-1-129, 61-3-506, 61-3-509, 61-3-519, 61-3-521, 61-3-524, AND 61-3-535, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because 61-3-506 gives rulemaking authority to the department of justice to adopt rules for the administration of the fees for certain trailers, pele trailers, and semitrailers. The legislature intends that the rules adopted by the department address the procedures for determining the date of manufacture for trailers, pole trailers, and semitrailers that do not have a designated model year and for determining the weight of the trailer.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-1-2111, MCA, is amended to read:

**"7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

HeinOnline -- 1997 vol. I 643 1997

(a) first class—all counties having a taxable valuation of $50 million or ~~over~~ *more*;

(b) second class—all counties having a taxable valuation of ~~more than~~ $30 million *or more* and less than $50 million;

(c) third class—all counties having a taxable valuation of ~~more than~~ $20 million *or more* and less than $30 million;

(d) fourth class—all counties having a taxable valuation of ~~more than~~ $15 million *or more* and less than $20 million;

(e) fifth class—all counties having a taxable valuation of ~~more than~~ $10 million *or more* and less than $15 million;

(f) sixth class—all counties having a taxable valuation of ~~more than~~ $5 million *or more* and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, ~~taxable valuation~~ *"taxable valuation"* means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) *that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;*

*(d)* the value provided hy the departinent of revenue under 15-36-324(10); and

~~(d)~~*(e)* 6% of the taxable value of the county on January 1 of each tax year."

**Section 2.** Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural iinplements and equipment;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) ~~all trailers and semitrailers, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2) or exempt under 15-6-201(1)(v);~~

HeinOnline -- 1997 vol. I 644 1997

~~(e)~~ all goods and equipment *that are* intended for rent or lease, except goods and equipment *that are* specifically included and taxed in another class;

~~(f)~~*(e)* buses and trucks having a rated capacity of more than 1 ton, including those prorated under 15-24-102;

~~(g) truck toppers weighing more than 300 pounds;~~

~~(h)~~*(f)* furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

~~(i)~~*(g)* x-ray and medical and dental equipment;

~~(j)~~*(h)* citizens' band radios and mobile telephones;

~~(k)~~*(i)* radio and television broadcasting and transmitting equipment;

~~(l)~~*(j)* cable television systems;

~~(m)~~*(k)* coal and ore haulers;

~~(n)~~*(l)* theater projectors and sound equipment; and

~~(o)~~*(m)* all other property *that is* not included in any other class in this part, except that property *that is* subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at:

(a) ~~0% of its market value for tax years ending on or before December 31, 1995;~~

~~(b) 8% of its market value for tax year 1996;~~

~~(c)~~ 7% of its market value for tax year 1997; and

~~(d)~~*(b)* 6% of its market value for tax years beginning after December 31, 1997."

**Section 3.** Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

HeinOnline -- 1997 vol. I 645 1997

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, *that are* owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) property *that is* owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgeges of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observateries *that are* not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) ~~a~~ truck canopy ~~cover~~ *covers* or ~~topper~~ *toppers* ~~weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.~~ *and campers;*

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

HeinOnline -- 1997 vol. I 646 1997

(k) motor homes~~, travel trailers, and campers~~;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) *(i)* property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, the mentally ill, or the vocationally handicapped, as defined in 18-5-101, and that is not operated for gain or profit; and

*(ii)* property *that is* owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildinge witb a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sperts and athletic events and *that is* not held or used for private or corporate gain or profit. For purposes of this subsection *(1)*(q), "nonprofit corporation" means an organization *that is* exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of teols owned by tlie taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements te real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers *as defined in 61-1-111,* ~~and~~ semitrailers ~~that have a licensed gross weight of 26,000 pounds or more or that are registered through a proportional registration agreement under 61-3-721~~ *as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;*~~. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:~~

~~(i) designed and used only for carrying property;~~

~~(ii) designed and used to be drawn by a motor vehicle; and~~

~~(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.~~

(w) all vehicles registered under 61-3-456.

(2) (a) For the purposes of subsection (1)(e), the term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

**Section 4.** Section 61-1-129, MCA, is amended to read:

**"61-1-129. Camper.** The term "camper" as used in 61-1-102, 61-3-524, and 61-3-525 includes but is not limited te truck camper, chassis-mounted camper, ~~cab-over~~ *cab-over*, half ~~cab-over~~ *cab-over*, ~~non-cab-over~~ *noncab-over*, telescopic, and telescopic ~~cab-over, but~~ *cab-over. The term* does not include a truck canopy cover or topper ~~weighing less than 300 pounds and having no accommodations attached~~."

**Section 5.** Section 61-3-506, MCA, is amended to read:

**"61-3-506. Rules.** *(1)* The department of revenue shall adopt rules for the payment of property taxes and the department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520. The department of revenue may adopt rules for the proration of taxes for the implementation and administration of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520, hut shall specifically provide that new car taxes ~~shall~~ *must* be for a 12-month period.

*(2) The department of justice may adopt rules for the administration of fees for trailers, pole trailers, and semitrailers, including criteria for determining a trailer's age and weight."*

**Section 6.** Section 61-3-509, MCA, is amended to read:

**"61-3-509. Disposition of taxes.** (1) Except as provided in subsection (2), the county treasurer sball, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motorcycles, motor homes, travel trailers, ~~and~~ campers, *trailers, pole trailers, and semitrailers* collected under 61-3-504, 61-3-521, 61-3-527, and 61-3-537 to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of 1 ton or less. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund to be used for purposes of state funding of the district court expenses as provided in 3-5-901."

**Section 7.** Section 61-3-519, MCA, is amended to read:

**"61-3-519. Grace period for registration and payment of ~~tax or~~ fee — penalty for failure to pay ~~tax or~~ fee.** (1) Unless the ~~tax or~~ fee *in lieu of tax* provided in 61-3-523 ~~and 61-3-524~~ for the year has been paid, ~~upon the purchase of a new camper,~~ the purchaser *of a new camper* has 20 days from the date of purchase *to apply for the camper decal, as provided in 61-3-524, and* to pay the ~~tax or to apply for the camper decal fee, or both~~ *fee*, as if the *fee on the* camper were being ~~taxed~~ *imposed* for the first time in that registration year. The purchaser may operate or transport a camper on the highways of Montana without a ~~tax paid~~ decal during the 20-day period if the operator of the camper or of the vehicle upon which the camper is transperted has in ~~his~~ *the operator's* possession a 20-day certificato issued by a dealer, if the camper was purchased from a dealer, or a vehicle purchase certificate issued pursuant to 61-3-317 or other evidence of purchase of the camper.

(2) A purchaser who fails to make application and pay the ~~tax~~ *fee* within the time provided in subsection (1) is subject to a penalty of $10, which must be

HeinOnline -- 1997 vol. I 649 1997

collected by the county treasurer when the tax is paid and must be in addition to the fees otherwise provided by law."

**Section 8.** Section 61-3-521, MCA, is amended to read:

**"61-3-521. Fee in lieu of tax for certain vehicles.** (1) There is a fee in lieu of property tax imposed on motor homes, travel trailers, and campers *and on trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds*. The fee is in addition to annual registration fees.

(2) The fee imposed by subsection (1) need not be paid by a dealer for vehicles that constitute inventory of the dealership."

**Section 9.** Section 61-3-524, MCA, is amended to read:

**"61-3-524. ~~Tax-paid decal~~ *Decal* required on camper — application for decal — application fee — issuance — ~~disposition of fee~~.** (1) A camper, subject to ~~taxation in Montana~~ *the fee in lieu of tax imposed under 61-3-521*, may not be operated by a person on the public highways or streets in this state unless there is displayed in a conspicuous place on the camper a decal as visual proof that the ~~tax~~ *fee* has been paid on the camper for the current year.

(2) Application for the issuance of the decal must be made to the county treasurer in the county of the owner's residence, accompanied by an application fee of $1, ~~upon~~ *on* a form ~~to be~~ furnished by the department ~~of revenue for this purpose~~, which may be obtained at the county treasurer's office. ~~and which~~ *The form* must provide for substantially the following information:

(a) name of owner;

(b) address;

(c) name of manufacturer;

(d) model number;

(e) make;

(f) year of manufacture;

~~(g) statement evidencing payment of the property tax;~~ and

~~(h)~~*(g)* ~~such~~ other information ~~as~~ *that* the department may require.

(3) (a) The county treasurer shall sign the application and transmit the application to the department ~~of justice~~.

(b) Upon receipt of the application in approved form *and payment of the fee in lieu of tax by the applicant*, the county treasurer shall issue to the applicant a numbered decal in the style and design prescribed by the department ~~of revenue~~ and of a different color than the preceding year."

**Section 10. Schedule of fees for trailers — exception.** (1) Except as provided in subsection (4), the owner of a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds shall pay the fee imposed pursuant to 61-3-521. The fee is based on the age and declared weight of the trailer or semitrailer according to the following schedule:

HeinOnline -- 1997 vol. I 650 1997

| Age (in years) | Declared Weight (in pounds) | | |
|---|---|---|---|
| | 0-6,000 | 6,001-16,000 | 16,001-25,999 |
| Less than 5 years old | $16 | $55 | $74 |
| 5 years old and less than 10 years old | 11 | 32 | 41 |
| 10 years old and older | 6 | 17 | 23 |

(2) The age of a trailer, pole trailer, or semitrailer is determined hy subtracting the manufacturer's designated model year from the current calendar year. For trailers, pole trailers, and semitrailers that do not have a designated model year, the department shall determine a year of manufacture.

(3) The declared weight is the total unladen weight of the trailer, pole trailer, or semitrailer plus the maximum load declared by the owner to he carried on the trailer, pole trailer, or semitrailer.

(4) This section does not apply to a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds and that is registered through a proportional registration agreement under 61-3-721.

**Section 11.** Section 61-3-535, MCA, is amended to read:

**"61-3-535. Vehicle reregistration by mail — renewal cards and reregistration notice by mail.** (1) Except as provided in subsection (2), an owner of the following types of motor vehicles may reregister by mail:

(a) light vehicles, quadricycles, and other vehicles subject to tax under 61-3-504(2); and

(b) motorcycles, *trailers, pole trailers, semitrailers,* travel trailers, campors, and motor homes subject to a fee in lieu of tax under 61-3-521 and 61-3-527.

(2) The option to reregister by mail need only be made available for vehicles, motor homes, and travel trailers *that are* registered at the close of the expiring registration poriod in the name of the applicant for reregistration and only if the value, age, length, or other criteria used to determine the tax or fee is available to the department.

(3) The department shall develop a procedure to facilitate the reregistration by mail of the vehicles listed in subsection (1). The mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration or recertification.

(4) The procedure implemented by the department to permit reregistration or camper decal application by mail must provide for a written reminder notice by mail to a vehicle owner of the requirement to reregister the owner's vehicle with the county treasurer or to apply for the annual camper decal.

(5) The department shall adopt rules to implement the mail reregistration and decal application procedure."

HeinOnline -- 1997 vol. I 651 1997

**Section 12. Codification instruction.** [Section 10] is intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [section 10].

**Section 13. Effective dates — rulemaking.** (1) Except for the purposes of subsection (2), [this act] is effective January 1, 1998.

(2) For the purposes of promulgating administrative rules under 61-3-506, [section 5 and this section] are effective on passage and approval.

Approved March 20, 1997

# CHAPTER NO. 122

[SB 62]

AN ACT CLARIFYING THE PROCESS FOR PAYING REHABILITATION BENEFITS TO DISABLED WORKERS' COMPENSATION CLAIMANTS INJURED ON OR BEFORE JUNE 30, 1997; LIMITING FUNDING FOR CERTAIN REHABILITATION BENEFIT PAYMENTS; PROVIDING FOR DIRECT PAYMENT OF REHABILITATION BENEFITS BY INSURERS TO DISABLED WORKERS INJURED ON OR AFTER JULY 1, 1997; AMENDING SECTIONS 39-71-1003, 39-71-1004, 39-71-1006, 39-71-1011, 39-71-1014, 39-71-1031, AND 39-71-1032, MCA; REPEALING SECTION 39-71-1013, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-1003, MCA, is amended to read:

"**39-71-1003. ~~Eligibility~~ *Payment* for vocational rehabilitation expenses *for injuries occurring on or before June 30, 1997.*** ~~(1) Upon certification by the department of public health and human services~~ *For injuries occurring on or before June 30, 1997,* a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

~~(2) The appeal process provided for in 53-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of public health and human services.~~"

**Section 2.** Section 39-71-1004, MCA, is amended to read:

"**39-71-1004. Industrial accident rehabilitation account.** (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made ~~on or before July 1 of~~ each year *upon an assessment by the department* as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

HeinOnline -- 1997 vol. I 652 1997

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the ~~department~~ *state fund*, an amount to be ~~determined~~ *assessed* by the department, not exceeding 1% of the compensation paid *by the state fund* to injured employees in Montana ~~from the industrial insurance expendable trust fund and the occupational disease expendable trust fund for~~ *during* the preceding fiscal year.

(2) Separate accounts of the amounts *that were* collected and disbursements *that were* made from the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the plans. If in any fiscal year the amount *that was* collected from the employers under any plan exceeds the amount of payments for employees of the employers under the plan, the assessment against the employers under the plan for the following year must be reduced.

(3) The payments provided for in this section must be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer. Disbursements from the account must be made after approval by the department ~~of public health and human services and upon audit and approval by the department of administration~~.

(4) The funds allocated or contributed as provided in this section may not be used for payment of administrative expenses of the department ~~or department of public health and human services~~.

*(5) The methods and processes used to disburse rehabilitation expense payments to eligible disabled workers are procedural and do not affect the substantive rights of those disabled workers."*

**Section 3.** Section 39-71-1006, MCA, is amended to read:

**"39-71-1006. Rehabilitation benefits.** (1) A disabled worker as defined in 39-71-1011 is eligible for rehabilitation benefits if:

(a) the worker has an actual wage loss as a result of the injury;

(b) a rehabilitation provider, as designated by the insurer, certifies that the ~~injured~~ worker has reasonable vocational goals and reemployment opportunity and will have a reasonable reduction in the worker's actual wage loss with rehabilitation; and

(c) a rehabilitation plan *is* agreed upon by the ~~injured~~ worker and the insurer ~~is filed with the department~~ *and a written copy of the plan is provided to the worker*. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning *date* and a completion date. ~~If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of public health and human services to use the funds~~ *The plan must specify the cost of tuition, fees, books, and other reasonable and necessary retraining expenses required to complete the plan.*

HeinOnline -- 1997 vol. I 653 1997

(2) ~~After filing the rehabilitation plan with the department, the~~ *A* disabled worker is entitled to receive biweekly compensation benefits at the ~~injured~~ worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

*(3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, as set forth in department rules and as specified in the rehabilitation plan. Expenses must be paid directly by the insurer.*

~~(3)~~*(4)* A worker may not receive temperary total benefits and the benefits under subsection (2) during the same period of time.

~~(4)~~*(5)* A rehabilitation provider authorized by the insurer shall continue to assist the ~~injured~~ worker until the rehabilitation plan is completed.

~~(5)~~*(6)* To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

~~(6)~~*(7)* A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

**Section 4.** Section 39-71-1011, MCA, is amended to read:

"**39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means a worker who has a permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.

(3) "Rehabilitation benefits" means benefits provided in ~~39-71-1003,~~ 39-71-1006~~,~~ and 39-71-1025.

(4) "Rehabilitation plan" means ~~an~~ *a written* individualized plan that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification and that reasonably reduces the worker's actual wage loss.

HeinOnline -- 1997 vol. I 654 1997

(5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation certification and designated by the insurer ~~to the department or a department of public health and human services counselor when a worker has been certified by the department of public health and human services under 39-71-1003~~.

(6) "Rehabilitation services" means a program of evaluation, planning, and implementation of a rebabilitation plan to assist a disabled worker to return to work."

**Section 5.** Section 39-71-1014, MCA, is amended to read:

"**39-71-1014. Rehabilitation services — required and provided by insurers ~~and department of public health and human services~~.** (1) Rehabilitation services are required for disabled workers and may be initiated by:

(a) an insurer by designating a rehabilitation provider ~~and notifying the department;~~

~~(b) the department by requiring the insurer to designate a rehabilitation provider~~; or

~~(c)~~*(b)* a disabled worker through a request to the department. The department shall then require the insurer to designate a rehahilitation provider.

(2) Rehahilitation services provided under this part must be delivered:

~~(a)~~ through a rehabilitation counselor certified by the board of rehabilitation certification;

~~(b) by a vocational rehabilitation counselor employed by the department of public health and human services; or~~

~~(c) by both~~.

~~(3) A disabled worker served by the department of public health and human services may receive only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2.~~"

**Section 6.** Section 39-71-1031, MCA, is amended to read:

"**39-71-1031. Exchange of information.** The ~~department of public health and human services, the~~ insurer's designated rehabilitation provider~~,~~ and the department shall provide to one another case information as necessary to carry out the purposes of this part."

**Section 7.** Section 39-71-1032, MCA, is amended to read:

"**39-71-1032. Termination of benefits for noncooperation with rehabilitation provider — department hearing and appeal.** (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' *written* notice to the worker and *the* department ~~on a form approved by the department~~, may terminate any benefits, except medical benefits and the impairment award, that the worker is receiving until the worker cooperates.

HeinOnline -- 1997 vol. I 655 1997

(2) The worker may contest the insurer's termination of benefits by filing a written exception to the department within 20 working days after the date of the 14-day notice. The worker or insurer may request a hearing before the department. The department shall hold a hearing within 30 days of receipt of the request. The department shall issue an order within 15 days of the hearing.

(3) If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within 30 days after the department mails its order to the party's last-known address, a party may appeal to the workers' compensation court."

**Section 8. Repealer.** Section 39-71-1013, MCA, is repealed.

**Section 9. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 10. Effective date.** [This act] is effective July 1, 1997.

Approved March 20, 1997

# CHAPTER NO. 123

[SB 119]

AN ACT GENERALLY REVISING THE LAWS GOVERNING TAX ADMINISTRATION; PROVIDING A THRESHOLD FOR THE REMITTANCE REQUIREMENT FOR NEW EMPLOYERS WITH LESS THAN 12 MONTHS' EXPERIENCE; PROVIDING UNIFORMITY IN ALL STATUTES INVOLVING QUARTERLY PAYMENT OF TAXES BY EMPLOYERS SUBJECT TO THE CHANGED PAYMENT SCHEDULE; CLARIFYING THE OLD FUND LIABILITY TAX ON WAGES PAID TO DOMESTICS IF THEY EARN LESS THAN $1,000 ANNUALLY, TO CONFORM TO FEDERAL LAW; PROVIDING A DEDUCTION FOR PARENTS OF CHILDREN WHO WORK AND FILE THEIR OWN RETURNS; AMENDING SECTIONS 15-1-211, 15-24-102, 15-30-111, 15-30-204, 39-71-2503, AND 39-71-2505, MCA; REPEALING SECTIONS 15-10-101, 15-10-102, AND 15-10-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-1-211, MCA, is amended to read:

**"15-1-211. Uniform tax review procedure — notice — appeal.** (1) The department of revenue shall provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

(a) The tax review procedure described in this section applies to all taxes administered by the department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or

HeinOnline -- 1997 vol. I 656 1997

whether the employment relationship was that of an independent contractor. The procedure applies to any revised assessment of centrally assessed property taxed pursuant to chapter 23.

(b) The term "taxpayers", as used in this section, includes all persons determined by the department to have a potential tax liability.

(2) (a) If the department determines that a request for a refund should be denied in whole or part, it shall notify the taxpayer of the determination. If the department determines that a person has failed to pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the running of any applicable statute of limitations regarding the assessment of the tax.

(b) A notice under this section must clearly state:

(i) the reasons for the department's determination that a refund is not due or that tax plus interest and penalty, if any, ~~is~~ *are* due;

(ii) the taxpayer's right to a review by the department, the taxpayer's right to appeal after a final department decision, and the taxpayer's right to a review of determinations by the department of labor and industry and board of labor appeals of whether an employer-employee relationship existed between the taxpayer and certain individuals or whether the employment relationship was that of an independent contractor;

(iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right to contest the department's determination under this section or to file an appeal with the state tax appeal board;

(iv) that the taxpayer has 30 days to either notify the department in writing that the taxpayer does not agree with an assessment or pay the amount assessed;

(v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless the taxpayer notifies the department that the taxpayer disagrees with an assessment or pays within 30 days; and

(vi) that the notice stops the running of the statute of limitations regarding the assessment of the tax.

(3) (a) A taxpayer shall notify the department, in writing, that the taxpayer objects to the determination within 30 days from the date *that* the notice is mailed. The notification by the taxpayer is not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer is objecting to a determination that an employer-employee relationship existed between the taxpayer and individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not notify the department within 30 days:

(i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

(ii) the taxpayer waives any further right to review under this section or to appeal to the state tax appeal board; and

(iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

HeinOnline -- 1997 vol. I 657 1997

(b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer disagrees with a tax assessment sball present the objections, the reasons for the objections, and any other information to the administrator of the division that administers the tax or to tbe administrator's designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may be provided in writing, by telepbone, or, if requested by the taxpayer, at an informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

(ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer disagrees with the department's determination that an employer-employee relationship existed between the taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must be referred to the department of labor and industry for appeal procedures pursuant to ~~39-51-2403~~ *39-51-2402* and 39-51-2410.

(c) Within 60 days after the taxpayer has presented ~~his~~ *the taxpayer's* objections, as provided in subsection (3)(b), the administrator or a designee shall issue a written decision addressing the taxpayer's objections and describing the reasons for the determination. The administrator's decision must also clearly set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director of revenue.

(4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the administrater's decision within 30 days from the date that the decision is mailed, or the taxpayer may appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer waives any further right to review or appeal and a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) Except as provided in subsection (6), a taxpayer who objects te the administrator's decision pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and any other information to the director of revenue or tlie directer's designee within 60 days after the notice referred to in subsection (4)(a) is mailed. The director or the designee may consider written information, hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana Administrative Procedure Act.

(c) Within 60 days after the taxpayer has presented the objections, the director or the designee shall issue a written decision addressing the objections and describing the reasons for the decision. The director's decision is the final decision and assessment of the department.

(5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by the board or, if further appeals are filed, by the appropriato court. However, any interest required by law must continue to accrue.

HeinOnline -- 1997 vol. I 658 1997

(6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the department.

(b) If the director notifies the board within 30 days after an appeal is filed that the director has not had an opportunity to review the administrator's decision and the director believes that a review may be helpful in resolving the controversy, the board shall stay the appeal for a time *that* the board considers reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide the taxpayer's objections and reasons for the objections to the director so that the director or the director's designee may review the controversy and issue a decision within the period of the stay granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal resumed.

(7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by mutual consent of the department and the taxpayer. The department shall consent to all reasonable requests for extension of deadlines.

(8) (a) The director of revenue or the director's designee is authorized to enter into an agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department for any taxable period.

(b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

**Section 2.** Section 15-24-102, MCA, is amended to read:

**"15-24-102. Valuation of interstate fleets — determination of aggregate tax due — exemption from mill levies.** The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet making application for proportional registration, as follows:

(1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the department determines the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, is the market value.

(3) The sum of the market value of all taxable vehicles included in the fleet multiplied by the tax rate for class eight property in 15-6-138 is the taxable value for the entire fleet as provided in 15-6-138.

HeinOnline -- 1997 vol. I 659 1997

(4) To determine the amount of tax due, the taxable value of the entire fleet must be multiplied by the statewide average county mill levy plus state levies as provided in 15-24-103.

(5) To determine the tax due under this chapter, state levies applicable to interstate motor vehicle fleets include but are not limited to levies imposed under ~~15-10-101,~~ 15-10-106, 20-9-331, 20-9-333, 20-9-360, and 53-2-813.

(6) All taxes and fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 15-24-105."

**Section 3.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Cede of 1954, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15); and

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, *a* county, municipality, *or* district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

HeinOnline -- 1997 vol. I 660 1997

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer; ~~and~~

(k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted; *and*

*(l) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.*

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code for all periods for which the DISC election is effective.

HeinOnline -- 1997 vol. I 661 1997

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954, as that section may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year *that* the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 ~~per~~ *a* week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, ~~permanently and totally disabled~~ *"permanently and totally disabled"* means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

**Section 4.** Section 15-30-204, MCA, is amended to read:

**"15-30-204. Weekly, monthly, or annual payment.** (1) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding lookback period was $12,000 or greater shall file a return in the form and containing the information that may be required by the department and shall pay the amount required by 15-30-202 to be deductod and withheld by the employer from wages paid during the preceding payroll period. The payment must be submitted on or before the date on which federal income tax weekly withholding payments are due. On or before the last day of April, July, October, and January, the employer shall file a return in the form and containing the information required by the department. The quarterly returns for employers subject to this subsection must be used to summarize and adjust payments and to request refunds of overpayments. The employer shall also file the annual statement as required by 15-30-207.

(2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding lookback period was less than $12,000 but greater than $1,199 shall remit a monthly payment to the department for the amount required by 15-30-202 to be deducted and withheld

HeinOnline -- 1997 vol. I 662 1997

by the employer from wages paid during the preceding month. The monthly payment must be submitted on or before the 15th day of the month following the payment of the wages. The employer subject to this subsection shall, on or before February 28 of the year following payment of the wages, file an annual return in the form and containing the information required by the department and the annual statement required by 15-30-207. The annual returns for employers subject to this subsection must be used to summarize and adjust payments and to request refunds of overpayments.

(3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202 upon the wages of all employees of any employer is less than $1,200 for the preceding lookback period, the employer shall, on or before February 28 of the year succeeding that in which the wages were paid, file an annual return in the form required by the department, together with the annual statement required by 15-30-207, and shall at the same time pay the amount required to be deducted and withheld by the employer from all wages paid during the preceding calendar year.

(b) An employer subject to the provisions of this subsection (3) may elect to remit monthly payments. If an employer elects to make monthly payments, the employer shall remit monthly payments during the entire year and is subject to the same interest and penalty provisions as employers subject to the provisions of subsection (2).

(c) If an employer subject to the provisions of this subsection (3) does not file the annual return required by subsection (3)(a), the employer is subject to the payment and filing provisions of subsection (2) until the department determines from the employer's subsequent filing history that the employer will file in a timely fashion.

(4) (a) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.

(b) A new employer or an employer with no filing history is subject to the provisions of subsection (2) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

*(c) An employer who has been in operation for less than the full 12 months of the lookback period and who estimates that the total liability for state income tax withholding or, if the employer is not subject to state income tax withhalding, the employer's tax liability for the old fund liability tax will not exceed $1,199 for the calendar year may apply to the department to remit and file pursuant to subsection (3)(a). However, if the liability exceeds $1,199 at any time during the calendar year, the employer shall immediately remit the total amount due and begin to remit payments pursuant to subsection (2). The employer is liable to monitor the accrued tax liability.*

(5) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income tax."

HeinOnline -- 1997 vol. I 663 1997

**Section 5.** Section 39-71-2503, MCA, is amended to read:

**"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer, except an employer whose employees are covered by federal workers' compensation legislation, a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

(i) for the preceding payroll period for employers subject to the payment schedule contained in 15-30-204(1);

(ii) for the preceding month for employers subject to the payment schedule contained in 15-30-204(2); and

(iii) for the preceding year for employers subject to the payment schedule contained in 15-30-204(3)(a).

(b) There is imposed on each employee, except an employee who is covered by federal workers' compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages. An employer paying wages for services performed in Montana shall deduct and withhold the tax from the wages.

(c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager derived from ongoing activities.

(ii) The tax imposed in this subsection *(1)*(c) applies only to the ordinary income of a shareholder, partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

(iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this subsection *(1)*(c).

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who owns stock in a closely held corporation that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment

HeinOnline -- 1997 vol. I 664 1997

account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records that the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the stato for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the old fund liability tax required hy this section.

(j) A sole proprietor, subchapter S. corporation sbareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as received in the account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must he made pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remaimder to the account provided for in 39-71-2504.

(b) Tax payments due from sole proprietors, subcbapter S. corporation shareholders, partners of partnerships, and memhers or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department sball first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided for in 39-71-2504.

*(c) Remuneration paid by an employer for domestic service in the employer's private home is not considered wages subject to the workers' compensation old fund liability tax if the remuneration paid during the year is less than $1,000 for each employee. If the remuneration paid during the year is $1,000 or more, it is subject to the provisions of subsections (1)(a) and (1)(b) and must be paid with the employer's Montana individual income tax return. However, if the employer withholds state income tax from the wages of the employee, the employer must make tax payments and returns according to 15-30-204 and subsection (3)(a) of this section.*

(4) An employer's officer or employee with tlie duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the stato for the unpaid amount and any penalty and interest relating to that amount.

HeinOnline -- 1997 vol. I 665 1997

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. The department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

**Section 6.** Section 39-71-2505, MCA, is amended to read:

"**39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year.

(2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.

(b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll *for* ~~in~~ the preceding ~~calendar quarter~~:

HeinOnline -- 1997 vol. I 666 1997

*(A) payroll period for employers subject to the payment schedule contained in 15-30-204(1);*

*(B) month for employers subject to the payment schedule contained in 15-30-204(2);*

*(C) year for employers subjeet to the payment schedule contained in 15-30-204(3)(a).*

(ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages ~~in the preceding calendar quarter~~ *each payroll period.*

(iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of eacb subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liabiiity company.

(iv) The rate of the employer old fund liability tax determined by this section includes tbe 0.28% employer old fund liability tax provided for in 39-71-2503.

(v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007.

(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are outstanding, the old fund liability tax may not be imposed after tbe end of fiscal year 2007.

(vi) The old fund liability tax described in this section must be collected and deposited as provided in 39-71-2503 and 39-71-2504.

(3) If in any January the cumulative projected amount to be borrowed by the state fund from reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1, 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, not including any outstanding bonds as of May 13, 1993, exceeds $80 million for the following fiscal year, the tax rate on the persons subject to the old fund liabiiity tax must be increased by 0.05% for the following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance for the current fiscal year exceeds $25 million, the tax rate on the persons subject te tbe old fund liability tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

(4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

(5) The budget director shall certify the cash flow projections of the state fund required by this section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected pursuant to this section."

**Section 7. Repealer.** Sections 15-10-101, 15-10-102, and 15-10-104, MCA, are repealed.

**Section 8. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

HeinOnline -- 1997 vol. I 667 1997

**Section 9. Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1997

# CHAPTER NO. 124

[SB 125]

AN ACT ADOPTING THE UNIFORM UNCLAIMED PROPERTY ACT; AMENDING SECTIONS 17-8-303 AND 72-14-102, MCA; REPEALING SECTIONS 70-9-101, 70-9-102, 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204, 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304, 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315, AND 70-9-316, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 29] may be cited as the "Uniform Unclaimed Property Act".

**Section 2. Definitions.** In [sections 1 through 29], unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the department of revenue provided for in 2-15-1301.

(2) "Apparent owner" means a person whose name appears on the records of a holder as the person entitled to property beld, issued, or owing hy the holder.

(3) "Business association" means a corporation, joint-stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(4) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(5) "Financial organization" means a savings and loan association, bank, banking organization, or credit union.

(6) "Holder" means a person obligated to hold for the account of, or deliver or pay to, the owner property that is subject to [sections 1 through 29].

(7) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(8) "Mineral" means gas; oil; coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable

HeinOnline -- 1997 vol. I 668 1997

ores; colloidal and other clay; steam and other geothermal resource; or any other substance defined as a mineral by the law of this state.

(9) "Mineral proceeds" means amounts payable for the extraction, production, or sale of minerals or, upon the abandonment of those payments, all payments that become payable after abandonment. The term includes amounts payable:

(a) for the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

(b) for the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

(c) under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farmout agreement.

(10) "Money order" includes an express money order and a personal money order, on which the remitter is the purchaser. The term does not include a bank money order or any other instrument sold by a financial organization if the seller has obtained the name and address of the payee.

(11) "Owner" means a person who has a legal or equitable interest in property subject to [sections 1 through 29] or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(12) "Person" means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(13) "Property" means tangible property described in [section 4] or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental suhdivision, agoncy, or instrumentality, and all income or increments from the property. The term includes property that is referred to as or evidenced by:

(a) money, check, draft, deposit, interest, or dividend;

(b) credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wago, unused ticket, mineral proceeds, or unidentified remittance;

(c) stock or other evidence of ownership of an interest in a business association or financial organization;

(d) bond, debenture, note, or other evidence of indebtedness;

(e) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(f) an amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty

insurance, workers' compensation insurance, or health and disability insurance; and

(g) an amount distributable from a trust or custodial fund that is established under a plan to provido health, welfare, pension, vacation, severance, retirement, death, stock purcbase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(14) "Record" means information tbat is inscribed on a tangible medium or that is stored in an electronic or other niedium and that is retrievable in perceivable form.

(15) "State" means a state of the United States, the District of Columbia, tbe Commonwealth of Puerto Rico, or any territery or insular possession that is subject to the jurisdiction of the United States.

(16) "Utility" means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transmission of communications or tbe production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

**Section 3. Presumptions of abandoument.** (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

(c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:

(i) the date of tbe niost recent dividend, stock split, or other distribution that was unclaimed by the apparent owner; or

(ii) the date of the second niailing of a statenient of account or other notification or comniunication that was returned as undeliverable or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(d) debt of a business association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed by the apparent owner;

(e) demand, savings, or time deposit, including a deposit that is automatically renewable, 5 years after the earlier of maturity or tbe date of tbe last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upen its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file witb the holder;

(f) money or credits owed to a custenier as a result of a retail business transaction, 3 years after the obligation accrued;

HeinOnline -- 1997 vol. I 670 1997

(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value;

(h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, 3 years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, 3 years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(i) property distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

(j) property received by a court as proceeds of a class action and not distributed pursuant to the judgment, 1 year after the distribution date;

(k) property held by a court, government, governmental subdivision, agency, or instrumentality, 1 year after the property becomes distributable;

(l) wages or other compensation for personal services, 1 year after the compensation becomes payable;

(m) deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

(n) property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(o) a patronage refund owed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date; and

(p) all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time that an interest is presumed abandoned under subsection (1), any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable period set forth in subsection (1), the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder with the holder concerning the property or the account in which the property is held and has not otherwise indicated an interest in the property. A communication with an owner by a person other than the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

HeinOnline -- 1997 vol. I 671 1997

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) the making of a deposit to or withdrawal from an account in a financial organization; and

(d) the payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of [sections 1 through 29] notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(6) The presumption provided in subsection (1) does not apply to unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes.

**Section 4. Contents of safe deposit box or other safekeeping depository.** Tangible property held in a safe deposit box or other safekeeping depository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law are presumed abandoned if the property remains unclaimed by the owner for more than 5 years after expiration of the lease or rental period on the box or other depository.

**Section 5. Rules for taking custody.** Except as otherwise provided in [sections 1 through 29] or by other statute of this state, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this state if:

(1) the last-known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last-known address of the person entitled to the property is in this state;

(3) the records of the holder do not reflect the last-known address of the apparent owner and it is established that:

(a) the last-known address of the person entitled to the property is in this state; or

(b) the holder is domiciled in this state or is a government or governmental subdivision, agency, or instrumentality of this state and has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property;

(4) the last-known address of tbe apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in this state or is a goverument or governmental subdivision, agoncy, or instrumentality of this state;

(5) the last-known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in this state or is a government or gevernmental subdivision, agency, or instrumentality of this state;

(6) the transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last-known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) the property is a traveler's check or money order purchased in this state or the issuer of the traveler's check or money order has its principal place of business in this state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which tbe instrument was purchased.

**Section 6. Dormancy charge.** A holder may deduct from property presumed abandoned a charge imposed by reason of the owner's failure te claim the property within a specified time only if there is a valid and enforceahle written contract between the holder and the owner under which the holder may imposo the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited te an amount that is not unconscionable.

**Section 7. Burden of proof as to property evidenced by record of check or draft.** A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder that is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisito period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

**Section 8. Report of abandoned property.** (1) A holder of property presumed abandoned sball make a report te the administrater concerning the property.

(2) The report must be verified and must contain:

(a) a description of tlie proporty;

(b) except with respect to a traveler's check or money order, the name, if known, and last-known address, if any, and the social security number or

taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of $50 or more;

(c) an aggregated amount of items valued under $50 each;

(d) in the case of an amount of $50 or more held or owing under an annuity or a life or endowment insurance policy, the full name and last-known address of the annuitant or insured and of the beneficiary;

(e) in the case of property held in a safe deposit box or other safekeeping depository, an indication of the place where it is held and where it may be inspected by the administrator and any amounts owing to the holder;

(f) the date, if any, on which the property became payable, demandable, or returnable and the date of the last transaction with the apparent owner with respect to the property; and

(g) other information that the administrator by rule prescribes as necessary for the administration of [sections 1 through 29].

(3) If a holder of property presumed abandoned is a successor to another person that previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(4) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(5) The holder of property that is presumed abandoned shall send written notice to the apparent owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to [sections 1 through 29] if:

(a) the holder has in its records an address for the apparent owner that the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by a statute of limitations; and

(c) the value of the property is $50 or more.

(6) Before the date for filing the report, the holder of property presumed abandoned may request the administrator to extend the time for filing the report. The administrator may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(7) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with subsection (5).

**Section 9. Payment or delivery of abandoned property.** (1) Except for property held in a safe deposit box or other safekeeping depository, upon filing

the report required by [section 8], the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed; however, if the property is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository may not be delivered to the administrator until 60 days after filing the report required by [section 8].

(2) If the property reported to the administrator is a security or security entitlement under Title 30, chapter 8, the administrator is an appropriate person to make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Title 30, chaptor 8.

(3) If the holder of proporty reported to the administrator is the issuer of a certificated security, the administrator has the right to obtain a replacement certificate pursuant to 30-8-408, but an indemnity bond is not required.

(4) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any porson in accordance with [section 11].

**Section 10. Notice and publication of lists of abandoned property.** (1) The administrator shall publish a notice not later than November 30 of the year following the year in which abandoned proporty has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the county of this stato in which is located the last-known address of any person named in the notice. If a holder does not report an address for the apparent owner or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:

(a) the name of each person appoaring to be the owner of the property, as set forth in the report filed by the holder;

(b) the last-known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed hy the holder;

(c) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(d) a statement that information about the proporty and its return to the owner is available to a person having a legal or beneficial intorest in the property, upon request to the administrator.

HeinOnline -- 1997 vol. I 675 1997

(2) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than $50 or information concerning a traveler's check, money order, or similar instrument.

**Seetion 11. Custody by state — recovery by holder — defense of holder.** (1) In this section, payment or delivery is made in "good faith" if:

(a) payment or delivery was made in a reasonable attempt to coınply with [sections 1 through 29];

(b) the holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(c) there is no showing that the records under which the payment or delivery was made did not ıneet reasonable coınınercial standards of practice.

(2) Upen payment or delivery of property to the administrator, the state assumes custody and responsibility for the safekeeping of the property. A holder that pays or delivers property to the adminıstrator in goed faith is relieved of all liability arising thereafter with respect to the property.

(3) A holder that has paid money to the administrator pursuant to [sections 1 through 29] ınay subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upen a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the administrator shall promptly reiınburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrnment, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person that reasonahly appeared to be entitled to payment. The holder must be reimbursed for payment ınade even if the payment was made to a person whose claim was barred under [section 19].

(4) A holder that has delivered property other than ınoney to the administrator pursu:ınt to [sections 1 through 29] may reclaim the property if it is still in the possession of the administrator, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(5) The administrator may accept a holder's affidavit as sufficient proof of the holder's right to recover ınoney and property under this section.

(6) If a holder pays or delivers property to the administrator in good faith and thereafter another person claims the property from the holder or anotlıer state claiins the money or property under its laws relating to escheat or abandoned or unclaimed property, the adminıstrator, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claiın resulting from payment or delivery of the property to the administrator.

(7) Property reınoved from a safe deposit box or other safekeeping depository is received by the administrator suhject to the holder's right to be reimbursed for the cost of the opening and to any valid lien or contract providiıng for the holder to be reimhursed for unpaid rent or storago charges. The administrator shall

reimburse the holder out of the proceeds remaining after deducting the expense incurred by the administrator in sell. g the property.

**Section 12. Public sale of abandoned property.** (1) Except as otherwise provided in this section, the administrator, within 3 years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the state, which in the judgment of the administrator affords the most favorable market for the property. The administrator may decline the highest bid and reoffer the property for sale if the administrator considers the bid to be insufficient. The administrator need not offer the property for sale if the administrator considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least 3 weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the administrator. If securities are sold by the administrator before the expiration of 3 years after their delivery to the administrator, a person making a claim under [sections 1 through 29] before the end of the 3-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, plus dividends, interest, and other increments up to the time the claim is made, less any deduction for expenses of sale. A person making a claim under [sections 1 through 29] after the expiration of the 3-year period is entitled to receive the securities delivered to the administrator by the holder, if they still remain in the custody of the administrator, or the net proceeds received from sale and is not entitled to receive any appreciation in the value of the property occurring after delivery to the administrator except in a case of intentional misconduct or malfeasance by the administrator.

(3) A purchaser of property at a sale conducted by the administrator pursuant to [sections 1 through 29] takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The administrator shall execute all documents necessary to complete the transfer of ownership.

**Section 13. Deposit of funds.** (1) Except as otherwise provided by this section, the administrator shall promptly deposit in the general fund of this state all funds received under [sections 1 through 29], including the proceeds from the sale of abandoned property under [section 12]. The administrator shall retain in a separate trust fund at least $100,000 from which the administrator shall pay claims allowed. The administrator shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the property and the name and last-known address of each insured person or annuitant and beneficiary and, with respect to each policy or annuity listed in the repert of an insurance company, its number, the name of the company, and the amount due.

(2) Before making a deposit to the credit of the general fund, the administrator may deduct:

(a) expenses of sale of abandoned property;

HeinOnline -- 1997 vol. I 677 1997

(b) costs of mailing and publication in connection with abandoned property;

(c) reasonable service charges; and

(d) expenses incurred in examining records of holders of property and in collecting the property from those holders.

**Section 14. Claim of another stato to recover property.** (1) After property lias heen paid or delivered to the administrator under [sections 1 through 29], another state may recover tlie property if:

(a) the property was paid or delivered to the custody of this state because the records of the liolder did not reflect a last-known location of the apparent owner within the horders of the other state and the other state estiablishes that the apparent owner or other person entitled to tlie property was last known to be located within tlie borders of that state, and under the laws of that state, the property has escheated or become subject to a claim of abandonment by that state;

(b) the property was paid or delivered to the custody of this state because the laws of the other state did not provide for tlie escheat or custodial taking of the property, and under the laws of that state subsequently enacted, tlie property has escheated or become subject to a claim of abandonment by that state;

(c) the records of the holder were erroneous in that they did not accurately identify the owner of the property and the last-known location of the owner within the borders of anotlier state, and under tlie laws of that state, the property has escheated or become subject to a claim of abandonment by that state;

(d) the property was suhjected to custody by this state under [section 5(6)], and under the laws of the state of domicile of tlie holder, the property has escheated or become subject to a claim of abandonment by that state; or

(e) the property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the otlier state and delivered into tlie custody of this state under [section 5(7)], and under tlie laws of the other state, the property lias escheated or hecome subject to a claim of abandonment hy that state.

(2) A claim of anotlier state to recover escheated or abandoned property must be presented in a form prescribed hy the administrator, who shall decide tlie claim within 90 days after it is presented. The administrator shall allow the claim upon determining that tlie otlier state is entitled to tlie abandoned property under suhsection (1).

(3) The administrator shall require another state, before recovering property under this section, to agree te indemnify this state and its officers and employees against any liability on a claim to tlie property.

**Section 15. Filing claim with administrator — handling of claims hy administrator.** (1) A person, excluding another state, claiming property paid or delivered to tlie administrator may file a claim on a form prescribed by the administrator and verified hy tlie claimant.

(2) Within 90 days after a claim is filed, the administrator shall allow or deny tlie claim and give written notice of the decision to tlie claimant. If the claim is denied, the administrator shall inform the claimant of the reasons for tlie denial

HeinOnline -- 1997 vol. I 678 1997

and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the administrator or maintain an action under [section 16].

(3) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest, or other increment to which the claimant is entitled under [section 12].

(4) A holder that pays the owner for property that has been delivered to the state and that, if claimed from the administrater by the owner, would be subject to an increment under [section 12] may recover from the administrator the amount of the increment.

**Section 16. Action to establish claim.** A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the district court, naming the administrator as a defendant. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney fees.

**Section 17. Election to take payment or delivery.** (1) The administrator may decline to receive property reported under [sections 1 through 29] that the administrator considers to have a value less than the expenses of notice and sale.

(2) A holder, with the written consent of the administrater and upon conditions and terms prescribed by the administrator, may report and deliver property before the property is presumed abandoned. Preperty that is delivered must be held by the administrator and is not presumed abandoned until it otherwise would be presumed abandoned under [sections 1 through 29].

**Section 18. Destruction or disposition of property having no substantial commercial value — immunity from liability.** If the administrator determines after investigation that property delivered under [sections 1 through 29] has no substantial commercial value, the administrator may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the state or any officer or against the holder for or on account of an act of the administrator under this section except for intentional misconduct or malfeasance.

**Section 19. Periods of limitation.** (1) The expiration, before or after [the effective date of this act], of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by [sections 1 through 29].

(2) An action or proceeding may not be maintained by the administrator to enforce [sections 1 through 29] in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a repert or other

HeinOnline -- 1997 vol. I 679 1997

express notice the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

**Section 20. Requests for reports and examination of records.** (1) The administrator may require a person that has not filed a report or a person that the administrator believes has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the administrator. The report must state whether the person is holding property reportable under [sections 1 through 29], describe property not previously reported or as to which the administrator has made inquiry, and specifically identify and state the amounts of property that may be in issue.

(2) The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with [sections 1 through 29]. The administrator may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under [sections 1 through 29]. The administrator may contract with any other person to conduct the examination on behalf of the administrator.

(3) The administrator, at reasonable times, may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association or financial organization that is the holder of property presumed abandoned if the administrator has given the notice required by subsection (2) to both the association or organization and the agent at least 90 days before the examination.

(4) Documents and working papers obtained or compiled by the administrator, or the administrator's agents, employees, or designated representatives, in the course of conducting an examination are confidential and are not public records, but the documents and papers may be:

(a) used by the administrator in the course of an action to collect unclaimed property or otherwise enforce [sections 1 through 29];

(b) used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(c) produced pursuant to subpoena or court order; or

(d) disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection (4) if the other state is bound to keep the documents and papers confidential.

(5) If an examination of the records of a person results in the disclosure of property reportable under [sections 1 through 29], the administrator may assess the cost of the examination against the holder at the rate of $200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (3) may be assessed only against the business association or financial organization.

(6) If, after [the effective date of this act], a holder does not maintain the records required by [section 21] and the records of the holder available for the

HeinOnline -- 1997 vol. I 680 1997

periods subject to [sections 1 through 29] are insufficient to permit the preparation of a report, the administrator may require the holder to report and pay to the administrator the amount the administrator reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been but was not reported.

**Seetion 21. Retention of records.** (1) Except as otherwise provided in subsection (2), a holder required to file a report under [section 8] shall maintain the records containing the information required to he included in the report for 10 years after the holder files the report unless a shorter period is provided by rule of the administrator.

(2) A business association or financial organization that sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association or financial organization is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for 3 years after the holder files the report.

**Seetion 22. Enforeemcnt.** The administrator may maintain an action in this or another state to enforce [sections 1 through 29]. The court may award reasonable attorney fees to the prevailing party.

**Section 23. Interstate agreements and cooperation — joint and reciprocal actions with othcr states.** (1) The administrator may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may pormit the other state, or another person acting on behalf of a state, to examine records as authorized in [section 20]. The administrator by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(2) The administrator may join with another state to seek enforcement of [sections 1 through 29] against any person that is or may be holding proporty reportable under [sections 1 through 29].

(3) At the request of another state, the attorney general of this state may maintain an action on behalf of the other state to enforce, in this state, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other stato if the other state has agreed to pay expenses incurred hy the attorney general in maintaining the action.

(4) The administrator may request that the attorney general of another state or another attorney commence an action in the other state on hehalf of the administrator. With the approval of the attorney general of this stato, the administrator may retain any other attorney to commence an action in this state on behalf of the administrator. This state shall pay all expenses, including attorney fees, in maintaining an action under this subsection. With the administrator's approval, the expenses and attorney fees may be paid from money received under [sections 1 through 29]. The administrator may agree to pay expenses and attorney fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorney fees paid under

HeinOnline -- 1997 vol. I 681 1997

this subsection may not be deducted from the amount that is subject to the claim by the owner under [sections 1 through 29].

**Section 24. Interest and penalties.** (1) A holder that fails to report, pay, or deliver property within the time prescribed by [sections 1 through 29] shall pay to the administrator interest at the annual rate of 12% on the property or value of the property from the date the property should have been reperted, paid, or delivered.

(2) Except as otherwise provided in subsection (3), a holder that fails to report, pay, or deliver property within the time prescribed by [sections 1 through 29], or fails to perform other duties imposed by [sections 1 through 29], shall pay to the administrator, in addition te interest as provided in subsection (1), a civil penalty of $100 for each day the repert, payment, or delivery is withheld, or the duty is not performed, up to a maximum of $2,500.

(3) A hoider that willfully fails to repert, pay, or deliver property within the time prescribed by [sections 1 through 29], or willfully fails to perform other duties imposed by [sections 1 through 29], shall pay to the administrator, in addition to interest as provided in subsection (1), a civil penalty of $1,000 for each day tlie report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of $25,000, plus 25% of the value of any property that should have been but was not reported.

(4) A holder that makes a fraudulent repert shall pay to the administrater, in addition to interest as provided in subsection (1), a civil penalty of $1,000 for each day from the date a repert under [sections 1 through 29] was due, up to a maximum of $25,000, plus 25% of the value of any property that should have been but was not reported.

(5) The administrator for good cause may waive, in whole or in part, interest under subsection (1) and penalties under subsections (2) and (3) and shall waive penalties if the holder acted in good faith and without negligonce.

**Section 25. Agreement to locate property.** (1) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to tlie administrater. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the administrator's denial of a claim.

(2) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of tbe property and the services to be rendered, is signed by the apparent owner, and states the value of the property before and after the fee or other compensation has been deducted.

(3) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

HeinOnline -- 1997 vol. I 682 1997

(4) An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the administrator on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney fees to an owner who prevails in the action.

(5) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than unconscionable compensation.

**Section 26. Foreign transactions.** [Sections 1 through 29] do not apply to property held, due, and owing in a foreign country and arising out of a foreign transaction.

**Section 27. Transitional provisions.** (1) An initial report filed under [sections 1 through 29] for property that was not required to be reported before [the effective date of this act] but that is subject to [sections 1 through 29] must include all items of property that would have been presumed abandoned during the 10-year period next preceding [the effective date of this act] as if [sections 1 through 29] had been in effect during that period.

(2) [Sections 1 through 29] do not relieve a holder of a duty that arose before [the effective date of this act] to report, pay, or deliver property. Except as otherwise provided in [section 19(2)], a holder that did not comply with the law in effect before [the effective date of this act] is subject to the applicable provisions for enforcement and ponalties that then existed, which are continued in effect for the purpose of this section.

**Section 28. Rules.** The administrator may adopt, pursuant to Title 2, chapter 4, rules necessary to carry out [sections 1 through 29].

**Section 29. Uniformity of application and construction.** [Sections 1 through 29] must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of [sections 1 through 29] among states enacting it.

**Section 30.** Section 17-8-303, MCA, is amended to read:

**"17-8-303. Warrants — presentation and cancellation.** (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state treasurer on the state treasury must be presented for payment within 6 months after the date of issue.

(b) Warrants issued for the department of public health and human services that are funded to any extent with federal money must be presented for payment within 180 days after the date of issue.

(2) If the payee or legal holder of any warrant fails to present it for payment within the time specified in subsection (1), the state treasurer shall record the warrant as canceled and the amount must be credited to a separate expendable trust fund account administered by the treasurer. If the payee or legal owner of

HeinOnline -- 1997 vol. I 683 1997

a canceled warrant presents it for payment or presents a claim for payment within 4 years from the date of issue, the state treasurer may, upon proper showing by affidavit, issue a new warrant in lieu of the canceled warrant.

(3) Three years and 6 months after cancellation, the warrant must be classed as unclaimed property subject to the provisions of ~~Title 70, chapter 9, parts 1 through 3~~ *[sections 1 through 29]*. If the payee or legal owner of a canceled warrant presents it for payment or presents a claim for payment, the presentation must be to the department of revenue as provided in ~~70-9-310~~ *[section 15]*."

**Section 31.** Section 72-14-102, MCA, is amended to read:

**"72-14-102. Whcn title to eschcated propcrty vests in state.** (1) Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, the title vests in the state of Montana immediately upon the death of the owner without an inquest or other similar proceeding and there is no presumption that the owner died leaving heirs or next of kin.

(2) This chapter does not apply to any rural electric or telephone cooperative organized under Title 35, chapter 18, if the board of trustees of the cooperative has acted to retain patronage refunds that are made by the cooporative to a member or former member and that remain unclaimed for 5 years~~, as provided in 70-9-203~~."

**Section 32. Coordination instruetion.** If House Bill No. 284 is passed and approved amending 82-4-241, 82-4-311, and 82-4-424 to provide tbat unclaimed funds or bonds are to be deposited into an account in the state special revenue fund, then [section 3(1) of the first reading copy of this act] is amended to insert after "Except as provided in" the words "82-4-241, 82-4-311, 82-4-424, and".

**Section 33. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications tbat are severable from tbe invalid applications.

**Seetion 34. Two-thirds v.:e.** Because [section 18] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each bouse for passage.

**Section 35. Repcaler.** Sections 70-9-101, 70-9-102, 70-9-104, 70-9-105, 70-9-106, 70-9-111, 70-9-121, 70-9-122, 70-9-201, 70-9-202, 70-9-203, 70-9-204, 70-9-205, 70-9-206, 70-9-207, 70-9-208, 70-9-209, 70-9-210, 70-9-301, 70-9-302, 70-9-303, 70-9-304, 70-9-305, 70-9-306, 70-9-307, 70-9-308, 70-9-309, 70-9-310, 70-9-311, 70-9-312, 70-9-314, 70-9-315, and 70-9-316, MCA, are repealed.

**Section 36. Effective date.** [This act] is effective July 1, 1997.

Approved March 20, 1997

HeinOnline -- 1997 vol. I 684 1997

# CHAPTER NO. 125

[HB 311]

AN ACT REVISING THE TAXATION OF LIQUEFIED PETROLEUM GAS; PROVIDING FOR THE COLLECTION OF A TAX ON LIQUEFIED PETROLEUM GAS AT THE RETAIL LEVEL; ELIMINATING THE LICENSE TAX ON VEHICLES PROPELLED BY LIQUEFIED PETROLEUM GAS; AMENDING SECTIONS 15-70-701, 15-70-702, 15-70-703, 15-70-704, 15-70-705, 15-70-706, 15-70-707, 15-70-711, 15-70-712, 15-70-713, 15-70-714, 15-70-715, 15-70-716, 15-70-717, 15-70-718, AND 61-12-206, MCA; REPEALING SECTIONS 15-71-101, 15-71-102, 15-71-103, 15-71-104, 15-71-105, AND 15-71-110, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-70-701, MCA, is amended to read:

**"15-70-701. Definitions.** As used in this part, the following definitions apply:

(1) "Bond" means:

(a) a bond executed by a compressed natural gas dealer *or a liquefied petroleum gas dealer* as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the compressed natural gas dealer *or the liquefied petroleum gas dealer* arising out of this part; or

(b) a deposit with the department by the compressed natural gas dealer *or the liquefied petroleum gas dealer*, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(2) "Compressed natural gas" means a product that is used as a fuel and that contains carbon or hydrogen, or both, and is compressed to greater than 24 pounds per square inch absolute base pressure and up to 3,600 pounds per square inch absolute base pressure when sold for use in motor vehicles operated on the public roads and highways of this state.

(3) "Compressed natural gas dealer" or "dealer" means a person who delivers any part of compressed natural gas into the fuel supply tank or tanks of a motor vehicle.

(4) "Department" means the department of transportation.

(5) *"Liquefied petroleum gas" means any petroleum product that is sold for use in motor vehicles and that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons:*

*(a) propane;*

*(b) propylene;*

*(c) butane, including normal butane or isobutane; or*

*(d) butylene.*

*(6) "Liquefied petroleum gas dealer" or "dealer" means a person who delivers any part of liquefied petroleum gas into the fuel supply tank or tanks of a motor vehicle.*

*(7)* "Motor vehicle" means any vehicle that is self-propelled by compressed natural gas *or by liquefied petroleum gas* and that is driven upon the public roads and highways of this state.

~~(6)~~*(8)* (a) "Person" means ~~and includes any~~ *a* person, firm, association, joint-stock company, syndicate, partnership, or corporation.

(b) When used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, person means ~~and includes~~ the partners or members of a firm, association, syndicate, or partnership; as applied to a joint-stock company or corporation, the term means ~~and includes~~ the officers of the joint-stock company or corporation.

~~(7)~~*(9)* "Public roads and highways of this state" means all streets, roads, highways, and related structures that are:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state."

**Section 2.** Section 15-70-702, MCA, is amended to read:

**"15-70-702. Compressed natural gas dealer's *or liquefied petroleum gas dealer's* license.** A person may not act as a compressed natural gas dealer *or as a liquefied petroleum gas dealer* in this state unless the person holds a valid compressed natural gas dealer's license *or a valid liquefied petroleum gas dealer's license* issued by the department."

**Section 3.** Section 15-70-703, MCA, is amended to read:

**"15-70-703. Application for license.** An application for a compressed natural gas dealer's license *or a liquefied petroleum gas dealer's license* must be filed on a form prescribed by the department. The application must contain information that the department considers necessary."

**Section 4.** Section 15-70-704, MCA, is amended to read:

**"15-70-704. Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a compressed natural gas dealer's license *or a liquefied petroleum gas dealer's license* may not be issued to a person and may not be continued in force unless the person has furnished a bond, in a form prescribed by the department, to secure the dealer's compliance with this part and has paid all taxes, interest, and penalties due under this part. The department

HeinOnline -- 1997 vol. I 686 1997

shall waive the bond requirement of a compressed natural gas dealer *or a liquefied petroleum gas dealer* who is not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required must be equivalent to twice the compressed natural gas dealer's *or the liquefied petroleum gas dealer's* estimated monthly tax payments but may not be less than $1,000 for any compressed natural gas dealer *or liquefied petroleum gas dealer* who:

(a) requests a compressed natural gas dealer's *or a liquefied petroleum gas dealer's* license to be reissued after the license was canceled for cause; or

(b) fails to file timely reports and pay the tax due as required by 15-70-714.

(3) A surety on a bond furnished as provided in this section must be released and discharged from any liability to the state accruing on the bond after 30 days from the date when the surety has provided to the department a written request to be released and discharged. However, this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. Upon receiving a release request, the department shall promptly notify the compressed natural gas dealer *or the liquefied petroleum gas dealer* who furnished the bond, and unless the dealer, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as described in 15-70-701(1)(b), the department shall cancel the dealer's license.

(4) The department may require a compressed natural gas dealer *or a liquefied petroleum gas dealer* to give a new or additional surety bond or to deposit additional securities pursuant to 15-70-701(1)(b) if the department determines that the security of the surety bond previously filed by the dealer or the market value of the property deposited as security by the dealer is impaired or inadequate. If the compressed natural gas dealer *or the liquefied petroleum gas dealer* fails to give an additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the dealer's license."

**Section 5.** Section 15-70-705, MCA, is amended to read:

**"15-70-705. Issuance of license — grounds for refusal — hearing.** (1) Except as provided in subsection (2), upon receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as a compressed natural gas dealer *or as a liquefied petroleum gas dealer*. A license is valid until suspended, ~~or~~ revoked for cause, or otherwise canceled.

(2) The department may refuse to issue a compressed natural gas dealer's license *or a liquefied petroleum gas dealer's license* to any person:

(a) who formerly held a license that, prior to the time of filing the application, has been revoked for cause;

(b) who is not the real party in interest, and the license of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

HeinOnline -- 1997 vol. I 687 1997

(3) Before refusing to issue a license, the department shall grant the applicant a hearing and shall provide the dealer with at least 10 days' written notice of the time and place of hearing.

(4) A compressed natural gas dealer's license *or a liquefied petroleum gas dealer's license* is not transferable."

**Section 6.** Section 15-70-706, MCA, is amended to read:

"**15-70-706. Revocation of license — notice.** (1) The department may revoke the license of any compressed natural gas dealer *or liquefied petroleum gas dealer* for reasonable cause. Before revoking a license, the department shall notify the licensee of the department's intent to revoke the license. The notice must be made by certified mail addressed to the licensee's last-known address shown in the files of the department. The notice must include a statement that the licensee has the right to appear before the department at a time specified in the notice and to show cause, if any, why the license should not be revoked. The time specified by the department may not be more than 30 days or less than 10 days from the date of the notice. At any time prior to and during the hearing, the department may in the exercise of reasonable discretion suspend the license.

(2) Upon revocation of a license, the licensee shall immediately surrender the license to the department for cancellation."

**Section 7.** Section 15-70-707, MCA, is amended to read:

"**15-70-707. Cancellation of license upon surrender.** The department shall cancel a license to act as a compressed natural gas dealer *or as a liquefied petroleum gas dealer* immediately upon surrender of the license by the licensee."

**Section 8.** Section 15-70-711, MCA, is amended to read:

"**15-70-711. Tax on compressed natural gas — *tax on liquefied petroleum gas.*** (1) Each compressed natural gas dealer shall collect the tax on compressed natural gas from the user at the time *that* the compressed natural gas is placed into the supply tank of a motor vehicle.

(2) (a) The total tax due *on compressed natural gas* is computed according to the formula provided in subsection (2)(b).

(b) T = (R/V) x TV, where:

(i) T is the total tax due;

(ii) R is 7 cents;

(iii) V is 120 cubic feet of compressed natural gas at 14.73 pounds per square inch absolute base pressure; and

(iv) TV is the total volume of compressed natural gas placed into the supply tank of a motor vehicle.

(3) The *compressed natural gas* dealer shall pay the tax to the department as provided in 15-70-714.

HeinOnline -- 1997 vol. I 688 1997

*(4) Each liquefied petroleum gas dealer shall collect the tax on liquefied petroleum gas from the user at the time that the liquefied petroleum gas is placed into the supply tank of a motor vehicle.*

*(5) (a) The total tax due on liquefied petroleum gas is computed according to the formula provided in subsection (5)(b).*

*(b) T = (C/G) x TG, where:*

*(i) T is the total tax due;*

*(ii) C is 5.18 cents;*

*(iii) G is 1 gallon of liquefied petroleum gas; and*

*(iv) TG is the total gallons of liquefied petroleum gas placed into the supply tank of a motor vehicle.*

*(6) The liquefied petroleum gas dealer shall pay the tax to the department as provided in 15-70-714.*

*(7)* The United States, the state of Montana, and any political subdivision of this state are exempt from the levy and imposition of this tax."

**Section 9.** Section 15-70-712, MCA, is amended to read:

"**15-70-712. Recordkeeping.** (1) Each compressed natural gas dealer, *each liquefied petroleum gas dealer,* and each person importing, manufacturing, refining, dealing in, transporting, or storing compressed natural gas *or liquefied petroleum gas* in this state shall keep all records, receipts, invoices, and other pertinent documents that the department may require and shall produce them for the inspection of the department at any time during regular business hours.

(2) The records, receipts, invoices, and other pertinent documents must be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made."

**Section 10.** Section 15-70-713, MCA, is amended to read:

"**15-70-713. Examination of records — enforcement — reciprocity.** (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative may examine the records, receipts, invoices, documents, and equipment of any compressed natural gas dealer, *any liquefied petroleum gas dealer,* or ~~of~~ any person importing, manufacturing, refining, dealing in, transporting, or storing compressed natural gas *or liquefied petroleum gas* and may investigate the character of the disposition that any person makes of compressed natural gas *or liquefied petroleum gas* in order to determine whether all taxes due under this part are being properly reported and paid. If the records, receipts, invoices, documents, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department or at the business location of the dealer or other person and must, if requested by the department, be accompanied by the dealer or other person.

HeinOnline -- 1997 vol. I 689 1997

(3) The department shall, upon request from an official who is responsible for the enforcement of the compressed natural gas tax law *or the liquefied petroleum gas tax law* of any other state, the District of Columbia, the United States, a territory or possession of the United States, or a province of Canada, forward te the official any infornation that it has relative to the receipt, storage, delivery, sale, use, or other disposition of compressed natural gas *or liquefied petroleum gas* by any compressed natural gas dealer *or liquefied petroleum gas dealer* if the other governmental entity furnishes similar information to the department."

**Section 11.** Section 15-70-714, MCA, is amended to read:

**"15-70-714. Returns required — payment.** (1) For the purpose of determining the amount of liability for the tax due under this part, each compressed natural gas dealer *and each liquefied petroleum gas dealer* shall file with the department a monthly tax return on forms prescribed by the department.

(2) The dealer shall file the return on or before the last day of the next calendar month following the month for which the tax is due. For geod cause, the department may grant a taxpayer a reasonable extension of time for filing, but the extension may not exceed 30 days.

(3) The tax return must be accompanied by payment of the amount of tax due under 15-70-711 for compressed natural gas *or liquefied petroleum gas* sold during the preceding menth."

**Section 12.** Section 15-70-715, MCA, is amended to read:

**"15-70-715. Penalties for refusal or failure to file return or pay tax when due.** (1) If a compressed natural gas dealer *or a liquefied petroleum gas dealer* refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-714, there is inposed a ponalty of $25 or a sum equal to 10% of tbe tax due, whichever is greater, together with interest at the rate of 1% on tlie tax due for each calendar month or fraction of a month during which the refusal or failure contimues. If a compressed natural gas dealer *or a liquefied petroleum gas dealer* establishes to the satisfaction of the department that tlie failure to file a return within tlie time prescribed was due to reasonable cause, the department shall waive the penalty imposed by this section.

(2) Whenever a compressed natural gas dealer *or a liquefied petroleum gas dealer* files a return but fails te pay in whole or in part the tax due under this part, there must be added to the unpaid amount due interest at tlie rato of 1% ~~per~~ *a* month or fraction of a month from the date *on which* the tax was due to the date of payment in full."

**Section 13.** Section 15-70-716, MCA, is amended to read:

**"15-70-716. Deficiency — penalty.** If the department determines that the tax reported by a compressed natural gas dealer *or a liquefied petroleum gas dealer* is deficient, tlie department shall assess the deficiency on tlie basis of information available to the department. There must be added to the deficiency interest on the deficient amount at the rate of 1% ~~per~~ *a* month or fraction of a month from the date *on which* the return was due."

HeinOnline -- 1997 vol. I 690 1997

**Section 14.** Section 15-70-717, MCA, is amended to read:

**"15-70-717. Determination if no return made — penalty — presumption.** (1) If a compressed natural gas dealer *or a liquefied petroleum gas dealer*, whether or not the dealer is licensed, fails, neglects, or refuses to file a compressed natural gas tax return *or a liquefied petroleum gas tax return* when due, the department shall, on the basis of information available to the department, determine the tax liability of the compressed natural gas dealer *or the liquefied petroleum gas dealer* for the period during which a return was not filed and add to the tax determined the penalty and interest provided for in 15-70-715.

(2) An assessment made by the department pursuant to 15-70-715, 15-70-716, or this section is presumed to be correct. Whenever the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by a preponderance of the evidence that it is erroneous or excessive."

**Section 15.** Section 15-70-718, MCA, is amended to read:

**"15-70-718. Fraudulent return — penalty.** If a compressed natural gas dealer *or a liquefied petroleum gas dealer* files a fraudulent return with intent to evade the tax impesed by this part:

(1) there must be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at the rate of 1% ~~per~~ *a* month or fraction of a month on the deficiency from the date *on which* the tax was due to the date of payment. The penalty and interest are in addition to all other penalties prescribed by law.

(2) the person is guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than $100 or more than $2,000 or imprisonment of not less than 30 days or more than 6 months, or both."

**Section 16.** Section 61-12-206, MCA, is amended to read:

**"61-12-206. Offenses for which arrest authorized.** Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions:

(1) chapters 3 and 5 of this title, but only if the vehicle involved is subject to 61-10-141;

(2) chapter 10 of this title;

(3) part 3, chapter 4, of this title;

(4) 15-24-201 through 15-24-205;

(5) Title 15, chapter 70, parts 2 and 3;

~~(6) 15-71-101 through 15-71-105;~~

~~(7)~~*(6)* 44-1-1005 and safety rules adopted under that section;

~~(8)~~*(7)* Title 69, chapter 12."

HeinOnline -- 1997 vol. I 691 1997

**Section 17. Repealer.** Sections 15-71-101, 15-71-102, 15-71-103, 15-71-104, 15-71-105, and 15-71-110, MCA, are repealed.

**Section 18. Effective date.** [This act] is effective January 1, 1998.

Approved March 21, 1997

# CHAPTER NO. 126

[HB 69]

AN ACT ALLOWING THE SUBSTITUTION OF THE DEPARTMENT OF REVENUE FOR DISTRICT CLERKS OF COURT AS TRUSTEE OF TRUSTS FOR UNLOCATABLE MINERAL OWNERS; AND AMENDING SECTIONS 82-1-302, 82-1-304, 82-1-305, AND 82-1-306, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 82-1-302, MCA, is amended to read:

"**82-1-302. Creation of trust for unlocatable mineral, leasehold, or royalty interest owners.** (1) Any person who owns an interest in minerals underlying a tract of land may petition the district court of the county in which the tract or a portion of the tract is located to declare a trust in favor of ~~a person or~~ *other* persons also owning or claiming an interest in the minerals underlying the tract if their place of residence and present whereabouts is unknown and cannot reasonably be ascertained.

(2) In requesting the appointment of a trustee, the petitioner ~~must~~ *shall* show that:

(a) a diligent but unsuccessful effort to locate the absent owner or claimant has been made; and

(b) appointment of a trustee will be in the best interest of all owners of *an* interest in the minerals.

(3) After determining that the conditions of subsection (2) have been met, the court shall appoint the ~~clerk of court~~ *clerk of court or, if the clerk of court declines to act as trustee, the department of revenue* as ~~a~~ trustee and shall authorize ~~him~~ *the clerk of court or the department* to execute and deliver an oil, gas, or other mineral lease, a ratification, *a* division order, or *any* other related document or instrument on ~~such~~ *the* terms and conditions as the court may approve.

*(4) If at any time a clerk of court decides to not continue as trustee for a trust for unlocatable mineral, leasehold, or royalty interest owners, the district court shall appoint the department of revenue to act as trustee. Upon the department of revenue's appointment as trustee, the clerk of court shall remit all funds and interest held in the trust to the department of revenue.*"

**Section 2.** Section 82-1-304, MCA, is amended to read:

HeinOnline -- 1997 vol. I 692 1997

"**82-1-304. Administration of ~~the~~ trust.** (1) The administration of the trust ~~shall~~ *must* comply with the appropriate provisions regulating trusts contained in Title 72.

(2) ~~No trustee~~ *Trustee* or attorney fees may *not* be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income ~~shall~~ *must* be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to ~~it~~ *the money* upon the order of the district court.

(4) A trust in favor of unlocatable owners ~~shall~~ *must* be *kept* in force until the unlocatable owners of the mineral interest in question have successfully claimed ~~the~~ *their* share of *the* funds held in trust and *have* filed the notice, *as* provided in 82-1-306.

(5) The trustee shall invest funds ~~under his management~~ in ~~the~~ *a prudent* manner ~~of a prudent man~~, as provided in 72-34-114. Fifty percent of the interest earned on each trust ~~shall~~ *must* be credited to the ~~general fund of the county in which the mineral interest is located~~ *department of revenue or, if the clerk of the court is the trustee, to the general fund of the county in which the mineral interest is located* to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9."

**Section 3.** Section 82-1-305, MCA, is amended to read:

"**82-1-305. ~~Existing trust~~ *Trust* for unlocatable mineral, leasehold, and royalty interest owners — ~~transfer of trustees —~~ penalty.** ~~(1) Any bonuses, rental payments, royalties, and other income now held by any person or association for unlocatable owners or claimants of an interest in minerals underlying a tract of land must be deposited with the clerk of the district court in which the tract is located within 6 months after July 1, 1979. An accounting for the funds, any related documents, and any instrument creating a trust must be filed with the funds.~~

~~(2)~~*(1)* ~~No~~ *A* person may *not* personally hold for longer than 6 months any bonuses, rental payments, royalties, ~~and~~ *or* other income for unlocatable owners or claimants of an interest in minerals *underlying a tract of land.*~~, but in such case~~ *Within the 6-month period, the person* ~~must~~ *shall* petition the district court for creation of a trust, as provided in 82-1-302.

~~(3)~~*(2)* ~~If any~~ *A* person ~~fails~~ *failing* to comply with subsection (1) ~~or (2), he~~ is liable for all attorney fees and court costs and interest on ~~such~~ funds *subject to subsection (1)* at twice the current average passbook account rate paid by financial institutions in ~~that~~ *any* district *in which the property or part of the property is located.*"

**Section 4.** Section 82-1-306, MCA, is amended to read:

"**82-1-306. Filing of addresses.** *(1)* Upon the payment of a $5 fee, ~~any~~ *a* person claiming an interest in minerals underlying a tract of land ~~which~~ *that* is

HeinOnline -- 1997 vol. I 693 1997

the subject of a trust proceeding under 82-1-302 may file with the clerk and recorder of each county ~~wherein the mineral interests lie~~ *in which the land is located* a notice ~~of his~~ *containing the person's* address and ~~the~~ *a* ~~legal~~ description of ~~his~~ *the person's* interest *in the minerals.* ~~and thereby establish~~ *Filing the notice creates* a rebuttable presumption that ~~such~~ *the* person owns the interest claimed.

*(2) The clerk and recorder shall forward a copy of the notice to the trustee of the trust."*

Approved March 24, 1997

# CHAPTER NO. 127

[HB 197]

AN ACT REVISING CERTAIN PROVISIONS RELATING TO LIGHTING DISTRICTS; CLARIFYING THAT THE MAILING ADDRESS FOR PROPERTY ASSESSMENT PURPOSES IS THE APPROPRIATE MAILING ADDRESS WITH RESPECT TO CREATING A LIGHTING DISTRICT; ALLOWING THE TERMINATION OF A LIGHTING DISTRICT BY A MAJORITY VOTE OF A CITY OR TOWN COUNCIL AS WELL AS BY A PETITION OF PROPERTY OWNERS; INCREASING FROM 8 YEARS TO 20 YEARS THE PERIOD OVER WHICH A LIGHTING DISTRICT BOND MAY BE AMORTIZED; CLARIFYING THE MEANING OF "MINOR MODIFICATIONS" TO A LIGHTING DISTRICT; AND AMENDING SECTIONS 7-12-4303, 7-12-4311, 7-12-4342, AND 7-12-4354, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-12-4303, MCA, is amended to read:

**"7-12-4303. Notice of resolution of intent to create lighting district.** (1) Upon having passed the resolution required by 7-12-4302, the council ~~must~~ *shall* give notice of the passage of ~~such~~ *the* resolution of intention. The notice of the passage of ~~such~~ *the* resolution must be published for 5 days in a daily newspaper or in ~~some~~ one issue of a weekly newspaper in the city or town or, in case no newspaper ~~be~~ *is* published in ~~such~~ *the* city or town, then by posting for 5 days in three public places in the city or town. A copy of ~~such~~ *the* notice ~~shall~~ *must* be mailed to every person, firm, or corporation having property within the proposed district, *as listed on the current property tax record,* at ~~his last known~~ *the property owner's* address *as the address is listed on the current property tax record,* ~~upon~~ *on* the same day ~~such~~ *that the* notice is first published or posted.

(2) ~~Such~~ *The* notice must describe the general character of the improvement ~~so~~ proposed to be made, state the estimated cost ~~thereof~~ *of the improvement* and the estimated cost of maintaining the lights and supplying the electrical current ~~therefor~~ *for the improvement and lights* within ~~such~~ *the* district for the first year, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of ~~such~~ *the* improvement or the creation of ~~such~~ *the* district. ~~Such~~ *The* notice ~~shall~~ *must* refer to the resolution on file in the office of the city clerk for a description of the boundaries."

**Section 2.** Section 7-12-4311, MCA, is amended to read:

HeinOnline -- 1997 vol. I 694 1997

**"7-12-4311. Termination of special improvement lighting district.** If at any time after the creation of ~~any~~ *a* special improvement lighting district~~,~~ a petition ~~shall be~~ *is* presented to the city or town council, signed by the owners or agents of more than three-fourths of the total amount of property ~~embraced~~ within the district, asking that the maintenance and operation of ~~such~~ *the* special lighting system and the furnishing of electrical current ~~therefor in such~~ *in the* district be discontinued, *or if a majority of the city or town council votes to discontinue a special improvement lighting district,* the city or town council shall, by resolution, provide for discontinuing the maintenance and operation of the lighting system. If the council ~~shall have~~ *has,* prior to the presentation of ~~such~~ *a* petition *or by a majority vote of the council to discontinue the district,* entered into any contract for the maintenance and operation of ~~such~~ *the* lighting system, ~~such~~ *the* maintenance and operation ~~shall~~ *may* not be discontinued until after the expiration of the contract."

**Section 3.** Section 7-12-4342, MCA, is amended to read:

**"7-12-4342. Details relating to lighting district bonds and warrants.** (1) ~~Said warrants~~ *Warrants* or bonds ~~shall~~ *issued pursuant to 7-12-4341 must* be in the denomination of $100 or fractions or multiples ~~thereof~~ *of $100* and may be issued in installments.

(2) ~~Such~~ *The* warrants or bonds ~~shall~~ *must* he redeemed by the treasurer when there is money available ~~therefor~~ *for redemption* in the fund against which ~~said~~ *the* warrants or bonds are issued and ~~shall~~ *must* bear interest from the date of registration ~~thereof~~ *of the warrants or bonds* until called for redemption or paid in full, interest to be payable annually on January 1 of each year as expressed by the interest coupon attached ~~thereto~~ *to the warrant or bond,* which may bear the engraved facsimile signature of the mayor and city clerk.

(3) ~~Such~~ *The* warrants or bonds may extend over a period not to exceed ~~8~~ *20* years.

(4) The requirements of ~~this section and~~ 7-12-4341 ~~shall~~ *and this section* apply to all special improvement lighting districts, including those ~~now~~ in the process of formation or to be formed ~~hereafter~~ *on or after [the effective date of this act].*"

**Section 4.** Section 7-12-4354, MCA, is amended to read:

**"7-12-4354. Minor modifications exempt.** Nothing in 7-12-4351 through 7-12-4354 prevents the city or town council from eliminating unnecessary lights, relocating individual lights, upgrading lights and lighting-related facilities in the interest of energy conservation, or making other minor modifications in a special improvement lighting district without following the procedures described in 7-12-4351 through 7-12-4353. *For the purposes of this section, "minor modifications" includes but is not limited to adding properties or lights if the additions:*

*(1) reduce assessments within the maintenance district; or*

*(2) increase the average assessments within the maintenance district by 3% or less in a fiscal year."*

HeinOnline -- 1997 vol. I 695 1997

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved March 24, 1997

# CHAPTER NO. 128

[HB 201]

AN ACT REVISING THE REQUIRED FREQUENCY FOR INVENTORYING COUNTY TOOLS, MACHINERY, AND EQUIPMENT FROM ANNUALLY TO BIENNIALLY; AND AMENDING SECTION 7-8-2111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-8-2111, MCA, is amended to read:

**"7-8-2111. Inventory of county tools and equipment.** ~~It shall be the duty of the~~ *The* board of county commissioners ~~to~~ *shall biennially* prepare and file with the county clerk and recorder an ~~annual~~ inventory covering all county tools, machinery, and equipment."

Approved March 24, 1997

# CHAPTER NO. 129

[HB 257]

AN ACT LIMITING DEFENDANTS TO ONE JURY TRIAL IN MISDEMEANOR CRIMINAL CASES FILED IN A JUSTICE'S OR CITY COURT; REQUIRING A DEFENDANT TO ELECT THE FORUM IN WHICH THE JURY TRIAL WILL OCCUR; PROVIDING THAT A TRIAL DE NOVO IN THE DISTRICT COURT ON APPEAL FROM A JUSTICE'S OR CITY COURT MAY NOT BE BY JURY IF THE DEFENDANT ELECTED A JURY TRIAL IN THE JUSTICE'S OR CITY COURT; AMENDING SECTIONS 46-7-102, 46-17-201, AND 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-7-102, MCA, is amended to read:

**"46-7-102. Duty of court.** (1) The judge shall inform the defendant:

(a) of the charge or charges against the defendant;

(b) of the defendant's right to counsel;

(c) of the defendant's right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) of the general circumstances under which the defendant may obtain pretrial release;

(e) of the defendant's right to refuse to make a statement and the fact that any statement made by the defendant may be offered in evidence at the defendant's trial; ~~and~~

(f) of the defendant's right to a judicial determination of whether probable cause exists if the charge is made by a complaint alleging the commission of a felony; *and*

*(g) if the charge is a misdemeanor filed in justice's or city court, of the defendant's right to elect one jury trial, either in justice's or city court or on appeal to the district court, as provided in 46-17-201.*

(2) The judge shall admit the defendant to bail as provided by law."

**Section 2.** Section 46-17-201, MCA, is amended to read:

**"46-17-201. Juries in misdemeanor cases.** (1) ~~The~~ *Subject to subsection (3), the* parties in a misdemeanor case are entitled to a jury of six qualified persons but may agree to a number less than six at any time before the verdict.

(2) Upon consent of the parties, a trial by jury may be waived.

*(3) A defendant in a misdemeanor case filed in justice's or city court is limited to one jury trial, either in justice's or city court or on appeal to the district court. The defendant shall either elect a jury trial in justice's or city court or reserve jury trial for the district court in the event of conviction and subsequent appeal to the district court. The defendant's election or reservation must be noted by the court on the face of the charging document."*

**Section 3.** Section 46-17-311, MCA, is amended to read:

**"46-17-311. Appeal from justices', municipal, and city courts.** (1) Except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases *if the defendant has not previously exercised the right of jury trial in a justice's or city court, as provided in 46-17-201. If the defendant received a jury trial in justice's or city court, the case must be tried anew in the district court without a jury.* An appeal from a municipal court to the district court is governed by 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date *that* the order complained of is given. The prosecution may ~~only~~ appeal *only* in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court."

**Section 4. Effective date.** [This act] is effective on passage and approval.

**Section 5. Applicability.** [This act] applies to criminal charges filed on or after [the effective date of this act].

Approved March 24, 1997

HeinOnline -- 1997 vol. I 697 1997

# CHAPTER NO. 130

[HB 310]

AN ACT CLARIFYING THAT CERTAIN ACTIONS OF BREWERS OR BEER IMPORTERS CONSTITUTE ESTABLISHING OR MAINTAINING THE PRICE FOR RESALE OF THEIR PRODUCTS BY WHOLESALE BEER DISTRIBUTORS; AMENDING SECTION 16-3-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-3-221, MCA, is amended to read:

**"16-3-221. Illegal acts by brewers or beer importers.** It is unlawful for any brewer or beer importer or any officer, agent, or representative of any brewer or beer importer to:

(1) coerce, attempt to coerce, or persuade any person licensed to sell beer at wholesale to enter into any agreement or to take any action that would violate or tend to violate any of the laws of this state or any rules promulgated by the department;

(2) sell its products in the state without a written contract, which conforms to the provisions of 16-3-221 through 16-3-226, with each appointed licensed wholesale distributor;

(3) designate or allow more than one wholesale distributor to sell or distribute a specific brand of the brewer's or beer importer's products to retail licensees in the same area, provided that nothing in this part prohibits the brewer or beer importer from designating more than one wholesale distributor to sell or distribute different brands of the same manufacturer to retail licensees in the same area;

(4) fix or maintain the price at which a wholesale distributor resells the brewer's or beer importer's products. Without limitation, it is a violation of this section if:

(a) after a wholesale distributer has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges tbe wholesale distributor for those products within 60 days; ~~or~~

(b) after a wholesale distributor has exceeded a resale price increase recommended by a brewer or beer importer, the brewer or beer importer raises the price that it charges the wholesale distributor in an amount proportionately larger than the amount tbat it raised the wholesale distributor's prices initially when compared to the *increase in the* resale price that it recommended to the wholesale distributor*; or*

*(c) the brewer or beer importer links or ties its participation in promotional discounts to the wholesale distributor's compliance with any recommended resale price.*

HeinOnline -- 1997 vol. I 698 1997

(5) cancel or terminate, except for just cause or in accordance with the current terms and standards established by the brewer or beer importer then equally applicable to all wholesalers, any agreement or contract, written or oral, or the franchise of any wholesaler existing on January 1, 1974, or entered into after that date to sell beer manufactured by the brewer or imported by the beer importer. A brewer or beer importer may, notwithstanding the preceding sentence, make reasonable classifications among wholesalers. If a brewer or beer importer cancels or terminates a wholesaler's franchise, the brewer or beer importer has the burden of proving that the classification was reasonable and not arbitrary. After July 1, 1974, the provisions of 16-3-221 through 16-3-226 must be a part of any franchise, contract, agreement, or understanding, whether written or oral, between any wholesaler of beer licensed to do business in this state and any manufacturer or beer importer doing business with the licensed wholesaler just as though the provisions had been specifically agreed upon between the wholesaler and the manufacturer or beer importer."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1997

# CHAPTER NO. 131

[HB 330]

AN ACT ALLOWING LOCAL GOVERNMENT GROUP SELF-INSURANCE PROGRAMS TO INVEST IN DIRECT OBLIGATIONS OF THE UNITED STATES, WITH THE AVERAGE MATURITY DATE OF THE INVESTMENTS NOT TO EXCEED 6 YEARS; AND AMENDING SECTION 7-6-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-202, MCA, is amended to read:

**"7-6-202. Investment of public money in direct obligations of ~~the~~ United States.** (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) obligations of the following agencies of the United States, subject to the limitations in subsection (2):

(i) federal home loan bank;

HeinOnline -- 1997 vol. I 699 1997

(ii) federal national mortgage association;

(iii) federal home mortgaga corporation; and

(iv) federal farm credit bank.

(2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

(3) The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;

(b) the fund consists only of eligible securities as described in this section;

(c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custedian;

(d) the fund is listed in a national financial publication under the category of "money market mutual funds", showing the fund's average maturity, yield, and asset size; and

(e) the fund's average maturity does not exceed 397 days.

(4) *Except as provided in subsection (5), an* ~~An~~ investment authorized in this part may not have a maturity date exceeding 5 years, except when the investment is used in an escrow account to refund an outstanding bond issue in advance.

*(5) An investment of the assets of a local government group self-insurance program established pursuant to 2-9-211 or 39-71-2103 in an investment authorized in this part may not have a maturity date exceeding 10 years, and the average maturity of all those authorized investments of a local government group self-insurance program may not exceed 6 years.*

~~(5)~~*(6)* This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2."

Approved March 24, 1997

## CHAPTER NO. 132

[HB 357]

AN ACT CLARIFYING A LANDLORD'S WAIVER OF A CLAIMED BREACH OF A RENTAL AGREEMENT BY A TENANT; AND AMENDING SECTION 70-24-423, MCA.

HeinOnline -- 1997 vol. I 700 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-24-423, MCA, is amended to read:

**"70-24-423. Waiver of landlord's right to terminate for breach.** Acceptance by the landlord of full payment of rent due ~~with knowledge of a tenant's default or acceptance by the landlord of a tenant's performance that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach unless otherwise agreed after the breach has occurred~~ *is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent. Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right.* The acceptance of partial payment of rent due does not constitute a waiver of any right."

Approved March 24, 1997

# CHAPTER NO. 133

[HB 396]

AN ACT GENERALLY REVISING THE MONTANA MEDICAL LEGAL PANEL ACT; ADDING PODIATRISTS TO THE MONTANA MEDICAL LEGAL PANEL ACT; PROVIDING FOR A MINIMUM ANNUAL ASSESSMENT OF $15 AGAINST HEALTH CARE PROVIDERS AND A 5-YEAR CAPITAL CONTRIBUTION BY PODIATRISTS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-302, 27-6-306, 27-6-308, AND 27-6-401, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-6-103, MCA, is amended to read:

**"27-6-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as the individual's principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal gevernmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to tbe claim:

HeinOnline -- 1997 vol. I 701 1997

(i) was an individual who had as the principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) (a) "Health care facility" means a facility (other than a gevernmental infirmary but including a university or college infirmary) licensed as a health care facility under Title 50, chapter 5.

(b) For the purposes of this chapter, a health care facility does not include a chemical dependency facility, an end-stage renal dialysis facility, a home infusion therapy agency, or a residential care facility.

(3) "Health care provider" means a physician, a dentist, *a podiatrist,* or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means a claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care that proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as the individual's principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed te practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as the principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under tbe laws of any state to render medical services and whose

shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3.

*(8) "Podiatrist" means:*

*(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the assessment:*

*(i) has as the individual's principal residence or place of podiatric practice the state of Montana;*

*(ii) is not employed full-time by any federal governmental agency or entity; and*

*(iii) is not fully retired from the practice of podiatry; or*

*(b) for all other purposes, a person licensed to practice podiatry under the provisions of Title 37, chapter 6, who at the time of the occurrence of the incident giving rise to the claim:*

*(i) was an individual who had as the principal residence or place of podiatric practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or*

*(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render podiatric services and whose shareholders, partners, or owners were individual podiatrists licensed to practice podiatry under the provisions of Title 37, chapter 6."*

**Section 2.** Section 27-6-206, MCA, is amended to read:

**"27-6-206. Funding.** (1) There is a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it must be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but is open to auditing hy the legislative auditor.

(2) *(a)* To create the fund, an annual surcharge *or assessment* must be levied on all health care providers. The amount of the assessment must be set annually by the director and must be appertioned among physicians, dentists, *podiatrists,* hospitals, and other health care providers hy group. ~~For~~ *Except as provided in subsection (2)(c), for* the group of all physicians, the group of all dentists, *the group of all podiatrists,* the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual repert of the panel for the years preceding the year of assessment.

*(b)* ~~The~~ *Except as provided in subsection (2)(c), the* amount of the assessment for the group of all:

*(i)* hospitals must he proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or

not, as reflected in the most recent compilation of the department of public health and human services. ~~The amount of the assessment for the group of all;~~

*(ii)* physicians must be equally assessed against all physicians. ~~The amount of the assessment for the group of all;~~

*(iii)* dentists must be equally assessed against all dentists.~~;~~

*(iv) podiatrists must be equally assessed against all podiatrists; and*

~~The amount of the assessment for the group of all~~

*(v)* other health care facilities must be equally assessed against all other health care facilities.

*(c) The annual amount of the assessment levied against each health care provider may not be less than $15.*

*(d)* Surplus funds, if any, above the amount required for the annual administration of the chapter must be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years *to not less than $15 for each health care provider*, commensurate with the proper administration of this chapter.

(3) The annual surcharge must be paid on ~~or before the date that physicians' and dentists' annual registration or renewal fees are due under 37-3-313 and 37-4-307~~ *April 1 of each year*. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The lato charge fee is part of the annual surcharge. ~~The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians' and dentists' annual registration or renewal fees.~~ *The panel may collect the annual surcharge by an action at law.*"

**Section 3.** Section 27-6-302, MCA, is amended to read:

**"27-6-302. Contents of application — waiver of confidentiality of medical and dental records.** The application ~~shall~~ *must* contain the following:

(1) a statement in reasonable detail of the elements of the health care provider's conduct ~~which~~ *that* are believed to constitute a malpractice claim, the dates *on which* the conduct occurred, and the names and addresses of all physicians, dentists, *podiatrists,* and hospitals having contact with the claimant and all witnesses;

(2) a statement authorizing the panel to obtain access to all medical, dental, *podiatric,* and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. ~~Nothing in that~~ *The* statement may *not* in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court."

**Section 4.** Section 27-6-306, MCA, is amended to read:

**"27-6-306. Health care provider's appearance and answer — waiver of confidentiality of records.** (1) If a health care provider involved chooses to retain legal counsel, ~~his~~ *the health care provider's* attorney shall informally enter ~~his~~ *the health care provider's* appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical, dental, *podiatric,* and hospital records and information pertaining to the application and, for the purposes of ~~such~~ inspection only, waiving any privilege as to the contonts of those records. ~~Nothing in the~~ *The* statement ~~waives~~ *does not waive* that privilege for any other purpose."

**Section 5.** Section 27-6-308, MCA, is amended to read:

**"27-6-308. Director to furnish panel members with documents.** At least 10 days prior to the hearing, the director shall furnish to each panel member copies of all claims, briefs, medical, *podiatric,* or dental records, and other documents *that* the director considers necessary."

**Section 6.** Section 27-6-401, MCA, is amended to read:

**"27-6-401. Composition of panel.** (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. Six panel members sball sit in review of each case. Three panel members who are physicians and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more physicians. Three panel members who are dentists and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more dentists. *Three panel members who are podiatrists and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more podiatrists.* If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.

(2) In all other cases, two of the panel members must be physicians, one panel member must be an administrator of the same type of health care facility, and three panel members must be attorneys, except that when a claim is heard against a dentist, a dentist must be substituted for one of the physicians on the panel *and when a claim is heard against a podiatrist, a podiatrist must be substituted for one of the physicians on the panel.*"

**Seetion 7. Podiatric contributions to fund — delayed implementation — capital contribution.** The director may not levy an annual assessment against or collect an annual assessment from podiatrists until 1998. For the years 1998 through 2002, podiatrists shall pay an additional capital contribution of $50 to the fund in addition to the amount of tbe annual assessment computed under 27-6-206.

**Section 8. Applicability.** [This act] applies to causes of action arising on or after [the effective date of this act].

Approved March 24, 1997

HeinOnline -- 1997 vol. I 705 1997

# CHAPTER NO. 134

[HB 441]

AN ACT ALLOWING ELECTRONIC RECORDING OF CERTAIN TAX APPEAL PROCEEDINGS TO SUFFICE AS A RECORD OF THOSE PROCEEDINGS; AMENDING SECTIONS 15-2-301 AND 15-15-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-2-301, MCA, is amended to read:

"**15-2-301. Appeal of county tax appeal board decisions.** (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. If the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set the appeal for hearing either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the timo and place of the hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearings officer. The board member or hearings officer may exercise all the powers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the board. The stato board shall determine the appeal on the record.

(3) On all hearings at county seats throughout tho state, the state board or the member or hearings officer designated te conduct a hearing may employ ~~the local court reporter or other~~ *a* competent ~~stenographer~~ *person* to ~~take and transcribe~~ *electronically record* the testimony received. The cost of ~~taking and transcribing~~ *electronically recording* testimony may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent *that* this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state tax appeal board may not amend or repeal any administrative

HeinOnline -- 1997 vol. I 706 1997

rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

**Section 2.** Section 15-15-103, MCA, is amended to read:

**"15-15-103. Examination of applicant — failure to hear application.** (1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application, touching the value of the property of each person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agsnt shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be ~~taken in shorthand, taken by stenotype, or~~ electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, ~~all testimony must be transcribed or otherwise reduced to writing and forwarded~~ *the record of the proceedings, including the electronic recording of all testimony, must be forwarded,* together with all exhibits, to the state tax appeal board. The date of the hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in tbe property tax record. An application is not automatically granted for the following appeals:

(a) those listed in 15-2-302; and

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current 60-day session."

**Scetion 3. Effcetive date.** [This act] is effective on passage and approval.

Approved March 24, 1997

HeinOnline -- 1997 vol. I 707 1997

# CHAPTER NO. 135

[HB 243]

AN ACT ALLOWING CLAIMS FOR CIVIL PENALTIES FOR SHOPLIFTING TO BE ASSIGNED AND BROUGHT IN SMALL CLAIMS COURT; AMENDING SECTIONS 25-34-105, 25-35-505, AND 27-1-718, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 25-34-105, MCA, is amended to read:

"**25-34-105. Parties — representation.** (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency ~~thereof~~ *of the state.*

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court~~, except as set forth in subsection (3) herein~~.

(3) ~~An individual~~ *Individuals* shall represent ~~himself~~ *themselves* in the small claims court. A partnership ~~shall~~ *must* be represented by a partner or one of its employees. A union ~~shall~~ *must* be represented by a union member or union employee. A corporation ~~shall~~ *must* be represented by one of its employees. An association ~~shall~~ *must* be represented by one of its members or by an employee of the association. Any other kind of organization or entity ~~shall~~ *must* be represented by one of its members or employees.

(4) ~~Only~~ *Except as provided in subsection (5), only* a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in tbe small claims court.

(5) ~~No~~ *A* party may *not* file an assigned claim in the small claims court *unless it has been assigned pursuant to 27-1-718.*

(6) Notwitbstanding any other provision of this section, an executor or administrator of a decedent's estate, a guardian, or a conservator may be a party in the small claims court."

**Section 2.** Section 25-35-505, MCA, is amended to read:

"**25-35-505. Parties — representation.** (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency ~~thereof~~ *of the state.*

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

(3) ~~An individual~~ *Individuals* may represent ~~himself~~ *themselves* in a small claims court. A partnership may be represented by a partner or one of its employees. A union may be represented by a union member or union employee. A corporation may be represented by one of its employees. An association may be represented by one of its members or by an employee of the association. Any

other kind of organization or entity may be represented by one of its members or employees.

(4) ~~Only~~ *Except as provided in subsection (5), only* a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) ~~No~~ *A* party may *not* file an assigned claim in the small claims court *unless it has been assigned pursuant to 27-1-718.*

(6) ~~No~~ *Except for claims under 27-1-718, a* party may *not* file more than 10 claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court."

**Section 3.** Section 27-1-718, MCA, is amended to read:

**"27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor, as defined in 20-25-501, who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the taker's own use without having paid the purchase price of the goods is liable to the owner or seller for a penalty, whether or not the goods have been returned undamagod, in the amount of the greater of $100 or the retail value of the goods, not to exceed $500. This amount is in addition to actual damagos.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the minor's own use without having paid the purchase price of the goods, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of $100 or the retail value of the goods, not to exceed $500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agoncy that has been assigned responsibility for the minor child pursuant to court order or action of the department of corrections or the department of public health and human services.

(3) Judgments~~, but not~~ *and* claims, arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section."

**Section 4. Applicability.** [This act] applies to claims for civil ponalties for shoplifting based on events occurring after [the effective date of this act].

Approved March 25, 1997

HeinOnline -- 1997 vol. I 709 1997

# CHAPTER NO. 136

[HB 256]

AN ACT CLARIFYING THAT A LICENSED PRACTICAL NURSE MAY ACT IN A CHARGE-NURSE CAPACITY IN CERTAIN LONG-TERM CARE FACILITIES; AMENDING SECTION 37-8-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-8-102, MCA, is amended to read:

"**37-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1844.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(5) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice uses standardized procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. *These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.*

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the

biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1997

# CHAPTER NO. 137

[HB 283]

AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES FISH AND WILDLIFE SERVICE AND THE STATE OF MONTANA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. United States Fish and Wildlife Service-Montana compact ratified.** The compact entered into by the State of Montana and the United States Fish and Wildlife Service and filed with the secretary of state of the State of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims existing on the effective date of the Compact to water for Black Coulee and Benton Lake National Wildlife Refuges administered by the U.S. Fish and Wildlife Service within the State of Montana.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, inter alia, its

HeinOnline -- 1997 vol. I 711 1997

rights to water with respect to Black Coulee National Wildlife Refuge, see United States v. Aageson, No. CV-79-21-GF;

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of Benton Lake and Black Coulee National Wildlife Refuges, in the State of Montana;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Fish and Wildlife Service Refuges to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS, The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendix 1.

(2) "Benton Lake National Wildlife Refuge" means those lands located in Montana that were withdrawn and reserved by Executive Order No. 5228 of November 21, 1929.

(3) "Black Coulee National Wildlife Refuge" means those lands and interests in lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order 7801 of January 28, 1938.

(4) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(5) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval hy the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(6) "Groundwater" means water that is beneath the ground surface.

(7) "Non-consumptive" means a water right considered to be non-consumptive by the decree, permit or law authorizing the use, because it results in no depletion of water from the source.

(8) "Parties" means the State of Montana and the United States.

(9) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(10) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(11) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(12) "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior, or his or her designees.

## ARTICLE II

## WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the Refuges described. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected. All reserved water rights described in this Article are subject te Article IV, section A of this Compact.

A. Benton Lake National Wildlife Refuge

1. Quantification: The United States shall have the right to water from the following sources where they occur on the Refuge:

a. Consumptive Use: The United States has a reserved water right to 2 acre-feet per year diverted at a maximum rate of 45 gpm from groundwater beneath the Benton Lake National Wildlife Refuge.

b. Natural Flow: The United States has a reserved water right to the natural flow in tbe Lake Creek drainage including the unnamed tributaries to Benten lake where the drainage enters the Refuge in the amount of the natural flow remaining after satisfaction of the following rights:

HeinOnline -- 1997 vol. I 713 1997

(1) all rights recognized under state law with a priority date prior to the effective date of this Compact;

(2) any rights for stock watering ponds with a priority date after the effective date of this Compact and a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet por year from a source other than a porennial flowing stream; and

(3) any right to appropriato groundwater with a priority date after the effective date of this Compact by means of a well or deveioped spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

2. a. Priority Date: The United States has a priority date of November 21, 1929, for the reserved water rights described in this Compact for Benton Lake National Wildlife Refuge.

b. Subordination: The natural flow water right is subordinato to:

(1) any use recognized under state law with a priority date hefore the effective date of this Compact;

(2) any use considered non-consumptive as defined by this Compact;

(3) stock watering ponds with a priority date after the effective date of this Compact and with a maxinum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet por year from a source other than a porennial flowing stream; and

(4) appropriation of groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.

3. Period of Use: The poriod of use of this water right shall be from January 1 through December 31 of each year.

4. Points and means of diversion: Any point on the Refuge and by any means subject to the torms of this Compact.

5. Purposes: The United States right to water may be used for the following purposes, provided that, subject to the limitations set forth in Article III. section E., the United States may change the use of water identified for consumptive use.

a. Consumptive Use: The United States wator right to groundwater shall be used at the Refuge headquarters for the purposes of the Refuge.

b. Natural Flow: The United States water right to natural flow shall be used on the Benton Lake National Wildlife Refuge for wildlife habitat maintenance and enhancement.

B. Black Coulee National Wildlife Refuge

1. Quantification: The United States shall have the right to water from the following sources where they occur on Black Coulee National Wildlife Refuge:

2. Natural Flow: The United States has a reserved water right for the natural flow in the Black Coulee drainage where the drainage enters the Refuge in the amount of the natural flow remaining after satisfaction of the following rights:

(1) all rights recognized under state law with a priority date prior to the effective date of this Compact;

(2) any rights for stock watering ponds with a priority date after the effective date of this Compact and a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(3) any right to appropriate groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet por year.

3. a. Priority Date: The United States has a priority date of January 28, 1938 for the water rights described in this Compact for Black Coulee National Wildlife Refuge.

b. Subordination: The natural flow water right is subordinate to:

(1) any use recognized under state law with a priority date before the effective date of this Compact;

(2) any use considered non-consumptive as defined by this Compact;

(3) stock watering ponds with a priority date after the effective date of this Compact and with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and

(4) appropriation of groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet por year.

4. Period of Use: The period of use of this water right shall be from January 1 through December 31 of each year.

5. Points and means of diversion: any point on the Refuge and by any means subject to the terms of this Compact.

6. Purposes: The United States water right te natural flow shall be used on the Black Coulee National Wildlife Refuge for wildlife habitat maintenance and enhancement.

C. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Fish and Wildlife Service refuges. The United States, may as part of its reserved water right, divert water for fire suppression at all of the Fish and Wildlife Service Refuges as neoded, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved

HeinOnline -- 1997 vol. I 715 1997

water rights for consumptive use or a violation of its reserved water rights for natural flow.

ARTICLE III

IMPLEMENTATION

A. Basin Closure

1. In the following drainage basins upstream of the most downstream point on the Refuges for which a reserved water right is described by this Compact, the Department shall not process or grant an application for a permit to appropriate or to reserve water for consumptive use after the effective date of this Compact, provided that, the Department may issue certificates of water right for appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year, and permits for stock watering ponds with a maximum capacity of the impeundment or pit of less than 15 acre-feet and an appropriation of less tban 30 acre-feet per year from a source other than a perennial flowing stream:

Benton Lake National Wildlife Refuge:
Lake Creek Watershed including the unnamed tributaries of Benton Lake

Black Coulee National Wildlife Refuge:
Black Coulee Watershed

2. If a temperary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

3. Within 180 days following the effective date of this Compact, the Department shall mail notice of the basin closure to every person or public agency of record with a claim of water right or permit in the source subject to closure.

B. Enforcement of Water Right

1. The United States, the state, or a holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a refuge for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the refuge, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of natural flow. The terms of entry shall be as specified in an order of a state or federal ceurt of competent jurisdiction.

HeinOnline -- 1997 vol. I 716 1997

3. The Department may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it deems necessary for enforcement of its reserved water right for natural flow described in this Compact.

6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the ponalties provided by state law.

C. Use of Water Right

The rights of the United States described in this agreement are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the associated reserved land described in Article II, sections A.5. and B.5 and C.

D. Location of Natural Flow Rights

The United States' reserved water rights for natural flow apply to the portion of the streams spocified in this Compact that flow over or form the boundary to land administered by the Fish and Wildlife Service.

E. Change in Use

1. Natural flow: Reserved water rights spocified in this Compact for natural flow shall not be subject to change to any other use, provided that: the emergency use of water for fire suppression as provided for in Article II.C. shall not be deemed a change or alteration in use, or violation of a reserved water right for natural flow.

2. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that:

(1) the action shall be in fulfillment of the purposes of the refuge described in Article II, sections A.5;

(2) the total use shall not exceed the amount described in this Compact; and

(3) the action shall not adversely affect a water right that is recognized under state law.

3. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:

a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellbore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.

b. Emergency Use: Within 60 days after the commencement of a temporary emergency use for fire suppression described in Article II, Section C. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.

c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on:

(1) actions during the preceding year affecting the use of a consumptive use right described in this Compact;

(2) the initiation of new uses that were completed during the preceding year; and

(3) any data and documents generated or received by the Fish and Wildlife Service during the preceding year on measurement of stream flow on a stream with a natural flow water right set forth in this Compact.

4. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of:

(1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact;

(2) any data and documents generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to a stream for which a water right for natural flow is described in this Compact;

(3) any certificate of water right issued during the preceding year for appropriation of groundwater; and

(4) any permit issued during the preceding year for a stock watering pond.

## ARTICLE IV

## GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights

1. The relationship between the water rights of the Fish and Wildlife Service described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The parties to this agreement recognize that the water rights described in this Compact are

junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Fish and Wildlife Service.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any Indian Tribes and tribal members in Montana.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests in the State of Montana.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. Abstract

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for Benton Lake and Black Coulee National Wildlife Refuges, that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

D. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact; or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use

HeinOnline -- 1997 vol. I 719 1997

Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the Fish and Wildlife Service, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

10. to prevent the United States from constructing or modifying an outlet to an impoundment at a Refuge in compliance with all applicable law;

11. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed te new permits by this Compact or any other law.

E. Reservation of Rights

The parties expressly reserve all rights not granted, described or relinquished in this Compact.

F. Severability

The provisions of this Compact are not severable, provided that for the purposes of Sec. 85-2-702(3), MCA, the water rights described in this Compact for each Fish and Wildlife Service Refuge shall be considered as separate Compacts.

G. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

HeinOnline -- 1997 vol. I 720 1997

H. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as be or she may designate in writing.

2. United States: Upen the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE V

FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. The State and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the State to the use of water; and

b. Except as otherwise provided in Article IV, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact sball not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. § 666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver

HeinOnline -- 1997 vol. I 721 1997

of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. § 666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 for Benton Lake National Wildlife Refuge and Appendix 3 for Black Coulee National Wildlife Refuge to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice any claims made by the United States for the Fish and Wildlife Service Refuges described in this Compact in federal court. This Compact may be filed as a consent decree in those federal suits, only if, prior te the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

3. Continuation of Negotiations: The parties were unable to finalize agreement on quantification of the water rights for: Red Rocks National Wildlife Refuge and Wilderness Area; the National Bison Range; Bowdoin National Wildlife Area; and Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the effective date of this Compact. The parties agree to continue to pursue, in geod faith, quantification of water rights for these areas. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

C. Settlement of Claims

The parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land described in this Compact and administered by the Fish and Wildlife Service in Montana on the effective date of this Compact. Pursuant to this settlement, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for Black Coulee and Benton Lake National Wildlife Refuges, relinquishes forever on the effective date of this Compact all said claims to water within the State of Montana for Black Coulee and Benton Lake National Wildlife Refuges. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

HeinOnline -- 1997 vol. I 722 1997

D. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____, 19__.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Titlo 85, chapter 20, apply to [section 1].

Approved March 25, 1997

## CHAPTER NO. 138

[HB 314]

AN ACT ENCOURAGING A SCHOOL DISTRICT TO ESTABLISH AND MAINTAIN A FIREARMS SAFETY EDUCATION COURSE; AND AUTHORIZING A DISTRICT TO USE A COURSE DEVELOPED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, A LAW ENFORCEMENT AGENCY, OR A FIREARMS ASSOCIATION.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Firearms safcty education.** The trustees of a district are encouraged to establish and maintain a firearms safety education course. The trustees may adopt a course of instruction developed by the department of fish, wildlife, and parks, a law enforcement agency, or a firearms association as its firearms safety education course. Instructors from the department of fish, wildlife, and parks, a law enforcement agency, or a firearms association or a person recognized by the trustees as having expertise in firearms safety education may be used to provide tbe instruction.

**Scction 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20, chapter 7, part 1, apply to [section 1].

Approved March 25, 1997

## CHAPTER NO. 139

[HB 348]

AN ACT REVISING THE TYPES OF INFORMATION RELATED TO THE VALUE OF PROPERTY OWNED BY A CORPORATION THAT MUST BE SUBMITTED ANNUALLY BY DOMESTIC AND FOREIGN CORPORATIONS TO THE SECRETARY OF STATE; AND AMENDING SECTION 35-1-1104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 35-1-1104, MCA, is amended to read:

HeinOnline -- 1997 vol. I 723 1997

**"35-1-1104. Annual report for secretary of state.** (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to tbe secretary of stato, for filing, an annual report tbat sets forth:

(a) the name of the corporation and the state or country under whose law it is incorporated;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) the names and business addresses of its directors and principal officers;

(e) a brief description of the nature of its business;

(f) the total number of authorized shares, itemized hy class and series, if any, within each class; and

(g) the total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(2) ~~Each foreign corporation shall also include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within Montana and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the year ending December 31 preceding the date provided in this section for the filing of the report and the gross amount of business transacted by the corporation at or from places of business in Montana. If on December 31 preceding the time provided in this section for the filing of the report the corporation had not been authorized to transact business in Montana for 1 year, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in Montana and December 31. If all the property of the corporation is located in Montana and all of its business is transacted at or from places of business in Montana, the information required by this subsection need not be reported.~~

~~(3)~~ Information in the annual report must he current as of the date the annual report is executed on behalf of the corporation.

~~(4)~~*(3)* The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

~~(5)~~*(4)* If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed."

Approved March 25, 1997

HeinOnline -- 1997 vol. I 724 1997

# CHAPTER NO. 140

[HB 382]

AN ACT EXTENDING TO ALL BUILDINGS AND STRUCTURES THE PERMISSIBLE INSTALLATION OF BELOW-GRADE LIQUEFIED PETROLEUM GAS-BURNING APPLIANCES; AND AMENDING SECTION 50-60-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-60-203, MCA, is amended to read:

**"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may amend or repeal the rules.

(b) In adopting rules concerning the conservation of energy, the department shall conform those rules to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent tho department from adopting rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances ~~in single family dwellings~~."

Approved March 25, 1997

# CHAPTER NO. 141

[HB 402]

AN ACT GENERALLY REVISING THE CONSERVATION PRACTICE LOAN PROGRAM LAWS; AMENDING SECTIONS 76-15-524, 76-15-542, 76-15-546, AND 76-15-547, MCA; PROVIDING A RETROACTIVE APPLICABILITY DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-15-524, MCA, is amended to read:

**"76-15-524. Receipt and crediting of district funds — responsibility on bond.** The treasurer of the principal county shall receive and receipt for all county tax money of the district and for ~~all loan repayments and administrative fees or charges~~ *conservation practice loan repayments, including principal, interest, if any, administrative fees or charges for loans, and interest paid and*

*collected on deposits or investments* under a conservation practice loan program and place the same to the credit of the district. ~~He~~ *The treasurer* is responsible ~~on his~~ *for the* official bond *and* for ~~the~~ *its* safekeeping and disbursement, in the manner provided in this part and part 6, of the money of the district held by ~~him~~ *the treasurer*."

**Section 2.** Section 76-15-542, MCA, is amended to read:

"**76-15-542. Conservation practice loan account.** (1) The supervisors of a district may allocate a portion of the regular assessment for each fiscal year to a segregated and separate conservation practice loan account within the treasury of the principal county for the purpose of providing funds for conservation practice loans.

(2) Conservation practice loan repayments, including principal, ~~and~~ interest, *if any,* and administrative fees or charges for loans must be deposited in the conservation practice loan account. *Interest earned from deposits or investment of funds must be credited to the conservation practice loan account unless the district directs the county treasurer to deposit the interest earned into the conservation district general operating account.*

(3) The funds in the conservation practice loan account may be used for conservation practice loans and for the administrative expenses of a conservation practice loan program. *Interest paid and collected on the deposits or investments of a conservation practice loan account may be used for the general operations of a conservation district.*"

**Section 3.** Section 76-15-546, MCA, is amended to read:

"**76-15-546. Terms and conditions of loan.** A conservation practice loan is subject to the following terms and conditions:

(1) The district shall obtain ~~such~~ *a* security interest in real estate ~~as~~ *that* would be obtained by a reasonable, careful, and prudent lender.

(2) The term of the loan may not be greater than the life of the project~~,~~ and ~~in no case~~ may *not* ~~it~~ exceed 30 years.

(3) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at ~~his~~ *the borrower's* expense. All costs incident to the loan and loan closing~~, other than administrative costs of the district,~~ must be paid by the borrower.

(4) A conservation practice must be completed according to United States ~~soil~~ *natural resources* conservation service standards and specifications, if applicable."

**Section 4.** Section 76-15-547, MCA, is amended to read:

"**76-15-547. Rules for loan program.** The district shall adopt rules ~~in accordance with the Montana Administrative Procedure Act~~:

(1) prescribing the form and content of applications for loans and plans for the resource conservation practice;

(2) governing the application of the criteria and preferences for awarding loans;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted;

(5) prescribing the conditions for making loans;

(6) establishing the interest rate, *if any,* for the loans; and

(7) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest."

**Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all loans issued before [the effective date of this act] and to all funds that are on deposit in a conservation practice loan account.

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1997

# CHAPTER NO. 142

[HB 439]

AN ACT ALLOWING STUDENTS WHO PARTICIPATE IN THE YOUTH VOTING ACT TO CAST THEIR BALLOTS AT A LOCATION OTHER THAN A REGULAR POLLING PLACE; AND AMENDING SECTIONS 13-22-104 AND 13-22-106, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-22-104, MCA, is amended to read:

"**13-22-104. Program development.** (1) The secretary of state and the superintendent of public instruction shall compile a program and establisb a process whereby:

(a) students are instructed on the electoral process, the importance of voting, and how to mark and cast a ballot;

(b) students are educated about current issues in a manner appropriate for each grade level involved;

(c) students cast facsimile or mock ballots *at a location designated as a youth voting location or* while accompanying ~~their parents~~ *an eligible voter* to *a* polling ~~places~~ *place* during regular elections; and

(d) ballots cast by students at elections are counted and the results are made available to all participating schools.

(2) The program must be presented to participating schools in a nonpartisan, nonbiased, and informative manner."

HeinOnline -- 1997 vol. I 727 1997

**Section 2.** Section 13-22-106, MCA, is amended to read:

**"13-22-106. Polling plaee procedures.** (1) The secretary of state and the superintendent of public instruction shall work with *participating schools or* county election officials, *as necessary,* to provide that:

(a) facsimile or mock ballots are distributed to ~~polling places in counties with participating schools~~ *locations designated as youth voting locations*;

(b) participating students accompanied by ~~a parent or~~ *an* eligible voter are allowed to cast ballots in the youth election *at regular polling places*; and

(c) student ballots are counted and the results are announced to the participating schools.

(2) The provisions of this section must be carried out in a manner that will not interfere with the normal voting process or established polling place procedures."

Approved March 25, 1997

# CHAPTER NO. 143

[HB 470]

AN ACT ALLOWING SCHOOL DISTRICTS TO PROVIDE FOR CASH COMPENSATION IN LIEU OF ACCUMULATION OF VACATION LEAVE; AMENDING SECTION 2-18-617, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-18-617, MCA, is amended to read:

**"2-18-617. Accumulation of leave — cash for unused — transfer.** (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

HeinOnline -- 1997 vol. I 728 1997

(3) However, if an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

*(4) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy."*

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved March 25, 1997

# CHAPTER NO. 144

[HB 501]

AN ACT SPECIFYING WHEN BALLOTS FOR CERTAIN SCHOOL BOND ELECTIONS MUST BE MADE AVAILABLE; REQUIRING THAT CERTAIN NOTICES BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IF THERE IS ONE IN THE SCHOOL DISTRICT; AND AMENDING SECTIONS 20-6-604, 20-9-426, 20-20-204, AND 20-20-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-6-604, MCA, is amended to read:

**"20-6-604. Sale of property when resolution passed after hearing—appeal procedure.** (1) Whenever the trustees of a district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district, the trustees may sell or otherwise dispose of the real or personal property in accordance with this section and without conforming to the provisions of 20-6-603. If a decision to sell or dispose of property is made, the trustees shall adopt a resolution to sell or otherwise dispose of the district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district.

(2) The resolution may not become effective for 14 days after the notice required in subsection (3) is made.

(3) The trustees shall ~~cause notices of the resolution to be published in a newspaper of general circulation in the district. If there is no newspaper of general circulation, the trustees shall cause notices of the resolution to be posted~~ *provide notice of the resolution* in the manner required for school elections in 20-20-204.

(4) A taxpayer may appeal the resolution of the trustees, at any time prior to the effective date of the resolution, to the district court by filing a verified petition with the clerk of the court and serving a copy of the petition upon the district. The petition must set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition stay the resolution until final determination of the matter by the court.

HeinOnline -- 1997 vol. I 729 1997

The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it considers necessary. Its proceedings are summary and informal, and its decision is final.

(5) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of the real or personal property in any reasonable manner that they determine to be in the best interests of the district.

(6) The money realized from the sale or disposal of real or personal property of the district must be credited to the debt service fimd, building fund, general fund, or other appropriate fund, at the discretion of the trustees."

**Section 2.** Section 20-9-426, MCA, is amended to read:

**"20-9-426. Preparation and form of ballots for bond election.** *(1)* The school district shall cause ballots to be prepared for all hond elections, and whenever bonds for more than one purpose are to be voted upen at the same election, separate ballots ~~shall~~ *must* be prepared for each purpose.

*(2) For bond elections that are not held in conjunction with a school election, the ballots for absentee voting must be printed and made available at least 30 days before the bond election.*

*(3)* All ~~such~~ ballots ~~shall~~ *must* be substantially in the following form:

OFFICIAL BALLOT SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized te issue and sell bonds of this school district in the amount of.... dollars ($....), bearing interest at a rate not more than.... percent (....%) ~~per annum~~ *a year*, payable semiannually, during a period not more than.... years, for the purpose.... (here state the purpose the same way as in the notice of election)?

☐ BONDS — YES.

☐ BONDS — NO."

**Section 3.** Section 20-20-204, MCA, is amended to read:

**"20-20-204. Election notice.** (1) (a) When the trustees of ~~any~~ *a* district call a school election, they shall give notice of the election not less than 20 days or more than 30 days before the day of the election by:

(i) publication of the notice in a newspaper of general circulation *if there is one* in the district; ~~or~~ *and*

(ii) posting notices in three public places in the district, provided that in incorporated cities and towns, at least one notice ~~shall~~ *must* be posted at a public place in each ward or precinct.

HeinOnline -- 1997 vol. I 730 1997

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication of the school election notice in a radio or television broadcast, the trustees may cause ~~such~~ *that* notification to be made.

(2) The notice of a school election, unless otherwise required by law, ~~shall~~ *must* specify:

(a) the date and polling places of the election;

(b) the hours *that* the polling places will be open;

(c) each proposition to be considered by the electorate;

(d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position; and

(e) where and how absentee ballots may be obtained.

(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices."

**Section 4.** Section 20-20-401, MCA, is amended to read:

**"20-20-401. Trustees' election duties — ballot certification.** (1) The trustees are the general supervisors of school elections unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than 15 days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available at least 11 days ~~prior to~~ *before* the election, *except as provided in 20-9-426(2) for a bond election not held in conjunction with a school election.* Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election."

Approved March 25, 1997

# CHAPTER NO. 145

[HB 507]

AN ACT TO EXTEND WATER RESERVATIONS IN THE YELLOWSTONE BASIN UNTIL THEY ARE PERFECTED; AMENDING SECTION 85-2-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-605, MCA, is amended to read:

HeinOnline -- 1997 vol. I 731 1997

"**85-2-605. Reservations.** *(1)* The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency ~~thereof~~ *of the United States* may apply for reservation of water in the basin under 85-2-316 for beneficial use of that water in the state of Montana. Particular emphasis ~~shall~~ *must* be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

*(2) Notwithstanding other provisions of this title, the department shall extend the duration of the 14 conservation district reservations and 8 municipal reservations approved by administrative order dated December 15, 1978, in the basin until those reservations are perfected, or until those reservations are revoked pursuant to 85-2-316.*"

**Section 2. Effeetive date.** [This act] is effective on passage and approval.

Approved March 25, 1997

# CHAPTER NO. 146

[HB 550]

AN ACT GENERALLY REVISING AND CLARIFYING WHAT ELECTIONS MAY BE CONDUCTED BY MAIL; AND AMENDING SECTIONS 13-19-102 AND 13-19-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 13-19-102, MCA, is amended to read:

"**13-19-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(2) "Mail ballot election" means any election ~~that involves either candidates or ballot issues and is~~ conducted *by mail pursuant to 13-19-104 and* in compliance with the procedure specified in 13-19-106.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

(4) "Return/verification envelopo" means an envelope that contains a secrecy envelope and ballot and ~~which~~ *that* is designed to:

(a) allow election officials, upon examination of the outside of the envelope, to determine that the ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

HeinOnline -- 1997 vol. I 732 1997

(b) allow it to be used in the United States mail.

(5) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's vote and to prevent that elector's ballot from being distinguished from the ballots of other electors."

**Section 2.** Section 13-19-104, MCA, is amended to read:

**"13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited — *when county election administrator conducts.*** (1) Conducting elections by mail ballot is only one option available to local officials, and ~~nothing in~~ this chapter ~~mandates~~ *does not mandate* that the procedure be used.

(2) ~~The following elections~~ *Except as provided in subsection (3), any election* may be conducted by mail ballot~~:~~

~~(a) an election in a political subdivision required to hold annual elections under 13-1-104(3);~~

~~(b) an election in a city of the third class, as defined in 7-1-4111(3), if all of the candidates whose names will appear on the ballot are candidates for offices to be elected without party designation;~~

~~(c) an election in a town as defined in 7-1-4111(4);~~

~~(d) an election conducted under 7-13-2236 in an unincorporated area; and~~

~~(e) a special election called by a local government unit for the sole purpose of submitting one or more ballot issues to its qualified electors if such special election is not held in conjunction with a statutorily scheduled election~~.

(3) The following elections may not be conducted by mail ballot:

(a) ~~an election held for one of the purposes or at the time provided in 13-1-104(1) and 13-1-107(1);~~

~~(b) an election held for one of the purposes or at the time provided in 13-1-104(2) and 13-1-107(2), except as specifically allowed by subsections (2)(b) and (2)(c) of this section;~~

~~(c) an election being held under the provisions of the Montana Recall Act, in Title 2, chapter 16, part 6;~~

~~(d) an election involving candidates for public office, except as specifically allowed by subsections (2)(a) through (2)(c) of this section; and~~

~~(e) a special election being held in conjunction with a statutorily scheduled election~~ *a regularly scheduled federal, state, or county election;*

*(b) a special federal or state election, unless authorized by the legislature; or*

*(c) a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day.*

*(4) If more than one mail ballot election is being conducted in the political subdivision on the same day, the county election administrator shall conduct the elections."*

Approved March 25, 1997

# CHAPTER NO. 147

[SB 66]

AN ACT CLARIFYING THAT STATE AND LOCAL GOVERNMENT AGENCIES MAY COOPERATIVELY PURCHASE BENEFIT SERVICES AND INSURANCE PRODUCTS TO PROVIDE EMPLOYEE GROUP BENEFITS; SPECIFYING PROCEDURES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Cooperative purchasing of employee benefit services and insurance products — procedures.** (1) To provide employee group benefits, an agency, as defined in 2-18-601, may participate with other agencies, nonprofit organizations, or business entities and in voluntary disability insurance purchasing pools provided for under 33-22-1815 if the agency determines that cooperative purchasing is in the agency's best interest.

(2) Cooperative purchases under this section may be conducted according to purchasing procedures developed by the participating parties if, for contracts valued at $20,000 a year or more, purchasing procedures, at a minimum, include:

(a) public notice in three major Montana newspapers of requirements for submitting bids or offers; and

(b) consideration of all submitted bids or offers.

(3) For purposes of this section, "employee" also means a schoolteacher.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 7, and the provisions of Title 2, chapter 18, part 7, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1997

HeinOnline -- 1997 vol. I 734 1997

# CHAPTER NO. 148

[SB 104]

AN ACT AUTHORIZING THE DEPARTMENT OF COMMERCE TO REVIEW THE BOOKS AND AFFAIRS OF BANK HOLDING COMPANIES; AND AMENDING SECTION 32-1-220, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-1-220, MCA, is amended to read:

**"32-1-220. ~~Examination of~~ *Access to* holding companies and affiliated entities.** The division ~~shall request assistance from and cooperate with the federal reserve system in the examination~~ *may review the books and affairs* of *a* bank holding ~~companies~~ *company operating* under the Bank Holding Company Act of 1956 ~~in order to resolve issues relating to the safety and soundness of banks under the jurisdiction of the division~~ *during the course of a regularly scheduled safety and soundness examination whenever serious regulatory concerns arise that could jeopardize the safety and soundness of the particular subsidiary being examined. The purpose of the authority granted in this section is to resolve serious regulatory concerns that arise during the examination from bank holding company transactions with the subsidiary being examined. The authority granted in this section does not authorize a review of the holding company as a standard procedure when the division has no serious regulatory concerns over transactions with the subsidiary being examined.*"

Approved March 25, 1997

# CHAPTER NO. 149

[SB 142]

AN ACT CLARIFYING THE PROCEDURE APPLICABLE TO THE APPEAL OF THE REVOCATION OF A SUSPENDED SENTENCE BY A JUSTICE'S COURT OR CITY COURT; AMENDING SECTION 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

WHEREAS, in *State v. Rogers*, 267 Mont. 190 (1994), the Montana Supreme Court held that an appeal de novo was available for a Justice's Court revocation of a suspended sentence and also held that a jury trial was not available.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-17-311, MCA, is amended to read:

**"46-17-311. Appeal from justices', municipal, and city courts.** (1) Except *as provided in subsection (4) and except* for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110.

HeinOnline -- 1997 vol. I 735 1997

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date *that* the order complained of is given. The prosecution may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

*(4) A defendant may appeal a justice's court or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation proccdure."*

**Section 2. Applicability.** Because [section 1] codifies existing case law, [section 1] applies to all suspended sentence revocation proceedings regardless of when the sentence was entered.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1997

# CHAPTER NO. 150

[SB 158]

AN ACT CLARIFYING THE LAWS RELATING TO THE QUALIFICATION OF SUBSTITUTES FOR JUSTICES OF THE PEACE; PROVIDING FOR THE FILING, WITH THE COUNTY CLERK, OF WRITTEN DOCUMENTATION CONCERNING THE QUALIFICATION OF SUBSTITUTES FOR JUSTICES OF THE PEACE; AMENDING SECTION 3-10-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in *Potter v. District Court*, 266 Mont. 384 (1994), the Montana Supreme Court ordered the suppression of evidence obtained under search warrants issued by an acting Justice of the Peace who had not been properly qualified; and

WHEREAS, the Montana Supreme Court found that compliance with the statutory scheme for qualifying substitutes for Justices of the Peace is mandatory and that failure to follow the statutory requirements may result in an unqualified substitute attempting to act in a judicial capacity without authority; and

WHEREAS, the Legislature finds that clarification of the statutory scheme for qualifying substitutes for Justices of the Peace may avoid future problems in which an unqualified substitute attempts to act in a judicial capacity and may avoid the consequences associated with such a situation.

THEREFORE, the Legislature of the State of Montana finds it appropriate to clarify the statutory scheme for qualifying substitutes for Justices of the Peace.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-10-231, MCA, is amended to read:

HeinOnline -- 1997 vol. I 736 1997

**"3-10-231. Circumstances in which ~~an~~ acting justice called in — by whom.** (1) Whenever a justice of the peace is disqualified from acting in any action because of the application of the supreme court's rules on disqualification and substitution of judges, ~~subdivision 1, 2, or 3, he~~ *3-1-803 and 3-1-805, the justice of the peace* shall either transfer the action to another justice's court in the same county or call a justice from a neighboring county to preside ~~in his behalf~~.

(2) *(a) The following requirements must be met to qualify a substitute for a justice of the peace:*

*(i)* Within 30 days of taking office, a justice of the peace shall provide a list of persons who are qualified to hold court in ~~his~~ *the justice's* place during a temporary absence when ~~no other~~ *another* justice or city judge is *not* available. The persons listed must be of good moral character and have community support, a sense of community standards, and a basic knowledge of court procedure. ~~The county commissioners shall administer the oath of office to each~~

*(ii) The sitting justice of the peace shall request and obtain from the commission on courts of limited jurisdiction established by the supreme court a waiver of training for the substitutes.*

*(iii) Each* person on ~~this~~ *the* list, *provided for in subsection (2)(a)(i), shall subscribe to the written oath of office* as soon as possible after the person has received a waiver of training from the supreme court. *The oath may be subscribed before any member of the board of county commissioners or before any other officer authorized to administer oaths.*

*(b) The list of qualified substitutes, the written oath, and the commission's written approval and waiver of training for those substitutes, pursuant to subsection (2)(a)(ii), must be filed with the county clerk as provided in 3-10-202.*

*(c) A county clerk may provide a current list of qualified and sworn substitutes to local law enforcement officers.*

(3) Whenever a justice is sick, disabled, or absent, the justice may call in another justice, if there is one readily available, or a city judge or a person from the list provided for in subsection (2) to hold court for the absent ~~judge~~ *justice* until ~~his~~ *the absent justice's* return. If the justice is unable to call in a substitute, the county commissioners shall call in another justice, a city judge, or a person from the list provided for in subsection (2).

(4) During the time when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county ~~shall be~~ *is* authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the justice of the peace may designate another person in the same manner as if the justice were sick or absent.

(5) A justice of the peace of any county may hold the court of any other justice of the peace at ~~his~~ *that justice's* request."

**Section 2. Effective date.** [This act] is effective on passago and approval.

Approved March 25, 1997

HeinOnline -- 1997 vol. I 737 1997

# CHAPTER NO. 151

[SB 192]

AN ACT ALLOWING, FOR A PERIOD OF 12 MONTHS FOR THE PURPOSE OF SELLING THE DENTAL PRACTICE, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED DENTIST OR THE PERSONAL REPRESENTATIVE OF A DISABLED DENTIST TO CONTRACT WITH A DENTIST TO MANAGE AN ESTABLISHMENT WHERE DENTAL SERVICES ARE PROVIDED; PROHIBITING THE PERSONAL REPRESENTATIVE FROM GOVERNING OR INTERFERING WITH THE CLINICAL ASPECTS OF DENTAL PRACTICE; AMENDING SECTIONS 37-4-101, 37-4-102, 37-4-103, AND 37-4-327, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-4-101, MCA, is amended to read:

"**37-4-101. Definitions — practice of dentistry.** (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the hoard of dentistry provided for in 2-15-1842.

(b) "Conscious sedation" means a minimally depressed level of consciousness in which tbe patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(d) "General anesthesia" means a state of unconsciousness intentionally produced hy anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be adminlstered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anestbesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes througbout most of the procedure.

(e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term ~~general anesthetic~~ does not include a nitrous oxide/oxygen mixture or any other anesthetic administered to produce conscious sedation.

HeinOnline -- 1997 vol. I 738 1997

(2) ~~A~~ *Except for the provisions of [section 5], a* person is "practicing dentistry" under this chapter if ~~he~~ *the person*:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to ~~himself~~ *the person*, any other person, or *any* agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed, *unless the person is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist, as provided in [section 5]*;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any methed, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease. pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", *or* "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter ~~which~~ *that* in any way represents ~~him~~ *the person* as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that ~~he~~ *the person* can perform or will attempt to perform dental operations or render a diagnosis in connection ~~therewith~~ *with dental operations*; or

(l) engages in any of the practices included in the curricula of recognized dental colleges."

**Section 2.** Section 37-4-102, MCA, is amended to read:

**"37-4-102. Designations constituting prima facie evidence of practicing dentistry.** *Except for the provisions in [section 5],* ~~Whenever any~~

HeinOnline -- 1997 vol. I 739 1997

~~person shall append~~ *appending* the word "dentist" or the letters "D.D.S.", "D.M.D.", or ~~like~~ *similar* letters to ~~his or her~~ *a person's* name ~~in any way for advertising or upon any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of the same to be done, the same shall be prima facie evidence that such~~ *on a door or a sign, in a printed or published form, or in any other type of advertisement is prima facie evidence that the* person is engaged in the practice of dentistry and *is* subject to the regulations, convictions, and penalties of this chapter."

**Section 3.** Section 37-4-103, MCA, is amended to read:

**"37-4-103. Exemptions.** (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chaptor do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) ~~Nothing in this chapter prevents~~ *This chapter does not prevent* a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to ~~his~~ *the faculty member's* teaching functions. ~~Nothing in this chapter prevents~~ *This chapter does not prevent* students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board ~~provided such~~ *if the* dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturitry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in this chapter apply to a person engaged in the lawful practice of denturitry.

*(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of [section 5]."*

**Section 4.** Section 37-4-327, MCA, is amended to read:

**"37-4-327. Practicing dentistry without certificate — penalty.** (1) ~~A~~ *Except as provided in 37-4-101 through 37-4-103, [section 5], and this section, a* person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a certificate

to practice dentistry from the department entitling ~~him~~ *the person* to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined *an amount* not less than $500 or more than $1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, except those paid to a justice's court, ~~shall~~ *must* be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury ~~over and above~~ *in excess of* the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter ~~shall~~ *must* be deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6)."

**Section 5. Twelve-month period for disposition of deceased or disabled dentist's practice by personal representative — restrictions.** (1) For the purpose of selling or otherwise disposing of a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided.

(2) A personal representative may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care;

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;

(c) allow any person other than a dentist to supervise and control the selection, compensation, terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental practice;

(d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a dentist or the dentist's practice; or

(e) limit or define the scope of services offered by the dentist.

(3) For the purposes of this section:

(a) "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care being rendered to a patient;

(b) "disabled" has the same meaning as provided for the term "permanently and totally disabled" in 15-30-111; and

(c) "personal representative" of the estate of a deceased dentist has the same meaning as provided for the term in 72-1-103.

(4) The 12-month period provided for in subsection (1) begins when:

HeinOnline -- 1997 vol. I 741 1997

(a) the personal representative of the estate of a deceased dentist files a verified copy of the death certificate of the deceased with the department; or

(b) the personal representative of the disabled dentist files a verified copy of a document signed by a licensed physician that attests to the dentist's disability.

**Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 37, chapter 4, part 1, and the provisions of Title 37, chapter 4, part 1, apply te [section 5].

**Section 7. Applicability.** [Section 5] applies to the sale or disposal of a dental practice managed, owned, operated, or otherwise conducted by the personal representative of a dentist whose death or disability occurs on or after [the effective date of this act].

Approved March 25, 1997

# CHAPTER NO. 152

[SB 197]

AN ACT CLARIFYING THE MONTANA ADMINISTRATIVE PROCEDURE ACT; PROVIDING MORE SPECIFIC STANDARDS FOR DETERMINING WHEN AUTHORITY EXISTS TO ADOPT A RULE AND FOR STATING THE REASONABLE NECESSITY FOR RULES; AND AMENDING SECTIONS 2-4-302 AND 2-4-305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-4-302, MCA, is amended to read:

**"2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice ~~shall~~ *must* include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views ~~thereon~~ *on the intended action.*

(2) (a) The notice ~~shall~~ *must* be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to persons who have made timely requests to the agency for notice of its rulemaking proceedings and to the office of any professional, trade, or industrial society or organization or member ~~thereof which~~ *of the entity that* has filed a request with the administrative code committee when ~~such~~ *the* request has been forwarded to the agency as provided in subsection (2)(b).

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the ~~Montana Administrative Register~~ *register*. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

HeinOnline -- 1997 vol. I 742 1997

(c) The notice ~~shall~~ *must* be published and mailed at least 30 days in advance of the agency's intended action.

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained ~~herein~~ *in this section*. However, ~~in no case may~~ the notice period *may not* be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and *at least* 28 days from the day of *the original* notice to submit data, views, or arguments, orally or in writing. *If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions.* In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing ~~shall~~ *must* be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing ~~herein~~ *in this section* alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again propeses the same rule for adoption, amendment, or repeal, the propesal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of ~~any~~ *a* hearing on the intended action, the person designatod by the agency to preside at the hearing shall read aloud the "Notice of Function of Administrative Code Committee" appearing in the register."

**Section 2.** Section 2-4-305, MCA, is amended to read:

**"2-4-305. Requisites for validity — authority and statement of reasons.** (1) The agency shall consider fully written and oral submissions respecting the proposed rule. Upen adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as propesed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ *register*, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutery language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the pertion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation te the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each propesed and adopted rule must include a citation

HeinOnline -- 1997 vol. I 743 1997

to the specific section or sections in the Montana Code Annotated that the rule purports to implement. *A substantive rule may not be proposed or adopted unless:*

*(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or*

*(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.*

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, *an adoption, amendment, or repeal of* a rule ~~adopted~~ is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. *A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the prineipal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules.* Subject to the provisions of subsection (8), reasonable necessity must be *clearly and thoroughly* demonstrated *for each adoption, amendment, or repeal of a rule* in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in statements of reasonable necessity, in citations of authority for rules, and in citations of sections implemented by rules."

Approved March 25, 1997

HeinOnline -- 1997 vol. I 744 1997

# CHAPTER NO. 153

[SB 370]

AN ACT CLARIFYING THE PROVISIONS RELATING TO ARCHITECTURAL SERVICES TO ALLOW A SCHOOL DISTRICT TO DETERMINE WHETHER ARCHITECTURAL SERVICES ARE NECESSARY FOR THE BUILDING, FURNISHING, REPAIRING, OR COMPLETION OF OTHER WORK FOR THE BENEFIT OF THE SCHOOL DISTRICT; INCREASING THE LIMIT RELATING TO REQUIRED ARCHITECTURAL SERVICES; ELIMINATING NEGOTIATION FOR ARCHITECTURAL SERVICE FEES; AMENDING SECTIONS 20-6-631 AND 20-6-633, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-6-631, MCA, is amended to read:

"**20-6-631. When contracts for architectural services required.** Whenever *the trustees of a school district determine that* the ~~estimated cost of any~~ building, furnishing, repairing, or other work for the benefit of a school district ~~exceeds $50,000 and~~ *exceeds $150,000 and* requires architectural services *under Title 37, chapter 65,* ~~such~~ *the trustees of the school district shall contract for those* services ~~shall be by contract~~."

**Section 2.** Section 20-6-633, MCA, is amended to read:

"**20-6-633. ~~Negotiation of fees~~ *Hiring for architectural services authorized.*** ~~After selecting a firm, the~~ *If the trustees determine pursuant to 20-6-631 that architectural services are necessary, the* trustees ~~shall negotiate with the selected firm a fair and reasonable fee~~ *shall hire a licensed arehitect* for the architectural services as described by the school district's scope of the work. ~~In the event the trustees and the firm are unable to negotiate a fair and reasonable fee, the trustees may select another firm, provided the trustees again give reasonable public notice of their selection.~~ *In the event that the trustees and the architect are unable to negotiate a fair and reasonable fee, tho trustees may select another architect if the trustees again give reasonable notice of their selection.*"

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1997

# CHAPTER NO. 154

[HB 110]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE LITIGATION IN THE CLARK FORK RIVER BASIN; EXTENDING REPAYMENT AND PROVIDING FOR INTEREST ON PREVIOUS LOANS; REQUIRING A CONTRACT BETWEEN THE DEPARTMENT AND THE STATE TREASURER IN ORDER TO EFFECTUATE THE APPROPRIATION;

HeinOnline -- 1997 vol. I 745 1997

TRANSFERRING THE FUND BALANCE IN CERTAIN FEDERAL SPECIAL REVENUE ACCOUNTS TO THE STATE SPECIAL REVENUE FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Natural resource damage program appropriation.** Subject to [section 4(2)], there is appropriated to the department of justice from the stato special revenue fund $2.5 million for the remainder of the current fiscal year and for the biennium ending June 30, 1999, for the purpose of conducting the litigation and pursuing the state of Montana's natural resource damage claims, and any appeals, against the atlantic richfield company through the natural resource damage litigation program. Any recovery in the litigation up to the amount of the loans extended in [section 2] must be deposited in the coal severance tax permanent fund. Any additional amount recovered in the litigetion up to the amount appropriated in this section must be deposited in the general fund.

**Section 2. Extension of provious loans.** Repayment of principal and interest on all loans authorized from the coal severance tax permanent fund under Chapter 354, Laws of 1993, and Chapter 411, Laws of 1995, is extended through the end of the 1999 biennium in accordance with 17-2-107(8).

**Section 3. Rate of interest.** The interest to be paid on the previous loans extended under [section 2] must be the highest rates allowahle for interest recoverable under 42 U.S.C. 9607(a), which are based on the rates specified for interest on investments of the hazardous substance superfund established under 26 U.S.C. 9507. The interest is payable as of the date on which the loan proceeds were or are transferred from the coal severance tax permanent fund.

**Section 4. Contracts.** (1) In order to extend the previous loans authorized in Chapter 354, Laws of 1993, and Chapter 411, Laws of 1995, the board of investments shall enter into a revised contract with the department of justice, pledging the amount recovered in the litigation to the repayment of the loans to the full extent allowable under law. The contract must provide that loan repayments must be depesited in the coal severanco tax permanent fund. To the extent possible, the board shall make the loan from the portion of the coal severance tax pormanent fund invested in the short-term pool.

(2) The appropriation in [section 1] is not effective until the department of justice enters into a contract with the state treasurer implementing the redeposit provisions of [section 1].

**Section 5. Fund balance transfer — reconciliation.** There is transferred from the social services block grant acconnt $680,000 and from the public welfare account $1,820,000 to the state special revenue fund to the credit of the department of justice. The department of public health and human services may use any of its general fund appropriation to pay federal claims attributable to the funds transferred from these accounts that are related to activity prior to fiscal year 1996.

**Section 6. Use of recovered funds.** Any funds recovered by the state on the natural resource damage claims against the atlantic richfield company and any interest that accumulates on the funds after their receipt by the stato must be used, to the extent consistent with state and federal law, to recoup the expenses

HeinOnline -- 1997 vol. I 746 1997

of the natural resource damage assessment and the costs of litigating the state's claim and to restore, replace, rehabilitate, or acquire the equivalent of the damaged natural resources that are the subject of the litigation.

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1997

# CHAPTER NO. 155

[HB 411]

AN ACT MAKING IT A CRIME TO TATTOO A MINOR WITHOUT PARENTAL CONSENT; AMENDING SECTION 45-5-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-623, MCA, is amended to read:

**"45-5-623. Unlawful transactions with children.** (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if ~~he~~ *the person* knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriato city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under tbe age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age; ~~or~~

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian; *or*

*(e) tattoos a child under the age of majority without the explicit in-person consent of the child's parent or guardian. For purposes of this subsection, "tattoo" has the meaning provided in 50-2-116(2)(k)(vi). Failure to adequately verify the identity of a parent or guardian is not an excuse for violation of this subsection.*

(2) A person convicted of the offense of unlawful transactions with children shall be fined *an amount* not to exceed $500 or be unprisoned in the county jail for any term not to excoed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined *an amount* not to exceed $1,000 or be imprisoned in the county jail for any torm not to exceed 6 months, or both. (See compiler's comments for contingent termination of certain text.)"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1997

HeinOnline -- 1997 vol. I 747 1997

# CHAPTER NO. 156

[HB 486]

AN ACT ELIMINATING CERTAIN UNDERGROUND PIPES FROM THE DEFINITION OF "UNDERGROUND STORAGE TANK" IN THE HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK LAWS; AMENDING SECTION 75-10-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-403, MCA, is amended to read:

**"75-10-403. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any regulated substance or hazardous waste into or onto the land or water so that the regulated substance, hazardous waste, or any constituent of the regulated substance or hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(5) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(6) "Generation" means the act or process of producing waste material.

(7) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(8) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(9) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of bazardous wastes.

(10) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and otber similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(11) "Manifest" means the shipping document that is originated and signed hy the generator and that is used to identify the hazardous waste and its quantity, origin, and destination during its transportation.

(12) "Person" means the United States, an individual, firm, trust, estato, partnersbip, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(13) "Regnlated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) potroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temporature and pressure (60 degrees F and 14.7 pounds por square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

(14) "Storage" means the actual or intended containment of regulated substances, hazardous wastes, or both, either on a temporary basis or for a period of years.

(15) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(16) "Transporter" means a porson engaged in the offsite transportation of bazardous waste by air, rail, highway, or water.

(17) "Treatment" means a method, technique, or process, including neutralization, designed to change tbe physical, chemical, or biological cbaracter or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(18) "Underground storage tank":

HeinOnline -- 1997 vol. I 749 1997

(a) means, except as provided in subsections (18)(h)(i) through (18)(b)~~(xi)~~*(xii)*:

(i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely aboveground, partially aboveground, or entirely underground;

(b) does not include:

(i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons or less, and that is used for storing heating oil for consumptive use on the premises where it is stored;

(iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;

(iv) a septic tank;

(v) a pipeline facility, including gathering lines, regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

(B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or

(C) state law comparable to the provisions of law referred to in subsection (18)(b)(v)(A) or (18)(b)(v)(B), if the facility is intrastate;

(vi) a surface impoundment, pit, pond, or lagoon;

(vii) a storm water or wastewater collection system;

(viii) a flow-through process tank;

(ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; ~~or~~

(xi) any pipe connected to a tank described in subsections (18)(b)(i) through (18)(b)(ix)*; or*

*(xii) underground pipes connected to an above ground storage tank at a petroleum refinery that is subject to facility-wide corrective action permit provisions under 75-10-406 or the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended.*

HeinOnline -- 1997 vol. I 750 1997

(19) "Used oil" means any oil that has been refined from crude oil or any synthetic oil, either of which has been used and as a result of that use is contaminated by physical or chemical impurities."

**Section 2. Coordination instruction.** If House Bill 152 is passed and approved, and if it deletes the definition of "underground storage tank" from 75-10-403, and adopts it in a recodified underground storage tank act, then the amendment to the definition made in [section 1] is made to that definition in House Bill 152.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1997

# CHAPTER NO. 157

[SB 15]

AN ACT REQUIRING LOCAL EDUCATIONAL AGENCIES AND ACCREDITED SCHOOLS TO ADOPT A POLICY FOR THE TRANSFERRING OF PERMANENT AND SPECIAL EDUCATIONAL RECORDS; AUTHORIZING THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO ENTER INTO RECIPROCAL RECORDS TRANSFER AGREEMENTS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Transfer of school records.** (1) Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies and accredited schools shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request.

(2) If records cannot be forwarded within 5 days, the local educational agency or accredited school shall notify the requestor in writing or electronically providing the reasons why the local educational agency or accredited school is unable to comply within the 5-day timeframe and the local educational agency or accredited school shall provide the date by which the requested records will be transferred.

(3) A local educational agency or accredited school may not refuse to transfer files because a student owes fines or fees.

(4) The files that are forwarded must include education records in the permanent file, special education records, and any disciplinary actions taken against the student that are educationally related.

HeinOnline -- 1997 vol. I 751 1997

(5) A local educational agency or accredited school may release student information to the juvenile justice system to assist the system's ability to effectively serve, prior to adjudication, the student whose records are released under provisions of 20 U.S.C. 1232g(B)(1)(E) of the Family Educational Rights and Privacy Act of 1974, as amended. The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student.

(6) The superintendent of public instruction is encouraged to contact other states or provinces and may enter into reciprocal records transfer agreements with the superintendent of public instruction or a department of education of any state or province. The superintendent of public instruction shall supply a copy of any reciprocal records transfer agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(7) Upon request, the local educational agency or accredited school shall transfer by mail or electronically a copy of the permanent file to a nonpublic school or facility.

(8) As used in this section, "local educational agency" means a public school district or a state-funded school.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 1, part 2, and the provisions of Title 20, chapter 1, part 2, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 1997.

Approved March 26, 1997

# CHAPTER NO. 158

[SB 39]

AN ACT APPLYING MANAGEMENT AND EXCLUSIVE AGENCY CONTRACT RESTRICTIONS TO FARM MUTUAL INSURERS; DEFINING "FARM MUTUAL INSURER"; REQUIRING LICENSURE OF FARM MUTUAL MANAGING GENERAL AGENTS AND REGULATION OF FARM MUTUAL MANAGING GENERAL AGENT CONTRACTS; LIMITING THE RETENTION OF CROP-HAIL RISK BY A FARM MUTUAL INSURER; AND AMENDING SECTIONS 33-4-101, 33-4-102, AND 33-4-502, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-4-101, MCA, is amended to read:

**"33-4-101. Scope of chapter — provisions applicable.** (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

HeinOnline -- 1997 vol. I 752 1997

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) ~~All insurers qualifying under subsection (1) may be referred to as "farm mutual insurers".~~

~~(3)~~ The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as contained or referred to in this chapter.

~~(4)~~*(3)* The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions: ~~parts 1, 2, 3, 4, and 7 of~~ chapter 1, *parts 1 through 4 and 7*; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; chapter 2, ~~part~~ *parts* 13 *and 16*; 33-2-1212; 33-3-218; 33-3-308; *33-3-309;* 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18."

**Section 2.** Section 33-4-102, MCA, is amended to read:

**"33-4-102. Definitions.** (1) A ~~"county"~~ *"county* mutual insurer" is ~~an~~ *a farm mutual* insurer authorized to insure ~~only~~ property *and liability risks* located in the county ~~wherein is located~~ *in which* its principal office *is located* and in the counties in this state with boundaries contiguous with ~~such~~ *the* principal office county.

(2) *A "farm mutual insurer" is an insurer that meets the qualifications of 33-4-101(1).*

*(3)* A ~~"state"~~ *"state* mutual insurer" is ~~an~~ *a farm mutual* insurer authorized to insure property *and liability risks* throughout the state.

~~(2)~~*(4)* "Surplus" is the extent to which the value of an insurer's assets exceeds its liabilities."

**Section 3.** Section 33-4-502, MCA, is amended to read:

**"33-4-502. Limit of risk — retention of liability.** (1) Except as provided in subsection (3), the maximum amount of insurance ~~which~~ *that* an insurer shall retain on a single risk, after deduction of applicable reinsurance, may not exceed 10% of the admitted assets of the insurer or $50,000, whichever is the larger amount.

(2) For the purposes of this section, a "single risk" as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophic perils includes all properties insured hy the same insurer ~~which~~ *that* are reasonably susceptible to ioss or damage from the same fire or the same occurrence of ~~such other~~ *another* hazard insured against.

(3) A farm mutual insurer:

(a) that insures any portion of a liability risk shall maintain a surplus of at least $50,000;

HeinOnline -- 1997 vol. I 753 1997

(b) that retains any portion of a liability risk shall obtain reinsurance on that liability insurance with an insurer authorized to do business in this state, and the farm mutual insurer's maximum aggregate liability for incurred losses on liability coverage retained for any calendar year or contract year may not exceed the smaller of $200,000 or 20% of the farm mutual insurer's surplus as of December 31 of the preceding year; and

(c) may not retain liability risk *or risk resulting from insuring growing crops against loss or damage from hail or other hazards* greater than the proportional share of each limit of liability in the following schedule:

| Surplus as of the Preceding December 31: | Proportional Share of Each Limit of Liability Retained: |
|---|---|
| $1,000,000 or greater | 15% |
| $800,000 to $999,999 | 12% |
| $600,000 to $799,999 | 9% |
| $400,000 to $599,999 | 6% |
| $200,000 to $399,999 | 3% |
| Under $200,000 | 0" |

Approved March 26, 1997

# CHAPTER NO. 159

[SB 129]

AN ACT DEFINING A LOG LOADER AS SPECIAL MOBILE EQUIPMENT FOR REGISTRATION PURPOSES; AMENDING SECTION 61-1-104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-1-104, MCA, is amended to read:

**"61-1-104. Special mobile equipment.** (1) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus. The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment. The enumeration in this section is partial and does not exclude other vehicles that are within the general terms of this section.

(2) For purposes of Title 61, chapter 3, and Title 61, chapter 10, part 2, a motor vehicle or a trailer designed and used to apply fertilizer to agricultural land must be treated as special mobile equipment.

HeinOnline -- 1997 vol. I 754 1997

*(3) For registration purposes, a log loader must be treated as special mobile equipment, subject to the identification and registration exemptions and regulations in 61-3-431."*

**Section 2. Effective date.** [This act] is effective January 1, 1998.

Approved March 26, 1997

# CHAPTER NO. 160

[SB 138]

AN ACT REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A FULL-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE PRACTICE OF LAW FOR 3 YEARS BEFORE THE DATE OF ELECTION OR APPOINTMENT; REQUIRING THAT A PERSON ELECTED OR APPOINTED TO FILL A PART-TIME COUNTY ATTORNEY POSITION IN A COUNTY WITH A POPULATION OF LESS THAN 30,000 BE ADMITTED TO THE PRACTICE OF LAW BEFORE TAKING OFFICE; ELIMINATING THE REQUIREMENT THAT A PERSON APPOINTED TO FILL A VACANCY IN THE OFFICE OF COUNTY ATTORNEY BE DESIGNATED AN ACTING COUNTY ATTORNEY UNTIL THAT PERSON ESTABLISHES RESIDENCY IN THE COUNTY; AND AMENDING SECTIONS 7-4-2701 AND 7-4-2702, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-4-2701, MCA, is amended to read:

**"7-4-2701. Qualifications for county attorney in certain counties.** *(1)* ~~No~~ *A* person is *not* eligible for the position of *full-time* county attorney in counties ~~which~~ *that* have a population in excess of 30,000 unless ~~he~~ *the person* is a citizen of the United States ~~who~~ *and* has resided in the state 2 years immediately before taking office and has been admitted te the practice of law for at least 5 years ~~prior to~~ *before* the date of election or appointment.

*(2) A person is not eligible for the position of full-time county attorney in counties that have a population of less than 30,000 unless the person is a citizen of the United States and has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 3 years before the date of election or appointment.*

*(3) A person is not eligible for the position of part-time county attorney in counties that have a population of less than 30,000 unless the person is a citizen of the United States and resides in the state and has been admitted to the practice of law before taking office."*

**Section 2.** Section 7-4-2702, MCA, is amended to read:

**"7-4-2702. Proeedure to fill vacancy in office of county attorney.** ~~(1)~~ Whenever a vacancy in the office of county attorney ~~shall arise~~ *arises* in ~~any~~ *a* county ~~and there is no licensed attorney residing in said county who is eligible to be appointed to fill said vacancy~~, the board of county commissioners is authorized

*to appoint an attorney who meets the qualifications established in 7-4-2701 to fill the vacancy.* ~~and has the power to employ special counsel from without the county, who shall be designated and officially known as the "acting county attorney" and who during said employment shall be vested with all the powers and shall perform all the duties of the county attorney, including the filing of all complaints, informations, and/or other proceedings for and in which the county or state may be a party and the prosecution and defense of the same to the same extent and with the same force and effect as if he were the regular qualified county attorney. Said attorney shall be paid a monthly compensation not to exceed the monthly salary of the county attorney. Whenever any such attorney is employed, the county clerk of said county shall certify to the attorney general the name of such acting county attorney and the fact of his employment.~~

~~(2) Whenever any licensed attorney shall establish residence in said county and become eligible to hold the office of county attorney, it shall be the duty of the board to appoint such attorney to fill said vacancy, and the employment of said special attorney shall thereupon cease.~~"

Approved March 26, 1997

# CHAPTER NO. 161

[SB 141]

AN ACT CLARIFYING THAT PENALTY PROVISIONS OF THE FISH AND GAME CODE ARE SUPPLEMENTAL TO BUT DO NOT SUPERSEDE THE CRIMINAL CODE; PROVIDING THAT THE GENERAL TIME LIMITS FOR PROSECUTION OF FISH AND GAME OFFENSES ARE GOVERNED BY THE TIME LIMITS SET OUT IN THE CRIMINAL CODE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Supreme Court decision in State v. Gatts, No. 95-402 (1996), limited penalties for fish- and game-related crimes to those specified in the fish and game code, precluding the state from bringing charges under the state criminal code; and

WHEREAS, it is the intent of the Legislature that the charging for and punishment of fish- and game-related violations be authorized under the criminal code as well as the fish and game code and that the fish and game code not be considered the exclusive remedy for fish and game violations to the exclusion of the criminal code; and

WHEREAS, it is the intent of the Legislature that if fish- and game-related violations constitute an offense under both the criminal code and the fish and game code, the prosecution has the discretion te bring charges under either or both codes.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Fish and wildlife code not to supersede criminal code — statute of limitations.** (1) The penalty provisions of this title are intended to supplement but not supersede the provisions of Title 45. Nothing in this title limits the prosecution of any conduct defined as an offense in Title 45.

HeinOnline -- 1997 vol. I 756 1997

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of any offense under this title are those time limitations specified in 45-1-205.

**Section 2. Codification instruction.** [Section 1] is intended to he codified as an integral part of Title 87, chapter 1, part 1, and the provisions of Title 87, chapter 1, part 1, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1997

# CHAPTER NO. 162

[SB 145]

AN ACT CLARIFYING THE BAR AGAINST A SUBSEQUENT PROSECUTION AFTER A FORMER PROSECUTION IN ANOTHER JURISDICTION; AMENDING SECTION 46-11-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Montana Supreme Court has suggested in State v. Pierce, 199 Mont. 57 (1982), State v. Sword, 229 Mont. 370 (1987), and State v. Tadewaldt, 53 St. Rep. 635 (1996), that the concurrent jurisdiction provisions of section 46-11-504, MCA, he clarified.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-11-504, MCA, is amended to read:

**"46-11-504. Former prosecution in another jurisdiction.** When conduct constitutes an offense within the ~~concurrent~~ jurisdiction of ~~this~~ *any* state ~~and of the United States or another state~~ *or federal court* ~~or of two courts of separate, overlapping, or concurrent jurisdiction in this state~~, a prosecution in any ~~other~~ jurisdiction is a bar to a subsequent prosecution in this state ~~under the same circumstances barring further prosecution in this state~~ if:

(1) the first prosecution resulted in an acquittal or in a conviction and the subsequent prosecution is based on an offense arising out of the same transaction; or

(2) the former prosecution was terminated, after tbe charge had been filed, by an acquittal or by a final order or judgment for the defendant that has not been set aside, reversed, or vacated and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact that must be established for conviction of the offense for which the defendant is subsequently prosecuted."

**Section 2. Applicability.** [Section 1] applies to offenses occurring on or after [the effective date of this act].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1997

HeinOnline -- 1997 vol. I 757 1997

# CHAPTER NO. 163

[SB 163]

AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION FOR ENTERING PLEAS AND SENTENCING IN MISDEMEANOR CRIMINAL CASES IF NEITHER PARTY OBJECTS AND THE COURT AGREES; AMENDING SECTIONS 46-12-211, 46-16-105, 46-17-203, 46-18-102, AND 46-18-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-12-211, MCA, is amended to read:

**"46-12-211. Plea agreement procedure — *use of two-way electronic audio-video communication.*** (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriato disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) ~~If~~ *Subject to the provisions of subsection (5), if* a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time *that* the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentonce report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If tbe court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

*(5) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, a disclosure of the agreement through the use of*

HeinOnline -- 1997 vol. I 758 1997

*two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be a disclosure in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."*

**Section 2.** Section 46-16-105, MCA, is amended to read:

**"46-16-105. Plea of guilty — *use of two-way electronic audio-video communication.*** (1) Before or during trial, a plea of guilty may be accepted when:

(a) *subject to the provisions of subsection (3),* the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of ~~his~~ *the* plea and of the maximum penalty provided by law ~~which~~ *that* may be imposed upon acceptance of ~~such~~ *the* plea.

(2) At any time before or after judgment, the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

*(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."*

**Section 3.** Section 46-17-203, MCA, is amended to read:

**"46-17-203. Plea of guilty — *use of two-way electronic audio-video communication.*** (1) Before or during trial, a plea of guilty may be accepted when:

(a) *subject to the provisions of subsection (3),* the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of ~~his~~ *the* plea and of the maximum penalty provided by law ~~which~~ *that* may be impesed upon acceptance of the plea.

(2) A plea of guilty in a ~~justices'~~ *justice's* court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

*(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty in open court. Audio-video communication may be used if neither*

HeinOnline -- 1997 vol. I 759 1997

*party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."*

**Section 4.** Section 46-18-102, MCA, is amended to read:

**"46-18-102. Rendering judgment and pronouneing sentence — *use of two-way electronic audio-video communication.*** (1) The judgment ~~shall~~ *must* be rendered in open court. *For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, a judgment rendered through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be a judgment rendered in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201.*

(2) If the verdict or finding is not guilty, judgment ~~shall~~ *must* be rendered immediately and the defendant ~~shall~~ *must* be discharged from custody or from the obligation of ~~his~~ *a* bail bond.

(3) (a) If the verdict or finding is guilty, sentence ~~shall~~ *must* be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge sball clearly state for the record ~~his~~ *the* reasons for imposing the sentence."

**Section 5.** Section 46-18-115, MCA, is amended to read:

**"46-18-115. Sentencing hearing — *use of two-way electronic audio-video communication.*** Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the applicability of sentencing enhancement provisions, mandatory minimum sentences, persistent felony offender status, or an exception te these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. *For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, the requirement that the court address the defendant personally may be satisfied by the use of two-way electronic audio-video communication. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201.*

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion

HeinOnline -- 1997 vol. I 760 1997

regarding appropriate sentence. At the victim's option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

(5) The court shall impose sentence or make any other disposition authorized by law.

(6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment."

**Section 6. Applicability.** [This act] applies to guilty pleas entered and sentences pronounced after [the effective date of this act].

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1997

# CHAPTER NO. 164

[SB 204]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO SCHEDULE COMMERCIAL DRIVER'S LICENSE EXAMINATIONS IN A COUNTY IF PREVIOUSLY SCHEDULED THROUGH THE DEPARTMENT OF JUSTICE; AMENDING SECTION 61-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-5-101, MCA, is amended to read:

**"61-5-101. Driver licensing responsibilities of ~~the~~ department.** *(1)* The department shall maintain a pormanent place of business at the state capital and shall provide the necessary staff, facilities, and equipment for the purpose of providing ~~driver~~ *driver's* license services as required by this part.

*(2) The department shall provide an examiner to administer a commercial driver's license examination in any county of the state if the examination is previously scheduled through the department.*"

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved March 26, 1997

# CHAPTER NO. 165

[HB 46]

AN ACT REQUIRING CERTAIN HEALTH MAINTENANCE ORGANIZATIONS TO OFFER A POINT-OF-SERVICE OPTION BENEFIT PLAN TO EACH PURCHASER OF A HEALTH CARE SERVICES AGREEMENT; AMENDING SECTION 33-31-102, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-31-102, MCA, is amended to read:

**"33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132; and

(j) treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(2) "Commissioner" means the commissioner of insurance of the state of Montana.

(3) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(4) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(5) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(6) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(7) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.

(8) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(9) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(10) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

HeinOnline -- 1997 vol. I 763 1997

*(11) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.*

~~(11)~~*(12)* "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or nurse specialist as specifically listed in 37-8-202 who treats any illness or injury within the scope and limitations of ~~his~~ *the person's* practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

*(13) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.*

*(14) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.*

~~(12)~~*(15)* "Uncovered expenditures" mean the costs of health care services that are covered hy a health maintenance organization and for which an enrollee is liable if the health maintenance organization hecomes insolvent."

**Section 2. Point-of-service option.** (1) (a) A health maintenance organization that has at least 10,000 enrollees shall offer a point-of-service option benefit plan to each purchaser of a health care services agreement. The purchaser may accept or reject the addition of a point-of-service option to the health care services agreement.

(b) For the purposes of subsection (1)(a), an enrollee does not include an individual receiving medicaid services under the Montana medicaid program provided for in Title 53, chapter 6, or an individual participating in an approved medicare risk contract administered by a licensed health maintenance organization.

(2) Any difference in premium charged for the point-of-service option benefit plan compared to the premium for a standard health care services agreement may not exceed the expected cost to the insurer of benefits and expenses based on sound actuarial principles.

(3) This section may not he construed to permit a health maintenance organization to offer stand-alone indemnity insurance coverage.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 33, chapter 31, and the provisions of Title 33, chapter 31, apply to [section 2].

**Section 4. Applicability.** [This act] applies to health care service agreements purchased or renewed after January 1, 2000.

Approved March 27, 1997

HeinOnline -- 1997 vol. I 764 1997

# CHAPTER NO. 166

[HB 381]

AN ACT REVISING CERTAIN PROVISIONS RELATING TO THE EXEMPTION FROM PROPERTY TAXATION OF CERTAIN COMMUNITY SERVICE BUILDINGS AND LAND; ALLOWING A NONPROFIT COMMUNITY SERVICE ORGANIZATION THAT SELLS FOOD AND BEVERAGES TO QUALIFY FOR THE PROPERTY TAX EXEMPTION; ALLOWING CERTAIN COMMUNITY SERVICE ORGANIZATIONS TO APPLY FOR THE EXEMPTION FOR TAX YEAR 1997; AMENDING SECTION 15-6-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-209, MCA, is amended to read:

"**15-6-209. Community services buildings exempt.** (1) The building and appurtenant land, not exceeding ~~1 acre~~ *3 acres*, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections ~~(3)~~ *(4)* and ~~(4)~~ *(5)*, if the organization:

(a) is a lodge of a nationally recognized fraternal organization ~~and does not sell food or beverages under license from the state of Montana~~;

(b) *(i)* furnishes services to senior citizens in the form of daytime or evening educational or recreational activities *that are recognized in the state plan on aging adopted by the department of public health and human services;* and

*(ii)* does not furnish living accommodations to senior citizens ~~or sell food or beverages under license from the state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of public health and human services~~; or

(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.

(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, 1981.

*(3) A community service organization exempted under this section may sell food and beverages under license from the state.*

~~(3)~~*(4)* A building and ~~lot~~ *land* exempted under this section must be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or ~~lot~~ *land*.

~~(4)~~*(5)* The exemption provided under this section may not be extended to any property owned by a community service organization described in this section ~~which~~ *that* is leased in whole or in part to any person for business or profitmaking purposes."

**Section 2. Application for exemption.** To qualify for the exemption under 15-6-209 for tax year 1997, a community service organization that sells

HeinOnline -- 1997 vol. I 765 1997

food and beverages under license with the state or that has 3 acres of land shall apply for the exemption on a form available from the department of revenue within 30 days of passage and approval of [this act].

**Section 3. Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

Approved March 27, 1997

# CHAPTER NO. 167

[HB 506]

AN ACT ESTABLISHING A PROCESS FOR THE ACKNOWLEDGMENT OF WATER RIGHT TRANSFERS IN REAL PROPERTY TRANSFER TRANSACTIONS; AMENDING SECTIONS 15-7-305, 15-7-308, AND 85-2-424; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-7-305, MCA, is amended to read:

**"15-7-305. Realty transfer certificate required.** (1) The county clerk and recorder shall ~~cause to be executed by~~ *require* the parties to the transaction or their agents or representatives *to complete* a certificate declaring the consideration paid or to be paid for the real estate transferred.

(2) ~~No~~ *An* instrument or deed evidencing a transfer of real estate may *not* be accepted for recordation until the certificate has been received by the county clerk and recorder. The validity or effectiveness of an instrument or deed ~~as~~ between the parties to it ~~shall~~ *is* not ~~be~~ affected by ~~the~~ failure to comply with the provisions in this part.

(3) ~~The~~ *Except as provided in 85-2-423, the* form of certificate ~~shall~~ *must* be prescribed by the department of revenue, and the department shall provide an adequate supply of ~~such~~ forms to each county clerk and recorder in the state. *The department shall coordinate with the department of natural resources and conservation and the water court to develop and provide the forms required under 85-2-423 and this part.*

(4) The clerk and recorder shall prepare a ~~like~~ certificate for each contract for deed filed for recording.

(5) The clerk and recorder shall transmit each executed certificate to the department."

**Section 2.** Section 15-7-308, MCA, is amended to read:

**"15-7-308. Disclosure of information restricted — *water right transfer certificate exception.*** *(1)* ~~The~~ *Except as provided in subsection (2), the* certificate required by this part and the information contained in the certificate is not a public record and must be held confidential by the county clerk and recorder and the department. This is because the legislature finds that the

demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

*(2) The confidentiality provisions of this section do not apply to the information in the clerk and recorder's abbreviated copy of the realty transfer certificate or to the information contained in the water right transfer certificate prepared and filed with the department of natural resources and conservation pursuant to 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX, section 3(4), of the Montana constitution. A person may access water right transfer information through the department of natural resources and conservation pursuant to the department's implementation of the requirements of 85-2-112(3).*"

**Section 3.** Section 85-2-424, MCA, is amended to read:

"**85-2-424. Filing.** (1) The transferor of a water right ~~or his agent or representative~~ shall file with the department a water right transfer certificate within 60 days of recording a deed or other instrument evidencing a transfer of real property.

(2) Except in the case of a transfer of real property served by a public service water supply, when any person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate shall ~~note whether or not the transfer includes a transfer of water rights~~ *contain a water rights disclosure whereby the transferor shall acknowledge, at or before closing, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.* If the realty transfer certificate ~~notes~~ *discloses* a transfer of water rights, ~~the clerk and recorder shall provide such person the form prescribed under 85-2-423 for the transfer of water rights~~ *a water right transfer certificate must be completed and filed with the department.* The recording of the deed or other instrument ~~shall~~ *may* not be delayed because of the transfer of the water rights.

(3) ~~The~~ *Upon request of the department, the* county clerk and recorder shall send to the department, *on a monthly basis,* a ~~list of all transfers that involve transfers of water rights~~ *copy of the clerk and recorder's copy of any realty transfer certificate that discloses a transfer of water rights.* ~~The list must be sent every month and must include all transfers for the month immediately preceding the date of submittal to the department. The list must include the names and addresses of all parties to the transfer and a legal description of the land subject to the transfer.~~"

**Section 4.** Section 85-2-431, MCA, is amended to read:

"**85-2-431. Penalty.** (1) The transferor of a water right is responsible for the filing of a water right transfer certificate with the department in accordance with 85-2-424.

(2) ~~A person~~ *The transferor of a water right* who violates 85-2-424(1) is liable for a civil penalty of not more than $50.

(3) An action to recover the penalty must be brought by the department and filed in the district court for the first judicial district.

HeinOnline -- 1997 vol. I 767 1997

(4) Any penalty fee collected under this section must be deposited in the water right appropriation account provided for in 85-2-318."

**Section 5. Effective date — applicability.** [This act] is effective January 1, 1998, and does not apply to deeds entering escrow before that date.

Approved March 27, 1997

# CHAPTER NO. 168

[SB 6]

AN ACT REVISING THE OFFENSE OF POSSESSION OF A DEADLY WEAPON BY A PRISONER; MAKING IT AN OFFENSE FOR A PERSON IN A YOUTH DETENTION FACILITY, SECURE DETENTION FACILITY, REGIONAL DETENTION FACILITY, SHORT-TERM DETENTION CENTER, STATE YOUTH CORRECTIONAL FACILITY, OR SHELTER CARE FACILITY TO POSSESS A DEADLY WEAPON; AND AMENDING SECTION 45-8-318, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-8-318, MCA, is amended to read:

"**45-8-318. Possession of deadly weapon by prisoner *or youth in facility*.** (1) ~~Every prisoner committed to the Montana state prison or incarcerated in a county jail, city jail, or regional jail who, while at the state prison or a jail, while being conveyed to or from the Montana state prison or a jail, while at a state prison farm or ranch, while being conveyed to or from any such place, or while under the custody of prison or jail officials, officers, or employees,~~ *A person commits the offense of possession of a deadly weapon by a prisoner if the person* purposely or knowingly possesses or carries ~~upon his person~~ or has under ~~his~~ *the person's* custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon ~~is guilty of a felony~~ *while the person is:*

*(a) a person committed to the Montana state prison or incarcerated in a county jail, city jail, or regional jail and is:*

*(i) at the state prison, a state prison farm or ranch, or jail;*

*(ii) being conveyed to or from a place listed in this subsection (1)(a); or*

*(iii) under the custody of prison or jail officials, officers, or employees; or*

*(b) a person in a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, or shelter care facility, as those terms are defined in 41-5-103, and is at the facility, being conveyed to or from the facility, or under the custody of the facility officials, officers, or employees.*

(2) ~~He~~ *A person convicted of the offense of possession of a deadly weapon by a prisoner* shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, ~~such term of imprisonment to commence~~

~~from the time he would otherwise have been released from jail or prison, or shall be punished~~ by a fine of not more than $50,000, or by both ~~such~~ fine and imprisonment.

*(3) The youth court has jurisdiction of any violation of subsection (1)(b) unless a youth's case is transferred to district court, in which case the district court has jurisdiction."*

Approved March 27, 1997

# CHAPTER NO. 169

[SB 160]

AN ACT AUTHORIZING A NAME CHANGE PETITION TO PROCEED ON A SEALED-RECORD BASIS WHEN PROBABLE CAUSE IS SHOWN THAT THE SAFETY OF THE PETITIONER IS AT RISK; AMENDING SECTION 27-31-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-31-201, MCA, is amended to read:

**"27-31-201. Order setting hearing date — notice — *safety*.** (1) When a petition setting out the matters contained in 27-31-101 or 27-31-102 is filed, the court or judge may appoint a time for hearing the petition. Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, notice of the time and place of hearing the petition must be published for 4 successive weeks in some newspaper published in the county, if a newspaper ~~be~~ *is* printed ~~therein, but if no~~ *in the county. If a* newspaper ~~be~~ *is not* printed in the county, a copy of ~~such~~ *the* notice must be posted in at least three public places in the county for ~~a like period~~ *4 successive weeks*.

(2) ~~No publication~~ *Publication* is *not* required for a change of name of a minor under 27-31-101 if both parents and all legal guardians consent in writing.

*(3) The court may allow a petition to proceed on a sealed-record basis when probable cause is shown that the safety of the petitioner is at risk and the judge is satisfied that the petitioner is not attempting to avoid debt or to hide a criminal record. The request to proceed on a sealed-record basis must be set forth in the petition. All papers and records pertaining to the sealed-record petition must be kept as a permanent record of the court and withheld from inspection unless the judge denies the request to proceed on a sealed-record basis. A person, other than the petitioner, may not have access to the records except for good cause shown and on order of the judge of the court in which the petition was granted."*

**Section 2. Applicability.** [Section 1] applies to petitions filed on or after [the effective date of this act].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1997

HeinOnline -- 1997 vol. I 769 1997

# CHAPTER NO. 170

[SB 175]

AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES BUREAU OF LAND MANAGEMENT AND THE STATE OF MONTANA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. United States Bureau of Land Management-Montana compact ratified.** The compact entered into by the state of Montana and the United States Bureau of Land Management and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, BUREAU OF LAND MANAGEMENT

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the Bureau of Land Management within the State of Montana at the time of the effective date of this Compact.

RECITALS

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, 85-2-703 and 85-2-228(3), MCA, provide that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of two Bureau of Land Management units in the State of Montana, specifically those reserved water rights necessary to preserve the Upper Missouri National Wild and Scenic River and the Bear Trap Canyon Public Recreation Site;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992);

HeinOnline -- 1997 vol. I 770 1997

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Annual Report" means the report prepared hy the Montana Department of Natural Resources and Conservation providing information concerning water appropriations issued, modified, revoked, or abandoned in that year that affects the quantity of water in the Available Water Supply, and the current status of tbe Available Water Supply.

(2) "Available Water Supply" or "AWS" means those monthly amounts of surface and groundwater avallable to meet the state's projected demands, as identified in Table 1, in the Missouri River basin upstream from the poimt the Missouri River leaves the boundary of the Upper Missouri National Wild & Scemic River beyond that necessary to satisfy the United States' reserved water right. All depletions from appropriations completed after December 31, 1987, sball be subtracted from the Available Water Supply.

(3) "Bear Trap Canyon Public Recreation Site" or "BTCPRS" means those lands located in Montana that, pursuant to authority grantod by Executive Order No. 10355 of May 26, 1952, were withdrawn and reserved by Secretary of the Interior Public Land Order 5062 (Montana 17093), published in the Federal Register on June 9, 1971.

(4) "BLM" means the Umited States Bureau of Land Manageiment or its successor.

(5) "Department" means tbe Montana Department of Natural Resources and Conservation or its successor.

(6) "Depletion" means, for water uses subtracted from the Available Water Supply, the amount of water reduced in the source of supply for each month as calculated in accordance with tbe Method for Calculation of Monthly Depletions. A depletion is a standard reduction amount based on depletion factors for the type of use as opposed to a measured deduction or a term, condition, restriction, or limitation on an appropriation.

(7) "Groundwater" means any water that is beneath the ground surface.

(8) "HYDROSS Model" means the United States Bureau of Reclamation's Hydrologic Operations Study (HYDROSS) model for the Missouri River basin upstream from the peimt that tbe Missouri River leaves the boundary of the Upper Missouri National Wild & Scemic River. The HYDROSS Model is a wator supply model tbat uses monthly water supply studies derived from a period of flow records to simulate tbe effect of existing and propesed water demands on the historic naturalized flow of tbe Missouri River. The HYDROSS model and information used to develop the model are archived in the Montana state library.

(9) "Instream flow" means the water that the parties agree shall remain in tbe stream in satisfaction of the United States' reserved water right for the purposes of tbe federal reservation.

HeinOnline -- 1997 vol. I 771 1997

(10) "Method for Calculation of Monthly Depletions" means the procedure the Department will follow in calculating depletions subtracted from the Available Water Supply for appropriations completed after December 31, 1987. The Method for Calculation of Monthly Depletions is incorporated in this Compact and attached as Appendix 1.

(11) "Non-Consumptive Use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(12) "Parties" means the State of Montana and the United States.

(13) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, "state" means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

(14) "Supplemental Water" means a new appropriation issued for the same purpose of use and place of use already covered by a valid appropriation, with the same (or reduced) period of use, flow rate and, if applicable, volume of water. To be considered supplemental, no aspect of the new appropriation may exceed that of the original valid appropriation and only one appropriation or part of each may be used at the same time.

(15) "Upper Missouri National Wild & Scenic River" or "UMNW&SR" means the segment of the Missouri River located in Montana that, pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. 1271, et seq, (1986, Supp. 1992), was designated as a component of the National Wild and Scenic Rivers System by Public Law 94-486, Title II, 90 Stat. 2327-2329, on October 12, 1976.

(16) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's designee.

## ARTICLE II

## WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. The parties to this Compact recognize that the water rights described in this Compact are junior to any Tribal water rights with a priority date before the effective date of this Compact, including aboriginal rights, if any, in the basins affected. All reserved water rights described in this Article are subject to Article V, section A.

A. Instream Flow for the Upper Missouri National Wild and Scenic River.

1. Priority Date: The United States has a priority date of October 12, 1976, for the water right described in this Compact for the UMNW&SR.

2. Instream Flow: The United States has a water right for instream flow in the Missouri River from Fort Benton one hundred and forty-nine miles downstream to Fred Robinson Bridge, as specifically depicted on the map

attached as Appendix 2. The water right is in the amount of the remaining flow of the river after (1) all water appropriations completed before December 31, 1987; (2) the volumes of water designated for the Available Water Supply as provided in Article III, section A; and (3) uses not subtracted from the Available Water Supply as provided in Article III, section C.

B. Instream Flow for the Bear Trap Canyon Public Recreation Site.

1. Priority Date: The United States has a priority date of June 9, 1971, for the water right described in this Compact for the BTCPRS.

2. Instream Flow: The United States has a water right for instream flow in the Madison River which flows over the reserved land of Bear Trap Canyon Public Recreation Site, more specifically described as T4S R1E Sec. 20 SW1/4 downstream to T3S R1E Sec. 15 NE1/4. The water right is in the amount of 1,100 cubic feet per second from January 1 through December 31.

## ARTICLE III

## UMNW&SR WATER RIGHT IMPLEMENTATION

A. Available Water Supply.

The HYDROSS model incorporates information on water uses completed on or before December 31, 1987. The Department will calculate depletions from appropriations completed after December 31, 1987, on a monthly basis in accordance with Article III, section B and subtract such depletions from the water volumes designated for the Available Water Supply as set forth in Table 1.

### TABLE 1

### AVAILABLE WATER SUPPLY

### MONTHLY AMOUNTS

| Month | Acre-feet |
|---|---|
| January | 104,000 |
| February | 121,000 |
| March | 124,000 |
| April | 185,000 |
| May | 219,000 |
| June | 62,000 |
| July | 82,000 |
| August | 66,000 |
| September | 40,000 |
| October | 35,000 |
| November | 57,000 |
| December | 98,000 |

HeinOnline -- 1997 vol. I 773 1997

B. Method for Calculation of Monthly Depletions Subtracted from the Available Water Supply.

1. Surface Water. Except as provided in Article III, section C, the Department will calculate depletions from surface water based on monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 in the month that the use occurs. The Department will subtract monthly depletions from the AWS monthly amounts.

2. Groundwater. Except as provided in Article III, section C, the Department will calculate depletions from groundwater based on monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and spread the depletions in equal increments throughout the year with 1/12th of the annual depletion volume subtracted from each AWS monthly amount.

3. Stored Water. Except as provided in Article III, section C, the Department will calculate depletions from stored water based on monthly depletion factors for various types of water use for the months of use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1, but subtract such depletions from the AWS in the months when diverted as calculated in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1. The Department will calculate evaporation depletions in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and subtract such depletions from the AWS montbly amounts.

4. Water Reservations. Except as provided in Article III, section C, the Department will calculate depletions from state water reservations granted pursuant to 85-2-316 but not completed on or before December 31, 1987, based on the monthly depletion facters for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and subtract such depletious from the AWS monthly amounts, except that the Department will not subtract depletions from Wator Reservation No. 72579-41T from the AWS monthly amounts. The Department will process state water reservations subtracted from the AWS monthly amounts that are abandoned, revoked, modified, or found invalid pursuant to Article III, section D.

C. Uses Not Subtracted from the Available Water Supply.

1. Non-Consumptive Use. The Department will not subtract non-consumptive uses from the AWS monthly amounts.

2. Uses of 35 gallons per minute or less, not to exceed 10 acre feet per year. The Department will not subtract groundwater uses of 35 gallons per minute or less, not to exceed 10 acre feet per year, and surface water appropriations of 35 gallons per minute or less, not to exceed 10 acre feet per year for domestic use from the AWS monthly amounts.

3. Supplemental Water. The Department will not subtract supplemental water uses from the AWS monthly amounts.

4. Lawn and Garden. The Department will not subtract depletions for appropriations to irrigate an area 5 acres or less from the AWS monthly amounts.

HeinOnline -- 1997 vol. I 774 1997

5. Instream Stock Uses. The Department will not subtract instream stock uses from the AWS monthly amounts.

6. Late Claims. The Department will not subtract valid late claims as defined by 85-2-221, MCA (1995) from the AWS monthly amounts.

7. Federal and Tribal Water Rights. The Department will not subtract water rights created under federal law, water rights recognized in satisfaction of water rights created under federal law, and water rights owned by individuals that are derived from water rights created under federal law from the AWS monthly amounts.

D. Additions to the Available Water Supply.

1. Abandonment. When an appropriation right on a stream affected by this Compact is abandoned after December 31, 1987, and such abandonment causes water to become available for appropriation, the Department will calculate the previous depletion amount in accordance with the Method for Calculation of Monthly Depletions and add such amount to the water volumes designated for the Available Water Supply. State law governs the issue of whether an abandonment has occurred.

2. Modified, Revoked, or Invalid Appropriations. When an appropriation right on a stream affected by this Compact is modified, revoked, or found invalid and such modification, revocation, or invalidation causes water to become available for appropriation, the Department will calculate the previous depletion amount in accordance with the Method for Calculation of Monthly Depletions and add such amount to the water volumes designated for the Available Water Supply.

E. Basin Closure. Except for the uses provided for in Article III, section C, in the Missouri River basin upstream from the point that the Missouri River leaves the boundary of the UMNW&SR the Department shall not process or grant an application for an appropriation in any month in which the water volume designated for the Available Water Supply has been exhausted.

F. Prohibition on Future Mainstem Impoundment. No new impoundments may be permitted on the mainstem of the Missouri River upstream from the UMNW&SR. Reclamation, repair, or rehabilitation of an existing impoundment shall not be considered a new impeundment, provided that, without the consent of the United States, which for nonfederal power generating impoundments under the Federal Energy Regulatory Commission's jurisdiction shall be obtained through the Federal Energy Regulatery Commission, reclamation, repair, or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impeundment.

G. Administration and Reporting by the State.

1. Department Administration. The Department will administer the AWS by subtracting depletions from the monthly available water amounts following the procedures set forth in the Method for Calculation of Monthly Depletions attached as Appendix 1. In order to monitor the water volumes in the AWS, the Department will calculate preliminary monthly depletions and subtract the amounts from the AWS. The Department will make final subtractions from the AWS when the Department determines that an appropriation is completo pursuant to 85-2-315 or 85-2-316(8)(b), MCA.

HeinOnline -- 1997 vol. I 775 1997

2. Annual Report. The Department will produce an Annual Report hy March 1st of each year detailing its actions in administering the AWS for the previous calendar year, provided that the first Annual Report after ratification of this Compact shall include information concerning water appropriations issued, completed, modified, revoked, found invalid, or abandoned since January 1, 1988, through the previous calendar year. The Annual Report is final on April 15 of the year issued unless on or before that date the BLM submits written comments or a request for an annual meeting to the Department. If an annual meeting is requested, it shall be held within thirty days of the request. The Department will make a final decision and issue a final Annual Report by June 1, unless the Department and the BLM agree to a different date.

3. Cooperative Review Process. The Department and the BLM will create a cooperative review process to allow discussion of depletion factors and depletion amounts assigned to the undefined uses as listed in the Method for Calculation of Monthly Depletions attached as Appendix 1 and any other issues concerning the Annual Report. Subject to Article III, section H(1), the Department will make the final decision concerning the administration of the AWS. The Department and the BLM will develop a Memorandum of Understanding describing the cooperative review process within six months of the ratification of this Compact.

4. Changes to the Method for Calculation of Monthly Depletions. The parties may make changes to the Methed for Calculation of Monthly Depletions attached as Appendix 1 by written agreement and such changes sball not be deemed a modification of this Compact.

H. Action for Enforcement of Provisions of Article III.

The United States may file an action in a court of competent jurisdiction to enforce the provisions of Article III as follows:

1. Enforcement of Administration of Available Water Supply. After the Annual Report becomes final in accordance with Article III, section G(2), the United States shall have 90 days to file an action for enforcement of the provisions of Article III, section G of this Compact concerning the administration of the AWS. Any action challenging the administration of the AWS may consist only of trial de novo of the Department's actions for the previous calendar year. The United States may not challenge the Department's actions concerning administration of the AWS contained in previous Annual Reports. Except for appropriations issued in vielation of Article III, section E, any court order concerning this subsection shall be limited to calculating depletion amounts from the AWS and does not affect the appropriations issued, revoked, modified, or abandoned or any other decision of the Department.

2. Enforcement of Other Provisions of Article III. Tbe United States may file an action for enforcement of any provision of Article III except Article III, section G at any time.

3. No Standing to Object. The United States does not have standing to object to an application for an appropriation or change in appropriation right, or to participate in a revocation or modification proceeding, based on the property, water right, or interests of the United States for the UMNW&SR, provided that, for an appropriation applied for with a point of diversion or means of conveyance within the boundaries of the UMNW&SR, the Department shall not grant the

HeinOnline -- 1997 vol. I 776 1997

appropriation unless the Department expressly conditions the appropriation on obtaining tho necessary authorization for entry and use from the United States, and provided further that nothing in this Compact shall limit tbe United States' standing te object based on any other water rights of the United States or the reserved water right for the BTCPRS.

4. Exclusive Remedy. The remedy set forth in this section is the exclusive remedy for enforcement of Article III of this Compact. The United States shall not have to exhaust any administrative remedies in order to enforce Article III of this Compact.

ARTICLE IV

BTCPRS WATER RIGHT IMPLEMENTATION

A. Subject to Prior Uses. The Unites States' federal reserved water right for instream flow for the segment of the Madison River which flows over the reserved land of Bear Trap Canyon Public Recreation Site is subject to all water rights with a priority date before June 9, 1971 recognized under stato or federal law. Nothing in this Compact may affect an existing right to divert water from a point within the BTCPRS and transport it for use outside the BTCPRS.

B. Change in Instream Flow Right. The federal reserved water right for instream flow as described in Article II, section B, shall not be changed to any other use.

C. Notice of Reopening of Madison River Basin. The Department shall notify the BLM if an application for a state water reservation pursuant to 85-2-316, MCA, may be processed and granted within the Madison River basin, as such basin is defined by 85-2-340(4).

D. Enforcement of Water Right. The United States may file an action in a court of competent jurisdiction to enforce the federal reserved water right described in Article II, section B.

E. Venue for Appeal of Administrative Decisions. For any appeal of an administrative decision, venue shall be the First Judicial District in Helena and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedures Act, Title 2, chapter 4, of the Montana Code Annotated.

ARTICLE V

GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the Bureau of Land Management described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by tbe rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and Tribal members in Montana.

HeinOnline -- 1997 vol. I 777 1997

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a rigbt or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Bureau of Land Management for the UMNW&SR and the BTCPRS.

B. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between tbe United States and the state; or of the United States and any other state;

2. as a waiver by tbe United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact, or, except as provided in this Compact, any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persens using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state te seek fees or reimbursement for costs or the right of the United States to contest the impesition of sucb fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the BLM, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.

C. Use of Water Right.

The rights of the United States described in Article II of this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water

HeinOnline -- 1997 vol. I 778 1997

rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall bo restricted to uses necessary te fulfill the purposes outlined in applicable federal law.

D. Concurrent with other Non-consumptive Water Uses.

The federal reserved water right for instream flows for the UMNW&SR and the BTCPRS recognized by this Compact shall run concurrently with any other non-consumptive water uses including but not limited to all hydropower uses and other instream flow uses.

E. Appropriation Pursuant to State Law.

Nothing in this Compact may prevent the United States from seeking a water appropriation pursuant to state law for use on the reserved land within the UMNW&SR or the BTCPRS or for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that a water right obtained in this manner shall be considered a state water right and shall he administered pursuant to state law.

F. Reservation of Rights.

The parties expressly reserve all rights not granted, described, or relinquished in this Compact.

G. Severability.

The provisions of this Compact are not severable, provided that for the purposes of 85-2-702(3), MCA, the water rights described in this Compact for the Upper Missouri National Wild and Scenic River and Bear Trap Canyon Public Recreation Site shall be considered as separate Compacts.

H. Multiple Originals.

This Compact is executed in quintuplicato. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice.

Unless otherwise specifically provided for in this Compact, service of notice, except service in litigation, shall he:

1. State: Upon the Director of the Department and such other officials as the Directer may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI

FINALITY OF COMPACT

A. Binding Effect.

1. The effective date of this Compact is the dato of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department

of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall he binding on:

a. the state and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the state to the use of water; and

b. except as otherwise provided in Article V, section A, the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective dato, this Compact shall not be modified without the consent of both parties. Any attempt to umilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

B. Settlement of Claims.

The parties intend that tbe water rights described in this Compact are in full and final settlement of the reserved water right claims for the UMNW&SR and the BTCPRS. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact, the United States hereby and in full settlement of any and all claims filed by the United Statos or which could have been filed by the United States for the UMNW&SR and the BTCPRS relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved water rights for the above mentioned units. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

C. The parties agree to defend the provisions and purposes of this Compact trom all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____, 19__.

Appendix 1

Method for Calculation of Monthly Depletions

A. Surface Water.

Depletion factors are grouped by the use codes now employed by the Department, and tbe monthly depletion factors for each type of water use are set forth below.

1. Fishery, Wildlife, Recreational, and Wildlife/Waterfowl Uses:

FS Fishery

FW Fish and Wildlife

RC Recreation

WW Wildlife/Waterfowl.

The water loss resulting from fishery, wildlife, recreational, and wildlife/waterfowl uses occurs as evaporation from small pends. The following

table lists the monthly depletion factors for evaperative loss in feet per surface acre:

Monthly Depletion Factors for Evaporation

| | |
|---|---|
| January | 0.00 |
| February | 0.00 |
| March | 0.00 |
| April | 0.08 |
| May | 0.17 |
| June | 0.26 |
| July | 0.50 |
| August | 0.51 |
| September | 0.35 |
| October | 0.26 |
| November | 0.04 |
| December | 0.00 |

The Department will calculato monthly depletions from evaporation by multiplying the above factors by maximum reservoir surface area (acres).

2. Geothermal and Power Generation Uses:

GE Geothermal

PG Power Generation.

The Department will determine depletions from geothermal and power generation uses on a case-by-case basis.

3. Domestic, Multiple Domestic, and Municipal Uses:

DM Domestic

MD Multiple Domestic

MC Municipal.

The Department will calculate monthly depletions from domestic uses over 35 gallons per minute, exceeding 10 acre feet per year, multi-family domestic, and municipal uses by multiplying the annual volume by the monthly depletion factors set forth below.

HeinOnline -- 1997 vol. I 781 1997

Monthly Depletion Factors for Domestic, Multiple Domestic, and Municipal Uses

| | |
|---|---|
| January | .0135 |
| February | .0135 |
| March | .0270 |
| April | .0315 |
| May | .0450 |
| June | .0585 |
| July | .0810 |
| August | .0675 |
| September | .0495 |
| October | .0360 |
| November | .0135 |
| December | .0135 |

4. Irrigation including Lawn and Garden over 5 Acres:

IR Irrigation

LG Lawn and Garden.

The Department will calculate monthly depletions from irrigation uses (in acre feet) by multiplying the number of acres by the depletion factors set forth below.

Monthly Depletion Factors for Irrigation Uses

| Month | Monthly Depletion Factor (feet per acre) |
|---|---|
| January | 0.0 |
| February | 0.0 |
| March | 0.0 |
| April | 0.0 |
| May | 0.2604 |
| June | 0.4656 |
| July | 0.7417 |
| August | 0.5885 |
| September | 0.1177 |

| | |
|---|---|
| October | 0.0 |
| November | 0.0 |
| December | 0.0 |

The Department will calculate monthly depletions from lawn and garden uses to irrigate an area greater than 5 acres using the method for irrigation set forth above.

5. Stock Uses:

ST Stock.

The Department will calculate monthly depletions from stock ponds using the monthly depletion factors for evaporation listed in Appendix 1, section A(1).

6. Commercial, Industrial, Institutional, Mining, and Other Uses:

CM Commercial

IN Industrial

IS Institutional

MN Mining.

OP Other Purpose

The Department will assign monthly depletions from commercial, industrial, institutional, mining, and other undefined uses as 50% of the annual volume spread in equal increments throughout the period of use. The Department will make any necessary changes to the assigned monthly depletions to reflect actual depletions when the appropriation is complete. The Department and the BLM may discuss the monthly depletions at the annual meeting and the Department will make the final monthly depletion determination.

7. Transbasin Diversions: The Department will calculate monthly depletions for transbasin diversions outside the drainage area of the Missouri River and its tributaries upstream from the point that the Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River at 100% of the diverted amount.

B. Groundwater.

The Department will subtract all groundwater uses over 35 gallons per minute, exceeding 10 acre feet per year, from the AWS monthly amounts regardless of location or source aquifer. The Department will calculate depletions from groundwater uses based on monthly depletion factors for the type of water use as listed in Appendix 1, section A and spread the depletions in equal increments throughout the year with 1/12th of the annual depletion volume subtracted from each AWS monthly amount.

HeinOnline -- 1997 vol. I 783 1997

C. Stored Water.

The Department will calculate depletions from storage projects by determining the annual depletion based on the monthly depletion factors for the type of use for which the water is stored as listed in Appendix 1, section A and subtract such depletion from the AWS monthly amounts as set forth in the schedule below. For purposes of subtracting the annual depletion for the type of use from the AWS monthly amounts, the Department will apply the following depletion schedule to all reservoirs unless the appropriation issued specifies a different fill regimen.

Monthly Sterage Depletion Schedule

| Month | % of Calculated Annual Depletion |
|---|---|
| November | 7% |
| December | 8% |
| January | 7% |
| February | 7% |
| March | 10% |
| April | 21% |
| May | 38% |
| June | 2% |
| Total | 100% |

The Department will also subtract the monthly depletions from evaporation based on the monthly depletion factors for evaporation listed in Appendix 1, section A(1).

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Approved March 27, 1997

# CHAPTER NO. 171

[SB 298]

AN ACT REVISING THE ADVISORY COUNCILS ASSOCIATED WITH THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ELIMINATING THE STATE ADVISORY COUNCIL ON FOOD AND NUTRITION, THE MONTANA INITIATIVE FOR THE ABATEMENT OF MORTALITY IN INFANTS PROJECT ADVISORY COUNCIL, THE EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL, THE STATE AND LOCAL FAMILY SERVICES ADVISORY COUNCILS, THE STATEWIDE HEALTH COORDINATING COUNCIL, THE CHILD-CARE ADVISORY

HeinOnline -- 1997 vol. I 784 1997

COUNCIL, THE REGIONAL ADVISORY COUNCILS FOR DEVELOPMENTAL DISABILITIES, AND THE ADVISORY COUNCIL ON EMOTIONALLY DISTURBED CHILDREN; AMENDING SECTIONS 2-15-2204, 50-5-101, 50-6-103, 50-6-401, 50-6-402, 50-6-404, 50-19-303, 50-49-103, 50-49-106, 50-49-107, 52-1-103, 52-2-704, 53-20-203, 53-20-205, AND 53-21-202, MCA; AND REPEALING SECTIONS 2-15-2210, 2-15-2213, 2-15-2215, 50-6-403, 50-19-312, 50-49-104, 50-49-105, 52-1-202, 52-1-203, 52-2-705, AND 53-20-207, MCA.

WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies inte a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-2204, MCA, is amended to read:

**"2-15-2204. Developmental disabilities planning and advisory council.** (1) The governor shall appoint a developmental disabilities planning and advisory council in accordance with the provisions of this section.

(2) The council is composed of at least 23 but no more than 25 members and consists of the following:

(a) a representative of the program of services provided under the authority of the Rehabilitation Act of 1973, 29 U.S.C. 701, et seq.;

(b) a representative of the program of services provided under the authority of the Older Americans Act of 1965, 42 U.S.C. 3001, et seq.;

(c) a representative of the program of services for persons with developmental disabilities provided under the authority of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;

(d) a representative of the program of services provided under the authority of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.;

(e) two recognized professionals, one each in the disciplines of medicine and law;

(f) one member of the state senate;

(g) one member of the state house of representatives;

(h) ~~seven~~ *12* persons, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;

(i) ~~one member of each of the five regional councils provided for in 53-20-207, each of whom has a developmental disability or who is an immediate family member or guardian of a person with a developmental disability;~~

~~(j)~~ the director of the university-affiliated or satellite program on developmental disabilities, created pursuant to 42 U.S.C. 6031, or a designee of the director;

~~(k)~~*(j)* the director of the state protection and advocacy system, created pursuant to 42 U.S.C. 6012, or a designee of the director; and

~~(l)~~*(k)* a representative of a statewide developmental disabilities service provider organization whose member agencies provide direct services to persons with developmental disabilities.

(3) (a) Each member who serves on the council pursuant to subsection (2)(a), (2)(b), (2)(c), or (2)(d) shall serve for a term concurrent with the respective term of the director of the agency that administers the program that the member represents. Upon the removal of an agency director from office, the representative's term as a member of the council is automatically terminated.

(b) Each member who serves on the council pursuant to subsection (2)(f) or (2)(g) must be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsection (2)(e), (2)(h), ~~(2)(i), (2)(l)~~ *(2)(k)*, or (3)(d) must be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining members serving on the council pursuant to subsection (2)(e), (2)(h), ~~(2)(i), (2)(l)~~ *(2)(k)*, or (3)(d) must be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(d) Representatives named to the council pursuant to this section, in addition to fulfilling the requirements listed in subsections (2)(a) through ~~(2)(l)~~ *(2)(k)*, may also be selected to represent the following areas: psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities. A minimum of one member of the council must represent each of these areas. In the event that the persons listed in subsections (2)(a) through ~~(2)(l)~~ *(2)(k)* do not represent all of the areas of psychology, social work, special education, and minority groups, including Native Americans with developmental disabilities, up to two representatives may be added to the membership of the council to represent not more than two of these groups.

(4) The council is allocated to the department for administrative purposes only and, unless inconsistent with the provisions of 53-20-206 and this section, the provisions of 2-15-121 apply."

**Section 2.** Section 50-5-101, MCA, is amended to read:

**"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home that offers light personal care or custodial care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner of the home.

(b) As used in this subsection (3), the following definitions apply:

HeinOnline -- 1997 vol. I 786 1997

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and sheltor and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Ambulatory surgical facility" means a facility that provides surgical treatment to patients not requiring hespitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(6) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(7) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(10) "College of American pathologists" means the organization nationally recognized by that name, with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(11) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in

that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(12) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(13) "Department" means the department of public health and human services provided for in 2-15-2201.

(14) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(15) "Federal acts" means federal statutes for the construction of health care facilities.

(16) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(17) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes ambulatory surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(18) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(19) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engeged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(20) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(21) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical,

HeinOnline -- 1997 vol. I 788 1997

psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential compenent. The term includes:

(a) an inpatient hospice facility, which is a facility managed diroctly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly hy a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diaguosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recoguized by that name with headquarters in Clricago, Illinois, that surveys health care facilities upen their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(26) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

HeinOnline -- 1997 vol. I 789 1997

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102(4), or for individuals with related problems.

(e) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(27) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions that is used to provide medical or other health services and that costs a substantial sum of money.

(28) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(29) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(30) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(31) "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

(32) "Offer" means the representation by a health care facility that it can provide specific health services.

(33) "Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(34) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(35) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(36) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing

comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(40) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(41) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(42) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(43) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(44) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by ~~the statewide health coordinating council and~~ the governor."

**Section 3.** Section 50-6-103, MCA, is amended to read:

**"50-6-103. Powers of department.** (1) The department of public health and human services is authorized to confer and cooperate with any other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any funds that are now available or that may be donated, granted, or appropriated to the department.

(3) The department may, after consultation with ~~the emergency medical services advisory council,~~ the trauma care committee, the Montana committee on trauma of the American college of surgeons, the Montana hospital association, and the Montana medical association, adopt rules necessary to implement part 4 of this chapter."

**Section 4.** Section 50-6-401, MCA, is amended to read:

**"50-6-401. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

HeinOnline -- 1997 vol. I 791 1997

(2) "Emergency medical service" means an emergency medical service as defined by 50-6-302.

(3) ~~"Emergency medical services advisory council" means the emergency medical services advisory council created in 2-15-2215.~~

~~(4)~~ "Health care facility" or "facility" means a hospital or medical assistance facility as defined in 50-5-101.

~~(5)~~*(4)* "Hospital trauma register" means patient-specific trauma data that is maintained by a health care facility, in a format prescribed by department rule, and that has the primary purpose of facilitating peer review and quality improvement at the health care facility.

~~(5)~~*(5)* "Quality improvement" means the process of defining trauma care system performance standards, collecting data against which the standards may be applied, using the data to determine compliance with the standards, and using the data and compliance information in a nonpunitive manner, including peer review, that will continuously improve performance and facilitate compliance with the standards.

~~(7)~~*(6)* "State trauma register" means trauma data relating to a specific patient or health care facility that is maintained by the department in an electronic format and that has the primary purpose of facilitating peer review and quality improvement for a health care facility or a trauma care system.

~~(8)~~*(7)* "Trauma" means a severe, abrupt injury to the human body that is caused by mechanical, environmental, thermal, or other physical force.

~~(9)~~*(8)* "Trauma care committee" means the trauma care committee created in 2-15-2216.

~~(10)~~*(9)* "Trauma care system" means a state or regional system for the prevention of trauma and the provision of optimal medical care to trauma victims that includes both provision of appropriate health care services and provision of emergency medical care, equipment, and personnel for effective and coordinated prehospital, hospital, interhospital, and rehabilitative care for trauma patients.

~~(11)~~*(10)* "Trauma facility" means a health care facility designated by the department pursuant to 50-6-410 as providing a specialized program in trauma care with appropriately trained personnel, equipment, and other facility resources that are specifically organized to provide optimal care to a trauma patient at the facility.

~~(12)~~*(11)* "Trauma region" means a geographic area, designated by department rule pursuant to 50-6-402, within which trauma services are coordinated and evaluated through a regional trauma care system."

**Section 5.** Section 50-6-402, MCA, is amended to read:

**"50-6-402. Department duties — rules.** (1) The department shall plan, coordinate, implement, and administer a statewide trauma care system that involves all health care facilities and emergency medical services within the state. The department shall also develop and adopt a statewide trauma care system plan and a state trauma register.

HeinOnline -- 1997 vol. I 792 1997

(2) The department shall adopt rules to:

(a) establish and coordinate the statewide trauma care system, including rules that establish:

(i) various levels of trauma facilities and the standards each facility is required to meet concerning personnel, equipment, resources, data collection, and organizational capabilities;

(ii) procedures for, standards for, and the duration of designation and revocation of designation of a trauma facility, including application procedures, site survey procedures, complaint investigation, and emergency suspension of designation;

(iii) operational procedures and criteria for the regional trauma advisory committees;

(iv) prehospital emergency medical services triage and treatment protocols for trauma patients;

(v) triage and treatment protocols for the transfer of injured persons between health care facilities;

(vi) requirements for collection and release of trauma register data;

(vii) quality improvement standards for emergency medical services and trauma care facilities; and

(viii) the duties, responsibilities, and functions of ~~the emergency medical services advisory council created by 2-15-2215,~~ the trauma care committee created by 2-15-2216~~,~~ and the regional trauma care advisory committees created pursuant to 50-6-411;

(b) designate trauma regions throughout Montana, taking into consideration geographic distance from available trauma care, transportation modalities available, population location and density, health care facility resources, historical patterns of patient referral, and other considerations relevant to optimum provision of emergency medical care;

(c) establish the procedure to be followed by a health care facility to appeal to the department a decision by the department pursuant to 50-6-410 affecting the facility's designation as a trauma facility;

(d) specify the information that must be submitted to the department, including information from health care facilities, for statistical evaluation of the state and regional trauma care systems, planning prevention programs, assessing trauma-related educational priorities, and determining how trauma facilities and emergency medical services may comply with protocols and standards adopted by the department; and

(e) establish the electronic format and other standards that a health care facility trauma data system is required to meet in order to qualify as a hospital trauma register.

HeinOnline -- 1997 vol. I 793 1997

(3) The department shall submit a report to each session of the legislature concerning the effectiveness of the trauma care system established under this part.

(4) This part does not restrict any other provisions of law allowing or requiring a health care facility or health care provider to provide health care services."

**Section 6.** Section 50-6-404, MCA, is amended to read:

"**50-6-404. Duties of trauma care committee.** The trauma care committee provided for in 2-15-2216 shall:

(1) provide recommendations and guidance to the department concerning:

(a) trauma care, including suggestions for changes to the statewide trauma care system;

(b) the implementation of a hospital data collection system; and

(c) the design and implementation of a statewide and regional quality improvement system for trauma care that considers the standards recommended by the American college of surgeons and the joint commission on accreditation of healthcare organizations;

(2) assist the department in conducting statewide quality improvement and peer review functions by regularly analyzing the effect of the statewide trauma care system on patient care, morbidity, and mortality; *and*

(3) provide recommendations to and oversight and coordination of the activities of the regional trauma care advisory committees~~; and~~

~~(4) provide recommendations to the emergency medical services advisory committee concerning the statewide trauma care system and the integration of trauma care with the emergency medical services delivery system~~."

**Section 7.** Section 50-19-303, MCA, is amended to read:

"**50-19-303. Definitions.** For purposes of this part, the following definitions apply:

(1) ~~"Council" means the MIAMI project advisory council established in 2-15-2213.~~

~~(2)~~ "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~*(2)* "Low income" means, with respect to an individual or family, income that does not exceed the official federal poverty threshold as defined by the federal office of management and budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

~~(4)~~*(3)* "Project" means the MIAMI project established in 50-19-311.

~~(5)~~*(4)* "Service provider" means a person, agency, or organization that has a contract to provide services under the MIAMI project."

HeinOnline -- 1997 vol. I 794 1997

**Section 8.** Section 50-49-103, MCA, is amended to read:

**"50-49-103. Definitions.** For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) ~~"Council" means the state advisory council on food and nutrition established in 2-15-2210.~~

~~(2)~~ "Department" means the department of puhlic health and human services provided for in 2-15-2201.

~~(3)~~*(2)* "Food programs and nutrition services" means public or private programs to provide food and nutrition assistance to persons who have need. The term includes hut is not limited to the food stamp program, food programs for the elderly, and supplemental food programs for women, infants, and children."

**Section 9.** Section 50-49-106, MCA, is amended to read:

**"50-49-106. Gifts and grants.** The ~~council~~ *department* may accept contributions, gifts, and grants to fund its activities."

**Section 10.** Section 50-49-107, MCA, is amended to read:

**"50-49-107. Publie health nutritionist — appointment and duties.** The director of the department shall appoint a registered dietitian as a public health nutritionist. The appointment of the public health nutritionist may not be required unless funding for the position is available. The public health nutritionist shall:

(1) establish a program of public education and technical assistance for programs that provide food assistance; *and*

(2) ~~provide staff assistance to the council;~~

~~(3)~~ provide technical assistance to the governor's advisory council on aging; and

~~(4)~~*(3)* provide technical assistance to health care and public health agencies."

**Section 11.** Section 52-1-103, MCA, is amended to read:

**"52-1-103. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

*(3) establish a system of councils at the state and local levels to make recommendations and to advise the department on issues, including children's issues;*

~~(3)~~*(4)* provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

HeinOnline -- 1997 vol. I 795 1997

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

~~(4)~~*(5)* register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care facilities;

~~(5)~~*(6)* act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

~~(5)~~*(7)* administer the interstate compact for children;

~~(7)~~*(8)* (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

~~(5)~~*(9)* ~~(a) make a written evaluation of each plan developed by the local family services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions;~~

~~(b)~~ develop a statewide youth services and resources plan that takes inte consideration local needs ~~as reflected in plans developed by the local family services advisory councils~~;

~~(9)~~*(10)* administer services to the aged;

~~(10)~~*(11)* provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

~~(11)~~*(12)* utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutery functions, to carry out its functions under this title;

~~(12)~~*(13)* contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

~~(13)~~*(14)* adopt rules necessary to carry out the purposes of 41-3-1126 and this chapter."

**Section 12.** Section 52-2-704, MCA, is amended to read:

**"52-2-704. Duties of department.** (1) The department is responsible for planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

HeinOnline -- 1997 vol. I 796 1997

(b) develop a state child-care plan ~~after consultation with the local family services advisory councils established under 52-1-203 and the child-care advisory council established in 52-2-705~~;

(c) coordinate child-care programs administered by all state agencies;

(d) issue licenses to persons to receive children into a day-care center on a regular basis;

(e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(f) adopt rules for day-care facilities consistent with the purposes of this part; and

(g) issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis.

(3) The department may:

(a) enter into interagency agreements to administer and coordinate child-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for the purposes of the part."

**Section 13.** Section 53-20-203, MCA, is amended to read:

"**53-20-203. Responsibilities of department.** The department shall:

(1) take coguizance of matters affecting the citizens of the state who are persons with developmental disabilities;

(2) initiate a preventive developmental disabilities program ~~which shall~~ *that must* include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means ~~shall~~ *must* be utilized to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205 ~~and 53-20-207~~.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare, with the assistance of the planning and advisory council, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services ~~shall~~ *must* include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(6) ~~provide state personnel to assist regional councils provided for in 53-20-207;~~

~~(7)~~ receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state;

~~(8)~~*(7)* require that habilitation plans be developed, implemented, and continuously maintained for all persons with developmental disabilities who are served through a community-based program funded by the state; and

~~(9)~~*(8)* use funds available for cases in which special medical or material assistance is necessary to rehabilitate children with developmental disabilities or physically handicapped children if ~~such~~ *the* assistance is not otherwise provided for by law."

**Section 14.** Section 53-20-205, MCA, is amended te read:

**"53-20-205. Community services.** (1) Tbe department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or accredited health or long-term care facilities.

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department ~~shall~~ *must* contain specific conditions for performance by the contractor. ~~It~~ *The department* shall set minimum standards for programs and establish appropriate qualifications for persons employed in such programs.

(3) All developmental disabilities facilities and services ~~shall~~ *must* comply with existing federal guidelines and with requirements ~~which~~ *that* will enable the services and facilities to qualify for available aid funds. However, ~~nothing herein requires~~ *this section does not require* facilities serving persons with developmental disabilities to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

(4) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this part ~~shall~~ *must* conform as nearly as possible to the plans of the advisory council created under 2-15-2204 ~~and the regional councils provided for in 53-20-207~~.

(5) The department may promote scientific and medical research investigations relative to the incidence, cause, prevention, and care of persons with developmental disabilities."

**Section 15.** Section 53-21-202, MCA, is amended to read:

**"53-21-202. Duties of department.** The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

HeinOnline -- 1997 vol. I 798 1997

(2) initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. The means must be utilized to initiate and operate these services in cooperation with local agencies as established under this part.

(3) collect and disseminate information relating to mental health;

(4) prepare and maintain a comprehensive plan for the development of public mental health services in the state;

(5) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(6) establish standards for mental health programs that receive funds from the department;

(7) evaluate performance of programs that receive funds from the department in compliance with federal and state standards; *and*

(8) coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers~~; and~~

~~(9) appoint an advisory council to make recommendations to the department regarding services for emotionally disturbed children. The members of the advisory council shall serve without compensation and must include but not be limited to a representative of:~~

~~(a) the department;~~

~~(b) the office of public instruction;~~

~~(c) a youth court;~~

~~(d) parents of emotionally disturbed children; and~~

~~(e) service provider groups.~~"

**Section 16. Repealer.** Sections 2-15-2210, 2-15-2213, 2-15-2215, 50-6-403, 50-19-312, 50-49-104, 50-49-105, 52-1-202, 52-1-203, 52-2-705, and 53-20-207, MCA, are repealed.

Approved March 27, 1997

## CHAPTER NO. 172

[SB 41]

AN ACT TRANSFERRING JURISDICTION OVER DISPUTES RELATING TO WAGES PAID FOR IN PROPERTY OTHER THAN MONEY, DISPUTES RELATING TO SUBROGATION, AND DISPUTES RELATING TO PAYMENT OF COMPENSATION TO BENEFICIARIES TO THE WORKERS'

HeinOnline -- 1997 vol. I 799 1997

COMPENSATION COURT; REQUIRING MEDIATION OF CERTAIN TYPES OF DISPUTES; INCLUDING LIMITED LIABILITY PARTNERSHIPS WITHIN THE PROVISIONS OF THE WORKERS' COMPENSATION ACT; ELIMINATING THE UNDERINSURED EMPLOYERS' PROVISIONS OF THE WORKERS' COMPENSATION ACT; PROVIDING FOR TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; AMENDING SECTIONS 39-71-117, 39-71-118, 39-71-303, 39-71-401, 39-71-414, 39-71-432, 39-71-723, AND 39-71-724, MCA; REPEALING SECTIONS 39-71-531, 39-71-532, 39-71-533, AND 39-71-534, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-117, MCA, is amended to read:

**"39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, *limited liability partnership,* and private corporation, including any public service corporation and including an independent contractor who has ~~any~~ *a* person in service under ~~any~~ *an* appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, *limited liability partnership,* or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, limited liability company, *limited liability partnership,* or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, *limited liability partnership,* or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, *limited liability partnership,* or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, *limited liability partnership,* or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier doing business in this state who uses drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, limited liability company, *limited liability partnership,* or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

**Section 2.** Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile *who is* performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person *who is* receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person *who is* employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as defined in subsection (1)(b), *who is* performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from

HeinOnline -- 1997 vol. I 801 1997

a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection *(1)*(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301; and

(g) a person who is an enrolled member of a volunteer fire department as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who, at the time, is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities; or

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, *limited liability partnership,* sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, *or limited liability partnership,* the owner of the sole proprietorship, or any member of the limited liability company devoting full time

to the partnership, *limited liability partnership,* proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

HeinOnline -- 1997 vol. I 803 1997

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contracter, firm, limited liability company, *limited liability partnership,* or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(10) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under subsection (9)(d)."

**Section 3.** Section 39-71-303, MCA, is amended to read:

"**39-71-303. Work paid for in property other than money ~~—wages to be determined by department.~~** ~~Where any~~ *When an* employer procures ~~any~~ work to be done, payment for which is to be made in property other than money or its equivalent and the value of ~~which~~ *that* property is speculative or intangible, the wages of the employees receiving ~~such~~ *the* compensation ~~shall~~ *must* be determined ~~by the department~~ in accordance with the geing wage for the same or similar work in the district or locality where the ~~same~~ *work* is to be performed."

**Section 4.** Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

HeinOnline -- 1997 vol. I 804 1997

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, *working members of a limited liability partnership,* or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller as defined in 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey *who is* performing under a license issued by the board of horseracing from the time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's speuse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task ratber than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is *not* engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or managor owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the speuse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of tbe limited liability company.

(3) (a) A sole proprietor, a working member of a partnership, *a working member of a limited liability partnership,* or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is no fee for the initial application. Any subsequent application must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved ~~as of~~ *on or after* July 1, 1995~~, or thereafter~~. The renewal application and the $25 renewal application fee must be received by the department at least 30 days ~~prior to~~ *before* the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, *a partner in a limited liability partnership,* or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the

HeinOnline -- 1997 vol. I 807 1997

employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

**Section 5.** Section 39-71-414, MCA, is amended to read:

**"39-71-414. Subrogation.** (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third-party action, the employee shall give the insurer reasonable notice of the intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorney fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorney fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third-party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement that is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorney fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) Regardless of whether the amount of compensation and other benefits payable under the Workers' Compensation Act have been fully determined, the insurer and the claimant's heirs or personal representative may stipulate the proportion of the third-party settlement to be allocated under subrogation. *Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation.* ~~Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of~~

~~subrogation and may not be reopened by the department~~ *A dispute between the insurer and claimant concerning subrogation is a dispute subject to the mediation requirements of 39-71-2401.*

(6) (a) The insurer is entitled to full subrogation rights under this section, unless the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. If the insurer is entitled to subrogation under this section, the insurer may subrogate against the entire settlement or award of a third-party claim brought by the claimant or the claimant's personal representative without regard to the nature of the damages.

(b) If a survival action does not exist and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement.

(7) Regardless of whether the amount of compensation and other benefits payable have been fully determined, the insurer and the claimant may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation ~~and may not be reopened by the department~~. *A dispute between the insurer and claimant concerning subrogation is a dispute subject to the mediation requirements of 39-71-2401.*"

**Section 6.** Section 39-71-432, MCA, is amended to read:

"**39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, limited liability company, *limited liability partnership,* joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together, with the approval of the department, to purchase individual workers' compensation insurance policies covering each business entity that is part of a group."

**Section 7.** Section 39-71-723, MCA, is amended to read:

"**39-71-723. How compensation to be divided among beneficiaries.** Compensation *that is* due to beneficiaries must be paid to the surviving spouse, if any, or if none, ~~then~~ divided equally among or for the benefit of the children. In cases in which beneficiaries are a surviving spouse and stepchildren of the spouse, the compensation must be divided equally among all beneficiaries. Compensation *that is* due to beneficiaries, as defined in 39-71-116(5)(e) and (5)(f), if there is more than one, must be divided equitably among them~~, and the question of dependency and amount is a question of fact for determination by the department~~."

**Section 8.** Section 39-71-724, MCA, is amended to read:

"**39-71-724. Payment of compensation to beneficiary not a resident of United States.** (1) Before payment of compensation to a beneficiary *who is*

not residing within the United States, satisfactory proof of ~~such~~ *the* relationship as to constitute a beneficiary under this chapter ~~shall~~ *must* be furnished by ~~such~~ *the* beneficiary, ~~duly~~ authenticated under seal of an officer of a court of law in the country where ~~such~~ *the* beneficiary resides~~, at such times and in such manner as may be required by the department~~. ~~Such~~ *The* proof ~~shall be~~ *is* conclusive as to the identity of ~~such~~ *the* beneficiary, and any other claim of any other person to any ~~such~~ compensation ~~shall be~~ *is* barred from and after the filing of ~~such~~ *the* proof.

(2) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, ~~or~~ consul, or consular agent within the United States representing the country in which ~~such~~ *the* nonresident beneficiary resides, and the written receipt of ~~such~~ *the* plenipotentiary, ~~or~~ consul, or consular agent ~~shall acquit~~ *acquits* the employer~~,~~ *or* the insurer~~, or the department, as the case may be~~."

**Section 9. Repealer.** Sections 39-71-531, 39-71-532, 39-71-533, and 39-71-534, MCA, are repealed.

**Section 10. Transition.** Any surplus funds remaining in the underinsured employers' fund on [the effective date of this section] must be deposited in the uninsured employers' fund provided in 39-71-502.

**Section 11. Saving clause.** [Section 9] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of section 9].

**Section 12. Effective dates — applicability.** (1) [Sections 1 through 8] are effective July 1, 1997.

(2) [Sections 9 through 11 and this section] are effective on passage and approval.

Approved March 28, 1997

# CHAPTER NO. 173

[SB 92]

AN ACT REVISING THE COMPOSITION AND DUTIES OF THE INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS TO INCLUDE THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS AND THE STATE COORDINATOR OF INDIAN AFFAIRS AS MEMBERS; REQUIRING PREPARATION OF A UNIFIED PREVENTION BUDGET; REQUIRING THE DEVELOPMENT, MAINTENANCE, AND IMPLEMENTATION OF BENCHMARKS FOR PREVENTION PROGRAMS; AMENDING SECTION 2-15-225, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-225, MCA, is amended to read:

HeinOnline -- 1997 vol. I 810 1997

"2-15-225. **Interagency coordinating council for state prevention programs.** (1) There is an interagency coordinating council for state prevention programs consisting of the following ~~eight~~ members:

(a) the attorney general provided for in 2-15-501;

(b) the director of the department of public health and human services provided for in 2-15-2201;

(c) the superintendent of public instruction provided for in 2-15-701;

(d) the presiding officer of the Montana children's trust fund board;

(e) two porsons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services;

(f) the administrator of the board of crime control provided for in 2-15-2006; ~~and~~

(g) the commissioner of labor and industry provided for in 2-15-1701*;*

*(h) the director of the department of corrections provided for in 2-15-2301; and*

*(i) the state coordinator of Indian affairs provided for in 2-15-217.*

(2) The coordinating council sball perform the following duties:

(a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and tbat can be provided in a flexible manner to meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure tbat a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs; ~~and~~

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs*;*

*(f) prepare and present to the legislature and to the appropriate standing and interim legislative committees a unified budget for state prevention programe, which must be published in the governor's executive budget; and*

*(g) develop, maintain, and implement benchmarks for state prevention programs. As used in this subsection, "benchmark" means a specified reference point in the future that is used to measure the state of affairs at that point in time and to determine progress toward or the attainment of an ultimate goal, which is an outcome reflecting the desired state of affairs.*

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the pelicies and funding

HeinOnline -- 1997 vol. I 811 1997

for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist the council hy providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations hy each legislature."

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved March 28, 1997

# CHAPTER NO. 174

[SB 108]

AN ACT GENERALLY REVISING WATER ADJUDICATION LAWS; ALLOWING THE WATER COURT TO ADJUDICATE ABANDONMENT OF WATER RIGHTS; ALLOWING A WATER JUDGE TO CONSIDER RELEVANT EVIDENCE ARISING BEFORE OR AFTER JULY 1, 1973; PROVIDING FOR THE WATER COURT TO ENTER A TEMPORARY PRELIMINARY DECREE FOR ANY CATEGORY OF CLAIM THAT REQUIRES ADJUDICATION; REQUIRING OBJECTIONS TO BE FILED AT THE INITIAL DECREE STAGE; ALLOWING CLAIMANTS AND OBJECTORS TO AMEND THEIR CLAIMS OR OBJECTIONS; GIVING CLAIMANTS AN OPPORTUNITY TO FILE COUNTEROBJECTIONS; ENCOURAGING INCREASED USE OF ALTERNATIVE DISPUTE RESOLUTION; CLARIFYING THE PROCESS FOR ADMINISTERING WATER RIGHTS PENDING ADJUDICATION; AMENDING SECTIONS 3-7-501, 85-2-227, 85-2-231, 85-2-233, 85-2-404, AND 85-2-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-7-501, MCA, is amended to read:

"**3-7-501. Jurisdiction.** (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) ~~No~~ *A* water judge may *not* preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for ~~his~~ *the judge's* division except as provided in 3-7-201.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within ~~his~~ *the judge's* division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.

*(4) The determination and interpretation of existing water rights includes, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree."*

**Section 2.** Section 85-2-227, MCA, is amended to read:

**"85-2-227. Claim to constitute prima facie evideuce — *relevant evidence — abandonment.*** *(1)* For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, suporsede a claim of existing right until a final decree is issued.

*(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.*

*(3) A water judge may determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973."*

**Section 3.** Section 85-2-231, MCA, is amended to read:

**"85-2-231. Temporary preliminary and preliminary decree.** (1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.

(2) (a) The water judge shall issue a preliminary decree. The preliminary decree ~~shall~~ *must* be based on:

(i) the statements of claim before the water judge;

(ii) the data submitted by the department;

(iii) the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

(iv) any additional data obtained by the water judge.

(b) The preliminary decree ~~shall~~ *must* be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon ~~thereafter~~ *after the close of that period* as is reasonably feasible.

(c) ~~This section does not prevent the~~ *The* water judge ~~from issuing~~ *may issue* an interlocutory decree ~~or other temporary decree, pursuant to 85-2-321 or as~~

HeinOnline -- 1997 vol. I 813 1997

~~provided in subsection (1) of this section, or~~ if ~~such a~~ *an interlocutory* decree is otherwise necessary for the orderly administration of water rights ~~prior to the issuance of a preliminary decree~~.

(3) A *temporary* preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, *or any claim or group of claims* at a time different from the issuance of other *temporary* preliminary decrees ~~or portions of the same decree~~.

(4) The *temporary preliminary decree or* preliminary decree ~~shall~~ *must* contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. ~~The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.~~

(5) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree ~~set forth in subsections (1) and (3)~~ and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not ~~so~~ satisfied, ~~he~~ *the water judge* may~~, at his option,~~ recommit the report to the master with instructions~~,~~ or modify the report and issue the preliminary decree.

~~(6) In issuing a subsequent preliminary decree, the water judge shall incorporate the temporary preliminary decree for the basin as modified by objections and hearings. The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is enforceable and administrable according to its terms among parties ordered under 85-2-406. The preliminary decree, as modified after objections and hearings, shall upon issuance supersede and replace the temporary preliminary decree.~~"

**Section 4.** Section 85-2-233, MCA, is amended to read:

"**85-2-233. Hearing on temporary preliminary decree or preliminary decree — *procedure*.** (1) (a) For good cause shown and subject to the provisions of subsection ~~(7)~~ *(9)*, a hearing must be held before the water judge on any objection to a temporary preliminary decree or preliminary decree by:

(i) the department;

(ii) a person named in the temporary preliminary decree or preliminary decree;

(iii) any person within the basin entitled to receive notice under 85-2-232(1); or

(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if the claim or claims were from sources within the decreed basin.

(b) For the purposes of this subsection (1), "good cause shown" means a written statement showing that a person has an ownership interest in water or its use that has been affected by the decree.

HeinOnline -- 1997 vol. I 814 1997

(c) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree *issued before [the effective date of this act]*. However, a person may not raise an objection to a matter in a preliminary decree if that person was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree~~,~~ unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void; or

(v) any other reason justifying relief from the operation of the judgment.

*(d) After [the effective date of this act], a person may not raise an objection or counterobjection to a matter contained in a subsequent decree issued under this part if the matter was contained in a prior decree issued under this part for which there was an objection and counterobjection period unless the objection is allowed for any of the following reasons:*

*(i) mistake, inadvertence, surprise, or excusable neglect;*

*(ii) newly discovered evidence that by due diligence could not have been discovered at the close of the objection period set forth in subsection (2);*

*(iii) fraud, misrepresentation, or other misconduct of an adverse party;*

*(iv) the temporary preliminary decree is void; or*

*(v) any other reason justifying relief from the operation of the prior decree issued under this part. The fact that a prior owner of a water right did not object or counterobject at a prior decree stage may not be a basis for a subsequent owner of the water right to object or counterobject absent a finding that one of the provisions in this subsection (1)(d) applies.*

(2) ~~If a hearing is requested, the request~~ *Objections* must be filed with the water judge within 180 days after entry of the temporary preliminary decree or preliminary decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to expiration of the original 180-day period or any extension of it.

*(3) Upon expiration of the time for filing objections under subsection (2), the water judge shall notify each party whose claim received an objection that an objection was filed. The notice must set forth the name of each objector and must allow an additional 60 days for the party whose claim received an objection to file a counterobjection to the claim or claims of the objector. Counterobjections must be limited to those claims that are included within the particular decree issued by the court.*

HeinOnline -- 1997 vol. I 815 1997

~~(3)~~*(4)* ~~The request for a hearing~~ *Objections and counterobjections* must specify the paragraphs and pages containing the findinge and conclusions to which objection is made. The request must state the specific grounds and evidence on which the objections are based.

~~(4)~~*(5) (a)* Upen expiration of the time for filing ~~objections and upon timely receipt of a request for a hearing~~ *counterobjections under subsection (3)*, the water judge shall notify each party named in the temperary preliminary decree or preliminary decree *or that person's successor as documented in the department records* that ~~a hearing has been requested~~ *objections and counterobjections have been filed.* The water judge shall fix a day when all parties who wish to participate in future proceedings ~~must~~ *are required to* appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing must be conducted *in the same manner* as for other civil actions. At the order of the water judge, a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

*(b) In conducting hearings pursuant to this chapter, a water judge may require the parties to participate in settlement conferences or may assign the matter to a mediator. Any settlement reached by the parties is subject to review and approval by a water judge.*

*(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The costs of the notice required pursuant to this subsection must be borne by the moving party.*

~~(5)~~*(7)* Failure te object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

~~(5)~~*(8)* If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact is permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall issue a new preliminary decree in accordance with 85-2-231. However, any party to a compact declared void may appeal from that determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal stays the period for filing a statement of claim as required under this subsection.

~~(7)~~*(9)* Upon potition by a claimant, the water court may grant a motion for dismissal to an ohjection to a temporary preliminary or preliminary decree if the ohjection pertains to an element of a water right that was previously decreed and if dismissal is consistent with commnon-law principles of issue and claim preclusion.

HeinOnline -- 1997 vol. I 816 1997

~~(8)~~*(10)* The provisions of subsection ~~(7)~~ *(9)* do not apply to issues arising after entry of the previous decree, including but not limited to the issues of abandonment, expansion of the water right, and reasonable diligence."

**Section 5.** Section 85-2-404, MCA, is amended to read:

**"85-2-404. (Temporary) Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intontion of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right ~~in whole or~~ for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436, the use of water pursuant to 85-2-439, or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been *finally* determined in accordance with part 2 of this chapter. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

**85-2-404. (Effective July 1, 1999) Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right ~~in whole or~~ for the part not used.

HeinOnline -- 1997 vol. I 817 1997

(3) If an appropriator ceases to use all or part of an appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not creato or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The use of water pursuant to 85-2-439 or a temporary change pursuant to 85-2-407 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been *finally* determined in accordance with part 2 of this chapter. (Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)

**85-2-404. (Effective July 1, 2005) Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there shall he a prima facie presumption that the appropriator has abandoned his right ~~in whole or~~ for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) A temporary change pursuant to 85-2-407 does not constituto an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right.

(5) Subsections (1) and (2) do not apply to existing rights until they have been *finally* determined in accordance with part 2 of this chapter."

**Section 6.** Section 85-2-406, MCA, is amended to read:

HeinOnline -- 1997 vol. I 818 1997

**"85-2-406. District court supervision of water distribution.** (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision ~~shall~~ *must* be governed by the principle that first in time is first in right.

(2) *(a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).*

*(b)* When a water distribution controversy arises upon a source of water in which *not all* existing rights have ~~not~~ been *conclusively* determined according to part 2 of this chapter ~~or when a basin is the subject of a temporary preliminary decree or preliminary decree, as modified after objections and hearings~~, any party to the controversy ~~or any person whose rights are or may be affected by enforcement of the decree~~ may petition the district court ~~for relief~~ *to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter.* The district court from which relief is sought ~~may~~ *shall retain exclusive jurisdiction to* grant injunctive or other relief ~~which~~ *that* is necessary and appropriate ~~to preserve property rights or the status quo pending the issuance of the final decree~~ *pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.*

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district ~~court that issued the final decree~~ *court*. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) *A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms.* If an action to enforce a temporary preliminary decree *or preliminary decree* is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5) ~~(a)~~ A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a

HeinOnline -- 1997 vol. I 819 1997

suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2).

~~(b) The water judge is not bound by a supreme court determination on an appeal entered under this subsection in issuing any subsequent decree under part 2 of this chapter.~~"

**Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved March 28, 1997

# CHAPTER NO. 175

[HB 317]

AN ACT ESTABLISHING THAT THE COSTS TO A COUNTY OF ADMINISTERING A RURAL SPECIAL IMPROVEMENT DISTRICT MAINTENANCE FUND ARE A COST OF MAINTAINING THE DISTRICT; REQUIRING A MAINTENANCE DISTRICT BOARD OF TRUSTEES TO ANNUALLY DETERMINE THE COST OF ADMINISTERING THE MAINTENANCE DISTRICT AND TO ASSESS FOR THE COST; LIMITING THE COSTS FOR ADMINISTERING A MAINTENANCE DISTRICT; REQUIRING THE BOARD OF TRUSTEES OF A MAINTENANCE DISTRICT TO PAY TO THE COUNTY TREASURER THE AMOUNT FOR ADMINISTERING THE DISTRICT; REQUIRING THE COUNTY TREASURER TO DEPOSIT IN THE COUNTY GENERAL FUND ALL FUNDS RECEIVED FOR ADMINISTERING A MAINTENANCE DISTRICT; AMENDING SECTION 7-12-2161, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the administrative time involved with rural special improvement districts' maintenance districts can be substantial; and

WHEREAS, these districts benefit only the property owners within the districts' boundaries and not the county as a whole; and

WHEREAS, many of the rural special improvement districts rely on the county to make the maintenance decisions for the district; and

WHEREAS, the county receives no revenue for the administration and other costs involved with operating rural special improvement maintenance districts.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-12-2161, MCA, is amended to read:

"**7-12-2161. Payment of maintenance costs — resolution for assessment and for change of boundaries — *assessment for administrative costs.*** (1) It ~~shall be~~ *is* the duty of the board *of county commissioners* to estimate, as near as practicable, the cost of maintaining, preserving, or repairing the improvements in each district for each year beginning January 1 or ~~such other~~ *another* time as it may appear necessary.

(2) Before the first Monday in September of each year, the board shall pass and finally adopt a resolution levying and assessing all the property within the district with an amount equal to the whole cost of maintaining, preserving, or repairing ~~said~~ *the* improvements within the district. The assessment ~~shall~~ *must* be proportioned as provided in 7-12-2108.

(3) ~~Said~~ *The* resolution levying assessments to defray the cost of maintenance, preservation, or repair of ~~such~~ improvements ~~shall~~ *must* be prepared and certified to in *substantially* the *same* manner as ~~near as may be to~~ a resolution levying assessments for making, constructing, and installing the improvements in ~~said~~ *the* special improvement district.

(4) The board ~~shall have the power of changing~~ *may change* by resolution, not more than once a year, the boundaries of any maintenance district.

*(5) The board shall include in the estimated cost of maintaining the district the lesser of $500 or 5% of the annual assessment of the district. The amount determined by the board under this subsection is to defray the costs incurred by the county in administering the maintenance district and is a cost of maintenance. The board shall annually pay the amount determined under this subsection to the county treasurer for deposit in the county general fund."*

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved April 1, 1997

# CHAPTER NO. 176

[HB 319]

AN ACT CHANGING THE DATE BY WHICH A LOCAL GOVERNMENT USING THE LOCAL GOVERNMENT ALTERNATIVE ACCOUNTING METHOD MUST HAVE ADOPTED A BUDGET; AMENDING SECTION 7-6-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, current law requires a local government that has adoptod the local gevernment alternative accounting method te complete the budget by July 1; and

WHEREAS, taxable valuation and beginning fiscal year cash balances, major components of a local government budget, are not usually detormined by July 1; and

WHEREAS, taxable valuation is needed to determine mill levies, and the Departinent of Revenue does not usually provide this information until mid-July.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-604, MCA, is amended to read:

**"7-6-604. Alternative accounting method — requirements.** A local government entity that adopts the alternative accounting method shall:

(1) prepare its accounting records and financial reports in accordance with generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor;

HeinOnline -- 1997 vol. I 821 1997

(2) adopt a fiscal year that commences on July 1 of each year;

(3) (a) compile an annual financial report covering the preceding fiscal year and suhmit a copy of the annual financial report or an annual audit, pursuant to subsection (3)(b), to the department of coinmerce within 6 months of the end of that reported fiscal year; or

(b) if the local government entity submits an audit report in lieu of an annual financial report, ensure that the audit report contains, at a minimum, the entity's general purpose financial statements and combining and individual fund and account group statements as defined under the principles described in subsection (1);

(4) cause an annual audit in accordance with the provisions of Title 2, chapter 7, part 5; and

(5) ensure that a hudget is made each year that:

(a) shows the complete expenditure program for the local government entity for the coming fiscal year and the sources by which it will he funded;

(b) must be completed ~~by July 1~~ *on or before the second Monday in August* of the current fiscal year;

(c) must be approved or amended by the governing body in a regularly scheduled meeting;

(d) must be the subject of one or more advertised public hearings, pursuant to the provisions of 7-1-2121 or 7-1-4127, prior to approval or amendment; and

(e) must be submitted to the department of commerce by September 15."

**Seetion 2. Effective date.** [This act] is effective on passago and approval.

Approved April 1, 1997

# CHAPTER NO. 177

[HB 322]

AN ACT PROVIDING FOR AN ELECTION ON THE QUESTION OF ENLARGING A TRANSPORTATION DISTRICT; REDUCING THE NUMBER OF SIGNATURES NEEDED ON A PETITION TO ENLARGE A TRANSPORTATION DISTRICT FROM 51 PERCENT TO 20 PERCENT; AND AMENDING SECTIONS 7-14-203, 7-14-204, 7-14-207, 7-14-208, 7-14-209, 7-14-210, AND 7-14-241, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-14-203, MCA, is amended to read:

"7-14-203. **Petition to ereate *or enlarge an* urban transportation distriet.** Proceedings for ~~creation of~~ *creating or enlarging* a transportation district may be initiated by a petition signed hy not less than 20% of the registered

electors who reside within the proposed district *or the area to be added to an existing district.*"

**Section 2.** Section 7-14-204, MCA, is amended to read:

"**7-14-204. Details relating to petition.** The potition *under 7-14-203* ~~shall~~ *must* include a map showing the limits of the proposed district *or the area to be added to an existing district* and ~~shall~~ *must* be in the form provided in Title 13, chapter 27."

**Section 3.** Section 7-14-207, MCA, is amended to read:

"**7-14-207. Presentation of petition to board of county commissioners — bearing required.** (1) ~~Provided~~ *If* the petition contains the signatures of 20% of the qualified electors of the proposed transportation district *or the area proposed to be added to an existing district*, the county clerk shall present the petition and ~~his~~ *the county clerk's* certificate to the commissioners at their first meeting held after ~~he~~ *the county clerk* has attached ~~his~~ *the* certificate *to the petition.*

(2) *Upon receipt of the petition from the county clerk, the* ~~The~~ commissioners shall ~~thereupon~~ examine the potition and shall by resolution call for a public hearing on the creation of ~~such~~ *the* district *or the enlargement of the district.*"

**Section 4.** Section 7-14-208, MCA, is amended to read:

"**7-14-208. Notice of hearing.** (1) A notice of the public hearing *required by 7-14-207* ~~shall~~ *must* be published in a newspapor having general circulation within the proposed transportation district *or addition to the district* once each week for at least 2 weeks, the last publication to be at least 2 weeks prior to the hearing. If there is ~~no~~ *not a* newspapor having general circulation within the proposed district *or addition*, the notice of public hearing ~~shall~~ *must* he posted in at least three public places within the proposed district for 2 weeks prior to the hearing.

(2) The notice ~~shall~~ *must* state the time, date, place, and purpose of the hearing and describe the boundaries of tbe proposed district *or addition.*"

**Section 5.** Section 7-14-209, MCA, is amended to read:

"**7-14-209. Hearing on petition.** (1) At the time fixed for the puhlic hearing *required by 7-14-207*, the commissioners shall hear all testimony offered in support of and in opposition to any petition ~~and~~ *for* the creation of the district *or addition to a district.*

(2) The ~~hearings~~ *hearing* may be adjourned from time to time for the determination of additional information or hearing potitioners or objectors, hut ~~no~~ adjournment may *not* exceed 2 weeks after the date originally noticed and published for the hearing."

**Section 6.** Section 7-14-210, MCA, is amended to read:

"**7-14-210. Election on question of ereating urban transportation district *or addition to a district.*** (1) The commissioners, upon completion of the public hearing *required by 7-14-207*, shall proceed by resolution to refer the

HeinOnline -- 1997 vol. I 823 1997

creation of the district *or addition to a district* to the persons qualified to vote on the proposition.

(2) The commissioners may designate in their resolution whether a special election is to be held in conjunction with a regular or primary election, ~~or~~ whether the matter is to he determined at the next general election, *or whether the matter is to be determined by a mail ballot election held pursuant to the provisions of Title 13, chapter 19.* If a special election is ordered, the order must specify the date for the election and the voting places and the commissioners shall appoint and designate election judges and clerks."

**Section 7.** Section 7-14-241, MCA, is amended to read:

**"7-14-241. Procedure to ~~enlarge district or~~ be included in district *or to remove an addition to a district.*** ~~(1) The boundaries of any transportation district may be enlarged if 51% of the qualified electors of the area to be added to the existing district sign a petition requesting addition to the district.~~

~~(2)~~*(1)* A real property owner may petition to have that owner's property included in a district.

~~(3) Each~~ *The* addition *of the real property owner's property* must be approved by a majority vote of the transportation board.

~~(4)~~*(2)* ~~The~~ *An* area added to a district pursuant to ~~subsection (1)~~ *this part* may be removed if the area does not directly receive transportation services from the district and 51% of the qualified voters in the area sign a petition requesting to be removed from the district. The removal of the area is effective 60 days after submission of the petition to the transportation hoard unless within that time, it is determined that the petition contains insufficient signatures for removal of the area. An insufficient petition must be returned to the petitioners, who may resubmit a corrected version within 90 days.

~~(5)~~*(3)* (a) All property within any addition to ~~the~~ *a* district is subject to all existing indehtedness of the district.

(b) Proporty within an area removed from ~~the~~ *a* district is not subject to the district's existing indebtedness if the area was added to the district within 5 years of the date on which the petition for removal was submitted to the transportation board."

Approved April 1, 1997

# CHAPTER NO. 178

[HB 363]

AN ACT ALLOWING THE TRANSPORTATION COMMISSION AND LOCAL GOVERNMENTS TO AGREE TO EXCHANGE PORTIONS OF HIGHWAYS, COUNTY ROADS, OR STREETS WHEN MUTUALLY BENEFICIAL; AND AMENDING SECTIONS 60-2-107 AND 60-2-128, MCA.

HeinOnline -- 1997 vol. I 824 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 60-2-107, MCA, is amended to read:

**"60-2-107. Abandonment of highways — *exchange of roadways.*** *(1)* The commission may abandon highways on the federal-aid systems and state highways.

*(2) The commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or city street."*

**Section 2.** Section 60-2-128, MCA, is amended to read:

**"60-2-128. Maintenance system — designation of highways.** The commission shall designate the public highways that are to be included on the state maintenance system. ~~The~~ *Except as provided in 60-2-107, the* system must include all the highways that the department maintained on July 1, 1976."

Approved April 1, 1997

# CHAPTER NO. 179

[HB 375]

AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR UNDERGROUND UTILITIES; CLARIFYING CERTAIN DEFINITIONS; DEFINING "EMERGENCY EXCAVATION", "EMERGENCY LOCATE", "EXCAVATOR", AND "LOCATE"; ELIMINATING THE REQUIREMENT THAT A PUBLIC UTILITY FILE UNDERGROUND FACILITY INFORMATION WITH THE COUNTY CLERK AND RECORDER; CLARIFYING GENERAL AND EMERGENCY EXCAVATION AND LOCATION REQUIREMENTS; AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA; AND REPEALING SECTIONS 69-4-506 AND 69-4-511, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-4-501, MCA, is amended to read:

**"69-4-501. Definitions.** The following definitions ~~shall~~ apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, ~~or a legal local, state, or federal holiday~~ *New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.*

(2) ~~"Emergency"~~ *"Emergency excavation"* means *an excavation in response to an emergency locate that is necessary to*:

(a) ~~any~~ *alleviate a* condition that constitutes a clear and present danger to life or property; or

(b) *repair* a customer outage *involving a previously installed utility-owned facility.*

HeinOnline -- 1997 vol. I 825 1997

*(3) "Emergency locate" means a locate and mark that is requested for:*

*(a) a condition that constitutes a clear and present danger to life or property; or*

*(b) a customer outage for which repairs on a previously installed utility-owned facility are required.*

~~(3)~~*(4)* "Excavation" means ~~any~~ *an* operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

*(5) "Excavator" means a person conducting the excavation activities defined in subsection (4).*

~~(4)~~*(6)* "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

~~(5)~~*(7)* "Locatable underground facility" means an underground facility that can be *field-located and* field-marked with reasonable accuracy.

*(8) "Locate" means to use specialized equipment to identify the location of underground facilities or the actual location of underground facilities identified by the use of specialized equipment.*

~~(6)~~*(9)* "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location~~,~~ or absence~~,~~ of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific type of underground facility~~,~~ and the width of the facility if it is greater than 6 inches.

~~(7)~~*(10)* "One-call notification center" means a service through which a person may request a *locating and* marking of underground facilities.

~~(8)~~*(11)* "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency, and includes ~~any~~ *a* trustee, receiver, assignee, or ~~a~~ personal representative ~~thereof~~ *of the listed entities.*

~~(9)~~*(12)* "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both sides of an underground facility.

~~(10)~~*(13)* "Underground facility" means ~~any~~ *a* facility buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, fiber optics, electric energy, oil, gas, or other substances. The term includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items."

**Section 2.** Section 69-4-502, MCA, is amended to read:

HeinOnline -- 1997 vol. I 826 1997

**"69-4-502. Information to be sought before excavation — notification — exceptions.** (1) (a) Except as provided in subsection (1)(b), ~~a person~~ *an excavator* may not make or begin ~~any~~ *an* excavation ~~in a public street, alley, right-of-way dedicated to the public use, or utility easement~~ without first obtaining information concerning the possible location of ~~any~~ *an* underground facility from each public utility, municipal corporation, *underground facility owner,* or other person having the right to bury underground facilities *that is a member of a one-call notification center pursuant to subsection (2)(a)* ~~within the public street, alley, right-of-way, or utility easement~~.

(b) *(i)* A registered land surveyor or a person under the supervision of a registered land surveyor may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a highway or at the intersection of the center lines of public streets.

*(ii)* The registered land surveyor, prior to hand digging, shall obtain proper approval from the appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference the monument upon exposure.

*(iii)* The governing authority is not liable for any damages caused or suffered by the registered land surveyor or any person under the supervision of the registered land surveyor.

*(iv)* The registered land surveyor is liable for damages incurred regarding ~~utility~~ *facility* destruction~~, and any~~

*(v) A* public utility, municipal corporation, *underground facility owner,* or other person having the right to bury underground facilities ~~within the public street, alley, right-of-way, or utility easement~~ is not liable for any damages suffered by the registered land surveyor or any person under the control of the registered land surveyor.

~~(2) Every public utility, municipal corporation, or other person having the right to bury underground facilities shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained unless a one-call notification center is available.~~

~~(3)~~*(2)* (a) A public utility, municipal corporation, underground facility owner, or person having the right to bury underground facilities must be a member of a one-call notification center covering the service area in which the entity or person has underground facilities.

(b) Subsection ~~(3)(a)~~ *(2)(a)* does not apply to an owner or occupant of real property where underground facilities are buried if the facilities are used solely to furnish services or commodities to that property and no part of the facilities ~~are~~ *is* located in a public street, alley, or right-of-way dedicated to the public use."

**Section 3.** Section 69-4-503, MCA, is amended to read:

**"69-4-503. Notification — *locating and* marking.** (1) ~~At least 2 but not more than 10 business days before~~ *Before* beginning ~~any~~ *an* excavation, the excavator shall notify, through a one-call notification center, all owners of underground facilities in the area of the proposed excavation ~~of the scheduled~~

HeinOnline -- 1997 vol. I 827 1997

~~commencement of the excavation. If a one-call notification center service is not available, notice must be provided individually to the owners of underground facilities within the area of the proposed excavation.~~

*(2) After an excavator has notified the appropriate one-call notification center of a proposed excavation, an owner of an underground facility shall:*

*(a) provide the locates and mark the location within 2 business days; or*

*(b) respond immediately if the excavator notifies the one-call notification center that an emergency exists.*

*(3) (a) After an owner of an underground facility has located and marked the underground facilities, the excavator shall determine if weather, time, or other factors may have affected location marks, warranting relocation of the facilities.*

*(b) If excavation has not occurred within 30 days of the locate and mark, the excavator shall request that the facility be relocated and remarked before excavating unless other arrangements have been made with the underground facility owner. The excavator is responsible for costs associated with relocating and remarking a facility that is not excavated within 30 days of the locate and mark.*

~~(2)~~*(4)* Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to the owner's locatable underground facilities by surface *locating and* marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of the facilities shall provide the excavator with the best available information as to their locations. ~~Excavators~~ *An excavator* may not excavate until all known facilities have been *located and* marked. *An excavator is not responsible for damages to an underground facility that cannot be located by its owner.* Once the facilities are *located and* marked by the facility owner, the excavator is responsible for maintaining the markings.

~~(3)~~*(5)* Upon receipt of notice from the excavator, the facility owner shall respond within 2 business days by *locating and* marking the facility *or by notifying the excavator that locating and marking is unnecessary*. An excavator may not begin excavating before the *locating and* marking is complete or before ~~he~~ *the excavator* is notified that *locating and* marking is unnecessary.

~~(4)~~*(6)* ~~A facility owner may request the excavator to mark the area to be excavated~~ *An excavator shall locate and mark the area to be excavated if requested by the facility owner or the owner's representative.* If an excavator discovers an ~~unmarked~~ underground facility *that has not been located and marked*, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or the one-call notification center.

*(7) An underground facility owner may attempt to identify the location of a private underground facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate."*

**Section 4.** Section 69-4-504, MCA, is amended to read:

**"69-4-504. Information to be part of architects' and engineers' plans.** (1) Architects and engineers designing projects requiring excavation in or

adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information from the owners of underground facilities and then make the information a part of the plan by which the contractors operate. The owners of the underground facilities shall ~~provide substantially the same information as required by 69-4-503~~ *make available all records showing the locations of underground facilities and shall provide locates, if requested, pursuant to 69-4-503.*

(2) ~~Nothing in this~~ *This* section ~~shall~~ *does not* excuse ~~any~~ *a* person from the obligation imposed by 69-4-502(1)."

**Section 5. Emergency location and excavation.** (1) When an emergency excavation is required, the excavator shall notify the one-call notification center. An underground facility owner shall respond as soon as is practical after notification.

(2) Requesting an emergency locate or an emergency excavation that is not an emergency locate or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and is subject to the penalties under 45-7-204.

**Section 6. Repealer.** Sections 69-4-506 and 69-4-511, MCA, are repealed.

**Section 7. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to [section 5].

Approved April 1, 1997

# CHAPTER NO. 180

[HB 489]

AN ACT SPECIFYING THE PROVISIONS FOR A UNIT OF LOCAL GOVERNMENT TO REGULATE THE NOTIFICATION OF PESTICIDE APPLICATION; AMENDING SECTION 80-8-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, statewide uniformity in regulations, specifically pesticide notification posting and notification regulations a unit of local government may choose to enact, is in the best interest of Montana citizens; and

WHEREAS, excessive regulation inhibits Montana's economic health and the freedom of its citizens; and

WHEREAS, a local government is entitled to local control and may wish to enact an ordinance or resolution on pesticide application notification; and

WHEREAS, pesticides are a vital and necessary tool to protect Montanans from the threat of disease and economic harm caused by mosquitoes, weeds, and other pests; and

WHEREAS, this bill is in the best interest of the citizens of Montana.

*Be it enacted by the Legislature of the State of Montana:*

HeinOnline -- 1997 vol. I 829 1997

**Section 1.** Section 80-8-120, MCA, is amended to read:

**"80-8-120. Local pesticide regulation.** (1) *(a)* A unit of local government may adopt an ordinance to ~~regulate pesticide application that may include notification, provided that the ordinance is fully consistent with the authorities provided for in Title 80, chapter 8, and rules adopted under Title 80, chapter 8. The department shall develop a policy for the review and approval of local pesticide ordinances. A unit of local government shall submit a proposed ordinance to the department for verification that the proposed ordinance is consistent with the authorities provided for in Title 80, chapter 8. The ordinance may not be adopted until it has been approved by the department.~~ *require a commercial applicator, as defined in 80-8-102(6), to provide notification when applying a pesticide, subject to the following provisions:*

*(i) The applicator shall post a sign or signs at the time of the pesticide application or provide notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired, whichever is later.*

*(ii) A sign must be:*

*(A) at least 4 inches in height and 5 inches in width; and*

*(B) made of weather-resistant material if used for outdoor application.*

*(iii) A sign must contain:*

*(A) the words "pesticide application"; and*

*(B) the telephone number of the applicator, property owner, or property manager who can supply further information about the pesticide.*

*(iv) A sign must be posted:*

*(A) at a point clearly visible from each street or road frontage of the property so that the warning is conspicuous from the public right-of-way;*

*(B) for an interior application, at each public access to the treated property with the front of the sign facing the access;*

*(C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth tees.*

*(v) Notification for an application by a mosquito control district or a weed control district must be provided in a local newspaper or on local radio or television stating that the property will be treated and providing the telephone number of an individual who can supply further information on the pesticide applications. Notification under this subsection (1)(a)(v) must be made annually in the spring and periodically during the pesticide application season.*

*(vi) Posting or notification is not required for the following:*

*(A) a spot treatment of an area that is less than 100 square feet;*

HeinOnline -- 1997 vol. I 830 1997

*(B) an applicator subject to the environmental protection agency's worker protection standards as published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;*

*(C) an application on land classified as agricultural land or forest land for taxation purposes;*

*(D) an application on an irrigation conveyance facility or land or on an irrigation ditch easement or right-of-way;*

*(E) an application of a pesticide that is a minimum risk pesticide as published by the environmental protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the environmental protection agency;*

*(F) an application on a railroad facility or right-of-way;*

*(G) an application on a public utility facility or right-of-way.*

*(b) A unit of local government that adopts a notification ordinance pursuant to this section shall:*

*(i) notify the department that it is adopting the ordinance on pesticide notification as provided in this section and provide the department a final copy for the department's register provided for in subsection (4); and*

*(ii) fund the costs, including but not limited to:*

*(A) educating its citizens of the ordinance's requirements;*

*(B) compensating personnel to enforce the ordinance; and*

*(C) prosecution of a violation of the ordinance.*

*(c) A unit of local government may not adopt a notification ordinance under this section that imposes additional fee requirements on a commereial applicator.*

~~(2) A unit of local government may petition the department in writing to adopt rules to address specific local conditions, as provided in 80-8-105(3)(a). The petition must document:~~

~~(a) the need for a rule, including the reason that existing rules do not address the particular pesticide application;~~

~~(b) the need for specific local rules; and~~

~~(c) that a situation exists that threatens or is likely to threaten public health or environmental quality in the jurisdiction of the unit of local government.~~

~~(3) Local rules may be administered, enforced, and financed by a unit of local government:~~

~~(a) through a cooperative agreement with the department as provided under this section; or~~

~~(b) after the department adopts rules authorizing a unit of local government to administer, enforce, and finance an ordinance.~~

~~(4) Within 30 days of receiving the petition, the department shall respond to the unit of local government, stating:~~

~~(a) whether the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of this section; and~~

~~(b) the procedures and time period for the promulgation of rules by the department, provided that the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of this section.~~

~~(5)~~*(2)* The department may enter into a cooperative agreement with a unit of local government for the administration and enforcement of local rules adopted under 80-8-105(3)(a).

~~(6)~~*(3)* Except as provided in ~~subsection~~ *subsections* (1) *and (2)*, a *unit of* local government ~~ordinance~~ may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides *or enact notification provisions more stringent than those provided for in subsections (1) and (2)*. It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

~~(7)~~*(4)* The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1)."

**Section 2. Penalty.** A person who violates a notification ordinance adopted pursuant to 80-8-120:

(1) is subject to a written warning for the first violation;

(2) is guilty of a misdemeanor and upon conviction may be fined not more than $50 for the second violation; and

(3) is guilty of a misdemeanor and upon conviction may be fined not more than $500 for a third or subsequent conviction.

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Applicability.** An ordinance adopted by a local government under 80-8-120 before [the effective date of this act] must comply with [this act] by January 1, 1998.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1997

# CHAPTER NO. 181

[HB 540]

AN ACT CLARIFYING LAWS REQUIRING CRIMINALS TO PAY RESTITUTION TO THEIR VICTIMS; REQUIRING RESTITUTION TO BE PAID IN FULL; PROVIDING THAT THE DUTY TO PAY RESTITUTION

HeinOnline -- 1997 vol. I 832 1997

REMAINS WITH THE CRIMINAL UNTIL RESTITUTION IS PAID; PROVIDING FOR CREDIT AGAINST RESTITUTION FOR COMMUNITY SERVICE BY A CRIMINAL UNABLE TO PAY RESTITUTION; ALLOWING A COURT TO TAKE ACTION TO ENSURE THAT ASSETS OF A PERSON CHARGED WITH A CRIME THAT CAN BE USED TO PAY RESTITUTION ARE NOT DISSIPATED; PROVIDING FOR THE ORDER IN WHICH RESTITUTION MUST BE PAID TO PERSONS AND ENTITIES ENTITLED TO RESTITUTION PAYMENTS; AND AMENDING SECTIONS 46-18-201, 46-18-241, 46-18-244, 46-18-246, 46-18-247, AND 46-18-251, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

HeinOnline -- 1997 vol. I 833 1997

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for tbe offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties impesed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of *full* restitution to the victim as provided in 46-18-241 through 46-18-249. ~~If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.~~

(3) If a financial obligation is impesed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any otber conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whetber or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504,

HeinOnline -- 1997 vol. I 834 1997

45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

**46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

HeinOnline -- 1997 vol. I 835 1997

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties impesed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of *full* restitution to the victim as provided in 46-18-241 through 46-18-249. ~~If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.~~

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony

HeinOnline -- 1997 vol. I 836 1997

on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

**Section 2.** Section 46-18-241, MCA, is amended to read:

"**46-18-241. Condition of restitution.** (1) As provided in 46-18-201, a sentencing court shall require an offender to make *full* restitution to any victim of the offense who has sustained pecuniary loss as a result of the offense, including a person suffering an economic loss as a result of the crime. *The duty to pay full restitution under the sentence remains with the offender until full restitution is paid.*

(2) The court ~~may~~ *shall* require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, *if the offender is able to pay,* by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5 ~~or more than $250~~. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245.

(3) If *at any time* the court finds that, because of circumstances beyond the offender's control, the offender is not ~~and will not be~~ able to pay any restitution ~~during the period of state supervision~~, the court may order the offender to perform community service ~~commensurate with the amount of restitution that would have been imposed~~ *during the time that the offender is unable to pay. The offender must be given a credit against restitution due at the rate of the hours of community service times the state minimum wage in effect at the time that the community service is performed.*"

**Section 3.** Section 46-18-244, MCA, is amended to read:

HeinOnline -- 1997 vol. I 837 1997

"**46-18-244. Type and time of payment — defenses.** (1) The court shall specify the amount, method, and time of *each* payment to the victim and may permit payment in installments. ~~The court may not establish a payment schedule extending beyond the period of state supervision over the offender.~~

(2) In determining the amount, method, and time of *each* payment, the court shall consider the financial resources and future ability of the offender to pay. The court ~~may~~ *shall* provide for payment to a victim ~~up to but not in excess~~ *of the full amount* of the pecuniary loss caused by the offense. The offender may assert any defense that the offender could raise in a civil action for the loss sought to be compensated by the restitution order.

(3) In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

(a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) return of any property to the victim;

(c) payment of up to one-third of the offender's prison earnings.

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services *to the victim* in lieu of money or to make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense.

*(5) After a prosecution is commenced and upon petition of the prosecutor, the court may grant a restraining order or injunction, require a satisfactory bond, or take other action if the court finds that the restraining order or injunction, bond, or other action is necessary to preserve property or assets that could be used to satisfy an anticipated restitution order. A hearing must be held on the petition, and any person with an interest in the property is entitled to be heard.*"

**Section 4.** Section 46-18-246, MCA, is amended to read:

"**46-18-246. Waiver or modification of payment.** An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that the victim will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition *of restitution*, amount *of the victim's pecuniary loss, or* method~~,~~ or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making restitution. The court may extend the restitution schedule~~, but not beyond the period provided for in 46-18-244~~."

**Section 5.** Section 46-18-247, MCA, is amended to read:

**"46-18-247. Default.** (1) If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why the offender should not be confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, dato, and place for a hearing or, if the offender fails to appear as ordered, issue a warrant for the offender's arrest. The order or warrant must be accompanied by written notice of the offender's right to a hearing as provided in 46-18-203.

(2) If the court finds that the offender's default was attributahle to the offender's failure to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-18-203. ~~If confinement is ordered, the court, after entering the order, may reduce the term of confinement and, in accordance with the provisions of 46-18-246, waive satisfaction of the restitution order.~~

(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment of restitution, the sentencing court may order the restitution to be collected hy any method authorized for the enforcement of other judgments."

**Section 6.** Section 46-18-251, MCA, is amended to read:

**"46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same criminal proceeding, money collected from the offender must be allocated as provided in this section.

(2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

(b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

(c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

(d) any other payments ordered by the court.

*(3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:*

*(a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;*

*(b) to the crime victims compensation and assistance account provided for in 53-9-109 until the account is fully reimbursed for compensation to the victim;*

*(c) to any other government agency that has compensated the victim for the victim's pecuniary loss;*

*(d) to any insurance company that has compensated the victim for the victim's pecuniary loss.*

HeinOnline -- 1997 vol. I 839 1997

~~(3)~~*(4)* If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

Approved April 1, 1997

# CHAPTER NO. 182

[HB 577]

AN ACT DELETING THE PROVISION THAT A PERSON UNDER 21 YEARS OF AGE NEED NOT BE CONSUMING OR IN POSSESSION OF THE INTOXICATING SUBSTANCE AT THE TIME OF ARREST TO COMMIT THE OFFENSE OF POSSESSION OF AN INTOXICATING SUBSTANCE; AMENDING SECTION 45-5-624, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-624, MCA, is amended to read:

**"45-5-624. Unlawful attempt to purchase or possession of ~~an~~ intoxicating substance — interference with sentence or court order.** (1) A person under ~~the~~ *21 years of* age ~~of 21 years~~ commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. ~~The person need not be consuming or in possession of the intoxicating substance at the time of arrest to violate this subsection.~~ A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) In addition to any dispesition by the youth court under 41-5-523, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance ~~shall~~:

(a) for the first offense, *shall* be fined an amount not to exceed $100 and:

(i) *must* have the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and *shall* be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) *shall* be ordered to perform community service if a community service program is available; and

(iii) *shall* be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(b) for a second offense, *shall* be fined an amount not to exceed $200 and:

(i) *must* have the person's driver's license suspended for not less than 60 days and not more than 120 days;

(ii) *shall* be ordered to perform community service if a community service program is available; and

(iii) *shall* be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(c) for a third or subsequent offense, *shall* be fined an amount not less than $300 or more than $500 and:

(i) *must* have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, *must* have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;

(ii) *shall* be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of corrections, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance ~~shall~~:

(a) for a first offense, *shall* be fined an amount not to exceed $50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, *shall* be fined an amount not to exceed $100 and:

(i) *shall* be ordered to perform community service if a community service program is available; and

(ii) *must* have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, *shall* be fined an amount not to exceed $200 and:

(i) *shall* be ordered to perform community service if a community service program is available;

(ii) *must* have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) *shall* be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of corrections, which may, in

HeinOnline -- 1997 vol. I 841 1997

the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court, *shall* be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under ~~the~~ *21 years of* age ~~of 21~~ commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed $50 if the person was 18 years of age or older at the time *that* the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for contingent termination of certain text.)"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1997

# CHAPTER NO. 183

[SB 34]

AN ACT REQUIRING INSURANCE COVERAGE FOR A MINIMUM HOSPITAL STAY FOLLOWING CHILDBIRTH; AMENDING SECTION 33-31-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Coverage for minimum hospital stay following childbirth.** (1) For the purposes of this section, "attending health care provider" means a person licensed under Title 37 who is responsible for providing obstetrical and pediatric care to a mother and newborn infant.

(2) Each group or individual policy, certificate of disability insurance, subscriber contract, membership contract, or health care services agreement that

HeinOnline -- 1997 vol. I 842 1997

provides coverage for maternity services, including benefits for childbirth, must provide coverage for at least 48 hours of inpatient hospital care following a vaginal delivery and at least 96 hours of inpatient hospital care following delivery by cesarean section for a mother and newborn infant in a health care facility as defined in 50-5-101.

(3) A decision to shorten the length of inpatient stay to less than that provided under subsection (2) must be made by the attending health care provider and the mother. A health benefit plan, as defined in 33-22-1803, may not terminate the service of an attending health care provider or penalize or otherwise provide financial disincentives to an attending health care provider in response to orders by the attending health care provider for care consistent with the provisions of this section.

(4) A health benefit plan that provides coverage for postdelivery care that is provided to a mother and newborn infant in the home may not be required to provide coverage of inpatient care under subsection (2) unless the inpatient care is determined to be medically necessary by the attending health care provider.

(5) A health benefit plan, as defined in 33-22-243, must provide written notice, in a manner consistent with the provisions of this chapter, to all enrollees, insureds, or subscribers regarding the coverage required by this section.

**Section 2.** Section 33-31-301, MCA, is amended to read:

**"33-31-301. Evidence of coverage — schedule of charges for health care services.** (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

HeinOnline -- 1997 vol. I 843 1997

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligated to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider, if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for home health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

*(f) a provision providing coverage as required in [section 1];*

~~(f)~~*(g)* a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with the limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care physician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for the treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider other than the health maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the health maintenance organization;

(iii) the amount paid by the health maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection ~~(3)(f)~~ *(3)(g)* do not apply to services for mental illness provided under the Montana medicaid program as established in Title 53, chapter 6;

~~(g)~~*(h)* a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage that on its effective date is in conflict with the statutes of the state in which the insured resides on that date is amended to conform to the minimum requirements of those statutes."

~~(h)~~*(i)* a provision that the health maintenance organization shall issue, without evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if the evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy or because the employer discontinues the business or the coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding the termination of group coverage; and

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

~~(i)~~*(j)* a provision that clearly describes the amount of money an enrollee shall pay te the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation

HeinOnline -- 1997 vol. I 845 1997

of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

(6) A health maintenance organization may not use a schedule of charges for enrollee coverage for health care services or an amendment to a schedule of charges before it files a copy of the schedule of charges or the amendment to it with the commissioner. A health maintenance organization may evidence a subsequent amendment to a schedule of charges in a separate document issued to the enrollee. The charges in the schedule must be established in accordance with actuarial principles for various categories of enrollees, except that charges applicable to an enrollee may not be individually determined based on the status of the enrollee's health.

(7) The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer.

(8) The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

**Section 4. Effective date.** [This act] is effective January 1, 1998.

Approved April 1, 1997

# CHAPTER NO. 184

[SB 42]

AN ACT ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, UNDER CERTAIN CIRCUMSTANCES, TO CONVEY DEPARTMENT INTERESTS IN LANDS AND WATERS THROUGH DIRECT SALES RATHER THAN THROUGH A BIDDING PROCESS; AMENDING SECTION 87-1-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-1-209, MCA, is amended to read:

HeinOnline -- 1997 vol. I 846 1997

**"87-1-209. Acquisition and sale of lands or waters.** (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws that provide for sale or disposal of state lands and with or without reservation, as it considers necessary and advisable. *The department, with the consent of the commission, may convey department lands and waters for full market value to other governmental entities without regard to the requirements of subsection (3)(b) or (3)(c) if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than $20,000. When the department conveys land or water to another governmental entity pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by mail to the landowners whose property adjoins the department property being conveyed.*

(b) Notice of sale describing the lands or waters to be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if ~~no~~ *a* newspapor is *not* published in that county, then in any nowspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the directer within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of tbe balance due, then tbe next highest bidders must be similarly notified in succession until a sale is completed. Deposits must

HeinOnline -- 1997 vol. I 847 1997

be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or waters at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

*(4)* The department shall convey ~~the~~ lands and waters without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

~~(4)~~*(5)* The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. ~~In no case may the~~ *The* total cost of ~~such~~ installment contracts *may not* exceed the cost of purchases authorized by the department and appropriated by the legislature.

~~(5)~~*(6)* The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1997

# CHAPTER NO. 185

[SB 46]

AN ACT ALLOWING CONFISCATION OF THE DRIVER'S LICENSE OF A YOUTH WHO IS DELINQUENT OR IN NEED OF SUPERVISION; AND AMENDING SECTIONS 41-5-301, 41-5-403, AND 41-5-523, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-5-301, MCA, is amended to read:

**"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information from any agency or person, *including a parent or guardian of a youth,* based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms of an order, a probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

HeinOnline -- 1997 vol. I 848 1997

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter must be immediately referred to the department of public health and human services.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and the youth's parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer proceeds no further unless authorized by the county attorney; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(7) A petition charging a youth held in detention must be filed within 7 working days from the date *that* the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

HeinOnline -- 1997 vol. I 849 1997

(8) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition is filed."

**Section 2.** Section 41-5-403, MCA, is amended to read:

**"41-5-403. Disposition permitted under informal adjustment — contributions by parents or guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and as determined by the department;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth as determined by the department;

(d) restitution upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;

*(f) confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy.*

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents, legal guardian, or persons contributing to the youth's delinquency or need for supervision to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case.

(3) If the youth violates an aftercare agreement as provided for in 52-5-126, the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under informal adjustment.

(4) If the youth is placed in substitute care requiring payment by the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(5) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds *that* there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(7) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

HeinOnline -- 1997 vol. I 851 1997

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

**Section 3.** Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition — sentence to correctional facility — commitment to department — placement and evaluation of youth — restrictions.** (1) If a youth is found to he a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making one or more of the following dispesitions:

(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

(b) place the youth on probation;

(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and 46-23-506;

(e) place the youth in an in-state residence that ensures that the youth is accountable, provides for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that resources are available for placement of the youth at that residence.

(f) commit the youth to the department. In an order committing a youth to the department:

(i) the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate tbe need for removal of the youth from the youth's home;

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify tbat the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(g) order restitution by the youth or the youth's parents;

HeinOnline -- 1997 vol. I 852 1997

(h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(i) require the performance of community service;

(j) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(k) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(l) require the parents, guardians, or other persons having legal custody of the youth to furnish services *that* the court may designate;

(m) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(f), place a youth in a residential treatment facility.

(n) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(i) A youth adjudicated mentally ill or seriously mentally ill, as defined in 53-21-102, may not be committed or sentenced to a state youth correctional facility.

(ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(o) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

*(p) order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy.*

HeinOnline -- 1997 vol. I 853 1997

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not he a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not he held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could he imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not he placed in or transferred to a penal institution or other facility used for the execution of ~~sentence~~ *sentences* of adults convicted of crimes.

(3) A youth placed in a state youth correctional facility or other facility or program operated hy the department or who signs an aftercare agreement under 52-5-126 must he supervised by the department. A youth who is placed in any other placement hy the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision hy the youth prohation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may he placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered hy the court.

(5) The youth court shall determine the financial ahility of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

HeinOnline -- 1997 vol. I 854 1997

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to he a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds *that* there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

HeinOnline -- 1997 vol. I 855 1997

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Approved April 1, 1997

# CHAPTER NO. 186

[SB 54]

AN ACT GENERALLY REVISING THE LAWS PERTAINING TO CRIME VICTIMS AND VICTIMS COMPENSATION; PROHIBITING THE IMPOSITION OF CHARGES FOR FILING A PETITION FOR AN ORDER OF PROTECTION; PROVIDING THAT A VICTIM MUST BE GIVEN NOTICE OF AND AN OPPORTUNITY TO BE HEARD ON A PETITION FOR DESTRUCTION, DISPOSAL, OR USE OF EVIDENCE; CLARIFYING THAT RESTITUTION PAYMENTS WILL BE MADE TO THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT IF THE ACCOUNT HAS PAID BENEFITS TO THE VICTIM; PROVIDING FOR REIMBURSEMENT OF OTHER GOVERNMENT AGENCIES AND OF INSURERS WHO HAVE COMPENSATED THE VICTIM; SPECIFYING PROBATION SUPERVISORY FEES IN THE ALLOCATION OF PAYMENTS MADE BY AN OFFENDER; CLARIFYING THE OBLIGATION OF LAW ENFORCEMENT AGENCIES TO PAY FOR INVESTIGATIVE MEDICAL EXAMINATIONS OF VICTIMS OF CERTAIN SEXUAL OFFENSES; AUTHORIZING VICTIMS' DEATH BENEFITS TO BE PAID BY LUMP SUM; EXTENDING THE SUBROGATION RIGHTS OF THE CRIME VICTIMS COMPENSATION PROGRAM TO RECOVERIES RECEIVED BY THE VICTIM FROM ANY THIRD PARTY; LIMITING VICTIMS' WAGE LOSS BENEFITS TO 26 WEEKS; AMENDING SECTIONS 40-15-204, 46-5-307, 46-5-308, 46-15-411, 46-18-251, 46-24-206, 53-9-102, 53-9-103, AND 53-9-128, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-15-204, MCA, is amended to read:

**"40-15-204. Written orders of protection.** (1) The court may ~~determine~~, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, *determine* that, to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.

(2) In a dissolution proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a permanent order of protection.

(3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

(4) An order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate time period as directed by the court or permanently if the court finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

(5) An order of protection issued under this section may continue for an appropriate time period as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be terminated upon the petitioner's request that the order be dismissed.

(6) An order of protection must include a section that indicates whether there are any other civil or criminal actions pending involving the parties, a brief description of the action, and the court in which the action is filed.

(7) An amendment to a temporary order of protection or to an order of protection is effective only after it has been served in writing on the opposing party.

(8) There is no cost *to file a petition for an order of protection or* for service of an order of protection.

(9) Any temporary order of protection or order of protection must conspicuously bear the following:

"Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties of up to $10,000 in fines and up to a 5-year jail sentence.

This order is issued by the court, and the respondent is forbidden to do any act listed in the order, even if invited by the petitioner or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter.""

**Section 2.** Section 46-5-307, MCA, is amended to read:

**"46-5-307. Petition for destruction, disposal, or use of evidence.** (1) The prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

(a) the name and title of *the* petitioner;

(b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309 means any property that is unlawful to produce or possess;

(e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;

(f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of ~~such~~ *the* effort;

(g) an allegation to the effect that any criminal prosecutions involving the items of evidence have been completed and no appeals are pending or that no criminal charges have been filed or are presently contemplated; and

(h) the petitioner's intentions relative to disposition of the items.

(2) If the petition requests the destruction or use of contraband, it must describe how destruction is to be accomplished or how the contraband has training or law enforcement value and its contemplated use by a law enforcement agency.

*(3) The county attorney shall provide a victim of the offense with a copy of the petition and shall advise the court whether the victim wishes to be heard on the petition."*

**Section 3.** Section 46-5-308, MCA, is amended to read:

**"46-5-308. Order.** (1) The court may enter an order providing for the destruction or disposition of the evidence. *If a victim of the offense wishes to be heard on the petition, the court shall schedule a hearing on the petition and shall allow the victim to be heard in open court. The court shall consider the victim's statements prior to issuing an order under this section.* A proposed order must be presented by the petitioner to the court and may include:

(a) authorization to destroy all contraband listed in the petition, the method of destruction, and the time within which ~~such~~ *the* destruction must be accomplished;

(b) if certain contraband is requested by the petitioner for training or law enforcement purposes, authorization to use the items and a description of each;

(c) if the petition requests training or law enforcement use of noncontraband items, authorization to retain the items by the law enforcement agency and a description of the items;

(d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

(e) if the petition requests, authorization to sell noncontraband property at public sale or auction and *to* deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

(f) authorization to destroy all items not otherwise provided for.

(2) The order must specify the time period in which destruction or sale must occur. Within 10 days following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold and the date and method of disposition."

**Section 4.** Section 46-15-411, MCA, is amended to read:

**"46-15-411. Payment for medical evidence.** (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent, *sexual assault, or incest* occurs shall pay for the medical examination of a victim of *the* alleged ~~sexual intercourse without consent~~ *offense* when the examination is directed by ~~such~~ *the* agency ~~and~~ *or* when evidence obtained by the examination is used for the investigation, ~~or~~ prosecution, *or resolution* of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense."

**Section 5.** Section 46-18-251, MCA, is amended to read:

**"46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) If an offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same criminal proceeding, money collected from the offender must be allocated as provided in this section.

(2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

*(b) payment of supervisory fees imposed pursuant to 46-23-1031;*

~~(b)~~*(c)* payment of costs imposed pursuant to 46-18-232 or 46-18-233;

~~(c)~~*(d)* payment of fines imposod pursuant to 46-18-231 or 46-18-233; and

~~(d)~~*(e)* any other payments ordered hy the court.

*(3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:*

*(a) to the victim until the victim's unreimbursed pecuniary loss is satisfied;*

*(b) to the crime victims compensation and assistance account provided for in 53-9-109 until the account is fully reimbursed for compensation to the victim;*

HeinOnline -- 1997 vol. I 859 1997

*(c) to any other government agency that has compensated the victim for the victim's pecuniary loss;*

*(d) to any insurance company that has compensated the victim for the victim's pecuniary loss.*

~~(3)~~*(4)* If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

**Section 6.** Section 46-24-206, MCA, is amended to read:

"**46-24-206. Property return — *right to be heard on disposition of evidence.*** *(1)* A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining ~~such~~ *the* property.

*(2) Before the destruction, disposal, or use of evidence that is not the victim's property, the court shall, as provided in 46-5-308, give the victim an opportunity to be heard as to the appropriate disposition of the evidence.*"

**Section 7.** Section 53-9-102, MCA, is amended to read:

"**53-9-102. Legislative purpose and intent.** It is the intent of the legislature ~~of this state~~ to provide a method of compensating those persons within the state who are innocent victims of criminal acts, *including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of the United States against a resident of this state,* and who suffer bodily injury or death and those innocent citizens of this state who are injured or killed in a state that does not have a crime victims compensation program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons and to coordinate victims' assistance programs."

**Section 8.** Section 53-9-103, MCA, is amended to read:

"**53-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part ~~which~~ *that* the claimant has received or ~~which~~ *that* is readily available to ~~him~~ *the claimant* from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wago continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss ~~which~~ *that* was sustained because of tbe criminally injurious conduct;

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. ~~Any such~~ *A* contract in this state may not provide that benefits under this part ~~shall be~~ *are* a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state*; or*

*(i) any other third party.*

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state *or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state*;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable ~~but for the fact~~ *except* that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of tbe ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the division, by a preponderance of tbe evidence, to have been operating the motor vehicle while under the influence, as that term is defined in 61-8-401; or

(d) is committed in a state without a crime victims compensation program that covers a resident of tbis state if the conduct meets the requirements in suhsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

HeinOnline -- 1997 vol. I 861 1997

(5) "Division" means the division of crime control of the department of justice.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) ~~his~~ *the person's* good faith effort to prevent criminally injurious conduct; or

(c) ~~his~~ *the person's* good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct."

**Section 9.** Section 53-9-128, MCA, is amended to read:

"**53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and other treatment approved by the division for the injuries suffered due to criminally injurious conduct. *Unless expressly requested by the claimant, benefits may not be paid under this subsection until the claimant has been fully compensated for total wage loss benefits as provided in subsection (1) or (7).*

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must continue to be paid to the other dependents as long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding $3,500, must be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

HeinOnline -- 1997 vol. I 862 1997

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of the injury has no reasonable prospect of being regularly employed in the normal labor market and who was employable but was not employed at the time of the injury may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed $100 per week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market ~~or for a shorter period as determined by the division~~. The claimant must be awarded benefits as provided in subsection (2).

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week, which is payable in the manner and for the period provided by subsection (3)(b) or for a shorter period as determined by the division. The claimant must be awarded benefits as provided in subsection (4).

(8) ~~Amounts~~ *Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid when the victim is killed as a result of criminally injurious conduct, amounts* payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of *criminally injurious conduct involving* a sexual ~~crime~~ *offense* and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of ~~the crime~~ *that criminally injurious conduct*.

(c) Total payments made under subsections (9)(a) and (9)(b) may not exceed $2,000 or 12 consecutive months of treatment for each person, whichever occurs first."

**Section 10. Effective date.** [This act] is effective July 1, 1997.

Approved April 1, 1997

HeinOnline -- 1997 vol. I 863 1997

# CHAPTER NO. 187

[SB 60]

AN ACT REVISING CERTAIN PROVISIONS REGARDING FISH AND GAME LICENSES; ALLOWING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADOPT RULES REGARDING PROOF OF COMPETENCY IN SAFETY INSTRUCTION; REVISING THE INFORMATION REQUIREMENTS AND THE FORM OF THE WILDLIFE CONSERVATION LICENSE; CLARIFYING PROVISIONS RELATED TO THE MIGRATORY BIRD LICENSE AND MIGRATORY BIRD STAMP; ALLOWING RATHER THAN REQUIRING THE DEPARTMENT TO FURNISH A DECAL TO THE HOLDER OF A COMBINATION SPORTS LICENSE; REVISING THE DATE WHEN A LICENSE AGENT MUST ACCOUNT FOR UNSOLD LICENSES; ALLOWING THE DEPARTMENT TO CHARGE NEW LICENSE AGENTS AN ELECTRONIC LICENSE SYSTEM INSTALLATION FEE; ALLOWING THE DEPARTMENT TO ADOPT RULES REGARDING THE COMPENSATION, FEES, AND DUTIES OF LICENSE AGENTS; REVISING THE TERMS OF THE RECIPROCAL FISHING LICENSE; AMENDING SECTIONS 87-2-102, 87-2-105, 87-2-106, 87-2-202, 87-2-411, 87-2-412, 87-2-711, 87-2-902, 87-2-903, AND 87-2-1001, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 87-2-105(7) and 87-2-903(8) grant rulemaking authority to the department of fish, wildlife, and parks regarding standards applicable to license agents.

It is intended that the rules adopted pursuant to 87-2-105(7) address the methods by which a license agent determines proof of competency in hunter safety, particularly the competency of nonresidents who apply for a Montana hunting license. It is intended that the rules recognize that a person who takes a hunter safety course from a department-authorized instructor will be considered competent for licensing purposes.

It is intended that rules adopted pursuant to 87-2-903(8) address compensation, system installation fees, and duties of license agents.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-2-102, MCA, is amended to read:

**"87-2-102. Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(a) the member was a resident of Montana under the provisions of subsection (4) at the time the member entered the armed forces and continues to meet residency criteria of subsections (4)(b) through (4)(e); or

(b) the memher is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and ~~a certificate~~ *proof* of competency, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territery, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately ~~prior~~ *before* ~~to~~ making application for any license is eligible to receive hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of suhsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana;

(b) the person files Montana state income tax returns as a resident if required to file;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a post-secondary educational institution out of state and who would qualify for Montana resident tuition or *who* otlierwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

HeinOnline -- 1997 vol. I 865 1997

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for the purpose of determining a license applicant's residence status."

**Section 2.** Section 87-2-105, MCA, is amended to read:

"**87-2-105. Safety instruction required.** (1) A hunting license may not be issued to a resident person under the age of 18 years unless the ~~resident presents to the~~ person authorized to issue the license ~~a certificate~~ *receives proof* of competency as provided by this section.

(2) A hunting license may not be issued to a nonresident person under the age of 18 years unless the ~~nonresident presents to the~~ person authorized to issue the license ~~a certificate~~ *receives proof* of competency, as provided in this section, or a certificate verifying that the nonresident has successfully completed a course in the safe handling of firearms in any state or province.

(3) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the ~~member or dependent presents to the~~ person authorized to issue the license ~~a certificate~~ *receives proof* of competency, as provided in this section, or a certificate verifying that the member

or dependent has successfully completed a hunter safety course in any state or province.

(4) A bow and arrow license may not be issued to a resident or nonresident unless the ~~resident or nonresident presents to the~~ person authorized to issue the license *receives* an archery license issued for a prior hunting season or ~~a certificate~~ *receives proof* of completion *of a bowhunter education course* from the national bowhunter education foundation. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding ~~bow hunter~~ *bowhunter* education requirements. ~~As part of those public information efforts, the department shall notify by mail all individuals who purchased a Class A-2 special bow and arrow license during the 1990-91 hunting season.~~

(5) The department shall provide for a course of instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate as an instructor any person it finds to be competent to give instructions in the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of competency in the safe handling of firearms to a person successfully completing the course.

(6) The department shall provide for a course of instruction from the national bowhunter education foundation and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course.

*(7) The department may adopt rules regarding how a person authorized to issue a license determines proof of competency."*

**Section 3.** Section 87-2-106, MCA, is amended to read:

**"87-2-106. Application for license — penalties for violation — forfeiture of privileges.** (1) A license may be procured from the director, ~~any~~ *a* warden, or ~~any~~ *an* authorized agent of the director. The applicant shall state the applicant's name, age, occupation, *street* address of permanent residence, ~~and post-office~~ *mailing* address, ~~the applicant's~~ qualifying length of time as a resident in the state of Montana, ~~whether~~ *and status as* a citizen of the United States or *as* an alien, and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the

HeinOnline -- 1997 vol. I 867 1997

statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued hy mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant sball apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, brotber, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on ~~any~~ *an* application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:

(i) fined not less than the greater of $100 or twice the cost of tbe nonresident license tbat authorized the sought-after privilege or more than $1,000;

(ii) imprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of bond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section."

**Section 4.** Section 87-2-202, MCA, is amended to read:

**"87-2-202. Application ~~—stamp attachment~~ — fee — expiration.** (1) A wildlife conservation license must be sold upon written application. The application must contain the applicant's name, age, occupation, ~~place of~~ *street address of permanent* residence, ~~post office~~ *mailing* address, ~~and the~~ qualifying length of time as a resident in the state of Montana~~;~~, ~~state whether the applicant is~~ *and status as* a citizen of the United States or *as* an alien~~;~~ and *must* be ~~subscribed~~ *signed* by the applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate tbe required information when applying for a wildlife conservation license. It is the applicant's

HeinOnline -- 1997 vol. I 868 1997

hurden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

(2) Hunting, fishing, or trapping licenses *issued in a form determined by the department* ~~in the form of tags or stamps issued to a holder of a wildlife conservation license~~ must be ~~affixed to or~~ recorded ~~on the wildlife conservation license~~ according to rules *that* the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $4.

(h) Nonresident wildlife conservation licenses may be purchased for a fee of $5.

(4) Licenses issued are void after the last day of February next succeeding their issuance."

**Section 5.** Section 87-2-411, MCA, is amended to read:

"87-2-411. ~~Stamp~~ *License* **required to hunt migratory game birds.** It is unlawful for any person 15 years of age or older to hunt migratory game birds without first having obtained a valid migratory bird ~~stamp~~ *license* from the department. The fee for the ~~stamp~~ *license* is $5."

**Section 6.** Section 87-2-412, MCA, is amended to read:

"87-2-412. **Proeurement and sale of artwork for migratory bird stamp — disposition of proceeds.** (1) The department shall contract with an art publisher for the selection, by contest or other method, of a design for the annual migratory bird stamp ~~required by 87-2-411~~ and for the production of the stamp and related artwork. The contract must provide that only designs submitted by Montana artists may be selected. The department shall provide for the sale of stamps exclusively hy the department or its license agents, but may make other arrangements for the sale of related artwork that it determines appropriate. The procurement and sale of the stamps and artwork are exempt from the provisions of Title 18, chapter 4, part 3.

(2) Money received from the sale of stamps and related artwork must be deposited in the state special revenue fund for tbe use of the department and may be expended only for the protection, conservation, and development of wetlands in Montana."

**Section 7.** Section 87-2-711, MCA, is amended to read:

"87-2-711. **Class AAA—combination sports lieense.** (1) A resident, as defined by 87-2-102, who will be 12 years of age or older ~~prior to~~ *before* September 15 of the season for which the license is issued is entitled to:

(a) upon payment of the sum of $54, a combination sports license tliat permits the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, and resident conservation licenses as prescribed in 87-2-202; or

HeinOnline -- 1997 vol. I 869 1997

(b) upon payment of the sum of $64, a combination sports license that permits the holder to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license.

(2) The department ~~shall~~ *may* furnish each holder of a combination sports license an appropriate decal."

**Section 8.** Section 87-2-902, MCA, is amended to read:

**"87-2-902. Bond or security of agent and preferred claim of state for license money.** (1) An appointed license agent shall furnish a corporate surety bond or other security ~~as~~ *if* required by department rule. The bond ~~shall secure~~ *secures* the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all money received from the sale of hunting and fishing licenses and any pormits or certificates prescribed by the department. The license agent shall proporly account for all unsold licenses, permits, and certificates annually on ~~April~~ *March* 1 or at any other time at the request of the director.

(2) All money received for the sale of licenses, permits, and certificates ~~at all times~~ belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all money owed the state."

**Section 9.** Section 87-2-903, MCA, is amended to read:

**"87-2-903. Compensation, *fees,* and duties of agents — penalty for late submission of license money.** (1) License agents, except salaried employees of the department, must receive for all services rendered ~~the sum~~ *a commission* of 50 cents for each ~~license, permit, or certificate issued~~ *transaction*. ~~Each license agent shall submit to the department all duplicates of each class of licenses sold and shall accompany the duplicate licenses with all money received for the sale of the licenses, less the appropriate fee.~~

*(2) Each license agent shall submit to the department the money received from the sale of licenses, less the appropriate commission.*

*(3) Each license agent shall submit to the department copies of each license sold.*

*(4) The department may charge license agents appointed after March 1, 1998, an electronic licnse system installation fee not to exceed actual costs.*

*(5)* The department may designate classes of license agents and may establish a deadline for submission of license money by each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

~~(2)~~*(6)* For purposes of this section, the term ~~"license"~~ *"transaction"* includes *the sale of* any license, permit, ~~and~~ *or* certificate prescribed by the department.

~~(3)~~*(7)* If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate fee, by the deadline established by the department, an interest charge equal to the rate charged on late corporation license tax payments under 15-31-510~~(2)~~ must be assessed.

HeinOnline -- 1997 vol. I 870 1997

Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

*(8) The department may adopt rules necessary to implement this section."*

**Section 10.** Section 87-2-1001, MCA, is amended to read:

**"87-2-1001. Reciprocal fishing privilcges of licensees of bordering states.** (1) Any porson who is properly licensed to fish in a state ~~which~~ *that* borders ~~the state of~~ Montana and who complies with Montana fish and game laws and regulations may fisb in any part of a lake, reservoir, pond, or body of water in Montana that lies within or partly within 10 miles of the boundaries of ~~this state~~ *Montana* when ~~such~~ *the* water is declared to be opon to fishing hy the department~~; provided, however, that such~~ *if the* bordering state grants the same or similar privileges in any ~~such~~ body or bodies of water or in all lakes, reservoirs, ponds, or bodies of water similarly defined within its boundaries to holders of valid Montana fishing licenses, and ~~provided further that such~~ *if the bordering* state enters into a reciprocal agreement with Montana setting forth terms as provided hy this part.

(2) The department is authorized to enter into reciprocal agreements with corresponding state officials of adjoining states for purposes of providing ~~such~~ reciprocal fishing privileges upon any body or bodies of water as described ~~above~~ *in subsection (1).* ~~Such~~ *A reciprocal* ~~agreements~~ *agreement* may include provisions by which each state shall honor the license of the other state only when ~~there is affixed to such~~ *a valid reciprocal* license ~~a stamp~~ *is* purchasod from the honoring state, the charge for ~~such stamp~~ *the reciprocal license* being set by mutual agreement of the states."

**Section 11. Effective date.** [This act] is effective March 1, 1998.

Approved April 1, 1997

# CHAPTER NO. 188

[SB 68]

AN ACT PROVIDING THAT A REHABILITATION FACILITY ACCREDITED BY THE COMMISSION ON ACCREDITATION OF REHABILITATION FACILITIES MAY BE CONSIDERED ELIGIBLE FOR LICENSURE AS A REHABILITATION FACILITY OR A TREATMENT FACILITY FOR CHEMICAL DEPENDENCY; AND AMENDING SECTIONS 50-4-504, 50-4-605, 50-5-101, 50-5-103, 53-24-103, AND 53-24-208, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-4-504, MCA, is amended to read:

**"50-4-504. Definitions.** As used in this part, the following definitions apply:

(1) "Data hase" means the health care data base created pursuant to 50-4-502.

HeinOnline -- 1997 vol. I 871 1997

(2) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(3) "Health care" includes both physical health care and mental health care.

(4) "Health care advisory council" means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403.

(5) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in 50-5-101~~(19)~~*(18)*. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(6) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(7) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities."

**Section 2.** Section 50-4-605, MCA, is amended to read:

**"50-4-605. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Certificate of public advantage" or "certificate" means a written certificate issued by the department as evidence of the department's intention that the implementation of a cooperative agreement, when actively supervised by the department, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(2) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

(4) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in 50-5-101~~(19)~~*(18)*. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing."

**Section 3.** Section 50-5-101, MCA, is amended to read:

**"50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

HeinOnline -- 1997 vol. I 872 1997

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home that offers light personal care or custodial care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner of the home.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, bair grooming, and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificato of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the propesal.

(5) "Ambulatory surgical facility" means a facility that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(6) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(7) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers tbe health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

HeinOnline -- 1997 vol. I 873 1997

(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(10) "College of American pathologists" means the organization nationally recognized by that name~~, with headquarters in Traverse City, Michigan,~~ that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

*(11) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.*

~~(11)~~*(12)* "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

~~(12)~~*(13)* "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(13)~~*(14)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(14)~~*(15)* "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(15)~~*(16)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(16)~~*(17)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(17)~~*(18)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians or dentists. The term includes ambulatory surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential care facilities, and residential treatment facilities.

~~(13)~~*(19)* "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

HeinOnline -- 1997 vol. I 874 1997

~~(19)~~*(20)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(20)~~*(21)* "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(21)~~*(22)* "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(22)~~*(23)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(23)~~*(24)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(24)~~*(25)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

~~(25)~~*(26)* "Joint commission on accreditation of ~~hospitals~~ *healthcare organizations*" means the organization nationally recognized by that name ~~with headquarters in Chicago, Illinois,~~ that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(25)~~*(27)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or

HeinOnline -- 1997 vol. I 875 1997

intermediate developmental disability care to a total of two or more individuals or that provides personal care. The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102(4), or for individuals with related problems.

(e) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(27)~~*(28)* "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions that is used to provide medical or other health services and that costs a substantial sum of money.

~~(28)~~*(29)* "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured individuals prior to their transportation to a hospital or provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

~~(29)~~*(30)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(29)~~*(31)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(31)~~*(32)* "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

~~(32)~~*(33)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(32)~~*(34)* "Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either

diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

~~(34)~~*(35)* "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(35)~~*(36)* "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(36)~~*(37)* "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

~~(37)~~*(38)* "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

~~(35)~~*(39)* "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(36)~~*(40)* "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(40)~~*(41)* "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

~~(41)~~*(42)* "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(42)~~*(43)* "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(40)~~*(44)* "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(44)~~*(45)* "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

**Section 4.** Section 50-5-103, MCA, is amended to read:

**"50-5-103. Rules and standards — accreditation by joint commission.** (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 and 2.

HeinOnline -- 1997 vol. I 877 1997

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) Any hospital that furnishes written evidence required by the department, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process. The department may, in addition to its inspection authority in 50-5-116, inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of ~~health care~~ *healthcare* organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

*(6) The department may consider as eligible for licensure during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department may inspect a rehabilitation facility considered eligible for licensure under this section to ensure compliance with state licensure standards."*

**Section 5.** Section 53-24-103, MCA, is amended to read:

**"53-24-103. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who has a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.

(2) "Approved private treatment facility" means a private agency that has as its function the treatment, rehabilitation, and prevention of chemical dependency, that meets the standards prescribed in 53-24-208(1), and that is approved under 53-24-208.

(3) "Approved public treatment facility" means:

(a) a treatment agency operating under the direction and control of the department as a state agency and approved under 53-24-208; or

HeinOnline -- 1997 vol. I 878 1997

(b) a treatment agency operating under the direction and control of a local government and approved under 53-24-208.

(4) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, welfare, or safety.

*(5) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.*

~~(5)~~*(6)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(5)~~*(7)* "Family member" is the spouse, mother, father, child, or member of the household of a chemically dependent person whose life has been affected by the actions of the chemically dependent person and who may require treatment.

~~(7)~~*(8)* "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to a need for treatment.

~~(8)~~*(9)* "Incompetent person" means a person who has been adjudged incompetent by the district court.

~~(9)~~*(10)* "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

~~(10)~~*(11)* "Prevention" has meaning on four levels; these are:

(a) education to provide information to the school children and general public relating to chemical dependency treatment and rehabilitative services and to reduce the consequences of life experiences acquired by contact with a chemically dependent person;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

*(12) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.*

HeinOnline -- 1997 vol. I 879 1997

~~(11)~~*(13)* "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to chemically dependent persons, intoxicated persons, and family members."

**Section 6.** Section 53-24-208, MCA, is amended to read:

"**53-24-208. Facility standards.** (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and fix the fees to be charged for the required inspections. The standards must be adopted by rule and may concern the health standards to be met and standards for the approval of treatment programs for patients.

(2) Facilities applying for approval ~~must~~ *shall* demonstrate *that* a local need currently exists for proposed services and that the proposed services do not duplicate existing local services.

(3) The department shall periodically inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) The department shall maintain a list of approved public and private treatment facilities.

(5) Each approved public ~~and~~ *or* private treatment facility shall, on request, file with the department data, statistics, schedules, and information *that* the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested or files fraudulent returns ~~thereof shall~~ *of the requested material must* be removed from the list of approved treatment facilities.

(6) The department, after holding a hearing in accordance with the Montana Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval or refuse to grant an approval for failure to meet its standards.

(7) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(8) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times and examine the books and accounts of any approved public or private treatment facility ~~refusing~~ *that refuses* to consent to inspection or examination by the department or ~~which~~ *that* the department has reasonable cause to believe is operating in violation of this chapter.

*(9) If a rehabilitation facility otherwise meets the requirements of subsection (2), the department may consider as eligible for approval during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The*

HeinOnline -- 1997 vol. I 880 1997

*department may, but is not required to, inspect a facility considered eligible for approval under this section to ensure compliance with state approval standards."*

Approved April 1, 1997

# CHAPTER NO. 189

[SB 109]

AN ACT RELATING TO THE DEPARTMENT OF CORRECTIONS AND CORRECTIONAL FACILITIES; PROVIDING FOR CERTIFICATION BY THE DEPARTMENT OF CORRECTIONS OF APPROPRIATIONS FOR YOUTH COURT AND PROBATION FOSTER CARE PLACEMENTS; CLARIFYING NAMES OF PRISONS AND CORRECTIONAL FACILITIES AND THE APPLICATION OF CERTAIN STATUTES TO THOSE PRISONS AND FACILITIES; REQUIRING A PSYCHOSEXUAL EVALUATION OF CERTAIN OFFENDERS; REQUIRING THAT THE PRESENTENCE INVESTIGATION REPORT BE MADE AVAILABLE TO THE PROBATION AND PAROLE OFFICER IN ADDITION TO OTHERS; PROVIDING FOR QUALIFICATIONS OF PERSONS CONDUCTING PRESENTENCE INVESTIGATIONS; PROVIDING FOR LIMITED RELEASE FROM JAIL FOR PURPOSES OF EMPLOYMENT; REQUIRING THAT CERTAIN INFORMATION BE MADE AVAILABLE CONCERNING A PERSON'S CONFINEMENT; CLARIFYING STATUTES RELATING TO THE POWERS OF THE DEPARTMENT, CORRECTIONAL FACILITIES, AND PRISON INDUSTRIES TRAINING PROGRAMS; AMENDING SECTIONS 1-1-207, 41-5-103, 46-18-101, 46-18-111, 46-18-113, 46-18-201, 46-18-225, 46-18-701, 46-23-201, 46-23-215, 46-23-401, 46-24-212, 52-5-101, 52-5-108, 52-5-109, 52-5-112, 52-5-113, 53-1-102, 53-1-103, 53-1-104, 53-1-202, 53-1-203, 53-1-302, 53-30-101, 53-30-102, 53-30-105, 53-30-151, 53-30-503, AND 87-2-802, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 1-1-207, MCA, is amended to read:

**"1-1-207. Miscellaneous terms.** *(1)* Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

~~(1)~~*(a)* "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, that is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in ~~his~~ *the person's* action, vote, or opinion in any public or official capacity.

*(b) "Montana state prison" means the Montana state prison as defined in 53-30-101(3)(b).*

~~(2)~~*(c)* "Peace officer" has the meaning as defined in 46-1-202.

*(d) "State prison" or "prison" means:*

*(i) the Montana state prison as described in 53-30-101(1);*

*(ii) the Montana women's prison as defined in 53-30-101(3)(c);*

*(iii) a Montana regional correctional facility;*

*(iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106; or*

*(v) a combination of the facilities listed in this subsection (1)(d).*

~~(3)~~*(e)* "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

*(2) Subsections (1)(b) and (1)(d) do not authorize a court to sentence a person to a correctional facility listed in those subsections."*

**Section 2.** Section 41-5-103, MCA, is amended to read:

**"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(5) "Court", when used without further qualification, means the youth court of the district court.

(6) "Custodian" means a porson, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(7) "Delinquent youth" means a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of probation.

(8) "Department" means the department of corrections provided for in 2-15-2301.

(9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case.

HeinOnline -- 1997 vol. I 882 1997

(10) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

(12) "Foster home" means a private residence licensed by the department for placement of a youth.

(13) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(14) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(16) "Judge", when used without further qualification, means the judge of the youth court.

(17) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(18) "Necessary parties" includes the youth, the youth's parents, guardian, custodian, or spouse.

(19) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(20) "Probable cause hearing" means the hearing provided for in 41-5-303.

(21) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-811.

HeinOnline -- 1997 vol. I 883 1997

(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(23) "Secure detention facility" means any public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(24) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(25) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(26) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).

(27) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

(28) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills ~~school~~ *youth correctional facility* in Miles City ~~and the Mountain View school in Helena~~.

(29) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardian.

(30) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(31) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

(32) "Youth detention facility" means a secure detention facility licensed by the department for the temperary substitute care of youth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

(33) "Youth in need of care" has the meaning provided for in 41-3-102.

HeinOnline -- 1997 vol. I 884 1997

(34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages hy minors;

(b) continues to exhibit behavior beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision."

**Section 3.** Section 46-18-101, MCA, is amended to read:

**"46-18-101. Correctional policy.** (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions, including, whenever possible, the restoration of all pecuniary losses sustained by a victim of the offense. Corrections laws and programs must be implemented to impress upon each individual the responsibility for obeying the law. To achieve this end, it is the policy of the state to ~~assure~~ *ensure* that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities. Finally, it is the policy of the state to recognize that the interests of crime victims should be considered so that, to the extent possible, victims of crime may be protected from threat of futuro harm by the offender.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed;

(iv) the criminal history of the offender; and

(v) consideration of alternatives to imprisonment of the offender in ~~the~~ *a* state prison ~~or the women's correctional system~~.

(b) Dangerous offenders who habitually violato the law and victimize the public must be removed from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt with by probation, suspended sentence, community corrections, community service, or fine whenever the disposition appoars practicable and not detrimental to the needs of public safety

HeinOnline -- 1997 vol. I 885 1997

and the welfare of the individual. Whenever possible, sentences for offenders must include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

(4) It is also the policy of the state that alternatives to imprisonment, such as community corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce recidivism and enable offenders to become productive members of society."

**Section 4.** Section 46-18-111, MCA, is amended to read:

**"46-18-111. (Temporary) Presentence investigation — when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, or 45-5-625 involving a victim who was less than 16 years of age when the offense was committed, the investigation must include an evaluation of the defendant and a recommendation as to treatment of the offender in the least restrictive environment, considering community safety and offender needs. The evaluation must be completed by a person who is determined to be qualified under guidelines established by the department of corrections. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation officer is presented to and considered by the district court. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor.

**46-18-111. (Effective July 1, 1997) Presentence investigation — when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, ~~or~~ 45-5-507, ~~or under~~ 45-5-625, *or 45-5-627* ~~involving a victim who was less than 16 years of age when the offense was committed~~, the investigation must include ~~an~~ *a psychosexual* evaluation of the defendant and a recommendation as to treatment of the offender in the least restrictive environment, considering *the risk the offender presents to the* community ~~safety~~ and offender needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a ~~person who is determined to be qualified under guidelines established by the department of corrections~~ *sex offender therapist who is a member of the Montana sex offender treatment association or has comparable credentials acceptable to the professional and occupational licensing bureau of the department of commerce. The psychosexual evaluation must be made available to the county attorney's*

HeinOnline -- 1997 vol. I 886 1997

*office, the defense attorney, the probation and parole officer, and the sentencing judge.* All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) ~~Unless the court makes a finding that a report is unnecessary,~~ *The court shall order a presentence report unless the court makes a finding that a report is unnecessary. Unless the court makes such a finding,* a defendant convicted of ~~any offense not~~ *any offense not* enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation officer is presented to and considered by the district court. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor."

**Section 5.** Section 46-18-113, MCA, is amended to read:

**"46-18-113. Availability of presentence investigation report.** (1) All presentence investigation reports must be a part of the court record but may not be opened for public inspection. A copy of the presentence investigation report must be provided to the prosecution, the defendant and the defendant's attorney, *the probation and parole officer,* and the agency or institution to which the defendant is committed. The prosecutor may disclose the contents of the presentence report to a victim of the offense.

(2) The court having jurisdiction of the case may permit other access to the presentence investigation report as it considers necessary."

**Section 6.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

HeinOnline -- 1997 vol. I 887 1997

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the poriod of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

HeinOnline -- 1997 vol. I 888 1997

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the impesition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In impesing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to ~~the~~ *a* state prison ~~or the women's correctional system~~, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

**46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upen a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not excceding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the poriod of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

HeinOnline -- 1997 vol. I 889 1997

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the poriod of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional ~~institution~~ *facility* or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any ponalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow

HeinOnline -- 1997 vol. I 890 1997

part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the impesition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to tbe first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, tbe court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational pbase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of tbe offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If tbe offender is subsequently sentenced to ~~the~~ *a* state prison ~~or the women's correctional system,~~ the court shall state its reasons wby alternatives to imprisonment were not selected, based on tbe criteria contained in 46-18-225.

(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

**Section 7.** Section 46-18-225, MCA, is nmended to read:

**"46-18-225. (Temporary) Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent felony offender to a term of imprisonment in ~~the~~ *a* state prison ~~or the women's correctional system~~, the court sball take into account whether:

(1) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of tbe offender in ~~the~~ *a* state prison ~~or the women's correctional system~~;

HeinOnline -- 1997 vol. I 891 1997

(2) the needs of the offender can be better served in the community or in a facility or program other than ~~the~~ *a* state prison ~~or the women's correctional system~~;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(8) the character and attitude of the offender indicate that the offender is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or the offender's family.

**46-18-225. (Effective July 1, 1997) Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent felony offender to whom 46-18-219 does not apply to a term of imprisonment in ~~the~~ *a* state prison ~~or the women's correctional system~~, the court shall take into account whether:

(1) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in ~~the~~ *a* state prison ~~or the women's correctional system~~;

(2) the needs of the offender can be better served in the community or in a facility or program other than ~~the~~ *a* state prison ~~or the women's correctional system~~;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

HeinOnline -- 1997 vol. I 892 1997

(8) the character and attitude of the offender indicate that the offender is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or the offender's family."

**Section 8.** Section 46-18-701, MCA, is amended to read:

**"46-18-701. ~~Parole~~ *Limited release* during employment hours.** (1) A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of ~~such~~ *the* county and with the consent of the convicted person, order that any part of the imprisonment ~~so~~ imposed be served in confinement with ~~parole~~ *limited release* during the hours or periods the convicted person is actually employed.

(2) Upon the issuance of ~~such~~ an order *for limited release* under this part, the sheriff shall arrange for the convicted person to continue ~~his~~ *the person's* regular employment without interruption insofar as is reasonably possible. However, ~~said~~ *the* prisoner ~~shall~~ *must* be confined in the county jail during the hours when ~~he~~ *the prisoner* is not employed."

**Section 9.** Section 46-23-201, MCA, is amended to read:

**"46-23-201. (Temporary) Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's correctional system, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(3) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(4) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

**46-23-201. (Effective July 1, 1997) Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's ~~correctional system~~ *prison*, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2) or 46-18-219, when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

HeinOnline -- 1997 vol. I 893 1997

(3) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(4) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."

**Section 10.** Section 46-23-215, MCA, is amended to read:

**"46-23-215. Conditions of parole.** (1) A prisoner while on parole remains in the legal custody of the ~~institution~~ *correctional facility* from which the prisoner was released but is subject to the orders of the board.

(2) When an order for parole is issued, it must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a prisoner in the Montana state prison *or the Montana women's prison* has been approved for parole on condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant the prisoner a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on furlough, the prisoner remains in the legal custody of the prison and is subject to all other conditions recited by the board."

**Section 11.** Section 46-23-401, MCA, is amended to read:

**"46-23-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Applicant" means any prisoner who is eligible under 46-23-411 and who signs an application to participate in the supervised release program.

(2) "Board" means the board of pardons and parole provided for in 2-15-2302.

(3) "Department" means the department of corrections provided for in 2-15-2301.

(4) "Prisoner" means a person sentenced by a state district court to a term of confinement in the state prison.

(5) "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the supervised release program.

(6) "State prison" means the Montana state prison at Deer Lodge, *the Montana women's prison,* or any adult correctional facility designated by the department.

(7) "Supervising agent" means a probation and parole officer of the department."

HeinOnline -- 1997 vol. I 894 1997

**Section 12.** Section 46-24-212, MCA, is amended to read:

**"46-24-212. Information concerning confinement.** Upon request of a victim of a felony offense, the department of corrections or the board of pardons *and parole*, as applicable, shall:

(1) promptly inform the victim of *the following information concerning a prisoner committing the offense:*

*(a) the custody level;*

*(b) the projected discharge or parole eligibility date;*

*(c)* the ~~estimated~~ *actual* date of the prisoner's ~~release~~ *discharge* from confinement ~~in the Montana state prison~~ *or parole*, if reasonably ascertainable;

~~(2)~~*(d)* ~~promptly inform the victim of~~ the time and place of a parole hearing concerning the prisoner and of the victim's right to submit a statement to the board of pardons *and parole* under 46-23-202; *and*

*(e) the community in which the prisoner will reside after parole;*

~~(3)~~*(2)* provide reasonable advance notice to the victim before release of the defendant on furlough or to a work-release program, half-way house, or other community-based program or correctional facility; and

~~(4)~~*(3)* promptly inform the victim of the occurrence of any of the following events concerning the prisoner:

(a) an escape from a correctional or mental health facility or community program;

(b) a recapture;

(c) a decision of the board of pardons *and parole*;

(d) a decision of the governor to commute the sentence or to grant executive clemency;

(e) a release from confinement and any conditions attached to the release; and

(f) the prisoner's death."

**Section 13.** Section 52-5-101, MCA, is amended to read:

**"52-5-101. Establishment of state youth correctional facilities — prohibitions.** (1) The department of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate youth in need of these services. The youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited to the ~~state youth correctional facilities at the Mountain View school in Helena and the~~ Pine Hills ~~school~~ *youth correctional facility* in Miles City.

(2) A youth alleged or found to be a youth in need of supervision may not be placed in a state youth correctional facility as defined in 41-5-103."

HeinOnline -- 1997 vol. I 895 1997

**Section 14.** Section 52-5-108, MCA, is amended to read:

"**52-5-108. Medical examination before admission — records required to accompany ~~child~~ *youth* committed.** (1) Before a ~~child~~ *youth* is admitted for any purpose or for any length of time to ~~the Mountain View school,~~ the Pine Hills ~~school,~~ *youth correctional facility* or other facility under an order of commitment to the department of corrections, the ~~child~~ *youth* must he examined by a licensed physician. A ~~child~~ *youth* committed to one of the ~~schools~~ *state youth correctional facilities* or the department must be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must he a current, complete physical examination of the ~~child~~ *youth*."

**Section 15.** Section 52-5-109, MCA, is amended to read:

"**52-5-109. Commitment expenses — arrangement for transportation.** Tbe expenses of committing a ~~child~~ *youth* to the ~~Mountain View school, the~~ Pine Hills ~~school,~~ *youth correctional facility* or the department of corrections and transporting the ~~child~~ *youth* to the ~~Mountain View school, the~~ Pine Hills ~~school,~~ *youth correctional facility* or the place designated by the department for it to receive custody and the expense of returning the ~~child~~ *youth* to the county of residence must be borne by the county of residence. The district judge shall arrange for transportation of the ~~child~~ *youth* to the place where the department has directed that it will receive custody of the ~~child~~ *youth*."

**Section 16.** Section 52-5-112, MCA, is amended to read:

"**52-5-112. University aid to residents of schools.** The department of corrections may, on the recommendation of the superintendent, authorize a resident of ~~the Mountain View school or Pine Hills school~~ *a state youth correctional facility* who has completed high school and who is otherwise eligible to receive up to $800 per year toward the resident's expenses incurred in attending a unit of the Montana university system. The money may be used for transportation, clothing, hooks, hoard, and room and must be paid in the same manner as other expenses of the school. The board of regents of higher education may waive fees and tuition for these residents pursuant to 20-25-421. No more than eight residents of each ~~school~~ *state youth correctional facility* may receive these benefits each year. The department shall notify the board of regents before August 1 of each year of the residents that it has desiguated to receive the benefits for the next school year."

**Section 17.** Section 52-5-113, MCA, is amended to read:

"**52-5-113. Apprehension and return of youth leaving youth correctional facility without permission.** A youth who has left a youth correctional facility of the department of corrections without permission may be apprehended and returned by any citizen. The term "youth correctional facility of the department" means any facility under the supervision and control of the department of corrections that has as its primary function the care, training, custody, and control of youth and specifically includes the Pine Hills ~~school for boys and the Mountain View school for girls~~ *youth correctional facility*."

**Section 18.** Section 53-1-102, MCA, is amended to read:

HeinOnline -- 1997 vol. I 896 1997

**"53-1-102. Removal of patients from state custodial institutions *or correctional facilities* without permission a misdemeanor.** (1) A person, other than a parent or one having legal custody of ~~the person of the~~ *a* patient or inmate, who permits or assists a resident patient or inmate of a state custodial institution *or correctional facility* to leave the institution *or facility* without permission from the properly authorized member of the staff or proper court order is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) ~~Nothing herein is to~~ *This section may not* be construed to conflict with laws relative to inmates of ~~the~~ *a* Montana ~~state~~ prison."

**Section 19.** Section 53-1-103, MCA, is amended to read:

**"53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions *or correctional facilities* a misdemeanor.** (1) A person who knowingly sells or distributes or attempts to sell or distribute alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution *or correctional facility* without permission of the medical staff is guilty of a misdemeanor and, upon conviction, is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) ~~Nothing herein is to~~ *This section may not* be construed to conflict with laws relative to inmates of ~~the~~ *a* Montana ~~state~~ prison."

**Section 20.** Section 53-1-104, MCA, is amended to read:

**"53-1-104. Release of arsonist — notification of department of justice.** (1) Each of the following institutions ~~or~~, *correctional facilities, or other* facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice ~~whenever~~ *when* the person is admitted or released by it:

(a) Montana state hospital;

(b) ~~state~~ *a Montana* prison;

(c) ~~Mountain View school~~ *a Montana youth correctional facility*; *or*

(d) ~~Pine Hills school; or~~

~~(e) any~~ *a* county or city detention facility.

(2) The notification must disclose:

(a) the name of the person;

(b) where the person is or will be located; and

(c) the type of fire the person was involved in."

**Section 21.** Section 53-1-202, MCA, is amended to read:

HeinOnline -- 1997 vol. I 897 1997

"**53-1-202. (Temporary) Department of corrections.** (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following ~~institutional components~~ *correctional facilities or programs* to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(a) the Montana state prison;

(b) the Montana women's ~~correctional system~~ *prison*; and

(c) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs.

(3) Youth correctional services consist of the following ~~institutional components to diagnose, care for, train, educate, and rehabilitate~~ *correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent* youth *and youth in need of supervision* pursuant to Title 52, chapter 5:

~~(a) Mountain View school;~~

~~(b)~~*(a)* Pine Hills ~~school~~ *youth correctional facility or other state youth correctional facility*; and

~~(c)~~*(b)* any other ~~institution~~ *facility or program* that provides ~~care~~ *custody* and services for delinquent youth.

(4) A state institution *or facility* may not be moved, discontinued, or abandoned without the consent of the legislature.

**53-1-202. (Effective on occurrence of contingency) Department of corrections.** (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following ~~institutional components~~ *correctional facilities or programs* to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(a) the Montana state prison;

(b) the Montana women's ~~correctional system~~ *prison*;

(c) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

HeinOnline -- 1997 vol. I 898 1997

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; and

(d) the forensic unit at Warm Springs.

(3) Youth correctional services consist of the following ~~institutional components to diagnose, care for, train, educate, and rehabilitate~~ *correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent* youth *and youth in need of supervision* pursuant to Title 52, chapter 5:

~~(a) Mountain View school;~~

~~(b)~~*(a)* Pine Hills ~~school~~ *youth correctional facility or other state youth correctional facility*; and

~~(c)~~*(b)* any other ~~institution~~ *facility or program* that provides ~~care~~ *custody* and services for delinquent youth.

(4) A state institution *or correctional facility* may not be moved, discontinued, or abandoned without the consent of the legislature."

**Section 22.** Section 53-1-203, MCA, is amended to read:

"**53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole.

(b) subject to the functions of the department of administration, lease or purchase lands for use by ~~institutions~~ *correctional facilities* and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all ~~institutions~~ *correctional facilities* for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the ~~institutions~~ *correctional facilities*;

(c) contract with private, nonprofit Montana corporations to establish and maintain community-based prerelease centers for purposes of preparing inmates of ~~the~~ *a* Montana ~~state~~ prison who are approaching parole eligibility or discharge for release into the community. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs, including the supervised release program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's authority to operate and maintain community-based prerelease centers.

HeinOnline -- 1997 vol. I 899 1997

(d) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of ~~institutions~~ *correctional facilities*, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in ~~institutions~~ *correctional facilities*;

(f) encourage the establishment of programs at the local and ~~institutional~~ *facility* level for the rehabilitation and education of adult felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of suporvision and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of supervision and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature proporly informed of the specific information, hy category, related to youth in need of supervision and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are ~~alleged or~~ adjudicated to be delinquent or in need of supervision and who are ~~referred or~~ committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for ~~children in need of temporary protection or correctional services~~ *delinquent youth committed to the department*; and

(ii) coordinate and apply the principles of modern ~~institutional~~ *corrections* administration to the ~~institutions in the~~ department *facilities and programs*.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c).

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of supervision and delinquent youth in youth ~~care~~ *correctional* facilities."

**Section 23.** Section 53-1-302, MCA, is amended to read:

**"53-1-302. Disposition of receipts from sale of goods.** Receipts from the sale of goods produced or manufactured hy an institution ~~shall~~ *or correctional facility must* be deposited in the *appropriate enterprise or* internal service fund for the use of the industries program of the institution *or facility*."

**Section 24.** Section 53-30-101, MCA, is amended to read:

**"53-30-101. Location and function of ~~prison and women's correctional system~~ *prisons — definitions.*** (1) The ~~institution~~ *correctional facility* at Deer Lodge is the *Montana* state prison and ~~as~~ its primary function ~~provides facilities~~ *is to provide* for the custody, treatment, training, and rehabilitation of adult male criminal offenders. *The custody, treatment, training, and rehabilitation of adult male offenders may also occur at a correctional facility in another jurisdiction pursuant to an agreement as provided in 53-30-106.*

(2) The ~~institution~~ *correctional facility* located in Billings is the *Montana* women's ~~correctional system~~ *prison*, and its primary function is to provide ~~facilities~~ for the custody, treatment, training, and rehabilitation of adult female criminal offenders.

*(3) As used in this title, unless the context indicates otherwise, the following definitions apply:*

*(a) "Montana prison" means:*

*(i) the Montana state prison;*

*(ii) the Montana women's prison;*

*(iii) a Montana regional correctional facility;*

*(iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106; or*

*(v) a combination of the facilities listed in this subsection (3)(a).*

*(b) "Montana state prison" means:*

*(i) the correctional facility located at Deer Lodge;*

*(ii) a Montana regional correctional facility; or*

*(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106.*

*(c) "Montana women's prison" or "women's prison" means:*

*(i) the correctional facility located at Billings;*

*(ii) a Montana regional correctional facility; or*

*(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106."*

**Section 25.** Section 53-30-102, MCA, is amended to read:

**"53-30-102. Qualifications of warden of state prison and warden of women's ~~correctional system~~ *prison.*** The warden of the *Montana* state prison and the warden of the women's ~~correctional system~~ *prison* must be persons trained through education and experience in directing a training, rehabilitation, or custodial program in a penal institution."

**Section 26.** Section 53-30-105, MCA, is amended to read:

HeinOnline -- 1997 vol. I 901 1997

**"53-30-105. (Temporary) Good time allowance.** (1) The department of corrections may grant a good time allowance to inmates housed at an adult correctional facility or a supervised release program facility. The good time allowance may oporate as a credit on the inmate's sentence as imposed by the court, conditionod upon the inmate's good behavior and compliance with the rules adoptod by the department. The department may not grant good time allowance to exceed 1 day for each day served at an adult correctional facility or a supervised release program facility.

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department, the inmate may be punished by the forfeiture of part or all good time allowances.

(3) A person may not earn good time under this section while the person is on probation. A porson may earn good time while on parole at the rate of 1 day per day served on parole. If the department determines that a person has violated the conditions of parole, it may, in its discretion, deduct good time credit accumulated under this subsection in an amount up to and including all credit accumulated on the date of the violation.

(4) The department may restore all or portions of any previously forfeited good time as a result of subsequent good behavior.

(5) If the population at the Montana state prison or the Montana women's ~~correctional system~~ *prison* exceeds the design capacity of the institution, the department may grant an inmate additional good time credits in an amount necessary to permit the inmato to become eligible for parole or to discharge the inmate's sentence. Good time credits for the discharge of a sentence may not exceed 180 days. The award of good time under this subsection must generally be provided to inmates who are nearest to parole eligibility or discharge. (Repealed effective January 31, 1997—secs. 12(2), 13, Ch. 372, L. 1995.)"

**Section 27.** Section 53-30-151, MCA, is amended to read:

**"53-30-151. Prison maintenance by inmates.** An inmate of ~~the~~ *a* Montana ~~state~~ prison may be required to:

(1) keep ~~his own~~ *the* living quarters *assigned to that inmate* clean and orderly;

(2) perform goneral maintenance and repair work on prison grounds and facilities and assist in providing services essential to the administration of the prison, including but not limited to food and laundry services."

**Section 28.** Section 53-30-503, MCA, is amended to read:

**"53-30-503. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of corrections.

(2) "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.

(3) "Local governmental entity" means:

(a) a local governmental unit;

HeinOnline -- 1997 vol. I 902 1997

(b) a multijurisdictional service district; or

(c) an interlocal cooperation commission.

(4) "Multijurisdictional service district" means a district established in accordance with Title 7, chapter 11, part 11.

(5) "Regional correctional facility" means a correctional facility, except the Montana state prison, the women's ~~correctional system~~ *prison*, or the Swan River boot camp, designed, constructed, or operated under this part by a local governmental entity or the department, or both, for the housing of convicted felons."

**Section 29.** Section 87-2-802, MCA, is amended to read:

**"87-2-802. Veterans in VA hospitals and residents of state institutions.** Any veteran who is a patient residing at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all *correctional facilities and* institutions under the jurisdiction of the department of corrections and the department of public health and human services, except the Montana state prison at Deer Lodge or the *Montana* women's ~~correctional system~~ *prison*, ~~will be entitled to~~ *may* fish without a license. The residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license."

**Section 30. Code commissioner instruction.** Wherever a reference to the "Pine Hills school" is included in legislation enacted by the 55th legislature, the code commissioner is instructed to change the reference to the "Pine Hills youth correctional facility".

**Section 31. Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective October 1, 1997.

(2) [Section 21 and this section] are effective on passage and approval.

(3) [Section 4] is effective July 1, 1997.

Approved April 1, 1997

# CHAPTER NO. 190

[SB 114]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LIABILITY FOR A RESIDENT'S COST OF CARE IN A STATE INSTITUTION; SPECIFYING FACTORS TO BE CONSIDERED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES IN DETERMINING ABILITY TO PAY; REQUIRING NOTICE OF AND AN OPPORTUNITY FOR A HEARING REGARDING A DETERMINATION OF ABILITY TO PAY; SPECIFYING BILLING PROCEDURES; SPECIFYING THE INFORMATION TO BE PROVIDED TO AND CONSIDERED BY THE DEPARTMENT IN A FINANCIAL INVESTIGATION; PROVIDING FOR ANNUAL REVIEW OF ABILITY TO PAY; SPECIFYING THE EFFECT OF A FAILURE TO PROVIDE REQUIRED FINANCIAL INFORMATION; SPECIFYING LIMITS ON

HeinOnline -- 1997 vol. I 903 1997

LIABILITY FOR COSTS OF CARE; SPECIFYING COLLECTION PROCEDURES; SPECIFYING THE EXTENT OF RECOVERY FROM A DECEDENT'S ESTATE; SPECIFYING THE EFFECT AND TREATMENT OF CERTAIN MANAGED CARE PAYMENTS; PROVIDING FOR AUTOMATIC ASSIGNMENT OF THIRD-PARTY PAYMENTS TO THE DEPARTMENT FOR A RESIDENT'S COST OF CARE; AMENDING SECTIONS 53-1-401, 53-1-402, 53-1-403, 53-1-404, 53-1-405, 53-1-406, 53-1-407, 53-1-408, 53-1-409, 53-1-410, 53-1-411, 53-1-412, AND 53-1-413, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 53-1-401, MCA, is amended to read:

**"53-1-401. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "All-inclusive rate" means a fixed charge that is computed on a daily basis or on the basis of another time period for inpatients, that is computed on a per visit basis for outpatients, and that is applicable uniformly to each patient without regard to the extent of the services required by the patient and without regard to a distinction between physician services and hospital services.

(2) "Ancillary charge" means the expense of providing identifiable, direct, resident services, including but not limited to:

(a) physicians' services;

(b) x-ray and laboratory services;

(c) dental services;

(d) speech-language pathology and audiology services;

(e) occupational and physical therapy;

(f) medical supplies;

(g) prescribed drugs; and

(h) specialized medical equipment.

(3) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

*(4) "Cost of care" means the applicable all-inclusive rate charges or per diem charges and ancillary charges for a resident's care that are determined as provided in this part.*

~~(4)~~*(5)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(5)~~*(6)* "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

~~(6)~~*(7)* "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided hy the number of days in the year.

*(8) "Gross daily budgeted cost" means the total cost of operating a facility as budgeted through the legislative appropriation process less the budgeted amount of federal grant revenue for the institution.*

~~(7)~~*(9)* "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. The absence of a resident from the institution due to a temporary or trial visit may not be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

~~(6)~~*(10)* ~~"Per diem"~~ *"Per diem charge"* means the gross daily budgeted cost of operating an institution or an individual unit of an institution *for the state fiscal year* (including ~~certain~~ *but not limited to* contracted medical services, depreciation, and associated department costs but excluding the cost of educational programs, ~~federal grants,~~ ancillary charges, and costs not directly identified with patient care) divided by the full-time equivalent resident load *for the previous state fiscal year.*

~~(9)~~*(11)* "Resident" means any porson who is receiving care from or who is a resident of an institution listed in 53-1-402.

~~(10)~~*(12) (a)* ~~"Third party resource~~ *Third party"* means *any third-party individual or entity that is or may be liable to pay all or part of the charges for a resident's cost of care, including* hut ~~is~~ not limited to applicable medicare, medicaid, and personal *insurance or other similar* health care benefits.

*(b) Third party does not include:*

*(i) a managed care organization administering a mental health managed care program under contract with the department; or*

*(ii) a financially responsible person."*

**Section 2.** Section 53-1-402, MCA, is amended to read:

**"53-1-402. Residents ~~subject to per diem and ancillary charges~~ *and financially responsible persons liable for cost of care.*** (1) ~~The department shall assess and collect~~ *A resident and a financially responsible person are liable to the department for the resident's cost of care as provided in this part. The cost of care includes the applicable* per diem and ancillary charges *or all-inclusive rate charges* for the care of residents in the following institutions:

(a) Montana state hospital;

(b) Montana developmental center;

(c) Montana veterans' home;

(d) eastern Montana veterans' home;

(e) Montana mental health nursing care center;

(f) Eastmont human services center; and

HeinOnline -- 1997 vol. I 905 1997

(g) Montana chemical dependency treatment center.

(2) ~~This section does not apply to the~~ *The* eastern Montana veterans' home *may assess charges on either a per diem and ancillary charge basis or an all-inclusive rate basis* if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

(3) ~~This section does not apply to residents of the~~ *The* Montana state hospital ~~or to~~ *and* the Montana mental health nursing center ~~to the extent that either of these institutions assesses and collects charges through~~ *may determine the cost of care using* an all-inclusive rate ~~rather than~~ *or* per diem and ancillary charges *if the department contracts with a private entity to operate a mental health managed care program.*"

**Section 3.** Section 53-1-403, MCA, is amended to read:

"**53-1-403. Rules.** In addition to the specific provisions of this part ~~which~~ *that* require the department te ~~make~~ *adopt* rules, the department may ~~make~~ *adopt* rules ~~for the administration of~~ *to implement* this part. All rules ~~made~~ *adopted* by the department under the provisions of this part ~~shall~~ *must* be ~~made~~ *adopted* pursuant to the provisions of the Montana Administrative Procedure Act."

**Section 4.** Section 53-1-404, MCA, is amended to read:

"**53-1-404. ~~When~~ *Department to compute* per diem ~~to be computed~~ *charge.*** The per diem ~~shall~~ *charge for the fiscal year must* be computed on July 1 of each year by the department. If the budgeted costs of an institution change substantially within the fiscal year, the per diem *charge* may be adjusted te compensate for those changes."

**Section 5.** Section 53-1-405, MCA, is amended to read:

"**53-1-405. Monthly ~~assessment of charges~~ *payment amount.*** (1) *A resident and a financially responsible person are liable for the resident's cost of care in an amount that the department determines that the resident or financially responsible person is able to pay.* The department shall ~~assess monthly against each resident, financially responsible person, or applicable third party resource the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge~~ *determine ability to pay* based upon financial information ~~given to~~ *and documentation obtained by* the department ~~during its~~ *through an* investigation conducted ~~according to the rules of the department~~ *as provided in 53-1-406.*

(2) ~~An assessment made by the department under this section shall be based on the resident's or financially responsible person's ability to pay.~~ The department shall ~~prescribe~~ *adopt* rules ~~which~~ *that* estahlish criteria and ~~a procedure~~ *procedures* for determining ability te pay. *The criteria established by rules adopted under this section must address factors relevant to the person's ability to pay, including but not limited to:*

*(a) the amount of the resident's or financially responsible person's income, including the anticipated receipt of retroactive benefits, such as veteran's benefits or social security benefits;*

HeinOnline -- 1997 vol. I 906 1997

*(b) the amount of the resident's or financially responsible person's assets, including the availability of assets that are liquid or that are able to be readily converted to cash;*

*(c) the amount of the resident's or financially responsible person's fixed expenses for reasonable and necessary housing, utilities, transportation, medical care, food, and clothing;*

*(d) the amount of the resident's or financially responsible person's taxes and other mandatory payments, such as social security withholdings, insurance, child support, restitution, and court-ordered payments;*

*(e) the number of persons dependent upon the resident or financially responsible person for support;*

*(f) the amount of the resident's or financially responsible person's discretionary income;*

*(g) the resident's personal needs requirements while in the institution; and*

*(h) the extent to which requirement of a particular monthly payment or any monthly payment would impose an undue financial burden on the resident or financially responsible person.*

*(3) The department may determine ability to pay and assess charges up to the full cost of care but may require monthly payments in a lesser amount based upon:*

*(a) a resident's or financially responsible person's income-producing assets, such as stocks, bonds, certificates of deposit, or other similar assets;*

*(b) real property of the resident or the resident's spouse if:*

*(i) the property has been listed or advertised for sale, unless the sale proceeds are or will be used to purchase a home within 18 months or are used for primary residence living expenses; or*

*(ii) the property is not occupied as the home of the resident, the resident's spouse, or a dependent child or parent of the resident or the resident's spouse and if there is no reasonable expectation that the resident, the resident's spouse, or a dependent child or parent of the resident or the resident's spouse will return to occupy the property as a home; or*

*(c) the anticipated receipt of retroactive benefits, such as veteran's benefits or social security benefits.*

*(4) If the department has determined an ability to pay and has assessed charges but has required monthly payments in a lesser amount as provided in subsection (3), the department may bill and collect all or a part of the accumulated difference between the assessed charges and the minimum payment amount:*

*(a) upon sale or liquidation of the assets or real property;*

*(b) upon the actual receipt of retroactive benefits, such as veteran's benefits or social security benefits;*

*(c) upon determination of a current ability to pay; or*

*(d) from the resident's or financially responsible person's estate as provided in 53-1-412.*

*(5)* The department may not ~~make an assessment which~~ *require payment of a monthly amount that* would place an undue financial burden on the resident or ~~the~~ financially responsihle person.

*(6) The department shall refund to the resident or financially responsible person any payment made to the department for any month to the extent that the total payments received from the resident, financially responsible person, and third party exceed the resident's cost of care for that month.*

*(7) The fact that a managed care organization contracting with the department to administer a mental health managed care program is or may be liable to pay or has paid an amount to an institution with respect to the resident does not reduce or otherwise affect the resident's or financially responsible person's obligation to pay for the cost of care as provided in this part.*

*(8) The department shall provide a written notice and an opportunity for a hearing regarding a department determination of ability to pay to any resident or financially responsible person who is determined able to pay.*

*(9) In addition to providing the notice required by subsection (8), the department shall bill the resident or financially responsible person monthly for the amount determined in accordance with this section. The bill must state the amount due for the current month, the amount of any payments received during the billing cycle, and the total amount of unpaid costs of care that the department has determined the resident or financially responsible person is able to pay. The bill need not state the current or accrued full cost of care that is or would be payable by a third party.*

*(10) This section may not be construed to reduce the liability of a third party for the resident's full cost of care as provided in this part."*

**Seetion 6.** Section 53-1-406, MCA, is amended to read:

**"53-1-406. Investigation of ability to pay.** (1) *Before determining an ability to pay under 53-1-405, the department shall investigate each resident's and each financially responsible person's ability to pay. For purposes of the investigation, the determination of ability to pay, or any later review or redetermination, the department may require the resident or financially responsible person to complete, sign, and submit financial information and documentation, including financial statements on a form supplied by the department.*

*(2)* Each agency of the state shall ~~give~~*provide to the department* all reasonable assistance ~~to the department in obtaining~~ *and* all *requested* information *and documents* necessary for the ~~proper~~ financial investigation of residents or financially responsible persons. *The department of revenue may not provide confidential tax return information to the department without the consent of the taxpayer.*

~~(2)~~*(3)* Upon request of the department, the resident or financially responsible person shall make available to the department *and shall cooperate with the department in obtaining* any financial information ~~which~~ *and documentation that*

the department considers essential for the purpose of determining ability to pay and ~~which~~ *that*, under federal law, the department is not prohibited from seeking or obtaining from the resident or financially responsible person. ~~Willful failure~~ *The information and documentation that the department is entitled to receive includes but is not limited to:*

*(a) income statements and verification;*

*(b) liability statements and verification;*

*(c) tax returns and related forms, documents, and records, but the department of revenue may not provide confidential tax return information to the department without the consent of the taxpayer;*

*(d) asset statements and descriptions, including valuation appraisals;*

*(e) records of a bank or other financial institution, including account balances, loan statements, account ownership information, and transaction records;*

*(f) expense statements and verification;*

*(g) financial statements, including existing financial statements and financial statements on forms provided by the department;*

*(h) releases authorizing the department to obtain information or documents directly from an employer, creditor, federal agency, financial institution, or other person or entity; and*

*(i) any other information or documentation necessary to the determination.*

*(4) If a resident or financially responsible person fails* to provide *or cooperate in obtaining* the financial information *or documentation* requested by the department ~~may result in~~, *the department may make a determination of ability to pay based upon any information or documentation available to the department, including* a determination of ability to pay up to the full ~~per diem and full ancillary charges~~ *cost of care. The determination is effective* until ~~such time as~~ the requested information *and documentation* ~~is~~ *are* provided and the department makes a new determination of ability to pay, *taking into consideration the additional information and documentation.*

~~(3) (a) A representative of the department authorized by the director may administer oaths, take testimony, and subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for care as provided by this part.~~

~~(b) A person who fails to obey the subpoena, upon petition of the department to any judge of a district court of the state, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena when so ordered by the judge may be punished for contempt of court on application of the department to the district court.~~

*(5) In a hearing under 53-1-407, if a hearings examiner determines that information or documentation is relevant and admissible and orders the resident or financially responsible person to produce it and if the resident or financially*

*responsible person fails or refuses to produce that information or documentation, a determination of ability to pay the full cost of care may be affirmed or payment of the full cost of care ordered, regardless of other information presented.*"

**Section 7.** Section 53-1-407, MCA, is amended to read:

"**53-1-407. Appeal of determination of ability to pay.** ~~If a~~ *A* resident or financially responsible person ~~disagrees with the final determination of the department as to his~~ *aggrieved by a determination of* ability to pay ~~any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date of the department's determination in any court of record in Montana having jurisdiction of the resident or financially responsible person liable for payment~~ *under 53-1-405 may request a hearing pursuant to Title 2, chapter 4, part 6.*"

**Section 8.** Section 53-1-408, MCA, is amended to read:

"**53-1-408. Periodic review by department of ability to pay.** *(1)* ~~At appropriate intervals, the~~ *The* department shall review *at least annually* each determination of ability to pay, and~~,~~ if there has been a significant change in a resident's or financially responsible person's ability to pay, *the department* shall make a new determination. ~~However, a~~

*(2) In addition to the annual review required by subsection (1), the department shall review a determination of ability to pay upon the request of a resident or financially responsible person if the person provides the department with documentation of a changed circumstance that would substantially affect the amount determined under 53-1-405.*

*(3) A* new determination of ability to pay may not be applied retroactively unless:

*(a)* the new determination results in a monthly ~~assessment which~~ *payment amount that* is less than the previous monthly ~~assessment~~ *payment amount;* or ~~unless~~

*(b)* the resident or financially responsible person has ~~materially~~ misrepresented *or failed to provide* any financial information *or documentation that the person was obligated to provide under 53-1-406 and unless the resident or financially responsible person would have been required to pay a higher monthly amount based upon consideration of the complete and correct information and documentation.*

*(4)* The department ~~shall make~~ *may adopt* rules to implement the provisions of this section, including but not limited to rules for credit or refund of any overpayment resulting from an assessment retroactively reduced because of a new determination of ability to pay."

**Section 9.** Section 53-1-409, MCA, is amended to read:

"**53-1-409. ~~Liability~~ *Limitations on liability* of resident or *financially* responsible person for ~~assessed charges~~ *cost of care.*** (1) The resident or financially responsible person is liable only for the ~~per diem and ancillary charges~~ *cost of care* that the department has ~~assessed~~ *determined that the person is able to pay* and *for which the department has* billed the resident or financially responsible person. If ~~amounts assessed and billed are~~ *the amount*

*payable is* retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person ~~is liable only for~~ *shall pay only* the reduced amount for the period of time covered by the retroactive reduction.

(2) The natural or adoptive parents of *a* long-term ~~residents are liable only for the charges made by the department~~ *resident may not be required to pay* for *the resident's cost of* care in an amount ~~not to exceed~~ *exceeding* the cost of caring for a normal child at home as determined ~~from standard sources~~ *and updated annually* by the department *based upon the annual cost of raising a child, as estimated by the United States department of agriculture.*

(3) ~~Natural~~ *The natural* or adoptive parents of a long-term resident ~~are not liable for any charges made by the department for care of a long-term resident incurred or accrued subsequent to the resident attaining~~ *may not be required to pay for the resident's cost of care for periods after the resident attains* 18 years of age.

(4) (a) A resident or financially responsible person is not financially liable for care provided to a resident under any provision of a criminal statute.

(b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana chemical dependency treatment center.

*(5) This section may not be construed to reduce the liability of a third party for a resident's full cost of care as provided in this part."*

**Section 10.** Section 53-1-410, MCA, is amended to read:

**"53-1-410. Nonpayment not grounds for ~~release~~ *discharge*.** A resident of an institution listed in 53-1-402 may not be ~~released~~ *discharged* by reason of the nonpayment of the ~~per diem or the ancillary charge~~ *resident's cost of care* unless, by certification of a physician consulted by the superintendent of the institution, the ~~release~~ *discharge* is medically advisable."

**Section 11.** Section 53-1-411, MCA, is amended to read:

**"53-1-411. Collections ~~by department of administration~~ *from residents and financially responsible persons*.** *(1)* If a resident or financially responsible person ~~liable for payment of per diem and ancillary charges due under this part~~ refuses or fails to ~~make the payment, it is collectible~~ *pay the amount required under this part, any amount remaining unpaid 30 days after the department mails a written demand for payment may be collected:*

*(a) by the department in any manner allowed by law for the collection of debts; or*

*(b)* by the department of administration in the manner set forth in Title 17, chapter 4, for the collection of debts owing to the state or by a civil suit brought by the department of administration in the name of the state.

*(2) A resident's death or discharge from an institution does not reduce or eliminate the obligation of any person to pay an amount required under this part."*

**Section 12.** Section 53-1-412, MCA, is amended to read:

**"53-1-412. Collections from estates.** *(1)* The ~~state~~ *department* has a claim against the estate of a resident ~~or~~ *and* against the estate of a financially responsible person for ~~an amount due to the state at the death of the resident or~~

~~financially responsible person. The attorney general shall collect any claim which the state may have against the estate. However,~~ the *amounts that the department determined that the resident or financially responsible person was able to pay under 53-1-405, less any amounts actually paid by the resident, a financially responsible person, or a third party.*

*(2) The fact that a managed care organization contracting with the department to administer a mental health managed care program is or may be liable to pay or has paid an amount to an institution with respect to the resident does not reduce or otherwise affect the estate's obligation to pay for the cost of care as provided in this part.*

*(3) Except as provided in subsection (4), the department's claim under this section is enforceable against an estate after the death of a resident or financially responsible person. The department's claim is timely if presented within the time specified in the published notice to creditors in the probate proceeding.*

*(4) The department's* claim *under subsection (1)* may be enforced only to the extent that enforcement does not deprive a surviving spouse~~,~~ *or dependent* child~~,~~ or parent of the resident or financially responsible person of:

~~(1)~~*(a)* an amount necessary for reasonable living expenses or educational expenses; or

~~(2)~~*(b)* real estate while it is occupied as a home by the surviving spouse~~,~~ *or dependent* child~~,~~ or parent of the resident or financially responsible person."

**Section 13.** Section 53-1-413, MCA, is amended to read:

**"53-1-413. Deposit of payments *and collections*.** (1) Except as provided in 90-7-220, 90-7-221, and ~~subsection (2) of~~ this section, the department shall deposit payments *and collections* of ~~per diem and ancillary~~ charges *for a resident's cost of care* in the state treasury to the credit of the general fund.

(2) Payments ~~from~~ *and collections for services provided to residents of* the Montana veterans' home must be deposited in the ~~federal~~ special revenue ~~fund~~ *account* for the benefit of the home~~, and payments from~~. *Payments and collections for services provided to residents of* the Montana chemical dependency treatment center ~~program~~ must be deposited ~~to an alcohol~~ *in the* state special revenue account *for the facility*.

(3) ~~Payments~~ *Subject to 90-7-221, payments* from a managed care ~~contractor, provided for in 53-6-116,~~ *organization that is contracting with the department to administer a mental health managed care program* for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the state special revenue ~~fund~~ *account*, subject to appropriation by the legislature for the benefit of those institutions."

**Section 14. Automatic assignment of resident's resources from third party.** (1) Upon the provision of care to a resident, the resident is considered to have assigned to the department all third-party payments, benefits, and resources applicable to the resident's care.

(2) The department is entitled te all third-party payments, benefits, and resources assigned under this section upon demand and the submission of supporting documentation from the department to the third party. The

HeinOnline -- 1997 vol. I 912 1997

department is entitled to collect from the third party the full amount payable by the third party, up to the resident's full cost of care. Collection is not limited to the amount that the resident or financially responsible person has been determined able to pay under 53-1-405.

(3) The fact that a managed care organization contracting with the department to administer a mental health managed care program is or may be liable to pay or has paid an amount to an institution with respect to the resident does not reduce or otherwise affect the third party's obligation to pay for the cost of care as provided in this part.

(4) The department may assign its rights under this section to a managed care organization contracting with the department to administer a mental health managed care program.

(5) If a third party that has been notified of the department's or managed care organization's claim under this section pays benefits, resources, or other amounts to a resident, financially responsible person, or another person or entity without satisfying the department's or managed care organization's claim, the third party is liable to the department or to the managed care organization for the amount that the department or managed care organization was entitled to receive under this part.

**Section 15. Codification instruction.** [Section 14] is intended to be codified as an integral part of Title 53, chapter 1, part 4, and the provisions of Title 53, chapter 1, part 4, apply to [section 14].

**Section 16. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 17. Applicability.** (1) Except as provided in subsections (2) and (3), [this act] applies to care provided on or after July 1, 1997.

(2) [Section 11] applies to proceedings begun on or after July 1, 1997.

(3) [Section 2] applies to care provided to a resident, as defined in 53-1-401, on or after [the effective date of section 2].

**Section 18. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1997.

(2) [Section 2 and this section] are effective on passage and approval.

Approved April 1, 1997

# CHAPTER NO. 191

[HB 90]

AN ACT DIRECTING A COMMITTEE DESIGNATED BY THE LEGISLATIVE COUNCIL TO DESIGN A RETIREMENT PLAN TO REPLACE OR MODIFY THE CURRENT PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REQUIRING THAT THE COMMITTEE DEVELOP LEGISLATION AND AN

HeinOnline -- 1997 vol. I 913 1997

IMPLEMENTATION PLAN FOR THE 56TH LEGISLATURE; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Development and implementation of new or modified public employees' retirement system.** (1) A committee designated by the legislative council pursuant to 5-5-211 shall design a puhlic employees' retirement plan te replace or modify the current puhlic employees' retirement system provided for in Title 19, chapter 3.

(2) The new or modified retirement plan must be designed to provide for the following:

(a) increased portability of contributions;

(b) increased flexibility te allow plan members a choice in:

(i) selecting, from a group of set amounts, the amount of the member's contribution to the retirement plan;

(ii) directing investments; and

(iii) selecting the form of the benefit payout; and

(c) a retirement plan component that will provide for a specified benefit in retirement.

(3) (a) In designing the new or modified retirement plan, the committee shall involve employers, employees, members of the current public employees' retirement system, retirement plan administrators, policymakers, and other interested parties.

(b) The committee shall also gather and analyze information on the amount of state income tax revenue collected from the state's taxation of retirement benefits, consider this information in developing new or modified retirement benefits, and report the committee's findings to the 56th legislature.

(4) The committee shall establish an implementation schedule for conversion to the new or modified retirement plan. The retirement plan design and the implementation schedule, including any implementing legislation, must be presented to the 56th legislature. The retirement plan design and implementation schedule must include hut is not limited to:

(a) how the new or modified retirement plan is to be administered;

(b) the costs associated with the conversion;

(c) a timetable for implementation; and

(d) a preconversion and postconversion education plan for informing policymakers, administrative staffs, executive staffs, interagency staffs, employers, employees, retirement plan members, taxpayers, and other interested parties about the new or modified retirement plan.

(5) The committee may contract for consultant services.

HeinOnline -- 1997 vol. I 914 1997

**Section 2. Appropriation.** There is appropriated from the general fund to the legislative services division $80,000 for use by the committee designated by the legislative council under [section 1].

**Section 3. Coordination instruction.** If ___ Bill No. ___ [LC 0381] is passed and approved and if it repeals or extends the sunset on the committee on public employee retirement systems, then "A committee designated by the legislative council pursuant to 5-5-211" as it appears in [section 1 of this act] and "the committee designated by the legislative council under [section 1]" as it appears in [section 2 of this act] shall read "the committee on public employee retirement systems".

**Section 4. Effective date.** [This act] is effective July 1, 1997.

Approved April 2, 1997

## CHAPTER NO. 192

[HB 91]

AN ACT EXTENDING THE SUNSET PROVISION ON THE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS; AMENDING SECTION 9, CHAPTER 549, LAWS OF 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 9, Chapter 549, Laws of 1993, is amended to read:

"Section 9. **Termination.** [This act] terminates June 30, ~~1995~~ *1999*."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 2, 1997

## CHAPTER NO. 193

[HB 341]

AN ACT EXCLUDING SALESPERSONS, PARTS PERSONS, AND MECHANICS EMPLOYED BY A BUSINESS PRIMARILY ENGAGED IN SELLING REPLACEMENT PARTS TO A WHOLESALER OR THE ULTIMATE PUBCHASER FROM THE OVERTIME COMPENSATION LAW; AND AMENDING SECTION 39-3-406, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclnsions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) ~~any~~ persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) ~~any~~ *an* individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) ~~any~~ *an* individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, ~~or~~ farm implements, *or replacement parts* if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles, ~~or~~ implements, *or replacement parts* to *wholesalers or* ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's

HeinOnline -- 1997 vol. I 917 1997

spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town."

Approved April 2, 1997

# CHAPTER NO. 194

[HB 495]

AN ACT REVISING THE HUMAN RIGHTS LAW EXCEPTION FOR HOUSING FOR OLDER PERSONS TO THE PROHIBITION AGAINST DISCRIMINATION BASED ON AGE OR FAMILIAL STATUS; AND AMENDING SECTION 49-2-305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 49-2-305, MCA, is amended to read:

**"49-2-305. Discrimination in housing — exemptions.** (1) It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(d) to refuse to negetiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

HeinOnline -- 1997 vol. I 919 1997

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability includes:

(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, ~~where~~ *when* it is reasonable te do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

HeinOnline -- 1997 vol. I 921 1997

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and *(b)*(3) *through (b)(5),* ~~and 24 CFR 100.304,~~ as those ~~sections~~ *provisions* read on ~~October 1, 1989~~ *March 31, 1996.*

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as the owner's residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

Approved April 2, 1997

# CHAPTER NO. 195

[SB 69]

AN ACT AUTHORIZING THE CREATION OF LONG-TERM CARE INSURANCE PARTNERSHIPS BETWEEN INDIVIDUALS, PRIVATE HEALTH INSURERS, THE COMMISSIONER OF INSURANCE, AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; AUTHORIZING THE DEPARTMENT AND THE COMMISSIONER OF INSURANCE TO ADOPT STANDARDS FOR CERTIFYING CERTAIN LONG-TERM CARE INSURANCE POLICIES; ALLOWING CERTAIN ASSETS OF AN INDIVIDUAL WHO PURCHASES A CERTIFIED LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE TO BE DISREGARDED BY THE DEPARTMENT IN DETERMINING ELIGIBILITY FOR MEDICAID BENEFITS; AMENDING SECTION 53-6-143, MCA; AND PROVIDING CONTINGENT EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 4 and 5] grant rulemaking authority to the commissioner of insurance and the department of public health and human services. [Section 4] authorizes the commissioner and the department to adopt rules regarding requirements for certification of long-term care insurance policies and certificates for the purposes of qualification for medical assistance benefits. [Section 5] requires the department to adopt rules necessary for the administration of long-term care insurance partnerships, including eligibility requirements for disregard of resources and amounts of resources to be disregarded for the purposes of qualification for medical assistance benefits. In adopting rules pursuant to these sections, the commissioner and the department shall take into consideration the goal of reducing expenditures for long-term care by the Montana medicaid program.

HeinOnline -- 1997 vol. I 922 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 5], unless the context indicates otherwise, the following definitions apply:

(1) "Certificate" means a certificate as defined in 33-22-1107.

(2) "Commissioner" means the commissioner of insurance provided for in 2-15-1903.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Dollar-for-dollar model" means a program in which the amount of resources that is disregarded in determining medical assistance eligibility for an individual is increased by $1 for each dollar paid by an insurer to an insured under the insured's long-term care insurance policy or certificate.

(5) "Long-term care insurance" means an insurance policy or certificato that provides coverage for medically necessary services in a long-term care facility, as defined in 50-5-101, or in the insured's home.

(6) "Long-term care insurance partnership" or "partnership" means a program of collaboration between the commissioner, the department, insurers, and their insureds to create an incentive, through the issuance of insurance policies or certificates certified by the commissioner and the department, for individuals to purchase long-term care insurance.

(7) "Policy" means a policy as defined in 33-22-1107.

**Section 2. Purpose.** The purpose of [sections 1 through 5] and the long-term care insurance partnerships authorized by [sections 1 through 5] is to encourage individuals to purchase long-term care insurance policies or certificates that will provide for their potential long-term care needs, thereby reducing the amount of money spent by the state of Montana for long-term care under the Montana medicaid program. The purpose of [sections 1 through 5] is also to provide an incentive for the purchase of the policies or certificates by providing individuals some protection from the requirement that they spend down their resources in order to qualify for medical assistance benefits in the form of payment for long-term care.

**Section 3. Long-term care insurance partnerships authorized.** (1) The commissioner and the department may in their discretion create long-term care insurance partnerships if federal law permits those partnerships. If created, the partnerships must be consistent with the requirements of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.

(2) The commissioner and the department may in their discretion collaborate with private insurers to create long-term care insurance partnerships that will allow individuals who have resources in excess of the resource limit for receipt of medical assistance under the Montana medicaid program to receive medical assistance benefits if those individuals are eligible for or require the level of care provided by a long-term care facility and meet the other program requirements to qualify for those benefits.

HeinOnline -- 1997 vol. I 923 1997

(3) Under partnerships created pursuant to this section, individuals may qualify for special treatment of their resources if they purchase a long-term care insurance policy or certificate certified by the commissioner and the department as provided in [section 4] prior to becoming eligible for medical assistance benefits.

(4) The long-term care insurance partnerships may in the department's discretion be based on a dollar-for-dollar model or any other model that is cost-neutral.

**Section 4. Rulemaking and certification of policies by commissioner and department.** (1) The commissioner and the department may by rule adopt requirements for certification of long-term care insurance policies and certificates. These requirements may include but are not limited to:

(a) minimum levels and durations of benefits;

(b) mandatory inflation protection;

(c) mandatory home and community care coverage;

(d) case management; and

(e) procedures for the insured to appeal a denial of benefits.

(2) The commissioner and the department shall review long-term care insurance policies and certificates to determine whether policies and certificates meet the requirements for certification pursuant to this section.

**Section 5. Department to make rules.** The department shall adopt rules necessary for the administration of the partnerships, including but not limited to rules concerning:

(1) the populations and age groups eligible to have resources disregarded for the purposes of qualification for medical assistance benefits under the Montana medicaid program;

(2) the level of care that an individual requires in order to have resources disregarded in determining eligibility for medical assistance benefits;

(3) the amount and type of resources of an individual that will be disregarded in determining eligibility for medical assistance benefits;

(4) requirements for the disregard of resources of an individual in determining eligibility for medical assistance benefits; and

(5) the exemption of protected resources from a lien provided in 53-6-171 through 53-6-189 for the recovery of medical assistance benefits paid by the state.

**Section 6.** Section 53-6-143, MCA, is amended to read:

**"53-6-143. Medical assistance liens and recoveries.** (1) Except as provided in this section, the department may not impose a lien upon the property of an applicant for or recipient of medical assistance.

(2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed against the real or personal property of a medicaid applicant or recipient prior to the applicant's or recipient's death only:

(a) pursuant to a judgment of a court for recovery of medical assistance paid on behalf of the recipient;

(b) on a third-party recovery as provided in 53-2-612; ~~or~~

(c) as provided in 53-6-171 through 53-6-188; *or*

*(d) to the extent that the recipient has received medical assistance based upon resources not disregarded pursuant to [sections 1 through 5].*

(3) The department may recover medical assistance correctly paid on behalf of a recipient only as provided in 53-2-612, 53-6-167 through 53-6-169, or 53-6-171 through 53-6-188 or as provided in a written agreement between the department and the recipient or the recipient's representative pursuant to 42 U.S.C. 1382b(b).

(4) Except as otherwise specifically provided by 53-6-144, 53-6-165 through 53-6-169, 53-6-171 through 53-6-189, and this section, the department may pursue recovery under any section or combination of sections as may be applicable in a particular case. However, the department may not recover pursuant to 53-6-167 through 53-6-169 or 53-6-171 through 53-6-188 more than the total amount of recoverable medical assistance paid on behalf of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact that the department has or may have a lien on particular property does not preclude the department from pursuing recovery under another section against other assets of the recipient or assets of another person as provided in 53-6-144, 53-6-165 through 53-6-169, 53-6-171 through 53-6-189, and this section."

**Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [sections 1 through 5].

**Section 8. Contingent effective dates.** (1) [Sections 4, 5, and 7 and this section] are effective on the effective date of the repeal of 42 U.S.C. 1396p(b)(1)(A) and (b)(1)(B) or of the amendment of that section in a manner prohibiting adjustment or recovery of medical assistance paid to individuals described in that section.

(2) [Sections 1 through 3 and 6] are effective 6 months after [the effective date of sections 4 and 5].

Approved April 2, 1997

HeinOnline -- 1997 vol. I 925 1997

# CHAPTER NO. 196

[HB 154]

AN ACT GENERALLY REVISING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT; REQUIRING UNDERGROUND COAL MINE PERMITTEES TO COMPENSATE FOR CERTAIN PROPERTY DAMAGE CAUSED BY SUBSIDENCE; REQUIRING REPLACEMENT OF A WATER SUPPLY THAT IS CONTAMINATED, DIMINISHED, OR INTERRUPTED BY UNDERGROUND COAL MINING OPERATIONS; PROVIDING THAT AN OPERATING PERMIT IS REQUIRED FOR ALL UNDERGROUND INJECTION MINING OF URANIUM; CLARIFYING PROSPECTING PERMIT REQUIREMENTS; MODIFYING REVEGETATION REQUIREMENTS; AMENDING SECTIONS 82-4-203, 82-4-226, 82-4-233, AND 82-4-235, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICARILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Subsidence.** (1) The permittee of an underground coal mining operation shall:

(a) promptly repair or compensate for material damage to any occupied residential dwelling and related structures and to any noncommercial building resulting from subsidence caused by an underground coal mining operation. Repair of damage includes rehabilitation, restoration, or replacement. Compensation must be provided to the owner of the damaged property and must be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by tho purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

(b) promptly replace any drinking, domestic, or residential water supply from a well or spring that was in existence prior to the application for the permit pursuant to 82-4-222 and tbat has been affected by contamination, diminution, or interruption resulting from the underground coal mining operation.

(2) This section may not be construed to prohibit or interrupt an underground coal mining operation.

(3) This section does not abrogate, impair, or diminish any right or remedy granted under another provision of this part or any other law.

**Section 2.** Section 82-4-203, MCA, is amended to read:

**"82-4-203. Definitions.** Unless the context requires otberwise, in this part, the following definitions apply:

(1) "Abandoned" means an operation in which ~~no~~ *a* mineral is *not* being produced and ~~about which~~ *that* the department determines ~~that the operation~~ will not continue or resume *operation*.

(2) (a) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities.

(b) The term does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slopo wash, together witb talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities that permit or have the potential to permit economic development as a water source.

(4) (a) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(b) The term includes:

(i) all land overlying any tunnels, shafts, or other excavations used to extract the mineral;

(ii) lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral;

(iii) processing facilities at or near the mine site or other mine-associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining; and

(iv) all activities necessary and incident to the reclamation of tbe mining operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in tbe contour method of strip mining.

(6) "Board" means tbe board of environmental review provided for in 2-15-3502.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation and includes plans for the removal and use of minable and marketable coal located within the area planned to be mined.

(8) (a) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation.

(b) The term does not nıean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts tbat do not leave the plant, nor does the term mean processing for other tban comınercial purposes.

(9) "Coal preparation plant" nıeans a comınercial facility where coal is subject to coal preparation. The term includes commercial facilities associated with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(10) "Contour strip mining" nıeans that strip-mining method commonly carried out in areas of rough and hilly topography in whicb the coal or mineral

HeinOnline -- 1997 vol. I 927 1997

seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping, with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(11) "Degree" means a measurement from the horizontal. In each case, the measurement is subject to a tolerance of 5% error.

(12) "Department" means the department of environmental quality provided for in 2-15-3501.

(13) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation. However, the nonremoval or nonutilization of minable and marketable coal that occurs because of compliance with reclamation standards established by the department is not considered failure to conserve coal.

(14) "Fill bench" means that portion of a bench or table that is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(15) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not willingly be exposed to the danger during the time necessary for abatement.

(16) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(17) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(18) "Minable coal" means that coal that can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(19) "Mineral" means coal and uranium.

(20) "Operation" means:

(a) all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants; and

(b) all activities, including excavation incident to operations, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

HeinOnline -- 1997 vol. I 928 1997

(21) "Operator" means a person engaged in:

(a) strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden;

(b) coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location; ~~or~~

(c) operating a coal preparation plant; *or*

*(d) uranium mining using in situ methods.*

(22) "Overburden" means:

(a) all of the earth and other materials that lie above a natural mineral deposit; and

(b) the earth and other material after removal from their natural state in the process of mining.

(23) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(24) "Prime farmland" means land that:

(a) meets the criteria for prime farmland prescribed by the United States secretary of agriculture in the Federal Register; and

(b) historically has been used for intensive agricultural purposes.

(25) "Prospecting" means:

(a) the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine:

(i) the quality and quantity of overburden in an area; or

(ii) the location, quantity, or quality of a ~~natural~~ mineral deposit; or

(b) the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

(26) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(27) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(28) (a) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger

HeinOnline -- 1997 vol. I 929 1997

method or any similar method that penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine that enters the deposit from a surface excavation or any other mining method or process in which the strata or overburden is removed or displaced in order to recover the mineral.

(b) For the purposes of this part only, strip mining also includes remining and coal preparation.

(c) The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

(29) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(30) "Surface owner" means:

(a) a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land;

(b) a person who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affectod by strip-mining operations or who receives directly a significant portion of income, if any, from farming or ranching operations; or

(c) the state of Montana when the state owns the surface.

(31) "Topsoil" means the unconsolidated mineral matter that is naturally present on the surface of the earth, that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(32) "Underground mining" means any part of the process that is followed in the production of a mineral and that uses vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata. The term includes mining by in situ methods.

(33) "Unwarranted failure to comply" means:

(a) the failure of a permittee to prevent the occurrence of any violation of a permit or any requirement of this part because of indifference, lack of diligence, or lack of reasonable care; or

(b) the failure to abate any violation of a permit or of this part because of indifference, lack of diligence, or lack of reasonable care.

(34) "Waiver" means a document that demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(35) "Written consent" means a statement that is executed by the owner of the surface estate and that is written on a form approved by the department to demonstrate that the owner consents to entry of an oporator for the purpose of conducting strip-mining operations and that the consent is given only to

strip-mining and reclamation operations that fully comply with the terms and requirements of this part."

**Section 3.** Section 82-4-226, MCA, is amended to read:

"**82-4-226. Prospecting permit.** (1) Except as provided in subsection (8), prospecting by any person on land not included in a valid strip-mining or underground-mining permit is unlawful without possessing a valid prospecting permit issued by the department as provided in this section. A prospecting permit may not be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and an adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit must be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application must include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of the required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and other information that may be required by the department. The applicant shall state what types of prospecting and excavating techniques will be employed on the affected land. The application must also include any other or further information that the department may require.

(3) The application must be accompanied by a fee of $100. This fee must be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan must be promptly reclaimed.

(6) The prospecting permit is valid for 1 year and is subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

HeinOnline -- 1997 vol. I 931 1997

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228, ~~and~~ that is not conducted for the purpose of determining the location, quality, or quantity of a ~~natural~~ mineral deposit, *and that does not remove more than 250 tons of coal* is not subject to subsections (1) through (7). In addition, prospecting that is conducted to determine the location, quality, or quantity of a ~~natural~~ mineral deposit *outside an area designated unsuitable, that does not remove more than 250 tons of coal,* and that does not substantially disturb the natural land surface is not subject to subsections (1) through (7). However, a person who conducts prospecting described in this subsection shall file with the department a notice of intent to prospect that contains the information required by the department before commencing prospecting operations. If this prospecting substantially disturbs the natural land surface, it must be conducted in accordance with the performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time."

**Section 4.** Section 82-4-233, MCA, is amended to read:

"82-4-233. **Planting of vegetation following grading of disturbed area.** (1) ~~After~~ *Except as provided in subsection (4), after* the operation has been backfilled, graded, topsoiled, and approved by the department, the operator shall prepare the soil and plant ~~such~~ *the* legumes, grasses, shrubs, and trees ~~as~~ *that* are necessary to establish on the regraded areas and all other lands affected a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. The vegetative cover must be capable of:

(a) feeding and withstanding grazing pressure from a quantity and mixture of wildlife and livestock at least comparable to that which the land could have sustained prior to the operation;

(b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and

(c) preventing soil erosion to the extent achieved prior to the operation.

(2) The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, mulching, irrigation, fencing, and any other measures necessary to provide a suitable permanent diverse vegetative cover ~~shall~~ *must* be defined by rules of the board.

(3) All underground shafts, tunnels, or other excavations are excluded from the provisions of subsection (1) ~~of this section~~.

*(4) For land that was mined, disturbed, or redisturbed after May 2, 1978, and that was seeded prior to January 1, 1984, using a seed mix that was approved by the department pursuant to subsection (2) and on which the reclaimed vegetation*

HeinOnline -- 1997 vol. I 932 1997

*otherwise meets the requirements of subsection (1) and applicable state and federal seed and vegetation laws and rules, introduced species are considered desirable and necessary to achieve the postmining land use and may compose a major or dominant component of the reclaimed vegetation."*

**Section 5.** Section 82-4-235, MCA, is amended to read:

"**82-4-235. (Temporary) Inspection of vegetation — final bond release.** Inspection and evaluation for permanent diverse vegetative cover ~~shall~~ *must* be made as soon as it is possible to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). ~~In no event shall such~~ *The* remaining bond *may not* be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after February 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

**82-4-235. (Effective on occurrence of contingency) Inspection of vegetation — final bond release.** (1) Inspection and evaluation for permanent diverse vegetative cover must be made as soon as possible following an application for final bond release to determine if a satisfactory stand has been established. If the department determines that a satisfactory permanent diverse vegetative cover has been established, it shall release the remaining bond held on the area reclaimed after public notice and an opportunity for hearing as provided in 82-4-232(6). ~~For land that was seeded using a seed mix that included a substantial component of introduced species approved by the department pursuant to 82-4-233(2) and on which reclaimed vegetation otherwise meets the requirements of 82-4-233(1), approval of reclaimed vegetation for release of bond may not be withheld on the basis that introduced species compose a major or dominant component. Except as provided in subsection (2)(b), the~~ *The* remaining bond may not be released prior to a period of 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work required under this part for those operations or portions of operations that were seeded after May 2, 1978, or prior to a period of 5 years after initial planting for all exploration activities and all other operations.

(2) (a) Notwithstanding the provision in subsection (1), on land from which coal was removed prior to May 3, 1978, and on land from which coal was not removed and that was not used, disturbed, or redisturbed in connection with this part after May 2, 1978, the department may approve for release a bond on an area of reclaimed vegetation that meets the following criteria:

(i) it was seeded using a seed mixture that was approved by the department under the criteria established pursuant to 82-4-233 and that included introduced species; and

(ii) at least one of the following conditions exists:

(A) the standards of 82-4-233(1) are otherwise achieved;

(B) the operator has demonstrated substantial usefulness of the reclaimed vegetation for grazing of livestock;

HeinOnline -- 1997 vol. I 933 1997

(C) the operator demonstrates that the reclaimed vegetation has substantial value as a habitat component for wildlife present in the area; or

(D) the topography and soils are suitable for conversion to cropland or hayland consistent with the standards of 82-4-232(8) and the department approves and the operator completes that conversion.

(b) On lands that meet the criteria described in subsection (2)(a), interseeding or supplemental planting may be performed without reinitiating the liability period provided in subsection (1)."

**Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 2, and the provisions of Title 82, chapter 4, part 2, apply to [section 1].

**Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 8. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to underground coal mining operations that occurred after October 24, 1992.

**Section 9. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 4] is effective on the date that it is approved by the secretary of the United States department of the interior pursuant to 30 U.S.C. 1253.

Approved April 3, 1997

# CHAPTER NO. 197

[HB 412]

AN ACT REVISING THE DEFINITION OF "HEALTH CARE PROVIDER" FOR THE AIDS PREVENTION ACT TO ALLOW AN OUT-OF-STATE HEALTH CARE PROVIDER TO ORDER AN HIV TEST FOR INSURANCE COMPANIES; AMENDING SECTION 50-16-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-16-1003, MCA, is amended to read:

**"50-16-1003. Definitions.** As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means:

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state *or who is licensed, certified, or otherwise authorized by the laws of another state* to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including hut not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed hy the local board.

(12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(13) "Person" means an individual, corporation, organization, or other legal entity.

(14) "Posttest counseling" means counseling, conducted at the time *that* the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

HeinOnline -- 1997 vol. I 935 1997

(15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(16) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(h) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the subject's behalf. The written informed consent must include at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;

(ii) an explanation of the procedures to be followed for confidentiality, ~~blood drawing~~ *specimen collection*, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the ~~blood sample~~ *specimen* is taken;

(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;

(iv) a statement that the test may be obtained anonymously if the subject wishes;

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop an agreement form that may be used for purposes of this subsection *(18)*."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 3, 1997

HeinOnline -- 1997 vol. I 936 1997

# CHAPTER NO. 198

[SB 144]

AN ACT PROVIDING FOR THE INCLUSION OF PARTICIPATING OBSTETRICIANS AND GYNECOLOGISTS AS PRIMARY CARE PHYSICIANS; PROVIDING THAT A HEALTH BENEFIT PLAN MAY NOT REQUIRE A REFERRAL FROM A PRIMARY CARE PHYSICIAN AS A CONDITION FOR THE COVERAGE OF THE SERVICES OF AN OBSTETRICIAN OR GYNECOLOGIST; PROVIDING COVERAGE FOR SERVICES PROVIDED BY AN ADVANCED PRACTICE REGISTERED NURSE IN COLLABORATION WITH THE PARTICIPATING OBSTETRICIAN OR GYNECOLOGIST; REQUIRING NOTICE TO COVERED PERSONS; AMENDING SECTIONS 33-22-101 AND 33-31-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICARILITY DATE.

WHEREAS, the specialty of obstetrics and gynecology is devoted to primary and preventative health care of women throughout their lifetime; and

WHEREAS, significant numbers of women view their obstetrician and gynecologist as their primary or only physician; and

WHEREAS, for many women, an obstetrician or gynecologist is often the only physician they see regularly during their reproductive years; and

WHEREAS, a general medical examination was the second most frequently cited purpose for patient visits to obstetricians and gynecologists in 1989 and 1990; and

WHEREAS, obstetricians and gynecologists refer their patients less frequently than other primary care physicians, thus avoiding costly and time-consuming referrals to specialists.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Scope — purpose.** The provisions of [sections 1 through 8] apply to all health benefit plans offered to persons who receive health care services in this state. The purpose of [sections 1 through 8] is to ensure that obstetricians and gynecologists may be participating primary care physicians under health benefit plans offered to patients who receive health care services in this state and that persons covered by health benefit plans have direct access to the services of a participating obstetrician or gynecologist of their choice.

**Section 2. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Covered person" means a policyholder, subscriber, certificato holder, enrollee, or other individual who is participating in a health benefit plan.

(2) "Health benefit plan" means any individual or group plan, policy, certificate, subscriber contract, contract of insurance provided hy a managed care plan, preferred provider agreement, or health maintenance organization subscriber contract that is issued, delivered, issued for delivery, or renewed in this state by a health carrier that pays for, purchases, or furnishes health care services to covered persons who receive health care services in this state. For the

HeinOnline -- 1997 vol. I 937 1997

purposes of [sections 1 through 8], a health benefit plan located or domiciled outside of the state of Montana is subject to the provisions of [sections 1 through 8] if it receives, processes, adjudicates, pays, or denies claims for health care services submitted by or on behalf of covered persons who reside or who receive health care services in the state of Montana.

(3) "Health carrier" means a disability insurer, health care insurer, health maintenance organization, accident and sickness insurer, fraternal benefit society, nonprofit hospital service corporation, health service corporation, health care service plan, preferred provider organization or arrangement, multiple employer welfare arrangement, or any other person, firm, corporation, joint venture, or similar business entity.

(4) "Obstetrician or gynecologist" means a physician who is board-eligible or board-certified by the American board of obstetrics and gynecology.

(5) "Participating obstetrician or gynecologist" means an obstetrician or gynecologist who is employed by or under contract with a health benefit plan.

(6) "Primary care physician" means a physician who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referrals for specialist care.

**Section 3. Obstetricians or gynecologists as primary care physicians.** (1) Each health benefit plan that provides coverage for primary care or obstetrical or gynecological care must allow obstetricians and gynecologists to participate as primary care physicians. The health carrier that provides the health benefit plan shall contract with a sufficient number of obstetricians and gynecologists to ensure that covered persons have access to the options under this section without unreasonable delay if there are obstetricians or gynecologists practicing in the geographic service areas in which the plan operates who are willing to participate in the plan. An obstetrician or gynecologist may not be required to accept primary care physician status if the obstetrician or gynecologist does not wish to be designated as a primary care physician. A health benefit plan must use the same criteria with regard to credentials and other selection criteria for a participating obstetrician or gynecologist as are applied by the health benefit plan with respect to other physicians who are participating in the health benefit plan. An obstetrician or gynecologist wishing to accept designation as a primary care physician must meet the same criteria with regard to credentials and other selection criteria for a participating primary care physician as other physicians who are participating as primary care physicians in the health benefit plan.

(2) Each health benefit plan must allow a covered person to select any participating obstetrician or gynecologist of the covered person's choice as the covered person's primary care physician.

**Section 4. Self-referral for obstetrical or gynecological care permitted.** (1) A health benefit plan must permit self-referral to any participating obstetrician or gynecologist by a covered person who has not selected a participating obstetrician or gynecologist as the covered person's primary care physician for services covered under the health benefit plan. This self-referral is for the purpose of receiving any obstetrical or gynecological examination or care and primary and preventative obstetrical and gynecological

HeinOnline -- 1997 vol. I 938 1997

services required as a result of any obstetrical or gynecological examination or condition. This self-referral must be allowed without prior authorization or precertification from the health benefit plan or covered person's primary care physician, but the health benefit plan may require the covered person to notify the plan prior to self-referral.

(2) The services covered by this section may be limited to those services defined by the most recent published recommendations of the American college of obstetricians and gynecologists. The self-referral permitted by this section may be limited to one participating obstetrician or gynecologist for obstetrical care and one participating obstetrician or gynecologist for gynecological care of the covered person's choice annually.

(3) The participating obstetrician or gynecologist and the covered person shall comply with the health benefit plan's coordination and referral policies. The health benefit plan may require the participating obstetrician or gynecologist to whom the covered person self-refers to discuss with the covered person's primary care physician any services or treatment the participating obstetrician or gynecologist recommends for the covered person.

(4) Self-referral under this section may not affect the covered person's coverage under the health benefit plan. It is the intent of this section that a covered person must at all times have direct access to the covered services of the participating obstetrician or gynecologist of the covered person's choice under any health benefit plan.

**Section 5. Surcharges not allowed.** A health benefit plan may not impose a surcharge or additional copayments or deductibles upen a covered person who seeks or receives health care services under [section 3 or 4] unless similar surcharges or additional copayments or deductibles are impesed for other types of health care services not described in [sections 3 and 4].

**Section 6. Payment of covered services provided by certified advanced practice registered nurses.** A health benefit plan may not deny payment for covered services provided to a covered person under [sections 3 and 4] by a certified advanced practice registered nurse practicing in collaboration with the participating obstotrician or gynecologist. This section may not be construed to expand the definitions of participating obstetrician or gynecologist or primary care physician in [section 2] to include certified advanced practice registered nurses.

**Section 7. Disclosure.** Each health benefit plan shall disclose in all of its plan literature, in clear, accurate language, the covered person's option to seek the care described in [sections 1 through 8] without preapproval, preauthorization, or referral.

**Section 8. Enforeement.** If the commissioner determines that a health benefit plan does not comply with [sections 1 through 8] or that a health carrier has not complied with a provision of [sections 1 through 8], the commissioner may:

(1) recommend a correction plan that must be followed by the health carrier;

(2) institute corrective action that must be followed by the health carrier;

HeinOnline -- 1997 vol. I 939 1997

(3) suspend or revoke the certificate of authority or deny the health carrier's application for a certificate of authority; or

(4) use any of the commissioner's enforcement powers to obtain the health carrier's compliance with [sections 1 through 8].

**Section 9.** Section 33-22-101, MCA, is amended to read:

**"33-22-101. Exceptions to scope.** Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-130 through 33-22-132, 33-22-243, ~~and~~ 33-22-304, *and [sections 1 through 8]* do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemherment or loss of sight by accident or accidental means; or

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

**Section 10.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, tbe insurance or healtli service corporation laws do not apply to any health maintonance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulatod pursuant to the insurance or health service corporation laws of this state except with respect te its bealth maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by healtli professionals.

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chaptor do not exempt a healtli maintenance organization from the applicable certificate of noed requirements under Title 50, chapter 5, parts 1 and 3.

(5) The provisions of this section do not exempt a health maintenance organization from material transaction disclosure requirements under 33-3-701

through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-701 through 33-3-704.

*(6) The provisions of this section do not exempt a health maintenance organization from the provisions of [sections 1 through 8]."*

**Section 11. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [sections 1 through 8].

**Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 13. Applicability.** [This act] applies to each health benefit plan that is issued, delivered, issued for delivery, or renewed in Montana on or after January 1, 1998.

**Section 14. Effective date.** [This act] is effective on passage and approval.

Approved April 2, 1997

# CHAPTER NO. 199

[HB 63]

AN ACT REALLOCATING THE PROCEEDS OF THE SALES TAX ON NEW MOTOR VEHICLES BY DEPOSITING $1 PER VEHICLE IN A SPECIAL REVENUE ACCOUNT; PROVIDING THAT THE REALLOCATED FUNDS BE USED BY THE DEPARTMENT OF COMMERCE TO ADMINISTER THE NEW VEHICLE WARRANTY LAWS; AMENDING SECTION 61-3-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-502, MCA, is amended to read:

**"61-3-502. Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when the purchaser applies for an original Montana license through the county treasurer. For purposes of this section, "new motor vehicle" means a new motor vehicle for which original registration is sought or a motor vehicle previously furnished without charge by a dealer to a school district for use in a state-approved traffic education program, whether or not titled by the dealer or the school district, and for which original registration is sought.

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 1/8% of the list price during the second quarter of the year;

(c) 3/4 of 1% during the third quarter of the year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) ~~The~~ *The* proceeds from this tax must be remitted to the state treasurer every 30 days ~~for credit~~. *The state treasurer shall deposit $1 of the tax on each new motor vehicle in a special revenue account to be used by the department of commerce in carrying out its duties under Title 61, chapter 4, part 5, with the balance of the proceeds to be credited* to the highway nonrestricted account of the state special revenue fund. The county treasurer shall retain 5% of the taxes collected to pay for the cost of administration.

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) A motor vehicle may not be registered or licensed unless the application for registration is accompanied by a statement of origin that is furnished by the dealer selling the vehicle and that shows that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, firm, corporation, or association other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from the provisions of subsection (1).

(b) Motor vehicles brought or driven into Montana by nonresident, migratory, bona fide agricultural workers who are temporarily employed in agricultural work in this state, when those motor vehicles are used exclusively for transportation of agricultural workers, are also exempt from the provisions of subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from the provisions of subsection (1):

(i) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only; and

(ii) in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business.

(d) Motor vehicles owned or controlled by a special district, as defined in 18-8-202, are exempt from subsection (1).

HeinOnline -- 1997 vol. I 942 1997

(e) A vehicle registered under 61-3-456 is exempt from the provisions of subsection (1)."

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved April 4, 1997

# CHAPTER NO. 200

[HB 532]

AN ACT GENERALLY REVISING THE LAWS RELATING TO MOBILE HOMES AND MANUFACTURED HOMES; DEFINING "MANUFACTURED HOME"; ALLOWING FOR THE UNTITLING AND RETITLING OF A MANUFACTURED HOME; TREATING A MANUFACTURED HOME AS A MOBILE HOME FOR PURPOSES OF TAXATION; CHANGING THE DATES FOR THE PAYMENT OF PERSONAL PROPERTY TAXES ON A MOBILE OR MANUFACTURED HOME; REQUIRING THAT ALL TAXES ON A MOBILE HOME BE PAID BEFORE A TRANSFER OF INTEREST CAN OCCUR; AMENDING SECTIONS 7-13-4502, 15-1-101, 15-6-134, 15-8-201, 15-8-205, 15-16-202, 15-24-201, 15-24-202, 15-24-203, 15-24-204, 15-24-205, 15-24-206, 15-24-208, 15-24-209, 15-24-210, 15-32-102, 61-3-207, 61-3-303, 61-3-503, AND 69-12-331, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Manufactured home.** (1) "Manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(2) A manufactured home does not include a mobile home, as defined in 61-4-309 or 15-1-101, a housetrailer, as defined in 61-1-501, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

**Section 2. Manufactured home considered as improvement to real property — requirements.** (1) A manufactured home will be considered for tax purposes an improvement to real property if:

(a) the running gear is removed; and

(b) the manufactured home is attached to a permanent foundation on land that is owned or being purchased by the owner of the manufactured home or, if the land is owned by another person, with the permission of the landowner.

(2) To eliminate the certificate of ownership of a manufactured home, an owner may file a statement of intent on a form furnished by the department of justice.

(3) The statement of intent must include:

(a) the serial number of the manufactured home;

HeinOnline -- 1997 vol. I 943 1997

(b) the legal description of the real property to which the manufactured home has been permanently attached;

(c) a description of any security interests in the manufactured home; and

(d) approval from all lienholders of the intent to eliminate the title.

(4) The owner shall present the statement of intent to the county treasurer of the county in which the manufactured home is located and shall surrender the certificate of ownership. Upon receipt of a titling fee of $5, the county treasurer shall issue the owner a duplicate receipt for the surrendered certificate and forward a copy of the statement of intent, the original receipt, and the surrendered certificate to the department of justice. The county treasurer may not issue the receipt unless all taxes, interest, and penalties on the manufactured home have been paid in full. The county treasurer shall:

(a) deposit $1.50 of the titling fee in the county general fund; and

(b) remit $3.50 of the titling fee to the state treasurer for deposit in the state general fund.

(5) Upon the recording of the statement of intent and the receipt of surrender, the manufactured home may not be physically removed without the consent of all persons who have an interest in the manufactured home.

(6) A manufactured home that has been declared an improvement to real property in accordance with this section must be treated by the department and by lending institutions in the same manner as any other residence that is classified as an improvement.

**Section 3. Reversal of declaration — exception.** (1) Before a manufactured home can be physically removed from its location, the owner shall obtain a search of the title to the land from a title insurance company in order to identify those persons or entities whose consent for removal must be obtained. The owner shall obtain permission in writing from the affected persons or entities before removing the manufactured home from its location.

(2) At least 30 days before the manufactured home is removed, the owner shall give written notice to the department and the county treasurer in which the home is currently located, of the intended removal of the home. The written notice must include the written consents of the affected persons or entities identified in subsection (1). The owner may not remove the home until the written consents are received and all of the taxes that have been assessed have been paid in full to the county treasurer.

(3) Within 5 days of the removal of the home, the purchaser shall make a declaration of reversal and apply for a certificate of ownership for the manufactured home from the department of justice in accordance with the provisions of Title 61, chapter 3, part 2.

**Section 4. Exception to certificate of ownership requirements for manufactured homes.** (1) A manufactured home is subject to the provisions of this part unless the manufactured home has been declared an improvement to real property in accordance with the provisions of [section 2].

HeinOnline -- 1997 vol. I 944 1997

(2) A manufactured home that has been classified as personal property is subject to the provisions of this part.

**Section 5.** Section 7-13-4502, MCA, is amended to read:

**"7-13-4502. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board of directors" means the board of directors provided for in 7-13-4516 or a joint board of directors provided for in 7-13-4527.

(2) "Board of environmental review" means the board of environmental review as provided in 2-15-3502.

(3) "Commissioners" means the board of county commissioners or the governing body of a city-county consolidated government.

(4) "Family residential unit" means a single-family dwelling.

(5) "Fee-assessed units" means all real property with improvements, including taxable and tax-exempt property as shown on the property assessment records maintained by the county, and mobile homes *and manufactured homes* as defined in 15-24-201.

(6) "Local water quality district" means an area established with definite boundaries for the purpose of protecting, preserving, and improving the quality of surface water and ground water in the district as authorized by this part."

**Section 6.** Section 15-1-101, MCA, is amended to read:

**"15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

HeinOnline -- 1997 vol. I 945 1997

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes *and manufactured homes* used exclusively as a residence except when held by a distributor or dealer ~~of trailers or mobile homes~~ as stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and hest use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) (i) "Department", except as provided in suhsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, *manufactured homc,* or housetrailer has been established, the mobile home, *manufactured home,* or housetrailer is presumed to he an improvement to real property. A mobile home, *manufactured home,* or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

HeinOnline -- 1997 vol. I 946 1997

*(l) The term "manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards. A manufactured home does not include a mobile home, as defined in 61-4-309 and in subsection (1)(m) of this section, a housetrailer, as defined in 61-1-501, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.*

~~(l)~~*(m)* The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

~~(m)~~*(n)* The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

~~(n)~~*(o)* The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

~~(o)~~*(p)* The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

~~(p)~~*(q)* The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

~~(q)~~*(r)* "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

*(s) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.*

HeinOnline -- 1997 vol. I 947 1997

~~(r)~~*(t)* The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board."

**Section 7.** Section 15-6-134, MCA, is amended to read:

**"15-6-134. Class four property — description — taxable percentage.** (1) Class four property includes:

(a) all land, except that specifically included in another class;

(b) all improvements, including trailers, *manufactured homes,* or mobile homes used as a residence, except those specifically included in another class;

(c) the first $100,000 or less of the market value of any improvement on real property, including trailers, *manufactured homes,* or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection *(1)*(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 3,000 lineal yards; and

(e) all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a), (1)(b), and (1)(e) is taxed at 3.86% of its market value.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

HeinOnline -- 1997 vol. I 948 1997

| Income Single Person | Income Married Couple Head of Household | Percentage Multiplier |
|---|---|---|
| $ 0 - $ 6,000 | $ 0 -$ 8,000 | 20% |
| 6,001 - 9,200 | 8,001 - 14,000 | 50% |
| 9,201 - 15,000 | 14,001 - 20,000 | 70% |

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

**Section 8.** Section 15-8-201, MCA, is amended to read:

"**15-8-201. General assessment day.** (1) The department shall, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department shall assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1. The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1. A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

(2) The procedure provided by this section does not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

HeinOnline -- 1997 vol. I 949 1997

(f) mobile homes *and manufactured homes* held by a distributor or dealer ~~of mobile homes~~ as stock in trade; and

(g) property subject to the provisions of 15-16-203.

(3) Credits must be assessed as provided in 15-1-101(1)(f)."

**Section 9.** Section 15-8-205, MCA, is amended to read:

**"15-8-205. Initial assessment of class four trailer, *manufactured home,* and mobile home property — when.** The department shall assess all class four trailer, *manufactured home,* and mobile home property immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana."

**Section 10.** Section 15-16-202, MCA, is amended to read:

**"15-16-202. Boats, snowmobiles, and motor vehicles — payment of current and back taxes and fees.** (1) The fee in lieu of personal property taxes assessed against a boat for the year in which application for decals is made and the immediately previous year must be paid before license decals may be issued pursuant to 23-2-515.

(2) The fee in lieu of tax imposed on a snowmobile for the year in which application for registration is made and the immediately previous year must be paid before a snowmobile may be registered pursuant to 23-2-616.

(3) Except for mobile homes *and manufactured homes* as defined in 15-1-101, the new motor vehicle sales tax and the personal property tax or fee in lieu of tax imposed or assessed against a motor vehicle for the current year and the immediately previous year must be paid before a motor vehicle may be registered or reregistered pursuant to 61-3-303.

(4) The provisions of subsections (1) through (3) do not require payment of the immediately previous year's taxes or fees if ~~such~~ *the* taxes or fees have already been paid."

**Section 11.** Section 15-24-201, MCA, is amended to read:

**"15-24-201. Definitions.** As used in this part, the following definitions apply:

(1) "Dealer" means a person engaged in the distribution or sale of mobile homes *or manufactured homes.*

(2) "Housetrailer" means a form of housing designed to be moved from one place to another by an independent power connected ~~thereto~~ *to the housetrailer,* which is either 8 feet wide or less or ~~32~~ *45* feet long or less.

*(3) "Manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards. A manufactured home does not include a mobile home or a housetrailer.*

~~(3)~~*(4)* "Mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or ~~32~~ *45* feet in

HeinOnline -- 1997 vol. I 950 1997

length, designed to be moved from one place to another by an independent power connected ~~thereto~~ *to the mobile home or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.*"

**Section 12.** Section 15-24-202, MCA, is amended to read:

"**15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker.** (1) (a) The owner of a mobile home, *manufactured home,* or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206.

(b) The first payment is due *on or before May 31 or* within 30 days from the date of the notice of taxes due, *whichever is later.*

(c) The second payment is due no later than ~~September~~ *November* 30 of the year in which the property is assessed.

(d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

(2) Upon request, the treasurer shall notify a lienholder if taxes on a mobile home, *manufactured home,* or housetrailer have not been paid.

(3) Taxes assessed against a mobile home *or manufactured home* after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

(4) The department of revenue shall issue tax-paid stickers to the county treasurers. Except as provided in 15-24-206 and 15-24-209, if a mobile home, *manufactured home,* or housetrailer is to be moved and all taxes, interest, and penalties on the mobile home or housetrailer are paid in full, the treasurer shall issue a tax-paid sticker to the owner of the mobile home, *manufactured home,* or housetrailer. Prior to and while in the process of moving the mobile home, *manufactured home,* or housetrailer, the owner shall display the tax-paid sticker, which must be visible from the exterior of the mobile home, *manufactured home,* or housetrailer. ~~No~~ *A* mobile home *or manufactured home* movement declaration of destination provided for in 15-24-206 may *not* be issued unless:

(a) the taxes have been paid in full to the county treasurer; or

(b) the exceptions in 15-24-206(3) or 15-24-209 apply.

(5) On the movement of a mobile home, *manufactured home,* or housetrailer in violation of this part, the county treasurer for the county where the mobile home, *manufactured home,* or housetrailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or $50, whichever is greater, must be added to the delinquent taxes as penalty for violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward

HeinOnline -- 1997 vol. I 951 1997

all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty."

**Section 13.** Section 15-24-203, MCA, is amended to read:

**"15-24-203. Tax receipt — when production required.** If stopped on a highway or at a state vehicle weight station by a state highway patrol officer or state vehicle weight station attendant, a person transporting a mobile home, *manufactured home,* or housetrailer ~~must~~ *shall* produce, if requested, the property-tax-paid receipt or a duplicate issued by the county treasurer where the vehicle was taxed."

**Section 14.** Section 15-24-204, MCA, is amended to read:

**"15-24-204. Failure to display or produce declaration, sticker, or receipt — penalty.** (1) Whoever makes a false or fraudulent declaration of destination or, when required, fails to execute a declaration of destination or fails to display or produce a declaration of destination or tax-paid receipt, if a tax-paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than 6 months or by a fine of not more than $500, or both.

(2) Whoever fails to display a property-tax-paid sticker while in the process of moving a mobile home, *manufactured home,* or housetrailer or to produce a property-tax-paid receipt from 15 days after the due date for personal property taxes of 1 year to the due date for personal property taxes of the next year, when the display of a tax-paid receipt is required, commits a misdemeanor punishable by a fine of not less than $10 or more than $50 or confinement in the county jail for not more than 30 days or both ~~such~~ *a* fine and imprisonment."

**Section 15.** Section 15-24-205, MCA, is amended to read:

**"15-24-205. Sections limited to taxable trailers *and manufactured homes*.** The provisions of this part ~~shall~~ apply only to those mobile homes, *manufactured homes,* and housetrailers, as defined in this part, subject to assessment and taxation under chapter 8, part 2, and 15-24-301."

**Section 16.** Section 15-24-206, MCA, is amended to read:

**"15-24-206. Declaration of destination on imported mobile homes *and manufactured homes* — display — tax receipt — exemptions.** (1) A person who brings a mobile home *or manufactured home* into the state shall immediately upon arrival in the state execute a written declaration, verified under oath, stating the destination of the mobile home *or manufactured home* and any other information the department of revenue may require and shall deliver the original of the declaration to whomever is on duty at the nearest port of entry station, state vehicle weight station, or other place the department may prescribe. ~~He~~ *The person* shall also immediately upon arrival in the state affix a copy of the declaration to the mobile home *or manufactured home* at a conspicuous place.

(2) The treasurer shall issue the mobile home *or manufactured home* movement declaration provided for in this section to a person required by this section to execute it, in quantities ~~he~~ *the person* requests to a maximum of 100.

HeinOnline -- 1997 vol. I 952 1997

The treasurer shall issue additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. Executed declarations must be delivered to the treasurer within 30 days from their issue.

(3) A person who moves a mobile home *or a manufactured home* from a point within the state to another point within or ~~without~~ *outside of* the state shall first:

(a) execute the declaration provided for in subsection (1), deliver the original of it to the treasurer of the county in which the move originates or to any other person the department ~~may prescribe~~ *prescribes*, and affix a copy of it in a conspicuous place on the mobile home *or manufactured home* to be moved;

(b) obtain from the county treasurer of the county in which the move originates a receipt showing:

(i) payment in full of property taxes with respect to that mobile home *or manufactured home*; or

(ii) payment of the property taxes provided for in 15-24-209.

(4) The provisions of subsection (3)(b) do not apply whenever a person moves a mobile home *or manufactured home*:

(a) from a point ~~without~~ *outside of* to a point within the state;

(b) between places of business of dealers within or ~~without~~ *outside of* the state;

(c) from the place of business of a dealer to a point within or ~~without~~ *outside of* the state; or

(d) pursuant to the repossession of a mobile home *or manufactured home*, unless the treasurer has furnished the lienholder or secured party with timely notice of the delinquent tax due when information has been requested under 15-24-202(2)."

**Section 17.** Section 15-24-208, MCA, is amended to read:

**"15-24-208. Penalty for moving mobile home *or manufactured home* on which taxes due.** Any person ~~that~~ *who* moves a mobile home *or manufactured home* on which property taxes are unpaid is guilty of a misdemeanor."

**Section 18.** Section 15-24-209, MCA, is amended to read:

**"15-24-209. Limit on delinquent mobile home *or manufactured home* taxes chargeable to security interest holder.** The holder of a perfected security interest in a mobile home, *manufactured home,* or housetrailer who repossesses the mobile home, *manufactured home,* or housetrailer as provided by law and as authorized in the contract between the owner and the secured party may not be required to pay delinquent property taxes for more than 3 years as a condition of moving the mobile home, *manufactured home,* or housetrailer or transferring it to another person. Any additional delinquent taxes due upon the mobile home, *manufactured home,* or housetrailer are a lien upon

HeinOnline -- 1997 vol. I 953 1997

any other personal or real property of the person who was required by law to pay the delinquent taxes at the time the taxes were due."

**Section 19.** Section 15-24-210, MCA, is amended to read:

**"15-24-210. Notice of impending sale to certain lienholders.** After entry of a notation under 15-16-115(2) concerning a mobile home *or manufactured home* that is not taxed as an improvement to real property but before directing the sheriff to make a levy and sale on the mobile home *or manufactured home*, the treasurer shall notify a person who has a properly perfected security interest in the mobile home *or manufactured home* and who has furnished the treasurer a copy of the instrument by which the interest was perfected of the levy and sale. The notice must state that the sheriff may soon be requested to make a levy and sale on the mobile home *or manufactured home*."

**Section 20.** Section 15-32-102, MCA, is amended to read:

**"15-32-102. Definitions.** As used in this part, the following definitions apply:

(1) "Building" means a single or multiple dwelling, including a mobile home *or manufactured home*, or a building used for commercial, industrial, or agricultural purposes, that is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or both of the following results of an investment:

(a) reducing the waste or dissipation of energy; or

(b) reducing the amount of energy required to accomplish a given quantity of work.

(4) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building.

(5) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(6) "Low emission wood or biomass combustion device" means a noncatalytic stove or furnace that:

(a) (i) is specifically designed to burn wood pellets or other nonfossil biomass pellets; and

(ii) has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and

efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203; or

(iii) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of environmental quality pursuant to 15-32-203; or

(b) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of environmental quality pursuant to 15-32-203.

(7) "Recognized nonfossil forms of energy generation" means:

(a) a system that captures energy or converts energy sources into usable sources by using solar energy, including passive solar systems; wind; solid waste; or the decomposition of organic wastes;

(b) a system that produces electric power from solid wood wastes; or

(c) a small system that uses water power by means of an impoundment that is not over 20 acres in surface area."

**Section 21.** Section 61-3-207, MCA, is amended to read:

"**61-3-207. Mobile home or housetrailer — transfer of interest.** (1) Upon a transfer of any interest in a mobile home or housetrailer under the provisions of this chapter, the application for the transfer must be made through the county treasurer's office in the county in which the mobile home or housetrailer is located at the time of the transfer. *The county treasurer may not accept the application unless all taxes, interest, and penalties that have been assessed on the mobile home or housetrailer have been paid in full.*

(2) When a mobile home or housetrailer is sold under contract or under ~~such~~ conditions that title is not immediately conveyed, the parties to the transaction shall immediately file with the county clerk and recorder a notice of intention to transfer title. The notice must indicate the name of the party who is responsible for payment of taxes upon the mobile home or housetrailer after the transfer. The clerk and recorder shall immediately notify the department of revenue of the information in the notice. The penalty provisions of 61-3-201(2) do not apply if the notice of intent to transfer is filed with the county clerk and recorder within 20 days after the transfer."

**Section 22.** Section 61-3-303, MCA, is amended to read:

"**61-3-303. Application for registration.** (1) Each owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file or cause to be filed in the office of the county treasurer where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application must contain:

HeinOnline -- 1997 vol. I 955 1997

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the rated capacity is 1 ton or less, and type of body and, if a truck, rated capacity;

(d) declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733; and

(e) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home *or a manufactured home* as *those terms are* defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456; and

(b) except as provided in 61-3-456 or unless it has been previously paid:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department of revenue may not assess and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department of revenue may make full and complete investigation of the tax status of the vehicle. An applicant for registration or reregistration shall submit proof from the tax or other appropriate records of the proper county at the request of the department of revenue."

**Section 23.** Section 61-3-503, MCA, is amended to read:

**"61-3-503. Assessment.** (1) Except as provided in 61-3-520 and subsection (2) of this section, the following apply to the taxation of motor vehicles:

HeinOnline -- 1997 vol. I 956 1997

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing the application with the county treasurer submit the application to the department of revenue. The department of revenue shall enter on the application in a space to he provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(h) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. A motor vehicle is not subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or another nationally published used vehicle or appraisal guide approved by the department of revenue or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the department of revenue, and depreciated 10% a year until a value of $500 is reached, not including additions or deductions for options and mileage but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines; and a lien for taxes and fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) Quadricycles must be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide or another nationally published used vehicle or appraisal guide approved by the department of revenue, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage is 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides or other approved guides referred to in this

HeinOnline -- 1997 vol. I 957 1997

subsection (1). For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value must remain at that minimum as long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value must remain at that amount as long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motorcycles, motor homes, travel trailers, campers, or mobile homes *or manufactured homes* as *those terms are* defined in 15-1-101(1)."

**Section 24.** Section 69-12-331, MCA, is amended to read:

"69-12-331. **Special provisions relating to transportation of buildings.** A certificate that permits the transportation of a building other than a mobile home *or a manufactured home*, as defined in 15-1-101, from its existing foundation to a new location must permit transportation throughout the state and may not restrict transportation to a particular region of the state."

**Section 25. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 61, chapter 1, part 5, and the provisions of Title 61, chapter 1, part 5, apply to [section 1].

(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [sections 2 and 3].

(3) [Section 4] is intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [section 4].

**Section 26. Effective date.** [This act] is effective January 1, 1998.

Approved April 4, 1997

# CHAPTER NO. 201

[HB 224]

AN ACT AMENDING FIRE AND SAFETY REQUIREMENTS FOR FUEL TANKS ON FARMS AND RANCHES; PROVIDING FOR WRITTEN WARNING NOTICES FOR FARM AND RANCH TANK VIOLATIONS; AMENDING SECTION 50-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-3-103, MCA, is amended to read:

HeinOnline -- 1997 vol. I 958 1997

"**50-3-103. Rules promulgated by department.** (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. They must include but are not limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire extinguishers, fire alarm systems, and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film; combustible fibers; hazardous chemicals or materials; rubbish; open-flame devices; parking of vehicles; dust explosions; lightning protection; storage of smokeless powder and small arms primers; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of commerce and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

*(5) Rules promulgated by the department may not require diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, as defined in the uniform fire code, intended only for private use on farms and ranches.*

~~(5)~~*(6)* A person violating any rule made under the provisions of this part is guilty of a misdemeanor."

**Section 2. Notice of violations.** (1) When the storage of class I or class II liquids, as defined in the uniform fire code, in a tank on a farm or ranch is not in compliance with rules promulgated by the department of justice, the person making the inspection or the department shall serve a written warning notice upon the owner or operator of the tank.

(2) The notice must specify the violations found and the time within which the violations must be corrected. A penalty may not be imposed if the violation is corrected within the time period allowed.

**Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 50, chapter 62, part 1, and the provisions of Title 50, chapter 62, part 1, apply to [section 2].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1997

HeinOnline -- 1997 vol. I 959 1997

# CHAPTER NO. 202

[SB 117]

AN ACT DESIGNATING THE FOURTH FRIDAY IN SEPTEMBER OF EACH YEAR AS "AMERICAN INDIAN HERITAGE DAY" IN THE STATE OF MONTANA; AMENDING SECTION 20-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Article X, section 1(2), of the Montana Constitution recognizes the distinct and unique cultural heritage of American Indians and commits the state in its educational goals to the preservation of their cultural integrity; and

WHEREAS, the 1975 Legislature enacted House Joint Resolution No. 57, designating the fourth Friday in September of each year as "Native American Indian Day"; and

WHEREAS, despite the resolution, the knowledge of this important history and culture is gradually being lost to citizens of the State of Montana, to the detriment of both the American Indian and non-Indian citizens of the State of Montana; and

WHEREAS, the history and culture of American Indians are an integral part of the history of the nation and the State of Montana; and

WHEREAS, the Legislature recognizes that all Montanans have an invaluable opportunity for cultural enrichment through contact with the culture and philosophy of American Indians.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-1-306, MCA, is amended to read:

**"20-1-306. Commemorative exercises on certain days.** (1) All districts shall conduct appropriate exercises during the school day on the following commemorative days:

(a) Lincoln's Birthday (February 12);

(b) Washington's Birthday (February 22);

(c) Arbor Day (last Friday in April);

(d) Flag Day (June 14);

(e) Citizenship Day (September 17);

*(f) American Indian Heritage Day (fourth Friday in September);*

~~(f)~~*(g)* Columbus Day (October 12);

~~(g)~~*(h)* Pioneer Day (November 1);

~~(h)~~*(i)* ~~Other~~ *other* days designated by the legislature or governor as legal holidays.

(2) When these commemorative days fall on Saturday or Sunday, exercises may be conducted the preceding Friday."

HeinOnline -- 1997 vol. I 960 1997

**Section 2. Notification of tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1997

# CHAPTER NO. 203

[HB 316]

AN ACT INCREASING TO $50,000 THE THRESHOLD AT WHICH BIDDING IS REQUIRED FOR THE CONSTRUCTION, REPAIR, OR MAINTENANCE, BY A COUNTY, OF A BUILDING, ROAD, OR BRIDGE; AND AMENDING SECTION 7-5-2301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-5-2301, MCA, is amended to read:

**"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts.** (1) Except as provided in 7-5-2304, a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies in excess of $20,000 or for the construction, *repair, or maintenance* of any building, road, or bridge in excess of ~~$25,000 or for the repair or maintenance of any building, road, or bridge in excess of $45,000~~ *$50,000* may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Every contract subject to bidding must be let to the lowest and best responsible bidder."

Approved April 7, 1997

# CHAPTER NO. 204

[SB 223]

AN ACT CLARIFYING THE AUTHORITY OF THE MONTANA COAL BOARD TO ASSIST LOCAL GOVERNMENTAL UNITS IN PROVIDING SERVICES NECESSITATED BY A SIGNIFICANT DECLINE IN COAL MINING OR IN THE CONSUMPTION OF COAL BY COAL-USING ENERGY COMPLEXES; ELIMINATING THE COAL BOARD'S AUTHORITY TO MAKE LOANS TO LOCAL GOVERNMENTAL UNITS; AMENDING SECTIONS 90-6-201, 90-6-205, 90-6-206, 90-6-207, 90-6-208, AND 90-6-209, MCA; REPEALING SECTION 90-6-212, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 90-6-201, MCA, is amended to read:

HeinOnline -- 1997 vol. I 961 1997

"**90-6-201. Purpose.** The purposes of this part are to assist local governmental units that have been required to expand the provision of public services as a consequence of large-scale development of coal mines and coal-using energy complexes *or as a consequence of a major decline in coal mining or in the operation of coal-using energy complexes*, to assist in the construction and reconstruction of designated portions of highways that serve the area affected by the large-scale development, to support county land planning, and to support public schools throughout the state."

**Section 2.** Section 90-6-205, MCA, is amended to read:

"**90-6-205. Coal board — general powers.** The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from available funds;

~~(4) consider applications for loans from available funds for periods and interest rates to be determined by the board; and~~

~~(5)~~*(4)* award grants ~~and loans~~, subject to 90-6-207, from available funds:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development *or a major decline in coal mining or in the operation of coal-using energy complexes* by enabling them to adequately provide governmental services and facilities that are needed as a direct consequence of *an increase or decrease in* coal development *or in the consumption of coal by a coal-using energy complex*; and

(b) notwithstanding the provisions of 90-6-207, to the department of transportation, established in 2-15-2501, to expedite the construction, repair, and maintenance of deficient sections of highway within the area designatod in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; and

~~(5)~~*(5)* award a grant to a local ~~government~~ *governmental* unit for the purpose of paying for part or all of the credit that the local ~~government~~ *governmental* unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board ~~must~~ *shall* award the grant in accordance with 90-6-206."

**Section 3.** Section 90-6-206, MCA, is amended to read:

"**90-6-206. Basis for awarding grants ~~or loans~~.** (1) Grants ~~and loans~~ ~~shall~~ *must* be awarded on the basis of:

(a) need;

(b) degree of severity of impact from ~~the~~ *an increase or decrease in* coal development *or in the consumption of coal by a coal-using energy complex*;

(c) availability of funds; and

(d) degree of local effort in meeting these needs.

HeinOnline -- 1997 vol. I 962 1997

(2) In determining the degree of local effort, the board shall review the millage rates levied for the present fiscal year in relation to the average millage rates levied during the 3 years immediately preceding ~~coal development in that area or 1970, whichever is later, which impacts the local government unit applying for assistance~~ *the year of application for assistance.*

(3) Millage rates for the present fiscal year ~~which~~ *that* are lower than the average millage rate levied during the 3 years immediately preceding ~~coal development in that area or 1970, whichever is later, shall~~ *the year of application for assistance must* be ~~deemed~~ *considered* by the board to indicate the lack of local effort. The application under ~~such~~ *these* circumstances may be rejected.

(4) Further, in determining the degree of local effort, the board shall consider the possibility of requiring that local ~~government~~ *governmental* unit to increase its bonded indebtedness to provide all or part of the governmental service or facility ~~which~~ *that* is needed as a direct consequence of *an increase or decrease in* coal development *or in the consumption of coal by a coal-using energy complex.*

(5) To the extent *that* funds are needed to evaluate and plan for the impact needs caused by *the increase or decrease in* coal development *or in the consumption of coal by a coal-using energy complex*, consideration of bond issues and millage levies may be waived.

(6) To the extent *that* the applicant has no history of mill levies, subsections (2) and (3) do not apply."

**Section 4.** Section 90-6-207, MCA, is amended to read:

**"90-6-207. Priorities for impact grants.** (1) The department of commerce shall ~~annually~~ *biennially* designate:

(a) each county, incorporated city and town, school district, and other governmental unit that has had or expects to have as a result of the impact of coal development a net increase *or decrease* in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of environmental quality for a project within the county that will establish a new coal mine to produce at least 300,000 tons a year and that the department of commerce determines will commence production within 2 years;

(ii) the department of commerce has determined that the production of an existing mine will increase *or decrease* by at least 1 million tons a year and that the ~~new or expanded~~ *new, expanded, or reduced* production will commence within 2 years of the designation;

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

(iv) a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of environmental review for a new steam-generating or other new coal-burning facility that will consume at least 1 million tens a year of Montana-mined coal

HeinOnline -- 1997 vol. I 963 1997

and for which the department of commerce determines the construction or operation will commence within 2 years of the designation;

(c) each local governmental unit located within 100 miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), (1)(b)(ii), or (1)(b)(iv); and

(d) each local governmental unit in which:

(i) a mine that has produced 300,000 tons or more of coal a year has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

(3) ~~(a) Except as provided in 90-6-205(5)(b), beginning July 1, 1993, and ending June 30, 1995, the coal board may not award more than 20% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).~~

~~(b)~~ Except as provided in 90-6-205~~(5)(b)~~*(4)(b)*, ~~beginning July 1, 1995, and thereafter,~~ the ~~coal~~ board may not award more than ~~10%~~ *50%* of the funds appropriated to it each year for grants ~~and loans~~ to governmental units and state agencies for meeting the needs caused by *an increase or decrease in* coal development *or in the consumption of coal by a coal-using energy complex* to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

HeinOnline -- 1997 vol. I 964 1997

(e) one consecutive 3-year period ending ~~2~~ calendar years after the current calendar year.

(5) Attention should be given by the ~~coal~~ board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth *or decline* problems.

(6) All funds appropriated under this part are for use related to local impact.

(7) All designations *based on an increase in coal development or in the consumption of coal by a coal-using energy complex* made under *subsection (1)(a), (1)(b), or (1)(c)* ~~this section~~ must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated ~~government~~ *governmental* unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local gevernmental units continue to be eligible for coal impact grants ~~and loans~~ of not more than ~~20% and beginning July 1, 1995, not more than 10%~~ *50%* of the funds appropriated to the ~~coal~~ board for grants ~~and loans~~ in circumstances in which~~:~~

~~(a)~~ an impact exists in a community or area directly affected by*:*

*(a)* the operation of a coal mine or ~~mines~~ *a coal-using energy complex*; or

(b) ~~tax revenue is not available to mitigate the impact due to the closure of a mine or facility~~ *the cessation or reduction of coal mining activity or of the operation of a coal-using energy complex.*"

**Section 5.** Section 90-6-208, MCA, is amended to read:

"**90-6-208. Applications for grants ~~or loans~~.** The governing body of a city, town, county, *or* school district, any other local or state governmental unit or agency, or the governing body of a federally recognized Indian tribe may apply for a grant ~~or a loan~~ to enable it to provide governmental services ~~which~~ *that* are needed as a direct consequence of *an increase or decrease of* coal development *or of an increase or decrease in the consumption of coal by a coal-using energy complex*. The ~~coal~~ board shall prescribe the form for applications. Applicants shall describe the nature of their proposed expenditures and the time involved."

**Section 6.** Section 90-6-209, MCA, is amended to read:

"**90-6-209. Limitations on grants ~~and loans~~.** (1) The board may commit itself to the expenditure of funds for more than 1 year for a single project, ~~as long as the grant or loan does not extend over more than 10 years and does not exceed reasonable revenue expectations~~ *but the board may not obligate funds not yet appropriated by the legislature.* The total amount of grants ~~and loans~~ to state agencies, except grants made pursuant to 90-6-205~~(5)(b)~~*(4)(b)*, and Indian tribes may not exceed 7% of the total money allocated to the board during each fiscal year.

~~(2) (a) No loan may be approved by the board if the source of money for repayment would be derived from property taxes. Repayment may be made from fees, rentals, admissions, use charges, and special assessments.~~

HeinOnline -- 1997 vol. I 965 1997

~~(b) The repayment period for loans approved by the board may not exceed 20 years.~~

~~(c) The board shall hold all loan contracts within its administrative offices. The board may not sell, assign, or pledge a loan contract to any other entity.~~

~~(d) A local government unit or the governing body of a federally recognized Indian tribe receiving a loan from the board shall use or commit for use the loan money within 1 year of the date of the board's final approval of the loan.~~

~~(e) If a local government unit or the governing body of a federally recognized Indian tribe fails to comply with subsection (2)(d), the entire loan must be repaid within 30 days following expiration of the 1-year period.~~

~~(3)~~*(2)* ~~No loan or~~ *A* grant to an Indian tribe under 90-6-205 may *not* be approved by the board unless~~, with respect to that loan or grant~~:

(a) the governing body of the tribe has agreed:

(i) to waive its immunity from suit on any issue specifically arising from the transaction of a ~~loan or~~ grant obtained under this part; and

(ii) to the adjudication of any dispute arising out of the ~~loan or~~ grant transaction in the district court of the first judicial district of the state of Montana; and

(b) approval of the transaction has been obtained from the secretary of the United States department of the interior whenever ~~such~~ approval is necessary."

**Section 7. Repealer.** Section 90-6-212, MCA, is repealed.

**Section 8. Effective date.** [This act] is effective July 1, 1997.

Approved April 7, 1997

# CHAPTER NO. 205

[SB 264]

AN ACT AUTHORIZING THE GOVERNOR TO CREATE AND PARTICIPATE IN THE WESTERN GOVERNORS' UNIVERSITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Western governors' university.** The governor is authorized to act in consort with the governors of other states to create an entity to facilitate the provision of higher education services by electronic means to the residents of Montana and other states. The governor may take any steps necessary for Montana to join the entity that is created, including the payment of a fee, assessment, or other charge required for membership. It is anticipated that the entity will be called the western governors' university, but this authorization is not dependent on the entity being known by any specific name.

HeinOnline -- 1997 vol. I 966 1997

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 7, 1997

# CHAPTER NO. 206

[HB 466]

AN ACT ALLOWING A LOCAL GOVERNMENT TO SELECT AN ENGINEER FROM AN APPROVED LIST TO CONDUCT AN ENGINEERING AND TRAFFIC INVESTIGATION; REQUIRING THE ENGINEER TO SUBMIT A REPORT TO THE TRANSPORTATION COMMISSION; REQUIRING THE COMMISSION TO ACT ON THE FINDINGS WITHIN 120 DAYS; AND AMENDING SECTION 61-8-309, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-309, MCA, is amended to read:

**"61-8-309. Establishment of special speed zones.** (1) (a) If the ~~department of transportation~~ *commission* determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, dangerous location, or any other part of a highway under its jurisdiction, the commission may set a reasonable and safe special speed limit at that location.

(b) If a local authority requests the department of transportation *or an engineer, as provided in subsection (1)(c)(i),* to conduct an engineering and traffic investigation based on the belief that a speed limit ~~on a highway under the department's jurisdiction~~ *on a highway under the department's jurisdiction* is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

*(c) (i) A local authority may request at its own expense that an engineering and traffic investigation be completed by a licensed professional engineer selected from a list compiled and approved by a committee as provided in subsection (1)(c)(ii).*

*(ii) A committee containing two department of transportation staff appointed by the director and two representatives of associations whose membership comprises cities, towns, and counties, as authorized by 7-5-2141 and 7-5-4141, shall review credentials submitted by licensed professional engineers and shall determine who appears on the list of individuals authorized to conduct engineering and traffic investigations for local governments. The list must be completed by October 1, 1997, and must be updated every 2 years.*

*(iii) Upon completion of an engineering and traffic investigation conducted for a local government, the department of transportation shall submit a report to the commission with findings and recommendations. The commission shall*

HeinOnline -- 1997 vol. I 967 1997

*decide on an appropriate speed limit based on the traffic investigation within 120 days from the date the investigation is submitted to the department.*

(2) The department of transportation shall erect and maintain appropriate signs giving notice of these special limits. When they are erected, the limits are effective at that part at all times or at other times that the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit."

Approved April 7, 1997

# CHAPTER NO. 207

[HB 478]

AN ACT REVISING THE DEFINITION OF "GLASS BROKER"; REVISING THE PRACTICES FROM WHICH CERTAIN PERSONS ENGAGED IN THE SALE, REPAIR, OR REPLACEMENT OF AUTOMOBILE GLASS ARE PROHIBITED; AND AMENDING SECTIONS 30-14-225 AND 33-18-223, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-14-225, MCA, is amended to read:

"**30-14-225. Prohibited practices — advertising allowed.** (1) A person engaged in the sale, repair, or replacement of automobile glass may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; or

(b) pay a sum or incentive to an individual or entity for directing glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A ~~person~~ *glass broker, as defined in 33-18-223,* may not manage, handle, or arrange automobile glass replacement or glass repair work for which the ~~person~~ *glass broker* retains a percentage of the claim ~~or a set fee paid by the insurance company to the glass repair shop for an amount in excess of the amount paid to the glass repair shop~~."

**Section 2.** Section 33-18-223, MCA, is amended to read:

"**33-18-223. Prohibited activities — glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

HeinOnline -- 1997 vol. I 968 1997

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with ~~any person~~ *a glass broker* that requires a glass repair shop to bill through that ~~person~~ *glass broker* as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the lowest prevailing market price as provided in 33-18-222.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer ~~for~~ *whenever* the ~~purpose of entering~~ *glass broker enters* into agreements with other automobile glass dealers to perform glass replacement or glass repair work."

Approved April 7, 1997

# CHAPTER NO. 208

[HB 496]

AN ACT ALLOWING EMPLOYEES OF COUNTY HOSPITALS OR REST HOMES IN CERTAIN CLASSES OF COUNTIES TO NOT BECOME MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTION 19-3-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-3-412, MCA, is amended to read:

"**19-3-412. Optional membership.** The following employees in covered employment may become members of the retirement system at their option at any time during their employment in a covered position by filing a membership card with the board:

(1) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(2) part-time employees serving in employment that does not exceed the equivalent of 120 working days in any fiscal year;

(3) employees directly appointed by the governor;

(4) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(5) the chief administrative officer of any city or county;

(6) employees of county hospitals or rest homes in *counties of* the ~~sixth and seventh class counties~~ *third, fourth, fifth, sixth, and seventh class*."

HeinOnline -- 1997 vol. I 969 1997

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 7, 1997

# CHAPTER NO. 209

[SB 120]

AN ACT PROVIDING AN EXCEPTION FROM THE REQUIREMENT THAT AN EMPLOYEE WHO IS SEPARATED FOR CAUSE OR LAID OFF FROM EMPLOYMENT BE PAID ALL UNPAID WAGES IMMEDIATELY UPON SEPARATION IF A WAGE PAYMENT PROVISION IS PROVIDED FOR IN THE EMPLOYER'S WRITTEN PERSONNEL POLICY MANUAL; CLARIFYING THE PROVISIONS FOR PAYMENT OF UNPAID WAGES; AND AMENDING SECTION 39-3-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-3-205, MCA, is amended to read:

**"39-3-205. Payment of wages when employee separated from employment prior to payday — ~~exception~~ *exceptions*.** (1) ~~Except as provided in subsections (2) and (3), when an employee is separated from the employ of any employer, all the unpaid wages of the employee are due and payable within 3 days, except for employees of the state of Montana and its political subdivisions who would be paid on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee. However, if an employer's payroll checks originate at an office outside the state, the time provided in this section for payment of wages must be extended for 3 additional days.~~

~~(2) Except as provided in subsection (3), if an employee is separated for cause from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon the separation.~~

~~(3) If an employee is separated from employment by the employer because the employee has committed the offense of theft of the employer's funds or property and criminal charges have been filed by the county attorney against the employee, the employer may apply to the district court for an order temporarily staying the payment of any unpaid wages due the employee and staying the running of the penalty provided for in 39-3-206 pending the final resolution of criminal proceedings against the employee. If the employee pleads or is found guilty of the criminal offense, the district court may order any wages due and owing to the employee by the employer to be offset against the amount the employee illegally obtained from the employer. If the employee is found not guilty of the criminal offense, the district court may order the employer to pay the employee any wages due, including interest.~~ *When an employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from*

*employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee.*

*(2) Except as provided in subsection (3), when an employee is separated for cause or laid off from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon separation unless the employer has a written personnel policy governing the employment that extends the time for payment of final wages to the employee's next regular payday for the pay period or to within 15 days from the separation, whichever occurs first.*

*(3) When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the employer may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:*

*(a) the employee agrees in writing to the withholding; or*

*(b) the employer files a report of the theft with the local law enforcement agency within 7 days of the separation from employment, subject to the following conditions:*

*(i) if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within 15 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the 15-day period.*

*(ii) if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest."*

Approved April 7, 1997

# CHAPTER NO. 210

[SB 148]

AN ACT ALLOWING RECIPROCITY AGREEMENTS FOR ISSUING PROFESSIONAL OR OCCUPATIONAL LICENSES TO PERSONS LICENSED IN ANOTHER STATE; AND AMENDING SECTION 37-1-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-1-304, MCA, is amended to read:

**"37-1-304. Licensure of out-of-state applicants — *reciprocity.*** *(1)* A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

*(a)* the other state's license standards at the time of application to this state are substantially equivalent to *or greater than* the standards in this state ~~and~~; and

(b) ~~that~~ there is no reason to deny the license under the laws of this state governing the profession or occupation.

*(2)* The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending chargos or final disciplinary action for unprofessional conduct or impairment.

*(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis."*

Approved April 7, 1997

# CHAPTER NO. 211

[SB 235]

AN ACT ELIMINATING THE REQUIREMENT THAT SCHOOL DISTRICT TRUSTEES PREPARE AND ADOPT A PRELIMINARY BUDGET; AMENDING SECTIONS 20-3-322, 20-7-705, 20-9-115, 20-9-121, 20-9-131, 20-9-132, 20-9-165, 20-9-353, 20-9-438, 20-9-501, 20-9-503, 20-10-143, AND 20-10-144, MCA; REPEALING SECTIONS 20-9-113, 20-9-114, AND 20-9-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-3-322, MCA, is amended to read:

**"20-3-322. Meetings and qnorum.** (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a ~~preliminary~~ *final* budget meeting, as prescribed by ~~20-9-113~~ *20-9-131*; and

(c) in first-class elementary districts, not less than one regular meeting ~~per~~ *each* month; or

(d) in any other district, regular meetings during the months of April, July, October, and January.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency, meetings must be conducted in school buildings or in a publicly owned building located within the district.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice

HeinOnline -- 1997 vol. I 972 1997

of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of subsection (3), "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district."

**Section 2.** Section 20-7-705, MCA, is amended to read:

"**20-7-705. Adult education fund.** (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district may, whether or not the county high school district is unified with an elementary district under the provisions of 20-6-312, authorize a levy of not more than 2 mills on the district and a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than 3 mills on the district, for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by the levy. The trustees shall obtain the approval of the superintendent of public instruction before the fourth Monday of June in order to include the expenditures to he financed by the levy in the ~~preliminary~~ *final* budget. The superintendent of public instruction shall promulgate rules and forms for the approval.

(4) Whenever the trustees of a district decide to offer an aduit education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the ~~preliminary~~ *final* budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program that has been approved by the superintendent of puhlic instruction is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and

HeinOnline -- 1997 vol. I 973 1997

a levy on the district must be made by the county commissioners in accordance with 20-9-142."

**Section 3.** Section 20-9-115, MCA, is amended to read:

**"20-9-115. Notice of ~~preliminary budget filing and~~ final budget meeting.** Between July 10 and July 20 of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating ~~that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in the clerk's office and open to inspection by all taxpayers. The notice must also state~~ the time and place that the trustees will meet on the fourth Monday in August for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget."

**Section 4.** Section 20-9-121, MCA, is amended to read:

**"20-9-121. County treasurer's statement of cash balances and bond information.** (1) By July 10, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district at the close of the last-completed school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information must be prescribed by the superintendent of public instruction.

(2) By July 10, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement must be prescribed by the superintendent of public instruction.

(3) On or before July 10, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent, who shall ~~attach the district statements to the applicable district's preliminary budget~~ *forward the information to each district.*"

**Section 5.** Section 20-9-131, MCA, is amended to read:

**"20-9-131. Final budget meeting.** (1) On the second Monday in August, at the time and place noticed pursuant to 20-9-115, the trustees of each district shall meet to consider ~~the preliminary budget submitted to or prepared by the county superintendent, including~~ all *budget* information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than the fourth Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend

HeinOnline -- 1997 vol. I 974 1997

any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget."

**Section 6.** Section 20-9-132, MCA, is amended to read:

"**20-9-132. Final budget adjustment procedures.** At the final budget meeting of the trustees, ~~they shall have the power to~~ *the trustees may* make any changes or corrections they may ~~deem~~ *consider* necessary or proper in any item or amount of the ~~preliminary~~ budget either by eliminating the item or amount or by increasing or reducing the amount of any item. When it appears to the trustees that the amount proposed to be expended for any item of the ~~preliminary~~ *final* budget is in excess of the amount actually required to be expended for ~~such~~ *the* item, the trustees shall reduce ~~such~~ *the* amount to the amount actually required to be expended and shall enter in its minutes the reasons for ~~such~~ *the* reduction. *If any appropriation item of the final budget provides for the payment of wages or salary to more than one person, the district shall attach to the budget a separate listing of each position of employment, with the budgeted amount of compensation for each position.*"

**Section 7.** Section 20-9-165, MCA, is amended to read:

"**20-9-165. Budget amendment limitation, preparation, and adoption procedures.** (1) The meeting of the trustees to consider and adopt a budget amendment must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that there is sufficient need for a budget amendment, the trustees may make and adopt a ~~preliminary~~ *final* budget amendment, setting forth fully the facts constituting the need for the budget amendment. In adopting the ~~preliminary~~ *final* budget amendment, the trustees may budget for any fund that was included on the final budget of the district for the current school fiscal year. The budget must be itemized to show the amount appropriated for each item.

(2) When the budget amendment is the result of increased enrollment, the maximum amount of the budget amendment for all funds must be determined in the following manner:

(a) ~~Determine~~ *determine* the total amount in the final budget for the current school fiscal year of all funds affected by the enrollment increase, less any amounts appropriated as capital outlay and any amount appropriated for addition to the operating reserve~~.~~*;*

(b) ~~Divide~~ *divide* the amount determined in subsection (2)(a) by the number of pupils originally enrolled in the district during the immediately preceding school fiscal year. The resulting cost per pupil is the maximum permissible per-pupil expenditure in the budget amendment.

(c) ~~Determine~~ *determine* the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enroiled for the current school year. The result is the enrollment increase for the current school fiscal year.

(d) ~~Multiply~~ *multiply* the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result is the

maximum limitation on a budget amendment for amendments resulting from increased enrollment.

(3) For other types of budget amendments, the budget amendment is limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the budget amendment and the ~~preliminary~~ *final* budget amendment must include the details of the proposed expenditures.

(4) Whenever the trustees adopt a ~~preliminary~~ budget amendment for the transportation fund, the trustees shall attach to the budget amendment a copy of each transportation contract that is connected with the budget amendment and that has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the budget amendment by a majority vote of the trustees, it must be signed by the presiding officer of the trustees and the clerk of the district and copies must be sent to the county superintendent and the superintendent of public instruction."

**Section 8.** Section 20-9-353, MCA, is amended to read:

**"20-9-353. Additional financing for general fund — election for authorization to impose.** (1) The trustees of a district may propose to adopt:

(a) a budget amount up to the BASE budget amount for the district general fund that is within the limitations and required budget increases provided in 20-9-308(2);

(b) an over-BASE budget amount for the district general fund that does not exceed the maximum general fund budget for the district or other limitations, as provided in 20-9-308(3); or

(c) a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308(4).

(2) When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the additional amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon the proposition. The special election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of money to be financed, the approximate number of mills required to raise all or a portion of the money, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional financing is made)?

☐ FOR budget authority and any levy.

☐ AGAINST budget authority and any levy.

(3) If the election on any additional financing for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries

HeinOnline -- 1997 vol. I 976 1997

and the trustees may use any portion or all of the authorized amount in adopting the ~~preliminary~~ *final* general fund budget. The trustees shall certify any additional levy amount authorized by the special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, to raise the amount of the additional levy.

(4) Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308(4) is effective for only 1 school fiscal year.

(5) All levies adopted under this section must be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective.

(6) If the trustees of a district are required to submit a proposition to finance an increased amount up to the BASE budget amount, as provided in 20-9-308(2)(b), an increased over-BASE budget amount, as provided in 20-9-308(3)(a), or an amount in excess of the maximum general fund budget amount for the district as allowed by 20-9-308(4) to the electors of the district, the trustees shall comply with the provisions of subsections (2) through (4)."

**Section 9.** Section 20-9-438, MCA, is amended to read:

"20-9-438. **Preparation of debt service fund budget — operating reserve.** (1) The trustees of each school district having outstanding bonds shall include in the debt service fund of the ~~preliminary~~ *final* budget adopted in accordance with ~~20-9-113~~ *20-9-133* an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the ~~preliminary~~ *final* budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district that become due during the ensuing school fiscal year; and

(b) a limited operating reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (3).

(3) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year fund balance of the debt service fund to be earmarked as a limited operating reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations that must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year fund balance not earmarked for limited operating reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(4) The county superintendent shall compare the ~~preliminary~~ *final* budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school

HeinOnline -- 1997 vol. I 977 1997

fiscal year just beginning as reported by the county treasurer in ~~his~~ *the* statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the ~~preliminary~~ *final* budget amount, the county suporintendent shall increase the budgeted amount for interest or principal in the deht service fund of the ~~preliminary~~ *final* budget. The amount confirmed or revised by the county superintendent is the final budget expenditure amount for the debt service fund of the school district."

**Section 10.** Section 20-9-501, MCA, is amended to read:

**"20-9-501. Retirement fund.** (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordanco with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the ~~preliminary~~ *final* budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has heen adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money availahle to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-527, 61-3-537, and 67-3-204;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 preduction as provided in 15-36-325;

(iv) coal gross proceeds taxes under 15-23-703;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund halance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final

HeinOnline -- 1997 vol. I 978 1997

retirement fund budget for the ensuing school fiscal year and must he used for the purpose of paying retirement fund warrants issued hy the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax hase aid.

(b) notwithstanding the provisions of suhsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in tbe final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same propertion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must he proratod to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy tbe net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the numher of mills to he levied on the taxable property in the county to finance the retirement fund net levy requirement hy dividing the amount determined in subsection (4)(a) hy the sum of:

(a) the amount of guaranteed tax hase aid tbat the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000."

**Section 11.** Section 20-9-503, MCA, is amended to read:

**"20-9-503. Budgeting, tax levy, and use of building reserve fund.** (1) Whenever an annual building reserve authorization to budget is available to a

HeinOnline -- 1997 vol. I 979 1997

district, the trustees shall include ~~such~~ *the* authorized amount in the building reserve fund of the ~~preliminary~~ *final* budget. The county superintendent shall report ~~such~~ *the* amount as the building reserve fund levy requirement to the county commissioners on the fourth Monday of August, and a levy on the district ~~shall~~ *must* be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund ~~shall have the authority to~~ *may* expend ~~moneys~~ *money* from ~~such~~ *the* fund for the purpose or purposes for which it was authorized without ~~such~~ *the* specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to commence the authorized projects. ~~Such~~ *The* expenditures ~~shall~~ *may* not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest ~~such~~ *the* money in accordance with 20-9-213(4). The interest earned from the investment ~~shall~~ *must* be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for ~~such~~ *the* fund."

**Section 12.** Section 20-10-143, MCA, is amended to read:

**"20-10-143. Budgeting for transportation and transmittal of transportation contracts.** (1) The trustees of a district furnishing transportation to pupils who are residents of the district shall provide a transportation fund budget that is adequate to finance the district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget must include:

(a) an adequate amount to finance the maintenance and operation of ~~district owned and operated~~ school buses *owned and operated by the district*;

(b) the annual contracted amount for the maintenance and operation of school buses by a private party;

(c) the annual contracted amount for individual transportation, including any increased amount because of isolation, which may not exceed the schedule amounts prescribed in 20-10-142;

(d) any amount necessary for the purchase, rental, or insurance of school buses; and

(e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill an obligation to provide transportation in accordance with this title for:

(a) pupils not residing in the district at the time of the adoption of the ~~preliminary~~ *final* budget and who subsequently became residents of the district during the school fiscal year; or

(b) pupils who have become eligible transportees since the adoption of the ~~preliminary~~ *final* budget because their legal residence has been changed. The budgeted contingency amount may not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by the schedules and provided by the district unless 10% of the transportation schedule amount is less than $100, in which case $100 is the maximum limitation for the budgeted contingency amount.

(3) A budget amendment to the transportation fund budget may be adopted subject to the provisions of 20-9-161 through 20-9-166.

(4) The transportation fund budgeted expenditures appropriated by the trustees must be reported on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget must be completed in accordance with the school budgeting laws. When the adopted ~~preliminary~~ *final* budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation and individual transportation to the county superintendent. The contracts must substantiate all contracted transportation services incorporated in the ~~preliminary~~ *final* budget, and after the county superintendent has utilized the contracts for that purpose but before the ~~fourth Monday of July~~ *second Monday of August*, ~~he~~ *the county superintendent* shall send all transportation contracts received to the superintendent of public instruction. ~~When the county superintendent determines a deviation between the preliminary transportation fund budget amount for contracted transportation services and the contracted amount for the services, he shall immediately call the deviation to the attention of the appropriate trustees and shall allow the trustees to change the preliminary budgeted amount to compensate for the deviation.~~"

**Section 13.** Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the ~~fourth Monday of July~~ *second Monday of August* ~~and in accordance with 20-9-123~~, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the ~~preliminary~~ budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding tbe following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained hy the district (to determine the maximum reimbursabie expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committeo and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

HeinOnline -- 1997 vol. I 981 1997

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted ~~on~~ *in* tbe ~~preliminary~~ budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the ~~preliminary~~ budget must be reduced to the limitation amount and used in this determination of tbe schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total ~~preliminary~~ transpertation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same propertion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transpertation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with tbe provisions of 20-9-213(4);

HeinOnline -- 1997 vol. I 982 1997

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-527, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated oil and natural gas production taxes;

(h) anticipated local government severance tax payments for calendar year 1995 production;

(i) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from tbe end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budgot for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation hudget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

**Section 14. Repealer.** Sections 20-9-113, 20-9-114, and 20-9-123, MCA, are repealed.

**Section 15. Effective date.** [This act] is effective on passage and approval.

Approved April 7, 1997

HeinOnline -- 1997 vol. I 983 1997

# CHAPTER NO. 212

[SB 240]

AN ACT CREATING THE VOLUNTARY CONSOLIDATION AND ANNEXATION INCENTIVE PLAN FOR SCHOOL DISTRICTS; ALLOWING AN ELEMENTARY, HIGH SCHOOL, OR K-12 SCHOOL DISTRICT THAT IS CONSOLIDATED OR ANNEXED TO RECEIVE ANB AND ENTITLEMENT PAYMENTS OF THE COMPONENT DISTRICTS FOR 3 YEARS FOLLOWING THE CONSOLIDATION OR ANNEXATION; AMENDING SECTION 20-9-311, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-9-311, MCA, is amended to read:

**"20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the nearest school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-804, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. If a variance has been granted as provided in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction, but the ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

HeinOnline -- 1997 vol. I 984 1997

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; ~~or~~

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; *or*

*(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208; two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317; or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation;*

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

HeinOnline -- 1997 vol. I 985 1997

(10) For average daily attendance reporting purposes, districts shall provide the superintendent of public instruction with annual reports of school attendance for regularly enrolled students and special education students, using a format determined by the superintendent."

**Section 2. Effective date — retroactive applicability.** [This act] is effective July 1, 1997, and applies retroactively, within the meaning of 1-2-109, to a district that is consolidated or annexed on or after January 1, 1997.

Approved April 7, 1997

# CHAPTER NO. 213

[HB 160]

AN ACT PROVIDING ADMINISTRATIVE ENFORCEMENT FOR VIOLATIONS OF THE JUNK VEHICLE AND MOTOR VEHICLE WRECKING FACILITY LAWS; AUTHORIZING FACILITY LICENSE SUSPENSION OR DENIAL FOR VIOLATION OF AN ORDER; AUTHORIZING FACILITY LICENSE REVOCATION FOR VIOLATION OF A SUSPENSION ORDER; AMENDING SECTION 75-10-514, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Administrative enforcement.** (1) When the department determines that a violation of this part, a violation of a rule adopted under this part, or a violation of a license provision has occurred, it may serve written notice of the violation on the alleged violator or the violator's agent. The notice must specify the law, rule, or license provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time. The order becomes final 30 days after the notice is served unless the person named requests, in writing, a hearing before the board. On receipt of the request for a hearing, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or change the department's order. An order may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) The department shall make efforts to obtain voluntary compliance through warning, conference, or any other appropriate means before issuing an order pursuant to subsection (1).

**Section 2.** Section 75-10-514, MCA, is amended to read:

**"75-10-514. Denial, suspension, or revocation of license — grounds.** *(1)* The department may deny~~,~~ *or* suspend~~, or revoke~~ a motor vehicle wrecking facility's license ~~when it proves the business~~ *on any of the following grounds*:

~~(1)~~*(a) The applicant or licensee* sold or otherwise disposed of a motor vehicle, trailer, or any part ~~thereof~~ *of a motor vehicle or trailer* when it knew the vehicle or part was stolen or was appropriated without the consent of the owner~~;~~.

~~(2)~~*(b) The applicant or licensee* committed forgery on a certificate of title covering a vehicle tbat has been reassembled from parts obtained from the disassembling of other vehicles~~;~~.

~~(3)~~*(c) The applicant or licensee* committed any illegal act or omission ~~which~~ *that* has caused loss as the result of a sale of a motor vehicle, trailer, or part ~~thereof;~~ *of a motor vehicle or trailer.*

~~(4)~~*(d) The applicant or licensee* failed to comply with this part or with a rule of the department~~;~~.

~~(5)~~*(e) The applicant or licensee* obtained a license fraudulently.

*(2) The department may revoke a motor vehicle wrecking facility's license on the following grounds:*

*(a) the license was suspended pursuant to subsection (1)(d) and the facility failed to cure the defect or defects underlying the suspension during the period of suspension; or*

*(b) the license was suspended pursuant to subsection (1)(a), (1)(b), (1)(c), or (1)(e) and, after suspension, the licensee performed an act that is grounds for suspension pursuant to subsections (1)(a) through (1)(e) at any time during the remaining active life of the facility."*

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 10, part 5, and the provisions of Title 75, chapter 10, part 5, apply to [section 1].

**Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 8, 1997

# CHAPTER NO. 214

[HB 278]

AN ACT ALLOWING COUNTIES TO RETAIN 100 PERCENT OF THE MONEY RECEIVED BY THE COUNTY FOR ISSUING COUNTY LICENSES; REVISING THE ALLOCATION OF FEE MONEY FOR PREDATOR CONTROL; AMENDING SECTIONS 7-21-2105, 81-7-111, 81-7-114, 81-7-118, 81-7-120, 81-7-121, AND 81-7-122, MCA; AND REPEALING SECTION 81-7-119, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-21-2105, MCA, is amended to read:

HeinOnline -- 1997 vol. I 987 1997

**"7-21-2105. Disbursement of license fees.** ~~(1) Unless the disposition is otherwise provided for, all~~ *All* money collected by the county treasurer for licenses issued by the county under this chapter must be paid into the treasury of the county *for the use of the county*.

~~(2) Unless otherwise provided, the county treasurer shall retain 50% thereof for the use of the county, pay over 45% thereof to the state treasurer for the use of the general fund of the state, and pay over 5% thereof to the state treasurer for deposit in the state special revenue fund to be used by the board of livestock for predatory animal control.~~"

**Section 2.** Section 81-7-111, MCA, is amended to read:

**"81-7-111. Evidence of killing by bounty claimant.** (1) Any person killing ~~any of the aforesaid animals~~ *a predatory animal*, except *a* mountain ~~lions~~ *lion*, to obtain *a* bounty ~~thereon~~ shall within 30 days of the date of the killing:

(a) exhibit the entire skin ~~or skins~~ of the ~~said~~ animal ~~or animals~~, including the entire head with ears, the tail, and all four paws, to the bounty inspector nearest to the locality in which the animal ~~or animals were~~ *was* killed; and

(b) at the same time file with the bounty inspector~~, as hereinafter provided,~~ an affidavit setting forth:

(i) that ~~he~~ *the person* killed the animal ~~or animals~~ from which the skin ~~or skins were~~ *was* taken;

(ii) that the ~~same~~ *animal* was killed nearer to or, if more than one hide is presented, that the greater number *of animals* were killed nearer to the residence of the ~~said~~ bounty inspector to which the ~~same was~~ *animals are being* presented than to any other bounty inspector; and

(iii) the county or counties in which ~~said~~ *the* animals were killed.

(2) Any person killing ~~any~~ *a* mountain lion to obtain *a* bounty ~~thereon~~ shall present the ~~same~~ *mountain lion* to a bounty inspector as provided in this section ~~for wolves and coyotes~~, except that, in addition to the requirements of this section, the ~~skins~~ *skin* of *a* mountain ~~lions~~ *lion* ~~shall~~ *must* also contain the entire skin of the lower jaw, which ~~shall~~ *must* be severed by the bounty inspector and thereafter treated in the same manner as ~~scalps of wolves and coyotes herein provided~~ *the skins of other animals subject to this section*.

(3) Every bounty inspector appointed under the provisions of 81-7-111 through ~~81-7-122~~ *81-7-118 and 81-7-120 through 81-7-122* ~~shall be~~ *is* empowered to administer oaths to ~~any and all~~ persons making ~~any~~ *the* affidavit ~~as aforesaid~~ *required by this section*."

**Section 3.** Section 81-7-114, MCA, is amended to read:

**"81-7-114. Certificate and record of sheriff.** (1) *Upon receiving the affidavit required pursuant to 81-7-113, the* ~~The~~ officer shall ~~at the same time make out and~~ deliver to the person *claiming a bounty* a certificate addressed to the county clerk of ~~his~~ *the officer's* county and immediately deliver to the county clerk a duplicate of the certificate, showing the date, number, and kind of skins marked for severing and the name of the person presenting the skins. The certificate ~~shall~~ *must* also recite that the filing of the affidavits of taxpayers

HeinOnline -- 1997 vol. I 988 1997

~~previously~~ required *by 81-7-113* has been done and the examination *of the skins* has been made as required. The certificate ~~shall~~ *must* be signed by the officer in ~~his~~ *the officer's* official capacity. When a doubt exists as to the kind of skin presented, whether wolf or coyote, the certificate ~~shall~~ *must* be issued for the lesser bounty. Each sheriff shall keep a record of all skins marked and severed, showing the date, number, and kinds and the names of the persons presenting the skins. This record is an official record. The sheriff, undersheriff, or deputy sheriff may not perform any duties under 81-7-111 through ~~81-7-122~~ *81-7-118 and 81-7-120 through 81-7-122* except at the county seat.

(2) The sheriff shall, not later than the 15th of each month, give to the county clerk and recorder a report setting forth the names of the persons presenting skins, with the number of the certificate and the kind and number of the skins presented. The sheriff shall report for each certificate ~~which he has~~ issued during the month."

**Section 4.** Section 81-7-118, MCA, is amended to read:

**"81-7-118. (Temporary) Levy of tax for purpose of paying bounty claims — limitation on levy.** The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of wild animals killed in this state. The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock. The money received ~~shall~~ *must* be used only for the payment of claims approved by the department for the destruction of wild animals and for the administration of 81-7-111 through ~~81-7-122~~ *81-7-118 and 81-7-120 through 81-7-122*. The money received for the taxes levied ~~shall~~ *must* be sent annually with other taxes to the state treasurer by the county treasurer of each county. When the money is received by the state treasurer, it ~~shall~~ *must* be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims.

**81-7-118. (Effective on occurrence of contingency) Levy of tax for purpose of paying bounty claims — limitation on levy.** The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of predatory animals killed in this state. The tax in any 1 year may not exceed 7.5 mills on the taxable value of the livestock. The money received must be used only for the payment of claims approved by the department for the destruction of predatory animals and for the administration of 81-7-111 through ~~81-7-122~~ *81-7-118 and 81-7-120 through 81-7-122*. The money received for the taxes levied must be sent annually with other taxes to the state treasurer by the county treasurer of each county. When the money is received by the state treasurer, it must be placed in the state special revenue fund and may then be paid out on claims approved under the law governing the payment of claims."

**Section 5.** Section 81-7-120, MCA, is amended to read:

**"81-7-120. Use of funds remaining after payment of bounties — sale of furs, skins, and specimens — presentation to museums.** (1) If, at the end of a bounty paying season, there is surplus money available for the administration of 81-7-111 through ~~81-7-122~~ *81-7-118 and 81-7-120 through 81-7-122*, the surplus may be used to hire salaried hunters and trappers to hunt

HeinOnline -- 1997 vol. I 989 1997

and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

(2) All furs, skins, and specimens taken by hunters or trappers whose salaries are paid in whole or in part out of this money ~~shall~~ *must* be sold by the department, and the proceeds from these sales ~~shall~~ *must* be credited to the state special revenue fund. These funds ~~shall~~ *must* be used to carry out 81-7-111 through ~~81-7-122~~ *81-7-118 and 81-7-120 through 81-7-122*. Specimens may be presented free of charge to a state museum or institution."

**Section 6.** Section 81-7-121, MCA, is amended to read:

"**81-7-121. Falsifying certificates or affidavits — penalty.** ~~Any~~ *A* person who falsely makes, alters, forges, or counterfeits any of the certificates or orders and any person who falsely swears to any affidavit provided for by 81-7-111 through ~~81-7-122~~ *81-7-118 and 81-7-120 through 81-7-122* or procures the same *act* to be done by another, with the intent of obtaining any one of the certificates or orders, is punishable as provided in Title 45."

**Section 7.** Section 81-7-122, MCA, is amended to read:

"**81-7-122. Penalty for fraudulent claims.** ~~Any~~ *A* person ~~or persons~~ who ~~shall patch~~ *patches* up ~~any~~ *a* skin or scalp or ~~who shall present~~ *presents* ~~any~~ *a* punched or patched skin or scalp or who ~~shall bring~~ *brings* in any skin or skins from other states or ~~territory~~ *territories* with the intent to *fraudulently* obtain ~~the~~ *a* bounty ~~on the same fraudulently~~ or ~~any~~ *an* officer who ~~shall sign any~~ *signs a* certificate ~~herein provided for~~ without first counting ~~the skins~~ and examining the ~~same~~ *skins* to determine the kind of skins and to see that the skin from the scalp or head is properly severed and preserved ~~as hereinbefore provided~~ or *a person who* ~~shall evade or violate~~ *evades or violates* any provision of ~~any~~ law of the state of Montana relative to bounties or bounty claims shall be ~~deemed~~ guilty of a misdemeanor and~~, on~~ *upon* conviction ~~thereof,~~ shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year or ~~by~~ both ~~such fine and imprisonment and. two-thirds~~ *Two-thirds* of the fine~~, if the same be collected or can be collected, shall~~ *must* be given to the ~~informer~~ *person, if any, reporting the evasion or violation* and the balance *must* be deposited in the state special revenue fund and used for the administration of 81-7-111 through ~~81-7-122~~ *81-7-118 and 81-7-120 through 81-7-122*."

**Section 8. Repealer.** Section 81-7-119, MCA, is repealed.

Approved April 8, 1997

# CHAPTER NO. 215

[HB 318]

AN ACT ALLOWING CERTAIN COUNTY OFFICIALS TO BE REIMBURSED FOR ACTUAL TRANSPORTATION EXPENSES AND PER DIEM FOR ATTENDING GENERAL MEETINGS OF THEIR PEERS HELD WITHIN THE STATE; AMENDING SECTIONS 7-5-2142, 7-5-2143, 7-5-2144, AND 7-5-2145, MCA; AND PROVIDING AN EFFECTIVE DATE.

HeinOnline -- 1997 vol. I 990 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-5-2142, MCA, is amended to read:

**"7-5-2142. Membership in associations of clerk and recorders.** (1) The county clerk and recorders of the counties of Montana ~~are hereby authorized and empowered to~~ *may* take out county membership in and ~~to~~ cooperate with associations and organizations of county clerk and recorders of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerk and recorders of the ~~various counties throughout the~~ state ~~shall be~~ *are* allowed actual transportation expenses and per diem ~~allowance~~ for attendance ~~upon~~ *at* any general meeting of the Montana association of county clerk and recorders held within the state ~~not more often than once a year~~, and the proportionate expenses and chargos against each county as a member of ~~such~~ *the* association ~~shall~~ *must* be paid by ~~such~~ *the* county."

**Section 2.** Section 7-5-2143, MCA, is amended to read:

**"7-5-2143. Membership in associations of clerks of district courts.** (1) The county clerks of the district courts of the counties of Montana ~~are hereby authorized and empowered to~~ *may* take out county membership in and ~~to~~ cooperate with associations and organizations of county clerks of the district courts of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerks of the district ~~court~~ *courts* of the ~~various counties throughout the~~ state ~~shall be~~ *are* allowed actual transportation expenses and per diem ~~allowance~~ for attendance ~~upon~~ *at* any general meeting of the Montana association of clerks of court held within the state ~~not more often than once a year~~, and the proportionate expenses and chargos against each county as a member of ~~such~~ *the* association ~~shall~~ *must* be paid by ~~such~~ *the* county."

**Section 3.** Section 7-5-2144, MCA, is amended to read:

**"7-5-2144. Membership in associations of county treasurers.** (1) County treasurers may take out county membership in and cooperate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests.

(2) All county treasurers of the ~~various counties throughout the~~ state are allowed actual transportation expenses and per diem ~~allowance~~ for attendance at any general meeting of the Montana association of county treasurers held within the state ~~not more often than once a year~~, and the proportionate expenses and charges against each county as a member of the association must be paid by the county."

**Section 4.** Section 7-5-2145, MCA, is amended to read:

**"7-5-2145. Attendance at meetings and conventions by county officers and employees.** (1) Unless otherwise provided by law, ~~no~~ *a* county officer or employee may *not* receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance at ~~such~~ *a* convention,

HeinOnline -- 1997 vol. I 991 1997

meeting, or other gathering as the officer or employee may by virtue of ~~his~~ *the* office find it necessary to attend.

(2) ~~Three members~~ *Any member* of the board of county commissioners ~~may be~~ *is* allowed actual transportation expenses and per diem for attendance at any general meeting of county commissioners or assessors held within the state ~~not more often than once a year~~, and the proportionate expenses and charges against each county as a member of ~~such~~ *the* association ~~shall~~ *must* also be paid.

(3) County attorneys, sheriffs, assessors, and justices of the peace may attend their respective meetings or conventions held within the state and are allowed actual traveling expenses~~, not more often than once a year,~~ for attending the ~~same~~ *meeting or convention of their peers.*

(4) Any county officer paid on a per-day basis for ~~his~~ performance of official duties is allowed ~~his~~ *the* per-day rate of pay for attendance at any convention, meeting, or other gathering of public officers that the officer may by virtue of ~~his~~ *the* office find it necessary to attend."

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved April 8, 1997

# CHAPTER NO. 216

[HB 377]

AN ACT REQUIRING THAT A REQUEST FOR AN EXEMPTION FROM PAYING THE TAX FOR A TELEVISION DISTRICT BE SUBJECT TO REVIEW AND APPROVAL BY THE TELEVISION DISTRICT BOARD OF TRUSTEES; AND AMENDING SECTION 7-13-2529, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-13-2529, MCA, is amended to read:

**"7-13-2529. Exemption for nonbenefited taxpayers.** (1) The following taxpayers in the television district, ~~are exempt~~ *upon request and with the approval of the television district board of trustees, may be exempted* from payment of the tax for the support of the television services of the television district ~~upon the filing of an affidavit setting forth one of~~ *on* the following grounds:

(a) ~~The~~ *the* taxpayer ~~does not~~ *cannot* receive the signal of the television translator station~~.~~*;*

(b) ~~The~~*the* taxpayer receives direct reception from the television station from which the television translator repeats a signal~~.~~*; or*

~~(c) The taxpayer does not receive the translator signal directly but receives service through the medium of a community antenna system and does not directly or indirectly use any signal repeated by the television district as its source.~~

~~(d)~~*(c)* ~~The~~ *the* taxpayer receives the services through the medium of a community antenna system that has a written agreement with the district relating to the transmission of district signals.

(2) The ~~affidavit shall~~ *request for exemption must* be filed before September 1 with the board of trustees, ~~who shall~~ *which,* upon ~~the~~ receipt of ~~such affidavit~~ *the request and approval of the exemption, shall remove* ~~have~~ the ~~names~~ *name* of ~~such persons so~~ *the person* exempted from the tax for television services ~~stricken~~ from the list of taxpayers certified to the board of county commissioners. The exempted ~~persons shall~~ *person is* not ~~be~~ liable for ~~such~~ *the* tax.

(3) A similar exemption is available with respect to FM translator services. The procedure provided in subsection (1) ~~shall~~ *must* be utilized for the FM exemption.

(4) ~~Any~~ *A* person ~~or persons who shall make~~ *making* a false or fraudulent claim for *an* exemption ~~as~~ provided *for* in this section ~~shall be~~ *is* guilty of a misdemeanor."

Approved April 8, 1997

# CHAPTER NO. 217

[HB 421]

AN ACT ALLOWING A MUNICIPALITY TO HOLD A HEARING ON A PROPOSED ANNEXATION IN CONJUNCTION WITH A HEARING ON THE ZONING OF THE PROPOSED ANNEXATION; AND AMENDING SECTION 76-2-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-2-303, MCA, is amended to read:

"**76-2-303. Procedure to administer *certain annexations and* zoning laws — hearing and notice.** (1) The city or town council or other legislative body of ~~such~~ *a* municipality shall provide for the manner in which ~~such~~ regulations and restrictions and the boundaries of ~~such~~ districts ~~shall be~~ *are* determined, established, and enforced and from time to time amended, supplemented, or changed.

(2) However, ~~no such~~ *a* regulation, restriction, or boundary ~~shall~~ *may not* become effective until after a public hearing in relation ~~thereto~~ *to the regulation, restriction, or boundary* at which parties in interest and citizens ~~shall~~ have an opportunity to be heard *has been held.* At least 15 days' notice of the time and place of ~~such~~ *the* hearing ~~shall~~ *must* be published in an official paper or a paper of general circulation in ~~such~~ *the* municipality.

*(3) For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation, provided that the municipality continues on the annexed property a land use comparable to the land use authorized by county zoning. A joint hearing authorized under this subsection fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation."*

Approved April 8, 1997

HeinOnline -- 1997 vol. I 993 1997

# CHAPTER NO. 218

[HB 480]

AN ACT ALLOWING A DEDUCTION FROM ADJUSTED GROSS INCOME OR FROM CORPORATE GROSS INCOME EXPENDITURES FOR INORGANIC FERTILIZER PRODUCED AS A BYPRODUCT; AMENDING SECTIONS 15-30-121, 15-32-301, 15-32-302, AND 15-32-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-121, MCA, is amended to read:

**"15-30-121. Deduetions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(c) one-half of preinium payments for medical care as provided in subsection (9);

(2) federal income tax paid within the tax year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and ~~(9)~~ *(10)* and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f), as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can he claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental ilhiess; and

(iii) a spouse who is unable to provide self-care because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services that are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished hy an individual or, if the individual is married during the applicable period, is furnished hy the individual and the individual's spouse;

(d) the amounts deductible in subsections (3)(a) through (3)(c), subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent that the expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsectien (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(A) both speuses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the tax year ended December 31, 1978;

HeinOnline -- 1997 vol. I 995 1997

(5) that portion of expenses for organic fertilizer *and inorganic fertilizer produced as a byproduct* allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(7) one-half of premium payments, except premiums deducted in determining Montana adjusted gross income, for:

(a) insurance for medical care made directly by the taxpayer; and

(b) long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner; and

(8) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159.

(9) For the purpose of subsection (7)(a), deductible medical insurance premiums are those premiums that provide payment for medical care as defined by 26 U.S.C. 213(d).

(10) (a) Subject to the conditions of subsection (3), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (3)(d)(ii).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (10). (Subsection (8) terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)"

**Section 2.** Section 15-32-301, MCA, is amended to read:

**"15-32-301. Purpose.** The purpose of this part is to promote the use of organic matter produced by Montana industries and municipalities *and inorganic matter produced as byproducts of industrial or mining activity* to revitalize Montana lands and to assist in making organic fertilizer *and inorganic fertilizer produced as a byproduct* economically competitive with *commercially produced* inorganic fertilizer."

**Section 3.** Section 15-32-302, MCA, is amended to read:

**"15-32-302. Definitions.** As used in this part, the following definitions apply:

(1) *"Inorganic fertilizer produced as a byproduct" means enriched mine tailings, kiln dust, and reject rock that have been processed for use in increasing*

HeinOnline -- 1997 vol. I 996 1997

*soil condition and fertility and includes soil amendments as that term is defined in 80-10-101.*

*(2)* "Organic fertilizer" means raw organic matter that has heen processed and aged for use in increasing soil condition and fertility, and includes soil amendments as that term is defined in 80-10-101.

~~(2)~~*(3)* "Raw organic matter" means unprocessed plant or animal waste products."

**Section 4.** Section 15-32-303, MCA, is amended to read:

**"15-32-303. Deduction for purchase of Montana produced organic *or inorganic* fertilizer.** In addition to all other deductions from adjusted gross individual income allowed in computing taxahle income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct ~~his~~ expenditures for organic fertilizer *and inorganic fertilizer produced as a byproduct* produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income."

**Section 5. Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years heginning after December 31, 1996.

Approved April 8, 1997

# CHAPTER NO. 219

[HB 560]

AN ACT IMPLEMENTING THE MORATORIUM ON THE CREATION OF NEW SCHOOL DISTRICTS BY ELIMINATING THE PROCEDURES FOR CREATION OF A NEW ELEMENTARY OR HIGH SCHOOL DISTRICT; ELIMINATING DUTIES OF BOUNDARY COMMISSIONS RELATING TO CREATION OF DISTRICTS; ELIMINATING OUTDATED REFERENCES AND PROCEDURES RELATING TO COUNTY HIGH SCHOOL DISTRICTS; AMENDING SECTIONS 7-6-2701, 7-7-2203, 7-14-2524, 20-3-106, 20-3-206, 20-3-302, 20-3-312, 20-3-342, 20-3-343, 20-3-351, 20-3-352, 20-3-355, 20-3-356, 20-6-101, 20-6-104, 20-6-312, 20-6-313, 20-6-501, 20-9-402, 20-9-435, AND 20-15-404, MCA; REPEALING SECTIONS 7-6-2802, 20-6-216, 20-6-217, 20-6-303, 20-6-304, 20-6-311, 20-6-325, 20-6-415, 20-9-451, 20-9-452, 20-9-453, 20-9-454, 20-9-455, AND 20-9-456, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-2701, MCA, is amended to read:

**"7-6-2701. Investment of certain money in county, munieipal, hospital, and school warrants.** (1) ~~Except as provided in 7-6-2802, if~~ *If* a county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would he advantageous to invest in county, municipal,

hospital district, or school district registered warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase ~~such~~ *the* warrants of entities located in the same county.

(2) For ~~such~~ *the* purchases, the county commissioners shall:

(a) designate the fund or funds to be ~~so~~ invested;

(b) fix the amount that may be purchased;

(c) establish the rate of interest the county ~~shall~~ *must* receive for the investment; and

(d) designate the warrants ~~which~~ *that* are to be purchased by ~~such~~ *the* funds.

(3) The officer drawing a warrant to be purchased for investment by a county shall ~~cause to be attached~~ *attach* to or ~~stamped~~ *stamp*, ~~written, or printed~~ *write, or print* upon the warrant a notice to the effect that the county will exercise its preference right to purchase the warrant.

(4) (a) A school district, hospital district, or county warrant presented to the county treasurer for purchase by the county must be registered as any other school district, hospital district, or county warrant.

(b) A municipal warrant presented to the municipal clerk or treasurer for purchase by the county must be registered, and the holder of the warrant must be informed that the warrant may be presented to the county treasurer for purchase by the county.

(5) The county treasurer shall, when a warrant designated for purchase under the provisions of subsection (2) is presented to ~~him~~ *the treasurer*, purchase the ~~same~~ *warrant* out of the proper fund as designated by the board. When the designated amounts have been invested, the county treasurer shall notify the county clerk and recorder or the applicable officer authorized to draw ~~such~~ *the* warrants.

(6) Interest earned from ~~such~~ *the* investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, ~~shall~~ *must* be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(7) ~~No~~ *A* provision of this section may *not* be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2."

**Section 2.** Section 7-7-2203, MCA, is amended to read:

**"7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except ~~county high school bonds and~~ emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the value provided by the department of revenue under 15-36-324(10), to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds, plus, for general obligation bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for

HeinOnline -- 1997 vol. I 998 1997

tax year 1995, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 11.25%.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue under 15-36-324(10), when necessary to do so, to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, *and* for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995~~, and for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 27.75%, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings on the site and furnishing and equipping the buildings for county high school purposes~~.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue honds for the construction or improvement of a jail that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted hy 7-7-2101.

(4) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

**Seetion 3.** Section 7-14-2524, MCA, is amended to read:

**"7-14-2524. Limitation on amount of bonds issued — excess void.** (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outatanding bonds and warrants except ~~county high school bonds and~~ emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the value provided by the department of revenue under 15-36-324(10). The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(2) A county may issue bonds tbat, with all outstanding bonds and warrants ~~except county high school bonds~~, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of the property, plus the value provided by the department of revenue under 15-36-324(10) when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county~~, except county high school bonds,~~ may not exceed 22.5% of the total

HeinOnline -- 1997 vol. I 999 1997

of the taxable value of the property within the county, plus the value provided by the department of revenue under 15-36-324(10), as ascertained by the last preceding general assessment."

**Section 4.** Section 20-3-106, MCA, is amended to read:

"**20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) ~~approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;~~

~~(6)~~ approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

~~(7)~~*(6)* approve or disapprove school isolation within the limitations prescribed by 20-9-302;

~~(8)~~*(7)* generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

~~(8)~~*(8)* establish a system of communication for calculating joint district ~~revenues~~ *revenue* in accordance with the provisions of 20-9-151;

~~(10)~~*(9)* approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

~~(11)~~*(10)* generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

~~(10)~~*(11)* prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

~~(13)~~*(12)* approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

HeinOnline -- 1997 vol. I 1000 1997

~~(14)~~*(13)* distribute BASE aid and special education allowable cost payments in support of the BASE funding program, in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

~~(15)~~*(14)* provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

~~(16)~~*(15)* approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

~~(17)~~*(16)* request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

~~(15)~~*(17)* authorize the use of federal money for tbe support of an interlocal cooperative agreement in accordance with tbe provisions of 20-9-703 and 20-9-704;

~~(16)~~*(18)* prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

~~(20)~~*(19)* approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

~~(21)~~*(20)* recommend standards of accreditation for all schools to tbe board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

~~(20)~~*(21)* collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

~~(23)~~*(22)* establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

~~(24)~~*(23)* license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

~~(24)~~*(24)* as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

~~(23)~~*(25)* supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

~~(27)~~*(26)* administer the traffic education program in accordance with the provisions of 20-7-502;

~~(23)~~*(27)* administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

~~(23)~~*(28)* review school building plans and specifications in accordance with the provisions of 20-6-622;

HeinOnline -- 1997 vol. I 1001 1997

~~(30)~~*(29)* prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

~~(31)~~*(30)* provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

~~(32)~~*(31)* administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

~~(33)~~*(32)* perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

**Section 5.** Section 20-3-206, MCA, is amended to read:

"**20-3-206. Additional positions.** In ~~his~~ *the* capacity as county superintendent, ~~he~~ *the county superintendent* ~~also~~ shall *also* serve as:

(1) the chairman of the county transportation committee, as prescribed by 20-10-131;

(2) ~~a member of the high school boundary commission of the county, as prescribed by 20-6-304;~~

~~(3)~~ an attendance officer for a district under the conditions prescribed by 20-5-104; and

~~(4)~~*(3)* the clerk of a joint board of trustees under the conditions prescribed by 20-3-361."

**Section 6.** Section 20-3-302, MCA, is amended to read:

"**20-3-302. Legislative intent to elect less than majority of trustees.** (1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees may not regularly expire and be subject to election on the same regular school election day. In elementary districts, there may not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there may not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In ~~high school districts operating a~~ county high school *districts*, there may not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) In the following circumstances relating to newly created trustee positions, the initial terms may be shortened to comply with the intent of subsection (1):

(a) ~~the creation of a new elementary district under the provisions of 20-6-217;~~

HeinOnline -- 1997 vol. I 1002 1997

~~(b)~~ the consolidation of two or more elementary districts to form an elementary district under the provisions of 20-6-203 or the consolidation of two or more high school districts to form a high school district under the provisions of 20-6-315;

~~(c)~~*(b)* the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354 or new trustee positions under the provisions of 20-3-352(3);

~~(d)~~*(c)* the change of a district's classification under the provisions of 20-6-201 or 20-6-301;

~~(e)~~*(d)* the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

~~(f)~~*(e)* the establishment of additional high school trustee positions under the provisions of 20-6-313.

(3) If the change of a district's classification under 20-6-201 or 20-6-301 decreases the number of trustee positions, the positions must be eliminated in a manner that complies with the intent of subsection (1).

(4) Although the legislature intends that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that filling a vacancy under 20-3-308 may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time."

**Section 7.** Section 20-3-312, MCA, is amended to read:

"**20-3-312. Trustees of district affected by boundary change.** The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, joint district dissolution, territory transfer, or any other method of changing district boundaries, except by the consolidation of elementary districts ~~or by the creation of a new elementary district~~, shall continue to be the trustees of ~~such~~ *the* district with the same powers, duties, and responsibilities and subject to the same limitations provided by law~~,~~ as if there had been no boundary change. In the case of elementary district consolidation ~~or the creation of a new elementary district~~, the appointed trustees of the resulting elementary district shall assume their trustee positions under the authority of 20-6-203 or 20-6-216, whichever is applicable."

**Section 8.** Section 20-3-342, MCA, is amended to read:

"**20-3-342. Determination of terms after ~~creation or~~ consolidation of elementary districts.** Whenever the trustees are elected at one regular school election under the circumstances described in ~~subsections (2)(a) and (2)(b) of~~ 20-3-302*(2)(a)*, the members who are elected shall draw by lot to determine their terms of office. ~~Such~~ *The* terms of office by trustee position ~~shall~~ *must* be:

(1) three for 3 years, two for 2 years, and two for 1 year in a first-class elementary district;

(2) two for 3 years, two for 2 years, and one for 1 year in second-class elementary districts and third-class elementary districts having five trustee positions; or

HeinOnline -- 1997 vol. I 1003 1997

(3) one for 3 years, one for 2 years, and one for 1 year in a third-class elementary district having three trustee positions."

**Section 9.** Section 20-3-343, MCA, is amended to read:

**"20-3-343. Determination of terms after change of district classification.** Whenever the change of an elementary district classification requires the addition of trustee positions to the trustees of ~~such~~ *the* district under the circumstance described in 20-3-302~~(2)(d)~~*(2)(c)*, the members who are elected shall draw by lot to determine their terms of office, which ~~shall~~ *must* be one for 3 years and one for 2 years."

**Section 10.** Section 20-3-351, MCA, is amended to read:

**"20-3-351. Numher of trustee positions in high school districts.** (1) Except as provided in 20-3-352(3) *and subsection (2) of this section*, the trustees of a high school district~~, except a high school district operating a county high school,~~ must be composed of:

(a) the trustees of the elementary district in which tbe high school building is located or, if there is more than one elementary district in which high school buildings are located, the trustees of the elementary district designated by the high school boundary commission; and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) ~~The trustees of a high school district operating a~~ *There must be seven trustee positions for each* county high school ~~must be composed of seven trustee positions~~."

**Section 11.** Section 20-3-352, MCA, is amended to read:

**"20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee.** (1) As provided in 20-3-351(1)(b), a high school district, except a *county* high school district ~~operating a county high school~~, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, hut without equitable representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of additional trustee positions under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).

(2) A request for additional trustee positions must be made to the county superintendent hy a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county suporintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district that has its trustees placed on the high school trustees must be divided by the number of positions on the trustees of the elementary district to determine the taxable valuation per trustee pesition.

HeinOnline -- 1997 vol. I 1004 1997

(b) The taxable valuation used for the calculation in subsection (2)(a) must be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) must be divided by the taxable valuation per trustee position calculated in subsection (2)(a). The resulting quotient must be rounded off to the nearest whole number, except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).

(d) Except for a nonvoting trustee position, the number determined in subsection (2)(c) must be the number of additional trustee positions, except that the number of additional trustee positions may not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district that has its trustees placed on the high school district trustees. When this situation exists, three additional trustees must be elected from the elementary school districts in which the high school is not located and one additional trustee must be elected at large in the high school district.

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing the following alternative method of electing the members of the high school district board of trustees:

(i) one trustee to be elected from each elementary school district with territory included in the high school district; and

(ii) two or three trustees to be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among 1-, 2-, and 3-year terms.

HeinOnline -- 1997 vol. I 1005 1997

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period."

**Section 12.** Section 20-3-355, MCA, is amended to read:

**"20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions.** (1) Whenever all of the additional trustee positions are subject to election at one regular school election under the circumstance described in 20-3-302~~(2)(c)~~*(2)(b)*, the members who are elected shall draw by lot to determine their terms of office. ~~Such~~ *The* terms of office by number of members elected ~~shall~~ *must* be:

(a) two for 3 years, if four are elected;

(b) one for 3 years, if one, two, or three are elected;

(c) one for 2 years, if two, three, or four are elected; and

(d) one for 1 year, if three or four are elected.

(2) Whenever the reestablishment of the additional trustee positions for a high school district under the provisions of 20-3-354 results in an increased number of additional trustee positions, the members who are elected at the next regular school election shall draw by lot to determine their terms of office and ~~such~~ *the* terms ~~shall~~ *must* be determined in accordance with the additional trustee terms prescribed in this section."

**Section 13.** Section 20-3-356, MCA, is amended to read:

**"20-3-356. Membership of elected trustees of ~~high school district operating~~ county high school *district* and nomination of candidates.** (1) The trustees of a ~~high school district operating a~~ county high school *district* ~~shall be composed of~~ *must include* the following:

(a) four trustee positions filled by members residing in the elementary district where the county high school building is located; and

(b) three trustee positions filled by members one of whom resides in each of the three trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent shall establish the nominating districts, and, unless it is impossible, ~~such~~ *the* districts ~~shall~~ *must* have coterminous boundaries with elementary district boundaries.

(2) The provisions of 20-3-305 ~~shall~~ goveru the nomination of candidates for the trustee election prescribed in this section."

**Section 14.** Section 20-6-101, MCA, is amended to read:

**"20-6-101. Definition of elementary and high school districts.** (1) As used in this title, except as defined in 20-9-402 for bonding purposes or unless the context clearly indicates otherwise, the term "district" means the territory, regardless of county boundaries, organized under the provisions of this title to provide public educational services under the jurisdiction of tho trustees

HeinOnline -- 1997 vol. I 1006 1997

prescribed by this title. High school districts may encompass all or parts of the territory of one or more elementary districts.

(2) (a) An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade 8 and for preschool programs and kindergartens. An elementary district may be inactive if the district attaches to a high school district under the provisions of 20-6-701 to form a K-12 school district.

(b) A high school district is a district organized for the purpose of providing those public educational services authorized by this title for all grades beyond grade 8, including postsecondary programs, except those programs administered by community college districts or the Montana university system. A high school district with an attached elementary district may provide the educational services for an elementary district through the procedures established in 20-6-701 through 20-6-703.

(3) An elementary district is known as "District No..... County" and a high school district, except a high school district where a county high school is operated, is known as "High School District No..... County". A district is a body corporate and, as a body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law. Unless the context clearly indicates otherwise, the trustees of elementary districts and high school districts have the same types of powers, duties, and responsibilities authorized and imposed by the laws of Montana.

~~(4) Unless the context clearly indicates otherwise, an elementary district operating a high school in a county that has not been divided into high school districts is considered a high school district under this title and the trustees of the elementary district are the trustees of the high school district. An elementary district operating a high school may not have the bonding authority of a high school district. However, the elementary district may exercise its bonding authority, in the manner provided by law, for high school purposes.~~

~~(5)~~*(4)* As used in this title, unless the context clearly indicates otherwise, a county high school is ~~considered~~ a high school district *that has not unified with an elementary district under 20-6-312.* ~~subject to the limitations prescribed by law for a county high school as a result of its being a part of the county government. The boundaries of the high school district for a county high school are:~~

~~(a) the high school district boundaries established by the county high school boundary commission; or~~

~~(b) if no boundaries have been established, the county boundaries, except for any territory located in a joint high school district.~~

~~(6) A county high school recognized as a high school district under the provisions of subsection (5)(b) may not have a bonding authority. Instead, the county shall exercise its bonding authority in the manner provided in 20-9-451.~~"

**Section 15.** Section 20-6-104, MCA, is amended to read:

**"20-6-104. Moratorium on creation of new district — exception.** (1) A school district may not initiate the creation of a new elementary district ~~under the provisions of 20-6-216 and 20-6-217 or initiate the creation of a new high school district under the provisions of 20-6-303 and 20-6-325~~ *or a new high school district.*

(2) This section does not apply to a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704."

**Section 16.** Section 20-6-312, MCA, is amended to read:

**"20-6-312. County high school unification.** (1) Any county high school may be unified with the elementary district where the county high school building is located to establish a unified school system under a unified board of trustees. ~~If the county has not been divided into high school districts, a high school district with boundaries coterminous with the county boundaries shall be created, except that such high school district shall not include the territory of any existing joint high school district located in the county.~~ The territory of an existing joint high school district ~~shall~~ *must* remain a part of ~~such~~ *the* joint high school district. ~~The creation of high school districts under this provision shall be in lieu of the high school district division provisions of 20-6-303.~~

(2) A proposition to unify a county high school with the elementary district where the county high school building is located ~~shall~~ *must* be introduced whenever:

(a) the trustees of the county high school and the trustees of the elementary district individually pass resolutions requesting the county superintendent to order an election to consider a unification proposition; or

(b) not less than 20% of ~~the electors of the county or, if the county has been divided into high school districts,~~ the electors of the high school district where the county high school is located~~, and~~ who are qualified to vote under the provisions of 20-20-301, potition the county superintendent to order an election to consider a unification proposition.

(3) When the county suporintendent has received the trustees' resolutions or a valid petition, ~~he~~ *the county superintendent* shall, within 10 days after the receipt of the last resolution or petition and under the provisions of 20-20-201, order the county high school to call an election to consider a unification proposition. The trustees of the county high school shall call and conduct an election in the manner prescribed in this title for school elections. An elector who may vote on the unification proposition ~~shall~~ *must* be qualified to vote under the provisions of 20-20-301. The ballot for a county high school unification proposition ~~shall~~ *must* be substantially in the following form:

"OFFICIAL BALLOT COUNTY HIGH SCHOOL UNIFICATION ELECTION

Shall.... County High School be unified with District No.....,.... County to establish a unified school system under a unified board of trustees?

☐ FOR the unification of the county high school.

☐ AGAINST the unification of the county high school."

HeinOnline -- 1997 vol. I 1008 1997

(4) When the county superintendent receives the election certificate from the trustees of the county high school, ~~he~~ *the county superintendent* shall issue an order declaring the unification of the county high school with the elementary district identified on the ballot as of the next ~~succeeding~~ July 1, if a majority of those electors voting at ~~such~~ *the* election have voted for the unification proposition.

(5) If a majority of those electors voting at the election have voted against the unification proposition, ~~he~~ *the county superintendent* shall order the disapproval of the unification proposition."

**Section 17.** Section 20-6-313, MCA, is amended to read:

**"20-6-313. Transactions after approved county high school unification.** (1) Whenever a county high school is unified with the elementary district where the county high school building is located, the following transactions ~~shall~~ *must* be completed on or before the July 1 when the unification becomes effective:

(a) ~~The high school boundary commission, without the approval of the superintendent of public instruction, shall order the creation of a high school district if the county has not already been divided into high school districts.~~

~~(b)~~ The county high school trustees, who ~~shall~~ *do* not have the capacity to govern the high school district upon unification, shall surrender all minutes, documents, and other records of the county high school to the trustees of the high school district.

~~(c)~~*(b)* The county superintendent shall order the establishment of additional high school trustee nominating areas in the manner prescribed in 20-3-352 and 20-3-353, if requested to do so by a majority of the outlying elementary districts located in the high school district. When the county superintendent establishes ~~such~~ *the* areas, ~~he~~ *the county superintendent* shall appoint additional high school district trustees from each area, who shall hold office until a successor is elected at the next regular school election and qualified.

~~(d)~~*(c)* The county treasurer, after allowing for any outstanding or registered warrants, shall transfer all end-of-the-year fund cash balances of the county high school to similar funds established for the high school district. All previous years' taxes levied and collected for the county high school sball be credited to the appropriate fund of the high school district.

~~(e) The board of county commissioners shall execute, in the name of the county, all necessary and appropriate deeds, bills of sale, and other instruments for the conveyance of title to all real and personal property of the county high school, including all appurtenances and hereditaments, to the high school district.~~

(2) All county high school bonds outstanding at the time of unification shall remain the obligation of the county or that portion of the county against which the bonds were originally issued. The high school district ~~shall be~~ *is* responsible for the maintenance of the debt service fund for ~~such~~ *the* bonds. It ~~shall be~~ *is* the duty of the board of county commissioners and the trustees of the high school district to perform the duties prescribed in the school budgeting and bond redemption provisions of this title for the redemption and interest payments of

HeinOnline -- 1997 vol. I 1009 1997

the county high school bonds in the same manner and by the same means as though the county high school had not been unified."

**Section 18.** Section 20-6-501, MCA, is amended to read:

**"20-6-501. Definition of various schools.** As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. The trustees of any district shall designate the grade assignments for the schools of the district, but for the purposes of this title each school ~~shall be~~ *is* known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs, or the first eight grades or their equivalents. A middle school is a school comprising the work of grades 4 through 8 or any combination ~~thereof~~ *of grades 4 through 8* that has been accredited as a middle school under the provisions of 20-7-102. When an accredited junior high school or an accredited 6-year high school is operated by the district, grades 7 and 8 or their equivalents ~~shall~~ *may* not be considered as elementary grades.

(2) a high school when it comprises the work of one or more grades of schoolwork or their equivalents intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools ~~shall be~~ *are* designated as follows:

(a) a junior high school is a school comprising the work of grades 7 through 9 or their equivalents that has been accredited as a junior high school under the provisions of 20-7-102;

(b) a senior high school is a school ~~which~~ *that* comprises the work of grades 10 through 12 or their equivalents and ~~which~~ *that* is operated in conjunction with a junior high school;

(c) a 6-year high school is a school comprising the work of grades 7 through 12 or their equivalents that has been accredited as a 6-year high school under the provisions of 20-7-102;

(d) a 4-year high school is a school comprising the work of grades 9 through 12 or their equivalents~~;~~

~~(e) a county high school is a 4-year high school operated as an agency of county government and established under the provisions of the acts of March 3, 1899, March 14, 1901, and any subsequent amendments thereto~~."

**Section 19.** Section 20-9-402, MCA, is amended to read:

**"20-9-402. Definition of school district for bonding purposes.** For the purposes of indebting an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term "school district" ~~shall mean~~ *means* any elementary district, high school district, *county high school district,* or community college district~~, except the following types of high schools recognized as high school districts without a bonding authority in 20-6-101:~~

~~(1) high schools operated by an elementary district in a county that has not been divided into high school districts; or~~

~~(2) county high schools located in a county that has not been divided into high school districts by the county high school boundary commission.~~"

**Section 20.** Section 20-9-435, MCA, is amended to read:

"**20-9-435. Delivery of school district bonds and disposition of sale ~~moneys~~ *money*.** (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased the bonds, forward the bonds to the board that, in turn, shall send the bonds to the state treasurer and shall pay the bonds in the manner provided by law; or

(b) if the purchaser is anybody other than the board of investments, deliver the bonds to the purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of a bond, the trustee is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years or by a fine of not more than $50,000, or both.

(3) All money realized from the sale of school district bonds must be paid to the county treasurer. The county treasurer shall credit the money to the building fund of the school district issuing the bonds, except money realized for accrued interest or the purposes defined in 20-9-403(1)(c) and (1)(d) must be deposited in the debt service fund and money realized for the purposes authorized in 20-9-403(1)(e) must be deposited in a fund, as provided for in 2-9-316, to pay a final judgment against the school district. The money realized from the sale of school district bonds must be immediately available to the school district, and the trustees may expend the money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election. ~~Under the provisions of 7-6-2802, the trustees may invest the money for which there is no immediate demand and the interest earned by investment must be used in the manner provided in 7-6-2802. After the full accomplishment of the purpose or purposes of a bond issue, the excess money realized from the bond issue must be transferred to the debt service fund of the school district to be used for the redemption or purchase of bonds of the issue.~~"

**Section 21.** Section 20-15-404, MCA, is amended to read:

"**20-15-404. Trustees to adhere to certain other laws.** Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

(1) the teachers' retirement provisions of Title 19, chapter 20;

(2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;

(3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;

(4) the adult education provisions of 20-7-701 through 20-7-713;

(5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;

HeinOnline -- 1997 vol. I 1011 1997

(6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, ~~20-9-451 through 20-9-456,~~ and 20-9-461 through 20-9-465;

(7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;

(8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;

(9) the school elections provisions of Title 20, chapter 20;

(10) the students' rights provisions of 20-25-511 through 20-25-516; and

(11) the health provisions of 50-1-206."

**Section 22. Repealer.** Sections 7-6-2802, 20-6-216, 20-6-217, 20-6-303, 20-6-304, 20-6-311, 20-6-325, 20-6-415, 20-9-451, 20-9-452, 20-9-453, 20-9-454, 20-9-455, and 20-9-456, MCA, are repealed.

**Section 23. Effective date.** [This act] is effective July 1, 1997, and applies to bonds issued on or after [the effective date of this act].

Approved April 8, 1997

# CHAPTER NO. 220

[SB 116]

AN ACT ALLOWING AN APPLICANT FOR A USED MOTOR VEHICLE DEALER'S LICENSE TO MAINTAIN A PERMANENT NONRESIDENTIAL BUILDING FOR RECORDKEEPING AND SALES WITHIN 1,000 FEET OF THE LOT WHERE MOTOR VEHICLES ARE DISPLAYED; AMENDING SECTION 61-4-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-4-101, MCA, is amended to read:

**"61-4-101. Application for dealer's license or wholesaler's license.** (1) (a) A verified application for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in 61-1-104; or

(ii) business as a wholesaler as defined in 61-1-319.

HeinOnline -- 1997 vol. I 1012 1997

(b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

(c) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any ~~1~~ calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

(d) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department prior to the expiration of the license, the licensee may operate the business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant ~~must~~ *shall* furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant ~~must~~ *shall*:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational vehicle dealer and for the use of "RV" plates; as a trailer,

HeinOnline -- 1997 vol. I 1013 1997

semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set forth in subsections (2)(a)(i) and (2)(a)(ii), provide:

(i) a statement that the:

(A) applicant has an established place of business ~~that includes a lot or lots~~ *consisting of one or more lots located within 200 feet of each other* upon which motor vehicles may be displayed and a permanent nonresidential building on or ~~contiguous~~ *within 1,000 feet of* ~~to~~ the lot or lots where records are kept and sales are made; or

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that the person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) If two or more vehicle ~~dealer~~ *dealers* or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must he physically segregated and clearly identified. Each applicant's established place of business ~~shall~~ *must* display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readahle to the major avenue of traffic at a minimum distance of 150 feet.

(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(h).

(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's or wholesaler's license shall also file with ~~his~~ *the* application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the $25,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold; otherwise, all other trailer dealer, motorcycle dealer, or wholesaler license applicants shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved hy the department and filed in its office, and must he renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a

court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the hond is required."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 8, 1997

# CHAPTER NO. 221

[SB 343]

AN ACT REVISING AND CLARIFYING LAWS GOVERNING MOTOR VEHICLE DEALERS, MANUFACTURERS, AND DISTRIBUTORS; AND AMENDING SECTIONS 61-4-101, 61-4-104, 61-4-120, 61-4-121, 61-4-131, 61-4-133, 61-4-134, 61-4-201, 61-4-205, 61-4-206, 61-4-207, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-4-101, MCA, is amended to read:

**"61-4-101. Application for dealer's license or wholesaler's license.** (1) (a) A verified application for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in 61-1-104; or

(ii) business as a wholesaler as defined in 61-1-319.

(b) A licensed real estate broker or agent lawfully huying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

(c) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any 1 calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

(d) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must he renewed and paid for annually, and an application for relicensure must be filed not later than

HeinOnline -- 1997 vol. I 1015 1997

January 1 of each year. If an application for renewal of a license has been received by the department ~~prior to~~ *before* the expiration of the license, the licensee may operate the business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant ~~must~~ *shall* furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant ~~must~~ *shall*:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name, ~~and~~ address, *date of birth, and social security number* of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

*(iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclose whether the applicant or other person with interest in a dealership owned by the applicant has been convicted of a felony;*

*(iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance, pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;*

~~(iii)~~*(v)* state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

~~(iv)~~*(vi)* execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

~~(v)~~*(vii)* execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

~~(vi)~~*(viii)* execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational vehicle dealer and for the use of "RV" platos; as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set forth in subsections (2)(a)(i) ~~and (2)(a)(ii)~~ *through (2)(a)(iv)*, provide:

(i) a statement that the:

(A) applicant has an established place of business that includes a lot or lots upon which motor vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where records are kept and sales are made; or

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that the person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) If two or more vehicle dealer or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business shall display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's or wholesaler's license shall also file with ~~his~~ *the* application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the $25,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold~~;~~. ~~otherwise, all~~ *All* other trailer dealer, motorcycle dealer, or wholesaler license applicants shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. *The bond may extend to any other type of dealer license issued to the applicant at the same place of business, provided that all types of licenses are indicated on the face of the bond.* All bonds must run to the state of Montana, must be approved by the department, ~~and~~ *must be* filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required."

HeinOnline -- 1997 vol. I 1017 1997

**Section 2.** Section 61-4-104, MCA, is amended to read:

"**61-4-104. Record of purchase or sale.** A dealer or wholesaler licensed under 61-4-101 shall keep a hook or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles must also include the *vehicle identification number and* engine number, if any, ~~maker's number, if any, chassis number, if any, and other numbers or identification marks that appear on the motor vehicle~~ and must include a statement that a number has been obliterated, defaced, or changed if ~~such is the fact~~ *that has occurred.* In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear ~~thereon~~ *on the trailer, semitrailer, or special mobile equipment.* The dealer or wholesaler must also bave ~~in his possession,~~ *a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler* from the time the motor vehicle is delivered to ~~him~~ *the dealer or wholesaler* until it has been disposed of by ~~him~~ *the dealer or wholesaler*~~, a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler~~. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101(2)(b)(i). An authorized representative of the department, upon presentation of ~~his~~ *the representative's* credentials, may inspect and have access to and copy any records required under this chapter."

**Section 3.** Section 61-4-120, MCA, is amended to read:

"**61-4-120. Application for auto auction license — general regulations.** (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the moter vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by tbe department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and tbe location of premises, *including* ~~(~~street address, city, county, and state~~)~~, where records are kept, sales are made, and motor vebicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

HeinOnline -- 1997 vol. I 1018 1997

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of $25,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b).

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, date of sale, name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of

HeinOnline -- 1997 vol. I 1019 1997

production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not he used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the *vehicle* identification number ~~or~~ *and* engine number, if any; *and*

(ii) ~~other numbers or identification marks on the motor vehicle; and~~

~~(iii)~~ a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

*(i)* name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

*(ii)* name, address, and signature of the transferor;

*(iii)* name, license number, and signature of the transferee; and

*(iv)* ~~the~~ date the vehicle was sold through the auction.

HeinOnline -- 1997 vol. I 1020 1997

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for the buyer under the provisions of 61-3-206."

**Section 4.** Section 61-4-121, MCA, is amended to read:

**"61-4-121. Twenty-day permit — limitation on issuance *and transfer* — violation — penalty.** (1) *(a)* A dealer may not issue more than one 20-day permit under 61-4-111 or 61-4-112 per vehicle sale.

*(b) A dealer may not transfer 20-day permits to another dealer unless the dealer:*

*(i) notifies the department within 3 days of the transfer;*

*(ii) identifies to the department the dealer to whom any permits have been transferred;*

*(iii) informs the department of the date of the transfer and the quantity and serial numbers of the transferred permits.*

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day permits for a period of time determined by the department."

**Section 5.** Section 61-4-131, MCA, is amended to read:

**"61-4-131. Definitions.** As used in 61-4-131 through 61-4-137, ~~the following definitions apply:~~

~~(1) "Department" means the department of commerce.~~

~~(2)~~ ~~"Designated~~ *"designated* family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed ~~him~~ *the deceased* in the motor vehicle dealership, or under the laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer."

**Section 6.** Section 61-4-133, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1021 1997

**"61-4-133. Refusal to honor succession to ownership — notice required.** (1) If a manufacturer, factory branch, distrihutor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family memher's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family memher and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than ~~60~~ *90* days from the date ~~such~~ *the* notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than ~~60~~ *90* days from the date ~~such~~ *the* notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the family member and the department or if the department rules in favor of the complainant in a hearing held pursuant to 61-4-134, the franchise agreement ~~shall~~ *must* continue in effect subject to termination only as otherwise permitted by law."

**Section 7.** Section 61-4-134, MCA, is amended to read:

**"61-4-134. Procedure to determine right to succeed.** (1) Any designated family member who receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor ~~his~~ *the family member's* succession to the ownership and operation of the dealership may, within the ~~60-day~~ *90-day* period, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal hy showing tbat the succession would be detrimental to the public interest or to the representation of the manufacturer, factory branch, distributor, or importer.

(3) The franchise agreement ~~shall~~ *must* continue in effect until the final ~~determination of the issues raised in the complaint~~ *adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the designated family member. The manufacturer, factory branch, distributor, or importer and the designated family member shall abide by the terms of the franchise agreement and the laws of Montana during the appeals process.*

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to ~~part 7, chapter 4,~~ Title 2, *chapter 4, part 7*."

**Section 8.** Section 61-4-201, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1022 1997

**"61-4-201. Definitions.** As used in this part, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

~~(2) "Department" means the department of justice.~~

~~(3)~~*(2)* "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

~~(4)~~*(3)* "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

~~(5)~~*(4)* "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

~~(6)~~*(5)* "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor;

(c) the franchisee, as a separate business, constitutes a component of franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

~~(7)~~*(6)* "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services such new motor vehicles to and for the general public.

~~(8)~~*(7)* "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

~~(9)~~*(8)* "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

~~(10)~~*(9)* "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment~~, which~~ *that,* when installed, ~~form~~ *forms* an integral part of the new motor vehicle and ~~which~~ *that* constitutes a major manufacturing alteration, but does not include a porson who installs a camper on a pickup truck.

HeinOnline -- 1997 vol. I 1023 1997

*(10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.*

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles *under a franchise with the manufacturer of the new motor vehicles* or used motor vehicles taken in trade on new motor vehicles.

*(12) (a) "Retail sale" means the sale of a new motor vehicle.*

*(b) "Retail sale" does not mean a sale:*

*(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or*

*(ii) that is the result of a transfer between two licensed new motor vehicle dealers."*

**Section 9.** Section 61-4-205, MCA, is amended to read:

**"61-4-205. Limitations on cancellation and termination.** (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, ~~no~~ *a* franchisor may *not* cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) ~~No~~ *A* franchisor may *not* enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than ~~30~~ *60* days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. ~~No~~ *A* notice of intention to terminate or not continue a franchise ~~may be~~ *is not* required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice ~~shall~~ *must* be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices ~~shall~~ *must* be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy

HeinOnline -- 1997 vol. I 1024 1997

of the franchisor's notice to any other parties whom the department may consider interested persons~~, such copy to be in the form and substance and given in the manner the department finds appropriate~~.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse, son, or daughter, the franchisor shall give effect to ~~such a change~~ *the sale or transfer of ownership* in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, ~~no~~ *a* license under 61-4-101 through 61-4-105 may *not* be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor."

**Section 10.** Section 61-4-206, MCA, is amended to read:

**"61-4-206. Objections — hearing.** (1) A person who receives or is entitled to receive a copy of a notice provided for in ~~subsection (4) of~~ 61-4-205*(4)* may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If ~~no~~ *an* objection is *not* filed within 15 days from the date the notice was received, the proposed action ~~shall~~ *must* be approved.

(2) If a timely objection has been filed, the department shall enter an order fixing the time, which ~~shall~~ *must* be within 30 days of the date of the order, and place of a hearing on the objection and shall send by certified mail with return receipt requested a copy of the notice provided for in ~~subsection (4) of~~ 61-4-205*(4)*.

(3) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

(4) Upon hearing *or upon objection to the establishment of a new motor vehicle dealership*, the franchisor has the burden of proof to establish that good cause exists to terminate, ~~or~~ not continue, *or not establish* the franchise. ~~When there is an objection to the establishment of a new motor vehicle dealership, the burden of proof that good cause does exist shall be with the franchisor.~~

(5) The rules of evidence for ~~such~~ *a* hearing *provided for in subsection (2)* ~~shall be~~ *are the same as* those found in ~~chapter 4,~~ Title 2, *chapter 4*. The department shall reasonably apportion all costs between the parties.

HeinOnline -- 1997 vol. I 1025 1997

(6) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing ~~shall~~ *must* be conducted pursuant to ~~chapter 4,~~ Title 2, *chapter 4*.

(7) A transcript of the testimony of each witness taken at the hearing ~~shall~~ *must* be made and preserved. Within 30 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(8) Any party to the hearing before the department may appeal pursuant to ~~chapter 4,~~ Title 2, *chapter 4*.

*(9) The franchise agreement must continue in effect until the adjudication by the department on the verified complaint and the exhaustion of all appellate remedies available to the franchisee. The franchisor and the franchisee shall abide by the terms of the franchise and the laws of Montana during the appeals process."*

**Section 11.** Section 61-4-207, MCA, is amended to read:

**"61-4-207. Determination of good cause.** (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by the franchise;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of ~~his~~ *the franchisee's* part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for ~~such~~ warranty work performed by the franchisee; and

(g) except as provided in subsection (2) ~~of this section~~, failure by the franchisee to substantially comply with ~~those~~ *the written and uniformly applied* requirements of the franchise that are determined by the department to be reasonable and material.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee's dealership; *or*

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the samo line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care, *including satisfactory new motor vehicle dealer sales and service facilities, equipment, parts supply, and qualified management, sales, and service personnel,* for the new motor vehicle products of the line-make ~~which shall include the adequacy of new motor vehicle dealer sales and service facilities, equipment, supply of parts, and qualified management, sales, and service personnel~~."

**Section 12.** Section 61-4-208, MCA, is amended to read:

"**61-4-208. ~~Coercion prohibited~~ *Prohibited acts.*** *(1)* A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any representative ~~thereof~~ *of the persons or entities listed* may not:

*(a)* coerce, ~~or~~ attempt to coerce, *or require* a new motor vehicle dealer to:

~~(1)~~*(i)* accept delivery of a new motor vehicle, a part, or an accessory ~~therefor~~ *for a new motor vehicle* or any other commodity that has not been ordered by the dealer;

~~(2)~~*(ii)* participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices; ~~or~~

*(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;*

*(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before [the effective date of this act] when those requirements are not justified by reasonable business considerations;*

*(v) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or*

HeinOnline -- 1997 vol. I 1027 1997

~~(3)~~*(vi)* enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative ~~thereof~~ *of the listed persons or entities* or do any other act unfair to the dealer by:

~~(a)~~*(A)* threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative ~~thereof~~ *of the listed persons or entities* and the dealer; or

~~(b)~~*(B)* threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent ~~thereof~~ *of the listed entities*~~,~~*;*

*(b) delay, refuse, or fail to deliver new vehicles in a reasonable time in reasonable quantity relative to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer if the new vehicles are publicly advertised as being available for immediate delivery; or*

*(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards.*

*(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities."*

**Section 13. Manufacturer's right of first refusal.** (1) Regardless of the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor may exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership. This may occur if the sale or transfer is conditioned upon either the manufacturer or dealer entering into a dealer agreement with the proposed new owner or transferee if all the following requirements are met:

(a) the manufacturer or distributor notifies the dealer in writing of the manufacturer's or dealer's intent to exercise the right of first refusal within 60 days of receipt of the dealer's written proposal for sale or transfer;

(b) the dealer and the dealer's owner receive the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

(c) the proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners or to a qualified manager, partnership, or corporation controlled by a member of the family of a dealer owner; and

(d) the manufacturer or distributor agrees to pay reasonable costs and attorney fees relative to the proposed changes in ownership or transfer of dealership assets. In order for costs and fees to be payable, the dealer shall submit an accounting of the expenses within 20 days of the dealer's receipt of the manufacturer's or distributor's written request for the accounting. The

HeinOnline -- 1997 vol. I 1028 1997

manufacturer or distributor may request the accounting before exercising the manufacturer's or distributor's right of first refusal.

(2) This section does not affect any contractual right of a manufacturer or distributor to charge back to the dealer's account any amount previously credited or paid as a discount incident to the dealer's purchase of the vehicles.

**Section 14. Codification instruction.** [Section 13] is intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [section 13].

**Section 15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 16. Effective date.** [This act] is effective on passage and approval.

Approved April 8, 1997

# CHAPTER NO. 222

[HB 159]

AN ACT ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INITIATE AN ACTION FOR ENFORCEMENT OF CHILD CARE REMEDIES IN JUSTICE'S COURT, CITY COURT, OR MUNICIPAL COURT AS WELL AS DISTRICT COURT; AND AMENDING SECTION 52-2-741, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 52-2-741, MCA, is amended to read:

**"52-2-741. Penalty — remedies.** (1) A person, group of persons, or corporation who establishes or maintains a day-care facility or assists in conducting or maintaining a day-care facility without first obtaining a license or registration certificate from the department as provided for in this part is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed $500.

(2) (a) If the department is advised or has reason to believe that a person, group of persons, or corporation is operating a day-care facility without a license or registration certificate, it shall make an investigation to ascertain the facts. If the department finds that the day-care facility is being or has been operated without a license or registration certificate, it may report the results of its investigation to the attorney general or the county attorney of the county where the day-care facility is being operated for prosecution and request that an injunction be issued against the facility until a license or certificate is issued.

(b) The department may institute any action necessary to enforce compliance with this part or any order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

(c) The department may, by its own attorney ~~or counsel~~, any county attorney, or the attorney general, initiate an action in the *justice's court, city court, municipal court, or* district court of the appropriate ~~county~~ *jurisdiction* and be

represented by ~~such~~ *that* representative on appeal to the *district court and* supreme court of Montana, *as applicable.*"

Approved April 10, 1997

# CHAPTER NO. 223

[HB 174]

AN ACT EXPANDING THE GAME WARDENS' RETIREMENT SYSTEM TO BE A GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM FOR STATE PEACE OFFICERS; REVISING DEFINITIONS; PROVIDING MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO ARE PEACE OFFICERS WITH AN ELECTION TO JOIN THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; CLARIFYING THAT PUBLIC EMPLOYEES' RETIREMENT SYSTEM MEMBERS TRANSFERRING TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM MAY TRANSFER CREDITABLE SERVICE WITHOUT ACTUARIAL COST TO THE GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM; REDUCING THE VESTING REQUIREMENTS; AMENDING SECTIONS 19-8-101, 19-8-102, 19-8-301, 19-8-302, 19-8-504, 19-8-604, 19-8-701, 19-8-712, 19-8-902, AND 19-8-903, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1. Transfer of membership — qualification of previous serviee.** A person who elects to become a member of the game wardens' and peace officers' retirement system pursuant to 19-8-302 may transfer the member's creditable service in tbe public employees' retirement system into the game wardens' and peace officers' retirement system under tbe provisions of 19-8-902.

**Section 2.** Section 19-8-101, MCA, is amended to read:

"**19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a memher for any 3 years of continuous service upon which contributions were made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in tbe calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

HeinOnline -- 1997 vol. I 1030 1997

(3) "~~State game~~ *Game* warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks money.

*(4) "Motor carrier officer" means an employee of the department of transportation appointed as a peace officer pursuant to 61-12-201.*

*(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or who is charged with specific law enforcement responsibilities on behalf of the state."*

**Section 3.** Section 19-8-102, MCA, is amended to read:

**"19-8-102. Game wardens' *and peace officers'* retirement system established.** There is a retirement system known as the ~~state~~ game wardens' *and peace officers'* retirement system, which is governed by the provisions of chapter 2 and this chapter."

**Section 4.** Section 19-8-301, MCA, is amended to read:

**"19-8-301. Membership — inactive vested members — inactive nonvested members.** (1) Except as provided in 19-8-302, *the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, shall become and remain active members for as long as they are employed as peace officers:*

*(a)* ~~each state~~ game ~~warden~~ *wardens* who ~~is~~ *are* assigned to law enforcement in the department of fish, wildlife, and parks ~~shall become a member of the retirement system when first becoming a state game warden. All state game wardens are members of the retirement system so long as they are actively employed in that capacity.~~;

*(b) motor carrier officers employed by the department of transportation;*

*(c) campus security officers employed by the university system;*

*(d) the warden and deputy wardens of the state prison system;*

*(e) corrections officers employed by the department of corrections;*

*(f) probation and parole officers employed by the department of corrections;*

*(g) stock inspectors and detectives employed by the department of livestock;*

*(h) motor vehicle inspectors employed by the department of justice; and*

*(i) drill instructors employed by the department of corrections.*

(2) A member with at least ~~10~~ *5* years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

HeinOnline -- 1997 vol. I 1031 1997

(3) A member with less than ~~10~~ *5* years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 5.** Section 19-8-302, MCA, is amended to read:

"**19-8-302. ~~Ineligibility for public~~ *Public* employees' retirement system — transfer of membership.** (1) *Except as provided in subsections (2) and (4), an eligible peace officer shall become a member of the game wardens' and peace officers' retirement system on the first day of covered service.*

*(2) A member of the public employees' retirement system who first becomes eligible for membership in the game wardens' and peace officers' retirement system on July 1, 1997, may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by submitting a written election of intent to the board no later than December 31, 1997.*

*(3)* A person who is a member of the *game wardens' and peace officers'* retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement ~~in the department of fish, wildlife, and parks~~ *within the same state agency* may retain membership in the retirement system by filing a written election of intent with the board no later than 30 days after transfer to the new position.

~~(2)~~*(4)* A person who is a member of the public employees' retirement system who transfers to a position ~~as a state game warden~~ *covered by the game wardens' and peace officers' retirement system* may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election of intent with the board no later than 30 days after transfer to the new position."

**Section 6.** Section 19-8-504, MCA, is amended to read:

"**19-8-504. ~~State's~~ *State employer's* contribution.** Each month, ~~the~~ state ~~treasurer~~ *employers* shall pay to the pension trust fund ~~out of the department of fish, wildlife, and parks funds,~~ a sum equal to 8.15% of ~~all members' salaries~~ *the total compensation paid to their covered employees*."

**Section 7.** Section 19-8-604, MCA, is amended to read:

"**19-8-604. Early retirement benefit.** If a member is discontinued from service after having completed ~~10~~ *5* years of membership service but before reaching retirement age, the member must, upon filing a written application with the board, be paid a retirement benefit beginning on the member's 55th birthday calculated under the provisions of 19-8-603."

**Section 8.** Section 19-8-701, MCA, is amended to read:

"**19-8-701. Disability retirement benefit.** (1) A member who is determined by the board to be disabled must be granted a disability retirement benefit in an amount calculated on the actuarial equivalent of the service

HeinOnline -- 1997 vol. I 1032 1997

retirement benefit standing to the member's credit at the time of the member's disability retirement.

(2) If the disability is a direct result of any service to the ~~department of fish, wildlife, and parks~~ *state* in *the* line of duty and the member has at least ~~10~~ *5* years of membership service, the member who is disabled must be retired on a disability retirement benefit of *not less than* one-half of the member's final average salary."

**Section 9.** Section 19-8-712, MCA, is amended to read:

**"19-8-712. Medical examination of disability retiree — cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3). If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in the same classification within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(4) The ~~department of fish, wildlife, and parks~~ *member's former employer* may request a medical or psychological review as to the ability of the recipient to return to work as a ~~game warden~~ *peace officer*. If the board's findings are upheld, the ~~department of fish, wildlife, and parks~~ *former employer* shall pay the cost of the review."

**Section 10.** Section 19-8-902, MCA, is amended to read:

**"19-8-902. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of the member's accumulated contributions. To qualify

HeinOnline -- 1997 vol. I 1033 1997

this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the game wardens' *and peace officers'* retirement system, as determined by the board, based on the most recent actuarial valuation of the system minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the game wardens' *and peace officers'* retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' *and peace officers'* retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the game wardens' *and peace officers'* retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

**Section 11.** Section 19-8-903, MCA, is amended to read:

**"19-8-903. Employment in United States government.** (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may qualify the federal employment in the retirement system under subsection (2) of this section, provided that:

(a) the member has accumulated at least 5 years of membership service; and

(b) the member returns to full-time service for at least 1 year after completing employment in the United States government.

(2) A member who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) pay an amount equal to the normal employer and employee contributions plus interest within 2 years after the member's return to active state ~~game warden~~ *peace officer* status.

(3) Compensation earned while on assignment to an agency of the United States government must be considered compensation for purposes of the retirement system and may be included in the determination of final average salary, provided that the final average salary cannot exceed 100% of the member's highest monthly compensation earned as a state ~~game warden~~ *peace officer*."

HeinOnline -- 1997 vol. I 1034 1997

**Section 12. Instruction to code commissioner.** In the Montana Code Annotated and in material enacted by the 55th legislature, unless the context requires otherwise, the code commissioner shall change the term "game wardens' retirement system" to "game wardens' and peace officers' retirement system", and whenever the term "game wardens" is used in reference to the retirement system, the code commissioner shall change the term to "peace officers".

**Section 13. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 8, part 3, and the provisions of Title 19, chapter 8, part 3, apply to [section 1].

**Section 14. Effective date.** [This act] is effective July 1, 1997.

Approved April 10, 1997

# CHAPTER NO. 224

[HB 544]

AN ACT REVISING THE REGIONAL CORRECTIONAL FACILITY ACT TO PERMIT THE DEPARTMENT OF CORRECTIONS TO ENTER INTO AGREEMENTS WITH CORPORATIONS; ALLOWING THE CORPORATION AN OPTION TO PURCHASE A FACILITY OWNED BY THE STATE; ALLOWING A LOCAL GOVERNMENTAL ENTITY TO ENTER INTO LONG-TERM CONTRACTS AND TO INCUR INDEBTEDNESS TO ACQUIRE A FACILITY THROUGH A LEASE OR LEASE-PURCHASE OPTION; AND AMENDING SECTIONS 53-30-503, 53-30-504, 53-30-506, AND 53-30-507, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 53-30-503, MCA, is amended to read:

**"53-30-503. Definitions.** As used in this part, the following definitions apply:

*(1) "Corporation" means an entity organized and existing pursuant to Title 35, chapter 1 or 2, and approved or designated by a local governmental entity.*

~~(1)~~*(2)* "Department" means the department of corrections.

~~(2)~~*(3)* "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.

~~(3)~~*(4)* "Local governmental entity" means:

(a) a local governmental unit;

(b) a multijurisdictional service district; or

(c) an interlocal cooperation commission.

~~(4)~~*(5)* "Multijurisdictional service district" means a district established in accordance with Title 7, chapter 11, part 11.

HeinOnline -- 1997 vol. I 1035 1997

~~(5)~~*(6)* "Regional correctional facility" means a correctional facility, except the Montana state prison, the women's correctional system, or the Swan River boot camp, designed, constructed, or operated under this part by a local governmental entity, *a corporation,* ~~or~~ the department, or ~~both~~ *any combination of a local governmental entity, a corporation, and the department,* for the housing of convicted felons."

**Section 2.** Section 53-30-504, MCA, is amended to read:

**"53-30-504. Authority to enter into contracts — terms — financing.** (1) The department may contract with one or more local governmental entities *or corporations* for the housing of and provision of services to inmates sentenced to the department or the department's correctional institutions at a regional correctional facility designed, financed, constructed, or operated by a local governmental entity, *a corporation,* the department, or ~~both~~ *any combination of a local governmental entity, a corporation, and the department.*

(2) The contract must be authorized and approved by the governor, the department, and the governing body of the local governmental entity *or the corporation, whichever is party to the contract.* The contract must set forth fully the purposes, powers, rights, and responsibilities of each party to the contract and address necessary and proper matters set forth in 7-11-105.

(3) A contract may include an agreement to jointly design, finance, construct, and operate a regional correctional facility.

(4) The department may not enter into a contract unless the *department and the* local governmental entity *or corporation* has the legal authority and the ability to finance its share of the costs under the contract.

(5) A regional correctional facility may be constructed on real property *that is* owned by the state of Montana, ~~or~~ a local governmental entity, *or a corporation* or *that is* jointly owned ~~by both~~.

(6) The proceeds of long-range building program general obligation bonds authorized to be issued in accordance with Title 17, chapter 5, part 8, may be used, in whole or in part, to construct a regional correctional facility *that may be owned and operated by a local governmental entity,* whether or not the facility or any part of it is to be owned and operated by the state. If the proceeds of long-range building program general obligation bonds or other state revenue is to be used in whole or in part to construct a regional correctional facility that is to be owned and operated by a local governmental entity, the department of administration is not required to procure the design, engineering, or construction services for the facility. The contract may provide that the local governmental entity shall procure the services, but must also provide that the department of administration must be involved in the development and approval of the plans and specifications for the facility prior to the time the facility is let to bid.

~~(7)~~*(7)* The department shall use the proceeds of long-range building program bonds and other state revenue appropriated for regional correctional facilities to negotiate with local ~~government~~ *governmental* entities, *corporations,* or private providers to obtain the greatest number of beds that is consistent with program objectives for the least cost to the state.

HeinOnline -- 1997 vol. I 1036 1997

*(8) A person convicted in another state may not be confined in the state portion of a regional correctional facility in this state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4."*

**Section 3.** Section 53-30-506, MCA, is amended to read:

**"53-30-506. Local governmental entity option to purchase facility owned by state.** If, under a contract entered into under 53-30-504, the state constructs and owns a regional correctional facility, the contract may provide an option for the local governmental entity *or corporation* to purchase the facility."

**Section 4.** Section 53-30-507, MCA, is amended to read:

**"53-30-507. Rulemaking authority.** The department may adopt rules to implement this part, including rules for the determination of how sites are to be chosen for regional correctional facilities. The rules must provide that in selecting a site the department shall consider the need for a regional correctional facility in the area, the ability and willingness of ~~the~~ *a* local governmental entity *or a corporation* to enter into a long-term contract with the department, and the availability of rehabilitative services to inmates. *The rules must require that a corporation respond to a request for proposals prepared by the department for a regional correctional facility before a contract may be entered with that corporation.*"

**Section 5. Local governmental entity authorized to enter into long-term contracts and to incur indebtedness — noncompetition clause.** (1) A local governmental entity may enter into a long-term lease or agreement, not to exceed a term of 30 years, with a corporation proposing to operate a regional detention facility under this part. The local governmental entity may agree in the long-term lease or agreement to acquire the facility from the corporation through a lease or a lease option to purchase, subject to the limitations of Title 7, chapter 7, part 21.

(2) A contract may also contain a covenant by the local governmental entity that if the contract is terminated for nonappropriation of funds by the local governmental entity, the local governmental entity agrees not to purchase, lease, or rent property to perform the functions performed by the corporation and agrees not to permit the functions to be performed by its own employees or by any local governmental entity for a specified period of not less than 1 year and not more than the remaining original term of the contract.

**Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 53, chapter 30, part 5, and the provisions of Title 53, chapter 30, part 5, apply to [section 5].

Approved April 10, 1997

HeinOnline -- 1997 vol. I 1037 1997

# CHAPTER NO. 225

[SB 21]

AN ACT EXTENDING FOR 8 YEARS THE JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET; AMENDING SECTION 11, CHAPTER 387, LAWS OF 1993, AND SECTION 1, CHAPTER 381, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 11, Chapter 387, Laws of 1993, is amended to read:

"Section 11. **Termination.** [This act] terminates July 1, ~~1995~~ *2005*."

**Section 2.** Section 1, Chapter 381, Laws of 1995, is amended to read:

"Section 1. Section 11, Chapter 387, Laws of 1993, is amended to read:

"Section 11. **Termination.** [This act] terminates July 1, ~~1995~~ ~~1997~~ *2005*.""

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 10, 1997

# CHAPTER NO. 226

[SB 25]

AN ACT CLARIFYING THE TERM OF OFFICE FOR CERTAIN APPOINTEES TO FILL VACANT ELECTED POSITIONS; AMENDING SECTION 7-4-2206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-4-2206, MCA, is amended to read:

**"7-4-2206. Vacancies.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, ~~shall~~ *must* be filled by appointment by the board of county commissioners. Except *as provided in subsections (3) through (5)* ~~for the justice of the peace~~, the appointee shall hold ~~his~~ *the* office, if elective, until the *person elected at the* next general election *is certified pursuant to 13-15-406.* ~~unless otherwise provided in subsection (3) or (4), and if~~ *If the office is* not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 75 days or more before the general election held during the second year of the term, an individual ~~shall~~ *must* be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more before the primary election during the second year of the term, the same procedure ~~shall~~ *must* be ~~utilized~~ *used* as is used to elect a person to that office for a full 4-year term.

HeinOnline -- 1997 vol. I 1038 1997

(b) Whenever the vacancy occurs after the 75th day ~~preceding~~ *before* the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate ~~shall~~ *must* be filed with the clerk and recorder on or before the 75th day ~~prior to~~ *before* the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 75th day ~~preceding~~ *before* the general election held during the second year of the term, the person appointed by the commissioners under ~~7-4-2206(2)~~ *subsection (2)* shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace ~~shall~~ *must* be filled as provided in Title 3, chapter 10, part 2."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 10, 1997

# CHAPTER NO. 227

[SB 27]

AN ACT INCREASING THE AMOUNT THAT A COUNTY MAY BORROW WITHOUT APPROVAL OF THE ELECTORATE BASED UPON A COUNTY'S TAXABLE VALUATION; AND AMENDING SECTIONS 7-7-2101 AND 7-7-2402, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-7-2101, MCA, is amended to read:

"**7-7-2101. Limitation on amount of county indebtedness.** (1) A county may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue in 15-36-324(10), as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, plus, for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 23%.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in *7-7-2402*, 7-21-3413, and 7-21-3414.

HeinOnline -- 1997 vol. I 1039 1997

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

**Section 2.** Section 7-7-2402, MCA, is amended to read:

**"7-7-2402. Election required to borrow money — exceptions.** (1) Except as provided in subsection ~~(3)~~ *(4)*, the board of county commissioners may not borrow money for any of the purposes mentioned in this title or for any single purpose in an amount exceeding ~~$500,000~~ *the limits set in subsection (2)* without:

(a) first ~~having submitted~~ *submitting* the question of a loan to a vote of the electors of the county; and

(b) *obtaining* the approval of a majority of the electors of the county.

*(2) Based upon the taxable valuation of a county, a county may borrow the following amounts without a vote of the electorate:*

*(a) up to $500,000 if the county's taxable value is less than $50 million;*

*(b) up to $750,000 if the county's taxable value is between $50 million and $100 million; and*

*(c) up to $1 million if the county's taxable valuation is greater than $100 million.*

~~(2)~~*(3)* If a majority of the votes cast are in favor of the loan, then the board *of county commissioners* may ~~make~~ *enter into* the loan, issuing bonds or otherwise as ~~may seem best for~~ *is in* the *best* interests of the county.

~~(3)~~*(4)* It is not necessary to submit to the electors the question of borrowing money:

(a) to refund outstanding bonds; or

(b) for the purpose of enahling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines."

Approved April 10, 1997

# CHAPTER NO. 228

[SB 50]

AN ACT ALLOWING THE LESSEE OF AN OIL, GAS, OR OTHER MINERAL LEASE TO MAKE IN A SINGLE REQUEST FOR RECORDATION THE ASSIGNMENT OR RELEASE OF MORE THAN ONE LEASE; REQUIRING THAT A REQUEST FOR THE ASSIGNMENT OR RELEASE OF MORE THAN ONE LEASE BE TREATED AS A SINGLE REQUEST FOR PUBLIC RECORDING PURPOSES; AND AMENDING SECTION 82-1-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 82-1-201, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1040 1997

**"82-1-201. Release of record upon forfeiture, cancellation, or expiration of lease — penalty.** (1) When ~~any~~ *an executed and recorded* oil, gas, or other mineral lease ~~heretofore or hereafter executed and recorded~~ is forfeited, canceled, or expires, it ~~shall be~~ *is* the duty of the lessee, ~~his~~ *the lessee's* successor, or assigns, within 60 days from the date of ~~such~~ *the* forfeiture, cancellation, or expiration of ~~any and all leases~~ *the lease*, to have ~~such~~ *the* lease or abstract of ~~such~~ *the* lease released from record in the county where the leased land is situated without cost to the ~~owner thereof~~ *lessor*.

*(2) A lessee may request the recordation of an assignment or release of more than one lease in a single instrument, and an instrument involving more than one lease made under this subsection must be treated for public recording purposes as a single request from the lessee.*

~~(2)~~*(3)* A lessee who fails to comply with subsection (1) within 30 days of written notice from the lessor is guilty of a misdemeanor punishable by a fine of up to $250."

Approved April 10, 1997

# CHAPTER NO. 229

[SB 159]

AN ACT ELIMINATING THE REQUIREMENT THAT A LOCAL GOVERNMENT DISTRIBUTE DEMAND DEPOSITS RATABLY AMONG ALL BANKS WITHIN THE BOUNDARY OF THE LOCAL GOVERNMENT; AND AMENDING SECTION 7-6-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-205, MCA, is amended to read:

**"7-6-205. Demand deposits.** ~~(1)~~ Demand deposits ~~shall~~ *may* be placed only in banks.

~~(2) When more than one bank is available in any county for the deposit of such county funds or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor and substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this part. It shall be the duty of said county or city treasurer or town clerk to prorate all such demand deposits among all of the banks qualified to receive the same as provided in this part, to the end that an equitable distribution of such demand deposits shall be maintained.~~"

Approved April 10, 1997

HeinOnline -- 1997 vol. I 1041 1997

# CHAPTER NO. 230

[SB 205]

AN ACT CLARIFYING THAT TRUTH IS AN ABSOLUTE DEFENSE IN A CRIMINAL DEFAMATION PROCEEDING; AMENDING SECTION 45-8-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Supreme Court in *State v. Helfrich*, 53 St. Rep. 741 (1996), held that section 45-8-212, MCA, was unconstitutional for not allowing truth as an absolute defense in criminal defamation proceedings.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-8-212, MCA, is amended to read:

"**45-8-212. Criminal defamation.** (1) Defamatory matter is anything ~~which~~ *that* exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to ~~his~~ *the person's* or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true ~~and is communicated with good motives and for justifiable ends~~;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further ~~such~~ *the* interest or duty.

(4) ~~No~~ *A* person ~~shall~~ *may not* be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 10, 1997

HeinOnline -- 1997 vol. I 1042 1997

# CHAPTER NO. 231

[SB 246]

AN ACT REGULATING THE SALE OF A MOTOR VEHICLE BY A PERSON ON REAL PROPERTY IN WHICH THE PERSON DOES NOT HAVE A LEGAL INTEREST; AND AMENDING SECTION 61-1-314, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-1-314, MCA, is amended to read:

**"61-1-314. Dealer.** (1) "Dealer" means:

(a) a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and ~~who~~ *that* qualifies for issuance of a dealer's license under 61-4-101 through 61-4-105; ~~or~~

(b) an owner of real property who allows more than three new or used motor vehicles not titled in the property owner's or the seller's name to be offered for sale on the property during 1 calendar year unless the property is leased to a motor vehicle dealer licensed under 61-4-101 and the vehicles offered for sale are bona fide units of the licensed dealer's inventory; *or*

*(c) an owner of a motor vehicle that is offered for sale and is displayed on real property in which the motor vehicle owner does not have a legal interest, and the primary purpose for displaying the motor vehicle on the real property is to effect the sale of the motor vehicle.*

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of the persons included in subsection (2)(a) when engaged in the specific performance of their duties as employees; ~~or~~

(c) public officers while performing or in the operation of their duties;

*(d) a motor vehicle owner who obtains the written consent of the real property owner, lessee, or agent of the owner or lessee on whose property the motor vehicle is displayed and who posts the written consent or a copy of the written consent in the front or rear window of the motor vehicle; or*

*(e) a person who attempts to effect a sale of the person's motor vehicle by displaying the motor vehicle on a public street or public area that abuts real property in which the person has a legal interest."*

Approved April 10, 1997

HeinOnline -- 1997 vol. I 1043 1997

# CHAPTER NO. 232

[SB 29]

AN ACT GENERALLY REVISING THE MOTOR CARRIER LAWS; ELIMINATING THE SPECIAL PERMIT FOR A VEHICLE EXCEEDING A GROSS WEIGHT OF 80,000 POUNDS; ELIMINATING THE SPECIAL PERMIT FOR A CRANE; INCREASING THE WEIGHT FEES FOR VEHICLES WEIGHING IN EXCESS OF 80,000 POUNDS; INCREASING THE ALTERNATIVE GROSS WEIGHT FEES FOR CERTAIN VEHICLES WEIGHING IN EXCESS OF 78,001 POUNDS; INCREASING THE FEES ON CERTAIN VEHICLES LICENSED IN OTHER STATES; ELIMINATING THE TEMPORARY CASH COMPLIANCE BOND FOR SPECIAL FUEL USERS; AMENDING SECTIONS 61-8-312, 61-10-104, 61-10-107, 61-10-109, 61-10-124, 61-10-128, 61-10-144, 61-10-145, 61-10-146, 61-10-201, 61-10-203, AND 61-10-211, MCA; REPEALING SECTION 15-70-308, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-312, MCA, is amended to read:

**"61-8-312. Special speed limitations on trucks, truck tractors, motor-driven cycles, and vehicles towing housetrailers.** (1) A person may not operate a truck or truck tractor, the gross weight of which exceeds 8,000 pounds, at a speed greater than 65 miles ~~per~~ *an* hour on those completed sections of interstate and four-lane divided highways and 60 miles ~~per~~ *an* hour on those completed sections of primary and secondary highways. However, the truck nighttime speed limit may not exceed that of automobiles, as stated in 61-8-303.

(2) A person may not operate a vehicle subject to a term permit under 61-10-124~~(3)(d)~~*(2)(d)* or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124~~(6)~~*(4)* at a speed greater than 55 miles ~~per~~ *an* hour.

(3) A person may not operate a motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles ~~per~~ *an* hour unless the motor-driven cycle is equipped with a headlamp or lamps that are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

(4) A person may not operate a vehicle that is towing a housetrailer at a speed greater than a maximum of 50 miles ~~per~~ *an* hour."

**Section 2.** Section 61-10-104, MCA, is amended to read:

**"61-10-104. Length — definitions.** (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 55 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 1/2 feet each in length, excluding those portions not designed to carry a load,

HeinOnline -- 1997 vol. I 1044 1997

except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), nor may this combination have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck-tractor and one pole trailer or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection *(5)*(a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck-tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle combination, as provided in 61-10-124~~(3)~~*(2)*, does not apply to the vehicle combination described in this subsection *(5)*(a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except by *a* special, single-trip permit. Overhang is measured from the center of the rear-most axle to the most distant end of the logs being hauled.

(c) The provisions in subsections (5)(a) and (5)(b) do not apply to a vehicle combination hauling utility poles.

(6) As used in this chapter, the following definitions apply:

(a) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(b) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

HeinOnline -- 1997 vol. I 1045 1997

(c) "Lengtb", except as provided in subsection (5)(a), means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from tbe front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(d) "Rocky Mountain douhle" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer."

**Section 3.** Section 61-10-107, MCA, is amended to read:

**"61-10-107. Maximum gross weight ~~—when permit required~~.** (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. An axle load is the total load transmitted to the road hy all wheels wliose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle. For purposes of this section, axles 40 inches or less apart are considered to be a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, group of axles, or combination of vebicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel hase in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if tbe overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) (a) Notwithstanding a vehicle's conformance with the requirements of subsection (1), except for the steering axle, all axles weighing over 11,000 pounds must have at least four tires or have wide-base tires. The maximum load on an axle, other than a steering axle, equipped with wide-base tires is limited to 500 pounds ~~per~~ *for each* inch of tire width.

(b) The provisions of subsection (2)(a) do not apply to passenger buses.

(c) For the purposes of this section, wide-base tires are tires that are 14 or more inches in nominal width. The maximum tire weight limit is computed for wide-base tires based ou the number of inches shown on the tire marking, or if the tire marking is shown by metric size, the tire weight limit is computed by conversion of the metric size.

~~(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit. The permit may be issued in the discretion of the department of transportation based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee is $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify and permits issued under 61-10-124(6) must specify highway routing.~~

~~(4) A special permit issued under subsection (3) for the transportation of agricultural products by farm vehicles from a harvesting combine or other~~

~~harvesting machinery to the point of first unloading is for the full term of the harvest season of the agricultural product transported.~~

~~(5)~~*(3)* This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

**Section 4.** Section 61-10-109, MCA, is amended to read:

**"61-10-109. Operation without special permits prohibited.** The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits specified in 61-10-101 through 61-10-104 and 61-10-106 threugh 61-10-108 is permitted only if authorized by special permit issued *under 61-10-121 through 61-10-125* by the department of transportation or its agents or the highway patrol."

**Section 5.** Section 61-10-124, MCA, is amended to read:

**"61-10-124. Special permits — fees — ~~cranes.~~** ~~(1) As used in this section, "crane" means a self-propelled, single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.~~

~~(2)~~*(1)* Except as provided in subsections ~~(3)(b)~~ *(2)(b)*, ~~(3)(d)~~ *(2)(d)*, and ~~(6)~~ *(4)*, in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size ~~and weight~~ in excess of that specified in 61-10-101 through 61-10-104 ~~and 61-10-106 through 61-10-110~~ must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

~~(3)~~*(2)* (a) Except as provided in subsections ~~(3)(b)~~ *(2)(b)*, ~~(3)(d)~~ *(2)(d)*, ~~(6)~~ *(4)*, and ~~(7)~~ *(5)*, term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet~~,~~ or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length, and the long semitrailer cargo unit of the combination may not exceed 48 feet in length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a lead are net permitted except as previded in subsections ~~(6)~~ *(4)* and ~~(7)~~ *(5)*. Special permits for vehicle combinations may specify and special permits under subsections ~~(6)~~ *(4)* and ~~(7)~~ *(5)* must specify highway reuting and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection ~~(3)(a)~~ *(2)(a)*. The fee for this permit is $75. This permit expires on December 31 of each year, witb no grace period.

HeinOnline -- 1997 vol. I 1047 1997

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection ~~(2)~~ *(1)*, allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, tbe department may authorize travel between tbe terminal and the interchange. The fee for this permit is $125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

~~(4)~~*(3)* Except as provided in subsection ~~(3)(b)~~ *(2)(b)*, a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

~~(5) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for excess weight if the crane has a current special mobile equipment identification plate and if the department of transportation has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200.~~

~~(6)~~*(4)* The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and tbe interchange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) an individual carge unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

HeinOnline -- 1997 vol. I 1048 1997

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have ~~a restricted route permit under 61-10-107(3) and~~ a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

~~(7)~~*(5)* The department of transportation may issue special permits under subsection ~~(6)~~ *(4)* for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations."

**Section 6.** Section 61-10-128, MCA, is amended to read:

**"61-10-128. When authorities may restrict right to use roadway.** (1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of transportation by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority that enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order, ordinance, or resolution is not effective until the signs are erected. The department of transportation or the authority by ordinance or resolution may prohibit the operation of trucks or other commercial vehicles or impose limitations on their weight on designated highways, subject to the provisions of

HeinOnline -- 1997 vol. I 1049 1997

subsection (3). These prohibitions and limitations must be designated by appropriate signs placed on the highways.

(3) Neither the department of transportation nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable seed potatoes that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight;

~~(b) a permit has been issued under 61-10-107(3), regardless of the vehicle's gross weight, specifying the route from point of loading to the nearest nonrestricted road; and~~

~~(c)~~*(b)* the driver possesses a federal-state inspection certificate issued for the load*; and*

*(c) the vehicle takes the most direct route from the point of loading to the nearest nonrestricted road.*

~~(4) A permit referred to in subsection (3) may be revoked for violating any condition of the permit.~~"

**Section 7.** Section 61-10-144, MCA, is amended to read:

**"61-10-144. Violation of standards — tolerance.** (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110.

(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than 7% and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than 7%. ~~In the event that~~ *If* the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than 7%, the department may issue a single trip permit for the fee of $10, allowing the vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of 7% are subject to the fines provided in 61-10-145, and all loads in excess of 7% of the total gross or axle weight limitations:

(a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or

(b) may be issued a permit as authorized by 61-10-141.

(3) ~~An operator of a vehicle or combination of vehicles subject to the provisions of 61-10-107(4)~~ *Farm vehicles transporting agricultural products from a harvesting combine or other harvesting machinery* may move over a highway, except any highway that is part of the federal-aid interstate system, within a 50-mile radius of the harvested field to the point of first unloading without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the *farm* vehicle or combination of vehicles does not exceed allowable

HeinOnline -- 1997 vol. I 1050 1997

weight limitations by more than 20% ~~per~~ *for each* axle, but the maximum load ~~per~~ *for each* inch of tire width may not exceed 670 pounds. The *farm* vehicle or combination of vehicles may not exceed 40 miles an hour. A single trip permit, as required in subsection (2), is not applicable to the *farm* vehicle or combination of vehicles. When a *farm* vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit."

**Section 8.** Section 61-10-145, MCA, is amended to read:

**"61-10-145. Penalties.** (1) A person, firm, or corperation convicted of violating 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 shall be punished by a fine of not less than $30 or more than $100. A person, firm, or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $30 for any excess weight up to and including 2,000 pounds;

(b) $75 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) $125 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) $175 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) $250 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) $275 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $300 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $400 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $500 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $600 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $1,000 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $2,000 for any excess weight more than 25,000 pounds.

(2) If a motor vehicle is equipped with a retractable axle that is not fully extended and carrying its proportionate share of the load while the motor vehicle is operated upon the highways of this state, the weight penalties in subsection

(1) apply to all weight over the legal maximum allowed by the fixed axles regardless of whether the axle is extended at the time of weighing. In addition to the penalties in subsection (1), the owner or operator shall be fined $100 for failure to have the retractable axle fully extended while the gross weight of the vehicle exceeds the legal maximum allowed by the fixed axles.

(3) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 must specify the amount of the excess weight that the defendant is alleged to have had upon the vehicle or combination of vehicles.

~~(4) The penalties in subsection (1) do not apply to an operator who fails to secure a special permit as provided for in 61-10-107(3) if the vehicle or combination of vehicles is not overweight with that permit. The failure to obtain the special permit is punishable under 61-10-146 and under this section as provided in 61-10-146, and the operator is required to purchase the permit. If the vehicle or combination of vehicles exceeds the weight limitations allowed by special permit and the operator fails to obtain a permit under 61-10-107(3), the penalties of subsection (1) apply to the weight exceeding 80,000 pounds.~~

~~(5)~~*(4)* It is a misdemeanor, punishable as provided in 46-18-212, for a person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142."

**Section 9.** Section 61-10-146, MCA, is amended to read:

**"61-10-146. Special permits — misrepresentations and violations as misdemeanor.** (1) A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit or who does not follow the requirements and conditions of the special permit or who operates a vehicle, combination of vehicles, load, object, or other thing the size or weight of which requires a special permit without first obtaining a special permit is guilty of a misdemeanor.

(2) A person, firm, or corporation convicted of:

(a) operating a vehicle or combination of vehicles with weight upon a wheel, axle, or group of axles greater than the maximum authorized by a special permit or of operating without a special permit a vehicle or combination of vehicles the weight of which requires a special permit shall, in addition to the other penalties provided by law for the offense, be punished by a fine in the amount provided in 61-10-145(1); or

(b) violating any provision of 61-10-124~~(6)~~*(4)* or any restriction on the special permits issued by the department under 61-10-124~~(6)~~*(4)* shall be punished by a fine of not less than $500 or more than $1,000, and all special permits issued for the operation of the combination in violation ~~shall~~ *must* be confiscated. The combination must be separated into combinations of legal length before the units may proceed."

**Section 10.** Section 61-10-201, MCA, is amended to read:

**"61-10-201. Weight fees on motortrucks, truck tractors, and buses.** In addition to other fees for the licensing of vehicles and except as provided in 61-10-203, there must be paid and collected annually for each truck, truck tractor,

HeinOnline -- 1997 vol. I 1052 1997

and bus, based upon the manufacturer's rated capacity for trucks with a capacity of 1 ton or less and upon the maximum gross loaded weight and the maximum gross weight of any towed unit of each truck and truck tractor as set by the licensee in the licensee's application, the following fees:

Schedule I

| | |
|---|---|
| Manufacturer's rated capacity up to 1/2 ton | $ 7.00 |
| Manufacturer's rated capacity of 3/4 ton | 12.50 |
| Manufacturer's rated capacity of 1 ton | 17.50 |
| Up to 16,000 lbs | 21.00 |
| 16,001 through 18,000 lbs | 28.00 |
| 18,001 through 20,000 lbs | 37.50 |
| 20,001 through 22,000 lbs | 47.00 |
| 22,001 through 24,000 lbs | 70.00 |
| 24,001 through 26,000 lbs | 90.00 |
| 26,001 through 28,000 lbs | 110.00 |
| 28,001 through 30,000 lbs | 130.00 |
| 30,001 through 32,000 lbs | 150.00 |
| 32,001 through 34,000 lbs | 170.00 |
| 34,001 through 36,000 lbs | 190.00 |
| 36,001 through 38,000 lbs | 215.00 |
| 38,001 through 40,000 lbs | 235.00 |
| 40,001 through 42,000 lbs | 255.00 |
| 42,001 through 44,000 lbs | 275.00 |
| 44,001 through 46,000 lbs | 300.00 |
| 46,001 through 48,000 lbs | 320.00 |
| 48,001 through 50,000 lbs | 340.00 |
| 50,001 through 52,000 lbs | 360.00 |
| 52,001 through 54,000 lbs | 380.00 |
| 54,001 through 56,000 lbs | 400.00 |
| 56,001 through 58,000 lbs | 420.00 |

58,001 through 60,000 lbs . . . . . 440.00

60,001 through 62,000 lbs . . . . . 460.00

62,001 through 64,000 lbs . . . . . 482.50

64,001 through 66,000 lbs . . . . . 502.50

66,001 through 68,000 lbs . . . . . 522.50

68,001 through 70,000 lbs . . . . . 545.75

70,001 through 72,000 lbs . . . . . 566.50

72,001 through 74,000 lbs . . . . . 607.50

74,001 through 76,000 lbs . . . . . 655.00

76,001 through 78,000 lbs . . . . . 695.00

78,001 through 80,000 lbs . . . . . 750.00

Over 80,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 . . . . . 750.00
plus an additional 46.00
for each ton or fraction of a ton
in excess of 80,000 lbs.
*plus an additional $100.00*
*to exceed the 80,000 lbs.*
*federal gross weight limit.*"

**Seetion 11.** Section 61-10-203, MCA, is amended to read:

"**61-10-203. Alternative gross weight fees on motortrucks and truck tractors with special trailer combinations.** (1) In addition to other fees for the licensing of vehicles, there must be paid and collected annually for each motortruck or truck tractor operating under the provisions of 61-10-124~~(6)~~*(4)* and ~~(7)~~ *(5)*, based upon the maximum combined gross loaded weight of a truck tractor or a motortruck and trailers, as set by the licensee in the application, the following fees:

Schedule II

Truck tractor or a motortruck and trailers:

Up to 42,000 lbs . . . . . $ 571.00

42,001 to 44,000 lbs . . . . . 631.00

44,001 to 46,000 lbs . . . . . 691.00

46,001 to 48,000 lbs . . . . . 752.00

48,001 to 50,000 lbs . . . . . 812.00

50,001 to 52,000 lbs . . . . . 871.00

HeinOnline -- 1997 vol. I 1054 1997

52,001 to 54,000 lbs . . . . . 931.00

54,001 to 56,000 lbs . . . . . 992.00

56,001 to 58,000 lbs . . . . . 1,052.00

58,001 to 60,000 lbs . . . . . 1,112.00

60,001 to 62,000 lbs . . . . . 1,172.00

62,001 to 64,000 lbs . . . . . 1,233.00

64,001 to 66,000 lbs . . . . . 1,293.00

66,001 to 68,000 lbs . . . . . 1,352.00

68,001 to 70,000 lbs . . . . . 1,412.00

70,001 to 72,000 lbs . . . . . 1,473.00

72,001 to 74,000 lbs . . . . . 1,533.00

74,001 to 76,000 lbs . . . . . 1,593.00

76,001 to 78,000 lbs . . . . . 1,653.00

78,001 ~~and over~~ *to 80,000 lbs.* . . . . . ~~65.50~~ *1,718.50*
~~per ton or fraction thereof~~

*Over 80,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110* . . . . . *1,718.50*
*plus an additional $65.50 for each ton or fraction of a ton in excess of 80,000 lbs.*
*plus an additional $100.00 to exceed the 80,000 lbs. federal gross weight limit.*

(2) The trailers or semitrailers must be currently registered in another country, state, or county."

**Section 12.** Section 61-10-211, MCA, is amended to read:

**"61-10-211. Fees on motortrucks, truck tractors, trailers, and semitrailers from other states.** (1) In lieu of other fees for the licensing of vehicles, there must be collected a fee for each motortruck and truck tractor already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee provided in subsection (2) must be collected upon each entrance of the vehicle into the state and must be based upon the number of miles to be traveled in the state and the registered gross vehicle weight of the motortruck or truck tractor as shown in the application of the nonresident operator.

HeinOnline -- 1997 vol. I 1055 1997

(2) The fee for each trip in Montana is:

| | 0-200 miles | 201-400 miles | over 400 miles |
|---|---|---|---|
| Up to 46,000 lbs. | $10 | $15 | $20 |
| 46,001 through 80,000 lbs. | 20 | 30 | 40 |
| Over 80,001 lbs. | ~~30~~ *50* | ~~45~~ *65* | ~~60~~ *80* |
| Triple combination | ~~40~~ *60* | ~~60~~ *80* | ~~80~~ *100* |

(3) The fees do not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival that is under contract with a state, county, or district fair association.

(4) A fee must be collected for each nonresident, unlicensed or unregistered trailer or semitrailer entering Montana. The fee for each trip in Montana is:

(a) $10 for each trip of 200 miles or less;

(b) $15 for each trip of over 200 miles to 400 miles; and

(c) $20 for each trip of over 400 miles."

**Section 13. Repealer.** Section 15-70-308, MCA, is repealed.

**Section 14. Effective date.** [This act] is effective January 1, 1998.

Approved April 11, 1997

# CHAPTER NO. 233

[SB 167]

AN ACT PROVIDING FOR THE DELETION OF THE ADDRESSES OF VICTIMS OF CERTAIN CRIMINAL OFFENSES FROM THE OFFICIAL PRECINCT REGISTER OF VOTERS AND FROM ANY LIST OR ADDRESS LABELS AVAILABLE FROM THE COUNTY ELECTION ADMINISTRATOR; REQUIRING PEACE OFFICERS TO INFORM VICTIMS OF PARTNER OR FAMILY MEMBER ASSAULT OR CERTAIN OTHER OFFENSES OF THEIR RIGHT TO DELETION OF THEIR ADDRESS FROM THE LISTS; AND AMENDING SECTIONS 13-2-115, 13-2-122, AND 46-6-602, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-2-115, MCA, is amended to read:

**"13-2-115. Registration lists to be prepared.** (1) Except as provided in ~~subsection~~ *subsections* (5) *and (6)*, immediately after registration is closed, the election administrator shall prepare and must have printed lists of all registered electors in each precinct. Names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used. A preliminary list of registered electors may bo printed before the

close of registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.

(2) A copy of the list of registered voters must be displayed at the polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(3) The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.

(4) Lists of registered voters need not be printed if the election will not be held.

(5) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the registrar may not include the address on any list of registered voters but shall list only the name or names.

*(6) (a) Upon the request of an individual, an election administrator may not include the individual's residential address on any list of registered voters but shall list only the name or names if the individual:*

*(i) proves to the election administrator that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or*

*(ii) proves to the election administrator that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.*

*(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.*

*(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction."*

**Section 2.** Section 13-2-122, MCA, is amended to read:

**"13-2-122. Charges for registers, elector lists, and mailing labels made available to public.** (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, upon written request, the registrar shall furnish to any elector, for noncommercial use, a copy of the official precinct registers, a current list of registered electors, or mailing labels for registered electors. Upon delivery, the registrar may collect a charge not to exceed the actual cost of the register, list, or mailing labels.

(2) If the registrar receives in writing from a law enforcement officer or reserve officer, as defined in 7-32-201, a request that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's,

HeinOnline -- 1997 vol. I 1057 1997

not be disclosed, the registrar may not include the address on any register, list, or mailing labels disseminated pursuant to subsection (1).

*(3) An election administrator may not include an individual's residential address on any register, list, or mailing labels but shall list only the name or names if the individual requests that the individual's address not be used and the individual proves to the election administrator those matters described in 13-2-115(6)(a)(i) or (6)(a)(ii).*"

**Section 3.** Section 46-6-602, MCA, is amended to read:

"**46-6-602. Notice of rights to victim in partner or family member assault.** Whenever a peace officer arrests a person for partner or family member assault, as defined in 45-5-206, or responds to a call in which partner or family member assault is suspected, the officer, outside the presence of the offender, shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"The city or county attorney's office can file criminal charges against an offender if the offender committed the offense of partner or family member assault.

In addition to the criminal charges filed by the state of Montana, you are entitled to the following civil remedies:

You may go to court and file a petition requesting any of the following orders for relief:

(1) an order of protection that prohibits the offender from threatening to hurt you or hurting you;

(2) an order of protection that directs the offender to leave your home and prohibits the offender from having any contact with you;

(3) an order of protection that prevents the offender from transferring any property except in the usual course of business;

(4) an order of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your worksite or other specified place;

(5) an order of protection that gives you possession of necessary personal property;

(6) an order of protection that prohibits the offender from possessing or using the firearm used in the assault.

If you file a petition in district court, the district court may order all of the above and may award custody of your minor children to you or to the other parent. The district court may order visitation of your children between the parents. The district court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

HeinOnline -- 1997 vol. I 1058 1997

The forms that you need to obtain an order of protection are at _____. You may call _____ at _____ for additional information about an order of protection.

You may file a petition in district court at _____.

You may be eligible for restitution payments from the offender (the offender would repay you for costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a fund administered by the state of Montana for innocent victims of crime). You may call _____ at _____ for additional information about restitution or crime victims compensation.

*If a person has been found guilty of partner or family member assault against you or a partner or family member, as defined in 45-5-206, or has been found guilty of stalking or another offense involving bodily harm or the threat of bodily harm against you or a partner or family member, you may choose to keep your residential address off the list of registered voters by contacting the county election administrator at _____.*

The following agencies may be able to give you additional information or emergency help. (List telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary of services that are available.)""

Approved April 11, 1997

# CHAPTER NO. 234

[SB 180]

AN ACT CLARIFYING THE APPLICABILITY OF MAIL BALLOT ELECTIONS TO CERTAIN ELECTIONS; CLARIFYING THE AVAILABILITY OF SPECIAL ELECTIONS FOR CERTAIN WATER AND SEWER PROJECTS; AMENDING SECTIONS 7-7-2223, 7-7-2227, 7-7-2229, 7-7-2237, 7-7-4226, 7-7-4227, 7-7-4235, 7-7-4426, 7-7-4427, 7-13-2208, 7-13-2231, 7-13-2323, 7-13-2341, 85-9-206, AND 85-9-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-7-2223, MCA, is amended to read:

"**7-7-2223. Election required for issuance of certain bonds.** (1) County bonds for any purpose other than those enumerated in 7-7-2221 and 7-7-2311 may not be issued unless authorized at a *special election that is conducted by mail ballot, as provided in Title 13, chapter 19, at a* special election held in conjunction with a regular or primary election, or *at* a general election at which the question of issuing the bonds is submitted to the registered electors of the county and approved as provided in 7-7-2237.

(2) A bond election may not be called unless the board of county commissioners:

(a) initiates and unanimously adopts a resolution in accordance with the provisions of 7-7-2227(2); or

(b) receives a petition, delivered and certified by the election administrator, asking that the election be held and the question be submitted. The petition must be signed by at least 20% of the registered electors of the county."

**Section 2.** Section 7-7-2227, MCA, is amended to read:

**"7-7-2227. Examination of petition — resolution calling for election.** (1) Upon delivery of the certified petition, the board shall carefully examine the petition and make any other investigation that it may consider necessary. If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution that contains the provisions of subsection (2) plus the essential facts in regard to the petition and its filing and presentation.

(2) The resolution must:

(a) recite the purpose or purposes for which the bonds are proposed to be issued;

(b) fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limitations fixed in 7-7-2206; and

(d) make provision for having the question submitted to the registered electors of the county at the next general election or at a special election that is *conducted by mail ballot, as provided in Title 13, chapter 19, or that is* held in conjunction with a regnlar or primary election and that the board may call for that purpose.

(3) Whenever a board of county commissioners initiates a resolution in accordance with the provisions of 7-7-2223, the resolution must contain the provisions of subsection (2)."

**Seetion 3.** Section 7-7-2229, MCA, is amended to read:

**"7-7-2229. Notice of election.** (1) Whether the election is held at the general election, ~~or~~ *at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or* at a special election *that is* held in conjunction with a regular or primary election, separate notice of the election must be given.

(2) (a) The notice must state:

(i) the date when the election will be held;

(ii) the amount of bonds proposed to be issued;

(iii) the purpose of the issue;

(iv) the term of years through which the bonds are to be paid; and

HeinOnline -- 1997 vol. I 1060 1997

(v) other information regarding the holding of the election and the bonds proposed to be issued that the board may consider proper.

(b) If bonds are to be issued for two or more purposes, each purpose and the amount for each purpose must be separately stated.

(3) The notice must be published as provided in 13-1-108."

**Section 4.** Section 7-7-2237, MCA, is amended to read:

**"7-7-2237. Percentage of electors required to authorize bond issue.** Whenever the question of issuing county bonds for any purpose is submitted to the registered electors of a county at ~~either~~ a general election, *at an election that is conducted by mail ballot, as provided in Title 13, chapter 19,* or *at* a special election *that is* held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made in the following manner:

(1) determine the total number of electors who were qualified to vote in the bond election;

(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;

(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and

(4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otherwise it is considered rejected; or

(6) when the calculated percentage in subsection (3) is 30% or less, the bond propesition is considered rejected."

**Seetion 5.** Section 7-7-4226, MCA, is amended to read:

**"7-7-4226. Resolution to submit question of issuing bonds to voters.** (1) When the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality pursuant to a statute of this state, the governing body shall pass and adopt a resolution.

(2) The resolution must:

(a) recite the purpose or purposes for which it is proposed to issue the bonds;

(b) fix the amount of bonds to be issued for each purpose;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limits fixed in 7-7-4205; and

HeinOnline -- 1997 vol. I 1061 1997

(d) unless the bonds are revenue bonds not pledging the general credit of the municipality, make provisions that are necessary for submitting the question to the registered electors of the city or town at the next general city or town election, *at an election that is conducted by mail ballot, as provided in Title 13, chapter 19,* or at a special election that is held in conjunction with a regular or primary election and that the governing body may call for the purpose.

(3) Whenever the bond issuance is proposed by petition, the governing body shall, before submitting the measure to the electors, pass a resolution containing the information required in this section and setting forth the essential facts in regard to the filing and presentation of the petition."

**Section 6.** Section 7-7-4227, MCA, is amended to read:

**"7-7-4227. Notice of election.** (1) Whether the election is held at the goneral city or town election, *at an eleetion that is conducted by mail ballot, as provided in Title 13, chapter 19,* or at a special election *that is* held in conjunction with a regular or primary election, separate notice of the election must be given.

(2) (a) The notice must state:

(i) the date when the election will be held;

(ii) the amount of bonds proposed to he issued;

(iii) the purpose of the bonds;

(iv) the term of years through which the bonds will be paid; and

(v) other information regarding the election and the proposed bonds that the board may consider proper.

(b) If the bonds *that are* proposed to be issued are for two or more purposes, each purpose and tbe amount for each purpose inust be separately stated.

(3) The notice must be published as provided in 13-1-108 and may be posted in each voting precinct in the city or town at least 10 days prior to the date for holding the election."

**Section 7.** Section 7-7-4235, MCA, is amended to read:

**"7-7-4235. Percentage of electors required to authorize the issuing of bonds.** Whenever the question of issuing bonds for any purpose is submitted to the registered electors of a city or town at ~~either~~ a general election, *at an election that is conducted by mail ballot, as provided in Title 13, chapter 19,* or *at* a special election *that is* held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made in the following manner:

(1) determine the total number of electors who were qualified to vote in the bond election;

(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;

HeinOnline -- 1997 vol. I 1062 1997

(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and

(4) when the calculated percentage in subsection (3) is 40% or more, the bond propesition is considered approved and adopted if a majority of the votos cast were in favor of the proposition, otberwise it is considered rejected; or

(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otberwise it is considered rejected; or

(6) when tbe calculated percentage in subsection (3) is 30% or less, the bond proposition is considered rejected."

**Section 8.** Section 7-7-4426, MCA, is amended to read:

**"7-7-4426. Authorization for undertaking and issuance of bonds.** (1) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution or resolutions of the governing body of the municipality:

(a) without an election; or

(b) wben authorized by a majority of the qualified electors voting upon the question at a special election *that is conducted by mail ballot, as provided in Title 13, chapter 19, or that is* held in conjunction with a regular or primary election, if tbe governing body in its sole discretion chooses to submit the question to the electorate."

**Section 9.** Section 7-7-4427, MCA, is amended to read:

**"7-7-4427. Special election on question of issuing bonds.** (1) When tbe governing body bas chosen to submit the question of issuing bonds to the electorate, the special election must be *conducted by mail ballot, as provided in Title 13, chapter 19, or must be* held in conjunction witb a regular or primary election and must be noticed and conducted as provided for municipal general obligation bonds in chapter 7, part 42.

(2) The special election must be held not later than the next municipal election *that is* held after tbe council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, constructien, reconstruction, improvement, betterment, or extension of any undertaking as provided in this part *has* and ordered the special election."

**Section 10.** Section 7-13-2208, MCA, is amended to read:

**"7-13-2208. Decision on petition — eleetion required.** (1) On the final hearing, the board of county commissioners shall make any changes in the proposed boundaries within the county that are considered advisable and shall define and establish the boundaries. The board of county commissioners may not modify the boundaries in a manner that would exclude from the proposed district any territory that would be benefited by the formation of the district. Land that

HeinOnline -- 1997 vol. I 1063 1997

will not, in the judgment of the board of county commissioners, be benefited by the district may not be included within the proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall give notice of an election to be held in the proposed district for the purpose of determining whether or not the district is to be incorporated. The election must be *conducted by mail ballot, as provided in Title 13, chapter 19, or must be* held in conjunction with a regular or primary election."

**Section 11.** Section 7-13-2231, MCA, is amended to read:

**"7-13-2231. District to be governed by board of directors.** (1) At an election to be held within a district under the provisions of ~~this part and~~ part 23 *and this part* and the laws governing general elections not inconsistent *with* ~~this part and~~ part 23 *and this part*, the district shall elect a board of directors. The election must be *conducted by mail ballot, as provided in Title 13, chapter 19, or must be* held in conjunction with the next regular or primary election.

(2) The board of directors is the governing body of the district."

**Section 12.** Section 7-13-2323, MCA, is amended to read:

**"7-13-2323. Election on question of incurring bonded indebtedness.** *(1)* The board of directors shall fix a date upon which an election is held for the purpose of authorizing the bonded indebtedness to be incurred. ~~The~~ *Except as provided in subsection (2), the* election must be *conducted by mail ballot, as provided in Title 13, chapter 19, or must be* held in conjunction with a regular or primary election.

*(2) The board may order up to two special elections each year if:*

*(a) there are no bids within the amount of approved bonds;*

*(b) there is an emergency;*

*(c) a directive for a project is received from a government agency; or*

*(d) it is necessary to take advantage of the construction season."*

**Section 13.** Section 7-13-2341, MCA, is amended to read:

**"7-13-2341. Addition of land to district.** (1) Except as provided in subsection (5), any portion of any county~~,~~ *or* any municipality, or both, may be added to any district organized under the provisions of ~~this part and~~ part 22 *and this part* at any time upon petition presented in the manner provided in ~~this part and~~ part 22 *and this part* for the organization of the district.

(2) The petition may be granted by ordinance of the board of directors of the district. The ordinance must be submitted for adoption or rejection to the vote of the electors in the district and in the proposed addition at a general election, *at a special election that is conducted by mail ballot, as provided in Title 13, chapter 19,* or *at* a special election *that is* held in conjunction with a regular or primary election.

HeinOnline -- 1997 vol. I 1064 1997

(3) If the ordinance is approved, the president and secretary of the hoard of directors shall certify that fact to the secretary of state and to the county clerk and recorder of the county in which the district is located. Upon the receipt of the certification, the secretary of state shall within 10 days issue a certificate that states the passage of the ordinance and the addition of the territory to the district. A copy of the certificato must he transmitted to and filed with the county clerk and recorder of the county in which the district is situated.

(4) After the filing of the certificate, the territory is added to and is a part of the district with all the rights, privileges, and powers set forth in this part and necessarily incident to this part.

(5) If the board of directors determines that a district has a water facility or a sewer facility with a capacity greater than required to meet the needs of the current district, it may hy ordinance, upon petition of contiguous property owners and with the written consent of all property owners to whom the service is to be extended, expand the district to include land, to the extent of excess capacity, without complying with subsections (1) and (2). However, if the board determines that an election should be held or if 40% or more of the members of the district petition for an election, compliance with subsections (1) and (2) is required."

**Section 14.** Section 85-9-206, MCA, is amended to read:

"85-9-206. **Court hearing on petition — election — limits on eourt jurisdiction.** (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the court finds that the petition should be granted, it shall:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district and exclude those lands that will not be benefited;

(b) make an order fixing the time and place of an organizing election;

(c) order the election administrator to conduct the election in accordance with the provisions of Title 13;

(d) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, 51% or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization. The election must be *conducted by mail ballot, as provided in Title 13, chapter 19, or must be* held in conjunction with a regular or primary election.

(3) This chapter does not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation and questions of right growing out of or in any way connected with a priority of appropriation is expressly excluded from this chapter and must be determined as otherwise provided hy the laws of Montana."

**Section 15.** Section 85-9-623, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1065 1997

"85-9-623. **Issuance of bonds — resolution and election.** When the directors find it necessary to issue bonds, the directors shall:

(1) pass a resolution that includes:

(a) the purpose or purposes for which the bonds will be issued;

(b) the maximum amount and term of the bonds;

(c) the maximum interest rate *that* tbe bonds will bear;

(d) whether the bonds will be repaid from revenue, assessments, or both;

(2) give notice, as provided in 85-9-103(9), that must include the resolution adopted by the directors and the location of polling places *unless the election is conducted by mail ballot, as provided in Title 13, chapter 19*; and

(3) hold an election as provided by 85-9-422."

**Section 16. Effective date.** [This act] is effective on passage and approval.

Approved April 11, 1997

# CHAPTER NO. 235

[SB 182]

AN ACT GENERALLY REVISING AND CLARIFYING LAWS RELATING TO RAILROADS; DELETING AND ELIMINATING ARCHAIC REQUIREMENTS FOR RAILROADS; AMENDING SECTIONS 69-14-111, 69-14-112, 69-14-114, 69-14-115, 69-14-116, 69-14-120, 69-14-133, 69-14-232, 69-14-401, 69-14-604, 69-14-708, 69-14-713, 69-14-801, 69-14-921, 69-14-922, AND 69-14-1004, MCA; AND REPEALING SECTIONS 69-14-119, 69-14-301, 69-14-302, 69-14-303, 69-14-304, 69-14-305, 69-14-306, 69-14-307, 69-14-308, 69-14-309, 69-14-310, 69-14-311, 69-14-312, AND 69-14-712, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 69-14-111, MCA, is amended to read:

"**69-14-111. General supervision of railroads.** The commission shall have the general supervision of all railroads~~, express companies, car companies, sleeping car companies, and freight and freight line companies and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said commission and within its power and authority under~~ *subject to* the provisions of this chapter."

**Section 2.** Section 69-14-112, MCA, is amended to read:

"**69-14-112. Investigatory authority.** (1) The commission shall investigate any alleged neglect or violation of the laws of the state by any railroad ~~or other company above specified~~ doing business ~~therein or by the officers, agents, or employees thereof~~ *in this state*. The commission shall examine and inspect or cause to be examined and inspected all books, records, files, and papers ~~of the persons and companies specified above, insofar as the same may be pertinent~~

*referred to in 69-14-111 that pertain* to any matter under investigation before the commission, and shall hear and take testimony in the progress of any inquiry or investigation authorized by this chapter.

(2) The commission~~, or some members thereof to be deputed by it,~~ shall, *upon request,* investigate and make inquiry into every accident, *as defined in 49 CFR 225.5,* occurring in the operation of any railroad in this state ~~resulting in death, injury to any person of such gravity as to require the attention of a physician or surgeon, or the destruction of property greater in value than $2,000~~. The testimony taken ~~on any such hearing shall~~ *must* be transcribed and filed in the office of the commission."

**Section 3.** Section 69-14-114, MCA, is amended to read:

"**69-14-114. Investigation of existing ~~rates, classifications, and~~ rules.** The commission may, on its own motion or on the complaint by a shipper or other interested person, investigate any ~~rate, classification, or~~ rule approved and in effect for transportation of freight by any railroad within the state. The commission ~~must~~ *shall,* within 60 days after the commencement of an investigation on the commission's initiative or after the filing with ~~such~~ *the* commission of a complaint by a shipper or other interested person, proceed to investigate and determine the justness and reasonableness of any ~~classification, rate, charge, toll, regulation,~~ *rule* or order made by ~~said~~ *the* commission."

**Section 4.** Section 69-14-115, MCA, is amended to read:

"**69-14-115. Investigation, enforcement, and report concerning railroad safety laws.** (1) The commission shall:

(a) make inquiry into the observance by all railroads within this state of the laws of the United States and of Montana intended to safeguard ~~the lives of the~~ *railroad* employees ~~of persons or corporations engaged in operating the same~~;

(b) ~~lay~~ *file a* complaint before the proper state or federal officer~~, of any~~ *for an* infraction of any of ~~such~~ *the safety* laws *referred to in subsection (1)(a)*; and

(c) prosecute before the proper court or tribunal any person guilty of violation of the ~~penal provisions thereof~~ *safety laws referred to in subsection (1)(a).*

(2) The commission shall ~~in~~ *prepare* an annual report ~~set out what~~ *specifying the* effort it has made to carry out the provisions of this section, ~~with~~ the ~~result thereof~~ *the results of the efforts,* and in detail what steps it has taken to prosecute any violations of ~~any such acts~~ *the safety laws* of which it has secured information. ~~A copy of this annual report shall be mailed to the secretary of the department of transportation.~~"

**Section 5.** Section 69-14-116, MCA, is amended to read:

"**69-14-116. General protection of health and safety on railroads — rear-end telemetry systems — exemption for a caboose-equipped train.** (1) The commission has full authority:

(a) after notice and hearing, to ~~make~~ *adopt* and enforce rules providing for the installation on and equipment of trains, cars, or engines with safety appliances and providing for sanitation and adequate shelter as it affects the health of all railroad employees; and

HeinOnline -- 1997 vol. I 1067 1997

(b) to ~~inspect the safety appliances, sanitation facilities, and shelters and enforce regulations with regard to the provisions of~~ *conduct inspections to implement* subsection (1)(a).

(2) (a) Except as provided in subsection (4), the commission shall, to the extent permitted by federal law, require a railroad operating trains in Montana to install a rear-end train telemetry system on all trains operating within mountain grade territory as geographically defined and designated by mile posts in the railroad's official timetable and operating rules on file with the commission.

(b) As used in this section, "telemetry system" means a radio transmitter and receiver system with one device placed on the last car of a train and a second device placed in the cab of the controlling locomotive. The second device must be visible to the locomotive engineer and capable of indicating through electronic communication with the device located on the last car of the train the following:

(i) brake pipe pressure at the rear of the train, in increments of 1 pound per square inch;

(ii) rear car movement;

(iii) operation or nonoperation of the rear marker light;

(iv) remaining battery life powering the telemetry system;

(v) interruption of the communication link between the device located on the last car of the train and the device located in the cab of the controlling locomotive; and

(vi) total distance travelled in feet by the locomotive to which the device is attached.

(c) A train operating in the area defined under this subsection (2) may not depart a crew change point or its local point of origin unless the train is equipped with the telemetry system required under the rules established pursuant to this section.

(d) Telemetry systems installed on a train in conformity with rules made under this section must be equipped so that an emergency application of brakes of the train can be initiated by activation of the device placed on the last car at the rear end of the train.

(e) Disciplinary action or other adverse administrative or employment action may not be instituted against a person who reports a violation of this subsection (2) or who acts to enforce the provisions of this subsection (2).

(3) The ~~inspection,~~ *inspections and* rules~~, and regulations~~ required under subsections (1) and (2) must be compatible with any federal provisions and may not create an undue burden on interstate commerce.

(4) The commission may not require the installation and use of a telemetry system as described in this section on a train equipped with a caboose that:

(a) meets the requirements of Montana law;

(b) is placed as the last car of the train; and

(c) is occupied by a memher of the train crew."

**Section 6.** Section 69-14-120, MCA, is amended to read:

**"69-14-120. Violations of provisions relating to rails coming together.** ~~Any~~ *A* railroad or railway company and its officers or agents who ~~shall~~ refuse or fail to comply with the provisions of 69-14-118 ~~or 69-14-119~~ or any order or rule ~~relative thereto~~ made by the commission ~~shall be~~ *under 69-14-118 is* subject to a fine of not less than $25 or more than $50. Each day of ~~such~~ refusal or failure ~~shall be deemed~~ *is considered* a separate offense and ~~shall be~~ *is* subject to the penalty ~~herein prescribed,~~ *in this section.* ~~such~~ *The* fine ~~to~~ *must* be recovered in a civil action *filed* upon complaint of the commission in any court of competent jurisdiction."

**Section 7.** Section 69-14-133, MCA, is amended to read:

**"69-14-133. Collection and disposition of penalties and forfeitures.** Unless otherwise provided *in this chapter*, all penalties and forfeitures ~~incurred, levied, and made~~ under the provisions of this chaptor ~~shall~~ *must* be collected by the commission, ~~and~~ paid ~~over~~ te the state, ~~treasurer~~ and credited to the general fund. ~~Should~~ *If* the commission ~~fail~~ *fails* or ~~refuse~~ *refuses* to institute appropriate action for the recovery of any penalty or forfeiture provided for ~~herein~~ *in this chapter* for ~~the space of~~ 60 days after notice of the cause of complaint by an aggrieved person or shipper, ~~such~~ *the* person or shipper may institute and prosecute ~~such~~ *an* action in the name of the state against ~~such~~ *the* railroad, in the same manner as ~~could~~ the commission."

**Section 8.** Section 69-14-232, MCA, is amended to read:

**"69-14-232. Cahoose required to he rear train car — size and equipment of cahoose.** (1) ~~Every railroad must place, as the last car on any freight train required by federal railroad administration rules to have its air system and cars inspected by qualified inspecting employees at any designated inspection point and between said inspection points and operating within the state, a caboose occupied by at least one employee of the railroad. A caboose is required on all through freight, local, and work trains. Provided however, a caboose is not required on a train operating within railroad yard or switch limits as presently established, or on a through freight if not more than 2,000 feet in overall length operating within an automatic block signal system or within centralized traffic control limits.~~

~~(2) Cabooses shall~~ *Occupied cabooses must* be at least 24 feet in length, exclusive of platforms, and ~~shall~~ *must* be provided with a door in each end and with cupolas or bay windows, platforms, guardrails, grabirons, and stops for the safety of persons in alighting or getting on cabooses. Cabooses ~~shall~~ *must* be of metal frame construction and *must* be sufficiently insulated to eliminate track and other related noise above 85 decibels in any octave in the speech range. Other requirements for cabooses are as follows:

(a) The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and ~~shall~~ *must* have at least two four-wheel trucks with standard steel wheels or their equivalent. Draft gears ~~shall~~ *must* have a

HeinOnline -- 1997 vol. I 1069 1997

minimum travel of 2 1/2 inches and a minimum capacity of 18,000 foot-pounds and ~~shall~~ *must* comply with Association of American Railroads Standard M-901 or its equivalent.

(b) Electric lighting of at least 40 foot-candles ~~shall~~ *must* be provided for direct illumination of the caboose desk, reading areas, and lavatory facilities.

(c) A spotlight ~~shall~~ *must* be provided on the rear of the caboose with sufficient candlepower to illuminate the track for a distance of at least 300 feet to the rear of the caboose during the hours of darkness.

(d) The caboose marker or markers ~~shall~~ *must* be either reflectorized or capable of illumination when required.

(e) Only glass of the safety-glass type ~~shall~~ *may* be used in partitions, doors, windows, or wind deflectors.

(f) All seats and seat backs ~~shall~~ *must* conform to the safety standards designated by the United States department of transportation in its ~~"Federal~~ *Federal* Motor Vehicle Safety ~~Standards"~~ *Standards*, Motor Vehicle Safety Standard No. 201. All edges and protrusions on seats and seat hacks ~~shall~~ *must* be rounded to prevent injury to employees.

~~(3)~~*(2)* Any person, corporation, or company, operating any railroad or railway in this state, violating any of the provisions of this section and 69-14-233 is guilty of a misdemeanor and upon conviction ~~thereof~~ shall be fined not less than $500 or more than $1,000 for each offense."

**Section 9.** Section 69-14-401, MCA, is amended to read:

**"69-14-401. Court review of commission actions.** ~~(1) Actions~~ *An action* to review the determination of the commission ~~fixing~~ *adopting* any ~~classification, rate, toll, charge, regulation,~~ *rule* or order or the refusal of ~~said~~ *the* commission to ~~make, fix, or establish any classification, rate, toll, charge, regulation,~~ *adopt a rule* or order ~~shall~~ *must* be commenced~~,~~ in the district court of the county having jurisdiction ~~thereof, by the filing of a complaint, duly verified as provided for the verification of pleadings in civil actions. Notice may be served upon the party defendant either by summons issued and served as provided for in this code in civil actions or the court may issue an order directed to the defendant requiring him to answer the complaint at such time as the court may deem reasonable; provided, however, that such time shall not be less than 5 days from the time of the service of such order. Upon the appearance of the defendant, he may deny or admit the facts set forth in said complaint, by answer, which shall be verified as the pleadings in other civil actions.~~

~~(2) If, upon the hearing, the court shall find that the rates fixed or the classifications made are unjust and unreasonable, it shall thereupon be the duty of said commission to make new rates or a reclassification, as the case may be. All orders or notices required under the provisions of this section may be issued by the court or by the judge thereof at chambers.~~"

**Section 10.** Section 69-14-604, MCA, is amended to read:

**"69-14-604. Proccdure to order construction of crossing.** ~~Whenever any~~ *If a* board of county commissioners ~~shall order~~ *orders* the construction of ~~any~~

*a* railroad crossing, ~~said~~ *the* board shall enter an order upon its minutes, specifying the place of ~~such~~ *the* crossing. A copy of ~~said~~ *the* order ~~shall~~ *must* be served upon the railroad company, and a copy ~~shall also~~ *must* be immediately mailed to the public service commission. ~~Service of said order may be made upon the railroad company by delivering such copy to any station agent employed in connection with the operation of said railroad in said county.~~"

**Section 11.** Section 69-14-708, MCA, is amended to read:

"**69-14-708. Records of accidents involving ~~animals~~ *livestock*.** *(1)* ~~(1) It shall be the duty of any corporation, association, company, or person owning, controlling, or operating any~~ *A* railroad *company* ~~or branch thereof in this state to designate some station on the line of the same, in each county through which it passes, at which it shall keep a suitable book and within 30 days after the killing or injuring of any animal, to cause to be entered therein the date when and the place where the same was~~ *must report to the department of livestock any livestock* killed or injured, ~~as near as may be, together with a description thereof, including the age, color, and sex of the same and marks and brands upon the same as near as the same can be done. When such~~ *by a train or railroad equipment on the* railroad ~~or branch thereof shall run to or through any town or station at which is located the county seat of any county, then such book shall be kept at such town or station at which said county seat is located, and the written demand provided for in 69-14-709 may be served on the agent of such station~~ *right-of-way within 30 days after the killing or injuring of any livestock.*

*(2) A railroad company failing to provide the notice provided for in subsection (1) is liable to the owner of the animal killed or injured, whether negligently done or not. The court or jury before whom an action is tried for the recovery of damages may in its discretion render a verdict and judgment for the amount of the value of the livestock killed or the amount of damages sustained by reason of injury.*

~~(2) This book shall be kept for the inspection of any person claiming to be interested in the inspection thereof.~~

~~(3) Notice of the station designated pursuant to subsection (1) shall be filed with the county clerk of the county in which said station is situated.~~

~~(4) Any corporation, association, or person so owning, controlling, or operating such railroad or branch thereof failing to designate said station, file said notice, keep said book, and make the entries as provided in this section shall be liable to the owner of the animal so killed or injured, whether negligently done or not, and the court or jury before whom any action is tried for the recovery of damages on account thereof may in its discretion render verdict and judgment for the amount of the value of any such animal so killed or the amount of damages sustained by reason of any injury thereto.~~"

**Section 12.** Section 69-14-713, MCA, is amended to read:

"**69-14-713. Violation of provisions dealing with injury to livestock.** (1) Except as otherwise provided *in this chapter*, ~~every~~ *a* person who violates any of the provisions of 69-14-701 through ~~69-14-712~~ *69-14-711* relating to livestock killed or injured by railroads is guilty of a misdemeanor.

(2) ~~Any~~ *A* person violating any of the provisions of 69-14-711 ~~or 69-14-712~~ shall upon conviction ~~thereof~~ be punished by a fine of not less than $10 or more

than $300, ~~or~~ by imprisonment in the county jail for a period of not less than 10 days or more than 60 days, or ~~by~~ both ~~such fine and imprisonment~~."

**Section 13.** Section 69-14-801, MCA, is amended to read:

"**69-14-801. Maintenance of loading platform by railroad.** (1) ~~Every~~ *A* railroad company doing business in this state shall, within 60 days after notice from the commission, erect one or more *safe* platforms for the transfer of ~~livestock, grain, and other~~ commodities ~~from wagons or otherwise~~ to cars ~~at each and every station or siding designated in such notice, such~~. *The* platforms ~~to~~ *must* be erected ~~so as not~~ to *not* endanger life and property.

(2) If ~~any~~ *a* railroad company, after receiving notice as provided for in this section, ~~shall fail~~ *fails*, ~~refuse~~ *refuses*, or ~~neglect~~ *neglects* to erect platforms as required by this section within ~~the required~~ 60 days, the commission ~~is authorized and empowered and it is made its duty to~~ *shall* notify ~~such~~ *the* railroad company to appear before it at a certain time and place and show cause~~, if there is any,~~ why ~~such~~ *the* commission should not issue an order requiring ~~such~~ *the* railroad company to comply with the requirements of this section. The commission ~~shall have power~~ *may*, after ~~such~~ *the* hearing, ~~to~~ issue an order ~~upon said~~ *commanding the* railroad company ~~commanding it~~ to erect ~~such~~ *the* platform ~~if the commission shall upon such examination and hearing deem such platform necessary~~.

(3) ~~Any~~ *A* notice required to be served upon ~~any~~ *a* railroad company to carry out any of the provisions of this section or similar provisions relating to the enlarging of ~~such~~ platforms may be served upen any agent of ~~said~~ *the railroad* company within the state."

**Section 14.** Section 69-14-921, MCA, is amended to read:

"**69-14-921. Suitable cars to be furnished for shipment of grain and other commodities in hulk.** (1) All ~~boxcars~~ *cars* furnished by railroad or railway companies for the transpertation of grain or other commodities in bulk ~~shall~~ *must* he ~~of such construction and in such order as~~ *constructed* to prevent leakage when such commodities are placed or hauled ~~therein~~ *in the cars*. It is ~~hereby made~~ the duty of all railroad or railway companies to furnish ~~such~~ cars in ~~such~~ *the required* condition.

(2) Whenever ~~boxcars~~ *cars* placed for loading grain or other commodities in bulk are found to be in ~~such~~ *a* condition that ~~they~~ will not afford safe transpertation for ~~such~~ commodities, the railroad or railway company shall, upon written complaint to the agent or other person in authority by the shipper or ~~his~~ *the shipper's* representative who propeses to load ~~said~~ *the* car or cars and within 24 hours, cause ~~said~~ *the* car or cars to be properly cleaned ~~and coopered~~ and put in ~~such~~ repair ~~as will afford~~ *to allow* safe transpertation for the commodity to be shipped."

**Section 15.** Section 69-14-922, MCA, is amended to read:

"**69-14-922. Action by shipper to render cars suitable.** (1) ~~In case such~~ *If a* railroad or railway company ~~shall fail~~ *fails* within 24 hours after written complaint has been made by the shipper or ~~his~~ *the shipper's* representative to clean and ~~safely cooper such~~ *prepare a* car or cars, then ~~such~~ *the* shipper or ~~his~~ *the shipper's* representative ~~shall have authority to~~ *may* ~~enter upon such car or cars and~~ properly and safely ~~cooper and~~ clean ~~the same~~ *and prepare the car or*

*cars. Preparing a car or cars may not include repairs covered in 49 CFR, parts 200 through 399.* ~~Said~~ *The* railroad or railway company shall pay for the labor expended in ~~such~~ *the* ~~repairs at the rate of $3 per 8-hour day~~ *cleaning or preparation* and the actual cost of material used~~, providing that such charge shall in no case exceed $5 for each car so coopered~~.

(2) ~~In case any~~ *If a* car or cars are placed at a station or siding where there is no representative of ~~said~~ *the* railroad or railway company upon whom complaint may be served, then ~~and in such case~~ the shipper or ~~his~~ *the shipper's* representative may at once ~~enter upon the said car or cars and~~ clean and ~~make such repairs~~ *repair the cars* ~~as are necessary~~ and ~~shall~~ *must* be paid for the labor and material expended, as provided in subsection (1)."

**Section 16.** Section 69-14-1004, MCA, is amended to read:

**"69-14-1004. Penalty for ~~intoxication~~ *being under the influence* while engaged in train operations.** ~~Every~~ *A* person who is ~~intoxicated~~ *under the influence, as provided in 49 CFR 383.51, of alcohol or a drug* while in charge of a locomotive engine while as conductor or driver upon any railroad car or train~~, whether propelled by steam or otherwise,~~ or while acting as train dispatcher or as telegraph operator receiving or transmitting dispatches in relation to the movement of trains is guilty of a misdemeanor."

**Section 17. Repealer.** Sections 69-14-119, 69-14-301, 69-14-302, 69-14-303, 69-14-304, 69-14-305, 69-14-306, 69-14-307, 69-14-308, 69-14-309, 69-14-310, 69-14-311, 69-14-312, and 69-14-712, MCA, are repealed.

Approved April 11, 1997

# CHAPTER NO. 236

[SB 188]

AN ACT ALLOWING CERTAIN EMPLOYEES OF THE DEPARTMENT OF TRANSPORTATION TO SEIZE FUEL THAT IS BEING IMPROPERLY IMPORTED INTO THE STATE; DEFINING "CONVEYANCE", "IMPROPERLY IMPORTED FUEL", AND "PEACE OFFICER"; DIRECTING THE DEPARTMENT OF TRANSPORTATION TO ESTABLISH RULES GOVERNING A BIDDING PROCESS AMONG LICENSED MONTANA FUEL DISTRIBUTORS FOR THE PURCHASE OF SEIZED FUEL; PROVIDING FOR A HEARING TO DETERMINE THE RECIPIENT OF SEIZED FUEL; AMENDING SECTIONS 15-70-104, 15-70-201, 15-70-202, 15-70-301, AND 15-70-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it requires the department of transportation to establish rules to govern the bidding process determining the licensed Montana distributor that will be allowed to purchase improperly imported fuel seized by the department.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-70-104, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1073 1997

**"15-70-104. Rules to be established by department.** (1) The department of transportation shall adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this chapter.

(2) The department may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of:

*(a) part 2;*

~~(a)~~*(b)* part 3;

~~(b)~~*(c)* part 7; and

~~(c)~~*(d)* the International Fuel Tax Agreement authorized by 15-70-121."

**Section 2.** Section 15-70-201, MCA, is amended to read:

**"15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means ~~any~~ *a* person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to he "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) ~~any~~ *a* person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

HeinOnline -- 1997 vol. I 1074 1997

(b) ~~any~~ *a* person who imports gasoline for sale, use, or distribution;

(c) ~~any~~ *a* person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) ~~any~~ *an* exporter as defined in subsection (8);

(e) ~~any~~ *a* dealer licensed as of January 1, 1969, except a dealer at an established airport; *or*

(f) ~~any~~ *a* person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into ~~any~~ *a* person's possession or custody first after its arrival and coming to rest at destination within the state of ~~any~~ gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

*(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:*

*(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or*

*(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.*

~~(12)~~*(13)* "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

~~(13)~~*(14)* "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

~~(14)~~*(15)* "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

**Section 3.** Section 15-70-202, MCA, is amended to read:

**"15-70-202. License, fee, and security of gasoline distributors.** (1) *(a)* All gasoline distributors, including exporters, as defined in 15-70-201, and a person who imports, as defined in 15-70-201, prior to the commencement of doing business, shall file:

*(i)* an application for a license with the department of transportation on forms prescribed and furnished by the department setting forth the information as may be requested by the department~~.~~; *and* ~~Each distributor shall at the same time file~~

*(ii)* security with the department in an amount to be determined by the department. ~~However, the~~ *The* required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month.

*(b)* Upon approval of the application, the department shall issue to the distributor a nonassignable license that is in force until surrendered or canceled.

(2) ~~Any~~ *A* person who engages in the wholesale distribution of gasoline in this state exercising the option under 15-70-201(6)(c) shall pay an annual license fee of $200.

(3) "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under conditions as the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

*(4) Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of [section 6] allowing for the seizure, confiscation, and possible forfeiture of the fuel."*

**Section 4.** Section 15-70-301, MCA, is amended to read:

**"15-70-301. Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person whose major endeavor is the business of farming or ranching and whose primary source of earned income is from the business of farming or ranching.

(2) "Bond" means:

HeinOnline -- 1997 vol. I 1076 1997

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means ~~any~~ *a* unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributer's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

(7) "Distributer" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imperts special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an experter.

HeinOnline -- 1997 vol. I 1077 1997

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

*(12) "Improperly imported fuel" means special fuel as defined in subsection (16) that is:*

*(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or*

*(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.*

~~(12)~~*(13)* "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

~~(12)~~*(14)* "Person" includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

~~(14)~~*(15)* "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriatod funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

~~(15)~~*(16)* "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other

HeinOnline -- 1997 vol. I 1078 1997

types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

~~(16)~~*(17)* "Special fuel dealer" means:

(a) ~~any~~ *a* person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) ~~any~~ *a* person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) ~~any~~ *a* person who provides ~~any~~ *a* facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(17)~~*(18)* "Special fuel user" means ~~any~~ *a* person other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

~~(18)~~*(19)* "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

**Section 5.** Section 15-70-341, MCA, is amended to read:

**"15-70-341. License, fee, and security of special fuel distributors.** (1) *(a)* All special fuel distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of doing business, shall file:

*(i)* an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department.~~;~~ *and* ~~Each distributor shall at the same time file~~

*(ii)* security with the department in an amount to be determined by the department. ~~However, the~~

*(b) The* required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month.

*(c)* Upon approval of the application, the department shall issue to the distributor a nonassignable license that continues in force until surrendered or revoked.

(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(7)(c) and not already licensed under 15-70-202 shall pay an annual license fee of $200.

(3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

*(4) Failure to obtain a special fuel distributor license as required in this section subjects the distributor to the provisions of [section 6], allowing for the seizure, confiscation, and possible forfeiture of the fuel.*

~~(4)~~*(5)* As used in this section, "security" means:

HeinOnline -- 1997 vol. I 1079 1997

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation."

**Section 6. Improperly imported fuel — seizure.** (1) As used in this section, the following definitions apply:

(a) "conveyance" means a tank car, vehicle, or vessel that is used to transport fuel;

(b) "department" means the department of transportation; and

(c) "peace officer" means an employee of the department of transportation appointed as a peace officer under 61-12-201.

(2) Pursuant to 61-12-206(5), a peace officer may:

(a) stop and search a conveyance in the state if the peace officer has reasonable cause to believe that the conveyance is being used to carry improperly imported fuel and is intentionally avoiding fuel tax responsibilities; and

(b) seize without a warrant imported fuel for which the distributor or transporter has not obtained a valid Montana gasoline or special fuel distributor license as required in 15-70-202 and 15-70-341.

(3) The peace officer shall obtain authorization from the director of the department of transportation or the director's designee before seizing fuel.

(4) Upon seizing the fuel the peace officer believes to be improperly imported, the peace officer may:

(a) direct the rerouting or transfer of the fuel to a location designated by the department. The department shall reimburse the carrier for transportation costs from the point of seizure to the location designated by the department.

(b) unload the fuel; and

(c) take three samples of the fuel from the cargo tank for examination.

(5) Within 48 hours after seizure of the improperly imported fuel, the department shall issue a notice of right to file claim for the return of interest or title to the fuel. The notice must be issued to:

(a) the original owner of the fuel;

(b) the owner of the transportation company that conveyed the fuel; and

(c) any other interested party.

HeinOnline -- 1997 vol. I 1080 1997

(6) The parties listed in subsections (5)(a) through (5)(c) may file a claim for the return of interest or title to the fuel within 30 days after the date of seizure. If a claim is filed for interest or title to the seized fuel, the department shall:

(a) provide the opportunity for a hearing;

(b) if requested, conduct the hearing within 5 days after receiving the claim;

(c) make a final determination of the party to take interest or title to the fuel within 2 working days after the hearing; and

(d) mail notice of the department's determination to interested parties.

(7) (a) The department may determine that the seized fuel he forfeited by the originai owner and may:

(i) sell the fuel to the licensed Montana distributor predetermined through a bidding process established in department administrative rule; or

(ii) use the forfeited fuel for a public purpose determined by the department.

(b) The departinent shall issue a certificate of sale to the licensed distributor who purchases the seized fuel.

(c) The net proceeds from the sale of the fuel must be deposited in the general fund, less:

(i) the applicable taxes, fees, and penalties, which the department shall deposit in a highway revenue account in the state special revenue fund, as required in 15-70-101; and

(ii) the administrative costs incurred in conjunction with the seizure and disposal of the improperly imported fuel.

(8) If the department determines that the original owner of the fuel may reclaim interest or title to the fuel, the department may:

(a) return to the owner money, less tax and penalty, equal to the wholesale value of the fuel on the day of the seizure; or

(b) return the fuel.

(9) A person forfeits the interest, right, and title to improperly imported fuel if the person:

(a) fails to file a claim for the seized fuel within the time allowed in subsection (5); or

(b) is determined to be guilty of violating fuel tax laws.

(10) A person whose fuel is seized under this section is not relieved of any penalties imposed for illegal fuel importation in Title 15, chapter 70.

**Section 7. Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 15, chapter 70, part 2, and Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 2, and Title 15, chapter 70, part 3, apply to [section 6].

HeinOnline -- 1997 vol. I 1081 1997

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved April 11, 1997

# CHAPTER NO. 237

[SB 239]

AN ACT DEFINING "BANK RECORDS" AND "ELECTRONIC STORAGE"; REQUIRING THAT CERTAIN ELECTRONICALLY STORED INFORMATION BE TREATED AS AN ORIGINAL RECORD; AND AMENDING SECTION 32-1-492, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-1-492, MCA, is amended to read:

**"32-1-492. *Definitions* — ~~Reproduction~~ *reproduction* of bank records — admissibility in evidence.** *(1) (a) For the purposes of this section, "bank records" includes any document, paper, letter, book, map, photograph, sound or video recording, magnetic tape, electronic-storage medium, or other information- recording medium used in a bank's normal course of business.*

*(b) (i) For the purposes of this section, "electronic storage" means the recording, storage, retention, maintenance, and reproduction of documents using microfilm, microfiche, data processing, computers, or other electronic process that correctly and legibly stores and reproduces documents.*

*(ii) A photographic, photostatic, miniature photographic copy, or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, must be considered an original record for all purposes and must be treated as an original record in all courts and administrative agencies for the purposes of admissibility in evidence.*

*(iii) A facsimile, exemplification, or certified copy of any reproduction referred to in subsection (1)(b)(ii) must, for all purposes, be considered a facsimile, exemplification, or certified copy of the original record.*

~~(1)~~*(2)* Banks are ~~hereby~~ authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, ~~and~~ to ~~preserve, store, use, and employ the same~~ *be preserved, stored, used, and employed* in carrying on business.

~~(2)~~*(3)* In any action or proceedings in which ~~any~~ bank records may be called in question or be demanded of any bank or any officer or employee ~~thereof~~ *of the bank*, a showing that ~~such~~ *the* records have been destroyed in the regular course of business ~~shall be~~ *is* a sufficient excuse for the failure to produce ~~them~~ *the records*.

~~(3)~~*(4)* Upon ~~such~~ *the* showing *required in subsection (3)*, secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions, ~~thereof (and~~ photographic

HeinOnline -- 1997 vol. I 1082 1997

enlargements, and prints of microfilm reproductions~~)~~, when made in the regular course of business, ~~shall be~~ *is* admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

~~(4)~~*(5)* Any photostatic, photographic, or microfilm reproductions, ~~(~~including enlargements of the ~~latter)~~ *microfilm reproductions,* made in the regular course of business of any original files, records, hooks, cards, tickets, deposit slips, or memoranda ~~which~~ *that* were in existence on July 1, 1951, ~~shall be~~ *are* admissible in evidence ~~in~~ *as* proof of the form, text, and contont of ~~any said~~ *the* originals ~~which~~ *that* may be destroyed in the regular course of business ~~after July 1, 1951~~."

Approved April 11, 1997

# CHAPTER NO. 238

[SB 244]

AN ACT ALLOWING THE TRANSFER OF A BUS DEPRECIATION RESERVE FUND BALANCE ONLY WHEN A SCHOOL DISTRICT SELLS ALL OF ITS BUSES; AND AMENDING SECTION 20-10-147, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-10-147, MCA, is amended to read:

**"20-10-147. Bus depreciation reserve.** (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio.

(2) Whenever a hus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners on the fourth Monday of August as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses or to replace the huses or radios for which tbe bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund *sell all of the district's buses and* consider it to be in the best interest of the district to transfer any portion or all of the hus depreciation reserve fund balance to any other fund maintained hy the district, the trustees shall submit the proposition to tbe electors of the district. The electors qualified to vote at the

HeinOnline -- 1997 vol. I 1083 1997

election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer."

Approved April 11, 1997

# CHAPTER NO. 239

[SB 257]

AN ACT GENERALLY REVISING THE DISPOSITION OF GASOLINE TAXES AND FEDERAL HIGHWAY FUNDS; CORRECTLY IDENTIFYING THE LOCAL TECHNICAL ASSISTANCE TRANSPORTATION PROGRAM; CORRECTLY IDENTIFYING ROUTE DESIGNATION IN ACCORDANCE WITH FEDERAL LAW; ALLOWING THE DISBURSEMENT OF GASOLINE TAXES TO CONSOLIDATED CITY-COUNTY GOVERNMENTS; MODIFYING FUNDING ALLOCATION FORMULAS TO REFLECT THE MOST RECENT CENSUS DATA; REVISING THE DEFINITION OF "RURAL POPULATION" AND "RURAL ROAD MILEAGE"; AMENDING SECTIONS 15-70-101 AND 60-3-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-70-101, MCA, is amended to read:

**"15-70-101. Disposition of funds.** (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, ~~and~~ counties, *and consolidated city-county governments* in this section must, in accordance with the provisions of 15-1-501, be paid by the department of transportation from the state special revenue fund to the cities, towns, ~~and~~ counties, *and consolidated city-county governments*.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, ~~and~~ incorporated cities and towns, *and consolidated city-county governments* in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of $54,000 must be designated for the purposes and functions of the Montana ~~rural~~ *local* technical assistance transportation program in Bozeman.

(b) The amount of $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the ~~federal-aid interstate~~ *national highway* system and the ~~federal-aid~~ primary system, bears to the total rural road mileage in the state, exclusive of the

~~federal-aid interstate~~ *national highway* system and the ~~federal-aid~~ primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the ~~federal-aid interstate~~ *national highway* system and the ~~federal-aid~~ primary system, within corporate limits bears to the total street and alley mileage, exclusive of the ~~federal-aid interstate~~ *national highway* system and ~~federal-aid~~ primary system, within the corporate limits of all cities and towns in Montana.

*(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city and must be used to determine city and county populations and road mileages in the following manner:*

*(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recognized an incorporated city and the rural county. The factors must be based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.*

*(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).*

*(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.*

~~(3)~~*(4)* All funds allocated by this section to counties, cities, ~~and~~ towns, *and consolidated city-county governments* must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, ~~or~~ county, *or consolidated city-county government* might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the ~~federal-aid~~ primary or secondary highway system or urban extensions to those systems~~, except that the~~. *The* governing body of a town or third-class city, as defined in

HeinOnline -- 1997 vol. I 1085 1997

7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

~~(4)~~*(5)* All funds allocated by this section to counties, cities, ~~and~~ towns, *and consolidated city-county governments* must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

~~(5)~~*(6)* For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined ~~by the last preceding official federal census~~ *annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.*

~~(6)~~*(7)* For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, ~~and~~ counties, *and consolidated city-county governments* to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

~~(7)~~*(8)* Except by a town or third-class city as provided in subsection ~~(3)~~ *(4)*, the funds authorized by this section may not be used for the purchase of capital equipment.

~~(8)~~*(9)* Funds authorized by this section must be used for construction and maintenance programs."

**Section 2.** Section 60-3-206, MCA, is amended to read:

**"60-3-206. Apportionment of ~~state~~ funds to secondary highway system.** (1) Each fiscal year the department shall apportion the federal-aid highway funds allocated for the secondary highway system among the counties. The proportion that each county receives is computed on the following basis:

(a) one-fourth in the ratio of land area in each county to the total land area in the state;

(b) one-fourth in the ratio of the rural population in each county to the total rural population in the state;

(c) one-fourth in the ratio of the rural road mileage in each county to the total rural road mileage in the state;

(d) one-fourth in the ratio of value of rural lands in each county to the total value of rural lands in the state.

(2) To the extent necessary to permit orderly programming and construction of projects, obligations in ~~any~~ *a* county may exceed the amount apportioned to that county. The amount of ~~any~~ excess obligations must be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

HeinOnline -- 1997 vol. I 1086 1997

(a) "Rural population" means total *county* population *as reported in the latest decennial federal census* less the population in cities over 5,000 persons and their unincorporated fringe urban areas as ~~reported in~~ *determined by the department, using* the latest *decennial* federal census. ~~Federal census population figures must be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.~~

(b) *(i)* "Rural road mileage" means all road mileage outside of incorporated cities *and towns*, exclusive of road mileage on the primary highway system and the national highway system, *and those roads that are inside incorporated cities and towns and are functionally classified and approved by the commission as a major collector or a minor arterial, exclusive of road mileage on the primary system and the national highway system.*

*(ii) Road mileage that lies within incorporated cities over 5,000 persons and their unincorporated fringe urban areas, whose population is determined by the department, using the latest decennial federal census, is not considered rural road mileage.*

*(iii)* Rural road mileage reported by the road inventory of the department must be used in determining rural road mileage.

(c) "Value of rural lands" includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands must be computed from the latest ~~biennial report of~~ *available information from* the department of revenue.

(ii) The basis for the value of state-owned lands must be computed from the latest figures on the total grazing, timber, and agricultural lands in each county ~~contained in the latest biennial report of the~~ *based on the most recent information available from the* department of ~~state lands~~ *natural resources and conservation.*

~~(iii) The average value of privately owned lands is the average value of state owned lands if the actual value is not available.~~"

**Section 3. Effective date.** [This act] is effective July 1, 1997.

Approved April 11, 1997

# CHAPTER NO. 240

[SB 265]

AN ACT REVISING THE LAWS RELATING TO CONSTRUCTION STANDARDS FOR RECREATIONAL VEHICLES; ELIMINATING THE RESPONSIBILITY OF THE DEPARTMENT OF COMMERCE FOR ADOPTING CONSTRUCTION STANDARDS FOR RECREATIONAL VEHICLES; ADOPTING THE AMERICAN NATIONAL STANDARDS INSTITUTE CONSTRUCTION STANDARD FOR RECREATIONAL VEHICLES; AND AMENDING SECTIONS 50-60-104, 50-60-401, 50-60-402, AND 50-60-403, MCA.

*Be it enacted by the Legislature of the State of Montana:*

HeinOnline -- 1997 vol. I 1087 1997

**Section 1.** Section 50-60-104, MCA, is amended to read:

**"50-60-104. Inspection fees.** The department shall establish a schedule of fees and may collect fees for the inspection of plans and specifications and for the inspection of buildings, factory-built buildings, ~~recreational vehicles,~~ tramways, or any other facility or structure."

**Section 2.** Section 50-60-401, MCA, is amended to read:

**"50-60-401. Department to adopt rules for factory-built buildings ~~and recreational vehicles~~.** The department may adopt by reference nationally recognized construction standards, in whole or in part, *for the construction of factory-built buildings,* but this does not prevent the department from adopting rules more stringent than those contained in ~~such~~ *the national* standards~~, for the construction of factory-built buildings and recreational vehicles as defined in 50-60-101~~."

**Section 3.** Section 50-60-402, MCA, is amended to read:

**"50-60-402. Factory-built buildings and recreational vehicles to comply with standards.** (1) ~~No~~ *A* person, firm, or corporation may *not* manufacture, sell, or offer for sale any new factory-built building ~~or recreational vehicle~~ unless ~~such~~ *the* factory-built building ~~or recreational vehicle,~~ *and* its components, systems, and appliances have been constructed and assembled in accordance with the standards ~~herein~~ defined *in this part.*

(2) ~~Any~~ *A* factory-built building ~~or recreational vehicle unit which~~ *that* has been approved by the department ~~shall be deemed~~ *is considered* to be in full compliance with the standards and rules prescribed in parts 1 through 4.

(3) All factory-built buildings ~~or recreational vehicle units thus~~ approved *by the department* ~~shall be~~ *are* acceptable as meeting the requirements of parts 1 through 4 throughout the state of Montana without further inspection or fees except for zoning, utility connections, and foundation permits required by local ordinance.

*(4) A person, firm, or corporation may not manufacture, sell, or offer for sale a new recreational vehicle unless the vehicle has been constructed and assembled in accordance with the American national standards institute ANSI/A119.2 standard for recreational vehicles. The department is not responsible for enforcing the compliance of recreational vehicles with the ANSI/A119.2 standard as part of the state building code."*

**Section 4.** Section 50-60-403, MCA, is amended to read:

**"50-60-403. Use of independent testing laboratories authorized.** The department may ~~utilize~~ *use* independent testing laboratories or the agencies of other states to determine if approved models of factory-built buildings ~~or recreational vehicles~~ are being constructed in accordance with the approved plans and specifications for ~~said~~ *those* models."

Approved April 11, 1997

HeinOnline -- 1997 vol. I 1088 1997

# CHAPTER NO. 241

[SB 277]

AN ACT GENERALLY REVISING PROCEDURE FOR THE SMALL CLAIMS COURT; PROVIDING THAT THE SMALL CLAIMS COURT PROCEDURE IN DISTRICT COURT MUST CONFORM TO THE SMALL CLAIMS COURT PROCEDURE IN JUSTICE'S COURT; REPEALING THE SMALL CLAIMS PROCEDURE FOR DISTRICT COURT; AMENDING SECTION 3-12-101, MCA; REPEALING SECTIONS 3-12-106, 25-34-101, 25-34-102, 25-34-103, 25-34-104, 25-34-105, 25-34-106, 25-34-201, 25-34-202, 25-34-203, 25-34-204, 25-34-205, 25-34-206, 25-34-207, 25-34-208, 25-34-301, 25-34-302, 25-34-303, 25-34-401, 25-34-402, 25-34-403, AND 25-34-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Procedure.** A small claims court created under this chapter shall follow the small claims procedure used in justice's court, as provided in Title 25, chapter 35.

**Section 2.** Section 3-12-101, MCA, is amended to read:

**"3-12-101. Purpose — liberal construction.** It is tho purpose of this chapter ~~and chapter 34 of Title 25~~ to provide a speedy remedy in claims falling ~~hereunder~~ *under this chapter* and to promote a forum in which ~~such~~ *the* claims may be heard and disposed of without the necessity of formal trial. For this reason, the provisions ~~hereof~~ *of this chapter* should be liberally construed to provide an informal but equitable means of justice, and the judges appointed ~~hereunder~~ *under this chapter* are required to assist all parties before them to obtain substantial justice."

**Section 3. Repealer.** Sections 3-12-106, 25-34-101, 25-34-102, 25-34-103, 25-34-104, 25-34-105, 25-34-106, 25-34-201, 25-34-202, 25-34-203, 25-34-204, 25-34-205, 25-34-206, 25-34-207, 25-34-208, 25-34-301, 25-34-302, 25-34-303, 25-34-401, 25-34-402, 25-34-403, and 25-34-404, MCA, are repealed.

**Section 4. Codification instruetion.** [Section 1] is intended to be codified as an integral part of Title 3, chapter 12, part 1, and the provisions of Title 3, chapter 12, part 1, apply to [section 1].

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved April 11, 1997

# CHAPTER NO. 242

[SB 311]

AN ACT PROVIDING FOR SECRECY FOR ABSENTEE BALLOTS; AND AMENDING SECTIONS 13-13-201, 13-13-214, 13-13-221, 13-13-225, 13-13-229, 13-13-231, 13-13-232, 13-13-241, AND 13-15-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

HeinOnline -- 1997 vol. I 1089 1997

**Section 1.** Section 13-13-201, MCA, is amended to read:

**"13-13-201. Voting by absentee ballot — qualifications — *procedures.*** *(1)* A qualified registered elector is entitled to vote by absentee ballot, as provided in this part, if the elector:

~~(1)~~*(a)* expects to be absent from the county or precinct and unable to vote in person at the time of holding the election;

~~(2)~~*(b)* is physically incapacitated and unable to go to the polls on election day;

~~(3)~~*(c)* suffers from chronic illness or general ill health; or

~~(4)~~*(d)* is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day. ~~Such~~ *The* health emergency must arise from unforeseen circumstances that require the elector to seek health care or medical assistance.

*(2) The elector may vote by:*

*(a) marking the ballot in the manner specified;*

*(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;*

*(c) placing the secrecy envelope containing one ballot for each election being held in the return and verification envelope;*

*(d) executing the affidavit printed on the return and verification envelope; and*

*(e) returning the return and verification envelope with the secrecy envelope containing the ballot or ballots enclosed, as provided in 13-13-221."*

**Section 2.** Section 13-13-214, MCA, is amended to read:

**"13-13-214. Mailing ballot to elector.** (1) (a) Except as provided in 13-13-213 and in subsection (1)(b) of this section, as soon as the official ballots are printed, the election administrator shall send by mail, postage prepaid, to each elector from whom the election administrator has received a valid application whatever official ballots are necessary. Ballots must be sent immediately to electors submitting valid requests after the official ballots are printed.

(b) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

HeinOnline -- 1997 vol. I 1090 1997

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

*(a) a secrecy envelope, free of any marks that would identify the voter; and*

*(b)* a self-addressed envelope for the return of the ballots. An affirmation in the form prescribed by the secretary of state must be printed on the back of the envelope.

(3) The election administrator shall stamp the ballots provided to an absentee elector as provided in 13-13-116 *and remove the stubs from the ballots, attaching the stubs to the elector's absentee ballot application.*

(4) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

(5) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked "For Unvoted Party Ballot(s)". This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(6) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. *The instructions must include information regarding use of the secrecy envelope and use of the return and verification envelope.* The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector;

(b) the elector is out of the state or will be out of the state at the time of the election; and

(c) the elector requests a voter information pamphlet.

(7) The return envelope must be self-addressed to the election administrator."

**Section 3.** Section 13-13-221, MCA, is amended to read:

**"13-13-221. Marking and affirming ballot — *use of secrecy and return envelopes.*** (1) After the elector marks ~~his~~ *the elector's* ballots, ~~he~~ *the elector* shall fold them so that the vote is concealed and so that the official stamp is visible *and place the ballots in the secrecy envelope.* ~~The stubs shall be left attached and the ballots should be folded so that the stubs can be detached without revealing the vote.~~

~~(2)~~*(2)* The elector shall place the ballots *in the secrecy envelope and place the sealed secrecy envelope* in the *return* envelope addressed to the election administrator and seal it securely. If the ballots are for a primary election, the

HeinOnline -- 1997 vol. I 1091 1997

party ballot or ballots not voted ~~shall~~ *must* be placed in the envelope marked for that purpose and enclosed in the outer *return* envelope with the voted ballots *as provided in subsection (2).*

~~(3)~~*(3)* The elector shall complete and sign the affirmation on the envelope.

~~(4)~~*(4)* The elector shall mail the envelope, postage prepaid, or deliver it to the election administrator or the special absentee election board."

**Section 4.** Section 13-13-225, MCA, is amended to read:

**"13-13-225. Special absentee election boards — members — appointment.** (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot *as a result of illness or health emergency* under 13-13-201~~(4)~~.

(2) In a partisan election, each special absentee election board shall consist of two members, one from each of the two political parties receiving the highest votes in the state during the last preceding general election. Board members ~~must~~ *shall* reside in the county in which they serve.

(3) ~~No~~ *A* member of a special absentee election board may *not* be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county."

**Section 5.** Section 13-13-229, MCA, is amended to read:

**"13-13-229. Voting performed before ~~the~~ special absentee election board.** (1) As provided in 13-13-201~~(4)~~, a qualified elector who becomes ill or is prevented from voting at the polls because of a health emergency may vote by absentee ballot. Pursuant to 13-13-212(3), ~~such~~ *the* elector may request that a special absentee election board personally deliver a ballot to ~~him~~ *the elector.*

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-221, except *that* the elector ~~must~~ *shall* hand the marked ballot in the sealed *return* envelope to the special absentee election board, and the board ~~must~~ *shall* deliver the sealed *return* envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking ~~his~~ *the elector's* ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election board appointed to personally deliver the ballot. Any ~~such~~ assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119."

**Section 6.** Section 13-13-231, MCA, is amended to read:

**"13-13-231. Disposition of marked ballot upon receipt by election administrator.** (1) Upon receipt of the voted absentee ballot, the election

HeinOnline -- 1997 vol. I 1092 1997

administrator shall immediately attach the elector's application to the *unopened return* envelope and mark the precinct number for delivery.

(2) The election administrator shall safely keep the absentee ballots in ~~his~~ *the election administrator's* office until delivered by ~~him~~ *the election administrator to the election judges.*"

**Section 7.** Section 13-13-232, MCA, is amended to read:

"**13-13-232. Delivery of ballots, *secrecy envelopes, and return envelopes* to election judges — ballots to be rejected.** (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall deliver the *unopened return* envelope to the judges at the same time *that* the ballots are delivered. *The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.*

(2) If absentee ballots are received after the ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall immediately deliver the *unopened return* envelopes to the judges. *The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.*

(3) If the election administrator receives an absentee ballot for which an application or request was not received as required by 13-13-211, or if an absentee ballot is received by the election administrator after the close of the polls and was not issued to an elector pursuant to 13-13-201~~(4)~~*(1)(d)*, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots ~~so~~ endorsed ~~shall~~ *in this manner must* be retained by the election administrator and placed with the proper records when they are returned to ~~him~~ *the election administrator.*"

**Section 8.** Section 13-13-241, MCA, is amended to read:

"**13-13-241. Examination of absentee ballot *return* envelopes and affirmations while polls open — deposit of absentee and unvoted ballots.** (1) While the polls are open, the election judges may compare the signature of the elector on the absentee ballot request and affirmation. If they find that the signatures correspond, that the affirmation is sufficient, and that the absentee elector is qualified, they may open the absentee ballot *return* envelope.

(2) If the absentee ballot does not meet the requirements specified in subsection (1), it must be rejected. The election judges, without opening the absentee ballot *return* envelope, shall mark across it the reason for rejection and a majority of the judges shall sign their initials. Unopened rejected absentee ballot *return* envelopes must be handled in the same manner as provided for rejected ballots in 13-13-243.

*(3) After opening the absentee ballot return envelope and without opening the secrecy envelope, they shall place the secrecy envelope in the proper ballot box. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelopes.*

HeinOnline -- 1997 vol. I 1093 1997

~~(3)~~*(4)* After opening the absentee *ballot return* envelope and *if the ballot has not been placed in the secrecy envelope,* without unfolding the ~~ballots~~ *ballot* or permitting ~~them~~ *it* to be examined, the election judges shall ~~ascertain whether the stubs are attached or enclosed and whether the numbers correspond to the numbers in the certificate of the election administrator. If so, they shall detach the stubs and deposit the stubs and ballots in the proper ballot boxes. In a primary election, the unvoted ballots must be deposited in the unvoted ballot box without being removed from their enclosure envelope.~~ *place the ballot in the secrecy envelope and place the secrecy envelope in the proper ballot box.*

~~(4) If upon opening the absentee ballot envelope it is found that the number does not correspond to the number on the certificate of the election administrator, the ballot must be rejected. The reason for rejection must be marked on the back of the ballot or ballots, and the statement must be initialed by a majority of the election judges.~~"

**Section 9.** Section 13-15-201, MCA, is amended to read:

"**13-15-201. Preparation for count.** (1) To begin the count after the close of the polls, the election judges shall take ballots out of the box unopened to determine whether each ballot is single. *The election judges shall remove each absentee ballot secrecy envelope and open it to determine whether the ballot for each election is single. A ballot must be rejected if in the envelope there is more than one ballot for each election.*

(2) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbook.

(3) If they cannot reconcile the total number of ballots with the pollbook, they ~~must~~ *shall* submit a written report stating how many ballots were missing or in excess and any reason of which they are aware for the discrepancy. All judges ~~must~~ *shall* sign the report.

(4) A ballot ~~which~~ *that* is not endorsed by the official stamp is void and may not be counted unless the judges agree *that* the stamp is missing because of their error. ~~Such~~ *The* ballot ~~shall~~ *must* be marked "unstamped by error" on the back and must he initialed by all judges.

(5) If two or more ballots are folded together to look like a single ballot, they ~~shall~~ *must* be laid aside until the count is complete. The election judges shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were voted by one elector, they must be rejected; otherwise they must be counted."

Approved April 11, 1997

# CHAPTER NO. 243

[SB 313]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE MONTANA UNIVERSITY SYSTEM; ALLOWING A PUBLIC SCHOOL TEACHER TO RECEIVE COMPENSATION FROM A COLLEGE OR UNIVERSITY FOR SUPERVISING STUDENT TEACHERS WHILE

HeinOnline -- 1997 vol. I 1094 1997

EMPLOYED BY A PUBLIC SCHOOL DISTRICT; ADDING A MEMBER TO THE STUDENT LOAN ADVISORY COUNCIL; CHANGING THE DATE BY WHICH A COMMUNITY COLLEGE MUST SUBMIT ITS BUDGET TO THE BOARD OF REGENTS; CHANGING THE RESIDENCY REQUIREMENT FOR MONTANA HIGH SCHOOL GRADUATES SEEKING ADMISSION TO THE MONTANA UNIVERSITY SYSTEM; MAKING CHANGES TO THE GUARANTEED STUDENT LOAN PROGRAM TO REFLECT CHANGES IN FEDERAL REGULATIONS; REMOVING THE STATUTORY LIMITATIONS ON BUILDING FEES; REMOVING THE DATE BY WHICH MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK (METNET) FEES MUST BE DEPOSITED WITH THE COMMISSIONER OF HIGHER EDUCATION; AMENDING SECTIONS 2-2-104, 2-15-1520, 17-8-306, 20-15-312, 20-25-302, 20-25-503, 20-26-103, 20-26-1101, 20-26-1102, 20-26-1103, 20-26-1104, 20-26-1105, 20-26-1106, 20-26-1107, AND 20-32-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-2-104, MCA, is amended to read:

**"2-2-104. Rules of conduct for public officers, legislators, and public employees.** (1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

HeinOnline -- 1997 vol. I 1095 1997

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

*(i)* a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; *or*

*(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher's duties for a public school district.*

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices."

**Section 2.** Section 2-15-1520, MCA, is amended to read:

**"2-15-1520. ~~Guaranteed student~~ *Student* loan advisory council — terms — compensation.** (1) There is a student loan advisory council appointed by the board of regents.

(2) The council consists of ~~seven~~ *eight* members. Each member must be appointed for a term of 3 years.

(3) Appointments to the council must conform to the following requirements:

(a) One member must be a representative of a private eligible educational institution, as defined in 20-26-1101.

(b) Two members must be representatives of a public eligible educational institution, as defined in 20-26-1101.

(c) Two members must be representatives of approved lenders.

(d) One member must be a full-time student registered at an eligible educational institution, as defined in 20-26-1101.

(e) One member, *nonvoting,* must be a representative of the office of the commissioner of higher education.

*(f) One member must be a representative of the nonprofit corporation designated by the governor as the sole and exclusive nonprofit corporation in the state to provide a student loan acquisition program.*

(4) A presiding officer must be selected by the council from its membership at the first meeting of each fiscal year.

(5) Each member of the council is entitled to compensation and reimbursement for travel expenses as provided in 2-15-122(5)."

**Section 3.** Section 17-8-306, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1096 1997

"**17-8-306. Issuance of duplicate warrant.** (1) The state treasurer may issue a duplicate warrant whenever any warrant drawn by the state is lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate". A duplicate warrant may not be issued or delivered unless the person entitled to receive it deposits with the state treasurer a bond in double the amount for which the duplicate warrant is issued indemnifying the state and its officers and employees from any loss resulting from the issuance of the duplicate warrant.

(2) A bond of indemnity is not required when:

(a) the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer ~~thereof~~ *of a political subdivision*;

(b) the owner or custodian is the state of Montana or ~~any~~ *an* agency or officer of the state;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) the state treasurer has chosen to waive the requirement upon receipt of evidence that the original warrant has been lost or destroyed as a result of a disaster or other major occurrence;

(e) the amount of the lost or destroyed warrant is less than $300;

(f) it can be established that a crime has been committed and that as a result a Montana warrant has been stolen or destroyed;

(g) it can be established that a Montana warrant has been mailed to an incorrect payee;

(h) the payee is a vendor or contractor doing business with the state of Montana;

(i) the payee is a recipient of public assistance under Title 53;

(j) the payee is a recipient of a monthly annuity under Title 19;

(k) the payee is a recipient of student financial assistance administered or insured by the ~~guaranteed~~ student loan program pursuant to Title 20, chapter 26; or

(l) a state agency approves the issuance of the duplicate warrant and agrees to assume the risk of the original warrant being cashed.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(d), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l), a stop-payment order must be placed on the original warrant by the state treasurer.

(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (2)(j), (2)(k), or (2)(l), the application must include an agreement to indemnify the state and its officers

HeinOnline -- 1997 vol. I 1097 1997

and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant must be charged against the account from which the payment was derived."

**Section 4.** Section 20-15-312, MCA, is amended to read:

**"20-15-312. Calculation and approval of operating budget.** (1) Annually by ~~June 15~~ *September 1*, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college must be financed in the following manner:

(a) The general fund appropriation must represent a specific percentage of the budget amount per full-time equivalent student, as determined by the legislature. This percentage must be specified in the appropriations act appropriating funds to the community colleges for each biennium. This percentage does not apply to any portion of the unrestricted budget in excess of the budget amount per full-time equivalent student, as determined by the legislature.

(b) The mandatory levy amount must represent a specific percentage of the budget amount per full-time equivalent student, as determined by the legislature. This percentage must be specified for each community college by the board of trustees of the district and approved by the board of regents.

(c) The funding obtained in subsections (1)(a) and (1)(b) plus the revenue derived from tuition and fee schedules approved by the board of regents and unrestricted income from any other source is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget must be submitted to the board of regents for their review and approval.

(d) The amount estimated to be raised by the voted levy must be detailed separately in an expenditure schedule.

(e) The spending of each restricted funding source ~~shall~~ *must* be detailed separately in an expenditure schedule.

(f) The expenditure schedules provided in subsections (1)(c) through (1)(e) represent the total operating budget of the community college.

(2) The board of regents shall review the proposed total operating budget and all its components and make any changes it determines necessary. The board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents."

**Section 5.** Section 20-25-302, MCA, is amended to read:

**"20-25-302. Revenue-producing facilities — powers of regents.** The regents of the Montana university system may:

(1) purchase, construct, equip, or improve, at any unit of the Montana university system, any of the following types of revenue-producing facilities:

(a) land;

HeinOnline -- 1997 vol. I 1098 1997

(b) residence halls, dormitories, houses, apartments, and other housing facilities;

(c) dining rooms and halls, restaurants, cafeterias, and other food service facilities;

(d) student union buildings and facilities; and

(e) those other facilities specifically authorized by joint resolution of the legislature;

(2) rent housing facilities and provide food and other services to the students, officers, guests, and employees of the unit at rates that will ensure a reasonable net income over operating expenses and will provide for debt service and reserves and provide for the collection of charges, admissions, and fees for the use of other facilities by students and other persons~~,~~. ~~which~~ *The* charges, admissions, and fees ~~shall~~ *are* not ~~be deemed to be~~ *considered* tuition within the meaning of 20-25-421 and may be collected from any or all students. ~~Student building fees established and in effect on January 1, 1965, which are imposed uniformly upon all students or upon all of a specified class of students in attendance at any unit of the Montana university system shall not be increased without authorization by law unless absolutely necessary and then only to the extent necessary to pay principal or interest due on obligations for which such fees have been or shall be pledged or to maintain reserves securing the payment of such obligations in accordance with the indentures, resolutions, contracts, or other instruments authorizing the issuance of such obligations; provided that at any unit of the Montana university system where the aggregate amount of student building fees in effect on January 1, 1965, was less than $50 per student per academic year, such fees may be increased or additional student building fees may be established to an aggregate amount not exceeding $50 per student per academic year and provided further that additional student building fees may be established or existing student building fees may be increased at the university of Montana-Missoula to an aggregate amount not to exceed $90 per student per academic year. This limitation shall not affect admission or use charges which are made to individual students or others in proportion to their use or occupancy of particular facilities or services and shall not affect any student building fees or other charges which are made pursuant to 20-25-421 for nonresident students.~~

(3) hold the net income derived from the operation of ~~such~~ *the* facilities and the charges, admissions, and fees ~~so~~ collected and devote the ~~revenues~~ *revenue* from these sources to debt service and reserves, repairs, replacements, and betterments of the facilities or, so far as ~~such~~ *the* ~~revenues have~~ *revenue has* not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging, or improvement of additional facilities of the types described in this section;

(4) exercise full control and complete management of ~~such~~ *the* facilities;

(5) rent the facilities to other public or private persons, firms, and corporations for ~~such~~ uses, at ~~such~~ times, for ~~such~~ periods, and at ~~such~~ rates as in the regents' judgment will be consistent with the full use ~~thereof~~ *of the facilities* for academic purposes and will add to the ~~revenues~~ *revenue* available for capital costs and debt service;

HeinOnline -- 1997 vol. I 1099 1997

(6) do all things necessary to plan for and propose financing, including all necessary loan applications, for:

(a) classroom, laboratory, library, bookstore, and other instructional facilities;

(b) office, recordkeeping, storage, equipment maintenance, and other administrative and operational facilities;

(c) stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools, and other facilities for athletic and military instruction, exhibitions, games, and contests;

(d) auditoriums, theaters, music halls, and other assembly, theatrical, musical, and entertainment facilities;

(e) hospital, nursing, and other health instruction and service facilities;

(f) nurseries, barns, arenas, pavilions, and other facilities for agricultural and livestock breeding, development, and exhibition;

(g) parking lots and ramps and other parking facilities; and

(h) land needed for ~~such~~ *the* facilities."

**Section 6.** Section 20-25-503, MCA, is amended to read:

"**20-25-503. Presumptions and rules as to domicile.** (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of the minor's guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if the person is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates who are citizens or resident aliens of the United States are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; ~~or~~ *and*

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for the adult's spouse or any dependent minor child, or both. If the person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces residency in any other state and is not in the state primarily as a student, the person's spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as the person continues a Montana domicile. In the administration of this subsection, neither the full-time employee or spouse is eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

**Section 7.** Section 20-26-103, MCA, is amended to read:

**"20-26-103. Definitions.** As used in parts 1 and 2, the following definitions apply:

(1) "Postsecondary institution" includes the units of the university system and any postsecondary institution accredited or licensed under chapter 30 of this title.

(2) "Program advisory council" means the ~~guaranteed~~ student loan advisory council created by 2-15-1520.

(3) "Resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana."

**Section 8.** Section 20-26-1101, MCA, is amended to read:

**"20-26-1101. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) ~~"Board" means the board of regents of higher education.~~

~~(2) "Corporation"~~ *"Agency"* means the ~~corporation~~ *entity* designated by the board to administer student loans.

*(2) "Board" means the board of regents of higher education.*

(3) "Council" means the ~~guaranteed~~ student loan advisory council established in 2-15-1520.

(4) "Eligible educational institution" means any institution approved by the United States ~~commissioner~~ *secretary* of education as eligible to participate in the ~~guaranteed~~ student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

HeinOnline -- 1997 vol. I 1101 1997

*(5) "Eligible lender" means any lender as defined under Title IV of the Higher Education Act of 1965, as amended.*

~~(5)~~*(6)* ~~"Guaranteed student~~ *"Student* loan program" means the program established by the board pursuant to this part."

**Section 9.** Section 20-26-1102, MCA, is amended to read:

**"20-26-1102. Authorization to establish ~~guaranteed~~ student loan program.** (1) The board may establish and contract for the operation of a ~~guaranteed~~ student loan program ~~for the purpose of making~~ *to make* available to students improved opportunities for education by guaranteeing loans in accordance with applicable federal law to persons attending or accepted for enrollment at an eligible educational institution.

(2) The board is designated as the state representative for receiving federal, public, or private money that is now or will be made available under any act of the congress of the United States or otherwise for purposes of ~~the guaranteed~~ *a* student loan program."

**Section 10.** Section 20-26-1103, MCA, is amended to read:

**"20-26-1103. Duties of the board.** In discharging its duties in relation to the ~~guaranteed~~ student loan program, the board shall:

(1) act as guarantor *and administrator* on loans of money, upon terms and conditions as the board may prescribe, to assist persons attending or accepted for enrollment at an eligible educational institution to meet their educational expenses;

(2) approve financial or credit institutions~~, insurance companies,~~ or other lenders as eligible lenders upon their meeting the standards established by the board for making ~~guaranteed~~ student loans;

(3) incur and discharge debts, including defaulted loan obligations that have been guaranteed by the board;

(4) make and execute agreements, contracts, and other instruments with any puhlic or private person or agency, including the United States ~~commissioner~~ *secretary* of education, for the administration of the ~~guaranteed~~ student loan program;

(5) ~~contract with a corporation~~ *provide* for the operation of the ~~guaranteed~~ student loan program to ~~provide~~ *conduct* loan approval processing, essential and special loan servicing, preclaims assistance, *supplemental preclaims assistance,* claim processing and collections, and other services that would promote lender *and school* participation and loan availability to students;

(6) perform any other duties necessary for the administration of the ~~guaranteed~~ student loan program."

**Section 11.** Section 20-26-1104, MCA, is amended to read:

**"20-26-1104. Student loan advisory council — duties.** The council shall:

HeinOnline -- 1997 vol. I 1102 1997

(1) advise the board on policies, rules, and procedures necessary for accomplishing the provisions of this part; *and*

~~(2) make recommendations to the board concerning the designation of a corporation;~~

~~(3)~~*(2)* monitor the ~~corporation~~ *program* to ~~assure~~ *ensure* that ~~both~~ the students, *schools,* and lenders are adequately served~~; and~~

~~(4) advise on the adequacy and proper execution of any contracts entered into between the board and the corporation.~~"

**Section 12.** Section 20-26-1105, MCA, is amended to read:

"**20-26-1105. ~~Guaranteed student~~ *Student* loan account.** (1) There is a ~~guaranteed~~ student loan account within the federal special revenue fund provided for in 17-2-102.

(2) The board shall credit to the account established in subsection (1) all money designated for the ~~guaranteed~~ student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the ~~guaranteed~~ student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor *and administrator,* as provided for in this part, must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the ~~guaranteed~~ student loan account ~~shall~~ *may* not revert to the general fund at the close of any fiscal year."

**Section 13.** Section 20-26-1106, MCA, is amended to read:

"**20-26-1106. No state obligation.** The legislature is not obligated to appropriate any money to pay for ~~guaranteed~~ student loan defaults. For the purpose of the ~~guaranteed~~ student loan program, neither the board nor the ~~nonprofit corporation~~ *agency* may obligate the credit of the state."

**Section 14.** Section 20-26-1107, MCA, is amended to read:

"**20-26-1107. Dissolution — disposition of money.** (1) The ~~guaranteed~~ student loan program may not be dissolved until all contractual obligations have been satisfied and all loans ~~guaranteed~~ have been paid by the borrower or, if in default, by the board *or have been otherwise accounted for under Title IV of the Higher Education Act of 1965, as amended.*

(2) Upon dissolution of the program or the cessation of the program's activities, all property and money of the board relating to the ~~guaranteed~~ student loan program not refundable to the federal government as provided by law vest in the state and ~~shall~~ *must* be credited to the general fund."

**Section 15.** Section 20-32-103, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1103 1997

"**20-32-103. Fee collection and disposition for operational costs.** As a condition of participation in the network, the Montana university system and community colleges shall collect from appropriate discretionary funds in a manner approved by the board of regents an amount not to exceed $5 for each full-time equivalent student enrolled in the units or colleges. The funds collected must be deposited with the commissioner of higher education ~~by July 1~~ for the purposes of 20-32-102(4). The commissioner of higher education shall pay the department of administration the commissioner's share of the network costs."

**Section 16. Effective date.** [This act] is effective July 1, 1997.

Approved April 11, 1997

# CHAPTER NO. 244

[SB 326]

AN ACT ESTABLISHING THE MONTANA GRASS CONSERVATION ADVISORY COMMITTEE; PROVIDING FOR SUPPORT OF THE COMMITTEE BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTIONS 76-16-103, 76-16-104, AND 76-16-105, MCA; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Montana grass conservation advisory committee established.** (1) There is a Montana grass conservation advisory committee.

(2) The director of the department, giving equal consideration to both large and small operators, shall appoint six people to serve on the advisory committee and shall serve as an ex officio member of the committee. The committee must include:

(a) two members, one member who must be a member of the board of directors of the Montana association of state grazing districts and one member who is either an officer or serves on the board of directors of a state district;

(b) two members who hold active preference rights within state districts; and

(c) two members who are secretaries for state districts.

(3) The advisory committee shall:

(a) elect from its membership a presiding officer and a vice-presiding officer;

(b) convene meetings as the members consider appropriate and solicit comments and suggestions from state district boards of directors, district members, and the public;

(c) provide notices of all meetings to the state district secretaries at least 14 days before the meeting;

(d) analyze issues regarding the function of state grazing districts and identify services that the districts may need to assist them in functioning effectively; and

HeinOnline -- 1997 vol. I 1104 1997

(e) analyze Title 76, chapter 16, governing grazing districts and other laws that may affect grazing districts, and submit a report discussing findings and recommendations for changes to existing laws on or before October 1, 1998, to the director and the 1999 legislature.

(4) The members of the advisory committee serve for no salary but must be compensated for mileage and per diem as provided in 2-18-501 through 2-18-512 in fulfilling their duties as provided in this section.

(5) The term of office for each member is from [the effective date of this act] to January 1, 1999.

**Section 2.** Section 76-16-103, MCA, is amended to read:

**"76-16-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

*(1) "Advisory committee" means the Montana grass conservation advisory committee created in [section 1].*

~~(1)~~*(2)* "Animal unit" means one cow, one horse, or five sheep, 6 months old or over.

~~(2)~~*(3)* "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees.

~~(3)~~*(4)* "Commensurate property" means land that is privately owned or controlled and that is not range.

~~(4)~~*(5)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(5)~~*(6)* "Dependent commensurate property" is commensurate property that:

(a) requires the use of range in connection with it to maintain its proper use;

(b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of the districts.

~~(6)~~*(7)* "Grazing preference" is a right to obtain a grazing permit from a state district.

~~(7)~~*(8)* "Permits" are evidence of grazing privileges granted by state districts.

~~(8)~~*(9)* "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

~~(9)~~*(10)* "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

HeinOnline -- 1997 vol. I 1105 1997

~~(10)~~*(11)* "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members."

**Section 3.** Section 76-16-104, MCA, is amended to read:

**"76-16-104. Role of the department.** (1) The department shall assist in carrying out the purposes of this chaptor, act in an advisory capacity with the boards of county commissioners, ~~and~~ supervise and coordinate the formation and operation of districts that may be incorporated under this chapter, *and support the advisory committee established in [section 1].*

(2) The department may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies."

**Section 4.** Section 76-16-105, MCA, is amended to read:

**"76-16-105. Powers of the department.** The department may:

(1) prepare and standardize various forms to be used by the state districts and supervise or regulate the organization and operation of state districts;

(2) issue citations directed to any person requiring the person's attendance before the department and subpoena witnesses and pay expenses that would be allowed in a court action;

(3) require an officer or director of a state district to submit records of the state district to the department for the purpose of aiding an investigation conducted by the department;

(4) hold hearings on any matters affecting the department;

(5) require state districts to furnish itemized financial reports annually;

(6) cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter; *and*

*(7) provide technical and administrative support to the advisory committee in completing its duties and generating a report."*

**Section 5. Termination.** [This act] terminates January 1, 1999.

Approved April 11, 1997

# CHAPTER NO. 245

[SB 341]

AN ACT REVISING THE PENALTY FOR THE OFFENSE OF FELONY ASSAULT; PROVIDING THAT IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, THE OFFENDER IS REQUIRED TO PAY FOR AND UNDERGO COUNSELING ASSESSMENT; PROVIDING

HeinOnline -- 1997 vol. I 1106 1997

THAT A CONVICTION FOR FELONY ASSAULT, IF THE OFFENDER IS A PARTNER OR FAMILY MEMBER OF THE VICTIM, IS A PRIOR CONVICTION FOR PURPOSES OF PARTNER OR FAMILY MEMBER ASSAULT; AND AMENDING SECTIONS 45-5-202 AND 45-5-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-202, MCA, is amended to read:

**"45-5-202. (Temporary) Aggravated assault — felony assault.** (1) A person commits the offense of aggravated assault if ~~he~~ *the person* purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if ~~he~~ *the person* purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) *(a)* A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222. ~~A~~ *Subject to the provisions of subsection (3)(b), a* person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.

*(b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4).*

**45-5-202. (Effective July 1, 1997) Aggravated assault — felony assault.** (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if the person purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) *(a)* A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222. ~~A~~ *Subject to the provisions of subsection (3)(b), a* person convicted of felony assault

shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.

*(b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4).*"

**Section 2.** Section 45-5-206, MCA, is amended to read:

"**45-5-206. Partner or family member assault — penalty.** (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(b) *(i)* For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this

HeinOnline -- 1997 vol. I 1108 1997

state or in another state for a violation of a similar statute, which forfeiture has not been vacated.

*(ii) A conviction for felony assault under 45-5-202, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.*

(4) (a) An offender convicted of partner or family member assault ~~shall be~~ *is* required to pay for and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The counselor must he approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must he directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender shall be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence."

Approved April 11, 1997

# CHAPTER NO. 246

[SB 361]

AN ACT IMPLEMENTING THE NATIONAL VOTER REGISTRATION ACT; REQUIRING THE SECRETARY OF STATE TO ASSIST ELECTION ADMINISTRATORS WITH THE IMPLEMENTATION OF THE NATIONAL

HeinOnline -- 1997 vol. I 1109 1997

VOTER REGISTRATION ACT; REQUIRING THE SECRETARY OF STATE TO ADOPT RULES PROVIDING PROCEDURES FOR AGENCY-BASED REGISTRATION; REQUIRING THE SECRETARY OF STATE TO MAKE APPLICATIONS FOR VOTER REGISTRATION FORMS AVAILABLE; PROVIDING ADDITIONAL LOCATIONS FOR AVAILABILITY OF VOTER REGISTRATION FORMS; REQUIRING RETURN OR FORWARDING OF NOTICES OF REGISTRATION; PROVIDING FOR CANCELLATION OF VOTER REGISTRATION; PROVIDING FOR LISTS OF ACTIVE AND INACTIVE ELECTORS; PROVIDING FOR REACTIVATION OF ELECTOR'S NAMES FROM INACTIVE TO ACTIVE LISTS; AMENDING SECTIONS 1-2-112, 13-1-101, 13-1-203, 13-1-204, 13-2-203, 13-2-207, 13-2-402, 13-2-403, 13-2-512, AND 13-19-313, MCA; REPEALING SECTION 13-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the secretary of state authority to adopt administrative rules. [Section 12] requires the secretary of state to adopt rules providing alternative methods to be used by election administrators to ensure the maintenance of accurate voter registration rolls for elections. In adopting the alternatives, tbe secretary of state shall consider the recommendations of tbe federal election commission and consult with county election administrators.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 1-2-112, MCA, is amended to read:

**"1-2-112. Statntes imposing new loeal government duties.** (1) ~~Any~~ *Except as provided in this section, a* law enacted by the legislature that requires a local government unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than mill levies or the all-purpose mill levy. Any law that fails to provide a specific means to finance any activity, service, or facility is not effective until specific means of financing are provided by the legislature from state or federal funds.

(2) The legislature may fulfill the requirements of this section by providing for an increase in the existing authorized mill levies, the all-purpose mill levy, special mill levies, or the remission of money by the state to local governments. However, an increase in tbe existing authorized mill levies, the all-purpose mill levy, or any special mill levy must provide an amount necessary to finance the additional costs, and if financing is provided by remission of funds by the state, the remission must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) Subsequent legislation may not be considered to supersede or modify any provision of this section, whether by implication or otherwise, except to the extent that the legislation does so expressly.

(4) This section does not apply to:

*(a)* any law under which the required expenditure of additional local funds is an insubstantial amount that can be readily absorbed into the budget of an existing program. A required expenditure of the equivalent of approximately 0.1

HeinOnline -- 1997 vol. I 1110 1997

mill or less levied on taxable property of the local government unit may be considered an insubstantial amount.

*(b) a law necessary to implement the National Voter Registration Act of 1993, Public Law 103-31."*

**Section 2.** Section 13-1-101, MCA, is amended to read:

**"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

*(1) "Active elector" means a qualified elector whose name is on the active list.*

*(2) "Active list" means a list of active electors maintained by an election administrator pursuant to [section 11].*

*(3) "Application for voter registration" means a completed voter registration card submitted to the election administrator and subject to confirmation, as provided in 13-2-207.*

~~(1)~~*(4)* "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

~~(2)~~*(5)* "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;

(b) for the purposes of chapters 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

~~(3)~~*(6)* (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

HeinOnline -- 1997 vol. I 1111 1997

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

~~(4)~~*(7)* "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

~~(5)~~*(8)* "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

~~(6)~~*(9)* "Elector" means an individual qualified and registered to vote under state law.

~~(7)~~*(10)* (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection ~~(3)~~ *(6)*;

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee.

*(11) "Federal election" means a general election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.*

~~(6)~~*(12)* "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana

constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

*(13) "Inactive elector" means a qualified elector who is placed on an inactive list.*

*(14) "Inactive list" means a list of inactive electors maintained by an election administrator pursuant to [section 11].*

~~(9)~~*(15)* "Individual" means a human being.

~~(10)~~*(16)* "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, or 37, an issue becomes a "ballot issue" upon certification hy the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

~~(11)~~*(17)* "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection ~~(2)~~ *(5)* ~~of this section~~.

~~(12)~~*(18)* "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

~~(13)~~*(19)* "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

~~(14)~~*(20)* "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

~~(15)~~*(21)* "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

~~(16)~~*(22)* "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

HeinOnline -- 1997 vol. I 1113 1997

~~(17)~~*(23)* "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided hy law. It may be held in conjunction with a statutorily scheduled election.

~~(18)~~*(24)* "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

**Section 3.** Section 13-1-203, MCA, is amended to read:

**"13-1-203. Chief election officer to advise, assist, and train.** The secretary of state shall advise and assist election administrators with regard to application, operation, and interpretation of Title 13, except for ~~chapters~~ *chapter* 35, 36, or 37, *and the implementation and operation of the National Voter Registration Act of 1993, Public Law 103-31.* The secretary of state shall hold at least one workshop every 2 years to provide training and assistance to election administrators. Election administrators must be reimbursed, from funds appropriated to tbe secretary of state, for their mileage and expenses for attending the workshops at the rates set for mileage and expenses in 2-18-501 through 2-18-503. At the discretion of the secretary of state and within the budget limits allowed for workshops, the workshops may be held in several sessions at separate locations in the state."

**Section 4.** Section 13-1-204, MCA, is amended to read:

**"13-1-204. Election records to be kept by secretary of state.** (1) The secretary of state shall maintain current and accurate records including:

(a) a list of all precincts in each county;

(b) a map showing the boundaries of all precincts in each county;

(c) a count of the number of registered voters in each precinct for the latest general election;

(d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the ~~latest~~ *most recent* general election;

(e) a count of votes cast at the ~~latest~~ *most recent* general election by precinct and by legislative, judicial, and multicounty districts*; and*

*(f) records required to be submitted from local election administrators and other agencies and coordinated by the secretary of state pursuant to the National Voter Registration Act of 1993, Public Law 103-31.*

(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections ~~shall~~ *must* be open for public inspection during normal office hours."

**Section 5.** Section 13-2-203, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1114 1997

"**13-2-203. Registration by mail.** (1) A qualified individual may register by mailing, postage paid, a properly completed *application for voter* registration form to the election administrator in the county in which the individual resides.

(2) The election administrator shall send *applications for voter* registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. *The secretary of state shall make applications for voter registration forms available to governmental entities, private entities, and organized voter registration efforts.* The *application for* ~~mail~~ *voter* registration form must be designed as prescribed by the secretary of state. A form prescribed by the secretary of state explaining voter registration qualifications, deadlines, and purge information must be distributed with the *application for* ~~mail~~ *voter* registration form.

(3) The elector shall complete, sign, and return the *application for* ~~mail~~ *voter* registration form.

(4) The *application for voter* registration form must be received by the election administrator on or before the day of the close of registration and must be returned to the administrator no later than 15 days after the date it is signed.

(5) ~~Registration~~ *Application for voter registration* forms properly executed before the close of registration must be accepted for 3 days after the close of registration."

**Section 6.** Section 13-2-207, MCA, is amended to read:

"**13-2-207. ~~Notice~~ *Confirmation* of registration.** (1) The election administrator shall give or mail to each elector a notice, ~~affirming~~ *confirming* registration and giving the location of the elector's polling place. ~~Mailed notices must conform to postal regulations to ensure return, not forwarding, of undelivered notices.~~ *A notice sent to an elector to whom the notice is not personally given must be sent by nonforwardable, first-class mail, which must conform to postal regulations to ensure address corrections are received. If the notice is returned undeliverable the application for voter registration may not be placed on the register of electors kept by the election administrator.*

(2) The election administrator ~~must~~ *shall* investigate the reason for the return of any mailed notices ~~and correct the address on the registration form~~ and mail a ~~new~~ *confirmation* notice ~~or cancel the registration of the elector if a diligent effort fails to locate the elector named on the registration form~~ *to the elector. The notice must conform to postal regulations to ensure return, not forwarding, of undelivered notices.*"

**Section 7.** Section 13-2-402, MCA, is amended to read:

"**13-2-402. ~~Other reasons~~ *Reasons* for cancellation.** The election administrator shall cancel the registration of an elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of the elector is filed or if the elector is reported as deceased by the department of public health and human services in the department's reports submitted to the county under 72-16-217;

HeinOnline -- 1997 vol. I 1115 1997

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of the elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

(6) if the elector is successfully challenged and not allowed to vote at an election upon determination of an election judge; ~~or~~

(7) if a notice is received from another county or state that the elector has registered in that county or state; *or*

*(8) if the elector fails to respond to certain confirmation mailings and fails to vote in two subsequent federal elections.*"

**Section 8.** Section 13-2-403, MCA, is amended to read:

"**13-2-403. Challenge of registration.** (1) Forty-five or more days before the close of registration for an election, three registered electors of a precinct may challenge the registration of an elector by filing affidavits giving the name of the elector whose registration is challenged, the address at which ~~he~~ *the elector* is registered, and a statement that the affiant has personal knowledge that the elector does not reside at the address where registered.

(2) No later than 3 days after the filing of affidavits as provided in subsection (1), the election administrator ~~must~~ *shall* send written notice to the elector whose registration is challenged, at the address shown on the registration form. The notice must state that registration will be ~~canceled~~ *moved to the inactive list* within 15 days of the filing of the affidavits unless the elector refutes the affidavits by submitting proof or a sworn statement that ~~he~~ *the elector* resides at the address given on ~~his~~ *the* registration form.

(3) The election administrator must ~~cancel~~ *move to the inactive list* the registration of an elector whose registration is challenged under this section 15 days after the filing of the affidavits required in subsection (1) unless proof or a sworn statement as required in subsection (2) is received.

(4) If an elector proves or swears ~~he~~ *that the elector* resides at the address given on ~~his~~ *the* registration form after ~~his~~ *the* registration has been ~~canceled~~ *moved to the inactive list* as provided in this section, ~~he may reregister by completing a new registration form~~ *the elector's registration must be moved to the active list.* ~~Such~~ *The* registration ~~shall be~~ *is* effective for the next election even though the registration for that election is closed."

**Section 9.** Section 13-2-512, MCA, is amended to read:

"**13-2-512. Right to vote when precinct or name changed — *inactive elector — change of status.*** (1) An elector who has changed ~~his~~ residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where ~~he~~ *the elector* is registered at the first election at which ~~he~~ *the elector* offers to vote after the change *or at a central location designated by the election administrator* unless ~~his~~ *the elector's* registration has been canceled as provided in ~~13-2-207, 13-2-401, or~~ 13-2-402.

HeinOnline -- 1997 vol. I 1116 1997

(2) An elector *who* still ~~residing~~ *resides* in the same precinct where registered, whose name has changed, and who has failed to notify the election administrator of the change hy a new registration form may vote under ~~his~~ *the elector's* former name at the first election at which ~~he~~ *the elector* offers to vote after the change unless ~~his~~ *the elector's* registration has heen canceled as provided in ~~13-2-207, 13-2-401, or~~ 13-2-402.

(3) The elector ~~must~~ *shall* state ~~his~~ *the elector's* correct residence address and name when offering to vote and ~~must~~ *shall* complete a transfer form or new registration form to make the necessary correction hefore heing allowed to sign the precinct register and vote.

*(4) If an inactive elector appears to vote or votes by absentee ballot in a federal election, that elector must be allowed to vote and must be removed from the inactive list and placed on the active list."*

**Section 10.** Section 13-19-313, MCA, is amended to read:

**"13-19-313. Notice to eleetor — opportunity to resolve questions.** (1) As soon as possible after receipt of an elector's return/verification envelope, the election administrator shall give notice to the elector, either by telephone or by first-class mail, if the election admimistrator:

(a) is unable to verify the elector's signature under 13-19-310; or

(b) has discovered a procedural mistake made by the elector that would invalidate ~~his~~ *the elector's* ballot under 13-19-311.

(2) The election administrator shall inform the elector that ~~he~~ *the elector* may appear in person at tbe election administrator's office prior to 8 p.m. on election day and verify the signature or correct the mistake.

(3) Any elector ~~so~~ appearing *pursuant to subsection (2)* must be pormitted to:

(a) verify ~~his~~ *the elector's* signature, after proof of identification, by affirming that the signature is in fact ~~his~~ *the elector's* or *by* completing a new registration card containing ~~his~~ *the elector's* current signature;

(b) correct any minor mistake if the correction would render the ballot valid; or

(c) if necessary, request and receive a replacement ballot and vote it at that time.

*(4) If a mail ballot is returned, the election administrator shall mail a confirmation notice provided for in 13-2-207. However, the notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice. If the confirmation notice is returned to the election administrator, the elector must be placed on an inactive list until that elector becomes a qualified elector."*

**Seetion 11. Aetive list and inactive list of electors to be maintained for federal election.** The election administrator of a county shall maintain a list of active electors and a list of inactive electors for tlie purposes of a federal election.

HeinOnline -- 1997 vol. I 1117 1997

**Section 12. Maintenance of voter registration rolls for elections — rules by secretary of state.** (1) The secretary of state shall adopt rules specifying a list of procedures from which an election administrator shall choose at least one procedure for the maintenance of accurate voter registration rolls for use in elections.

(2) The procedures specified by the secretary of state must include the following procedures, which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who have failed to vote by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(3) Any notices returned to the election administrator after using the procedures provided in subsection (2) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(4) A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.

**Section 13. Agency-based registration.** (1) Qualified individuals must be given the opportunity to register to vote when applying for or receiving services or assistance:

(a) at an agency that provides public assistance;

(b) at or through an agency that provides state-funded programs primarily engaged in providing services to persons with disabilities; or

(c) at another agency designated by the secretary of state with the consent of the agency.

HeinOnline -- 1997 vol. I 1118 1997

(2) Agency-based registration sites must:

(a) distribute application for voter registration forms with each application for services or assistance; and

(b) assist an applicant in completing an application for voter registration form, unless the applicant refuses assistance.

(3) The completed application for voter registration form must be transmitted by the agency to the election administrator of the county of the elector's residence within the time period specified by 42 U.S.C. 1973gg, et seq.

(4) As used in this section, the following definitions apply:

(a) "Agency" means a state agency as defined in 2-4-102(1)(a) or an office of a political subdivision.

(b) "Political subdivision" means a city, county, consolidated city-county gevernment, or a town.

**Section 14. Reactivation of elector.** (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:

(a) appears in order to vote in a federal election; or

(b) notifies the county election administrator of the elector's current residence, which must be in that county.

(2) After an elector has complied with either subsection (1)(a) or (1)(b), the county election administrator shall place the elector's name on the active voting list for that county.

**Section 15. Electors not voting in 1996 general eleetion — placement on inactive voting list.** Election administrators shall place the name of electors who did not vote in the 1996 general election on the inactive voting list provided for in [section 11].

**Section 16. Repealer.** Section 13-2-401, MCA, is repealed.

**Section 17. Codification instruetion.** [Sections 11 through 14] are intended to be codified as an integral part of Title 13, chapter 2, part 2, and the provisions of Title 13, chapter 2, part 2, apply to [sections 11 through 14].

**Section 18. Effeetive date.** [This act] is effective on passage and approval.

Approved April 11, 1997

# CHAPTER NO. 247

[HB 156]

AN ACT PROVIDING FOR A 2-YEAR INCREASE IN THE AMOUNT ALLOWED TO FUND RESOURCE DEVELOPMENT ON SCHOOL LANDS;

HeinOnline -- 1997 vol. I 1119 1997

AMENDING SECTION 77-1-607, MCA; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 77-1-607, MCA, is amended to read:

**"77-1-607. Deductions from income for development account — maximum percentage.** (1) The board shall determine the amount or percentage of income, not to exceed ~~2 1/2%~~ *3%*, that is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income ~~which~~ *that* is secured from the lands by the department for the trusts benefited by this part.

(2) The maximum percentage limitation in subsection (1) does not apply to income deducted and expended under the provisions of 77-1-613."

**Section 2. Coordination instruction.** If ___ Bill No. ___ [LC 175] is passed and approved, then [this act] is void.

**Section 3. Effective date.** [This act] is effective July 1, 1997.

**Section 4. Termination.** [This act] terminates June 30, 1999.

Approved April 14, 1997

# CHAPTER NO. 248

[HB 216]

AN ACT REDUCING THE YEARS REQUIRED FOR VESTING IN THE SHERIFFS' RETIREMENT SYSTEM; INCREASING THE SERVICE RETIREMENT, DISABILITY, AND DEATH BENEFIT; INCREASING MEMBER AND EMPLOYER CONTRIBUTIONS; REPEALING THE INVOLUNTARY RETIREMENT BENEFIT; SUPERSEDING THE UNFUNDED MANDATE LAW; AMENDING SECTIONS 19-7-301, 19-7-403, 19-7-404, 19-7-502, 19-7-503, AND 19-7-901, MCA; REPEALING SECTION 19-7-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-7-301, MCA, is amended to read:

**"19-7-301. Membership — inactive vested members — inactive nonvested members.** (1) ~~Every~~ *Each* sheriff is required to become a member of the sheriffs' retirement system unless the sheriff was a member of the public employees' retirement system on July 1, 1974, in which case the sheriff may at the sheriff's option become a member of the sheriffs' retirement system.

(2) An investigator is required to become a member of the sheriffs' retirement system unless the investigator was a member of the public employees' retirement system on July 1, 1993, in which case the investigator has the option of becoming a member of the sheriffs' retirement system.

HeinOnline -- 1997 vol. I 1120 1997

(3) All sheriffs and investigators who become members of the sheriffs' retirement system ~~must~~ *shall* remain members so long as they are actively employed in an eligible capacity, except as provided in 19-7-1101.

(4) A member with at least ~~15~~ *5* years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than ~~15~~ *5* years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 2.** Section 19-7-403, MCA, is amended to read:

**"19-7-403. Member's contributions deducted.** (1) ~~Every~~ *Each* member shall contribute into the pension trust fund ~~7.865%~~ *9.245%* of the member's monthly compensation, which must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must he accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and salary as used to define the member's final average salary in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

**Section 3.** Section 19-7-404, MCA, is amended to read:

**"19-7-404. Employer contributions.** (1) The employer shall pay monthly ~~8.535%~~ *9.535%* of each member's gross compensation into the pension trust fund created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may budget, levy, and collect annually a special tax on the assessable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation. This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county."

HeinOnline -- 1997 vol. I 1121 1997

**Section 4.** Section 19-7-502, MCA, is amended to read:

**"19-7-502. Early retirement option.** A member with ~~15~~ *at least 5* years of membership service *and who has not met the minimum eligibility requirements for service retirement* may retire with an early retirement benefit commencing no sooner than the first day of the month following the member's 50th birthday. The early retirement benefit must be calculated to be the actuarial equivalent of the member's retirement benefit as otherwise accrued, based upon payment commencing when the member would have completed 20 years of membership service or reached age 60, whichever event would have occurred first."

**Section 5.** Section 19-7-503, MCA, is amended to read:

**"19-7-503. Service retirement benefit.** (1) The amount of any service retirement benefit granted to a member is ~~2.0834%~~ *2.5%* of the member's final average salary for each year of service credit.

(2) If a member dies after retirement and had not elected an optional retirement benefit provided for in 19-7-1001, the member's designated beneficiary must be paid the excess, if any, of the member's accumulated contributions at the time of retirement less payments made to the retired member."

**Section 6.** Section 19-7-901, MCA, is amended to read:

**"19-7-901. Payments in case of death before retirement.** If a member dies before retirement, the member's designated beneficiary may elect one of the following options for which the member qualified and the designated beneficiary qualifies:

(1) a lump-sum payment of the accumulated contributions standing to the member's credit at the member's death;

(2) a survivorship benefit equal to ~~2.0834%~~ *2.5%* of the member's final average salary for each year of service credit actuarially reduced from age 65 or the date *on which* the member would have completed 20 years of membership service, whichever provides a larger retirement benefit; or

(3) a survivorship benefit that is no less than one-half of the member's final average salary if the board finds that the member died as a direct and proximate result of injuries received in the course of employment."

**Section 7. Unfunded mandate law superseded.** The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

**Section 8. Repealer.** Section 19-7-504, MCA, is repealed.

**Section 9. Effective date.** [This act] is effective July 1, 1997.

Approved April 14, 1997

HeinOnline -- 1997 vol. I 1122 1997

# CHAPTER NO. 249

[HB 217]

AN ACT INCREASING CONSTRUCTION COST AUTHORIZATION THAT DOES NOT REQUIRE LEGISLATIVE CONSENT; INCREASING THE COST LIMIT FOR PROJECTS SUBJECT TO ADVERTISING AND BIDDING; ELIMINATING THE APPROVAL OF NEGOTIATED CONTRACTS BY THE BOARD OF EXAMINERS; INCREASING THE COST OF BUILDING OR CONSTRUCTION PROJECTS FOR WHICH SECURITY MAY BE WAIVED; AMENDING SECTIONS 18-2-102, 18-2-103, 18-2-105, 18-2-201, 18-2-301, AND 18-2-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-2-102, MCA, is amended to read:

**"18-2-102. Authority to construct buildings.** (1) Except as provided in subsection (2), a building costing more than ~~$50,000~~ *$150,000* may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's consent. When a building costing more than ~~$50,000~~ *$150,000* is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state."

**Section 2.** Section 18-2-103, MCA, is amended to read:

**"18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing more than ~~$50,000~~ *$150,000*, the department of administration shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all ~~moneys~~ *money*;

HeinOnline -- 1997 vol. I 1123 1997

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of the bid amount;

(d) review and approve all change orders; and

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

(3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are ~~$25,000~~ *$75,000* or less. However, with respect to a project having a proposed cost of ~~$25,000~~ *$75,000* or less but more than ~~$5,000~~ *$25,000*, the agency awarding the contract shall procure at least three informal bids from contractors licensed in Montana, if reasonably available.

(5) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost te be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under tbe authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

(7) The department of military affairs may act as the contracting agency for buildings constructed under the authority of 18-2-102(2)(d)~~;~~. ~~however~~ *However*, the department of administration may agree to act as the contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving a contract."

**Section 3.** Section 18-2-105, MCA, is amended to read:

**"18-2-105. General powers and duties of department of administration.** In carrying out powers relating to the construction of buildings, the department of administration may:

(1) inspect buildings not under construction;

(2) contract with the federal government for advance planning funds;

(3) transfer funds and authority to agencies and accept funds and authority from agencies;

HeinOnline -- 1997 vol. I 1124 1997

(4) purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for the buildings;

(5) issue and sell bonds and other securities;

(6) maintain an inventory of all buildings;

(7) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against money available for construction.

(8) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The department may terminate negotiations at any time. ~~Any contract award resulting from negotiation is subject to the approval of the board of examiners.~~"

**Section 4.** Section 18-2-201, MCA, is amended to read:

"**18-2-201. Security requirements.** (1) Except as otherwise provided in 85-1-219 and subsections (4) through (6) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the corporation, person, or persons with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or persons shall:

(a) faithfully perform all of the provisions of the contract;

(b) pay all laborers, mechanics, subcontractors, and material suppliers; and

(c) pay all persons who supply the corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for performing the work.

(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, with the county clerk of either county, except in cases of cities and towns, in which case the bond must be filed with the city or town clerk.

(3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

HeinOnline -- 1997 vol. I 1125 1997

(a) lawful money of the United States; or

(b) a cashier's check, certified check, hank money order, certificate of deposit, money market certificate, or bank draft, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

(4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept good and sufficient hond with two or more sureties acceptable to the governmental body.

(5) Except as provided in subsection (6), the state or other governmental entity may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than ~~$5,000~~ *$25,000*.

(6) A school district may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than $7,500."

**Section 5.** Section 18-2-301, MCA, is amended to read:

**"18-2-301. Bids required — advertising.** (1) It is unlawful for any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is ~~$25,000~~ *$75,000* or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform the work and stating the time and place bids will be considered.

(2) All work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done by inmates at an institution in the department of corrections."

**Section 6.** Section 18-2-302, MCA, is amended to read:

**"18-2-302. Bid security — waiver.** (1) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's check, a certified check, a hank money order, a certificate of deposit, a money market certificate, or a bank draft. The security must be:

HeinOnline -- 1997 vol. I 1126 1997

(a) drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

(b) drawn and issued by a credit union insured by the national credit union share insurance fund; or

(c) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than ~~$5,000~~ *$25,000.*"

**Section 7. Effective date.** [This act] is effective July 1, 1997.

Approved April 14, 1997

# CHAPTER NO. 250

[HB 505]

AN ACT REDUCING THE VESTING REQUIREMENTS FOR MEMBERS OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; INCREASING EMPLOYER AND STATE CONTRIBUTIONS; SUPERSEDING THE UNFUNDED MANDATE LAW; AMENDING SECTIONS 19-9-104, 19-9-301, 19-9-702, 19-9-703, AND 19-9-801, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-9-104, MCA, is amended to read:

"**19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means the remuneration, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, that a member receives as an active police officer.

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member, averagod over the last 36 months of ~~his~~ *the member's* service or, in the event a member has not been a member that long, over the period of membership.

HeinOnline -- 1997 vol. I 1127 1997

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes ~~10~~ *5* years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(8) "Retirement date" means the date on which the first payment of the retirement, disability, or survivorship benefits of a member or a survivor is payable.

(9) "Surviving spouse" means the spouse married to a member at the time of the member's death.

(10) "Survivor" means a surviving spouse or dependent child of the member."

**Section 2.** Section 19-9-301, MCA, is amended to read:

"**19-9-301. Active membership — inactive vested member — inactive nonvested member.** (1) A police officer becomes an active member of the retirement system:

(a) on the date the police officer's service with an employer commences;

(b) on July 1, 1977, if the police officer is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system as provided in 19-9-207, on the effective date of the election if the police officer is employed by the employer on that date.

(2) Upon becoming eligible for membership, the police officer shall complete the forms and furnish the proof required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) A member with at least ~~10~~ *5* years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than ~~10~~ *5* years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

HeinOnline -- 1997 vol. I 1128 1997

**Section 3.** Section 19-9-702, MCA, is amended to read:

"**19-9-702. State contribution.** The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. The payments must be made annually after the end of each fiscal year but no later than November 1 from the gross premium tax after deduction for cancellations and returned premiums. The division shall notify the auditor by September 1 of each fiscal year of the annual compensation paid to all active members during the preceding fiscal year. The state's contribution is ~~15.66%~~ *15.71%* of compensation paid to members."

**Section 4.** Section 19-9-703, MCA, is amended to read:

"**19-9-703. Employer contribution.** Each employer shall make its contribution through the city treasurer or other appropriate official out of money available to the city for that purpose. The employer's contribution, which must be paid monthly to the division, is ~~14.36%~~ *14.41%* of the compensation paid to all active members."

**Section 5.** Section 19-9-801, MCA, is amended to read:

"**19-9-801. Eligibility for service retirement — commencement of benefit.** (1) Members are eligible for retirement as provided in this section.

(2) A member is eligible to receive a service retirement benefit when the member has completed 20 years or more of membership service and has terminated service.

(3) A member who terminates service after completing at least ~~10~~ *5* years of membership service but prior to completing 20 years of membership service is eligible to receive a service retirement benefit when the member has reached 50 years of age.

(4) (a) Except as provided in subsection (4)(b), the retirement benefit may commence on the first day of the month following the member's minimum retirement date or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.

(b) The retirement benefit for an eligible inactive member must commence no ~~later~~ *earlier* than the first day of the month following the member's ~~55th~~ *50th* birthday."

**Section 6. Unfunded mandate law superseded.** The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

**Section 7. Effective date.** [This act] is effective July 1, 1997.

Approved April 14, 1997

HeinOnline -- 1997 vol. I 1129 1997

# CHAPTER NO. 251

[HB 533]

AN ACT PROVIDING AN EXEMPTION FROM REAL ESTATE LICENSURE REQUIREMENTS FOR A PERSON WHO PERFORMS ACTS WITH RESPECT TO CERTAIN RIGHT-OF-WAY TRANSFERS, CONDEMNATIONS, OR GOVERNMENTAL OR TRIBAL PERMITS; AND AMENDING SECTION 37-51-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 37-51-103, MCA, is amended to read:

**"37-51-103. Exemptions.** (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating ~~therefor~~ *a real estate transaction* for others, except as specified in this section, ~~shall constitute~~ *must identify* the person performing any of the acts *as* a real estate broker or *a* real estate salesperson. The provisions of this chapter ~~may~~ *do* not:

(a) apply to any person who, as owner or lessor, ~~shall perform~~ *performs* any acts listed in subsection (1) with reference to property owned or leased by ~~himself~~ *the person* or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a ~~duly executed~~ special or general powor of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requiroments;

(c) ~~be construed to~~ include in any way the services rendered by any attorney at law in the performance of ~~his duty as an attorney at law~~ *the attorney's duties*;

(d) apply to any person ~~duly~~ appointed by a court for *the* purpose of ~~evaluation~~ *evaluating* or appraising an estate in a probate matter;

(e) ~~be held to~~ include~~, while acting as such,~~ a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights ~~therein~~, whether upon a royalty basis or otherwise; ~~or~~

HeinOnline -- 1997 vol. I 1130 1997

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by ~~this state~~ *Montana* or an agency or subdivision ~~thereof~~ *of Montana* or by the government of the United States or an agency ~~thereof~~ *of the United States; or*

*(i) apply to a person performing any act with respect to the following types of land transactions:*

*(i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation easements or easements for recreational purposes;*

*(ii) condemnations; or*

*(iii) governmental or tribal permits.*

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business."

Approved April 14, 1997

# CHAPTER NO. 252

[HB 541]

AN ACT REVISING THE LAW PROHIBITING CREDIT GAMBLING; INCLUDING OFFERS TO OBTAIN AND COMMON SCHEMES IN THE OFFENSE OF OBTAINING ANYTHING OF VALUE BY FRAUD OR OPERATION OF AN ILLEGAL GAMBLING ACTIVITY, DEVICE, OR ENTERPRISE; AND AMENDING SECTIONS 23-5-112, 23-5-156, AND 23-5-157, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-5-112, MCA, is amended to read:

**"23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. More than 75 numbers may not be used. One number must appear in each square, except for the center square, which may be considered a free play.

HeinOnline -- 1997 vol. I 1131 1997

Numbers are randomly drawn using authorized equipment until the game is won hy the person or persons who first cover one or more previously designated arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the oppertunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any kind for use in gambling activities; and

(b) sells the equipment to a licensed distributor, route operator, or operator.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mecbanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device te the public.

(14) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

(a) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(b) a promotional game of chance; or

(c) an amusement game regulated under chapter 6 of this title.

HeinOnline -- 1997 vol. I 1132 1997

(15) "Gross proceeds" means gross revenue received less prizes paid out.

(16) "Illegal gambling device" means a gambling device not specifically authorized hy statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols tbat may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under chapter 7 or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160; ~~and~~

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2, 5, and 8 of this chapter*; and*

*(d) credit gambling.*

(18) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(19) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(20) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab card manufacturer, manufacturer of electronic live binge or keno equipment, other manufacturer, distributor, or route operator that is issued te a person by the department.

(21) "Licensee" means a person who has received a license from the department.

(22) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

HeinOnline -- 1997 vol. I 1133 1997

(23) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. The term does not mean lotteries authorized under chapter 7 of this title.

(24) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator.

(25) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(26) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(27) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(28) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(29) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(30) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(31) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

HeinOnline -- 1997 vol. I 1134 1997

(32) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(33) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

(34) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.

(35) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

(36) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

**Section 2.** Section 23-5-156, MCA, is amended to read:

**"23-5-156. ~~Obtaining~~ *Offering or obtaining* anything of value by fraud or operation of illegal gambling device or enterprise.** (1) A person who in an activity involving gambling *offers or* obtains money, property, or anything of value that does not exceed ~~$300~~ *$750* in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a misdemeanor and is punishable as provided in 23-5-161.

(2) A person who in an activity involving gambling *offers or* obtains money, property, or anything of value that exceeds ~~$300~~ *$750* in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a felony and is punishable as provided in 23-5-162.

*(3) A person who in an activity involving gambling offers or obtains money, property, or anything of value as part of a common scheme, as defined in 45-2-101, by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a felony and is punishable as provided in 23-5-162."*

**Section 3.** Section 23-5-157, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1135 1997

"**23-5-157. Gambling on cash basis — *penalties.*** (1) *(a)* In every gamhling activity, except raffles as authorized in 23-5-413 *and card games authorized in part 3 of this chapter and normally scored using points*, the consideration paid for the chance to play must be made in cash. A check or credit card may be used to obtain cash to participate in a gambling activity. A participant shall present the cash needed to play the game as the game is being played. ~~A~~ *If a* check~~,~~ *or* credit card~~, note, IOU, or other evidence of indebtedness may not be offered or accepted as part of the price of participation in the gambling activity or as payment of a debt incurred in the gambling activity~~ *is used to obtain cash on the premises of a licensee then it must be delivered and accepted unconditionally. A licensee or employee of a licensee may not hold a check or other evidence of indebtedness for redemption pending the outcome of a gambling activity.*

*(b) Credit gambling is prohibited. Credit gambling is offering or accepting as part of the price of participation in a gambling activity or as payment of a debt incurred in a gambling activity:*

*(i) a check or credit card held pending the outcome of a gambling activity;*

*(ii) a loan of any kind at any time from or on behalf of a licensee;*

*(iii) any form of deferred payment, including a note, IOU, post-dated check, hold check, or other evidence of indebtedness; or*

*(iv) a check issued or delivered that is accepted by the licensee with the knowledge that it will not be paid by the depository.*

(2) A person who violates this section is guilty of~~:~~

~~(a)~~ a ~~misdemeanor~~ *criminal offense under 23-5-156* and must be punished in accordance with 23-5-161~~;~~ or *23-5-162*

~~(b) a felony upon conviction of a third or subsequent offense and must be punished in accordance with 23-5-162~~."

Approved April 14, 1997

# CHAPTER NO. 253

[HB 566]

AN ACT TO INCREASE THE AMOUNT OF LIFE INSURANCE THAT IS NOT CONSIDERED PART OF AN ESTATE; AMENDING SECTION 72-16-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 72-16-304, MCA, is amended to read:

"**72-16-304. Insurance proceeds part of estate — exemption.** All insurance payable upon the death of any person over and above ~~$50,000~~ *$250,000* ~~shall be deemed~~ *is considered* a part of the property and estate passing to the person or persons entitled to receive ~~the same~~ *it* and, if payable to more than one

person, tho ~~$50,000~~ *$250,000* exemption ~~shall~~ *must* be prorated between ~~such~~ *those* persons in proportion to the amount of insurance payable to each."

**Section 2. Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to the estates of persons dying after December 31, 1996.

Approved April 14, 1997

# CHAPTER NO. 254

[HB 569]

AN ACT ALLOWING CERTAIN FIREFIGHTERS WHO ARE MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO ELECT TO REMAIN IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM INSTEAD OF TRANSFERRING TO THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM WHEN THE FIREFIGHTER IS HIRED INTO A POSITION THAT WOULD OTHERWISE BE COVERED UNDER THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM; AMENDING SECTION 19-13-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-13-301, MCA, is amended to read:

**"19-13-301. Active membership — inactive vested member — inactive nonvested member.** (1) ~~A~~ *Except as provided in subsection (7), a* full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer that elects to join the retirement system as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date *on which* the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

HeinOnline -- 1997 vol. I 1137 1997

(c) the date *on which* the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) A member with at least 10 years of membership service who terminates service and does not take a refund of accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 10 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

*(7) (a) A firefighter previously employed in a position covered under the public employees' retirement system and who is first hired into a position covered under the firefighters' unified retirement system after attaining 40 years of age may elect to remain in the public employees' retirement system.*

*(b) A firefighter making an election to remain in the public employees' retirement system shall make the election in a manner prescribed by the board within 1 month of being hired into the position otherwise covered under the firefighters' unified retirement system."*

**Section 2. Coordination instruction.** If ___ Bill No. ___ (LC 889) is passed and approved and if it amends 19-13-301 and 19-13-704 to reduce vesting requirements in the firefighters' unified retirement system from 10 years to 5 years, then "40", as is appears in [section 1(7)(a) of this act], must be amended to read "45".

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 14, 1997

# CHAPTER NO. 255

[SB 32]

AN ACT ALLOWING A PARTY, AS A PART OF A MOTION FOR TEMPORARY MAINTENANCE OR SUPPORT OR BY INDEPENDENT MOTION, TO REQUEST A TEMPORARY RESTRAINING ORDER PROVIDING THAT INSURANCE COVERAGE NOT BE MODIFIED; REQUIRING THAT A SUMMONS ISSUED IN A MARRIAGE DISSOLUTION, MAINTENANCE, CHILD CUSTODY, CHILD SUPPORT, OR FAMILY LAW MEDIATION ACTION CONTAIN A TEMPORARY RESTRAINING ORDER PREVENTING A PARTY FROM DISPOSING OF MARITAL PROPERTY WITHOUT A COURT ORDER OR THE CONSENT OF THE OTHER PARTY, EXCEPT IN THE USUAL COURSE OF BUSINESS, FOR NECESSITIES OF LIFE, OR FOR THE PAYMENT OF ATTORNEY FEES; SETTING OUT THE TERMS OF THE TEMPORARY RESTRAINING ORDER; AND AMENDING SECTION 40-4-121, MCA.

HeinOnline -- 1997 vol. I 1138 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-4-121, MCA, is amended to read:

**"40-4-121. Temporary order *for maintenance or support,* ~~or~~ temporary injunction, *or temporary restraining order.*** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining ~~any~~ *a* person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) *restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;*

*(c)* enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

~~(c)~~*(d)* excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

~~(d)~~*(e)* enjoining a party from removing a child from the jurisdiction of the court;

~~(e)~~*(f)* ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

~~(f)~~*(g)* providing other injunctive relief proper in the circumstances; and

~~(g)~~*(h)* providing additional relief available under Title 40, chapter 15.

(3) *When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue and include with the summons a temporary restraining order:*

*(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the court for all extraordinary expenditures made*

HeinOnline -- 1997 vol. I 1139 1997

*after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.*

*(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.*

*(4)* A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

~~(4)~~*(5)* The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if ~~no~~ *an* order is *not* issued until the time for responding has elapsed.

~~(5)~~*(6)* A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

~~(6)~~*(7)* At the time of the hearing, the court shall determine whether good cause exists for the injunction to continue for 1 year.

~~(7)~~*(8)* On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

~~(8)~~*(9)* A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

~~(9)~~*(10)* When the petitioner has fled the parties' residence, notice of the potitioner's new residence must be withheld except by order of the court for good cause shown."

Approved April 14, 1997

HeinOnline -- 1997 vol. I 1140 1997

# CHAPTER NO. 256

[SB 33]

AN ACT ALLOWING THE ISSUANCE OF A TEMPORARY FAMILY SUPPORT ORDER TO ENSURE THE PAYMENT OF PERIODIC MARITAL ESTATE LIABILITIES OUT OF THE PARTIES' INCOME OR MARITAL ASSETS DURING THE PENDENCY OF MARRIAGE DISSOLUTION PROCEEDINGS; AND AMENDING SECTION 40-4-121, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance ~~or~~, temporary support of a child of the marriage entitled to support, *or a temporary family support order. When a party is receiving public assistance, as defined in 40-5-201(12), for the minor children at issue or when a party receives public assistance during the life of a temporary family support order, the temporary family support order must designate separately the amounts of temporary child support and temporary maintenance, if any. The temporary child support order or the designated child support portion of the family support order must be determined as required in 40-4-204.* The motion must be accompanied by an affidavit setting forth the factual basis for the motion ~~and~~, the amounts requested, *a list of marital estate liabilities, a statement of sources of income of the parties and of a child of the marriage entitled to support, and, in the case of a motion for a temporary family support order, a proposal designating the party responsible for paying each liability. If ordered by a court, a temporary family support order must, without prejudice, direct one or both parties to pay, out of certain income sources, liabilities of the marital estate during the pendency of the action, including maintenance liabilities for a party or support of a child of the marriage entitled to support. If income sources are insufficient to meet the marital estate periodic liabilities, the temporary family support order may direct that certain liabilities be paid from assets of the marital estate. At any time during the proceedings, the court may order any temporary family support payments to be designated as temporary maintenance, temporary child support, or partial property distribution, retroactive to the date of the motion for a temporary family support order. When a party obtains public assistance, as defined in 40-5-201(12), or applies for services under Title IV-D of the Social Security Act, after the court has issued a temporary family support order, the petitioner shall promptly move the court for designation of the parts, if any, of the temporary family support order that are maintenance and child support and the court shall promptly so designate, determining the child support obligation as required in 40-4-204.*

(2) As a part of a motion for temporary maintenance ~~or~~, *temporary* support *of a child, or a temporary family support order* or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

HeinOnline -- 1997 vol. I 1141 1997

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court;

(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

(f) providing other injunctive relief proper in the circumstances; and

(g) providing additional relief available under Title 40, chapter 15.

(3) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if ~~no~~ *an* order is *not* issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) At the time of the hearing, the court shall determine whether good cause exists for the injunction to continue for 1 year.

(7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance ~~or~~, *temporary child* support, *or temporary family support* in amounts and on terms just and proper in the circumstance.

(8) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed *and, in the case of a temporary family support order, upon entry of the decree of dissolution*; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

(9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown."

Approved April 14, 1997

# CHAPTER NO. 257

[SB 94]

AN ACT ADDING TO THE RESPONSIBILITIES OF THE JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES A PERFORMANCE EVALUATION AT THE CONCLUSION OF EACH INTERIM; AND AMENDING SECTION 5-22-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-22-102, MCA, is amended to read:

**"5-22-102. Duties of oversight committee.** The joint oversight committee on children and families shall:

(1) examine public and private programs, services, and planning for children and families for the purpose of identifying duplications, inefficiencies, and any unmet needs within those programs, services, and plans;

(2) review federal, state, local, and private funds available to state and local jurisdictions for programs and services for children and families and consider feasible methods of refinancing those resources to maximize overall funding for existing and new programs;

(3) monitor interagency coordination of programs and services for children and families and study ways to improve coordination and collaboration among public and private human service providers at all levels of government in Montana;

(4) study the issues surrounding teenage parents and their families, including problems related to employment, education, parenting skills, and public assistance;

(5) monitor implementation of state and national welfare reforms related to at-risk families, child care, teenage parents, and other human service concerns;

(6) continue to study issues related to adult protective services; ~~and~~

(7) *conduct an oversight committee performance evaluation at the conclusion of each interim; and*

*(8)* report the results of its study in writing to each regular session of the legislature. The oversight committee shall also provide copies of its report to the governor and appropriate state agencies."

Approved April 14, 1997

HeinOnline -- 1997 vol. I 1143 1997

# CHAPTER NO. 258

[SB 113]

AN ACT REVISING THE DEFINITION OF "INSURANCE-SUPPORT ORGANIZATION"; ALLOWING THE COMMISSIONER OF INSURANCE TO REVIEW INFORMATION COMPILED FOR USE IN AN INSURANCE TRANSACTION AND TO ORDER AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION TO CORRECT, AMEND, OR DELETE INFORMATION THAT THE COMMISSIONER DETERMINES IS ERRONEOUS; REQUIRING THAT PERSONAL INFORMATION USED FOR INSURANCE UNDERWRITING BE ACCURATE; AND AMENDING SECTIONS 33-19-104, 33-19-302, AND 33-19-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-19-104, MCA, is amended to read:

**"33-19-104. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution ~~which~~ *that* the insurance producer represents and ~~which~~ *that* is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution ~~which~~ *that* specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis; ~~or~~

(ii) a declination of insurance coverage solely because ~~such~~ *the* coverage is not available on a class or statewide basis; or

HeinOnline -- 1997 vol. I 1144 1997

(iii) the rescission of a policy.

(2) "Affiliate" or "affiliated" means a person ~~that~~ *who* directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living ~~which~~ *that* is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means any person who:

(a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by tbe person.

(7) "Declination of insurance coverago" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disahility insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed policyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

HeinOnline -- 1997 vol. I 1145 1997

(a) an insurance producer;

(b) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

(10) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101. "Insurance institution" does not include insurance producers or insurance-support organizations.

(11) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

(12) (a) "Insurance-support organization" means a person who ~~regularly engages, in whole or in part, in the practice of assembling or collecting~~ *assembles or collects* information about natural persons for the ~~primary~~ purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, ~~insurance institutions,~~ medical care institutions, and medical professionals.

(13) "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(b) the servicing of an insurance application, policy, contract, or certificate.

(14) "Investigative consumer report" means a consumer report or portion ~~thereof~~ *of a consumer report* containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning ~~such items~~ *this type* of information.

(15) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical

HeinOnline -- 1997 vol. I 1146 1997

clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

(16) "Medical professional" means a person *who is* licensed or certified to provide health care services to natural persons, including hut not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech therapist.

(17) "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

(18) "Person" means a natural person, corporation, association, partnership, or other legal entity.

(19) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

(20) "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

(21) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone ~~he~~ *the person* is not;

(b) pretends to represent a person ~~he is~~ not in fact ~~representing~~ *being represented*;

(c) misrepresents the true purpose of the interview; or

(d) refuses to identify ~~himself~~ *the person performing the interview* upon request.

(22) "Privileged information" means any individually identifiable information that:

(a) relates to a ~~claim for insurance benefits or a~~ civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection will be considered "personal information" under this chapter if it is disclosed in violation of 33-19-306.

(23) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(24) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

(25) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

**Section 2.** Section 33-19-302, MCA, is amended to read:

**"33-19-302. Correction, amendment, or deletion of recorded personal information.** (1) Within 30 business days from the date of receipt of a written request from an individual to correct, amend, or delete any recorded personal information in its possession about the individual, an insurance institution, insurance producer, or insurance-support organization shall either:

(a) correct, amend, or delete the portion of the recorded personal information in dispute; or

(b) notify the individual of:

(i) its refusal to make ~~such~~ *the* correction, amendment, or deletion;

(ii) the reasons for the refusal; and

(iii) the individual's right to file a statement as provided in subsection (3).

(2) If the insurance institution, insurance producer, or insurance-support organization corrects, amends, or deletes recorded personal information in accordance with subsection (1)(a), the insurance institution, insurance producer, or insurance-support organization shall ~~so~~ notify the individual in writing *about the action that it has taken* and furnish the correction, amendment, or fact of deletion to:

(a) any person specifically designated by the individual who may have, within the preceding 2 years, received ~~such~~ recorded personal information *about the individual*;

(b) any insurance-support organization whose primary source of personal information is insurance institutions if the insurance-support organization has systematically received ~~such~~ recorded personal information from the insurance institution within the preceding 7 years, but the correction, amendment, or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual; and

HeinOnline -- 1997 vol. I 1148 1997

(c) any insurance-support organization that furnished the personal information ~~which~~ *that* has been corrected, amended, or deleted.

(3) Whenever an individual disagrees with an insurance institution's, insurance producer's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information, the individual may file with the insurance institution, insurance producer, or insurance-support organization:

(a) a concise statement setting forth what the individual thinks is the correct, relevant, or fair information; and

(b) a concise statement of the reasons why the individual disagrees with the insurance institution's, insurance producer's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information.

(4) If an individual files either statement described in subsection (3), the insurance institution, insurance producer, or insurance-support organization shall:

(a) file the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of *the* individual's statement and have access to it;

(b) in any subsequent disclosure by the insurance institution, insurance producer, or insurance-support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter in dispute and provide the individual's statement along with the recorded personal information being disclosed; and

(c) furnish the statement to the persons in the manner specified in subsection (2).

(5) *The commissioner may review a refusal by an insurance institution, insurance producer, or insurance-support organization to correct, amend, or delete recorded personal information in order to determine if the information is correct. The commissioner may order the insurance institution, insurance producer, or insurance-support organization to correct, amend, or delete information that the commissioner determines is erroneous in an individual's recorded information file.*

*(6)* The rights granted individuals by this section extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, insurance producer, or insurance-support organization in connection with an insurance transaction. The rights granted to natural persons by this subsection do not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.

~~(6)~~*(7)* For the purposes of this section, the term "insurance-support organization" does not include *a* consumer reporting agency."

**Section 3.** Section 33-19-303, MCA, is amended to read:

**"33-19-303. Reasons for adverse underwriting decisions.** (1) If an adverse underwriting decision is made, the insurance institution or insurance producer responsible for the decision shall:

HeinOnline -- 1997 vol. I 1149 1997

(a) either provide the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise ~~such~~ *the* person that upon written request, ~~he~~ *the person* may receive the specific reason or reasons in writing; and

(b) provide the applicant, policyholder, or individual proposed for coverage with a summary of the rights established under subsection (2) and 33-19-301 and 33-19-302.

(2) If a written request is received within 90 business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder, or individual proposed for coverage, the insurance institution or insurance producer shall within 21 business days from the date of receipt of the written request furnish the person:

(a) the specific reason or reasons for the adverse underwriting decision, in writing, if ~~such~~ *the* information was not initially furnished in writing pursuant to subsection (1)(a);

(b) the specific items of personal and privileged information that support those reasons; however:

(i) the insurance institution or insurance producer is not required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure; and

(ii) specific items of medical record information supplied by a medical care institution or medical professional ~~shall~~ *must* be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution or insurance producer prefers; and

(c) the names and addresses of the institutional sources that supplied the specific items of information pursuant to subsection (2)(b), except that the identity of any medical professional or medical care institution must be disclosed either directly to the individual or to the designated medical professional, whichever the insurance institution or insurance producer prefers.

(3) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer *that is* authorized to act on its behalf.

(4) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subsection (1) may be given orally *but must be made in writing at the request of the applicant, policyholder, or individual.*"

Approved April 14, 1997

HeinOnline -- 1997 vol. I 1150 1997

# CHAPTER NO. 259

[SB 198]

AN ACT DEFINING "SAME SALARY" FOR THE PURPOSES OF TEACHER TENURE; AMENDING SECTION 20-4-203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-4-203, MCA, is amended to read:

**"20-4-203. Teacher tenure.** (1) Except as provided in 20-4-208, whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be reelected from year to year ~~thereafter~~ as a ~~tenure~~ *tenured* teacher at the same salary and in the same or a comparable position of employment as that provided by the ~~last executed~~ *last-executed* contract with the teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

(2) The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:

(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district.

*(3) (a) For the purposes of subsection (1), "same salary" means the daily rate of pay, excluding benefits and excluding stipends for nonteaching duties, multiplied by the number of days worked under the last-executed contract with the teacher, up to the total number of days funded by the state in the per-ANB entitlements, as provided in 20-9-311, including pupil-instruction-related days. The calculation of daily rate of pay is determined by dividing the salary in the last-executed contract with the teacher for pupil-instruction and pupil-instruction-related days, excluding benefits and excluding stipends for nonteaching duties, by the total number of contracted days under the last-executed contract.*

*(b) The definition of same salary may be modified if negotiated and agreed to in a collective bargaining agreement executed by the district and the teacher's exclusive representative pursuant to Title 39, chapter 31, or in an individual contract between the district and a teacher in a district in which the teachers have no exclusive representative as provided in Title 39, chapter 31."*

**Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, contracts entered into, or proceedings that were begun before [the effective date of this act].

HeinOnline -- 1997 vol. I 1151 1997

**Section 3. Effective date — applicability.** [This act] is effective July 1, 1997, and applies to contracts executed for the school fiscal year beginning July 1, 1998.

Approved April 14, 1997

# CHAPTER NO. 260

[SB 226]

AN ACT REQUIRING THE COMMISSIONER OF INSURANCE TO PROMULGATE RULES PRESCRIBING INFORMATION THAT MUST BE DELIVERED TO A PROSPECTIVE ANNUITANT AT THE TIME OF SALE.

STATEMENT OF INTENT

The intent of this bill is to require the commissioner of insurance to promulgate rules prescribing information that must be delivered to prospective annuitants at the time of sale. The rules must set forth the manner in which and by whom the information must be delivered. The rules must require that the prospective annuitant be informed of the type of annuity being sold and the settlement options available under the annuity contract.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Annuity information.** The commissioner shall promulgate rules prescribing information that must be delivered to prospective annuitants at the time of sale. The rules must address the following:

(1) the manner of delivery of the information;

(2) when the information must be delivered;

(3) by whom the information is to be delivered; and

(4) the contents of the information, including:

(a) the type of annuity being sold; and

(b) the settlement options available under the annuity contract.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 20, part 3, and the provisions of Title 33, chapter 20, part 3, apply to [section 1].

Approved April 14, 1997

# CHAPTER NO. 261

[SB 245]

AN ACT ALLOWING INSURANCE PRODUCERS TO MAINTAIN MORE THAN ONE PLACE OF BUSINESS IN THE STATE; AND AMENDING SECTION 33-17-1101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

HeinOnline -- 1997 vol. I 1152 1997

**Section 1.** Section 33-17-1101, MCA, is amended to read:

**"33-17-1101. Place of business — display of license — records.** (1) ~~Every~~ *A* resident insurance producer shall ~~have and~~ maintain a place *or places* of business in this state accessible to the public. A nonresident insurance producer may maintain a place *or places* of business in this state. An insurance producer's place *or places* of business must be a place in which ~~he principally conducts~~ transactions *are conducted* under ~~his~~ *the insurance producer's* license. The street address *or addresses* of the place *or places of business* must appear upon the license. ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit the* maintenance of ~~the~~ *a* place of business in ~~the~~ *a* licensee's place of residence.

(2) The license must be conspicuously displayed in ~~the~~ *a* place of business at the street address shown on the license in a part of the place of business customarily open to the public.

(3) The insurance producer shall keep at ~~his~~ *a* place of business complete records pertaining to transactions under ~~his~~ *the* license for a period of at least 3 years after completion of the respective transactions, except that a title insurance producer, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216."

Approved April 14, 1997

# CHAPTER NO. 262

[SB 288]

AN ACT EXEMPTING SELF-SUFFICIENCY TRUSTS FROM LIENS IMPOSED BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE EXTENT PERMITTED BY FEDERAL LAW; AMENDING SECTIONS 40-5-242, 40-5-248, 53-2-612, AND 53-6-143, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-5-242, MCA, is amended to read:

**"40-5-242. Notice of support lien — civil liability upon failure to honor support lien or to comply with warrant for distraint.** (1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an obligor. For this purpose, personal property includes the obligor's share of a decedent's estate, workers' compensation benefits, and any proceeds or potential proceeds from suits at law. *Except as provided in subsections (1)(a) and (1)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.*

*(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect*

HeinOnline -- 1997 vol. I 1153 1997

*from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or the aid to families with dependent children program.*

*(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.*

(2) Except as provided in subsection (3), a person or entity is liable to the department in an amount equal to 100% of the value of a support lien or warrant for distraint or the value of real or personal property subject to a support lien or distrained by a warrant for distraint, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

(a) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien; or

(b) fails or refuses to surrender upon demand property of an obligor when presented with a warrant for distraint by a sheriff or levying officer under the provisions of 40-5-247.

(3) A person or entity is not liable to the department under this section when:

(a) a written release or waiver of the support lien or warrant for distraint issued by the department has been delivered to the person or entity;

(b) a determination has been made in an adjudicative proceeding, either administrative or judicial, that a support lien does not exist or that the lien has been satisfied; or

(c) the property subject to a support lien has been transferred to, paid over to, or repossessed by a person or entity holding:

(i) a prior perfected lien;

(ii) a mortgage, the proceeds of which were used by the obligor to purchase real property; or

(iii) a perfected purchase money security interest, as defined by 30-9-107."

**Section 2.** Section 40-5-248, MCA, is amended to read:

**"40-5-248. Lien against real and personal property — effect of lien —interest — warrant for distraint.** (1) There is a support lien on the real and personal property of an obliger:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgege, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as defined in 30-9-107.

(4) Support liens remain in effect until the delinquency upen which the lien is based is satisfied or until 2 years after the child to whoin the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor, if it can be located in the state. The lien applies te all real and personal property that the obliger can afterward acquire. *Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.*

*(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or the aid to families with dependent children program.*

*(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.*

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or inay be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

HeinOnline -- 1997 vol. I 1155 1997

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may chargo interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of tlie amount of the lien plus interest and fees, if any, tlie department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, tlie department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247."

**Seetion 3.** Section 53-2-612, MCA, is amended to read:

**"53-2-612. Lien of department or county upon third-party recoveries.** (1) Upon notice by the department, a county, or the recipient to a third party or ~~his~~ *the third party's* insurer as provided in subsection (5)(b), the department or county has a lien upon all money paid by a third party or ~~his~~ *the third party's* insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department or county has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability.

HeinOnline -- 1997 vol. I 1156 1997

(2) The department or county may, in the name of the recipient on whose behalf medical assistance has been paid by the department or county, commence and prosecute to final conclusion any action ~~which~~ *that* may be necessary to recover from a third party or ~~his~~ *the third party's* insurer compensation or damages for medical assistance paid by the department or county on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in ~~his~~ *the recipient's* own name in accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or ~~his~~ *a third party's* insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and

(ii) is subordinate to the lien of an attorney under 37-61-420.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or ~~his~~ *a third party's* insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

(c) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department or county and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien.

*(e) Except as provided in subsections (3)(e)(i) and (3)(e)(ii), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.*

*(i) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.*

*(ii) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.*

HeinOnline -- 1997 vol. I 1157 1997

(4) (a) A recipient of medical assistance or ~~his~~ *the recipient's* legal representative shall notify the department or county hy certified letter within 30 days if the recipient or ~~his~~ *the recipient's* legal representative asserts a claim against a third party or ~~his~~ *a third party's* insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department or county paid medical assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must he mailed to the director of the department or the director of the county department that paid medical assistance. At the same time, a copy must be sent by certified mail to the third party or ~~his~~ *the third party's* insurer.

(b) The notice must contain the following information:

(i) the name and address of the recipient and ~~his~~ *the recipient's* legal representative, if any;

(ii) the name and address of the third party alleged to be liable to the recipient;

(iii) the name and address of any known insurer of the third party; and

(iv) the judicial district and docket number of any action filed.

(c) A recipient or ~~his~~ *the recipient's* legal representative who has received actual notice that the department or county has paid medical assistance is liable to the department or county for the amount it is entitled to receive under this section if:

(i) the recipient or ~~his~~ *the recipient's* legal representative fails to timely notify the department or county or fails to mail a copy of the notice to the third party or ~~his~~ *the third party's* insurer; and

(ii) a third party or ~~his~~ *the third party's* insurer that did not receive notice from the department or county as provided for in suhsection (5)(b) pays the recipient or ~~his~~ *the recipient's* legal representative without satisfying any lien of the department or county.

(5) (a) If a third party or ~~his~~ *the third party's* insurer that has received notice of the department's or county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department or county, the third party or ~~his~~ *the third party's* insurer is liable to the department or county for the amount the department or county is entitled to receive under this section.

(b) For the purposes of subsection (5)(a), a third party or ~~his~~ *the third party's* insurer has been given notice if:

(i) the department or county mails, by certified mail, to the third party or ~~his~~ *the third party's* insurer:

(A) a statement of the medical assistance paid or ~~which~~ *that* may be paid by the department or county on behalf of the recipient; and

(B) a claim for reimbursement;

(ii) the recipient or ~~his~~ *the recipient's* legal representative mails, hy certified mail, to the third party or ~~his~~ *the third party's* insurer:

(A) a copy of the notice required by subsection (4)(a); or

(B) a statement stating that the recipient has applied for or has received medical assistance from the department or county in connection with the same claim; or

(iii) the recipient or ~~his~~ *the recipient's* legal representative has commenced an action against the third party or ~~his~~ *the third party's* insurer for damages or compensation for personal injury, disease, illness, or disability for which the department or county has paid or may pay medical assistance, in whole or in part, and the department or county files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement of the action and that:

(A) medical assistance in a stated amount has been paid by the department or county on behalf of the recipient; or

(B) medical assistance may be paid on behalf of the recipient.

(6) As used in this section, the following definitions apply:

(a) "County" means a county department of welfare in a county that has not transferred its public assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8.

(b) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or ~~his~~ *a third party's* insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department or a county and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort."

**Section 4.** Section 53-6-143, MCA, is amended to read:

**"53-6-143. Medical assistance liens and recoveries.** (1) Except as provided in this section, the department may not impose a lien upon the property of an applicant for or recipient of medical assistance.

(2) A lien for recovery of medical assistance paid or to be paid under this chapter may be imposed against the real or personal property of a medicaid applicant or recipient prior to the applicant's or recipient's death only:

(a) pursuant to a judgment of a court for recovery of medical assistance paid on behalf of the recipient;

(b) on a third-party recovery as provided in 53-2-612; or

HeinOnline -- 1997 vol. I 1159 1997

(c) as provided in 53-6-171 through 53-6-188.

(3) The department may recover medical assistance correctly paid on behalf of a recipient only as provided in 53-2-612, 53-6-167 through 53-6-169, or 53-6-171 through 53-6-188 or as provided in a written agreement between the department and the recipient or the recipient's representative pursuant to 42 U.S.C. 1382b(b).

(4) Except as otherwise specifically provided by 53-6-144, 53-6-165 through 53-6-169, 53-6-171 through 53-6-189, and this section, the department may pursue recovery under any section or combination of sections as may be applicable in a particular case. However, the department may not recover pursuant to 53-6-167 through 53-6-169 or 53-6-171 through 53-6-188 more than the total amount of recoverable medical assistance paid on behalf of a recipient, plus any applicable costs, interest, or other charges specifically allowed by law. The fact that the department has or may have a lien on particular property does not preclude the department from pursuing recovery under another section against other assets of the recipient or assets of another person as provided in 53-6-144, 53-6-165 through 53-6-169, 53-6-171 through 53-6-189, and this section.

*(5) Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.*

*(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the medicaid program.*

*(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien."*

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved April 14, 1997

# CHAPTER NO. 263

[SB 266]

AN ACT ESTABLISHING SUBROGATION RIGHTS IN MOTOR VEHICLE LIABILITY POLICIES; AND AMENDING SECTION 33-23-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-23-203, MCA, is amended to read:

HeinOnline -- 1997 vol. I 1160 1997

"**33-23-203. Limitation of liability under motor vehicle liability policy.** (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under ~~any such~~ *a* policy, including the limits of liability under uninsured motorist coverage, must be determined as follows, regardless of the number of motor vehicles insured under the policy:

(a) the limit of insurance coverage available for any one accident is the limit specified for the motor vehicle involved in the accident;

(b) if no motor vehicle insured under the policy is involved in the accident, the limit of insurance coverage available for any one accident is the highest limit of coverage specified for any one motor vehicle insured under the policy; and

(c) the limits of coverage specified for each motor vehicle insured under the policy may not be added together to determine the limit of insurance coverage available under the policy for any one accident.

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, ~~or~~ reductions of coverage ~~which~~, *or subrogation clauses that* are designed to prevent duplicate payments for the same element of loss *under the motor vehicle liability policy or under another casualty policy that provides coverage for an injury that necessitates damages or benefit payments.*"

Approved April 14, 1997

# CHAPTER NO. 264

[SB 285]

AN ACT ALLOWING COUNTY ADULT LITERACY FUNDING FOR PERSONS WHO ARE 16 YEARS OF AGE OR OLDER AND NOT ATTENDING SCHOOL; AND AMENDING SECTION 20-7-714, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-7-714, MCA, is amended to read:

"**20-7-714. County adult literacy programs — authorization to levy tax and establish fund.** (1) (a) The governing body of a county may, in its discretion, establish a fund and levy up to 1 mill on each dollar of taxable property in the county for the support of county literacy programs that give first priority to providing direct instruction to adults. The tax levy is in addition to all other tax levies and is subject to limitations on property taxes set forth in 15-10-402.

(b) The fund may be used only for the support of adult literacy programs within the county.

(2) (a) If a county levies a property tax for adult literacy programs, the county governing body shall appoint a county adult literacy board to administer the expenditure of funds from the county adult literacy fund established in subsection (1).

(b) The county adult literacy board shall coordinate all adult literacy programs receiving county adult literacy funds. The board may adopt policies concerning program standards and financial accountability for organizations

HeinOnline -- 1997 vol. I 1161 1997

receiving adult literacy funds. The board may require that adult literacy programs match adult literacy funds with federal, state, or private money. The board may, with the concurrence of the appropriate county officials, arrange for county in-kind services to support adult literacy programs.

(c) County adult literacy funding may be expended only on literacy programs for persons who are ~~at least 19 years of age and whose high school class has graduated~~ *16 years of age or older and who are not regularly enrolled, full-time pupils for the purposes of ANB computation.*"

Approved April 14, 1997

# CHAPTER NO. 265

[SB 337]

AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT AMONG THE STATE OF MONTANA, THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S INDIAN RESERVATION, AND THE UNITED STATES OF AMERICA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Chippewa Cree Tribe-Montana compact ratified.** The compact entered into by the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States of America for the purpose of settling any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States, on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights claims, see, United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. §666 (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

HeinOnline -- 1997 vol. I 1162 1997

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Chippewa Cree trihal water rights; and

WHEREAS, the United States has filed claims on behalf of the Chippewa Cree Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negetiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, 721 F.2d 1189; and

WHEREAS, the adjudication of Chippewa Cree tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Chippewa Cree Tribe within the State of Montana; and

WHEREAS, the Chippewa Cree Business Committee, or its duly designated representatives, have authority to negetiate this Compact pursuant to §1(a), of Article VI of the Tribal Constitution; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986), inter alia; and

WHEREAS, the Chippewa Cree Tribe, the State of Montana, and the United States agree that the Tribal Wator Right described in this Compact shall be in satisfaction of the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all parties that the water rights claims of the Chippewa Cree Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States;

NOW THEREFORE, the parties agree to enter into this Compact for the purpose of settling the water rights claims of the Chippewa Cree Tribe within the State of Montana.

## ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43560 cubic feet.

2. "Adverse effect" means an interference with the reasonable exercise of a water right.

3. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

4. "Ancestral Missouri River Channel Aquifer" means that material deposited by the Missouri River prior to Pleistocene glaciation, and glacial deposits underlying post-glacial alluvial deposits in the River valley that are sufficiently permeable to conduct groundwater and to yield water to wells. This aquifer is located in the valley of Big Sandy Creek at a depth of 150 feet or more beneath the surface of the ground as shown in Appendix 11 and described in USGS Water Supply Paper 1460-B, Swenson, Frank, "Geology and Ground-Water Resources of the Lower Marias Irrigation Project Montana," (1957).

5. "Beaver Creek Drainage" means Beaver Creek and its tributaries from its headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.

6. "Big Sandy Creek Basin" means the mainstem of Big Sandy Creek and its tributaries (exclusive of Sage Creek and Lonesome Lake) in Water Court Basin 40H from the headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.

7. "Board" means the Chippewa Cree - Montana Compact Board established by Section D. of Article IV of this Compact.

8. "Bonneau Reservoir" means the water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

9. "Box Elder Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Box Elder Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

10. "Brown's Reservoir" means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

11. "Bypass" means the designated streamflow around or through a diversion.

12. "Camp Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Camp Creek from its headwaters to its confluence with Duck Creek, as shown in Appendix 6.

13. "Change in use" means a change in the point of diversion, the place of use, the purpose of use, or the place or means of storage.

14. "Consumptive use" means use of water other than a "non-consumptive use" as defined in this Article.

15. "Continuously store" or "continuous storage" means the right to fill and then continually refill the active storage capacity of an impoundment from the natural flow of the source on which the impoundment is located.

16. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

17. "Drainage Stipulation" means an agreement entered into between and among the Tribe, the United States acting in its capacity as trustee for the Tribe, and one or more signatory non-tribal water users for entry as a stipulation in Montana Water Court. Drainage stipulations are set forth in Appendix 2.

18. "Drainage of Origin" means the drainage in which the water initially arises. See Appendix 6 showing drainage area boundaries.

19. "Duck Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Duck Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

20. "East Fork Reservoir" means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

21. "Evaporative Loss" means reduction in the quantity of water due to the process of evaporation and sball be three (3) acre feet per surface acre rounded off as set forth in Article III.

22. "Fish and Wildlife Enhancement" means the use of water to improve existing habitat for fish and wildlife use, protection, conservation or management through physical or operational modifications of impoundments, within the areas designated in Appendix 4.

23. "Gorman Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Gorman Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

24. "Gravel Coulee Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Gravel Coulee from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

25. "Groundwater" means any water that is beneath the ground surface.

26. "Hydrologically Connected" means the interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.

27. "Lake Elwell" means the water impounded on the Marias River by Tiber Dam.

28. "Lonesome Lake Coulee" means the mainstem of Lonesome Lake Coulee and its tributaries in Water Court Basin 40H from its headwaters to its confluence with Big Sandy Creek, as shown in Appendices 5 & 6.

29. "Lower Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek below its confluence with Box Elder Creek as shown in Appendix 6.

HeinOnline -- 1997 vol. I 1165 1997

30. "Minimum Pool" means the quantity of water in an impoundment, as measured in acre-feet, or by the water surface elevation in feet above sea level, that is not available for release for designated water uses.

31. "MR&I Water" means water for use for municipal, rural, industrial, domestic, and incidental drought relief purposes on the Reservation.

32. "Municipal/Domestic Uses" means water for domestic, public, commercial and industrial uses.

33. "Net Depletion" means the difference between the quantity of water diverted from a source and the quantity of water returned to the same source at or near the point of diversion.

34. "New reserved water rights" means any reserved water rights created with acquisition of land by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of ratification of this Compact by the State and the Tribe, whichever is later.

35. "Non-consumptive use" means a use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream or groundwater conditions.

36. "Non-Irrigation Water Uses" means the use of water for purposes other than the production of agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational uses, including development of golf courses.

37. "Parties" means the Tribe, the State of Montana, and the United States.

38. "Person" means an individual or any other entity, public or private, including the State, the Tribe and the government of the United States and all officers, agents, and departments thereof.

39. "Ratification date" means the date on which the Compact is finally approved by the Business Committee of the Chippewa Cree Tribe, by the Montana Legislature, and by the Congress of the United States, whichever date is latest.

40. "Recognized under state law" when referring to a water right means a water right arising under state law, but does not include water rights arising under federal law.

41. "Release" means (verb) to discharge water from storage, or (noun) the discharge of water from storage.

42. "Reservation" means the Rocky Boy's Reservation and includes all lands and interests in lands which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the Reservation.

43. "Sage Creek" means the main stem of Sage Creek and its tributaries in Water Court Basin 40G from the headwaters to the confluence with Big Sandy Creek, as shown in Appendices 5 and 6.

HeinOnline -- 1997 vol. I 1166 1997

44. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

45. "Shallow Alluvium Aquifer" means the material deposited by flowing water generally during, or after Pleistocene glaciation that is sufficiently permeable to conduct groundwater and to yield water to wells and springs.

46. "State" means the state of Montana and all officers, agents, departments, and political subdivisions thereof.

47. "Stockwatering" means the storage and use of water for the purpose of providing water to domesticated animals and wildlife.

48. "Stoneman Farms" means the tribal agricultural projects shown in Appendix 6.

49. "Stoneman Reservoir" means the water impoundment, as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

50. "Subordinate" means to rank the priority in which a water right is fulfilled behind other specified water rights without regard to relative priority dates.

51. "Supplemental Irrigation Water" means water used for irrigation, as a secondary supply, once it becomes apparent that the primary supply will be unable to meet the full annual demand.

52. "Surface Acres" means the horizontal area in acres associated with the water surface in an impoundment when filled to the maximum capacity.

53. "Transfer" means (verb) to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract, lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water Right.

54. "Tribal Water Resources Department" or "TWRD" means the Chippewa Cree Tribal Water Resources Department, or any successor agency.

55. "Tribal Water Right" means the right of the Chippewa Cree Tribe of the Rocky Boy's Reservation to divert, use, or store water as described by Article III of this Compact.

56. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Reservation and all officers, agents and departments thereof.

57. "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof.

58. "Upper Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek from its headwaters to its confluence with Box Elder Creek, as shown in Appendix 6.

59. "Volcanic Bedrock Aquifer" means those Tertiary igneous rock units that are sufficiently permeable to conduct groundwater and to yield water to wells

HeinOnline -- 1997 vol. I 1167 1997

and springs as shown in USGS Miscellaneous Geologic Investigations Map I-234, "Preliminary General Geologic Map of the Laredo Quadrangle, Bearpaw Mountains, Montana," and Map I-235, "Preliminary Geologic Map of the Centennial Mountain Quadrangle, Bearpaw Mountains, Montana," and shown as surface outcrop in Appendix 11.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 40H: Big Sandy Creek Basin.

1. Gravel Coulee/Lower Big Sandy Creek Drainages - 1690 AFY diversion -1000 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store or permit the continuous storaga of up to a capacity of 1000 AF of water in Stoneman Dam and Reservoir from the natural flow of Gravel Coulee. Subject to the 1000 AF limit on storage capacity, the Trihe shall have the additional right to divert up to 1480 AFY from the direct flow of Lower Big Sandy Creek and up to 445 AFY from groundwater for storage in Stoneman Dam and Reservoir as set forth in Section A.1.a.(2) of Article III. The quantity inpounded by continuous storage shall not decrease the 1480 AFY which the Tribe may divert for the purposes allowed in Section A.1.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife purposes, as set forth in Sections A.1.e.(3) and (4) of Article III.

(2) Diversion. The Tribe shall have the right to divert or use or permit the diversion or use of 1690 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total liinit of 1690 AFY:

(a) Direct Flow. The Tribe shall have the right to divert or use or permit the diversion or use of up to 1690 AFY from the direct flow of Gravel Coulee and Lower Big Sandy Creek and its tributaries. 1480 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount tbat can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 1690 AFY, the Tribe shall have the right to divert 1480 AFY from storage in Stoneman Reservoir for irrigation and non-irrigation purposes as more specifically provided in Sections A.1.e.(1) and (2) of Article III; provided that, the right to divert 1480 AFY from Lower Big Sandy Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

(c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek drainages in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

HeinOnline -- 1997 vol. I 1168 1997

(i) Of the 445 AFY, 100 AFY may be appropriated from the shallow alluvium along Gravel Coulee and Lower Big Sandy Creek.

(ii) Of the 445 AFY, 345 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer in the Gravel Coulee and Lower Big Sandy Creek drainages. Groundwater from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means on Lower Big Sandy Creek and Gravel Coulee drainages on the Reservation.

e. Purposes. The Tribe's right to 1690 AFY from the Gravel Coulee and Lower Big Sandy drainages may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation and non-irrigation purposes.

(1) Irrigation.

(a) Volume. 1380 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for irrigation.

(b) Source. The 1380 AFY for irrigation may come from a combination of direct flow, storage and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

(c) Place of use. The 1380 AFY may be used to irrigate 540 acres at Stoneman Farms on the Reservation.

(2) Non-Irrigation.

(a) Volume. 100 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for non-irrigation purposes.

(b) Source. The 100 AFY for non-irrigation purposes may come from a combination of direct flow, storage, and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

(c) Point of diversion. The 100 AFY for non-irrigation purposes may be diverted on the Reservation within the Lower Big Sandy and Gravel Coulee drainages.

HeinOnline -- 1997 vol. I 1169 1997

(3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 40 surface acres of impoundments on Lower Big Sandy drainage and 13 surface acres of impoundments on Gravel Coulee drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source.

i. Of the 160 AFY, 120 AFY for stockwatering may come from the direct flow of Lower Big Sandy Creek.

ii. Of the 160 AFY, 40 AFY for stockwatering may come from the direct flow of Gravel Coulee.

iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Gravel Coulee and Lower Big Sandy Creek drainages may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 16 surface acres of impoundments in the Gravel Coulee and Lower Big Sandy Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gravel Coulee and Big Sandy Creek.

HeinOnline -- 1997 vol. I 1170 1997

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gravel Coulee and Big Sandy Creek drainages, in the respective drainages of origin.

2. Box Elder Creek Drainage - 6940 AFY diversion - 4800 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in Bonneau Reservoir, Brown's Reservoir, and in any new impoundments, of up to a capacity of 4800 AF from the natural flow of Box Elder Creek, or any natural flow from the source on which the impoundment is located. Suhject to the 4800 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 6310 AFY from the direct flow of Box Elder Creek for storage in Brown's Reservoir and in any new impoundments not located on Box Elder Creek and to divert 1950 AFY from groundwater for storage in any new or existing impoundment wberever located, as set forth in Section A.2.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 6310 AFY, which the Tribe may divert for the purposes allowed in Section A.2.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.2.e.(4) and (5) of Article III.

(2) Diversion. The Tribe shall have the right to use or perınit the use of 6940 AFY of water froın the following sources where they occur on the Reservation in any combination up to the liınits on each source and the total limit of 6940 AFY:

(a) Direct Flow. Of the 6940 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 6590 AFY from Box Elder Creek and its tributaries. 6310 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 6940 AFY, the Tribe shall have the right to divert a total of 6310 AFY from storage in one or more of the following reservoirs: Bonneau Reservoir, Brown's Reservoir, and any new impoundments for irrigation and non-irrigation purposes. The right to divert 6310 AFY from Box Elder Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

(c) Groundwater. Of the 6940 AFY, the Tribe shall have the right to withdraw and use or to perınit the withdrawal and use of up to 1950 AFY of groundwater in the Box Elder Creek drainage in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing tbe amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(i) Of the 1950 AFY, 180 AFY may be appropriated froın the sliallow alluvium in the Box Elder Creek drainage.

(ii) Of the 1950 AFY, 230 AFY may be appropriated from the volcanic bedrock in the Box Elder Creek drainage.

HeinOnline -- 1997 vol. I 1171 1997

(iii) Of the 1950 AFY, 1570 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer; provided that, should water be imported to the Reservation, the entire 1950 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.2. of Article III, for the Box Elder Creek drainage, including water supplied by Box Elder Creek for off-stream storage, shall have a priority date of September 10, 1888, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and Means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Box Elder Creek drainage on the Reservation.

e. Purposes. The Tribe's right to 6940 AFY in the Box Elder Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation, non-irrigation and municipal/domestic purposes.

(1) Irrigation.

(a) Volume. 6280 AFY of water in the Box Elder Creek drainage may be used for irrigation.

(b) Source. The 6280 AFY for irrigation may come from a combination of direct flow, storage and groundwater. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

(c) Place of use. The 6280 AFY may be used to irrigate 1930 acres at the Stoneman Farms on the Reservation.

(2) Non-Irrigation.

(a) Volume. 30 AFY of water in the Box Elder Creek drainage may be used for non-irrigation purposes.

(b) Source. The 30 AFY for non-irrigation purposes may come from direct flow, storage, or groundwater or a combination thereof in the Box Elder Creek drainage. The 30 AFY for non-irrigation use may be developed from either the shallow alluvium or volcanic bedrock aquifers.

HeinOnline -- 1997 vol. I 1172 1997

(3) Municipal / Domestic.

(a) Volume. 350 AFY of water in the Box Elder Creek drainage may be used for municipal/domestic purposes.

(b) Source. The 350 AFY for municipal/domestic purposes may come from the following sources:

i. 150 AFY from the shallow alluvium adjacent to Box Elder Creek.

ii. 200 AFY from the volcanic bedrock.

(4) Stockwatering - Evaporative Loss. Use of the Tribal Water Right set forth for stockwatering in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 44 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 130 AFY for stockwatering may come from the direct flow of Box Elder Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Box Elder Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(5) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Box Elder Creek and its tributaries.

HeinOnline -- 1997 vol. I 1173 1997

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Box Elder Creek drainage, in the drainage of origin.

3. Camp Creek and Duck Creek Drainages - 280 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 280 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 280 AFY:

(1) Direct Flow. Of the 280 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 230 AFY from Duck and Camp Creeks and their respective tributaries in the following proportions:

(a) 170 AFY from Duck Creek.

(b) 60 AFY from Camp Creek.

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.3.e.(2) and (3) of Article III.

(3) Groundwater. Of the 280 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Camp and Duck Creek drainages on the Reservation, including groundwater that is hydrologically connected to surface water, in compliance with Sections A.6.a. and b. of Article IV. This right shall be exercised in the following proportions:

(a) 40 AFY from Duck Creek.

(b) 10 AFY from Camp Creek.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.3. of Article III, for the Camp and Duck Creek drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Camp Creek and Duck Creek drainages on the Reservation.

e. Purposes. The Tribe's right to 280 AFY in the Camp and Duck Creek drainages may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

HeinOnline -- 1997 vol. I 1174 1997

(1) Non-Irrigation.

(a) Volume. 50 AFY of water in the Camp and Duck Creek drainages may he used for non-irrigation purposes.

(b) Source. The 50 AFY for non-irrigation purposes may come from groundwater including groundwater that is hydrologically connected to surface water in the Camp and Duck Creek drainages.

(c) Place of use. The Tribal Water Right for non-irrigation purposes in Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation.

(2) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, tlie Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified hy the State and the Tribe, whicbever date is later.

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 19 surface acres of impoundments in the Camp Creek drainage and 23 surface acres of impoundments on Duck Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source.

i. Of the 130 AFY, 60 AFY for stockwatering may come from the direct flow of Camp Creek.

ii. Of the 130 AFY, 70 AFY for stockwatering may come from the direct flow of Duck Creek.

iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage otber than for a lined storage facility with a capacity of less tban 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(3) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocato an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point

HeinOnline -- 1997 vol. I 1175 1997

of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 100 AFY for fish and wildlife enhancement may come from the direct flow of Camp and Duck Creeks.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Camp and Duck Creek drainages, in the drainage of origin.

4. Gorman Creek Drainage - 60 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 60 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 60 AFY.

(1) Direct Flow. Of the 60 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 60 AFY from Gorman Creek and its tributaries.

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.4.e.(1) and (2) of Article III.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.4. of Article III, for the Gorman Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall he from January 1 through December 31 of each year.

d. Points and means of diversion. Suhject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Gorman Creek drainage on the Reservation.

e. Purposes. The Tribe's right to 60 AFY in the Gorman Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever dato is later.

HeinOnline -- 1997 vol. I 1176 1997

(1) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within tbe drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 10 AFY of water in the Gorman Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 3 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 10 AFY for stockwatering may come from the direct flow of Gorman Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Gorman Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(2) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 17 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gorman Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gorman Creek drainage, in the drainage of origin.

5. Upper Big Sandy Creek Drainage - 290 AFY diversion.

a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 290 AFY of water from the following sources where they occur

on the Reservation in any comhination up to the limits on each source and the total limit of 290 AFY.

(1) Direct Flow. Of the 290 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 240 AFY from the direct flow of Upper Big Sandy Creek and its tributaries;

(2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.5.e.(3) and (4) of Article III.

(3) Groundwater. Of the 290 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Upper Big Sandy Creek drainage including groundwater that is hydrologically connected to surface wator, in compliance with Section A.6.a. and b. of Article IV.

b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.5. of Article III, for the Upper Big Sandy Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

c. Period of use. The period of use of this water right shall be from January 1 through Decemher 31 of each year.

d. Points and means of diversion. The Tribe may divert or permit the diversion of this water right from any place and by any means in the Upper Big Sandy Creek drainage on the Reservation; provided that, the Tribe may net construct or permit the construction of a diversion or diversions with a total capacity in excess of 100 gpm for the irrigatien water right with a source on Upper Big Sandy Creek Drainage. This diversion limit also applies to any change(s) of use of this right.

e. Purposes. The Trihe's right to 290 AFY in the Upper Big Sandy Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin, or te a place upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Non-Irrigation.

(a) Volume. 50 AFY of water in the Upper Big Sandy Creek drainage may be used for non-irrigation purposes.

(b) Source. The 50 AFY for non-irrigation purposes may come from groundwater, including groundwater that is hydrologically connected to surface water, in the Upper Big Sandy Creek drainage on the Reservation.

(c) Place of use. The 50 AFY for non-irrigation purposes may be used on the Reservation within the drainage of origin.

HeinOnline -- 1997 vol. I 1178 1997

(2) Irrigation.

(a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for irrigation.

(b) Source. The 45 AFY for irrigation may come from direct flow of Upper Big Sandy Creek on the Reservation.

(c) Place of use. The 45 AFY may be used to irrigate 10 acres in the drainage of origin, on the Reservation.

(3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 15 surface acres of impoundments in the Upper Big Sandy Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 45 AFY for stockwatering may come from the direct flow of Upper Big Sandy Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in the Upper Big Sandy drainage. The Tribe shall have the right to continuously store water in these impoundments.

HeinOnline -- 1997 vol. I 1179 1997

(b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Upper Big Sandy Creek.

(c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Upper Big Sandy Creek drainage, in the drainage of origin.

B. Basin 40J: Beaver Creek Basin - 740 AFY diversion - 260 AFY net depletion - 665 AF continuous storage.

1. Quantification - Source - Volume.

a. Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in East Fork Reservoir of up to a capacity of 665 AF from the natural flow of the East Fork of Beaver Creek. Subject to the 665 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 390 AFY from the direct flow of the West Fork of Beaver Creek for storage in East Fork Reservoir as set forth in Section B.1.b. of Article III. The quantity impounded by continuous storage of the East Fork of Beaver Creek, shall not decrease the 390 AFY, which the Tribe has a right to divert from storage in East Fork Reservoir for non-irrigation purposes allowed in Section B.5. of Article III; provided that, the limit of 260 AFY on net depletion shall apply. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections B.5.b. and c. of Article III.

b. Diversion. The Tribe shall have the right to divert 740 AFY of water in the Beaver Creek drainage from a combination of direct flow, storage and groundwater where they occur on the Reservation up to the limits on each source and the total limit of 740 AFY.

(1) Direct Flow. Of the 740 AFY, the Tribe shall have the right to divert or permit the diversion of up to 540 AFY from the direct flow of Beaver Creek and its tributaries on the Reservation. 390 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to those purposes until such water is re-diverted from storage and applied to such purposes.

(2) Storage. The Tribe shall have the right to divert 390 AFY for non-irrigation purposes from water stored in East Fork Reservoir. The right to divert 390 AFY from the West Fork of Beaver Creek to storage is not reduced by the amount of water diverted for non-irrigation purposes from water derived from storage.

(3) Groundwater.

(a) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 120 AFY of groundwater including groundwater that is hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

HeinOnline -- 1997 vol. I 1180 1997

(b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. The limit of 260 AFY on net depletion set forth in Section B.1.a.(2) of Article III, shall not apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

c. Net Depletion. Of the 740 AFY diverted, the Tribe shall have a right to a net depletion of 260 AFY in the Beaver Creek drainage. The calculation of net depletion shall not include evaporative loss from fish and wildlife habitat, from stockwatering, or from East Fork Reservoir, and use of groundwater that is not hydrologically connected to surface water.

2. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section B. of Article III, for the Beaver Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

3. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and hy any means in the Beaver Creek drainage on the Reservation.

5. Purposes. The Tribe's right to water in the Beaver Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for non-irrigation purposes.

a. Non-Irrigation

(1) Volume. 590 AFY of water in the Beaver Creek drainage may be used for non-irrigation purposes; provided that, the net depletion may not exceed 260 acre-feet per year in accordance with Section B.1.c. of Article III.

(2) Source. The 590 AFY for non-irrigation in the Beaver Creek drainage may come from a combination of direct flow, storage and groundwater.

(3) Place of use. The 590 AFY for non-irrigation may be used in the Beaver Creek drainage on tbe Reservation.

b. Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point

HeinOnline -- 1997 vol. I 1181 1997

of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Volume. 40 AFY of water in the Beaver Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 13 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(2) Source. The 40 AFY for stockwatering may come from the direct flow of Beaver Creek on the Reservation. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(3) Place of use. The Tribal Water Right for stockwatering in the Beaver Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

c. Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Volume. 110 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 35 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(2) Source. The 110 AFY for fish and wildlife enhancement may come from the direct flow of Beaver Creek.

(3) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Beaver Creek drainage, in the drainage of origin.

C. Additional Development of Water.

In addition to the water rights specifically set forth in Sections A. and B. of Article III, the Tribe may develop water from the following sources:

1. Subject to Sections A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as part of the Tribal Water Right, develop or permit the development of groundwater on the Reservation in addition to the amounts specified in Sections A. and B. of Article III, from new sources or from expanded use of existing sources. The priority date of such new appropriation shall be the date of development, and notwithstanding any other provision of this Compact, may only be used in priority with other water rights.

HeinOnline -- 1997 vol. I 1182 1997

2. The Trihe may impound or permit the impoundment of surface water for stockwatering purposes in addition to the amounts set forth in Sections A. and B. of Article III; provided that tbe priority date of the new appropriation shall be the date of development and, notwithstanding any other provision of this Compact, may only be used in priority with other water rights; and further provided that, the maximum capacity of the impoundment or pit is less than 15 AF and the appropriation is less tban 30 AFY and is from a source other than a porennial flowing stream. The Tribe may not transfer or make a change in use of tbe stockwater right obtained pursuant to this section.

3. On the acquisition of land after the Compact is ratified by tbe State and the Tribe, whichever date is later, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. Such right shall become part of the Tribal Water Right in addition to the amount set forth in Article III of this Compact and shall be subject to the terms of this Compact; provided that, the right sball retain tbe priority date of the acquired right. The Tribe will notify DNRC of any acquisition of water in the Tribe's annual report and will identify the water right acquired.

4. The Tribe shall be entitled to use any new reserved water rigbts that may be created witb acquisition of land after the Compact is ratified hy the State and the Tribe, whichever date is later; provided tbat, in any drainage with a moratorium on new state permits pursuant to Section A.7.a. of Article IV, the Tribe sball defer exercise of new reserved water rights, if any, until the moratorium is lifted at which tiine the Tribe bas the first right to use the excess water in accordance with Section A.7.b. of Article IV. The priority date of the excess water sball be the date of acquisition of tbe land.

5. After the ratification date of the Compact, the Tribe shall bave the right to acquire off-Reservation water rights separate from acquisition of the land to which such water rights are appurtenant; provided that, water from the Tribal Water Right is not available for economic or other reasons; and provided further that, tbe rights shall retain the priority date held by the prior owner of the rights. Such rights sball become part of the Tribal Water Right and shall thereby become subject to Sections A.4.b.(1) and (2) of Article IV.

6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY of stored water in Lake Elwell, measured at the dam, for use or dispesition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to tbe terms of this Compact; provided that, such allocation shall be in accordance witb the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or of persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by tbe Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

D. Proposed Decree.

For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III and Section A.8. of Article IV is attached as Appendix 1.

HeinOnline -- 1997 vol. I 1183 1997

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.

2. Tribal Water Right: Administration. Subject to the limitations imposed by this Compact and other federal law, the use of the Tribal Water Right shall be administered by the Tribe through the TWRD both on and off of the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in D.4. of Article IV, concerning off-Reservation use of tbe Tribal Water Right which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning off-Reservation use of the Tribal Water Right which do not raise issues concerning the application of state or federal law will be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between users of the Tribal Water Right. The TWRD will, among other activities, develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current and future water use and diversions will be identified by location and quantity. Final storage capacities will be based on project as-built plans, and will store no more than the water right set forth in Article III of this Compact. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the ratification date of this Compact pursuant to any requirements set forth in the Constitution of the Chippewa Cree Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

3. Use.

a. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, or persons authorized by the Tribe.

b. Effect of Non-Use of Tribal Water Rights. Except as specifically provided herein, state law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

4. Change in Use or Transfer.

a. On-Reservation Changes in Use or Transfer of the Tribal Water Right. Unless otherwise stated in this Compact, the Tribe may make a change in use or transfer of a water right set forth in Article III of this Compact on the Rocky Boy Reservation, including the use of water salvaged through the application of water-saving methods to expand irrigation, provided that:

(1) for each source quantified in Article III, any change in use or transfer shall not result in uses that exceed the water amount quantified for that source;

HeinOnline -- 1997 vol. I 1184 1997

(2) any change in use or transfer shall not result in an increase in net depletion in the Beaver Creek drainage in excess of the amount specified for that source;

(3) any change in use or transfer shall not have an adverse effect on a water right recognized under state law with a priority date before the date of the change or transfer provided that for change in use or transfer of groundwater, the burden as to adverse effect shall be as set forth in Section A.6. of Article IV; and

(4) any change in use or transfer shall not change the source of the water involved in any such changes.

(5) The Tribe may not make a change in use or transfer of any water rights set forth in Article III for the purposes of stockwatering or fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified hy the State and the Tribe, whichever date is later.

(6) The Tribe may not make a change in use or transfer any of the water rights set forth in Article III with a source on the drainages of Upper Big Sandy Creek, Camp Creek, Duck Creek and Gorman Creek that results in a change in the place of use, point of diversion or place or means of storage of the water outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(7) The Tribe may make a change in use or transfer of the irrigation water right with a source in Upper Big Sandy Creek drainage as set forth in Section A.5.e. of Article III so long as it does so within the diversionary limits set forth in Section A.5.d. of Article III; provided that, the net depletion shall not exceed 30 AFY.

b. Off-Reservation Changes in Use or Transfer of the Tribal Water Right. Except as may be otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or permit a change in use or a transfer of the Tribal Water Right for use off the Reservation; provided that, any transfer shall be for a term of not to exceed 100 years, and may include provisions authorizing renewal for an additional term of not to exceed 100 years; and provided further that, no such transfer shall be a permanent alienation of the water transferred; and provided further that, no transfer or change in place of use shall be made to a location outside the watershed that forms the Missouri River drainage; and provided further that, if the Tribe receives a good faith offer from a third person from outside the Milk River drainage to acquire use of specified Tribal water rights and the Tribe is willing to accept the terms of the offer, the Tribe, before accepting the offer, shall allow water users in the Milk River drainage the opportunity to acquire use of such rights at the same price and on the same terms and conditions as those contained in the offer. Any change in use or transfer of any such water right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided that, any off-Reservation use

HeinOnline -- 1997 vol. I 1185 1997

of Tribal water rights described in this Compact shall not be deemed to convert such rights to rights arising under state law, and nonuse of such rights off the Reservation shall not constitute a relinquisbment, forfeiture, or ahandonment of the rights; and provided further that, releases or diversions from Lake Elwell for use on the Reservation shall not be considered off-Reservation uses. The Tribe may change the point of diversion or purpose or place of use of tbe Tribal Water Right back to the Reservation without reduction in tlie amount of water provided in the Compact.

(1) Applicable Law. No person may initiate an off-Reservation use, change in use, or transfer of a Tribal water right set forth in this Compact without first applying for and receiving authorization for the use, change in use, or transfer pursuant to Montana law in effect at tbe time of the application. Approval of an application for a use, change in use or transfer off the Reservation by the State shall be conditioned on a valid Tribal permit for such use, change in use or transfer by the Tribe. Tbe applicant shall provide DNRC with proof of a valid Trihal permit prior to initiating the use, cbange in use, or transfer.

(2) Diversion Facilities. With respect to diversion or transportation facilities located off the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or persons using such water rights shall apply for all permits, certificates, variances and other autborizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water rights may be made only after all permits, certificates, variances or other authorizations applied for pursuant to tbis paragraph bave been obtained.

(3) Subsequent Federal or State Law. All off-Reservation uses of Tribal water rights set forth in this Compact shall comply with the requirements set forth in Section A.4.b.(1) and (2) of Article IV until such time as the statutory or common law of tbe United States or the State of Montana establish that off-Reservation uses of Indian water rights may occur without regard to state law.

c. Placement and Size Survey. Placement and size of stockwater impoundments and fish and wildlife enhancement areas shall be surveyed by the TWRD every five (5) years commencing one (1) year after the ratification date of this Compact. The initial survey method shall he through use of data obtained by aerial photography or an acceptable quantitative substitute with accuracy and verification equal to or greater than photography. The method may be modified by agreement between the TWRD and the DNRC. Such modification is pursuant to and shall not be deemed a modification of this Compact. The TWRD shall provide the DNRC with a completed survey for review within six (6) months of initiation of the survey.

d. Net Depletion Table. Net depletion for Tribal water uses in the Beaver Creek drainage and for irrigation uses in the Upper Big Sandy Creek drainage sball be as set forth in the table attached as Appendix 9 to this Compact. Tbe TWRD and the DNRC may jointly agree to modify this initial table. Such modification is pursuant to, and will not be deemed a modification of, this Compact.

HeinOnline -- 1997 vol. I 1186 1997

5. Reporting requirements.

a. On an annual basis the DNRC shall provide the Tribe and the United States with a listing of all new uses of surface and groundwater for which a permit has been issued by the DNRC in the Big Sandy and Beaver Creek drainages, and of any change in use or transfer of surface water or groundwater approved by the DNRC in the Big Sandy and Beaver Creek drainages since the last report.

b. On an annual basis the TWRD shall provide the State and the United States with a listing of all new development of the water rights described in this Compact, the net depletion in the Beaver Creek drainage, and the net depletion for irrigation in the Upper Big Sandy Creek drainage, and of all changes in use or transfers of the water rights described in this Compact since the last report. The first report by the TWRD following adoption of a Tribal Water Code shall include a listing of existing uses.

c. The TWRD, the DNRC, and the United States may agree to modify the reporting requirements set forth in subsections a. and b. of this section. Such modification is pursuant to, and will not be deemed a modification of, this Compact.

6. Groundwater.

a. New Groundwater Development Without Adverse Effect.

(1) Limits on Additional Development of Groundwater from Sources on the Reservation. After the ratification date of this Compact, the Tribe may develop or permit the development of groundwater; provided that, such development is without an adverse effect on water rights recognized under state law with a priority date before the date of development of the new appropriation.

(2) Prerequisite Administrative Remedy. The following procedure for determining whether new development of groundwater will have an adverse effect on existing groundwater rights recognized under state law shall be followed prior to seeking relief from the Compact Board:

(a) Application for development of a groundwater use on the Reservation shall be made to the TWRD.

(b) The TWRD shall review the application and make a determination of whether the new use will have an adverse effect on existing water rights recognized under state law with a priority date before the application date. Upon request by the TWRD, the DNRC shall provide information on existing state water rights as recorded in the DNRC database to the TWRD.

(c) If the TWRD determines that the new development will have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall deny the application. If the TWRD determines that the new development will not have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall forward the application with its determination to the DNRC.

(d) If, based upon the evidence, DNRC agrees with the TWRD's determination, the application will be approved. If, however, based upon the evidence, the DNRC cannot agree with the determination of the TWRD, DNRC

HeinOnline -- 1997 vol. I 1187 1997

shall publish notice, of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any appropriator of water or holder of a permit who, according to the records of the department, has a water right with a priority date before the application date, and may be affected by the proposed development.

(e) DNRC and the TWRD shall attempt to resolve any disagreement on the determination of no adverse effect by the TWRD on a cooperative basis. If the DNRC or a holder of a water right recognized under state law with a priority date before the application date disagree with the determination of no adverse effect, DNRC or the water users may seek relief from the Compact Board.

(f) In any proceeding concerning the effect of new groundwater development on the Reservation either before the TWRD, the DNRC, or before the Compact Board, the following shall apply:

(i) 1 - 150 Feet Wells: For new Tribal groundwater wells completed at a depth beneath the surface of 1 to 150 feet, the Tribe shall bear the burden of showing no adverse effect to groundwater uses recognized under state law with a priority date before the application date.

(ii) 150 Feet or Deeper Wells: For Tribal groundwater wells completed at a depth beneath the surface of 150 feet or deeper, the owner of a water right recognized under state law with a priority date before the application date shall bear the burden of showing any adverse effect to the water right.

b. Groundwater Development Exempt From The Showing Of No Adverse Effect. The following wells are exempt from the requirement of showing no adverse effect:

(1) Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic wells are listed in Appendix 8. A comprehensive list of existing wells will be kept on file in TWRD offices as per the requirement to list existing uses in Section A.5. of Article IV.

(2) New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed without a showing of no adverse effect.

c. Ancestral Missouri River Channel Aquifer. Groundwater from the Ancestral Missouri River Channel Aquifer shall be a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

7. Moratorium.

a. New State Permits. With the exceptions listed in subsection (1) of this section, the DNRC shall not process or grant an application for a permit to appropriate water from a source in the Big Sandy Creek Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only be lifted pursuant to the

procedures set forth in Section A.7.b of Article IV. This moratorium is not intended to apply to applications for change in appropriation under state law.

(1) The moratorium shall not apply to the following appropriations:

(a) an appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation;

(b) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream;

(c) an appropriation of groundwater from any deep aquifer not hydrologically connected to surface water.

(2) Within 120 days following the date the moratorium takes effect, the DNRC shall publish notice of the moratorium once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on all appropriators of water or holders of permits who, according to the records of the department, have a water right with a source in the affected drainages.

(3) The moratorium applies only to new permits issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

h. Lifting of Moratorium. After 10 years, the Tribe or an individual seeking to appropriate water in the affected drainages may petition the DNRC for removal of the moratorium, or the DNRC may initiate proceedings to lift a moratorium on its own initiative. The DNRC shall comply with the following procedure in making a determination as to whether water is available in excess of the Tribal Water Right and rights recognized under state law. The DNRC and TWRD may agree to modify procedures or provide additional procedures. Such modification is pursuant to and shall not be deemed to be a modification of the Compact.

(1) Proceedings initiated by TWRD.

(a) The TWRD shall have sixty (60) days following the filing of the petition requesting that the moratorium be lifted to provide the DNRC with data supporting its petition to lift the moratorium.

(b) Within sixty (60) days following the receipt of the data supporting TWRD's petition, the DNRC shall determine whether to lift the moratorium, and shall notify the TWRD of its determination and the grounds therefor. The TWRD shall be allowed reasonable access to any data relied upon by the DNRC for its determination.

(c) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal

HeinOnline -- 1997 vol. I 1189 1997

(2) Proceedings initiated by DNRC.

(a) The DNRC may, on request by a water user or on its own initiative, commence proceedings to determine whether to lift a moratorium.

(b) The DNRC shall notify the TWRD of the commencement of proceedings to determine whether to lift the moratorium and shall submit to the TWRD all data in support of the proceedings at the same time or as soon after such data becomes available as practical or shall give the TWRD reasonable access to such data within the same time frame.

(c) The TWRD shall be given sixty (60) days following receipt of the data in support of the proceedings to submit to the DNRC a statement of the Tribe's position concerning the issue along with any supporting data and argument.

(d) The DNRC shall notify the TWRD of its determination and the grounds therefor within sixty (60) days of receipt of the Tribe's statement.

(e) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal.

c. Excess Water. If the moratorium is lifted pursuant to the procedure described in A.7.b. of Article IV, the Tribe shall have the first right to use the excess water for the purpose of fulfilling new reserved water rights, if any, on land acquired after the ratification date of this Compact, but before the date the moratorium is lifted. The excess water used by the Tribe shall become part of the Tribal Water Right and the tribe may make a change in use of, or transfer, including storage, of such water pursuant to Section A.4.a. of Article IV.

d. Limit on New Tribal Groundwater Development. In any drainage with a moratorium, new Tribal groundwater development pursuant to Section C.1. of Article III, by a well or developed spring from an aquifer that is hydrologically connected to surface water shall be limited to a maximum appropriation or combined appropriation from two or more wells or developed springs in a single drainage defined by this Compact to 35 gallons per minute or less, not to exceed 10 acre-feet per year.

8. Mutual Subordination. To reduce the need for daily administration of water use on and off the Reservation, water rights shall not be administered in priority, but shall be satisfied according to the following agreements.

a. Subordination to Non-Tribal Water Rights Upstream of the Reservation. The Tribal Water Right shall be subordinate to water rights recognized under state law upstream from any point on the Reservation with a priority date before the ratification date of this Compact. It is the intent of the parties that this subordination extends only to valid water rights, and not to statements of claim filed pursuant to 85-2-221, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights exempt from the permit process pursuant to 85-2-306, MCA, a list of rights as currently claimed is attached as Appendix 3. Appendix 3 will be modified by any final decree resolving claims on the affected drainages. Appendix 3 may be modified due to clerical error or omission.

HeinOnline -- 1997 vol. I 1190 1997

b. Effect of Mitigation. Because the impact of development of the Tribal Water Right on downstream water rights recognized under State law has been mitigated by provisions of the Compact and by special measures set forth in drainage stipulations, any person claiming or holding a water right recognized under State law, or an interest in such water right, may not assert priority over, or make a call for, or claim any of the water rights of the Tribe set forth in this Compact, in any court, tribunal, or other forum.

9. Stockwatering Impoundments Limited by Surface Area. Except for new stock ponds developed under Section C.2. of Article III, the surface acreage limitations on stockwatering impoundments set forth in Article III shall he the measure of compliance with the quantification of water rights for the purpose of stockwatering.

10. Impoundments for the Purpose of Enhancing Fish and Wildlife Habitat.

a. Fish and Wildlife Enhancement Impoundments Limited by Surface Area. The surface acreage limitations on impeundments for the purpose of fish and wildlife enhancement set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of fish and wildlife enhancement.

b. Limits on Structures. No structure for the purpose of fish and wildlife enhancement may create a potential high water line beyond the existing wet riparian habitat delineated as fish and wildlife enhancement zones on the map attached as Appendix 4.

11. Structures Mimic Natural Processes. No structure for the purpose of fish and wildlife enhancement, or new stockwatering impoundments on a perennial stream built after the ratification date of the Compact, excluding repair or replacement of existing structures, may stop the entire flow of surface water during filling of the impoundment. To accomplish this the Tribe shall build any structure to mimic natural processes by allowing water to flow through the structure, or bypass the structure during filling.

B. Big Sandy Creek Basin.

1. Operation of Bonneau Reservoir.

a. Minimum Pool / 240 AFY Stored for Satisfaction of Release. The minimum pool at Bonneau Reservoir shall be established by the Tribe. The Tribe shall store annually the minimum pool plus 240 acre-feet, if water is available. The 240 acre-feet above the minimum pool shall be stored to satisfy the release set forth in this Article and shall not be available to satisfy the Tribal Water Right. Evaporative loss shall be accounted for in setting the minimum pool and shall not be subtracted from the 240 acre-foot pool stored for downstream water users. Any change in use of the water stored in Bonneau Reservoir from irrigation to other purposes shall be without adverse effect on downstream water uses recognized under state law with a priority date before the date of change, and measures to prevent adverse effect may include release of additional water from Bonneau Reservoir.

b. Release for Off-Reservation Irrigation Use. The Tribe shall release no more than 104 AFY from Bonneau Reservoir or from direct flow of Box Elder Creek to satisfy the claims for irrigation water rights currently held by Bert Corcoran, and

HeinOnline -- 1997 vol. I 1191 1997

the Tribe shall deliver this water to a point of diversion specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2; provided that, the Tribe shall have no responsibility to upgrade or to increase the capacity of the existing delivery system; and further provided that, the Tribe shall not be required to release water from Bonneau Reservoir below the minimum pool established by the Tribe plus 240 acre-feet prior to satisfaction of the 240 acre-feet per year release set forth in Section B.1.c. of Article IV, and the minimum pool at all other times. The 104 AFY release shall be in accordance with a delivery schedule agreed to by Mr. Corcoran, or his successors in interest, and the TWRD. Mr. Corcoran's claims for irrigation water rights shall be specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2. Nothing in the drainage stipulation or in this Compact shall affect any existing right that Mr. Corcoran may have to the use of on-Reservation conveyance and distribution systems to deliver this water.

c. 240 AFY Release. The Tribe shall annually release the first 240 acre-feet of water, as measured near the confluence of Box Elder Creek and Lower Big Sandy Creek, stored in Bonneau Reservoir above the minimum pool, at the request of the downstream irrigation water users as set forth below, for maintenance of instream flow and for domestic and stock purposes on Lower Big Sandy Creek. The 240 AF of water, once released, shall be designated as an instream flow and shall be senior to all Tribal diversions and all non-domestic and non-stockwater rights recognized under state law from the point of release to the confluence with the Milk River. The Tribe shall not divert from direct flow on Lower Big Sandy Creek between its confluence with Box Elder Creek and the Reservation boundary at Stoneman Farms, as that boundary exists on the effective date of this Compact, during release of the 240 AF of water to downstream water users in the months of July and August. A structure that will bypass the peak scheduled release will be constructod for any diversion of the Tribal Water Right upstream of the confluence of Big Sandy Creek with Gravel Coulee. Under no circumstances shall the Tribe be required to release more than 240 AFY of water to maintain instream flow and for domestic and stock purposes.

d. Schedule for 240 AFY. The method for determining the schedule of releases is as follows: Water users on Lower Big Sandy Creek with drainage stipulations listed in Appendix 2 shall elect a three member Bonneau Release Committee to determine the schedule of release for the 240 AFY. The Committoe shall notify the DNRC which shall notify the TWRD by May 1st of each year of the requested schedule. The schedule shall not exceed the operating standards of Bonneau Reservoir or result in unreasonable interference of the Tribe's use of water stored in the Reservoir. If the TWRD does not receive notice by May 1 of any year, the TWRD shall release 2 cfs continuously for July and August in accordance with Section B.1.c. of Article IV. DNRC shall notify water users which, according to the records of the Department, have a water right recognized under state law with a source on Box Elder Creek, or on Big Sandy Creek between the confluence with Box Elder Creek and the confluence with the Milk River, that the release may not be diverted. After May 1, at the request of the Bonneau Release Committee, the DNRC shall request the Tribe to alter the rate of release and the Tribe may agree to comply. At the request of the Tribe, the DNRC shall request the Bonneau Release Committee to agree to forego the release, and if the Committee believes the purposes for the release as set forth in Section B.1.c. of Article IV are being satisfied without the release, the Committee may, in any year, agree to forego the release. When streamflow in lower Big Sandy Creek at

HeinOnline -- 1997 vol. I 1192 1997

the bypass structure referred to in Section B.1.c. of Article IV, exceeds the peak flow specified in the designated release schedule, such excess flow can be diverted by the Tribe, subject to the diversion limits designated in Article III.

e. Effective Date for Bonneau Reservoir Operational Plan. Notwithstanding ratification of this Compact by the parties, the operational plan for Bonneau Reservoir set forth in Sections B.1.a. through c. of Article IV, shall not become effective until completion of the enlargement of Bonneau Dam.

2. Water Use on Lower Big Sandy Creek Drainage.

a. 2 cfs Bypass at Stoneman Farms. Structures will be constructed at each point of diversion on Lower Big Sandy Creek which allow a minimum of 2 cfs of water flow from direct and return flow, if available, to pass year around from the most downstream diversion on the Reservation on Lower Big Sandy Creek. The 2 cfs shall be designated as an instream flow and shall be senior in priority to Tribal diversions and all non-domestic and non-stockwatering water rights recognized under state law with a point of diversion between the bypass and the confluence with the Milk River. When streamflow in Lower Big Sandy Creek exceeds 2 cfs outside the scheduled 240 AF release period, such excess flow can be diverted by the Tribe subject to diversion limits designated in Article III.

b. Water Quality Issues.

(1) Monitoring Wells. Within one year following the effective date of this Compact, a monitoring well network adequate to detect saline seep shall be installed to depths no greater than 30 feet near the proposed Enlarged Stoneman Reservoir site shown in Appendix 6. The location of the wells will be established by TWRD and DNRC (or its representative) and groundwater level and quality sball be measured on a quarterly basis to establish baseline conditions.

(2) Water Quality Monitoring Before Construction. Within one year following the effective date of this Compact, a surface water quality network will be established by TWRD and DNRC and quarterly sampling continued for a sufficient period of time to establish the water quality baseline conditions referred to above, adjacent to and below the Stoneman Farms project. The results of the baseline analysis will be used to establish a threshold value for water quality degradation associated with salinity which will trigger the requirement for more extensive study.

(3) Water Quality Monitoring After Construction. After construction of the Stoneman Reservoir enlargement, monitoring of the wells and surface water quality will be resumed to evaluate changes in water quality. If salinity measurements result in a trend of increasing salinity on a sustained basis over a reasonable period of time, the TWRD or DNRC may petition the Compact Board to appoint a technical expert to conduct an analysis to identify the causes of the increasing salinity and recommend appropriate remedies. The analysis and recommendations may include sources of salinity off the Reservation.

(4) Remedies. The results of the analysis shall be submitted to the DNRC and to the TWRD which shall make a joint effort to resolve the degradation issue based on the analyses. If the analysis includes sources of salinity off the Reservation, the DNRC shall assist the TWRD in obtaining reasonable access onto the land off the Reservation for the purpose of observation. If the DNRC

HeinOnline -- 1997 vol. I 1193 1997

and the TWRD, are unable to resolve the issue within 30 days through joint effort, the DNRC, the TWRD, or any affected water user, may petition the Compact Board for relief. The Compact Board shall have jurisdiction over any contributor to the salinity problem and shall fashion its remedy in a manner proportionate to the causes contributing to the problem. The remedy fashioned by the Compact Board for salinity problems shall be limited to issuance of an order to cease and desist the practice or practices leading to the salinity problems. The remedies set forth in this section shall be in addition to any remedies or water quality standards provided for under other applicable law.

C. Beaver Creek Drainage.

1. Moratorium on Tribal Consumptive Uses. For a period of five years following the ratification date of the Compact, there shall be a moratorium on the development of Tribal consumptive uses from surface water in the Beaver Creek drainage. During this moratorium, a monitoring network consisting of three continuous recording stations will be installed and the resulting data analyzed to determine if Beaver Creek gains or loses flow between the confluence of East and West Fork and the Reservation boundary. Location of the three gages shall be:

(1) the West Fork of Beaver Creek at the location the Tribe intends to divert water to the East Fork;

(2) the confluence of the East and West Forks of Beaver Creek; and

(3) the Reservation boundary at the most downstream point on Beaver Creek. A staff gage shall also be installed in East Fork Reservoir following enlargement of the Reservoir.

2. Development of Management Plan. Based on the results of the five years of gage data on Beaver Creek, the Tribe and the Montana Department of Fish, Wildlife and Parks shall work cooperatively to develop a fishery and recreational management plan. The plan may include modifications in minimum instream flows set forth in Section C.3. of Article IV. Such modification is pursuant to, and will not be deemed a modification of, this Compact. The management plan is not binding on any party and shall not be used to modify minimum instream flows until it is approved by the Tribe and the Montana Department of Fish, Wildlife and Parks.

3. Operation of East Fork Reservoir Following Enlargement and Pending Adoption of a Management Plan. During the moratorium imposed by Section C.1. of Article IV, or pending adoption of the management plan authorized by Section C.2. of Article IV, East Fork Reservoir may be enlarged; provided that,

a. The enlarged Reservoir shall be used only for recreational purposes during the five year moratorium. However, after the five year moratorium period and pending adoption of the management plan, the enlarged Reservoir may be utilized for multiple purposes, but remains subject to the limitations set forth under Sections C.3.b., c., and d. of Article IV.

b. Any surface water diversion from the West Fork of Beaver Creek and its tributaries on the Reservation to the East Fork of Beaver Creek shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East

HeinOnline -- 1997 vol. I 1194 1997

Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

c. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not he considered a diversion for the purposes of this provision.

d. The Trihe shall release water from East Fork Reservoir to augment streamflow on Beaver Creek if the flow at the confluence of East and West Fork or below the most downstream diversion on the Reservation, whichever is the most downstream, falls below 1 cfs; provided that, the Tribe shall not be required to release water if the level of the enlarged Reservoir reaches or falls below the minimum pool; and provided further that, the Tribe shall not be required to release water if the flow at the Reservation boundary at the most downstream point on Beaver Creek exceeds 2 cfs.

4. Operation of East Fork Reservoir Prior to Enlargement. Prior to enlargement of East Fork Reservoir and pending adoption of tbe management plan authorized by Section C.2. of Article IV, the following diversionary constraints are in effect.

a. Any surface water diversion from the West and East Forks of Beaver Creek and its trihutaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass the structure year around.

b. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year round.

D. Enforcement - Chippewa Cree-Montana Compact Board.

1. Establishment of Board. There is hereby established the Chippewa Cree-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana from up to six nominees, up to three nominated by the Commissioners of Chouteau County and up to three nominated by the Commissioners of Hill County; one member appointed by the Chippewa Cree Business Committee; and one member selected by the other two members. If the Governor fails to select a board member from the list of nominees, the Commissioners of Chouteau and Hill Counties may select the member. All members shall he appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor or County Commissioners, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Chippewa Cree Business Committee, the Director of the TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall he eligible for reappointment. The initial term of each member shall be staggered with one member serving a

HeinOnline -- 1997 vol. I 1195 1997

five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty days of the date of appointment of the second member, or within thirty days after any vacancy occurs, the following procedure shall be utilized:

a. Within five days thereafter each member shall nominate three persons to serve as a member of the Board;

b. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

c. Within five days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.

4. Jurisdiction of the Board. The Chippewa Cree-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between users of the Tribal Water Right and users of water rights recognized under state law including any contributor to a salinity problem. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

5. Pre-requisite Administrative Remedy.

a. Any non-tribal water user concerned that a new development or change in use of water by the Tribe is inconsistent with the Compact shall first contact the Havre Regional Office of the DNRC. If the DNRC and the TWRD are unable to resolve the issue in a reasonable time through discussion, DNRC, the water user, or the Tribe may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land to observe the challenged development or change in use.

b. The Tribe or any tribal water user concerned that a new development or change in use or transfer of water by non-tribal water users is inconsistent with the Compact shall first contact the TWRD. If the TWRD and the DNRC are unable to resolve the issue in a reasonable time through discussion, the TWRD or the Tribal water user may seek relief through the Compact Board. The DNRC agrees to assist the TWRD in obtaining reasonable access onto the non-tribal water user's land to observe the challenged development or change in use or transfer.

HeinOnline -- 1997 vol. I 1196 1997

c. The TWRD and the DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and will not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint a technical expert for the purposes of Section B.2.b. of Article IV. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.

b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section D.7.a. of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, may order such temporary or permanent relief as it considers just and proper.

d. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Chippewa Cree-Montana

HeinOnline -- 1997 vol. I 1197 1997

Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the Chippewa Cree Tribe described herein and any rights to water of any other Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes and tribal members of other Indian tribes.

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe other than the Chippewa Cree Tribe regarding its boundaries or property interests.

4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands other than those of the Chippewa Cree Tribe.

B. General Disclaimers.

Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State.

3. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;

4. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact;

5. To authorize the taking of a water right which is vested under state or federal law;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To preclude or to discourage the Tribe from acquiring, by contracting or by other means, water rights in addition to the rights acquired under this Compact from any existing or future federal storage facilities off the Reservation;

HeinOnline -- 1997 vol. I 1198 1997

8. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;

9. To prohibit the Tribe, or the United States on behalf of the Trihe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights not protected by a drainage stipulation set forth in Appendix 2 of this Compact; provided that, the United States, on behalf of any other Indian tribe, or in its own right, may raise valid objections to any claims listed in Appendix 2 and Appendix 3 of this Compact;

10. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;

11. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe, or the Trihe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the Trihe in the enjoyment of any water right in this Compact.

C. Rights Reserved.

The parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of United States Contingent.

Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

E. Expenditures of Money Contingent.

The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

The Trihe and the State of Montana agree to support federal legislation ratifying this Compact that will accomplish the following:

A. Off-Reservation Water Sources.

1. Lake Elwell Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of 10,000 acre-feet per year from storage water in Lake Elwell, as described in Section C.6. of Article III. The priority date of this water right shall be that established for the source of supply. This water right will be held in trust and will be part of the Tribal Water Right.

2. Right to Participate in Future Projects to Import Water to the Milk River. The Tribe shall have the right to participate in any project to augment the water supply in the Milk River system by transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Trihe to water to a point on the Reservation designated by the Tribe.

HeinOnline -- 1997 vol. I 1199 1997

B. Provision Of A Municipal, Rural, And Industrial Water Supply System, And A Tribal Economic Development Fund.

The State and Tribe agree to support federal legislation that will authorize and fund a municipal, rural and industrial water system adequate to meet the future MR&I water needs of the Tribe, according to the needs and population projections as set forth in the Municipal, Rural and Industrial (MR&I) Water Supply System Needs Assessment prepared for the Bureau of Reclamation, U.S. Department of the Interior (January, 1996), through either a regional system or a system serving the Reservation only. The State and Tribe further agree to support federal legislation that will establish an economic development fund as agreed to by the Tribe and the Department of the Interior, or by the Tribe and the Montana Congressional Delegation. Support by the Department of Interior for the proposed MR&I system will depend on a demonstration of feasibility and appropriate allocation of costs.

C. Implementation Contingencies and Cost Share of Administration and Mitigation.

Implementation of this Compact shall be contingent upon the appropriation of necessary funds by the Congress and by the Montana Legislature. The performance of any obligation by any party under this Compact shall be contingent upon appropriation of funds therefor. No liability shall accrue to any party in case necessary funds are not appropriated. The State and the Tribe agree to recommend the following cost share for administration and mitigation necessary to implement the Compact to the Montana State Legislature and the Congress for appropriation on a schedule consistent with implementation as contemplated in this Compact.

1. The State and the Tribe agree to support federal legislation to appropriate $3,070,000 for the administration of the Tribal Water Right by the Tribal Water Resources Department as set forth in Articles III and IV of the Compact, including but not limited to: stream flow gages; diversion/bypass structures on Big Sandy Creek; aerial survey of impoundments on the Reservation; and development of a Tribal Water Code.

2. The State and the Tribe agree to support state legislation to appropriate $150,000 for the following purposes as set forth in Articles III and IV of the Compact: water quality discharge monitoring wells and monitoring program; diversion structure on Big Sandy Creek; conveyance structure on Box Elder Creek; and purchase of contract water from Lower Beaver Creek Reservoir.

3. The state agrees to provide services, subject to the availability of funds, valued at $400,000 for administration required by the Compact and for water quality sampling required by this Compact.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS,

AND EFFECTIVENESS OF COMPACT

A. Ratification and Effectiveness of Compact.

1. This Compact shall become effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest; provided that, notwithstanding the provisions of Section 85-2-702(2), MCA, those aspects of the Compact specifically designated in Section A.2. of Article VII,

shall become effective as stated therein. Upon ratification of this Compact hy the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without tbe consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and tho United States.

2. As between the State and the Tribe, the moratorium on state permits in the Big Sandy Creek Basin set forth in Section A.7. of Article IV, shall become effective upon tbe date the Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. The reservoir operational plan for Bonneau Reservoir set forth in Section B.1 of Article IV shall not become effective until the Reservoir is enlarged.

3. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a party to this Compact -

a. if Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

b. if the municipal, rural, and industrial water supply system which the feasibility study identifies as the preferred alternative to serve the Rocky Boy's Reservation, or an equivalent water supply system as determined by the Tribe, is not authorized within four (4) years of the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

c. if appropriations are not authorized by Congress, including appropriations for planning, design, and other pre-construction work on the municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, within five (5) years of the date the Compact is ratified by the Tribe and by the State, wbichever date is later, or

d. if appropriations are not made in the manner contemplated by tbe federal legislation authorizing the Tribal municipal, rural, and industrial water supply system, or

e. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not commenced within seven (7) years from the date the Compact is ratified by the Tribe and by tbe State, whichever date is later, or

f. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not been completed within fourteen (14) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later.

The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Chippewa Cree Business Committee stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than 30 days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact sball become null and void without further action by any party, and the parties agree to resume negotiation in good faith for quantification of the water rights of the Chippewa Cree Tribe and entry of a

HeinOnline -- 1997 vol. I 1201 1997

decree in a court of competent jurisdiction. If the Tribe fails to take action to withdraw within five (5) years following the fourteen (14) year deadline for completion of the water system, all provisions of the Compact shall remain in effect.

4. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse support for federal legislation ratifying this Compact.

B. Incorporation Into Decrees and Disposition of Federal Suits.

1. The Tribe and the State agree to defend the provisions and purposes of tbis Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B of Article VII.

2. Within 180 days of the date this Compact is ratified by the Chippewa Cree Business Committee, the State of Montana, and Congress, whichever is latest, the Tribe, tbe State, or tbe United States sball file, in the general stream adjudication filed by the State of Montana pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation. If tbe court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the parties. If the court approves the proposed decree within tbree years, but the decree is subsequently set aside by the court or on appeal, the Compact shall be voidable by agreement of the parties. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of tbe United States in the McCarran Amendment, 43 U.S.C. §666 or other provision of federal law.

3. Consistent with section 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of section 85-2-702(3), MCA, the review by the Montana Water Court sball be limited to Article III, Section A.8. of Article IV, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III and Section A.8. of Article IV as displayed in Appendix 1 and sucb other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to section 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in United States v. Aageson, No. CIV-79-21-GF (D. Mont. 1979) (hereinafter referred to as "Aageson") and such claims may only be refiled if the Tribe exercises its option to withdraw as a party to the Compact pursuant to Section A.3. of Article VII. This Compact shall be filed as a consent decree in

HeinOnline -- 1997 vol. I 1202 1997

Aageson only if, prior to the dismissal of Aageson as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Aageson.

C. Tribal Settlement of Water Claims.

The parties intend that the water rights and other rights confirmed to the Tribe in this Compact are in full satisfaction of the Tribe's water rights claims, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, including rights to the future development of water pursuant to Section C. of Article III, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe hereby relinquish any and all claims to water rights of the Chippewa Cree Tribe within the State of Montana existing on the date this Compact is ratified by the State and the Tribe, whichever date is later.

D. Binding Effect.

Upon the effectiveness of any provision of this Compact, the terms of that provision will be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the Tribe to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law; and further provided that, nothing contained in this Compact affects any claim of any Indian tribe other than the Chippewa Cree Tribe, or of persons claiming water through any such other Indian tribe, or the right of any Indian tribe other than the Chippewa Cree Tribe, or persons claiming water through any such other Indian tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided

HeinOnline -- 1997 vol. I 1203 1997

that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States have signed this Compact on the _____ day of _____, 19___.

**Section 2. Provision exception.** Notwithstanding the provisions of 7-6-204, Hill County may apply the interest accrued on the $50,000 water purchase contract with the state of Montana toward operation, maintenance, and future repairs to the Lower Beaver Creek reservoir. The Department is authorized to execute a contract with Hill County for the purchase of 800 acre-feet of water stored in Lower Beaver Creek Reservoir. The Department is authorized to assist the Tribe, Hill County, and any appropriate federal agency in drafting an Operating Agreement for coordination of release of the purchased water from Lower Beaver Creek Reservoir with reductions in the natural flow of Beaver Creek due to diversion and impoundment of water on the Reservation.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Approved April 14, 1997

# CHAPTER NO. 266

[SB 275]

AN ACT CHANGING THE DELINQUENCY FEE IN THE MONTANA RETAIL INSTALLMENT SALES ACT; AND AMENDING SECTION 31-1-235, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 31-1-235, MCA, is amended to read:

**"31-1-235. Delinquency fee.** The holder *of a retail installment contract or a retail charge account agreement* may collect a delinquency charge on each installment in default for a period not less than 10 days in an amount not ~~in excess of 5% of each installment or~~ *to exceed* ~~$15~~ *$10,* ~~whichever is less,~~ or, in lieu of the charge, interest after maturity on each installment not exceeding the highest lawful contract rate. In addition to a delinquency charge, the contract may provide for the payment of ~~attorneys'~~ *attorney* fees not exceeding 15% of the amount due and payable under the contract when the contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with the delinquency."

Approved April 15, 1997

HeinOnline -- 1997 vol. I 1204 1997

# CHAPTER NO. 267

[SB 276]

AN ACT CHANGING THE COMPUTATION OF FINANCE CHARGES UNDER THE MONTANA RETAIL INSTALLMENT SALES ACT; AND AMENDING SECTION 31-1-241, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 31-1-241, MCA, is amended to read:

**"31-1-241. Finance charge limitation.** (1) Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract ~~shall~~ *must* be at a rate agreed upon by the retail seller and the buyer.

(2) Notwithstanding the provisions of any other law, the finance charge included in a retail charge account agreement ~~shall~~ *must* be at a rate agreed upon by the retail seller and the buyer.

~~(a)~~*(3)* ~~Except as provided in subsection (2)(b), the~~ *The* finance charge ~~shall~~ *must* be computed from month to month (which need not be a calendar month) or ~~other~~ *over another* regular billing cycle period by using *either:* ~~the average daily balance of the account during the billing cycle without including in the computation the amount of purchases charged to the account during that billing cycle.~~

~~(b) Nothing in this section prevents a retail seller and a buyer from agreeing to the computation of the finance charge by using the ending balance of the account as of the last day of the billing cycle period less the amount of purchases charged to the account during that billing cycle.~~

*(a) the average daily balance in the account in the billing cycle period; or*

*(b) the ending balance of the account as of the last day of the billing cycle period less the amount of total purchases charged to the account during that billing cycle.*

~~(3)~~*(4)* A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the ~~two~~ billing ~~cycles~~ *cycle* prior to the effective date of the change.

~~(4)~~*(5)* If the retail seller increases ~~his~~ *the* finance charge on a retail charge account agreement, then ~~such~~ *the* increased rate may only he applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

~~(5)~~*(6)* For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the halance existing prior to the change in rate until that balance is paid in full.

~~(6)~~*(7)* If the finance charge determined pursuant to subsection ~~(2)~~ *(3)* for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for ~~such~~ *the* period."

Approved April 15, 1997

HeinOnline -- 1997 vol. II 1205 1997

# CHAPTER NO. 268

[SB 329]

AN ACT GENERALLY REVISING THE LAWS GOVERNING LIMITED PARTNERSHIPS, BUSINESS CORPORATIONS, AND LIMITED LIABILITY COMPANIES; INCORPORATING REVISIONS TO THE UNIFORM LIMITED PARTNERSHIP ACT; PROHIBITING THE WITHDRAWAL OF LIMITED PARTNERS; PROVIDING A SAVING PROVISION FOR SHAREHOLDER AGREEMENTS; PROVIDING FOR THE PURCHASE AND VALUATION OF INTERESTS; ALLOWING A NONUTILITY COOPERATIVE TO DISTRIBUTE UNCLAIMED SHARES FOR CIVIC OR CHARITABLE PURPOSES IN THE COMMUNITY IN WHICH THE COOPERATIVE IS LOCATED; AND AMENDING SECTIONS 35-8-304, 35-8-1306, 35-12-504, 35-12-505, 35-12-508, 35-12-521, 35-12-601, 35-12-602, 35-12-604, 35-12-605, 35-12-606, 35-12-607, 35-12-608, 35-12-611, 35-12-701, 35-12-703, 35-12-704, 35-12-801, 35-12-802, 35-12-902, 35-12-903, 35-12-904, 35-12-1001, 35-12-1003, 35-12-1004, 35-12-1005, 35-12-1008, 35-12-1104, 35-12-1201, 35-12-1302, AND 35-12-1402, MCA, AND SECTION 3, SENATE BILL NO. 25.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Shareholder agreements.** (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, whether or not in proportion to ownership of shares, subject to the limitations in 35-1-712;

(c) establishes who must be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manago the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the

HeinOnline -- 1997 vol. II 1206 1997

shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section must be:

(a) set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and that is made known to the corporation;

(b) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) valid for 10 years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by 35-1-627(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement may not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement must be entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) An agreement authorized by this section must cease to be effective when shares of the corporation are listed on a national securities exchange or regnlarly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the hoard of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors must relieve the directors of, and impose upon the porson or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or porformance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholders for the acts or debts of the corporation even if the agreement or its performance treats

HeinOnline -- 1997 vol. II 1207 1997

the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares have not been issued when the agreement is made.

**Section 2.** Section 35-8-304, MCA, is amended to read:

"**35-8-304. Liability of members to third parties.** *(1)* A person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

*(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.*"

**Section 3.** Section 35-8-1306, MCA, is amended to read:

"**35-8-1306. Responsibility for services.** (1) An individual who renders professional services as *a member or* an employee of a domestic or foreign professional limited liability company is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. ~~An~~ *A member or an* employee of a professional limited liability company is not liable for the conduct of other *members or* employees unless the *member or* employee is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional limited liability company whose *member or* employee performs professional services within the scope of the *member's or* employee's employment or apparent authority to act for the company is liable to the same extent as the *member or* employee.

(3) Except as otherwise provided by statute, the personal liability of a member of a domestic or foreign professional limited liability company is no greater in any respect than that of a member of a limited liability company otherwise organized under this part."

**Section 4.** Section 35-12-504, MCA, is amended to read:

"**35-12-504. Definitions.** In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate referred to in 35-12-601, as that certificate is amended *or restated* from time to time.

(2) "Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

HeinOnline -- 1997 vol. II 1208 1997

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in 35-12-802.

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement ~~and who is named in the certificate of limited partnership as a limited partner~~.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means any limited partner or general partner.

(9) "Partnership agreement" means the agreement, written or, to the extent not prohibited by law, oral, or both, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" has the meaning specified in 35-12-1101.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

**Section 5.** Section 35-12-505, MCA, is amended to read:

**"35-12-505. Name.** The name of each limited partnership as set forth in its certificate of limited partnership:

(1) ~~shall~~ *must* contain the words "limited partnership", ~~in full~~ *the abbreviation "l.p.", or the designation "lp"*;

(2) may not contain the name of a limited partner unless:

(a) it is also the name of a general partner; or

(b) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) ~~may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership; and~~

~~(4) may not be the same as or deceptively similar to~~ *must be distinguishable on the record from* the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state."

HeinOnline -- 1997 vol. II 1209 1997

**Section 6.** Section 35-12-508, MCA, is amended to read:

**"35-12-508. Records to be kept.** (1) Each limited partnership shall keep at the office referred to in 35-12-507(1) the following:

(a) a current list of the full name and last-known business address of each partner, ~~set forth~~ *separately identifying the general partners,* in alphabetical order, *and the limited partners, in alphabetical order*;

(b) a copy of the certificate of limited partnership and all certificates of amendment ~~thereto~~, together with executed copies of any powers of atterney pursuant to which any certificate bas been executed;

(c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years; ~~and~~

(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years*; and*

*(e) unless contained in a written partnership agreement, a writing setting out:*

*(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and that each partner has agreed to contribute;*

*(ii) the times at which or the events on the happening of which any additional contributions agreed to be made by each partner are to be made;*

*(iii) any right of a partner to receive or of a general partner to make distributions to a partner that include a return of all or any part of the partner's contribution; and*

*(iv) any events, upon the happening of which, the limited partnership is to be dissolved and its affairs wound up.*

(2) ~~These records~~ *Records kept under this section* must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours."

**Section 7.** Section 35-12-521, MCA, is amended to read:

**"35-12-521. Secretary of state to establish fees.** The secretary of state ~~is authorized and required to~~ *shall* set filing fees reasonably related to the costs of processing the applications and certificates. The secretary ef state may establish fees for filing a certificate of limited partnership, certificate of amendment *or restatement*, certificate of cancellation, an application to reserve a name, a notice of transfer of a reserved name, an application for registration of a foreign limited partnership, a certificate of cancellation or correction of a foreign limited partnership or filing any other statement or report of a domestic or foreign limited partnership. The secretary of state shall maintain records sufficient to suppert the fee charged fer the filing requirements."

**Section 8.** Section 35-12-601, MCA, is amended to read:

**"35-12-601. Certificate of limited partnership.** (1) ~~Two or more persons desiring~~ *In order* to form a limited partnership, ~~shall execute~~ a certificate

HeinOnline -- 1997 vol. II 1210 1997

of limited partnership *must be executed*. ~~The certificate~~ must be filed in the office of the secretary of state, and ~~shall~~ *must* set forth:

(a) the name of the limited partnership;

(b) ~~the general character of its business;~~

~~(c)~~ the address of the office and the name and address of the agent for service of process required to be maintained by 35-12-507;

~~(d)~~*(c)* the name and the business address of each *general* partner ~~(specifying the general partners and limited partners separately)~~;

~~(e) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;~~

~~(f) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;~~

~~(g) any power of a limited partner to grant an assignee of any part of his partnership interest the right to become a limited partner and the terms and conditions of the power;~~

~~(h) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of or the method of determining the distribution to which he may be entitled respecting his partnership interest and the terms and conditions of the termination and distribution;~~

~~(i) any right of a partner to receive distributions of property, including cash, from the limited partnership;~~

~~(j) any right of a partner to receive or of a general partner to make distributions to a partner which include a return of all or any part of the partner's contribution;~~

~~(k) any time at which or events on the happening of which the limited partnership is to be dissolved and its affairs wound up;~~

~~(l) any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner;~~ and

~~(m)~~*(d)* any other matters the *general* partners, in their sole discretion, determine to include ~~therein~~.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section."

**Section 9.** Section 35-12-602, MCA, is amended to read:

**"35-12-602. Amendments to certificate — *restated certificates.*** (1) A certificate of limited partnership is amended by filing a certificate of amendment ~~thereto~~ in the office of the secretary of state. The certificate ~~shall~~ *must* set forth:

HeinOnline -- 1997 vol. II 1211 1997

(a) the name of the limited partnership;

(b) the date of filing of the certificate; and

(c) the amendments te the certificate.

(2) An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events:

(a) ~~a change in the amount or character of the contribution of any partner or in any partner's obligation to make a contribution;~~

~~(b)~~ the admission of a new *general* partner;

~~(c)~~*(b)* the withdrawal of a *general* partner; or

~~(d)~~*(c)* the continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner.

(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement ~~therein~~ *in the certificate* was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect~~, but amendments to show changes of addresses of limited partners need be filed only once every 12 months~~.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) ~~No~~ *A* person is *not* liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) ~~of this section~~ if the amendment is filed within the 30-day period specified in subsection (2).

*(6) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment."*

**Section 10.** Section 35-12-604, MCA, is amended to read:

**"35-12-604. Execution of certificates.** (1) Each certificate required by 35-12-601 through 35-12-609 to be filed in the office of the secretary of state ~~shall~~ *must* be executed in the following manner:

(a) ~~Each original~~ *An initial* certificato of limited partnership must he signed by ~~each partner named therein~~ *all general partners*.

(b) Each certificate of amendment must be signed by at least one general partner and by each other *general* partner who is designated in the certificate as a new *general* partner ~~or whose contribution is described as having been increased~~.

(c) Each certificate of cancellation must be signed by ~~each~~ *all* general ~~partner~~ *partners*.

HeinOnline -- 1997 vol. II 1212 1997

(2) Any person may sign a certificate hy an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission ~~or increased contribution~~ of a *general* partner must specifically describe the admission ~~or increase~~.

(3) The executior of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated ~~therein~~ *in the certificate* are true."

**Section 11.** Section 35-12-605, MCA, is amended to read:

**"35-12-605. ~~Amendment or cancellation~~ *Execution* by judicial act.** If the persons required by 35-12-604 to execute any certificate ~~of amendment or cancellation~~ fail or refuse to do so, any other ~~partner and any assignee of a partnership interest~~ *person* who is adversely affected by the failure or refusal may petition the district court to direct the ~~amendment or cancellation~~ *execution of the certificate*. If the court finds that ~~the amendment or cancellation~~ *it* is proper *for the certificate to be executed* and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate ~~of amendment or cancellation~~."

**Section 12.** Section 35-12-606, MCA, is amended to read:

**"35-12-606. Filing in the office of the secretary of state.** (1) One original and one copy of the certificate of limited partnership and of any certificates of amendment, *restatement,* or cancellation ~~(~~or of any judicial decree of amendment, *restatement,* or cancellation~~)~~ must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of ~~his~~ *the person's* authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the original and the copy the word "filed" and the day, month, and year of the filing ~~thereof~~;

(b) file the original in ~~his~~ *the secretary of state's* office; and

(c) return the copy to the person who filed it or ~~his~~ *the person's* representative.

(2) Upon the filing of a certificate of amendment, *restatement,* ~~(~~or judicial decree of amendment~~)~~ in the office of the secretary of state, the certificate of limited partnership is amended *or restated* as set forth ~~therein~~ *in the certificate.*~~;~~ ~~and upon~~ *Upon* the effective date of a certificate of cancellation ~~(~~or a judicial decree ~~thereof)~~ *of cancellation,* the certificate of limited partnership is canceled."

**Section 13.** Section 35-12-607, MCA, is amended to read:

**"35-12-607. Liability for false statement in certificate.** If any certificate of limited partnership or certificate of amendment, *restatement,* or cancellation contains a false statement, ~~one~~ *any person* who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person actually executing the certificate or causing another to execute it on ~~his~~ *the person's* behalf who knew and any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

HeinOnline -- 1997 vol. II 1213 1997

(2) any general partner who ~~thereafter~~ *after the execution of the certificate* knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon to have reasonably enabled that general partner to cancel, *restate,* or amend the certificate or to file a petition for its cancellation, *restatement,* or amendment under 35-12-605."

**Section 14.** Section 35-12-608, MCA, is amended to read:

"**35-12-608. Constructive notice.** The fact that a certificate of limited partnership is on file in the office of the secretary of state is constructive notice that the partnership is a limited partnership and that the persons designated ~~therein~~ *in the certificate* as ~~limited~~ *general* partners are ~~limited~~ *general* partners but is not constructive notice of any other fact."

**Section 15.** Section 35-12-611, MCA, is amended to read:

"**35-12-611. Application for renewal of certification.** One original and one copy of an application for renewal of certification of a limited partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the ~~following~~ information:

~~(1) the complete name of the limited partnership;~~

~~(2) the name and address, including street name and number, if any, of each general partner;~~

~~(3) the address of the principal office of the limited partnership, including the street name and number;~~

~~(4) a description of the business;~~

~~(5) the name of the county or counties in which business is being transacted; and~~

~~(6) the name and address of the specified agent for service of process in the state~~ *required by 35-12-601.*"

**Section 16.** Section 35-12-701, MCA, is amended to read:

"**35-12-701. Admission of ~~additional~~ limited partners.** *(1) A person becomes a limited partner:*

*(a) at the time the limited partnership is formed; or*

*(b) at any later time specified in the partnership agreement for becoming a limited partner.*

~~(1)~~*(2)* After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as ~~a new~~ *an additional* limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

HeinOnline -- 1997 vol. II 1214 1997

(h) in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

~~(2) In each case under subsection (1), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.~~"

**Section 17.** Section 35-12-703, MCA, is amended to read:

"**35-12-703. Liability to third parties.** (1) Except as provided in subsection (4), a limited partner ~~as such~~ is not liable for the obligations of a limited partnership unless, in addition to the exercise of ~~his~~ *the* rights and powers as a limited partner, ~~he takes part~~ *the limited partner participates* in the control of the business. However, if the limited ~~partner's participation~~ *partner participates* in the control of the business ~~is not substantially the same as the exercise of the powers of a general partner~~, ~~he~~ *the limited partner* is liable only to persons who transact business with the limited partnership ~~with actual knowledge of his participation in control~~ *reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.*

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner *or being an officer, director, or shareholder of a general partner that is a corporation*;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership *or guaranteeing or assuming one or more specific obligations of the limited partnership*;

(d) ~~approving or disapproving an amendment to the partnership agreement~~ *taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership*; ~~and~~

*(e) requesting or attending a meeting of partners;*

~~(e)~~*(f) proposing, approving, or disapproving, by* voting *or otherwise,* ~~on~~ one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership ~~other than in the ordinary course of its business~~;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business; ~~or~~

(v) the *admission or* removal of a general partner;

*(vi) the admission or removal of a limited partner;*

*(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;*

*(viii) an amendment to the partnership agreement or certificates of limited partnership; or*

*(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (2)(f) that the partnership states in writing may be subject to the approval or disapproval of limited partners;*

*(g) winding up the limited partnership pursuant to 35-12-1203; or*

*(h) exercise any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).*

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by ~~him~~ *the limited partner* in the business of the limited partnership.

(4) A limited partner who knowingly permits ~~his~~ *the limited partner's* name to be used in the name of the limited partnership, except under circumstances permitted by ~~subsections (2)(a) and (2)(b) of~~ 35-12-505*(2)(a) and (2)(b)*, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner."

**Section 18.** Section 35-12-704, MCA, is amended to read:

**"35-12-704. Person erroneously believing ~~himself a~~ limited partner *status.*** (1) Except as provided in subsection (2), a person who makes a contribution to a business enterprise and erroneously and in good faith believes that ~~he~~ *the person* has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if, on ascertaining the mistake, ~~he~~ *the person*:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

(2) Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate, if any, is filed to show ~~the withdrawal or before an appropriate certificate is filed to show his status as a limited~~ *that the person is not a general* partner ~~and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under 35-12-602~~, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction."

**Section 19.** Section 35-12-801, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1216 1997

"**35-12-801. Admission.** After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted ~~only~~ *as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners,* with the ~~specific~~ written consent of ~~each partner~~ *all partners.*"

**Section 20.** Section 35-12-802, MCA, is amended to read:

"**35-12-802. When person ceases to be general partner of limited partnership.** Except as otherwise approved by the specific written consent, at the time, of all partners, a person ceases to he a general partner of a limited partnership on the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in 35-12-1002;

(2) the general partner ceases to he a member of the limited partnership as provided in 35-12-1102;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided *in writing* in the ~~certificate of limited~~ partnership *agreement*, the general partner:

(a) makes an assignment for the henefit of creditors;

(b) files a voluntary petition in hankruptcy;

(c) is adjudicated a bankrupt or insolvent;

(d) files any petition or answer seeking for ~~himself~~ *the general partner* any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule;

(e) files any answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ *the general partner* in any proceeding of this nature; or

(f) seeks, consents to, or acquiesces in the appeintment of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ *the general partner's* properties;

(5) unless otherwise provided *in writing* in the ~~certificate of limited~~ partnership *agreement*, if, within 120 days after the commencement of any proceeding against the general partner seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule, the proceeding has not heen dismissed or if, within 90 days after the appointment without ~~his~~ *the general partner's* consent or acquiescence of any trustee, receiver, or liquidator of the general partner or of all or any suhstantial part of ~~his~~ *the general partner's* properties, the appointment is not vacated or stayed or if, within 90 days after the expiration of any stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person:

HeinOnline -- 1997 vol. II 1217 1997

(a) ~~his~~ *the general partner's* death; or

(b) the entry by a court of competent jurisdiction adjudicating ~~him~~ *the general partner* incompetent to manage ~~his~~ *the general partner's* person or ~~his~~ property;

(7) in the case of a general partner who is acting as ~~such~~ *general partner* in the capacity of a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a partnership, the dissolution and commencement of winding up of the partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation or the revocation of its charter; and

(10) in the case of an estate, the distribution by the fiduciary of all of the estate's interest in the partnership."

**Section 21.** Section 35-12-902, MCA, is amended to read:

**"35-12-902. Liability for contributions.** *(1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.*

~~(1)~~*(2)* Except as otherwise provided in the ~~certificate of limited~~ partnership *agreement*, a partner is liable to the limited partnership for any *enforceable* promise to contribute cash or property or to perform services regardless of whether ~~he~~ *the partner* is personally unable to perform because of disability, death, or any other reason. If a partner does not make the required contribution of property or services, ~~he~~ *the partner* is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, ~~(~~as stated in the ~~certificate of limited~~ partnership~~)~~ *records required to be kept pursuant to 35-12-508,* of the stated contribution that has not been made.

~~(2)~~*(3)* Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all of the partners. Notwithstanding a compromise so authorized, a creditor of a limited partnership who extends credit or ~~whose claim arises~~ *otherwise acts in reliance on that obligation* after the ~~filing of the certificate of limited partnership or an amendment thereto~~ *partner signs a writing* ~~which~~ *that*, in either case, reflects the obligation and before the amendment or cancellation ~~thereof~~ to reflect the compromise may enforce the precompromise obligation."

**Section 22.** Section 35-12-903, MCA, is amended to read:

**"35-12-903. Allocation of profits and losses.** The profits and losses of a limited partnership must be allocated among the partners and among classes of partners in the manner provided *in writing* in the partnership agreement. If the partnership agreement does not ~~so~~ provide *for the allocation in writing*, profits and losses must be allocated on the basis of the value, ~~(~~as stated in the ~~certificate of limited~~ partnership~~)~~ *records required to be kept pursuant to 35-12-508,* of the contributions actually made by each partner to the extent they have not been returned."

HeinOnline -- 1997 vol. II 1218 1997

**Section 23.** Section 35-12-904, MCA, is amended to read:

**"35-12-904. Allocation of distributions.** Distributions of cash or other assets of a limited partnership must be allocated among the partners and among classes of partners in the manner provided *in writing* in the partnership agreement. If the partnership agreement does not ~~so~~ provide *for the allocation in writing*, distributions must be made on the basis of the value, ~~(~~as stated in the ~~certificate of limited~~ partnership~~)~~ *records required to be kept pursuant to 35-12-508*, of the contributions actually made by each partner to the extent they have not been returned."

**Section 24.** Section 35-12-1001, MCA, is amended to read:

**"35-12-1001. Interim distributions.** Except as otherwise provided in 35-12-1001 through 35-12-1008, a partner is entitled to receive distributions from a limited partnership before ~~his~~ *the partner's* withdrawal from the limited partnership and before the dissolution and winding up ~~thereof:~~

~~(1)~~ to the extent and at the times or on the happening of the events specified in the partnership agreement~~; and~~

~~(2) if any distribution constitutes a return of any part of his contribution under 35-12-1008(3), to the extent and at the time or on the happening of the events specified in the certificate of limited partnership~~."

**Section 25.** Section 35-12-1003, MCA, is amended to read:

**"35-12-1003. Withdrawal of limited partner.** A limited partner may withdraw from a limited partnership at the time or on the happening of the events specified *in writing* ~~in the certificate of limited partnership and in accordance with any procedures provided~~ in the partnership agreement. If the ~~certificate of limited~~ partnership *agreement* does not specify the time or the events on the happening of which a limited partner may withdraw ~~from the limited partnership or a definite time for the dissolution and winding up of the limited partnership~~, a limited partner may *not* withdraw ~~from the~~ *prior to the time of the dissolution and winding up of the* limited partnership ~~upon not less than 6 months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state~~."

**Section 26.** Section 35-12-1004, MCA, is amended to read:

**"35-12-1004. Distributions upon withdrawal.** ~~Except as provided in 35-12-1001 through 35-12-1008, upon~~ *Upon* withdrawal any withdrawing partner is entitled to receive any distributions to which ~~he~~ *the partner* is entitled under the partnership agreement and, if not provided, ~~he~~ *the partner* is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ *the partner's* interest in the limited partnership as of the date of withdrawal, based upon ~~his~~ *the partner's* right to share in distributions from the limited partnership."

**Section 27.** Section 35-12-1005, MCA, is amended te read:

**"35-12-1005. Distributions in kind.** Except as provided in *writing in* the ~~certificate of limited~~ partnership *agreement*, a partner, regardless of the nature of ~~his~~ *the partner's* contribution, has no right to demand and receive any

HeinOnline -- 1997 vol. II 1219 1997

distribution from a limited partnership in any form other than cash. Except as provided *in writing* in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to ~~him~~ *the partner* exceeds a percentage of that asset ~~which~~ *that* is equal to the percentage in which ~~he~~ *the partner* shares in distributions from the limited partnership."

**Section 28.** Section 35-12-1008, MCA, is amended to read:

"**35-12-1008. Liability upon return of contributions.** (1) If a partner has received the return of any part of ~~his~~ *the partner's* contribution without violation of the partnership agreement or this chapter, for a period of 1 year ~~thereafter he~~ *after the return, the partner* is liable to the limited partnership for the amount of ~~his~~ *the* contribution returned, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of ~~his~~ *the partner's* contribution in violation of the partnership agreement or this chapter, for a period of 6 years ~~thereafter he~~ *after the return, the partner* is liable to the limited partnership for the amount of the contribution wrongfully returned.

(3) A partner has received a return of ~~his~~ *the partner's* contribution to the extent that a distribution to ~~him~~ *the partner* reduces ~~his~~ *the partner's* share of the fair value of the net assets of the limited partnership below the value, ~~(~~as set forth in the ~~certificate of limited~~ partnership~~)~~ *records required to be kept pursuant to 35-12-508,* of ~~his~~ *the partner's* contributions ~~which~~ *that* have not ~~theretofore~~ been distributed to ~~him~~ *the partner.*"

**Section 29.** Section 35-12-1104, MCA, is amended to read:

"**35-12-1104. Right of assignee to become limited partner.** (1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(a) the assignor gives the assignee that right in accordance with authority described in the ~~certificate of limited~~ partnership *agreement*; or

(b) in the absence of that authority, all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, all the rights and powers and is subject to all the restrictions and liabilities of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner is also liable for the obligations of ~~his~~ *the partner's* assignor to make and return contributions as provided in 35-12-1001 through 35-12-1008, but the assignee is not obligated for liabilities unknown to the assignee at the time ~~he~~ *the assignee* became a limited partner ~~and which could not be ascertained from the certificate of limited partnership~~.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the liability to the limited partnership under 35-12-607 and 35-12-902."

**Section 30.** Section 35-12-1201, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1220 1997

"**35-12-1201. Nonjudicial dissolution.** A limited partnership is dissolved and its affairs must be wound up on the occurrence of the first of the following:

(1) at the time or on the happening of the events specified *in writing* in the ~~certificate of limited~~ partnership *agreement*;

(2) on the unanimous written consent of all partners;

(3) on the happening of an event of withdrawal of a general partner unless at the time there is at least one other general partner and the ~~certificate of limited~~ *written provisions of the* partnership *agreement* permits the business of the limited partnership to be carried on by the remaining general partner and ~~he~~ *the remaining general partner* does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired; or

(4) on entry of a decree of judicial dissolution in accordance with 35-12-1202."

**Section 31.** Section 35-12-1302, MCA, is amended to read:

"**35-12-1302. Registration.** Before transacting business in this state, a foreign limited partnership ~~must~~ *shall* register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state one original and one copy of the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and *the* date of its formation;

(3) ~~the general character of the business it proposes to transact in this state;~~

~~(4)~~ the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

~~(5)~~*(4)* a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if ~~no~~ *an* agent has *not* been appointed pursuant to subsection ~~(4)~~*(3)* or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

~~(6)~~*(5)* the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership; ~~and~~

~~(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses~~

*(6) the name and business address of each general partner; and*

*(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.*"

**Seetion 32.** Section 35-12-1402, MCA, is amended to read:

"35-12-1402. **Proper plaintiff.** In a derivative action, tho plaintiff must he a partner at the time of bringing the action and *must have been a partner* at the time of the transaction of which ~~he~~ *the plaintiff* complains or ~~his~~ *the plaintiff's* status as a partner must have devolved ~~upon him~~ by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction."

**Section 33. Property of nonutility cooperatives.** If Senate Bill No. 125 is passed and approved, then section 3 of Senate Bill No. 125 is amended to read:

"**Section 3. Prosumptions of abandonment.** (1) Except as provided in subsection (6), property is presumed abandoned if it is unclaimed by the apparent owner during tbe time set forth below for the particular property:

(a) traveler's check, 15 years after issuance;

(b) money order, 7 years after issuance;

(c) stock or other equity interest in a business association or financial organization, including a security entitlement under Title 30, chapter 8, 5 years after the earlier of:

(i) the date of the most recent dividend, stock split, or other distribution that was unclaimed by the apparent owner; or

(ii) the date of the second mailing of a statement of account or other notification or communication that was returned as undeliverahle or after the holder discontinued mailings, notifications, or communications to the apparent owner;

(d) debt of a busiuess association or financial organization, other than a bearer bond or an original issue discount bond, 5 years after the date of the most recent interest payment that was unclaimed hy tbe apparent owner;

(e) demand, savings, or time deposit, including a depesit tliat is automatically renewable, 5 years after the earlier of maturity or the date of the last indication by the owner of interest in the property; however, a deposit that is automatically renewable is considered matured for purposes of this section upon its initial date of maturity unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writimg or is evidenced by a memorandum or other record on file with the holder;

(f) money or credits owed to a customer as a result of a retail business transaction, 3 years after the obligation accrued;

(g) gift certificate, 3 years after December 31 of the year in which the certificate was sold, but if redeemable in merchandise only, the amount abandoned is considered to be 60% of the certificate's face value;

(h) amount that is owed by an insurer on a life or endowment insurance policy or an annuity that bas matured or terminated, 3 years after tbe obligation to pay arose or, in tlie case of a policy or annuity payable upon proof of death, 3 years after tlie insured has attained, or would have attained if living, the limiting age under the mortality table on which tbe reserve is based;

(i) proporty distributable by a business association or financial organization in a course of dissolution, 1 year after the property becomes distributable;

(j) property received by a court as proceeds of a class action and not distributed pursuant to tbe judgment, 1 year after the distribution date;

(k) proporty held by a court, government, governmental subdivision, agoncy, or instrumentality, 1 year after the property becomes distributable;

(l) wages or otlier compensation for personal services, 1 year after the coinpensation becomes payable;

(m) depesit or refimd owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable;

(n) property in an individual retirement account, defined benefit plan, or other account or plan tliat is qualified for tax deferral under the income tax laws of the United States, 3 years after the earliest of the date of the distribution or attempted distribution of the property, tlie date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty;

(o) a patronago refund ov/ed to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that is not used by the cooperative for educational purposes, 5 years after the distribution date; ~~and~~

*(p) an unclaimed share in a cooperative that is not used for charitable or civic purposes in the community in which the cooperative is located, 5 years after the distribution date; and*

~~(p)~~*(q)* all other property, 5 years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(2) At the time tbat an interest is presumed abandoned under subsection (1), any otber property right accrued or accruing te the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(3) Property is unclaimed if, for the applicable poriod set forth in subsection (1), the apparent owner has not communicated in writing or hy other means reflected in a contemperaneous record prepared hy or on behalf of the holder with tbe liolder concerning tbe property or the account in which the property is held and has not otherwise indicated an interest in tbe property. A communication with an owner by a person other tlian the holder or its representative who has not in writing identified the property to the owner is not an indication of interest in the property by the owner.

(4) An indication of an owner's interest in property includes:

HeinOnline -- 1997 vol. II 1223 1997

(a) the presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or financial organization or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(b) owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(c) the making of a depesit to or withdrawal from an account in a financial organization; and

(d) the payment of a premium with respect to a property interest in an insurance policy; however, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otberwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) Property is payable or distributable for purposes of [sections 1 through 29] notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment.

(6) The presumption provided in subsection (1) does not apply to:

*(a)* unclaimed patronage refunds of a rural electric or telephone cooperative if the cooperative uses the refunds exclusively for educational purposes; *or*

*(b) unclaimed shares in a nonutility cooperative if the cooperative uses the shares for charitable or civic purposes in the community in which the cooperative is located."*

**Section 34. Codification instruetion.** [Section 1] is intended to be codified as an integral part of Title 35, chapter 1, part 8, and the provisions of Title 35, chapter 1, part 8, apply to [section 1].

Approved April 15, 1997

# CHAPTER NO. 269

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1. Time limits.** The appropriations contained in [section 3] are intended to provide only necessary and ordinary expenditures for the fiscal year ending June 30, 1997. The unspent balance of any appropriation must revert to the fund from which it was appropriated, unless the appropriation is continued by [section 3].

HeinOnline -- 1997 vol. II 1224 1997

**Section 2. Totals not appropriations.** The totals shown in [section 3] are for informational purposes only and are not appropriations.

**Section 3. Appropriations.** The following money is appropriated, subject to the terms and conditions of [sections 1 and 2].

| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| DEPARTMENT OF CORRECTIONS | | | |
| Juvenile Placement | 1997 | $5,328,305 | General Fund |
| Adult Corrections | 1997 | $3,600,000 | General Fund |
| DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION | | | |
| Forestry Program | 1997 | $4,466,090 | General Fund |
| SCHOOL FOR THE DEAF AND THE BLIND | | | |
| Education Program | 1997 | $278,628 | General Fund |
| Student Services Program | 1997 | $60,039 | General Fund |
| DEPARTMENT OF LIVESTOCK | | | |
| Meat Inspection | 1997 | $29,598 | General Fund |
| Meat Inspection | 1997 | $29,599 | Federal Fund |
| DEPARTMENT OF ENVIRONMENTAL QUALITY | | | |
| Remediation Division | 1997 | $900,000 | State Special |
| DEPARTMENT OF REVENUE | | | |
| Property Assessment Division | | | |
| Expert Witnesses | 1997 | $125,000 | General Fund |
| ISD Computer Charges (Property Tax) | 1997 | $66,000 | General Fund |
| ISD Computer Charges (Income Tax) | 1997 | $124,000 | General Fund |
| DEPARTMENT OF MILITARY AFFAIRS | | | |
| Air Guard Satisfaction of Judgment | 1997 | $80,200 | General Fund |

**Seetion 4. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1997

HeinOnline -- 1997 vol. II 1225 1997

# CHAPTER NO. 270

[HB 240]

AN ACT PROHIBITING STATE AGENCIES AND LOCAL GOVERNMENT ENTITIES THAT SET AND COLLECT CHARGES FOR SERVICES FROM MAINTAINING IN A FUND RECEIVING THE CHARGES A CASH BALANCE THAT IS GREATER THAN NECESSARY TO FINANCE THE SERVICES OF THE AGENCY OR ENTITY FOR MORE THAN 2 YEARS; REQUIRING REDUCTION OF CHARGES FOR SERVICES IN CERTAIN INSTANCES; PROVIDING DEFINITIONS AND EXCEPTIONS; REQUIRING REPORTS; AND PROVIDING A DELAYED EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, some state agencies and local government entities set and collect charges for all or part of the cost of some public services; and

WHEREAS, there is a growing concern that some state agencies and local government entities are building large reserves in operating revenue due to the amount of charges for services; and

WHEREAS, governments must be responsible to the people they serve and always be vigilant not to charge or retain more in charges for services than is justified by the operating expenses of the government programs supported by the charges.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Approving authority" means:

(a) in the case of a state agency, the approving authority as defined in 17-7-102;

(b) in the case of a local government entity, the local government entity's governing body.

(2) "Capital project" means the planned and necessary replacement or upgrade of building facilities, infrastructure, or equipment that is budgeted for by a state agency or a local government entity.

(3) (a) "Charge for services" or "charge" means a fee, charge, levy, or other assessment that is established by state agency rule or local government entity ordinance and that is:

(i) charged by the state agency or local government entity to a user of a service provided by the state agency or local government entity;

(ii) charged by the state agency or local government entity in exchange for a license, permit, or other type of grant of authority by the state agency or local government entity; or

(iii) collected exclusively to provide promotional or marketing services to the person on whom the charge is levied and that is not assessed or collected pursuant to Title 15.

HeinOnline -- 1997 vol. II 1226 1997

(b) For the purposes of [section 2(1) or (3)(a) or 4], the term includes a fee, charge, levy, or other assessment established as provided in subsection (3)(a) and a fee, charge, levy, or other assessment established by statute.

(4) "Governing body" means the:

(a) board of county commissioners in the case of a county;

(b) municipal commission in the case of a municipality;

(c) commission in the case of a consolidated government; or

(d) town meeting legislative body in the case of a town.

(5) "Legislative audit division" means the legislative audit division established by 5-13-301.

(6) "Local charge for services fund" or "local fund" means an accounting fund maintained by a local government entity for which the exclusive source of revenue is one or more charges for services or interest or other income on the fund.

(7) "Local government entity" means a county, city, consolidated government, or town.

(8) "Operating plan" means the financial plan used by a state agency or local government entity showing in detail the purposes for which the state agency's or local government entity's operating revenue will be spent in the current fiscal year of the state agency or local government entity and the fund from which the expenditures will be made.

(9) "State agency" means an agency as defined in 17-7-102.

(10) "State charge for services fund" or "state fund" means an account within the special revenue fund established by 17-2-102 for which the exclusive source of revenue is one or more charges for services or interest or other income on the fund.

**Section 2. Limitation on balance in state or local charge for services fund — exceptions — audits.** (1) Except as provided in this section, a state agency that deposits money into a state charge for services fund or a local government entity that deposits money into a local charge for services fund may not maintain a cash balance in the fund greater than twice the annual appropriation for that year or greater than the biennial appropriation from the account for the biennium, which includes that year from the state fund or local fund as shown in the state agency's or local government entity's initial operating plan.

(2) A state agency may maintain more money in a state fund or a local government entity may maintain more money in a local fund than is allowed by subsection (1) if the approving authority for the state agency certifies to the legislative finance committee, established by 5-12-201, or the manager of the service or function of the local government entity using money in a local fund certifies to the governing body of that entity:

(a) the date on which the state fund or local fund balance exceeded the limitation provided in subsection (1);

HeinOnline -- 1997 vol. II 1227 1997

(b) the amount of money by which the state fund or local fund balance exceeded the limitation provided in subsection (1);

(c) the amount of money usually needed in the state fund or local fund for the operation of the service or function of the state agency or local government entity for 1 year, along with supporting facts;

(d) whether the amount of money within the state fund or local fund that is in excess of the limitation provided in subsection (1) is necessary for the operation of the service or function of the state agency or local government entity because of:

(i) an emergency;

(ii) a special or unusual circumstance; or

(iii) a fluctuation in the service, function, or charges for services of the agency or entity; and

(e) the facts and circumstances demonstrating the emergency, unusual circumstance, or fluctuation claimed in subsection (2)(d).

(3) The legislative audit division shall include in financial audits performed by or at the direction of the legislative audit division and an independent auditor shall include in an audit performed by the independent auditor pursuant te Title 2, chapter 7, part 5, a determination of whether money is or has been retained in a state charge for services fund or in a local charge for services fund contrary to the requirements of:

(a) this section; or

(b) [section 3].

(4) Except as otherwise provided in [section 1(3)(b)], this section does not apply to:

(a) a chargo for services made by one state agency to another state agency or by one local government entity to another local government entity;

(b) a state chargo for services fund or a local chargo for services fund used only for replacement of buildings or te pay the costs of other future capital projects;

(c) a fee, charge, tax, levy, or other assessment the amount of which is established by statuto;

(d) fees, charges, and payments established pursuant to the revolving fund programs created by and administered pursuant to Title 75, chapter 5, part 11, and Title 75, chapter 6, part 2; or

(e) charges for services depesited in accordance with law into:

(i) a debt service or bond reserve fund;

(ii) the state general fund;

HeinOnline -- 1997 vol. II 1228 1997

(iii) a county general fund; or

(iv) a city, town, or consolidated government general fund.

**Section 3. Reduction of charge required.** A state agency that maintains a cash balance in a stato charge for services fund or a local government entity that maintains a cash balance in a local charge for services fund contrary to tbe limitation provided in [section 2(1)] for more than 60 days shall, within 120 days after the end of the 60-day peried, reduce the charge for services or, in the case of a state fund or local fund into which two or more charges for service are deposited, reduce one or more chargos for services specified by the state agency or local gevernment entity until the cash balance in the state fund or local fund complies with the limitation in [soction 2(1)].

**Section 4. Reports required.** (1) The approving authority for a state agency shall annually report in writing to the legislative finance committee hy August 1:

(a) each state agency that had a cash balance in a state charge for services fund contrary to the limitation provided in [section 2(1)] during the previous 12 months;

(b) the facts certified for each state agency by the approving authority pursuant to [section 2(2)];

(c) each state agency that has complied with the requirements of [section 3] and the circumstances of the agency's compliance; and

(d) each state agency that bas not complicd with [section 3] and the circumstances of the agency's noncompliance.

(2) The director of the department of commerce shall repert to the legislature at the time and in the manner required hy 5-11-210 a list of each local government entity that bad a balance in a local charge for services fund contrary to the limitation provided by [section 2(1)], that failed to reduce the charge as provided in [section 3], or both, during the previous 12 months.

**Section 5. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to charges for services, as defined in [section 1], collected prior to [the effective date of this act].

**Section 6. Effective date.** [This act] is effective July 1, 1998.

Approved April 16, 1997

# CHAPTER NO. 271

[HB 383]

AN ACT REVISING THE CIVIL PENALTY PROVISIONS OF THE METAL MINE RECLAMATION ACT AND THE OPENCUT MINING ACT; GRANTING DISCRETION TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN INSTITUTING CIVIL PENALTY ACTIONS; PROVIDING CRITERIA FOR EXERCISING THE DEPARTMENT'S CIVIL PENALTY ACTION DISCRETION AND FOR DETERMINING CIVIL PENALTY AMOUNTS;

HeinOnline -- 1997 vol. II 1229 1997

AMENDING SECTIONS 82-4-361 AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 82-4-361, MCA, is amended to read:

**"82-4-361. Violation — penalties — waiver.** (1) (a) ~~Except as provided in subsections (1)(b) and (2), a~~ *The department may assess an administrative* civil penalty of not less than $100 or more than $1,000 for each of the following violations~~,~~ *and* an additional *administrative* civil penalty of not less than $100 or more than $1,000 for each day during which the violation continues~~,~~ and *may bring an action for* an injunction from continuing the violation ~~may be imposed~~ against:

(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is $5,000 for each day of violation.

*(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:*

*(a) the nature, circumstances, extent, and gravity of the violation;*

*(b) the violator's prior history of violations;*

*(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;*

*(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and*

*(e) other matters that justice may require.*

~~(2) (a)~~ *(3)* The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

~~(b) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.~~

~~(3)~~*(4)* The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after notice of the violation. The person or operater, by filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty

HeinOnline -- 1997 vol. II 1230 1997

proposed to he assessed is proper. After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and issue a written decision as to the occurrence of the violation and whether the amount of penalty is warranted. The board shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails te petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department."

**Section 2.** Section 82-4-441, MCA, is amended to read:

"82-4-441. **Penalty — enforcement.** (1) A *The department may assess against a* person who violates any of the provisions of this part, rules adopted under this part, or provisions of a contract for reclamation:

(a) ~~shall pay~~ a civil penalty of not less than $100 or more than $1,000 for the violation; *and*

(b) ~~shall pay~~ an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation~~; and~~

~~(c) may be enjoined from continuing the violation as provided in this section.~~

(2) ~~The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.~~ *The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:*

*(a) the nature, circumstances, extent, and gravity of the violation;*

*(b) the violator's prior history of violations;*

*(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;*

*(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and*

*(e) other matters that justice may require.*

(3) The department shall notify the person or operater of the violation. The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the board sball make findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit

HeinOnline -- 1997 vol. II 1231 1997

the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a contract made pursuant to this part in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located."

**Section 3. Applicability.** [This act] applies to proceedings begun on or after [the effective date of this act].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1997

# CHAPTER NO. 272

[HB 437]

AN ACT REVISING PROVISIONS OF THE METAL MINE RECLAMATION LAW PERTAINING TO SMALL MINERS AND RECREATIONAL MINERS; REVISING THE SMALL MINER DEFINITION; REQUIRING SOIL MATERIALS SALVAGE BY SMALL MINERS WHO ENGAGE IN PLACER OR DREDGE MINING; INCREASING THE MAXIMUM BOND FOR SMALL MINERS; REVISING EXEMPTIONS FOR RECREATIONAL AND HOBBY MINERS; AMENDING SECTIONS 82-4-303, 82-4-305, AND 82-4-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 82-4-303, MCA, is amended to read:

**"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

HeinOnline -- 1997 vol. II 1232 1997

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "Mineral" means any ore, rock, or substance (other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium) that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other suhsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engeged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(12) "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

(13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14) "Reclamation plan" means the oporator's written proposal, as required and approved by the department, for reclamation of the land that will be disturbed. The proposal must include, to the extent practical at the time of application for an operating permit:

HeinOnline -- 1997 vol. II 1233 1997

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas when necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(15) (a) "Small miner" means a person, firm, or corporation that engeges in the business of mining or reprocessing of tailings or waste materials~~,~~ *or, except as provided in 82-4-310, that knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation;* ~~that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate,~~ that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2)~~,~~ *or a permit that meets the criteria of subsection (15)(c);* and that conducts:

(i) an operation that results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two oporations that disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engeged in by the person, firm, or corporation; *and*

(B) at least 1 mile apart at their closest point~~; and~~

~~(C) not operated simultaneously except during seasonal transitional periods, not to exceed 30 days~~.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation~~,~~*:*

*(i)* exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases*; and*

HeinOnline -- 1997 vol. II 1234 1997

*(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.*

*(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.*

*(16) "Soil materials" means earth material found in the upper soil layers that will support plant growth.*

~~(16)~~*(17)* (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(17)~~*(18)* "Underground mining" means all methods of mining other than surface mining.

~~(16)~~*(19)* "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(19)~~*(20)* "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

**Section 2.** Section 82-4-305, MCA, is amended to read:

"**82-4-305. Exemption — small miners — written agreement.** (1) Except as provided in subsections (3) through (9), the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner *shall salvage and protect all soil materials for use in reclamation of that*

HeinOnline -- 1997 vol. II 1235 1997

*site and* shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is an individual, that:

(i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's ~~actual~~ *documented* cost *estimate* of reclaiming the disturbed land, altbough the bond may not exceed ~~$5,000~~ *$10,000* per operation. ~~However,if~~ *If* the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining oporation fails to commence reclamation of the operation witbin 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and

HeinOnline -- 1997 vol. II 1236 1997

diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent will be used or disposed of. *The acreage disturbed by the cyanide ore-processing operation and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(15)(a)(i) and (ii).*

(8) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

HeinOnline -- 1997 vol. II 1237 1997

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds."

**Section 3.** Section 82-4-310, MCA, is amended to read:

**"82-4-310. Exemption — ~~sample collectors~~ *scale and type of activity.*** *(1)* This part ~~shall~~ *does* not ~~be applicable~~ *apply* to ~~any~~ *a* person ~~or persons~~ *engaged in* ~~collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding $100 per year~~ *mining activities if that person does not:*

*(a) use motorized excavating equipment;*

*(b) use blasting agents;*

*(c) disturb more than 100 square feet or 50 cubic yards of material per site;*

*(d) leave unreclaimed sites that are less than 1 mile apart;*

*(e) use a suction dredge with an intake of more than 4 inches in diameter; or*

*(f) operate a suction dredge beyond the area of the stream bed that is naturally under water at the time of operation.*

*(2) This part does not apply to a person who, on land owned or controlled by that person, allows other persons to engage in mining activities if those activities cumulatively meet the requirements of subsection (1)."*

**Section 4. Applicability.** (1) [Section 1(15)] applies to operations conducted after [the effective date of this act].

(2) [Section 2(1)(d)] applies to lands initially disturbed after May 15, 1997.

(3) [Section 2(3)] applies to operations for which a bond was not posted prior to May 15, 1997.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1997

# CHAPTER NO. 273

[HB 529]

AN ACT GENERALLY REVISING THE LAWS THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY ADMINISTERS; AMENDING SECTIONS 75-2-211, 75-20-204, 82-4-205, 82-4-361, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-2-211, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1238 1997

**"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operater notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(6) The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

HeinOnline -- 1997 vol. II 1239 1997

(7) An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (6) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(8) (a) If an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection (7), if the department prepares the environmental impact statement; ~~or~~

(ii) ~~within~~ 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement~~.~~; *or*

*(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.*

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection (7), of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(9) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

HeinOnline -- 1997 vol. II 1240 1997

(10) The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

**Section 2.** Section 75-20-204, MCA, is amended to read:

**"75-20-204. Facilities subject to federal energy regulatory commission jurisdiction.** (1) For a facility that is subject to the jurisdiction of the federal energy regulatory commission, the department shall file a state recommendation with the commission.

(2) A person making application to the federal energy regulatory commission shall file with the department notice of and a copy of the federal application regarding any facility subject to subsection (1). The state recommendation must be based on its study of the federal application and other material gained through intervention in the federal proceeding.

(3) A person subject to the provisions of subsection (2) shall pay a fee to the department ~~pursuant to 85-2-124~~ at the time *that* an application is filed with the federal energy regulatory commission. The fee ~~shall~~ *must* be used by the department to carry out its responsibilities ~~under Title 85, chapter 2, and~~ to develop a state recommendation and participate as a party in any necessary federal proceeding to assert the state recommendation. *The fee may not exceed one-half the amount that could be assessed under 75-20-215.* ~~No~~ *A* fee prescribed by 75-20-215 may *not* be assessed against a person paying a fee under this section.

(4) ~~Any~~ *A* person who fails to file a timely notice of and a copy of the federal application with the department ~~so as to prevent~~, *preventing* the department from timely compliance with this section and with the rules, statutes, or procedures governing the proceedings before the federal energy regulatory commission, is subject to the provisions of 75-20-408."

**Section 3.** Section 82-4-205, MCA, is amended to read:

**"82-4-205. Administration by department.** The department:

(1) shall exercise general supervision, administration, and enforcement of this part and all rules and orders adopted under this part;

(2) shall examine and pass upon all plans and specifications submitted by the operator for the method of operation, subsidence stabilization, water control, backfilling, grading, highwall reduction, and topsoiling and for the reclamation of the area of land affected by the operator's operation;

(3) shall issue orders requiring an operator to adopt the remedial measures necessary to comply with this part and rules adopted under this part;

(4) shall order the suspension of any permit for failure to comply with this part or a rule adopted under this part;

(5) shall issue, after an opportunity for hearing, a final order revoking a permit when the requirements set forth by notice of noncompliance, order of suspension, or order requiring remedial measures have not been complied with according to the terms in the notice or order;

HeinOnline -- 1997 vol. II 1241 1997

(6) shall order the halting of any operation that is started without first having secured a permit as required by this part or order the cessation of operations not in compliance with this part in accordance with 82-4-251;

(7) shall conduct hearings under the provisions of this part or rules adopted by the board;

(8) shall make investigations and inspections necessary to ensure compliance with this part;

(9) may encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to strip mining and to underground mining and reclamation of lands and waters affected by strip mining and underground mining;

~~(10) may adopt rules with respect to the filing of reports, the issuance of permits, monitoring, and other matters of procedure and administration;~~

~~(11)~~*(10)* may conduct hearings under the provisions of this part."

**Section 4.** Section 82-4-361, MCA, is amended to read:

**"82-4-361. Violation — penalties — waiver.** (1) (a) Except as provided in subsections (1)(b) and (2), a civil penalty of not less than $100 or more than $1,000 for each of the following violations, an additional civil penalty of not less than $100 or more than $1,000 for each day during which the violation continues, and an injunction from continuing the violation may be imposed against:

(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is $5,000 for each day of violation.

(2) (a) The department may bring an action for a restraining order or a temperary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

(b) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The hoard shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after notice of the violation. The person or operator, by filing a written request within 20 days of receipt of the notice of propesed penalty, is entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After the hearing or after the time for requesting a hearing has expired, the ~~board~~ *department* shall make findings of

HeinOnline -- 1997 vol. II 1242 1997

fact and issue a written decision as to the occurrence of the violation and whether the amount of penalty is warranted. The ~~board~~ *department* shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department."

**Section 5.** Section 82-4-441, MCA, is amended to read:

"**82-4-441. Penalty — enforcement.** (1) A person who violates any of the provisions of this part, rules adopted under this part, or provisions of a contract for reclamation:

(a) shall pay a civil penalty of not less than $100 or more than $1,000 for the violation;

(b) shall pay an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation; and

(c) may be enjoined from continuing the violation as provided in this section.

(2) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to puhlic health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be imposed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the ~~board~~ *department* shall make findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located.

HeinOnline -- 1997 vol. II 1243 1997

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a contract made pursuant to this part in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located."

**Section 6. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1997

# CHAPTER NO. 274

[HB 556]

AN ACT REVISING THE MEMBERSHIP REQUIREMENTS FOR JOINT OR CONSOLIDATED CITY-COUNTY PLANNING BOARDS; AMENDING SECTION 76-1-112, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-1-112, MCA, is amended to read:

**"76-1-112. Joint or consolidated planning boards.** (1) Any existing city, county, or city-county planning board may form a joint or consolidated planning board with any other existing city, county, or city-county planning board or with any combination of these boards.

(2) The manner of combination ~~shall~~ *must* be by interlocal agreement of the cities, counties, and towns represented on the existing planning boards pursuant to Title 7, chapter 11, part 1.

(3) The interlocal agreement ~~shall~~ *must*:

(a) state the name of the combined board;

(b) specify whether a joint or combined board is formed;

(c) specify the representation, means and manner of appointment, membership duties, and manner of sharing costs of the combined board which may, *subject to subsection (6),* be on any basis agreeable to the governing bodies of the cities, counties, and towns represented on the existing planning boards.

(4) If a consolidated board is formed, the existing city, county, and city-county planning boards ~~shall~~ *must* be dissolved and the consolidated board ~~shall have all of~~ *has* the rights, duties, powers, and obligations of the existing planning boards.

(5) If a joint board is formed, the existing planning boards ~~shall~~ *may* not be dissolved and the joint board ~~shall have such~~ *has the* rights, duties, powers, and obligations ~~as~~ *that* are ~~set forth~~ *contained* in the interlocal agreement.

HeinOnline -- 1997 vol. II 1244 1997

*(6) Membership of any city-county board formed pursuant to this section must have representation consistent with the requirements of part 2 of this chapter."*

**Section 2. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all joint or consolidated city-county planning boards created after July 1, 1985, which are still in existence. [This act] does not affect any action taken by a joint or consolidated planning board prior to the effective date of [this act].

**Section 3. Effective date.** [This act] is effective July 1, 1997.

Approved April 16, 1997

# CHAPTER NO. 275

[SB 63]

AN ACT PROVIDING A FREE FISHING DAY FOR PARTICIPANTS IN APPROVED ANGLER EDUCATIONAL EVENTS AND ACTIVITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking powers to the department of fish, wildlife, and parks to implement fishing license exceptions for approved angler educational events and activities. In approving angler educational events, the department shall give consideration to activities that promote family togetherness. The legislature intends that the rules adopted by the department include:

(1) procedural requirements for applications;

(2) criteria for qualification of the instructors;

(3) a procedure for training volunteers from the private sector to conduct the angler educational events and activities; and

(4) any other procedures and criteria reasonably necessary or desirable to administratively review and approve angler educational events and activities.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Fishing license exeeption for angler educational events and activities.**

(1) A participant in any angler educational event or activity approved by the department may fish without the otherwise required fishing license while participating on the specified body of water during the event.

(2) To be eligible during the 2-year period following [the effective date of this act], an angler educational event or activity must be taught under the guidance of an employee of the department or by an instructor certified by the department as competent to instruct in the laws, techniques, and ethics of angling. At the end of the 2-year period, angler educational events and activities should be conducted as provided in subsection (4).

(3) The department shall adopt rules to implement this section.

HeinOnline -- 1997 vol. II 1245 1997

(4) The department shall develop a statewide network of volunteers to conduct the angler educational events and activities for which fishing license exceptions are provided. Within 2 years of [the effective date of this act], as many angler educational events and activities as possible approved pursuant to this section should be conducted by the volunteer instructors certified as provided in subsection (2).

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 8, and the provisions of Title 87, chapter 2, part 8, apply to [section 1].

**Section 3. Effective date.** [This act] and House Bill No. 289, Chapter 66, Laws of 1997, are effective on passage and approval.

Approved April 16, 1997

## CHAPTER NO. 276

[SB 67]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; INCREASING TO SEVEN MEMBERS THE STATE COMPENSATION INSURANCE FUND BOARD AND AUTHORIZING A LICENSED INSURANCE PRODUCER MEMBER; PROVIDING FOR THE TRANSFER OF $63.8 MILLION TO THE OLD FUND ACCOUNT; TERMINATING THE OLD FUND LIABILITY TAX ON EMPLOYERS, EMPLOYEES, AND SELF-EMPLOYED PERSONS WHEN THE OLD FUND IS ADEQUATELY FUNDED; REMOVING THE LIMITATION ON THE PAYMENT OF DIVIDENDS BY THE NEW FUND; PROVIDING THAT THE AMOUNTS IN EXCESS OF ADEQUATE FUNDING OF THE OLD FUND ARE RETURNED TO THE NEW FUND ACCOUNT AND THAT ANY SHORTFALL IN ADEQUATE FUNDING IS RETURNED TO THE OLD FUND IN AN AMOUNT EQUAL TO THAT RETURNED TO THE NEW FUND; CLARIFYING THE DEFINITION OF "DEPENDENT" FOR FATAL INJURY BENEFICIARY CLAIMS; PROVIDING THAT AN INSURER'S FAILURE TO MEET TIME LIMITATIONS IS NOT AN ACCEPTANCE OF THE CLAIM; PROVIDING THAT A WORKER WHO HAS NOT REACHED MAXIMUM HEALING BUT WHO IS RELEASED BY A TREATING PHYSICIAN AND REFUSES THE OFFER OF EMPLOYMENT IN A MODIFIED OR ALTERNATIVE POSITION AT AN EQUIVALENT OR HIGHER WAGE IS NOT ELIGIBLE FOR TEMPORARY PARTIAL OR TEMPORARY TOTAL DISABILITY BENEFITS; INCREASING ACCESS TO REHABILITATION BENEFITS; PROVIDING FOR FRAUD INVESTIGATION AND PROSECUTION FOR THE UNINSURED EMPLOYERS' FUND BY THE DEPARTMENT OF JUSTICE; DEFINING "TREATING PHYSICIAN" TO INCLUDE THOSE PHYSICIANS LICENSED IN OTHER STATES; INCLUDING PSYCHOLOGISTS AND FUNCTIONAL CAPACITY EVALUATIONS AND PROVIDING FOR EXAMINATIONS BY LICENSED PROVIDERS IN ANOTHER STATE WHEN EXAMINATIONS ARE REQUESTED BY THE INSURER; ADJUSTING THE LIFTING REQUIREMENT FOR LIGHT ACTIVITY FOR PERMANENT PARTIAL DISABILITY BENEFITS; AUTHORIZING THE STATE FUND TO PROVIDE "OTHER STATES" COVERAGE; CLARIFYING THE STATE

HeinOnline -- 1997 vol. II 1246 1997

FUND'S USE OF LICENSED INSURANCE PRODUCERS; REQUIRING THAT THE STATE FUND REPAY $20 MILLION TO THE GENERAL FUND; PROVIDING FOR UP TO ONE-HALF OF THE PRIOR YEAR'S INVESTMENT INCOME FOR ADMINISTRATIVE EXPENDITURES AND FOR REVIEW BY THE LEGISLATIVE FINANCE COMMITTEE; LIMITING THE TIME FOR BRINGING AN ACTION TO RESOLVE A BENEFITS DISPUTE; REQUIRING THE STATE FUND, THE DEPARTMENT OF JUSTICE, AND THE DEPARTMENT OF LABOR AND INDUSTRY TO FILE A JOINT BIENNIAL BUDGET FOR THE WORKERS' COMPENSATION FRAUD OFFICE; PROVIDING FOR TRANSFER OF THE BALANCE IN THE WORKERS' COMPENSATION BOND REPAYMENT ACCOUNT ON JUNE 30, 1997, TO THE STATE FUND; AMENDING SECTIONS 2-15-1019, 2-15-2015, 17-7-502, 33-1-1205, 33-16-1024, 39-71-116, 39-71-318, 39-71-406, 39-71-502, 39-71-605, 39-71-606, 39-71-703, 39-71-712, 39-71-1006, 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2322, 39-71-2327, 39-71-2351, 39-71-2352, 39-71-2363, 39-71-2501, 39-71-2503, 39-71-2505, AND 39-71-2905, MCA; REPEALING SECTIONS 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2502, 39-71-2503, 39-71-2504, AND 39-71-2506, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND TERMINATION DATES.

WHEREAS, it is the intent of the state compensation insurance fund to assist all Montanans by reducing the unfunded liability of the old fund, torminating the old fund liability tax when the old fund is adequately funded, which is currently estimated to occur as early as June 30, 1999, providing for the payment of dividends to policyholders, and maintaining a viable state compensation insurance fund; and

WHEREAS, there was an unfunded liability of $355 million as of June 30, 1996, for claims for workers' compensation injuries occurring before July 1, 1990, in the old fund, which included $129 million in outstanding bond debt; and

WHEREAS, the old fund is funded with the old fund liability tax paid by employers, employees, and self-employed persons, generating as much as $50 million each year; and

WHEREAS, the surplus of $231 in the new fund as of June 30, 1996, allowed the Board of Directors of the State Fund to declare a dividend of up to $109 million to retire the outstanding bond debt in the old fund; and

WHEREAS, the unfunded liability in the old fund will be an estimated $200 million deficit by June 30, 1997, and the surplus or the excess of assets above the reserves that are set aside to meet the claim liability in the new fund will be an estimated $127 million by June 30, 1997; and

WHEREAS, current state law requires the State Fund to use dividends to he applied first to old fund outstanding liability rather than paying dividends directly to pelicyholders, the State Fund shall, no later than June 30, 1998, transfer $63.8 million to the old fund account to pay old fund claims to allow direct payment of dividends to pelicybolders; and

WHEREAS, the $20 million appropriation received by the Stato Fund from the general fund during the June 1989 Special Session partially addressed the unfunded liability issue existing at that time in the old fund and canceled a planned 22% rate increase; and

HeinOnline -- 1997 vol. II 1247 1997

WHEREAS, the State Fund now agrees to repay the $20 million appropriation to the general fund by June 30, 1999, in lieu of transferring additional funds to the old fund account to provide the general fund with additional revenue and to remove any perception that the State Fund remains a hurden on the general fund; and

WHEREAS, hecause decreases in premium rates totaled 35% in fiscal years 1996 and 1997 and legislative changes in henefit levels have resulted in the return of private carriers, the 15% limitation on administration expenses as a percent of the prior year's premium will significantly impact the State Fund's ahility to provide service to policyholders and their injured workers; and

WHEREAS, the State Fund seeks to improve the level of services provided to customers without increasing existing State Fund staffing levels by working with private sector-licensed insurance producers; and

WHEREAS, in response to *Haag v. Montana Schools Group Insurance Authority*, 274 M 109, 906 P.2d 693 (1995), in which the Montana Supreme Court ruled that an insurer's failure to comply with the time limitations for accepting or denying a workers' compensation claim constituted acceptance of the claim, current law needs to be clarified to provide that the failure to comply with the time limitations does not constitute acceptance of the claim.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-1019, MCA, is amended to read:

**"2-15-1019. Board of directors of ~~the~~ state compensation insurance fund.** (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the hoard may employ its own staff.

(3) Tlie board may provide for its own office space and the office space of the state fund.

(4) The hoard consists of ~~five~~ *scven* members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least ~~three~~ *four* of the ~~five~~ *seven* members ~~shall~~ *must* represent state fund policyholders and may be employees of state fund policyholders. At least ~~three~~ *four* members of the board shall represent private, for-profit enterprises. *One of the seven members may be a licensed insurance producer.* A member of the board may not:

(a) *except for the licensed insurance producer member,* represent or be an employee of an insurance company tliat is licensed to transact workers' componsation insurance under componsation plan No. 2; or

(b) be an employee of a self-insured employer under componsation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more tlian two 4-year terms. A member shall hold office until a successor is appointed and qualified.

HeinOnline -- 1997 vol. II 1248 1997

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply."

**Section 2.** Section 2-15-2015, MCA, is amended to read:

"**2-15-2015. Workers' compensation fraud office.** There is a workers' compensation fraud investigation and prosecution office in the department of justice. The office shall investigate and prosecute cases referred by the state compensation insurance fund *or the department of labor and industry on behalf of the uninsured employers' fund*. The office is under the supervision and control of the attorney general and consists of:

(1) ~~four persons~~ *one or more investigators* qualified by education, training, experience, and high professional competence in investigative procedures who shall investigate violations of the provisions of Title 39, chapters 71 and 72, at the request of the state compensation insurance fund *or the department of labor and industry on behalf of the uninsured employers' fund*; and

(2) ~~one person~~ *one or more attorneys* licensed to practice law in Montana who shall prosecute violations of the provisions of Title 39, chapters 71 and 72. The ~~attorney~~ *attorneys* may also assist county attorneys in prosecuting violations of Title 39, chapters 71 and 72, without charge to the county.

*(3) The state compensation insurance fund, the department of labor and industry, and the department of justice shall submit to the legislature for approval one proposed biennial budget for the workers' compensation fraud office. The proposed budget for staffing and related expenses must be based upon the needs of the state compensation insurance fund and the department of labor and industry on behalf of the uninsured employers' fund for investigating and prosecuting workers' compensation fraud.*"

**Section 3.** Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513;

HeinOnline -- 1997 vol. II 1249 1997

19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; ~~39-71-2504;~~ 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the honds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 4.** Section 33-1-1205, MCA, is amended to read:

"**33-1-1205. Duties of authorized insurers, adjusters, administrators, consultants, and producers — *notice exception*.** (1) Each insurer, independent adjuster, independent administrator, independent consultant, and independent producer shall cooperate fully with the commissioner with respect to the provisions of this part.

(2) ~~An~~ *Except as provided in subsection (4), an* insurer, an officer, employee, or producer of the insurer, an independent adjuster, an independent administrator, an independent consultant, or an independent producer who has reason to believe that an insurance fraud has been or is being committed sball provide notice of the alleged insurance fraud to the commissioner within 60 days.

(3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud has been committed in connection with an insurance claim, application, or policy tolls any applicable time period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding unfair claims settlement practices.

*(4) Notice of an alleged insurance fraud involving an insurance claim or application submitted to the state compensation insurance fund or a policy issued by the state compensation insurance fund must be made within 60 days to the fraud detection and prevention unit established pursuant to 39-71-211.*"

**Section 5.** Section 33-16-1024, MCA, is amended to read:

"**33-16-1024. Plan No. 3 membership in licensed workers' compensation advisory organization — reporting requirements.** (1) The plan No. 3 insurer under Title 39, chapter 71, part 23, is required to be a member of a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4.

HeinOnline -- 1997 vol. II 1250 1997

(2) If the plan No. 3 insurer is not a member of the workers' compensation advisory organization designated under 33-16-1023, then, subject to the deviations from the uniform statistical plan, uniform classification system, and uniform experience rating plan that may be approved by the board of directors of the plan No. 3 insurer as provided in 39-71-2316~~(5)~~, the insurer shall:

(a) record and report its workers' componsation experience to the designated advisory organization as required in the uniform statistical plan of the designated workers' compensation advisory organization approved by the commissioner, tbe uniform classification system, and the uniform experience rating plan that have been filed by the designated advisory organization with and approved by the commissioner; and

(b) use the forms and adhere to the rules that the designated advisory organization develops and files with the commissioner under 33-16-1023."

**Section 6.** Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

~~(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:~~

~~(a) investigation, review, and settlement of claims;~~

~~(b) payment of benefits;~~

~~(c) setting of reserves;~~

~~(d) furnishing of services and facilities; and~~

~~(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.~~

*(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:*

*(a) investigation, review, and settlement of claims;*

*(b) payment of benefits;*

*(c) setting of reserves;*

*(d) furnishing of services and facilities; and*

*(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.*

~~(3)~~*(3)* "Aid or sustenance" means any public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

~~(4)~~*(4)* "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

~~(5)~~*(5)* "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, *as defined in 26 U.S.C. 152,* upon the decedent for support at the time of injury;

(e) a parent who is dependent, *as defined in 26 U.S.C. 152,* upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, *as defined in 26 U.S.C. 152,* upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

~~(6)~~*(6)* "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

~~(7)~~*(7)* "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(8)~~*(8)* "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(9)~~*(9)* "Days" means calendar days, unless otherwise specified.

~~(10)~~*(10)* "Department" means the department of labor and industry.

~~(11)~~*(11)* "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(12)~~*(12)* "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

HeinOnline -- 1997 vol. II 1252 1997

~~(13)~~*(13)* "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(14)~~*(14)* "Invalid" means one who is physically or mentally incapacitated.

~~(15)~~*(15)* "Limited liability company" is as defined in 35-8-102.

~~(15)~~*(16)* "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(17)~~*(17)* "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(13)~~*(18)* "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(19)~~*(19)* "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(20)~~*(20)* "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(21)~~*(21)* "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must he adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(22)~~*(22)* "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability te work; and

(c) has an actual wage loss as a result of the injury.

~~(23)~~*(23)* "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

HeinOnline -- 1997 vol. II 1253 1997

~~(24)~~*(24)* The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

~~(25)~~*(25)* "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(25)~~*(26)* "Public corporation" means the state or any county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

~~(27)~~*(27)* "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(28)~~*(28)* "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

~~(29)~~*(29)* (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection ~~(29)~~ *(29)*, "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

~~(30)~~*(30)* "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

~~(31)~~*(31)* "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(32)~~*(32)* "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

HeinOnline -- 1997 vol. II 1254 1997

~~(33)~~*(33)* "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

~~(34)~~*(34)* "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(33)~~*(35)* "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection ~~(35)(a)~~ *(35)(a)*, in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; ~~or~~

(e) a dentist licensed by the state of Montana under Title 37, chapter 4*; or*

*(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (35)(a) through (35)(e) who is licensed or certified in another state.*

~~(36)~~*(36)* "Year", unless otherwise specified, means calendar year."

**Section 7.** Section 39-71-318, MCA, is amended to read:

**"39-71-318. Hearings — rules of evidence — conduct —*filing limits* — exception.** (1) The statutory and common-law rules of evidence do not apply to a hearing before the department under this chapter. *A petition for a hearing before the department must be filed within 2 years after benefits are denied.*

(2) Except for a hearing before the workers' compensation court, a hearing under this chapter may be conducted by telephone or by videoconference."

**Section 8.** Section 39-71-406, MCA, is amended to read:

**"39-71-406. Deduction from wages of any part of premium a misdemeanor.** It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of the employer's workers, and the making or attempt to make any ~~such~~ *premium* deduction is a misdemeanor. ~~The workers' compensation old fund liability tax under 39-71-2503 is not a premium for the purpose of this section.~~"

**Section 9.** Section 39-71-502, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1255 1997

**"39-71-502. Creation and purpose of uninsured employers' fund.** *(1)* There is created an uninsured employers' fund. The purpose of the fund is to pay:

*(a)* to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in 39-71-503(2); *and*

*(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015.*

*(2) The department may refer to the workers' compensation fraud office established in 2-15-2015 cases involving:*

*(a) false or fraudulent claims for benefits; or*

*(b) criminal violations of 45-7-501."*

**Section 10.** Section 39-71-605, MCA, is amended to read:

**"39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost.** (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, *psychologist,* or panel ~~of physicians, who~~ *that* must be provided and paid for by the insurer, and shall likewise submit to examination from time to time by any physician, *psychologist,* or panel ~~of physicians~~ selected by the department *or as ordered by the workers' compensation judge.*

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. *An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section.* The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, *psychologist,* or panel ~~of physicians~~ employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department *or the workers' compensation judge,* at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, *psychologist,* or panel ~~of physicians~~ within the state or elsewhere ~~who have~~ *that has* had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, *psychologist,* or panel ~~of physicians~~ making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, *psychologist,* or panel ~~of physicians~~ for the examination.

HeinOnline -- 1997 vol. II 1256 1997

*(3) As used in this section, a panel includes a treating physician, as defined in 39-71-116, and may include a psychologist.*

*(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical therapist.*

~~(3)~~*(5)* This section does not apply to impairment evaluations provided for in 39-71-711."

**Section 11.** Section 39-71-606, MCA, is amended to read:

**"39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of benefits and entitlements to claimants — notice of denial — notice of reopening — notice to employer.** (1) ~~Every~~ *Each* insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation *signed by the claimant or the claimant's representative*, either accept or deny the claim~~,~~ and, if denied, shall inform the claimant and the department in writing of ~~such~~ *the* denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

(4) Upon the request of an employer *that* it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

*(5) Failure of an insurer to comply with the time limitations required in this section does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-608 or this section may be assessed a penalty under 39-71-2907 if a claim is determined to be compensable by the workers' compensation court."*

**Section 12.** Section 39-71-703, MCA, is amended to read:

**"39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is established by objective medical findings; and

(ii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

HeinOnline -- 1997 vol. II 1257 1997

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligihle for an impairment award only.

(3) The permanent partial disabiliity award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (4) by 350 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to he used in subsection (3) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if tlie claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or wlio has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of ~~more than $2~~ *more than $2* an liour as a result of tlie industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages tbat tlie worker eərns or is qualified to earn after tlie worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury tlie worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of tlie injury and after tlie injury the worker can perform only light or sedentary labor activity, 2%.

(6) Tlie weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at tlie time of injury, but the rate may not exceed one-lialf the state's average weekly wage. The weekly benefit amount established for an injured worker may not be clianged by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a reliabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages tliat tlie worker earns or would be qualified to earn following the completion of the reliabilitation plan.

(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 peunds frequently;

HeinOnline -- 1997 vol. II 1258 1997

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to ~~25~~ *20* pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

**Section 13.** Section 39-71-712, MCA, is amended to read:

**"39-71-712. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend the period of temporary partial disability payments.

(4) *A worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:*

*(a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;*

*(b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an equivalent or higher wage than the worker received at the time of injury; and*

*(c) the worker refuses to accept the modified or alternative position.* A worker requalifies for temporary total disability benefits if the modified *or alternative* position is no longer available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

(5) Temporary partial disability may not be credited against any permanent partial disability award or settlement under 39-71-703."

**Section 14.** Section 39-71-1006, MCA, is amended to read:

**"39-71-1006. Rehabilitation benefits.** (1) A ~~disabled~~ worker ~~as defined in 39-71-1011~~ is eligible for rehabilitation benefits if:

(a) *(i)* the worker ~~has an actual wage loss~~ *meets the definition of a disabled worker as provided in 39-71-1011; or*

HeinOnline -- 1997 vol. II 1259 1997

*(ii) the worker has, as a result of the work-related injury, a whole person impairment rating of 15% or greater* ~~as a result of the injury~~, *as established by objective medical findings, and has no actual wage loss*;

(b) a rehabilitation provider, as designated by the insurer, certifies that the injured worker has reasonable vocational goals and *reasonable* reemployment opportunity ~~and~~. *If eligible because of an impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss, the worker* will have a reasonable reduction in the worker's actual wage loss with rehabilitation~~; and~~.

(c) a rehabilitation plan agreed upon by the injured worker and the insurer is filed with the department. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning and completion date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of public health and human services to use the funds.

(2) After filing the rehabilitation plan with the department, the disabled worker is entitled to receive biweekly compensation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

(3) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.

(4) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker until the rehabilitation plan is completed.

(5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

(6) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

**Section 15.** Section 39-71-2316, MCA, is amended to read:

**"39-71-2316. Powers of state fund —** ***payment to account for claims for injuries resulting from accidents occurring before July 1, 1990.*** *(1)* For the purposes of carrying out its functions, the state fund may:

~~(1)~~*(a)* insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

~~(2)~~*(b)* sue and be sued;

~~(3)~~*(c)* except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

~~(4)~~*(d)* collect and disburse money received;

~~(5)~~*(e)* adopt classifications and charge premiums for the classifications so that the state fund will be neitber more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and nıay use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, cbapter 16, part 10, a workers' compensation advisory organization or a licensed workers' conıponsation rating organization under Title 33, chapter 16, part 4, or otber person nıay not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

~~(6)~~*(f)* pay tbe amounts determined due under a policy of insurance issued by the state fund;

~~(7)~~*(g)* hire persounel;

~~(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.~~

*(h) upon approval of the board, contract with licensed resident insurance producers;*

*(i) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;*

~~(9)~~*(j)* perform all functions and exercise all powers of a private insurance carrier tbat are necessary, appropriate, or convenient for the administration of the state fund.

*(2) The state fund shall, no later than June 30, 1998, transfer $63.8 million to the account created in 39-71-2321 to pay claims for injuries resulting from accidents that occurred before July 1, 1990."*

HeinOnline -- 1997 vol. II 1261 1997

**Section 16.** Section 39-71-2316, MCA, is amended to read:

**"39-71-2316. Powers of state fund.** For the purposes of carrying out its functions, the state fund may:

~~(1)~~*(1)* insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

~~(2)~~*(2)* sue and be sued;

~~(3)~~*(3)* except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

~~(4)~~*(4)* collect and disburse money received;

~~(5)~~*(5)* adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have heen adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

~~(3)~~*(6)* pay the amounts determined due under a policy of insurance issued by the state fund;

~~(7)~~*(7)* hire personnel;

~~(8)~~*(8)* declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. ~~If these reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.~~

*(9) upon approval of the board, contract with licensed resident insurance producers;*

HeinOnline -- 1997 vol. II 1262 1997

*(10) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;*

~~(9)~~*(11)* perform all functions and exercise all pewers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund."

**Section 17.** Section 39-71-2320, MCA, is amended te read:

"**39-71-2320. ~~(Temporary)~~ Property of state fund — investment required — *exception*.** ~~All~~ *(1) Except as provided in subsection (2), all* premiums and other money paid to the state fund, all property and securities acquired through the use of money helonging to the state fund, and all interest and dividends earned upon money belonging te the state fund are the sole property of the state fund and must be used exclusively for the oporations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

*(2) The state fund shall pay to the general fund:*

*(a) $10 million in the fiscal year ending June 30, 1998; and*

*(b) $10 million in the fiscal year ending June 30, 1999.*

~~39-71-2320. (Effective July 1, 1997, on occurrence of contingency) Property of state fund — investment required — exception for common stock. (1) All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808. Except as provided in subsection (2), state fund money may be invested in common stocks of any corporation.~~

~~(2) State fund money may be invested in common stocks of a corporation if the investment does not cause the book value of state fund common stock investments to exceed 15% of the book value of the state fund total invested assets or does not cause the book value of common stock investments in one corporation to exceed 2% of the book value of the state fund total invested assets on the date of purchase. (Effective on approval by electorate of House Bill No. 463 — sec. 5, Ch. 424, L. 1995.)~~"

**Section 18.** Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in state fund.** (1) ~~(a)~~ All premiums, penalties, recoveries by subrogation, interest earned upon money belonging te the state fund, ~~and~~ securities acquired by or through use of money, *taxes collected under 39-71-2503 and 39-71-2505, and the interest and penalties on the taxes in accordance with 15-1-501* must be deposited in the state fund. ~~They must be separated into two accounts based upon whether they relate.~~ *They must be*

HeinOnline -- 1997 vol. II 1263 1997

*separated into two accounts based upon whether they relate* to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

~~(b)~~*(2)* All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

~~(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990.~~

*(3) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."*

**Section 19.** Section 39-71-2321, MCA, is amended to read:

**"39-71-2321. What to be deposited in state fund.** (1) ~~(a)~~ All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money, *taxes collected under 39-71-2503 and 39-71-2505, and the interest and penalties on the taxes in accordance with 15-1-501* must be deposited in the state fund. ~~They must be separated into two accounts based upon whether they relate.~~ *They must be separated into two accounts based upon whether they relate* to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

~~(b)~~*(2)* All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

~~(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990.~~"

**Section 20.** Section 39-71-2322, MCA, is amended to read:

**"39-71-2322. Money in state fund held in trust — disposition of funds upon repeal of chapter — *exception*.** ~~The~~ *Except as provided in 39-71-2320, the* money coming into the state fund must be held in trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being ~~had~~ *given* to obligations of compensation incurred and existing."

**Section 21.** Section 39-71-2327, MCA, is amended to read:

**"39-71-2327. Earnings of state fund to be credited to fund — improper use a felony — *exception*.** ~~All~~ *Except as provided in 39-71-2320, all* earnings made by the state fund by reason of interest paid for the deposit ~~thereof~~ *of funds* or otherwise must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both."

HeinOnline -- 1997 vol. II 1264 1997

**Section 22.** Section 39-71-2351, MCA, is amended to read:

**"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

~~(a)~~ separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

~~(b) create an old fund liability tax provided for in 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.~~

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

**Section 23.** Section 39-71-2352, MCA, is amended to read:

**"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in ~~39-71-2316 and~~ 39-71-2354, premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

HeinOnline -- 1997 vol. II 1265 1997

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

**Section 24.** Section 39-71-2352, MCA, is amended to read:

**"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred ~~before July 1, 1990, and~~ *before July 1, 1990, and* on or after July 1, 1990 ~~—spending limit —~~ *spending limit.*** (1) ~~Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316 and 39-71-2354, premiums~~ *Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums* paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that ~~occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that~~ *occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that* occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that ~~occurred before July 1, 1990, and claims for injuries resulting from accidents that~~ *occurred before July 1, 1990, and claims for injuries resulting from accidents that* occur on or after July 1, 1990, separately from the sources provided by law.

(3) ~~The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990~~ *The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.*"

**Section 25.** Section 39-71-2363, MCA, is amended to read:

**"39-71-2363. Agency law — submission of budget — annual report.** (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

HeinOnline -- 1997 vol. II 1266 1997

(2) ~~The~~ *(a) Except as provided in 2-15-2015, the* executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year. A copy of the approved budget must be delivered to the governor and the legislature.

*(b) The board may approve administrative expenditures in excess of 15% of the earned annual premium of the prior fiscal year, but the excess amount approved may not exceed one-half of the investment income earned in the prior fiscal year.*

*(c) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.*

*(d) Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.*

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary."

**Section 26.** Section 39-71-2501, MCA, is amended to read:

"**39-71-2501. Definitions.** As used in this part, the following definitions apply:

~~(1) "Account" means the workers' compensation bond repayment account established in 39-71-2504.~~

~~(2)~~*(1)* "Department" means the department of revenue provided for in 2-15-1301.

~~(2)~~*(2)* "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

~~(4)~~*(3)* (a) "Employer" means, except as provided in subsection ~~(4)(b)~~ *(3)(b)*, the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person who has control of the payment of wages.

~~(5)~~*(4)* "Federal workers' compensation legislation" means federal legislation that provides an employee with compensation or remuneration for accidental injury or death. This legislation includes but is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base Act.

HeinOnline -- 1997 vol. II 1267 1997

~~(6)~~*(5)* "Ongoing activities" means obligations or occurrences that are continuous, rather than intermittent or occasional, that exist for a definite period of time during the year, or that are intended to cover or apply to successive and similar obligations or occurrences.

~~(7)~~*(6)* "Publicly traded limited partnership" means a business entity that issues shares or similar ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders on a public exchange recognized by the securities exchange commission.

~~(8)~~*(7)* "State fund" means the state compensation insurance fund.

~~(9)~~*(8)* "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~(10)~~*(9)* "Wages" means all remuneration for services performed in the state of Montana by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection ~~(10)(a)~~ *(9)(a)*, an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection ~~(10)(a)(i)~~ *(9)(a)(i)*, by the employer in the performance of service during the preceding calendar quarter.

(b) for services not in the course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;

(d) as payments from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002, to a qualified individual employee;

(e) as wages or compensation, the taxation of which is prohibited by federal law;

(f) as wages or compensation for services performed by Montana residents outside the borders of the state of Montana."

HeinOnline -- 1997 vol. II 1268 1997

**Section 27.** Section 39-71-2503, MCA, is amended to read:

**"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer, except an employer whose employees are covered by federal workers' compensation legislation, a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

(i) for the preceding payroll period for employers subject to the payment schedule contained in 15-30-204(1);

(ii) for the preceding month for employers subject to the payment schedule contained in 15-30-204(2); and

(iii) for the preceding year for employers subject to the payment schedule contained in 15-30-204(3)(a).

(b) There is imposed on each employee, except an employee who is covered by federal workers' compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages. An employer paying wages for services performed in Montana shall deduct and withhold the tax from the wages.

(c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager derived from ongoing activities.

(ii) The tax imposed in this subsection *(1)*(c) applies only to the ordinary income of a shareholder, partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

(iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this subsection *(1)*(c).

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who owns stock in a closely held corporation that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

~~(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment~~

HeinOnline -- 1997 vol. II 1269 1997

~~account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.~~

*(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990.*

~~(g)~~*(g)* Each employer shall maintain the records that the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

~~(h)~~*(h)* An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

~~(i)~~*(i)* The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the old fund liability tax required by this section.

~~(j)~~*(j)* A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as ~~received in the account~~ *provided for in 39-71-2321*. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the account provided for in ~~39-71-2504~~ *39-71-2321*.

(b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the ~~account~~ *account as* provided ~~for~~ in ~~39-71-2504~~ *39-71-2321*.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry for the purpose of investigation and prevention of

HeinOnline -- 1997 vol. II 1270 1997

noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. The department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration ef the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to tbe tax, te employers, to employees, to sole proprieters, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liahility companies, and to the department."

**Section 28.** Section 39-71-2505, MCA, is amended to read:

**"39-71-2505. Payment ~~of unfunded~~ *of unfunded* liability for injuries resulting from accidents occurring before July 1, 1990.** ~~(1) The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year.~~

~~(2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.~~ *(1) The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claime for the ensuing year.*

*(2) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the*

*cost of administering and paying claims for the injuries provided for in subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.*

~~(b) (i)~~*(3)* There is imposed on each employer a workers' compensation old fund liahility tax as provided in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll in the preceding calendar quarter.

~~(ii)~~*(4)* The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the preceding calendar quarter.

~~(iii)~~*(5)* ~~The~~ *Except as provided in subsection (7)(e), the* old fund liability tax is an amount equal to 0.2% on tho profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation shareholder, partner of a partnership, or memher or manager of a limited liability company.

~~(iv)~~*(6)* The rate of the employer old fund liability tax determined by this section includes the 0.28% employer old fund liability tax provided for in 39-71-2503.

~~(v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007.~~

*(7) (a) The old fund liability tax imposed under 39-71-2503 and 39-71-2505 terminates on either January 1 or July 1 of the year in which claims for injuries resulting from accidents that occurred before July 1, 1990, are projected to be adequately funded.*

*(b) As used in this part, "adequately funded" means the present value of:*

*(i) the total cost of future benefits remaining to be paid;*

*(ii) the cost of administering the claims; and*

*(iii) an additional amount equal to 10% of the total of the amounts in subsections (7)(b)(i) and (7)(b)(ii).*

*(c) Each fiscal year until the old fund liability tax terminates, the independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability, as of the following June 30, for claims for injuries resulting from accidents that occurred before July 1, 1990.*

*(d) The old fund liability tax terminates on January 1 if, by October 15 of the prior year, the budget director certifies to the department that, based upon the independent actuary's selected best estimate ultimate projections and as approved by the state fund board of directors, claims for injuries resulting from accidents that occurred before July 1, 1990, will be adequately funded as of January 1.*

*(e) The old fund liability tax terminates on July 1 if, by February 28 of the year the budget director certifies to the department that, based upon the*

*independent actuary's selected best estimate ultimate projections and, as approved by the state fund board of directors, claims for injuries resulting from accidents that occurred before July 1, 1990, will be adequately funded as of July 1.*

*(f) If the old fund liability tax terminates on July 1, the amount of tax imposed under subsection (5) is an amount equal to 0.1% for the full calendar year.*

*(g) In determining whether claims for injuries resulting from accidents that occurred before July 1, 1990, are adequately funded, the estimated future amounts of old fund liability tax must be included.*

*(h) By October 1 of each year following the first full fiscal year after termination of the old fund liability tax, any funds in excess of the adequate funding amount established in subsection (7)(b) must be returned to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred after July 1, 1990. Under this section, the total amount of funds returned to the account may not exceed $63.8 million.*

*(i) If, in any fiscal year after the old fund liability tax is terminated and claims for injuries resulting from accidents that occurred after July 1, 1990, are not adequately funded, any amount returned to the account in 39-71-2321 to pay claims for injuries resulting from accidents that occurred after July 1, 1990, pursuant to subsection (7)(h) must be transferred back to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred before July 1, 1990.*

*(j) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid.*

~~(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.~~

~~(vi)~~*(8)* The old fund liability tax described in this section must be collected and deposited as provided in *39-71-2321 and* 39-71-2503 ~~and 39-71-2504~~.

~~(3) If in any January the cumulative projected amount to be borrowed by the state fund from reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1, 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, not including any outstanding bonds as of May 13, 1993, exceeds $80 million for the following fiscal year, the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance for the current fiscal year exceeds $25 million, the tax rate on the persons subject to the old fund liability tax must be reduced by 0.05% from the current tax rate for the following fiscal year.~~

~~(4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.~~

~~(5) The budget director shall certify the cash flow projections of the state fund required by this section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected pursuant to this section.~~"

**Section 29.** Section 39-71-2905, MCA, is amended to read:

"**39-71-2905. Petition to workers' compensation judge — *time limit on filing.*** *(1)* A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71.

*(2) A petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied.*"

**Section 30. Transfer of funds.** The balance remaining in the workers' compensation bond repayment account on June 30, 1997, must be deposited in the state fund as provided in 39-71-2321.

**Section 31. Repealer.** (1) Section 39-71-2504, MCA, is repealed.

(2) Sections 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2502, 39-71-2503, and 39-71-2506, MCA, are repealed.

**Section 32. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 33. Retroactive applicability.** (1) [Sections 6(35)(f) and 10] apply retroactively, within the meaning of 1-2-109, to claims for injuries occurring prior to [the effective date of sections 6(35)(f) and 10].

(2) [Section 11] applies retroactively, within the meaning of 1-2-109, to claims filed on or after March 27, 1973.

**Section 34. Effective dates — applicability.** (1) [Sections 1 through 5, 6(1) through 6(34) and 6(36), 9, 15, 17, 18, 20, 21, 23, 25 through 28, 30, and 31(1)] are effective July 1, 1997.

HeinOnline -- 1997 vol. II 1274 1997

(2) [Sections 7, 12 through 14 and 29] are effective July 1, 1997, and apply to claims for injuries occurring on or after [the effective dates of sections 7, 12 through 14 and 29].

(3) [Sections 8, 19, 22, 24, and 31(2)] are effective on the date that the hudget director certifies that the old fund liability tax is terminated pursuant to [section 28].

(4) [ Section 16 ] is effective July 1, 1998.

(5) [Sections 6(35), 10, 11, 32, 33, 35, and this section] are effective on passage and approval.

**Section 35. Termination.** (1) [Sections 18 and 23] terminate on the date that the old fund liability tax is terminated pursuant to [section 28].

(2) [Section 15] terminates June 30, 1998.

Approved April 16, 1997

# CHAPTER NO. 277

[SB 133]

AN ACT CONTINUING THE AUTHORITY FOR THE TAX LEVY FOR THE SUPPORT OF THE MONTANA UNIVERSITY SYSTEM FOR 10 YEARS; PROVIDING THAT THE PROPOSED AUTHORITY BE SUBMITTED TO THE ELECTORS OF MONTANA; AMENDING SECTION 20-25-423, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-25-423, MCA, is amended to read:

**"20-25-423. State tax levy — support of public education institutions.** The legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year ~~1989~~ *1999*. All revenue from this property tax levy ~~shall~~ *must* be appropriated for the support, maintenance, and improvement of the Montana university system."

**Section 2. Snbmission to electorate.** The question of whether section 1 will become effective sball be submitted to the qualified electors of Montana at the general election to be held in November 1998 by printing on the ballot the full title of this act and the following:

☐ FOR giving the legislature authority to levy up to 6 mills for the suppert of the Montana university system.

☐ AGAINST giving the legislature authority to levy up to 6 mills for the support of the Montana university system.

**Section 3. Effective dates.** (1) Section 2 and this section are effective on passage and approval.

HeinOnline -- 1997 vol. II 1275 1997

(2) If approved by the electorate, section 1 is effective January 1, 1999.

Approved April 16, 1997

# CHAPTER NO. 278

[SB 229]

AN ACT ALLOWING CERTAIN COUNSELORS TO TAKE AN EXAMINATION FOR LICENSURE AS LICENSED PROFESSIONAL COUNSELORS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Opportunity for examination allowed for eertain counselors — licensure — definition.** (1) Notwitbstanding the requirements of 37-23-202(1), an individual meeting the requirements of this subsection (1) may take the examination provided for in subsection (2) if the individual:

(a) holds a master's degree from a master's-level program primarily related to counseling;

(b) has gained at least 5,000 hours of counseling practice after award of the master's degree required by subsection (1)(a); and

(c) has been given clinical privileges as a recognized provider of psychotherapy or related services at a community mental health center by the center pursuant te a contract with the mental and addictive disorders division of the department of public bealtb and human services.

(2) An individual fulfilling tbe requiremonts of subsection (1) must, upon application to the board of social work examiners and professional counselors before [14 days after the effective date of this act], be given the opportunity to take tbe national board of certified counselors examination used by the board of social work examiners and professional counselors to determine fitness for licensure under Title 37, chapter 23.

(3) Upon passage of the national board of certified counselors examination taken pursuant to subsection (2) and upon payment of the appropriate fee required by 37-23-206, the board of social work examiners and professional counselors shall issue a license to the individual to practice as a licensed professional counselor exclusively in a community mental health center and in accordance with Title 37, chapter 23.

(4) Licenses issued pursuant to subsection (3) are subject to Title 37, chapter 23.

(5) For tlie purposes of this section, "community mental bealth center" means a community mental health center as defined in 53-21-201.

**Section 2. Applicability.** [This act] applies only to persons employed by a community mental health center on [tlie effective date of this act].

**Section 3. Effective date.** [This act] is effective on passage and approval.

HeinOnline -- 1997 vol. II 1276 1997

**Section 4. Termination.** [This act] terminates July 1, 1998.

Approved April 16, 1997

# CHAPTER NO. 279

[SB 263]

AN ACT GENERALLY REVISING THE LAWS GOVERNING ESTATES, TRUSTS, AND FIDUCIARIES; CLARIFYING THE RECORDING FOR UNIT OWNERSHIP; CLARIFYING THAT A COURT MAY LIMIT THE POWERS AND DUTIES OF THE GUARDIAN OF A MINOR; CLARIFYING PROVISIONS RELATING TO MULTIPLE-PERSON ACCOUNTS; CLARIFYING PROTECTION FOR A FINANCIAL INSTITUTION FOR HONORING A REQUEST FOR THE ALTERATION OF RIGHTS TO A MULTIPLE-PERSON ACCOUNT; ALLOWING DEVIATIONS FROM THE STATUTORY DEATH TAX APPORTIONMENT RULE; PERMITTING A REGULATED FINANCIAL INSTITUTION TO HIRE AN APFILIATE FOR THE PURCHASE OR SALE OF INVESTMENT SECURITIES; AND AMENDING SECTIONS 70-23-304, 72-5-231, 72-6-204, 72-6-213, 72-6-226, 72-16-603, AND 72-34-117, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-23-304, MCA, is amended to read:

**"70-23-304. Declaration to be approved by department of revenue before recording.** Before a declaration may be recorded in the county in which the property is located, it must be approved by the department of revenue. A declaration must be approved unless:

(1) the name ~~is proper so as to~~ *does not* comply with 70-23-303; and

(2) all taxes and assessments due and payable have *not* heen paid."

**Seetion 2.** Section 72-5-231, MCA, is amended to read:

**"72-5-231. Powers and duties of guardian of minor.** A *Unless otherwise limited by the court, a* guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of ~~his~~ *the parent's* minor and unemancipated child, except that a guardian is not legally obligated to provide from ~~his~~ *the guardian's* own funds for tho ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

(1) ~~He~~ *The guardian* ~~must~~ *shall* take reasonable care of ~~his~~ *the* ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) ~~He~~ *The guardian* may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. ~~He~~ *The guardian* also may receive money or proporty of the ward paid or delivered by virtue of 72-5-104. Any sums ~~so~~ received

HeinOnline -- 1997 vol. II 1277 1997

~~shall~~ *must* be applied to the ward's current needs for support, care, and education. ~~He~~ *The guardian* ~~must~~ *shall* exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case *the* excess ~~shall~~ *must* be paid ~~over~~ at least annually to the conservator. Sums ~~so~~ received by the guardian ~~are~~ *may* not ~~to~~ be used for compensation for ~~his~~ *the guardian's* services except as approved by *an* order of *the* court or as determined by a duly appointed conservator other than the guardian. A guardian may instituto proceedings to compel the porformance by any person of a duty to suppert the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitato the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of ~~his~~ *the* ward.

(4) A guardian ~~must~~ *shall* repert the condition of ~~his~~ *the* ward and of the ward's estato ~~which~~ *that* has been subject to ~~his~~ *the guardian's* possession or control, as ordered by *the* court on petition of any person interested in the minor's welfare or as required by court rule."

**Section 3.** Section 72-6-204, MCA, is amended to read:

**"72-6-204. Forms.** (1) A contract of depesit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this part applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

..... .....

OWNERSHIP [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

..... MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent. However, any one party may withdraw the entire amount on deposit in the account. ~~Further, any one party may change the type of account.~~

*CHANGING TERMS OF ACCOUNT [Select One and Each Party Initial]:*

..... *MULTIPLE-PARTY ACCOUNT'S TERMS MAY BE CHANGED BY A SINGLE PARTY*

..... *MULTIPLE-PARTY ACCOUNT'S TERMS MAY BE CHANGED ONLY BY AGREEMENT OF ALL PARTIES*

HeinOnline -- 1997 vol. II 1278 1997

RIGHTS AT DEATH [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

..... SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

..... .....

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

..... .....

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

..... MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

[To Add Agency Designation to Account, Name One or More Agents]:

..... .....

[Select One And Initial]:

..... AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

..... AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(2) A contract of deposit that does not contain provisions in substantially the form provided in subsection (1) is governed by the provisions of this part applicable to the type of account that most nearly conforms to the depositor's intent."

**Section 4.** Section 72-6-213, MCA, is amended to read:

**"72-6-213. Alteration of rights.** (1) Rights at death under 72-6-212 are determined by the terms of the account at the death of a party.

HeinOnline -- 1997 vol. II 1279 1997

*(2) Except as provided in subsection (3) and unless otherwise agreed in writing between the parties to the account,* ~~The~~ *the* terms of an account may be altered by written notice given by a party to the financial institution to change the terms of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

*(3) A financial institution may, in its discretion, refuse to honor a request for alteration of rights that would change:*

*(a) the financial institution's obligations or rights under the contract of deposit; or*

*(b) the parties to a multiple-party account if the request is not signed by all of the parties to the account.*

~~(2)~~*(4)* A right of survivorship arising from the express terms of the account, from 72-6-212, or from a POD designation may not be altered by will."

**Section 5.** Section 72-6-226, MCA, is amended to read:

**"72-6-226. Discharge.** (1) Payment made pursuant to this part in accordance with the terms of an account, *or honoring a request for alteration of rights made in accordance with 72-6-213,* discharges the financial institution from all claims for amounts so paid *or alterations so made*, whether or not the payment *or alteration* is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment *or alteration* may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment *or alteration* is requested, received, or made.

(2) Protection under this section does not extend to payments *or alterations* made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account *or alteration of rights*, including ~~one~~ *payments or alterations relating to an account* having an agency designation, should not be permitted and after the financial institution has had a reasonable opportunity to act on the notice when the payment is made *or the alteration is requested.* Unless the notice is withdrawn by the person giving it, the successor of any deceased party shall concur in a request for payment *or alteration* if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account *or to honor a request for alterations.*

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts *or regarding whether a request for an alteration of rights to an account was improper between the parties.*"

HeinOnline -- 1997 vol. II 1280 1997

**Section 6.** Section 72-16-603, MCA, is amended to read:

**"72-16-603. Tax — how apportioned.** (1) Except as provided in subsection (3) and unless the will *or governing instrument* otherwise provides, the tax ~~shall~~ *must* be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose.

(2) If the decedent's will *or governing instrument* directs a method of apportionment of tax different from the method described in this part, the method described in the will *or governing instrument* controls.

(3) If the liabilities of persons interested in the estate as described in this part differ from those ~~which~~ *that* result under the federal estate tax law, the liabilities imposed by the federal law control and the balance of this part applies as if the resulting liabilities had been prescribed in this part."

**Section 7.** Section 72-34-117, MCA, is amended to read:

**"72-34-117. Certain actions *and transactions* not violations of duties.** *(1) The following actions or transactions do not violate the duties provided in 72-34-103 or 72-34-105:*

*(a)* ~~The~~ *the* provision of services for *reasonable* compensation by a regulated financial institution or its affiliates in the ordinary course of business either to a trust ~~of~~ *for* which it *or an affiliate* also acts as trustee or to a person dealing with the trust ~~is not a violation of the duty provided in 72-34-103 or 72-34-105.~~;

*(b) the purchase or sale of investment securities between a regulated financial institution or its affiliates in the ordinary course of business or to a trust for which it or an affiliate also acts as trustee.*

*(2) Subsection (1) does not affect the duty to use ordinary skill and prudence as provided in 72-34-114.*

*(3)* For the purposes of this section, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreigu corporation."

Approved April 16, 1997

# CHAPTER NO. 280

[SB 282]

AN ACT ALLOWING A LICENSED CHIROPRACTOR TO CERTIFY AN APPLICATION FOR A SPECIAL PARKING PERMIT FOR THE DISABLED; AND AMENDING SECTIONS 49-4-301, 49-4-303, AND 49-4-305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 49-4-301, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1281 1997

"**49-4-301. Eligibility for special parking permit.** (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and who, as determined by a licensed physician *or a licensed chiropractor*, meets one of the following criteria:

(a) cannot walk 200 feet without stopping to rest;

(b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;

(c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) uses portable oxygen;

(e) is restricted by lung disease to ~~such an~~ *the* extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the porson's functional limitations are classified as class III or IV under standards accepted by the American heart association; or

(g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician *or the licensed chiropractor* as being comparable in severity to the other conditions listed in this subsection (1).

(2) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under 61-3-332(10)(g). If the condition exists after 6 months, a new temporary placard must be issued for the time poriod prescribed by the applicant's physician *or chiropractor*, not te exceed 24 months, upon receipt of a new certification from the disabled person's physician *or chiropractor* that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(3) The department of justice may issue special parking pormits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

**Section 2.** Section 49-4-303, MCA, is amended to read:

"**49-4-303. Applications for permit.** (1) Applications for a special parking permit may be made to the department of justice on forms provided hy the department~~, which must~~ *that* require sufficient information to determine eligibility for a permit. The application must be accompanied by:

HeinOnline -- 1997 vol. II 1282 1997

(a) a certificate from a licensed physician *or a licensed chiropractor* describing the extent of the applicant's disability; and

(b) a fee of $1.

(2) Applications ~~shall~~ *must* be available at the office of the county treasurer in each county and directly from the department."

**Section 3.** Section 49-4-305, MCA, is amended to read:

**"49-4-305. Expiration of permit.** (1) Except as provided in subsection (2), a permit expires on the occurrence of either of the following:

(a) 3 years from the date of issuance, unless the permit was issued to a person who has a condition expected to improve within 6 months. A person may renew a permit if a licensed physician *or a licensed chiropractor* certifies that the person's mobility disability still exists and that one of the criteria specified in 49-4-301 continues to be met.

(b) certification by a licensed physician *or a licensed chiropractor* that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

(2) A permit issued before October 1, 1993, expires on:

(a) the death of the permittee; or

(b) certification by a licensed physician *or a licensed chiropractor* that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met."

Approved April 16, 1997

# CHAPTER NO. 281

[SB 309]

AN ACT ALLOWING THE PLACEMENT OF NOT MORE THAN FOUR BUSINESS SIGNS ON ONE SPECIFIC INFORMATION SIGN FOR QUALIFYING BUSINESSES; AMENDING SECTION 60-5-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 60-5-512, MCA, is amended to read:

**"60-5-512. Specific information signs — number of business signs — distances.** (1) The number of specific information signs permitted is limited to one for each type of motorist service along an approach to an interchange or intersection.

(2) More than six business signs may not be displayed on a "GAS", "FOOD", "LODGING", or "CAMPING" specific information sign. Except as provided in subsection (3), a business may not be allowed more than one business sign on the same specific information sign.

HeinOnline -- 1997 vol. II 1283 1997

(3) In areas where there are ~~only one or two~~ *not more than four* qualified businesses available for each of two or more types of motorist services, business signs for two types of services may be displayed by a business on the same specific information sign. More than ~~two~~ *four* business signs for each type of service may not be displayed in combination on a specific information sign.

(4) To qualify for business identification on a specific information sign, a motorist service facility shall meet the eligibility criteria established in 60-5-514 and may not be located more than 3 miles from the interstate highway. However, if eligible services are not located within the 3-mile limit, the distance limits may be increased in 3-mile increments until either an eligible service or 15 miles is reached."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1997

# CHAPTER NO. 282

[SB 316]

AN ACT REVISING THE LAW RELATING TO GROUP INSURANCE FOR PUBLIC EMPLOYEES; REQUIRING A CONTRACT FOR GROUP HEALTH INSURANCE TO PROVIDE FOR CONTINUED PARTICIPATION BY RETIRED JUDGES IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 2-18-704, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-18-704, MCA, is amended to read:

**"2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

HeinOnline -- 1997 vol. II 1284 1997

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3) and subsequently terminates membership may not rejoin the group unless the person again serves as a legislator.

*(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.*

*(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:*

*(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;*

*(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or*

HeinOnline -- 1997 vol. II 1285 1997

*(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.*

*(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.*

~~(4)~~*(5)* A person electing to remain a member of the group under subsection (1), (2), ~~or~~ (3), *or (4)* shall pay the full premium for coverage and for that of the person's covered dependents.

~~(5)~~*(6)* An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation."

**Section 2. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, te a judge who was a member of the state's group health insurance plan in effect on December 1, 1996, who is otherwise ellgible under the provisions of 2-18-704 and who files written notice to the department of administration within 30 days of [the effective date of this act].

Approved April 16, 1997

# CHAPTER NO. 283

[SB 335]

AN ACT PROVIDING FOR THE OPERATION OF FARM VEHICLES ON A COUNTY ROAD WITHOUT ACCOMPANYING FLAG VEHICLES; INCREASING THE WIDTH THAT A VEHICLE MUST BE TO WARRANT AN ACCOMPANYING FLAG VEHICLE; AMENDING SECTION 61-10-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-10-102, MCA, is amended to read:

**"61-10-102. Width.** (1) Except as provided in subsection (2), a vehicle, including a bus, unloaded or with load, may not have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay, moved or propelled upen the highway during daylight hours for a distance of not more than 100 miles if tlie movement is

HeinOnline -- 1997 vol. II 1286 1997

incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than 12 feet *6 inches* wide, it must be preceded by flag vehicle escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations *or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay.* Lights which meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flag vehicle escorts *unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner.*

(b) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of haled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

(c) Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial hay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than 12 feet *6 inches* wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

*(4) For the purposes of this section, "county road" has the same meaning as the term is defined in 60-1-103."*

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1997

HeinOnline -- 1997 vol. II 1287 1997

# CHAPTER NO. 284

[SB 375]

AN ACT REVISING THE ASSESSMENT PROCEDURES FOR THE WORKERS' COMPENSATION SUBSEQUENT INJURY FUND; PROVIDING FOR A RUNOFF OF CLAIMS CURRENTLY ADMINISTERED BY THE SUBSEQUENT INJURY FUND; PROVIDING FOR TRANSFER AND DISTRIBUTION OF FUNDS HELD IN THE SUBSEQUENT INJURY FUND; AMENDING SECTIONS 33-16-1008, 39-71-504, 39-71-903, AND 39-71-907, MCA; REPEALING SECTIONS 39-71-902, 39-71-910, AND 39-71-913, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Assessment of insurers — definition.** (1) As used in this section, "paid losses" means the following benefits paid during tbe preceding calendar year for injuries covered by the Montana Workers' Compensation Act witbout regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 insured employer, and plan No. 3, tbe state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocatod among plan No. 1 employers, plan No. 2 insured employers, and plan No. 3, the state fund, based on paid losses for the calendar year preceding tbe year in which tbe assessment is collectod. The board of investments sball invest the money of the fund, and the investment income must be deposited in tbe fund.

(3) On or before March 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed against the employer or the state fund for that calendar year. On or before March 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers of the premium surcharge rate to be effective for policies written or renewed on and after January 1 in that calendar year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore te the total paid losses of all plan No. 1 employers during tlie preceding calendar year.

(5) Tbe portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the

HeinOnline -- 1997 vol. II 1288 1997

percentage that the total paid losses of the individual plan No. 2 insured employer hore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.

(6) Paynent of assessments due nust he nade to the departnent semiannually on June 30 and Decenher 31 of the year following the calendar year on which the assessment is hased.

(7) Each plan No. 2 insurer providing workers' compensation insurance may collect from each of its policyholders an amount equal to the insured employer's fund assessment through a surcharge hased on premiun. When collected, assessments may not constitute an element of loss for the purpose of estahlishing rates for workers' compensation insurance hut, for the purpose of collection, nust he treated as separate costs imposed upon insured employers. The total of this assessment must he stated as a separate cost on an insured enployer's policy or on a separate document suhmitted hy the insured employer and must he identified as "workers' compensation policyholder surcharge". Each assessinent nust he shown as a porcentage of the total workers' compensation policyholder premium. The premium surcharge must he collected at the same time and in the same manner that the premiun for the coverage is collected. The premiun surcharge must he excluded fron the definition of premiuns for all purposes, including conputation of insurance producers' commissions or preinium taxes, except that an insurer nay cancel a workers' conpensation policy for nonpayment of the premium surcharge. Cancellation must he in accordance with the procedures applicahle to the nonpayment of premium.

(8) All assessments paid to the department nust be deposited in the fund.

**Section 2.** Section 33-16-1008, MCA, is amended to read:

**"33-16-1008. Definitions.** As used in this part, the following definitions apply:

(1) "Accepted actuarial standards" neans the standards adopted hy the casualty actuarial society in its Statenent of Principles Regarding Property and Casualty Insurance Ratemaking and the Standards of Practice adopted by the actuarial standards board.

(2) "Advisory organization" means a person or organization that either has two or nore nember insurers or is controlled either directly or indirectly by two or more insurers and that assists insurers in ratemaking-related activities. The term does not include a joint underwriting association, any actuarial or legal consultant, or any employee of an insurer or insurers under common control or management or their employees or nanager. As used in this suhsection, two or more insurers who have a common ownership or operate in this state under common management or control constitute a single insurer.

(3) "Classification system" means the plan, systen, or arrangeinent for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.

(4) "Contingencies" means provisions in rates to recognize the uncertainty of the estimates of losses, loss adjustment expenses, other operating expenses, and investment income and profit that comprise those rates. The provisions nay be explicit, including but not limited to a specific charge to reflect systematic

HeinOnline -- 1997 vol. II 1289 1997

variations of estimated costs from expected costs, or implicit, including but not limited to a consideration in selecting a single estimate from a reasonable range of estimates, or both.

(5) "Developed losses" means adjusted losses, including loss adjustment expenses, using accepted actuarial standards to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss payments, including loss adjustment expense payments.

(6) "Expenses" means the portion of a rate that is attributable te acquisition, filed supervision and collection expenses, general expenses and taxes, licenses, or fees.

(7) "Experience rating" means a rating procedure using past insurance experience of the individual policybolder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

(8) "Insurer" means a person licensed to write workers' compensation insurance as a plan No. 2 insurer under the laws of the state.

(9) "Loss trending" means a procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective, including loss ratio trending.

(10) "Market" means the interaction in this state between buyers and plan No. 2 sellers of workers' compensation and employer's liability insurance pursuant to the provisions of this part.

(11) (a) "Prospective loss costs" means historical aggregate losses and loss adjustment expenses, including all assessments tbat are loss-based *and excluding any separately stated policyholder surcharges*, projected through development te their ultimate value and through trending to a future point in time and ascertained by accepted actuarial standards.

(b) The term does not include provisions for profit or expenses other than loss adjustment expenses and assessments that are loss-based.

(12) "Pure premium rate" means the pertion of the rate that represents tbe loss cost per unit of expesure, including loss adjustment expense.

(13) (a) "Rate" or "rates" means rate of premium, policy and membership fee, or any otber charge made by an insurer for or in coimection with a contract or policy of workers' compensation and employer's liability insurance, prior to application of individual risk variations based on loss or expense considerations.

(b) The term does not include minimum premiums.

(14) "Reserve estimates" means provisions for insurer obligations for future payments of loss or loss adjustment expenses.

(15) "Statistical plan" means the plan, system, or arrangement that is used in collecting data.

HeinOnline -- 1997 vol. II 1290 1997

(16) "Supplementary rate information" means a manual or plan of rates, statistical plan, classification system, minimum premium, policy fee, rating rule, rate-related underwriting rule, and any other information needed to determine the applicable premium for an individual insured that is consistent with the purposes of this part and with rules prescribed by rule of the commissioner.

(17) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner."

**Section 3.** Section 39-71-504, MCA, is amended to read:

**"39-71-504. Funding of fund — option for agreement between department and injured employee.** The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

~~(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund.~~

~~(4)~~*(3)* The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection (2)."

**Section 4.** Section 39-71-903, MCA, is amended to read:

**"39-71-903. Procedure and practice.** When a vocationally handicapped person receives ~~a personal~~ *an* injury, *as defined in 39-71-119,* the procedure ~~and practice~~ provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided ~~herein~~."

**Section 5.** Section 39-71-907, MCA, is amended to read:

**"39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — insurer liability for compensation limited — appropriation.** (1) A person certified as vocationally handicapped who receives ~~a personal~~ *an* injury ~~arising out of and in the course of employment and resulting~~, *as defined in 39-71-119, that results* in

HeinOnline -- 1997 vol. II 1291 1997

death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from ~~such~~ *the* injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

**Section 6. Transfer and credit of excess funds held in subsequent injury fund.** On or before September 1, 1997, the department of labor and industry shall transfer $3.5 million of the funds retained in the fund to the fund in 39-71-201 and credit the amount to offset the insurer's assessment for the administration fund as follows:

(1) plan No. 1, $490,000;

(2) plan No. 2, $612,500; and

(3) plan No. 3, $2,397,500.

**Section 7. Repealer.** Sections 39-71-902, 39-71-910, and 39-71-913, MCA, are repealed.

**Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 1].

**Section 9. Effective dates.** (1) [Sections 1 through 5 and 7] are effective January 1, 1998.

(2) [Sections 6 and 8 and this section] are effective on passage and approval.

Approved April 16, 1997

# CHAPTER NO. 285

[SB 383]

AN ACT CREATING THE MONTANA STREET TERRORISM ENFORCEMENT AND PREVENTION ACT; DEFINING "CRIMINAL STREET GANG" AND "PATTERN OF CRIMINAL STREET GANG ACTIVITY"; PROVIDING FOR THE ENHANCEMENT OF CRIMINAL PENALTIES FOR CRIMINAL STREET GANG-RELATED ACTIVITY; PROVIDING FOR THE DETERRENCE AND PUNISHMENT OF CRIMINAL STREET GANG-RELATED OFFENSES; AMENDING SECTION 41-5-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

HeinOnline -- 1997 vol. II 1292 1997

WHEREAS, the Legislature finds and declares that it is the right of every person to he secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals; and

WHEREAS, it is not the intent of the Legislature to interfere with the exercise of the constitutionally protected rights of freedom of expression and association; and

WHEREAS, the Legislature hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process; and

WHEREAS, the Legislature further finds that the State of Montana is in a situation of rising crisis caused by the entry into the state of criminal street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods; and

WHEREAS, these activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected; and

WHEREAS, the Legislature finds that several out-of-state criminal street gangs have established a presence in Montana's larger cities, that these criminal street gangs are attracting and recruiting members in Montana, and that identifiable criminal street gang-related crimes are beginning to appear and increase in Montana communities that have recognizable criminal street gang-related presences; and

WHEREAS, the Legislature finds that when these criminal street gangs establish a presence in Montana cities, the quality of Montana citizens' safety, welfare, and enjoyment of life begins to decline; and

WHEREAS, the Legislature wishes to deter the growing influx of violent criminal street gangs and criminal street gang-related activity in its communities and to protect Montana citizens from the terror associated with violent criminal street gangs; and

WHEREAS, it is the intent of the Legislature in enacting [sections 1 through 8] to seek the eradication of activity of criminal street gangs by focusing on the patterns of criminal street gang activity and on the organized nature of criminal street gangs.

THEREFORE, the Legislature finds it appropriate to enact [sections 1 through 8].

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 8] may be cited as the "Montana Street Terrorism Enforcement and Prevention Act".

**Section 2. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its

HeinOnline -- 1997 vol. II 1293 1997

primary activities the commission of one or more of the criminal acts enumerated in [section 5], having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal street gang activity.

(2) "Pattern of criminal street gang activity" has the meaning provided in [section 5].

**Section 3. Use of threat to coerce gang membership — use of violence to coerce gang membership.** (1) A person commits the offense of use of threat to coerce criminal street gang membership if the person purposely or knowingly threatens a person under 18 years of age with physical violence on two or more separate occasions with the intent to coerce, induce, or solicit the minor to actively participate in any criminal street gang whose members engage in a pattern of criminal street gang activity.

(2) A person commits the offense of use of violence to coerce criminal street gang membership if the person purposely or knowingly uses physical violence to coerce, induce, or solicit a person under 18 years of age to actively participate in any criminal street gang whose memhers engage in a pattern of criminal street gang activity.

(3) (a) A person convicted of the offense of use of threat to coerce criminal street gang membership shall be imprisoned in the county jail for a torm not to exceed 1 year.

(b) A person convicted of the offense of use of violence to coerce criminal street gang membership shall be imprisoned in a state prison for a term not to exceed 3 years.

(4) A person who is 16 years of age or older and less than 18 years of age who is named in a petition filed in youth court alleging delinquency for the alleged commission of the offense of use of threat to coerce criminal street gang membership or the offense of use of violence to coerce criminal street gang membership is subject to transfer of the case to district court under 41-5-206 or, if the case is not transferred to district court under 41-5-206, to the provisions of Title 41, chapter 5.

(5) This section may not be construed to limit prosecution under any other provision of law.

(6) A person may not be convicted of violating this section based on speech alone, except on a showing that the speech itself threatened violence against a specific person, that the defendant had the apparent ability to carry out the threat, and that physical harm was imminently likely to occur.

**Section 4. Additional sentence for criminal street gang-related felony.** (1) (a) A person who is convicted of a felony that the person committed for the benefit of, at the direction of, or in association with any criminal street gang for the purpose of promoting, furthering, or assisting any criminal conduct by criminal street gang members shall, in addition to the punishment provided for the commission of the underlying offense, be sentenced to a term of imprisonment in a state prison of not less than 1 year or more than 3 years, except as provided in 46-18-222.

HeinOnline -- 1997 vol. II 1294 1997

(b) If the underlying felony described in subsection (1)(a) is committed on the grounds of, or within 1,000 feet of, a public school, as defined in 20-6-501, during hours when the facility is open for classes or school-related programs or when minors are using the facility, the additional term provided for in subsection (1) is 2 to 4 years.

(2) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(3) An additional sentence prescribed by this section shall run consecutively to the sentence provided for the underlying offense.

**Section 5. Pattern of criminal street gang activity.** (1) For purposes of [sections 1 through 8], "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, attempt; adjudication as a delinquent youth for the commission, attempt, or solicitation; or conviction of two or more of the offenses listed in subsection (2) within a 3-year period, and that the offenses were committed on separate occasions.

(2) The offenses that form a pattern of criminal street gang activity include:

(a) deliberate homicide, as defined in 45-5-102;

(b) felony assault, as defined in 45-5-202;

(c) intimidation, as defined in 45-5-203;

(d) kidnapping, as defined in 45-5-302;

(e) aggravated kidnapping, as defined in 45-5-303;

(f) robbery, as defined in 45-5-401;

(g) sexual intercourse without consent, as defined in 45-5-503;

(h) aggravated promotion of prostitution, as defined in 45-5-603;

(i) criminal mischief, as defined in 45-6-101;

(j) arson, as defined in 45-6-103;

(k) burglary, as defined in 45-6-204;

(l) theft, as defined in 45-6-301;

(m) forgery, as defined in 45-6-325;

(n) tampering with witnesses and informants, as defined in 45-7-206;

(o) bringing armed men into the state, as defined in 45-8-106;

(p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;

(q) carrying a concealed weapon, as defined in 45-8-316;

(r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;

(s) possession of a destructive device, as defined in 45-8-334;

HeinOnline -- 1997 vol. II 1295 1997

(t) possession of explosives, as defined in 45-8-335;

(u) possession of a sawed-off firearm, as defined in 45-8-340;

(v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture, or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;

(w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership provided in [section 3].

**Section 6. Supplying of firearms to criminal street gang.** (1) A person commits the offense of supplying firearms to a criminal street gang if the person purposely or knowingly supplies, sells, or gives possession or control of any firearm to another, and the person has actual knowledge that the other person will use the firearm to commit an offense enumerated in [section 5] while actively participating in any criminal street gang whose members engage in a pattern of criminal street gang activity.

(2) Subsection (1) does not apply to a person who is convicted as a principal to the offense committed by the person to whom the firearm was supplied, sold, or given.

(3) A person convicted of the offense of supplying firearms to a criminal street gang shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

**Section 7. Exeeptions.** [Sections 1 through 8] do not apply to employees engaged in lawful concerted activities for their mutual aid and protection or to the lawful activities of labor organizations or their members or agents.

**Section 8. Adoption of local regulations.** [Sections 1 through 8] do not prevent a local government from adopting and enforcing ordinances or resolutions consistent with [sections 1 through 8] relating to criminal street gangs and criminal street gang violence.

**Section 9.** Section 41-5-206, MCA, is amended to read:

**"41-5-206. Transfer to criminal court prior to prosecution.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or ~~more~~ *older* at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or ~~more~~ *older* at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(I);

*(K) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in [section 3];*

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of itself grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years ~~old~~ *of age* or older at the time of the conduct alleged to be unlawful and the unlawful

HeinOnline -- 1997 vol. II 1297 1997

act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1105.

(6) Upon order of the youth court transferring the case to the district court under subsection (5), the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, the commitment must be to the department of corrections. The department shall confine the youth in whatever institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

**Section 10. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to [sections 1 through 8].

**Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 12. Effective date.** [This act] is effective on passage and approval.

HeinOnline -- 1997 vol. II 1298 1997

**Section 13. Retroactive applicability.** For purposes of determining a pattern of criminal street gang activity, the provisions of [section 5] apply retroactively, within the meaning of 1-2-109, to an offense that occurred before [the effective date of this act] if the second or subsequent offense occurred after [the effective date of this act].

Approved April 16, 1997

# CHAPTER NO. 286

[HB 114]

AN ACT GENERALLY REVISING AND RECODIFYING THE MONTANA YOUTH COURT ACT; CLARIFYING THAT SHORT-TERM DETENTION OF YOUTH, FOR UP TO 96 HOURS, EXCLUDES WEEKENDS AND LEGAL HOLIDAYS; AMENDING SECTIONS 7-6-501, 7-32-2244, 41-5-103, 41-5-208, 41-5-301, 41-5-303, 41-5-305, 41-5-306, 41-5-307, 41-5-311, 41-5-403, 41-5-502, 41-5-521, 41-5-522, 41-5-523, 41-5-525, 41-5-527, 41-5-530, 41-5-1004, 41-5-1104, 46-24-207, 52-5-129, AND 53-9-107, MCA; REPEALING SECTIONS 41-5-310 AND 41-5-312, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-501, MCA, is amended to read:

**"7-6-501. Definitions.** As used in 7-6-502 and this section, unless the context requires otherwise, the following definitions apply:

(1) "Detention" means the holding or temporary placement of a youth in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of his case.

(2) "Juvenile detention program" means services to provide for the lawful detention or shelter care of youth. The term includes:

(a) youth evaluations ordered by the court under 41-5-523, *[section 29], or [section 36]*; and

(b) programs for the transportation of youth to appropriate detention facilities or shelter care facilities.

(3) "Local government" has the same meaning as provided in 7-12-1103.

(4) "Shelter care" has the same meaning as provided in 41-5-103.

(5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent youth or youth in need of supervision as those terms are defined in 41-5-103."

**Section 2.** Section 7-32-2244, MCA, is amended to read:

**"7-32-2244. Detention of juveniles.** Juveniles may be held in a detention center only in accordance with ~~41-5-301 through 41-5-307, 41-5-309, and 41-5-311~~ *Title 41, chapter 5, part 3.*"

HeinOnline -- 1997 vol. II 1299 1997

**Section 3.** Section 41-5-103, MCA, is amended to read:

**"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(5) "Court", when used without further qualification, means the youth court of the district court.

(6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(7) "Delinquent youth" means a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of probation.

(8) "Department" means the department of corrections provided for in 2-15-2301.

(9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case.

(10) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523 *or [section 29]*.

(12) "Foster home" means a private residence licensed by the department *of public health and human services* for placement of a youth.

(13) ~~"Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.~~ *"Guardian" means an adult:*

*(a) who is responsible for a youth and has reciprocal rights, duties, and responsibilities with the youth; and*

*(b) whose status is created and defined by law.*

HeinOnline -- 1997 vol. II 1300 1997

(14) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(16) "Judge", when used without further qualification, means the judge of the youth court.

(17) (a) "Legal custedy" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what poriod;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

~~(18)~~*(18)* "Necessary parties" includes the youth~~,~~ *and* the youth's parents, guardian, custodian, or spouse.

~~(18)~~*(19)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

~~(20)~~*(20)* "Probable cause hearing" means the hearing provided for in ~~41-5-303~~ *[section 12].*

~~(21)~~*(21)* "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-811.

~~(20)~~*(22)* "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

~~(20)~~*(23)* "Secure detention facility" means any public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

~~(24)~~*(24)* "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and

HeinOnline -- 1997 vol. II 1301 1997

that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(25)~~*(25)* "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(26)~~*(26)* "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in ~~41-5-306(1)~~ *[section 20]*.

~~(27)~~*(27)* "Short-term detention center" means a detention facility licensed hy the department for the temporary placement or care of youth, for a period not to exceed 96 hours *excluding weekends and legal holidays*, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

~~(25)~~*(28)* "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City ~~and the Mountain View school in Helena~~.

~~(29)~~*(29)* "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardian.

~~(30)~~*(30)* "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(31)~~*(31)* "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged te be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

~~(32)~~*(32)* "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

~~(30)~~*(33)* "Youth in need of care" has the meaning provided for in 41-3-102.

~~(34)~~*(34)* "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited te a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) continues to exhibit behavior beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian te exert all reasonable efforts te mediate, resolve, or control the youth's behavior; or

HeinOnline -- 1997 vol. II 1302 1997

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision."

**Section 4.** Section 41-5-208, MCA, is amended to read:

**"41-5-208. Transfer to district court after prosecution — disposition in district court — limitation on jurisdiction.** (1) To ensure continued compliance with the court's disposition under ~~41-5-523~~ *[section 29]*, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age, the youth court judge may transfer jurisdiction to district court and order the transfer of supervisory responsibility and the youth's case files to the department.

(2) If a youth whose case has been transferred to district court under this section violates a disposition imposed under ~~41-5-523~~ *[section 29]*, the district court may impose conditions as provided under 46-18-201 through 46-18-203.

(3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

(b) be supervised by the department.

(4) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age."

**Section 5.** Section 41-5-301, MCA, is amended to read:

**"41-5-301. Preliminary ~~investigation and disposition~~ *inquiry — referral of youth in need of care.*** (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms of an order, a probation officer shall make a preliminary inquiry into the matter.

~~(2) The probation officer may:~~

~~(a) require the presence of any person relevant to the inquiry;~~

~~(b) request subpoenas from the judge to accomplish this purpose;~~

~~(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.~~

~~(3)~~*(2)* If the probation officer determines that the facts indicate *that the youth is* a youth in need of care, the matter must be immediately referred to the department of public health and human services.

~~(4) (a) The probation officer in the conduct of the preliminary inquiry shall:~~

~~(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;~~

~~(ii) determine whether the matter is within the jurisdiction of the court;~~

HeinOnline -- 1997 vol. II 1303 1997

~~(iii) determine, if the youth is in detention or shelter care, whether detention or shelter care should be continued based upon criteria set forth in 41-5-305.~~

~~(b) Once relevant information is secured, the probation officer shall:~~

~~(i) determine whether the interest of the public or the youth requires that further action be taken;~~

~~(ii) terminate the inquiry upon the determination that no further action be taken; and~~

~~(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.~~

~~(5) The probation officer upon determining that further action is required may:~~

~~(a) provide counseling, refer the youth and the youth's parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;~~

~~(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer proceeds no further unless authorized by the county attorney; or~~

~~(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.~~

~~(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.~~

~~(7) A petition charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the~~ *youth released unless good cause is shown to further detain the youth.*

~~(8) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition is filed.~~"

**Section 6. Preliminary inquiry — procedure.** (1) In conducting a preliminary inquiry under 41-5-301, the probation officer shall:

(a) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention or shelter care, whether detention or shelter care should be continued based upon criteria set forth in 41-5-305 and [section 16].

(2) In conducting a preliminary inquiry, the probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

**Section 7. Preliminary inquiry — determinations — release.** Once relevant information is secured after a preliminary inquiry under 41-5-301, the probation officer shall:

(1) determine whether the interest of the public or the youth requires that further action be taken;

(2) terminate the inquiry upon the determination that no further action be taken; and

(3) release the youth immediately upon the determination that the filing of a petition is not authorized.

**Section 8. Preliminary inquiry — dispositions available to probation officer.** Upon determining that further action is required after a preliminary inquiry under 41-5-301, the probation officer may:

(1) arrange informal disposition as provided in [section 9]; or

(2) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

**Section 9. Informal disposition.** After a preliminary inquiry under 41-5-301, the probation officer upon determining that further action is required and that referral to the county attorney is not required may:

(1) provide counseling, refer the youth and the youth's parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention; or

(2) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer proceeds no further unless authorized by the county attorney.

**Section 10. Petition — county attorney — procedure — release from custody.** (1) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the

HeinOnline -- 1997 vol. II 1305 1997

allegations of the petition are true, the youth court shall grant leave to file the petition.

(2) A petition charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(3) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county atterney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the prohation officer, and make the final decision as to whether a petition is filed.

**Seetion 11.** Section 41-5-303, MCA, is amended to read:

**"41-5-303. Rights of youth taken into eustody — questioning — ~~hearing for probable eause — detention~~ — *waiver of rights.*** (1) When a youth is taken into custody for questioning upen a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of supervision, the following requirements must be met:

(a) The youth must be advised of ~~his~~ *the youth's* right against self-incrimination and ~~his~~ *the youth's* right to counsel.

~~(b) The youth may waive these rights under the following situations:~~

~~(i) when the youth is 16 years of age or older, the youth may make an effective waiver;~~

~~(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and~~

~~(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.~~

~~(c)~~*(b)* The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

*(2) A youth may waive the rights listed in subsection (1) under the following situations:*

*(a) when the youth is 16 years of age or older, the youth may make an effective waiver;*

*(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver; or*

*(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.*

~~(2) Unless a youth has been released, a hearing must be held within 24 hours after the youth is taken into custody, excluding weekends and legal holidays, to determine whether there is probable cause to believe that the youth is a delinquent youth or a youth in need of supervision.~~

~~(3) The probable cause hearing required under subsection (2) may be held by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing.~~

~~(4) At the probable cause hearing, the youth must be informed of his constitutional rights and his rights under this chapter.~~

~~(5) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless he:~~

~~(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or~~

~~(b) is excused by the court for good cause.~~

~~(6) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.~~

~~(7) If it is determined that there is probable cause to believe the youth is a delinquent youth or is a youth in need of supervision, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-305, the youth may be placed in a detention facility or shelter care facility as provided in 41-5-306 but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.~~

~~(8) If probable cause is not found or if a probable cause hearing is not held within the time specified in subsection (2), the youth must be immediately released from custody.~~"

**Section 12. Custody — hearing for probable cause.** (1) When a youth is taken into custody for questioning, a hearing to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of supervision must be held within 24 hours, excluding weekends and legal holidays. A hearing is not required if the youth is released prior to the time of the required hearing.

(2) The probable cause hearing required under subsection (1) may he held by the youth court, a justice of the peace, a municipal or city judge, or a magistrato having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate,

a record of the hearing must be made by a court reporter or by a tape recording of the hearing.

(3) A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

**Section 13. Custody — hearing for probable cause — procedure.** (1) At a probable cause hearing held pursuant to [section 12], the youth must be informed of the youth's constitutional rights and the youth's rights under this chapter.

(2) A parent, guardian, or custodian of the youth may be held in contempt of court for failing to be present at or te participate in the probable cause hearing unless the parent, guardian, or custedian:

(a) cannot be located through diligent efforts of tbe investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(3) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

**Section 14. Custody — hearing for probable cause — determinations — detention — release.** (1) If, at a probable cause hearing held pursuant to [section 12], it is determined that there is probable cause to believe the youth is a delinquent youth or a youth in need of supervision, the court having jurisdiction in tbe case shall determine whether the youth should be retained in custedy. If the court determines tbat continued custedy of the youth is necessary and if the youth meets the criteria in 41-5-305 or [section 16], the youth may be placed in a detention facility or shelter care facility as provided in [sections 18 through 21] but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(2) If probable cause is not found or if a probable cause hearing is not held within the time specified in [section 12], the youth must be immediately released from custedy.

**Section 15.** Section 41-5-305, MCA, is amended te read:

**"41-5-305. Criteria for placement of youth in secure detention facilities ~~or shelter care facilities.~~** ~~(1)~~ A youth may ~~not~~ be placed in a secure detention facility ~~unless~~ *only if the youth*:

~~(a)~~*(1)* ~~he~~ has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

~~(b)~~*(2)* ~~he~~ is alleged to be a delinquent youth and:

~~(i)~~*(a)* ~~he~~ has escaped from a correctional facility or secure detention facility;

~~(ii)~~*(b)* ~~he~~ has violated a valid court order or an aftercare agreement;

~~(iii)~~*(c)* ~~his~~ *the youth's* detention is required to protect persons or property;

~~(iv)~~*(d)* ~~he~~ *the youth* has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

~~(v)~~*(e)* there are not adequate assurances that ~~he~~ *the youth* will appear for court when required; or

~~(vi)~~*(f)* ~~he~~ *the youth* meets additional criteria for secure detention established hy the youth court in the judicial district that has current jurisdiction over ~~him~~ *the youth*; or

~~(c)~~*(3)* ~~he~~ has been adjudicated delinquent and is awaiting final disposition of ~~his~~ *the youth's* case.

~~(2) A youth may not be placed in a shelter care facility unless:~~

~~(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;~~

~~(b) the youth needs to be protected from physical or emotional harm;~~

~~(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;~~

~~(d) shelter care is necessary to assess the youth and his environment;~~

~~(e) shelter care is necessary to provide adequate time for case planning and disposition; or~~

~~(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.~~"

**Section 16. Criteria for placement of youth in shelter care facilities.** A youth may be placed in a shelter care facility only if:

(1) the youth and the youth's family need shelter care to address their problematic situation and it is not possible for the youth to remain at home;

(2) the youth needs to be protected from physical or emotional harm;

(3) the youth needs te be deterred or prevented from immediate repetition of troubling behavior;

(4) shelter care is necessary to assess the youth and the youth's environment;

(5) shelter care is necessary to provide adequate time for case planning and disposition; or

(6) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate tbe problem and reunite the family.

**Section 17.** Section 41-5-306, MCA, is amended te read:

HeinOnline -- 1997 vol. II 1309 1997

"41-5-300. ~~Place of shelter care or detention~~ *Limitation on placement of youth in need of care.* ~~(1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:~~

~~(a) in a licensed youth foster home as defined in 41-3-1102;~~

~~(b) in a facility operated by a licensed child welfare agency;~~

~~(c) in a licensed youth group home as defined in 41-3-1102; or~~

~~(d) under home arrest, either in the youth's own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.~~

~~(2)~~ A youth alleged to be a youth in need of care may be placed only in ~~the facilities listed in subsection (1)~~ *shelter care, as provided in [section 20],* and may not be placed in a jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

~~(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only:~~

~~(a) in the facilities described in subsection (1);~~

~~(b) under home arrest as provided in subsection (1);~~

~~(c) in a short-term detention center;~~

~~(d) in a youth detention facility; or~~

~~(e) in a community youth court program.~~"

**Section 18. Limitation on placement of youth in need of supervision.** (1) After a probable cause hearing provided for in [section 12], a youth alleged to be a youth in need of supervision may be placed only in shelter care, as provided in [section 20].

(2) A youth alleged or found to be a youth in noed of supervision may not be placed in a jail, secure detention facility, or correctional facility.

**Section 19. Limitation on placement of delinquent youth.** After a probable cause bearing provided for in [section 12], a youth alleged to be a delinquent youth may be placed only:

(1) in shelter care, in the facilities described in [section 20];

(2) under home arrest as provided in [section 20];

(3) in detention, as provided in [section 21]; or

(4) in a community youth court program.

**Section 20. Place of shelter care.** Placement in shelter care means placement in one of the following:

(1) in a licensed youth foster home as defined in 41-3-1102;

HeinOnline -- 1997 vol. II 1310 1997

(2) in a facility operated by a licensed child welfare agency;

(3) in a licensed youth group home as defined in 41-3-1102; or

(4) under home arrest as provided in Title 46, chapter 18, part 10, either in the youth's own home or in one of the facilities described in subsections (1) through (3).

**Section 21. Place of detention.** Placement in detention means placement in one of the following facilities:

(1) a short-term detention center; or

(2) a youth detention facility, including a regional detention facility.

**Section 22.** Section 41-5-307, MCA, is amended to read:

**"41-5-307. Release ~~or delivery~~ from custody — *detention — shelter care.*** (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a *responsible* person ~~who has custody of the youth~~, ~~then~~ the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of ~~his~~ *the peace officer's* reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention, *as provided in [section 21]. that is* approved by the youth court.

*(3)* If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediatoly and shall provide a written report of ~~his~~ *the peace officer's* reasons for placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court."

**Section 23.** Section 41-5-311, MCA, is amended to read:

**"41-5-311. Youth not to be detained in jail — exceptions — time limitations.** (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that if committed by an adult would constitute a criminal offense may be temperarily detained in a jail or other adult detention facility for a period not to exceed:

(a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to ~~41-5-303~~ *[section 12].*

HeinOnline -- 1997 vol. II 1311 1997

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a metropolitan statistical area;

(b) alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) the youth is kept in an area that provides physical as well as sight and sound separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding."

**Section 24.** Section 41-5-403, MCA, is amended to read:

**"41-5-403. Disposition permitted under informal adjustment — contributions by parents or guardians for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, ~~and~~ as determined by the department;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth as determined by the department;

(d) restitution upon approval of the youth court judge *and subject to the provisions of [section 37]*;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

~~(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:~~

~~(a) age of the youth;~~

~~(b) ability of the youth to pay;~~

~~(c) ability of the parents, legal guardian, or persons contributing to the youth's delinquency or need for supervision to pay;~~

~~(d) amount of damage to the victim; and~~

~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case.~~

~~(3)~~*(2)* If the youth violates an aftercare agreement as provided for in 52-5-126, the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under informal adjustment.

~~(4)~~*(3)* If the youth is placed in substitute care requiring payment by the department, the court, *as provided in [section 35],* shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

~~(5)~~*(4)* If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection ~~(4)~~*(3)*, the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

~~(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.~~

~~(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:~~

~~(i) good cause not to require immediate income withholding; or~~

~~(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.~~

~~(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:~~

~~(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and~~

~~(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.~~

~~(d) An alternative arrangement must:~~

~~(i) provide sufficient security to ensure compliance with the arrangement;~~

~~(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and~~

~~(iii) if approved by the court, be entered into the record of the proceeding.~~

~~(7) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.~~

~~(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.~~"

**Section 25.** Section 41-5-502, MCA, is amended to read:

**"41-5-502. Summons.** (1) After a petition has been filed, summons must be served directly to:

(a) the youth;

(b) ~~his~~ *the youth's* parent or parents having actual custody of the youth or ~~his~~ *the youth's* guardian or custodian, as the case may be; and

(c) other persons as the court may direct.

(2) The summons must:

(a) require the parties to whom it is directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take ~~him~~ *the youth* to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If ~~any~~ *a* youth is placed in detention or shelter care under any provision of this chapter pending an adjudication, the court shall, as soon as practicable, conduct a probable cause hearing as provided in ~~41-5-303~~ *[section 12]*.

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9."

**Section 26.** Section 41-5-521, MCA, is amended to read:

**"41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury trial on the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing must be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function is to determine whether the youth committed the

HeinOnline -- 1997 vol. II 1314 1997

contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing must be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded, except that in the court's discretion, the general public may be excluded if the petition ~~does not allege~~ *alleges* that the youth is ~~delinquent~~ *in need of supervision.*

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P."

**Section 27.** Section 41-5-522, MCA, is amended to read:

**"41-5-522. Dispositional hearing.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of care, commitment, and treatment of the youth as required in ~~41-5-523~~ *[section 35].*

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the social summary or predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the

HeinOnline -- 1997 vol. II 1315 1997

public. The evidence must include but is not limited to the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth or the youth's parents or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

~~(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:~~

~~(a) age of the youth;~~

~~(b) ability of the youth to pay;~~

~~(c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or need for supervision to pay;~~

~~(d) amount of damage to the victim; and~~

~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case.~~"

**Section 28.** Section 41-5-523, MCA, is amended to read:

"**41-5-523. Disposition *of youth in need of supervision*** ~~**— sentence to correctional facility — commitment to department — placement and evaluation of youth**~~ **— restrictions.** ~~(1)~~ If a youth is found to be ~~a delinquent youth or~~ a youth in need of supervision, the youth court may enter its judgment making one or more of the following dispositions:

~~(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);~~

~~(b)~~*(1)* place the youth on probation~~;~~. *The youth court retains jurisdiction in a disposition under this subsection.*

~~(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.~~

~~(d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and 46-23-506;~~

~~(e)~~*(2)* place the youth in an in-state residence that ensures that the youth is accountable, provides for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that resources are available for placement of the youth at that residence.

~~(f)~~*(3)(a)* commit the youth to the department. In an order committing a youth to the department~~:~~,

~~(i)~~ the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home~~;~~.

*(b) The department may not place a youth in need of supervision in a state youth correctional facility.*

~~(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.~~

~~(g)~~*(4)* order restitution by the youth or the youth's parents *or guardians, subject to the provisions of [section 37]*;

~~(h)~~*(5)* impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

~~(i)~~*(6)* require the performance of community service;

~~(j)~~*(7)* require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

~~(k)~~*(8)* require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

~~(l)~~*(9)* require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

~~(m)~~*(10) subject to the provisions of subsection (11),* order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department for services outside the state of Montana without the department's approval~~, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(f), place a youth in a residential treatment facility.~~;

~~(n)~~*(11) subject to the provisions of [section 31],* commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102~~. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.~~;

~~(i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed or sentenced to a state youth correctional facility.~~

HeinOnline -- 1997 vol. II 1317 1997

~~(ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

~~(c)~~*(12)* place the youth under home arrest as provided in Title 46, chapter 18, part 10.

~~(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:~~

~~(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.~~

~~(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.~~

~~(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.~~

~~(3) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:~~

~~(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;~~

~~(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;~~

~~(c) submitting an application to a facility in which the youth may be placed; and~~

~~(d) case management of the youth.~~

~~(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract~~

~~with the department or other public or private agencies to obtain evaluation services ordered by the court.~~

~~(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.~~

~~(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.~~

~~(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.~~

~~(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.~~

~~(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.~~

~~(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.~~

~~(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.~~

~~(12)(a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.~~

~~(b) A court ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:~~

~~(i) good cause not to require immediate income withholding; or~~

~~(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.~~

~~(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:~~

~~(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and~~

~~(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.~~

~~(d) An alternative arrangement must:~~

~~(i) provide sufficient security to ensure compliance with the arrangement;~~

~~(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and~~

~~(iii) if approved by the court, be entered into the record of the proceeding.~~

~~(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).~~

~~(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.~~

~~(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.~~"

**Section 29. Disposition of delinquent youth — restrictions.** (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-523;

(b) subject to 41-5-523(3)(b), [sections 30(1), 31(2)], and subsection (2) of this section, sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(c) require a youth found to be delinquent, as the result of the commission of an offense that would be a violation of 45-5-501 through 45-5-504, 45-5-507, or 45-5-511 if committed by an adult, to register as a sex offender pursuant to 46-18-254 and 46-23-506. The youth court retains jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth

correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(2) The youth court may not order placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged te have committed an offense that is transferable to criminal court under 41-5-206.

**Section 30. Disposition — commitmcnt to department — restrictions on placement.** When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the limitations contained in 41-5-523(3)(b) and the following limitations:

(1) A youth may not he held in a state youth correctional facility for a period of time in excess of the maximum peried of imprisonment that could be impesed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the departinent to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(2) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adulta convicted of crimes.

(3) The department inay not place a youth adjudicated delinquent for commission of an act that would not he a criminal offense if committed by an adult in a state youth correctional facility.

**Section 31. Disposition — finding of mentally ill or seriously mentally ill — rights — limitation on placement.** (1) A youth who is found to be seriously mentally ill as defined in 53-21-102 is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placeinent or sentencing, is found to be mentally ill, as defined in 41-5-103, or seriously mentally ill, as defined in 53-21-102, may not be committed or sentenced te a state youth correctional facility.

(3) A youth who is found te be mentally ill or seriously inentally ill after placeinent in or sentencing to a state youth correctional facility must be moved te a more appropriate placement in respense to tlie youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

**Section 32. Disposition — commitment to department — supervision.** (1) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department.

(2) A youth who is placed in any other placement hy the departinent, the youth court, or the youth court's juvenile probation officer inust be supervised by tlie probation officer of the youth court having jurisdiction over tbe youth under 41-5-205 whether or not the youth is committed to the department. Suporvision by tlie youth probation officer includes but is not limited to:

HeinOnline -- 1997 vol. II 1321 1997

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application te a facility in which the youth may be placed; and

(d) case management of the youth.

**Section 33. Disposition — commitment to department — transfer of records.** Whenever the court commits a youth te the department, it shall transmit with the dispesitional judgment copies of medical reperts, social history material, education records, and any other clinical, predisposition, or other reperts and information pertinent to the care and treatment of the youth.

**Section 34. Modification of court orders — notice to department — hearing.** (1) An order of the court may be modified at any time.

(2) In the case of a youth committed to the department, an order pertaining to the youth may be modified only upen notice to the department and subsequent hearing.

**Section 35. Contribution for costs — order for contribution — exceptions — collection.** (1) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering ali or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parents or guardians te pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(3) (a) Except as provided in subsection (3)(b), contributions ordered under 41-5-403 and this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under 41-5-403 or this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

HeinOnline -- 1997 vol. II 1322 1997

(c) A finding of good cause not to require immediate income withholding must, at a minimum, he based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person requirod to make contribntions; and

(iii) if approved by the court, be entered into the record of tbe proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under 41-5-403 or subsection (2).

(5) (a) If the court orders the payment of contributions under 41-5-403 or this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under 41-5-403 or this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

**Section 36. Disposition — medical or psychological evaluation of youth — costs.** (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior te final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. Except as provided in subsection (2), the county determined by the ceurt as the residence of the youth is responsible for the cost of the evaluation. A county may contract with the department or other public or privato agencies to obtain evaluation services ordered by the court.

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or gnardians to pay all or part of the cost of the evaluation.

(3) The youth court may not order evaluation of a youth at a state youth correctional facility unless the youth is found te be a delinquent youth or is alleged to have committed an offense that is transferable to district court under 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

HeinOnline -- 1997 vol. II 1323 1997

**Section 37. Restitution.** (1) In determining whether restitution, as autborized by 41-5-403 and 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or need for supervision to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss ınay not be considered in any case.

(2) Restitution paid hy a youth or a youth's parents or guardians is subject to subrogation as provided in 46-18-248.

**Section 38.** Section 41-5-525, MCA, is amended to read:

**"41-5-525. Youth placement committees — composition.** (1) In each judicial district, the department shall establish a youtli placement committee for the purposes of:

(a) recommending an appropriate placement of a youtli referred to the department under 41-5-403; or

(b) recommending available community services or alternative placements whenever a change is required in the placoment of a youth wlio is currently in the custody of the department under 41-5-523 *or [section 29].* However, the committee may not suhstitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriato to address the needs of the youth. Members may include:

(a) two representatives of the department;

(b) a representative of the department of public health and human services;

(c) either the chief probation officer or the youtli's probation officer;

(d) a mental healtli professional;

(e) a representative of a school district located within tlie boundaries of the judicial district;

(f) if an Indian child or children are involved, sonieone, preferahly an Indian person, knowledgeahle about Indian culture and family matters;

(g) a parent or guardian; and

(h) a youth services provider.

(3) Committee members serve without compensation.

(4) Notwithstanding the provisions of 41-5-527, the committee may be convened by the department or the probation officer of the youth court."

**Section 39.** Section 41-5-527, MCA, is amended to read:

"**41-5-527. Youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department.** (1) Prior to commitment of a youth to the department pursuant to 41-5-523 *or [section 29]*, a youth placement committee must be convened. The committee shall submit in writing to the department and to the youth court judge its primary and alternative recommendations for placement of the youth.

(2) If the department accepts either of the committee's recommendations, it shall promptly notify the committee in writing.

(3) If the department rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(4) Within 72 hours after making a decision on a placement or change of placement, the department shall notify the youth court of the decision and of the placement or change of placement."

**Section 40.** Section 41-5-530, MCA, is amended to read:

"**41-5-530. Parental contributions account — allocation of proceeds.** (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, ~~41-5-523~~ *[section 35]*, or 41-5-524 must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103."

**Section 41.** Section 41-5-1004, MCA, is amended to read:

"**41-5-1004. Distribution of grants — limitation of funding — restrictions on use.** (1) The board shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care must be paid as provided by law.

HeinOnline -- 1997 vol. II 1325 1997

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Based on funding available after the board has funded block grants under subsection (2), the board shall, in cases of extreme hardship in which the transfer of youth court cases te the adult system has placed considerable financial strain on a county's resources, award grants to eligible counties to fund up to 75% of the actual costs of securo detention of youth awaiting transfer. Hardship cases will be addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular case or cases that created the hardship expenditure for which the hardship grant is requested.

(4) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in ~~41-5-523~~ *[section 36]*."

**Seetion 42.** Section 41-5-1104, MCA, is amended to read:

"**41-5-1104. Disposition in extended jurisdiction proseeutions.** (1) If a youth in an extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in 41-5-1102(1)(b), the court shall:

(a) impose one or more juvenile dispositions under ~~41-5-523~~ *[section 29]*; and

(b) impose an adult criminal sentence, the execution of which must be stayed on tbe condition that the youth not violate the provisions of the disposition order and not commit a new offense. If the youth violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed as provided in 41-5-1105.

(2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is convicted of an offense not described in 41-5-1102(1)(b), the court shall adjudicate the youth delinquent and order a disposition under ~~41-5-523~~ *[section 29]*.

(3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in 41-5-1102(1)(b), the court may impose, with the youth's consent, a disposition provided under subsection (1)(b) *of this section*. If the youth does not consent to disposition under subsection (1)(b), the court shall impose a disposition as provided under subsection (2)."

**Section 43.** Section 46-24-207, MCA, is amended to read:

"**46-24-207. Victims and witnesses of juvenile felony offenses — consultation — notification of proceedings.** (1) The attorney general shall ensure that the services and assistance that must be provided under this chapter to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under Title 41, chapter 5, part ~~5~~*14 or 15*, the county attorney or a designee shall consult with the victim of a juvenile felony offense or, in the case of a minor victim or a homicide victim, with the victim's family regarding the disposition of the case, including:

HeinOnline -- 1997 vol. II 1326 1997

(a) a dismissal of the petition filed under 41-5-501;

(b) a reduction of the charge to misdemeanor;

(c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and

(d) the disposition of the youth.

(3) (a) Whenever possible, a person described in subsection (3)(b) who provides the youth court with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-501;

(ii) the release of the youth from detontion or shelter care; and

(iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of a dato for the dispositional hearing under 41-5-522, tbe disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim of a juvenile felony offense, an adult relative of the victim if the victim is a minor, or an adult relative of a homicide victim.

(c) The court shall provide to the department the list of people entitled to notification under this subsection (3), and the department is responsible to provide the notification.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

**Section 44.** Section 52-5-129, MCA, is amended to read:

**"52-5-129. Hearing on alleged violation of aftercarc agreement — right to appeal outcome.** (1) When it is alleged by an aftercare counselor that a youth has violatod the terms of tlie youth's aftercare agreement, the youth must be grantod a hearing at the sito of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to the youth correctional facility from which the youth was released or a different plan for treatment should be pursued by the department of corrections.

(2) The youth, upen advice of an attorney, may waive the right to a hcaring.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the aftercare agreement, including notice of the purpose of the hearing;

(b) *a* disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) *the* opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigato the violation;

(d) *the* opportunity to have the ~~referee~~ *hearings officer* subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the ~~referee~~ *hearings officer*.

(4) The department shall appoint a ~~referee~~ *hearings officer*, who may not he an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the ~~referee~~ *hearings officer* finds, by a preponderance of the evidence, that the youth did in fact commit the violation, the ~~referee~~ *hearings officer* shall make a recommendation to the department for the placement of the youth. In making this recommendation, the ~~referee~~ *hearings officer* may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the ~~referee's~~ *hearings officer's* recommendation.

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and ponding the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or the youth may abscond or be removed from the community. The department shall determine the place and manner of detention and is respensible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of the youth's aftercare agreement are as provided in 41-5-303, 41-5-306, 41-5-311, ~~and~~ 41-5-314, *[sections 12 through 14], and [sections 18 through 21].*

(8) If the decision is made to return the youth to the youth correctional facility from which the youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility."

HeinOnline -- 1997 vol. II 1328 1997

**Section 45.** Section 53-9-107, MCA, is amended to read:

**"53-9-107. Public inspection and disclosure of division's records.** (1) Except as provided in subsections (2) and (3), the records the division maintains in its possession in the administration of this part are open to public inspection and disclosure.

(2) Confidential criminal justice information obtained by the division is subject to the confidentiality provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5. ~~Information regarding youth court proceedings obtained by the division is subject to the confidentiality provisions of Title 41, chapter 5, part 6.~~

(3) In assuring that the right of individual privacy so essential to the well-being of a free society may not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature, such as personal, medical, or similar information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure ~~shall have~~ *has* the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(4) If any public record of the division contains material ~~which~~ *that* is not exempt under subsection (3), as well as material ~~which~~ *that* is exempt from disclosure, the division shall separate the exempt and nonexempt and make the nonexempt material available for examination."

**Section 46. Repealer.** Sections 41-5-310 and 41-5-312, MCA, are repealed.

**Section 47. Code commissioner instructions.** (1)(a) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 1: 41-5-207, 41-5-525, 41-5-526, 41-5-527, 41-5-528, 41-5-529, 41-5-530.

(b) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 2: 41-5-603, 41-5-604, 41-5-605.

(c) The code commissioner is instructed to renumber sections in Title 41, chapter 5, part 3, to achieve a logical sequence.

(d) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 12: 41-5-301, 41-5-304.

(e) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 13: 41-5-401, 41-5-402, 41-5-403.

(f) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 14: 41-5-202, 41-5-501, 41-5-502, 41-5-503, 41-5-511, 41-5-512, 41-5-513, 41-5-514, 41-5-515, 41-5-524, 41-5-531, 41-5-532.

HeinOnline -- 1997 vol. II 1329 1997

(g) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 15: 41-5-521, 41-5-522, 41-5-523, 41-5-533.

(h) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 16: 41-5-1101, 41-5-1102, 41-5-1103, 41-5-1104, 41-5-1105.

(i) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 17: 41-5-701, 41-5-702, 41-5-703, 41-5-704, 41-5-705, 41-5-706.

(j) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 18: 41-5-802, 41-5-809, 41-5-810, 41-5-811, 41-5-812, 41-5-813, 41-5-814.

(k) The code commissioner is instructed to renumber the following sections into Title 41, chapter 5, part 19: 41-5-1001, 41-5-1002, 41-5-1003, 41-5-1004, 41-5-1005, 41-5-1006, 41-5-1007, 41-5-1008.

(2) The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to or in sections of the Montana Code Annotated caused by the renumbering required by this section, including material enacted by the 55th legislature.

**Section 48. Codification instruction.** (1) [Sections 12 through 14, 16, and 18 through 21] are intended to be codified as an integral part of Title 41, chapter 5, part 3, and the provisions of Title 41, chapter 5, part 3, apply to [sections 12 through 14, 16, and 18 through 21].

(2) [Sections 6 through 8] are intended to be codified as an integral part of Title 41, chapter 5, part 12, and the provisions of Title 41, chapter 5, part 12, apply to [sections 6 through 8].

(3) [Section 9] is intended to be codified as an integral part of Title 41, chapter 5, part 13, and the provisions of Title 41, chapter 5, part 13, apply to [section 9].

(4) [Section 10] is intended to be codified as an integral part of Title 41, chapter 5, part 14, and the provisions of Title 41, chapter 5, part 14, apply to [section 10].

(5) [Sections 29 through 37] are intended to be codified as an integral part of Title 41, chapter 5, part 15, and the provisions of Title 41, chapter 5, part 15, apply to [sections 29 through 37].

**Section 49. Coordination instruction.** (1) If ___ Bill No. ___ [LC 224] is passed and approved and if it includes a section that amends 41-5-523(3)(b), then the code commissioner is instructed to compile the two provisions to retain the structure of [this act] and the substantive changes of ___ Bill No. ___ [LC 224].

(2) If ___ Bill No. ___ [LC 222] is passed and approved and if it includes a section that amends 41-5-523(2)(b), then the code commissioner is instructed to compile the two provisions to retain the structure of [this act] and the substantive changes of ___ Bill No. ___ [LC 222].

(3) If Senate Bill No. 48 and this bill are both passed and approved:

HeinOnline -- 1997 vol. II 1330 1997

(a) any reference in this bill to [section 29] is void, and the reference must be changed to reflect [section 34] in Senate Bill No. 48 in the second reading copy of the second house;

(b) any reference to [section 35] in this bill is void, and the reference must be changed to reflect [section 41] in Senate Bill No. 48 in the second reading copy of the second house;

(c) any reference to [section 36] in this bill is void, and the reference must be changed to reflect [section 39] in Senate Bill No. 48 in the second reading copy of the second house;

(d) sections amending 41-5-301, 41-5-303, 41-5-305, 41-5-306, and 41-5-530, in Senate Bill No. 48, second reading copy of the second house are void;

(e) sections amending 41-5-403, 41-5-523, 41-5-1004, and 41-5-1104 and [sections 29, 30, 31, 32, 33, 34, 35, 36, 37, and 48(5)] in this bill, first reading copy, are void;

(f) the following sections in this bill must read as follows:

"**Section 5.** Section 41-5-301, MCA, is amended to read:

"**41-5-301. Preliminary ~~investigation and disposition~~ *inquiry — referral of youth in need of care.*** (1) Whenever the court receives information from ~~any~~ *an* agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of ~~supervision~~ *intervention* or~~, being~~ *that the youth is* subject to a court order or consent order~~,~~ *and* has violated the terms of an order, a probation officer *or an assessment officer* shall make a preliminary inquiry into the matter.

~~(2) The probation officer may:~~

~~(a) require the presence of any person relevant to the inquiry;~~

~~(b) request subpoenas from the judge to accomplish this purpose;~~

~~(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.~~

~~(3)~~*(2)* If the probation officer *or assessment officer* determines that the facts indicate *that the youth is* a youth in need of care, the matter must be immediately referred to the department of public health and human services.

~~(4) (a) The probation officer in the conduct of the preliminary inquiry shall:~~

~~(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;~~

~~(ii) determine whether the matter is within the jurisdiction of the court;~~

~~(iii) determine, if the youth is in detention or shelter care, whether detention or shelter care should be continued based upon criteria set forth in 41-5-305.~~

~~(b) Once relevant information is secured, the probation officer shall:~~

~~(i) determine whether the interest of the public or the youth requires that further action be taken;~~

~~(ii) terminate the inquiry upon the determination that no further action be taken; and~~

~~(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.~~

~~(5) The probation officer upon determining that further action is required may:~~

~~(a) provide counseling, refer the youth and the youth's parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;~~

~~(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer proceeds no further unless authorized by the county attorney; or~~

~~(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.~~

~~(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.~~

~~(7) A petition charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.~~

~~(8) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition is filed.~~"

NEW SECTION. **Section 6. Preliminary inquiry — procedure — youth assessment.** (1) In conducting a preliminary inquiry under 41-5-301, the probation officer or assessment officer shall:

(a) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention, a youth assessment center, or shelter care, whether detention, placement in a youth assessment center, or

shelter care should be continued or modified based upon criteria set forth in 41-5-305, [section 16], and [section 47].

(2) In conducting a preliminary inquiry, the probation officer or assessment officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency;

(d) perform a youth assessment pursuant to [section 46].

(3) The probation officer or assessment officer sball collect the following information regarding a youth:

(a) biographical data;

(b) a description of prior and current offenses, including criminal history;

(c) a listing of known or suspected associates;

(d) any gang or drug involvement;

(e) field investigation data;

(f) motor vehicle ownership and offense data, if any;

(g) whether the youth is a suspect in other criminal investigations;

(h) history of any victimization of others by the youth;

(i) the youth's status offense history;

(j) existence of active warrants;

(k) school, employment, and family histories;

(l) social and medical services histories;

(m) prior conduct in a youth detention or correctional facility, if any.

NEW SECTION. **Section 7. Preliminary inquiry — determinations — release.** Once relevant information is secured after a preliminary inquiry under 41-5-301, the probation officer or assessment officer shall:

(1) determine whether the interest of the public or the youth requires that further action be taken;

(2) terminate the inquiry upon the determination that no further action be taken; and

(3) release the youth immediately upon the determination that the filing of a petition is not authorized.

NEW SECTION. **Section 8. Preliminary inquiry — dispositions available to probation officer.** Upon determining that further action is

required after a preliminary inquiry under 41-5-301, the probation officer or assessment officer may:

(1) arrange informal disposition as provided in [section 9]; or

(2) refer the matter to the county attorney for filing a petition in youth court charging the youth to be a delinquent youth or a youth in need of intervention or for filing an information in the district court as provided in 41-5-206.

NEW SECTION. **Section 9. Informal disposition.** After a preliminary inquiry under 41-5-301, the probation officer or assessment officer upon determining that further action is required and that referral to the county attorney is not required may:

(1) provide counseling, refer the youth and the youth's family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detontion; or

(2) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the mattor is referred immediately to the county attorney for review, and if the probation officer or assessment officer proceeds no further unless authorized by the county attorney.

NEW SECTION. **Section 10. Petition — county attorney — procedure — release from custody.** (1) The county attorney may apply to the youth court for permission to file a petition charging a youth to he a delinquent youth or a youth in need of intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(2) A petition charging a youth who is held in detention or a youth assessment center must be filed within 7 working days from the date the youth was first taken into custody or the petition must he dismissed and the youth released unless good cause is shown to further detain the youth.

(3) If a petition is not filed under this section, the complainant and victim, if any, must he informed by the probation officer or assessment officer of the action and the reasons for not filing and must he advisod of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer or assessment officer, and make the fmal decision as to whether a petition is filed.

NEW SECTION. **Section 14. Custody — hearing for probable cause — determinatious — detention — release.** (1) If, at a probable cause hearing held pursuant to [section 12], it is detormined that there is probable cause to believe that the youth is a delinquent youth or a youth in need of intervention, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-305, [section 16], or [section 47], the youth may be placed in a detention facility, a youth assessment center, or a shelter care facility as provided in [sections 18 through

HeinOnline -- 1997 vol. II 1334 1997

21] but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(2) If probable cause is not found or if a probable cause hearing is not held within the time specified in [section 12], the youth must be immediately released from custody.

**Section 17.** Section 41-5-306, MCA, is amended to read:

"**41-5-306. ~~Place of shelter care or detention~~ *Limitation on placement of youth in need of care.*** ~~(1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:~~

~~(a) in a licensed youth foster home as defined in 41-3-1102;~~

~~(b) in a facility operated by a licensed child welfare agency;~~

~~(c) in a licensed youth group home as defined in 41-3-1102; or~~

~~(d) under home arrest, either in the youth's own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.~~

~~(2)~~ A youth alleged to be a youth in need of care may be placed only ~~in the facilities listed in subsection (1)~~ *by the department of public health and human services as provided in Title 41, chapter 3,* and may not be placed in a *youth assessment center, youth detention facility,* jail, or other facility intonded or used for the confinement of adults accused or convicted of criminal offenses.

~~(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only:~~

~~(a) in the facilities described in subsection (1);~~

~~(b) under home arrest as provided in subsection (1);~~

~~(c) in a short-term detention center;~~

~~(d) in a youth detention facility; or~~

~~(e) in a community youth court program.~~"

NEW SECTION. **Section 20. Place of shelter care.** Placement in shelter care means placement in one of the following:

(1) in a licensed youth care facility as defined in 41-3-1102; or

(2) under home arrest, with or without a monitering device, as provided in Title 46, chapter 18, part 10, either in the youth's own home or in a facility described in subsection (1).

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103.

HeinOnline -- 1997 vol. II 1335 1997

**Section 40.** Section 41-5-530, MCA, is amended to read:

**"41-5-530. Parental contributions account — allocation of proceeds.** (1) There is a parental contrihutions account in the state special revenue fund.

(2) Contributions paid hy the parents and guardians of youth under 41-3-406, ~~41-5-403, 41-5-523~~ *[section ~~35~~ 41 of Senate Bill No. 48, second reading copy of the second house]*, or 41-5-524 must be depesited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103.""

(g) This section must be placed in House Bill No. 114 and is intended to be codified in Title 41, chapter 5, part 12, and tbe provisions of Title 41, chapter 5, part 12, apply to this section:

"NEW SECTION. **Section 46. Preliminary inquiry — youth assessment.** (1) The probation officer or assessment officer may perform a youth assessment if:

(a) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses that would not be offenses if the youth were an adult in the past year; or

(b) the youth or tlie youth's parent or guardian requests the youth assessment and both tbe youth and the parent or guardian are willing to cooperate with the assessment process.

(2) A youth assessment:

(a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has mental health needs, or an assessment of the need for any family-based services or other services provided by tlie department of public health and human services or other state and local agencies. The education component of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The education component is not intended to interfere with the right to attend a nonpublic or home school tliat complies with 20-5-109.

(b) must include a summary of the family's strengtbs and needs as tbey relato to addressing the youth's behavior;

(c) may occur in a youth's home, witli or without electronic monitoring, or pursuant to 41-5-305 in a youth assessment center licensed by tbe department of public health and human services or in any other entity licensed by the department of public health and human services. The county shall provide adequate security in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county must meet licensing requirements applicable to the licensed entity in which the youth is being held.

(3) The assessment officer arranging the youth assessment shall work with the parent or guardian of the youth to coordinate the performance of the various parts of the assessment with any providers that may already be working with the

family or providers that are chosen by the family to the extent possible to meet the goals of the Youth Court Act."

(h) This section must be placed in House Bill No. 114 and is intended to be codified in Title 41, chapter 5, part 3, and the provisions of Title 41, chapter 5, part 3, apply to this section:

"NEW SECTION. **Section 47. Criteria for placement of youth in youth assessment centers.** A youth may be placed in a youth assessment center only if:

(1) the youth meets the requirements for placement in shelter care;

(2) the youth has not committed an act that would be a felony offense if committed by an adult;

(3) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's need for services;

(4) the youth needs to be held accountable for the youth's actions with structured programming; and

(5) the youth meets qualifications as outlined by the placement guidelines that are determined by the department and coordinated with the guidelines used by the youth placement committees."

(i) This section must be placed in House Bill No. 114:

"NEW SECTION. **Section 50. Code commissioner instruction.** (1) Wherever a reference to "an aftercare agreement" appears in House Bill No. 114, the code commissioner is directed to change it to an appropriate reference to "a parole agreement".

(2) References to "an aftercare agreement" that are contained in Title 41, chapter 5, in material enacted by the 55th legislature must be changed to "a parole agreement"."

**Section 50. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 51. Applicability.** [This act] applies to proceedings commenced after [the effective date of this act].

Approved April 17, 1997

## CHAPTER NO. 287

[HB 170]

AN ACT ESTABLISHING A GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR CERTAIN BENEFIT RECIPIENTS IN THE STATEWIDE PUBLIC EMPLOYEE RETIREMENT SYSTEMS UNDER THE PUBLIC EMPLOYEES' RETIREMENT BOARD; DEFINING "ACTUARIALLY SOUND BASIS"; MAKING THE ANNUAL ADJUSTMENT AN

HeinOnline -- 1997 vol. II 1337 1997

ALTERNATIVE TO CERTAIN EXISTING BENEFITS; INCREASING CONTRIBUTION RATES AND MODIFYING CERTAIN BENEFITS TO FUND THE ADJUSTMENT; PROVIDING THAT CERTAIN COURT FEES BE CREDITED TO THE GENERAL FUND; REQUIRING THAT MEMBERS OF THE PUBLIC EMPLOYEES' AND HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEMS PAY THE FULL ACTUARIAL COST OF PURCHASING CERTAIN SERVICE; ALLOWING MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM WHO BECAME MEMBERS ON OR AFTER JULY 1, 1989, TO PURCHASE ADDITIONAL SERVICE FOR CALCULATING BENEFITS; REDEFINING THE SALARY USED TO CALCULATE CERTAIN BENEFITS UNDER THE JUDGES' AND FIREFIGHTERS' RETIREMENT SYSTEMS; ADJUSTING CERTAIN DEATH BENEFITS PAID UNDER THE JUDGES' AND GAME WARDENS' RETIREMENT SYSTEMS; REPLACING CURRENT POSTRETIREMENT ADJUSTMENTS AND MINIMUM BENEFITS UNDER EACH RETIREMENT SYSTEM FOR CURRENT MEMBERS WHO ELECT THE ANNUAL ADJUSTMENT AND FOR ALL NEW MEMBERS; AMENDING SECTIONS 3-2-404, 3-2-405, 19-3-315, 19-3-316, 19-3-503, 19-3-512, 19-3-513, 19-5-101, 19-5-404, 19-5-502, 19-5-601, 19-5-802, 19-6-402, 19-6-404, 19-6-707, 19-6-709, 19-6-801, 19-8-502, 19-8-504, 19-8-1002, 19-9-702, 19-9-710, 19-9-1007, 19-13-601, 19-13-604, 19-13-704, 19-13-803, 19-13-902, 19-13-1006, 19-13-1007, 19-13-1009, AND 25-1-201, MCA; REPEALING SECTIONS 19-3-1601, 19-3-1602, 19-3-1603, 19-7-708, 19-7-709, 19-7-710, 19-8-1101, 19-8-1102, AND 19-8-1103, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 1 through 3] give the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to guarantee a minimum level of annual benefit increases for retired members and their contingent annuitants or survivors under each of the statewide public employee retirement systems. The legislature also intends to fund this guaranteed annual benefit adjustment (GABA) in the most cost-effective manner possible.

Because the GABA is intended to address the erosion of retirement benefits caused by inflation as cost-effectively as possible, it is the intent of the legislature that the guaranteed annual 1.5% minimum adjustment not begin until after the original benefit has been paid for at least 36 months.

Because it is most cost-effective to reduce current unfunded liabilities as well as to avoid future unfunded liabilities and to fund new benefits as they accrue, the bill provides that the GABA be substituted for other benefits in cases in which the GABA is as valuable or more valuable to members. The resulting actuarial savings will reduce the additional funding required for the GABA.

In the public employees', sheriffs', and game wardens' retirement systems, all members will automatically be covered by the GABA provided for in this bill instead of the current postretirement adjustments based on investment earnings.

In the highway patrol officers', municipal police officers', firefighters' unified, and judges' retirement systems, in which the substitution of the GABA in place of other benefits is not a clear benefit enhancement for all current members, it

is the intent of the legislature that the members be provided with a thorough analysis of the benefits to be substituted so that members may individually and irrevocably elect whether to be covered under the provisions of this bill. However, it is not the intent of the legislature that the retirement board or its administrative staff be required to recommend a specific or best choice to individual members.

It is the intent of the legislature that all future members of these systems be covered by the GABA in place of certain other benefits.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's initiation date is at least 36 months prior to January 1 of the year in which the adjustment is te be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section.

**Section 2. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

HeinOnline -- 1997 vol. II 1339 1997

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's initiation date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member or benefit recipient either:

(i) first became an active member on or after [the effective date of this act]; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998.

(4) The board shall adopt rules to administer the provisions of this section.

**Section 3. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's initiation date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after [the effective date of this act]; or

(ii) filed a voluntary, irrevocable election to he covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from [the effective date of this act] forward. A retired member or the member's survivor who is receiving a monthly benefit before [the effective date of this act] shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section.

**Section 4. State contributions for local government and school district employers.** The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation of members employed by local gevernment entities and school districts on and after [the effective date of this act]. The division shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week.

**Section 5. Systems to be funded on actuarially sound basis — definition.** As required by Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For purposes of this section, "actuarially sound hasis" means that contributions to each system must be sufficient to pay the full actuarial cost of the system. The full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.

**Section 6.** Section 3-2-404, MCA, is amended to read:

"**3-2-404. Disposition of fees.** Except as otherwise provided by law, ~~three-fourths of~~ all fees collected by the clerk must be paid into the state treasury and ~~shall~~ *must* be credited to the general fund~~, and the remaining one-fourth of the fees shall be paid to the public employees' retirement division of the department of administration to be credited to the Montana judges' retirement system account~~."

**Section 7.** Section 3-2-405, MCA, is amended to read:

"**3-2-405. Settlements and accounts to state auditor.** (1) The clerk is responsible and ~~must~~ *shall* account for and, in ~~his~~ *the clerk's* settlement with the state auditor, must be charged with the full amount of all fees collected or chargeable and accruing in causes brought into the court for services rendered ~~therein~~ up to the time of each settlement. The settlement must take place quarterly, and immediately ~~thereafter~~ *after settlement,* the clerk ~~must~~ *shall* pay the amount found due into the treasury ~~or to the public employees' retirement division, as provided in 3-2-404~~.

(2) ~~He~~ *The clerk* ~~must~~ *shall* ~~also~~ at the end of each quarter render to the state auditor, in ~~such~~ *a* form ~~as~~ that *the* ~~officer~~ *state auditor* prescribes, an account in

detail and under oath of all fees chargeable and accruing in causes brought into court and not included in ~~his~~ *the clerk's* previous accounts.

(3) ~~His~~ *The clerk's* salary may not be allowed or paid until all fees ~~so accruing~~ for which ~~he~~ *the clerk* is chargeable have been accounted for and paid ~~over~~."

**Section 8.** Section 19-3-315, MCA, is amended to read:

**"19-3-315. Member's contribution to be deducted.** (1) On and after July 1, ~~1993~~ *1997*, the regular contribution of each member is ~~6.70%~~ *6.8%* of the member's compensation. *Each member's contribution increases to 6.9% beginning July 1, 1999.*

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Cede of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the memher and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

**Section 9.** Section 19-3-316, MCA, is amended te read:

**"19-3-316. Employer contribution rates.** *(1)* Each employer shall contribute to the cost of benefits under the system. ~~On and after July 1, 1993~~ *Except as provided in subsection (2),* the amount of the employer ~~contributions is 6.70% of each~~ *contribution as a percentage of the* employer's covered payroll *is 6.8% beginning July 1, 1997, and increases to 6.9% beginning July 1, 1999.*

*(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rate applied to their monthly covered payrolls under [section 4].*"

**Section 10.** Section 19-3-503, MCA, is amended to read:

**"19-3-503. Election to qualify military service.** (1) (a) ~~A~~ *Except as provided in subsection (2), a* member with 10 years or more of service credits may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces of the United States, including the first special service force or

HeinOnline -- 1997 vol. II 1342 1997

the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-705 *or is ineligible under subsection (2)(a).*

(b) To qualify this service, the member shall contribuuto to the pension trust fund tbe ~~amount determined by the board to be due based on the member's compensation and regular contribution rate as of the member's 11th year and as many succeeding years as are required to qualify this service, with regular interest from the date the member becomes eligible for this benefit to the date the member contributes. The member may not purchase more of this service credit than the member has service credits in excess of 10 years~~ *actuarial cost of the service credit based on the most recent actuarial valuation of the system.*

(2) *(a)* If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1).

*(b)* However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945, is not more than 25% of the total sum of all years of military service including reserve and active duty time."

**Section 11.** Section 19-3-512, MCA, is amended to read:

**"19-3-512. Qualification of service from other public retirement systems.** (1) A member with 5 or more years of membership service in the public employees' retirement system may qualify:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not qualify more than 5 years of service under this section. To qualify this service, a member shall:

(a) at any time before retirement make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board~~,~~ based on:

~~(i) the member's compensation in the sixth year of service covered under the public employees' retirement system; and~~

~~(ii)~~ the most recent actuarial valuation *of the system.*

HeinOnline -- 1997 vol. II 1343 1997

(3) Contributions to qualify service under this section may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-3-503.

(5) Service qualified under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the accumulated contributions made to qualify the service."

**Section 12.** Section 19-3-513, MCA, is amended to read:

**"19-3-513. Election to purchase additional service.** (1) At any time before retirement, a person ~~who became a member of the retirement system before July 1, 1989, and~~ who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund ~~an amount equal to the member's compensation for the 12 month period immediately preceding the date the member elects to purchase the service multiplied by the combined employee and employer contribution rates contained in 19-3-315 and 19-3-316~~ *the actuarial cost of the service credit based on the most recent actuarial valuation of the system.* Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(3) (a) Except as provided in subsection (3)(b), ~~after January 1, 1990,~~ a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for service retirement."

**Section 13.** Section 19-5-101, MCA, is amended to read:

**"19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Compensation" means remuneration as defined in 2-16-403, 3-5-211, and 3-7-222 paid to a member.

HeinOnline -- 1997 vol. II 1344 1997

(2) "Current salary" means the current compensation for the office retired from.

(3) *"Final average salary" means the average of the member's highest monthly compensation during any 36 consecutive months of membership service in the retirement system.*

*(4)* "Involuntary retirement" means a retirement not for cause and before retirement age.

~~(4)~~*(5)* "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."

**Section 14.** Section 19-5-404, MCA, is amended to read:

**"19-5-404. Contributions by state.** (1) ~~The~~ *Except as provided in subsection (2), the* state of Montana shall contribute monthly to the pension trust fund a sum equal to ~~6%~~ *25.81%* of the compensation of each member. ~~In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6) to the state, which shall first deposit in the pension trust fund an amount equal to 34.71% of the total compensation paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the division to be credited to the pension trust fund.~~

(2) The state of Montana shall contribute monthly from the renewable resource grant and loan program account in the state special revenue fund to the judges' pension trust fund an amount equal to ~~34.71%~~ *25.81%* of the compensation paid to the chief water court judge."

**Section 15.** Section 19-5-502, MCA, is amended to read:

**"19-5-502. Service retirement benefit.** Upon retirement from service, ~~a member must receive a~~ *the* service retirement benefit ~~equal to~~ *must be as follows:*

*(1) for members not covered under [section 2],* 3 1/3% per year of the member's current salary for the first 15 years of credited service and 1.785% per year for each year of credited service after 15 years; *or*

*(2) for members covered under [section 2], the benefit provided under subsection (1) except that the benefit must be calculated using final average salary."*

**Section 16.** Section 19-5-601, MCA, is amended to read:

**"19-5-601. Disability retirement benefit.** In case of the disability of a member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of any service to the Montana judiciary in the line of duty, the ~~member must receive a benefit equal to~~ *member's disability retirement benefit must be no less than:*

HeinOnline -- 1997 vol. II 1345 1997

*(1)* one-half of the member's final current salary ~~or the benefit provided in 19-5-502, whichever is greater~~ *for a person not covered under [section 2]; or*

*(2) one-half of the member's final average salary for a person covered under [section 2].*"

**Section 17.** Section 19-5-802, MCA, is amended to read:

"**19-5-802. Payments in case of death from other causes.** (1) If a retired member who ~~chose a regular~~ *is not covered under [section 2] and who did not choose an option 2, 3, or 4 form of* retirement benefit *payment under 19-5-701* dies before receiving payments equal to the present value of the member's retirement benefit as it was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump sum. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

(2) *Upon the death of a retiree who did not choose an option 2, 3, or 4 form of retirement benefit payment under 19-5-701 and who is covered under [section 2], the member's designated beneficiary must be paid the unpaid balance of the retiree's benefit. The benefit must be calculated by subtracting the total benefits paid to the member during the member's lifetime from the member's total amount of contributions and interest on account as that amount was on the day that the member retired.*

*(3)* If a member dies before reaching retirement age, the member's designated beneficiary is entitled te a monthly survivorship benefit that is the actuarial equivalent of the *involuntary retirement* options ~~as~~ provided in 19-5-503."

**Section 18.** Section 19-6-402, MCA, is amended to read:

"**19-6-402. Member's contribution.** (1) ~~Each~~ *(a) A* memher *not covered under [section 3]* shall contribute into the pension trust fund ~~a sum equal to~~ 9% of the member's monthly compensation~~, which must be deposited to the member's credit in the pension trust fund~~.

*(b) A member covered under [section 3] shall contribute to the pension trust fund 9.05% of the member's monthly compensation.*

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up hy the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and compensation as used to define the member's final average salary in 19-6-101. The employer shall

HeinOnline -- 1997 vol. II 1346 1997

deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

**Section 19.** Section 19-6-404, MCA, is amended to read:

**"19-6-404. State's contribution.** The state of Montana shall annually contribute to the pension trust fund an amount equal to ~~36.28%~~ *36.33%* of the total compensation paid to the members from the following sources:

(1) an amount equal to ~~26.10%~~ *26.15%* of the total compensation of the members is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of the total compensation of the members is payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121."

**Section 20.** Section 19-6-707, MCA, is amended to read:

**"19-6-707. Minimum monthly benefit.** (1) Subject to the limitations contained in subsection (2), the following retired members, *or* ~~and~~ their survivors, *who are not covered by [section 3]* are eligible to receive a monthly benefit of not less than 2% multiplied by the member's service credits multiplied by the current base compensation received by a probationary highway patrol officer:

(a) a retired member who is 55 years of age or older, except as provided in subsection (3), or the member's survivor, who is receiving a service retirement benefit;

(b) a retired member, or the member's survivor, who is receiving a disability retirement benefit; and

(c) a recipient of a survivorship benefit.

(2) (a) The maximum monthly benefit paid under subsection (1) may not exceed 60% of the current base compensation of a probationary highway patrol officer.

(b) The annual increase in a monthly benefit under subsection (1) may not exceed 5% of the current monthly benefit paid to a retired member or the member's survivor.

(3) A retired member otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19 is ineligible to receive the minimum monthly benefit provided for in this section until the member's service in the covered position is terminated."

**Section 21.** Section 19-6-709, MCA, is amended to read:

**"19-6-709. (Temporary) Supplemental benefits for certain retirees.** (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

HeinOnline -- 1997 vol. II 1347 1997

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, *may not be covered by [section 3],* and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligiblo under subsection (2)(a); or

(c) a recipient of a disability or survivorship benefit under 19-6-601 or 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) (a) Twenty-five cents of each motor vehicle registration fee provided for in 61-3-321 must be deposited in tlie pension trust fund at the end of each fiscal year. The fee is statutorily appropriated, as provided in 17-7-502, for payment of benefits to eligible recipients. The total funds must be distributed by the division in lump-sum payments to eligible recipients along with their normal retirement benefit payment.

(b) Tbe lump-sum payment must be distributed proportionally to all eligible recipients based on service credit at the time of retirement, subject to the following:

(i) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(ii) any recipient of a service retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(iii) the maximum annual increase in the amount of supplemental henefits paid to each individual under this section ~~after August 31, 1993,~~ is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system.

(5) Every 10 years following July 1, 1991, the division shall review the size of the additional fee collected under 61-3-321(5) and deposited in the account in accordance with subsection (4)(a) and recommend to each legislature following tbe division's review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section."

HeinOnline -- 1997 vol. II 1348 1997

**Section 22.** Section 19-6-801, MCA, is amended to read:

**"19-6-801. Election to qualify military service.** (1) A member with 15 years or more of service credit with the Montana highway patrol may, at any time prior to retirement, make a written election with the division to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-705.

(2) To qualify this service ~~the~~:

*(a) a* member *not covered by [section 3]* shall contributo to the account the amount determined by the division to be due based on the member's compensation and regular contribution rate as of the member's 16th year and as many succeeding years as are required to qualify this service, with interest from the date tbe member becomes eligible for this benefit to the date the member contributes. The member may not qualify more of this service than the member has service with the Montana highway patrol in excess of 15 years.

*(b) a member covered by [section 3] shall contribute the actuarial cost of the service credit based on the most recent actuarial valuation of the system."*

**Section 23.** Section 19-8-502, MCA, is amended to read:

**"19-8-502. Member's contribution.** (1) ~~Every~~ *Each* member is required to contribute into the pension trust fund ~~a sum equal to 7.9%~~ *8.5%* of the member's monthiy cempensation, which ~~sum~~ must be deposited to the member's credit in the pension trust fund.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay tbe contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the emploYer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and the member's compensation as used to define the member's final average salary in 19-8-101. Tbe employer shall deduct from the member's cempensation an amount equal to the amount of the member's contributions picked up hy the employer and remit the total of the contributions to the board."

**Section 24.** Section 19-8-504, MCA, is amended to read:

**"19-8-504. State's contribution.** Each month, the state treasurer shall pay to the pension trust fund out of the department of fish, wildlife, and parks funds, a sum equal to ~~8.15%~~ *9%* of all members' salaries."

HeinOnline -- 1997 vol. II 1349 1997

**Section 25.** Section 19-8-1002, MCA, is amended to read:

**"19-8-1002. Postretirement death payments.** If a ~~retired~~ member who *retires on or after [the effective date of this act] and who* has not chosen an ~~optional~~ *option 2, 3, or 4* retirement benefit under 19-8-801 dies before receiving an amount equal to the ~~present value of the member's service retirement benefit under 19-8-603~~ *member's total amount of contributions and interest on account* as ~~it~~ *that amount* was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump-sum payment. ~~At the option of the designated beneficiary, the lump-sum payment may be annuitized and paid over the beneficiary's lifetime; however, the payment is not a benefit subject to increases.~~"

**Section 26.** Section 19-9-702, MCA, is amended to read:

**"19-9-702. State contribution.** The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. The payments must be made annually after the end of each fiscal year but no later than November 1 from the gross premium tax after deduction for cancellations and returned premiums. The division shall notify the auditor by September 1 of each fiscal year of the annual compensation paid to all active members during the preceding fiscal year. The state's contribution is ~~15.66%~~ *15.96%* of compensation paid to members."

**Section 27.** Section 19-9-710, MCA, is amended to read:

**"19-9-710. Member's contribution.** (1) ~~The~~ *Except as provided in subsection (2), the* regular contribution *as a percentage of compensation* of each active member first employed by an employer *as a police officer:*

*(a)* on or before June 30, 1975, is 7.8% ~~of the member's compensation.~~*;*

*(b)* ~~In the case of a member first employed by an employer as a police officer~~ after June 30, 1975, ~~the contribution~~ is 9% ~~of the member's compensation.~~*;*

*(c)* ~~In the case of a member first employed by an employer as a police officer~~ after June 30, 1979, *but before [the effective date of this act],* ~~the contribution~~ is 10.5% ~~of the member's compensation.~~*; and*

*(d) on and after [the effective date of this act], is 11%.*

*(2) A member covered under [section 3] shall pay a contribution rate equal to 11% of compensation received on and after [the effective date of this act].*

*(3)* Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under ~~subsection~~ *subsections* (1) *and (2)* for service rendered after June 30, 1985.

~~(3)~~*(4)* The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

HeinOnline -- 1997 vol. II 1350 1997

~~(4)~~*(5)* The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and in the member's compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

**Section 28.** Section 19-9-1007, MCA, is amended to read:

"**19-9-1007. Supplement to certain benefits.** (1) The benefits paid in each fiscal year to a retired member or the member's survivors *and that are not covered by [section 3]* may not be less than one-half of the compensation that will be paid in the current fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before October 1 of each year, the division shall make a report including the following information:

(a) the names of all retired members who are receiving benefits from the retirement system as of the date of the report;

(b) the names of all surviving spouses or dependent children who are receiving benefits from the retirement system because of the death of an active or retired member of this or a prior plan;

(c) for the purpose of determining the base retirement, disability, or survivorship benefits for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the benefits paid in the base fiscal year to each retired member described in subsection (2)(a);

(ii) the amount of the benefits paid in the base fiscal year to each surviving spouse or dependent child described in subsection (2)(b);

(iii) upon the death after the base fiscal year of any retired member who was receiving benefits, the amount of benefits that would have been paid to an eligible surviving spouse of the retired member if the surviving spouse had been receiving benefits in the base fiscal year;

(d) the original amount of retirement, disability, or survivorship benefits paid to retired members or their eligible survivors as of the original retirement dates after July 1, 1975;

(e) the compensation that will be paid during the current fiscal year to a newly confirmed police officer of each city or town participating in the retirement system.

(3) The division shall compute the difference between each amount reported under subsections (2)(c) through (2)(e) and one-half the compensation to be paid during the current fiscal year to a newly confirmed police officer of the appropriate city or town. The difference must be reported to the state auditor who shall pay the difference to the pension trust fund out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-18-512(3) no later than November 1. If the compensation of a newly

HeinOnline -- 1997 vol. II 1351 1997

confirmed police officer has not been set for the current fiscal year in time to be included in the October 1 report to the state auditor, the division shall make any retroactive adjustments necessary to individual supplemental benefits after the current compensation has been determined and shall include these amounts in the next year's report for reimbursement at that time.

(4) The premium tax amount paid by the stato auditor is statutorily appropriated, as provided in 17-7-502, for the payment of supplemental retirement benefits to eligible retired members and their survivors. This payment is in addition to the payment to be made by the state auditor under 19-9-702.

(5) If more than one dependent child is entitled to supplementary benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one depondent chiid and the supplementary benefits must be paid to the dependent children collectively."

**Section 29.** Section 19-13-601, MCA, is amended to read:

**"19-13-601. Deduction remitted to firemen's association — member's contribution.** (1) Each employer shall retain from the compensation of each active member a sum equal to 1% of the member's compensation for services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the retirement system.

(2) ~~The~~ *Each* member's contribution to the retirement system ~~is 7.8%~~ *as a percentage* of the member's componsation *must be:*

*(a) 7.8% for a member not covered under [section 3]; or*

*(b) 9% for a member covered under [section 3].*

(3) If a member receives compensation under the provisions of the Workers' Componsation Act, Title 39, chaptor 71, tbe amount received must be included as part of the member's compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under 19-13-604, 19-13-605, and this section must be based on the total compensation received by the member from the employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amendod and applicable on July 1, 1987, shall pick up and pay the contributions that would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

HeinOnline -- 1997 vol. II 1352 1997

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

**Section 30.** Section 19-13-604, MCA, is amended to read:

**"19-13-604. State contribution.** The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-18-512. These payments must be made annually to the pension trust fund after the end of each fiscal year but no later than November 1 from the gross premium taxes after deduction for cancellations and returned premiums. The division shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year. The state's contribution is ~~24.21%~~ *24.5%* of this total compensation. As soon as practicable after receipt of the state contribution, the division shall deposit it in the pension trust fund."

**Section 31.** Section 19-13-704, MCA, is amended to read:

**"19-13-704. Amount of service retirement benefit.** (1) *Except as provided in subsection (3), the following retirement benefits apply:*

(a) A member ~~hired before July 1, 1981,~~ who elects to retire after having reached 20 years of membership service must receive a service retirement benefit equal to the sum of:

(i) 50% of the member's last monthly compensation for years of service credit up to and including 20 years; and

(ii) 2% of the member's last monthly compensation for each year of service credit after 20 years.

(b) A member ~~hired before July 1, 1981,~~ who elects to retire after having reached at least 10 years but less than 20 years of membership service as an active member must receive a service retirement benefit equal to 2% of the member's last monthly compensation for each year of service credit. ~~Upon the retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104.~~

(2) A member hired on or after July 1, 1981, who retires with at least 10 years of membership service must receive a service retirement benefit equal to 2% of the member's final average compensation for each year of service credit.

*(3) A member hired before July 1, 1981, and who is covered under [section 3] is entitled to the same benefit provided under subsection (1) or (2), except that the benefit must be calculated using final average compensation.*

*(4) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the*

HeinOnline -- 1997 vol. II 1353 1997

*member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104."*

**Section 32.** Section 19-13-803, MCA, is amended to read:

**"19-13-803. Amount of disability retirement benefit.** (1) A *Except as provided in subsection (3), the disability retirement benefit for a* member hired before July 1, 1981, who becomes disabled:

(a) before completing 20 years of membership service must ~~receive a disability retirement benefit~~ equal ~~to~~ one-half the member's last monthly compensation;

(b) after completing 20 years or more of membership service must ~~receive~~ *equal* the disability retirement benefit provided in subsection (1)(a) increased at a rate of 2% of the member's last monthly compensation for each year of service credit in excess of 20.

(2) A *Except as provided in subsection (3), the disability retirement benefit for a* member hired on or after July 1, 1981, who becomes disabled:

(a) before completing 25 years of membership service must ~~receive a disability retirement benefit~~ equal ~~to~~ one-half the member's last monthly compensation;

(b) after completing 25 years or more of membership service must ~~receive~~ *equal* tbe disability retirement benefit provided in subsection (2)(a) increased at a rate of 2% of the member's last monthly compensation for each year of service credit in excess of 25.

(3) *A member covered under [section 3] is entitled to the same benefit as provided in subsection (1) or (2) except that the benefit must be calculated using final average compensation.*

*(4)* A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's death the member leaves no surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as they remain dependent children as defined in 19-13-104."

**Section 33.** Section 19-13-902, MCA, is amended to read:

**"19-13-902. Survivorship benefit.** (1) ~~(a) Upon the death before retirement~~ *Except as provided in subsection (3), the survivorship benefits payable to the surviving spouse upon the death* of an active member hired before July 1, 1981, ~~the member's surviving spouse, if there is one, must receive a survivorship benefit equal to~~ *must be as follows:*

*(a)* one-half the last monthly compensation received by the member*; or*~~. If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104.~~

HeinOnline -- 1997 vol. II 1354 1997

(b) ~~If~~ *if* the deceased member completed over 20 years of membership service, the survivorship benefit provided in subsection (1)(a) ~~must be~~ increased at a rate of 2% of the last monthly compensation for each year *of service* in excess of 20.

(2) Upon the death before retirement of a member hired on or after July 1, 1981, the member's surviving spouse, if there is one, must receive a survivorship benefit equal to one-half of the member's final average compensation.

*(3) The benefit payable to the surviving spouse upon the death of an active member covered under [section 3] must be the same as provided under subsection (1) or (2) except that the benefit must be calculated using final average compensation.*

*(4)* If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104."

**Section 34.** Section 19-13-1006, MCA, is amended to read:

**"19-13-1006. Supplement to retirement benefits for persons retiring before July 1, 1973.** (1) ~~The~~ *Except for persons who elect to be covered under [section 3], the* retirement system shall pay to each member retired before July 1, 1973, or the member's surviving spouse or dependent children a monthly retirement benefit of not less than one-half the regular monthly compensation paid to a confirmed active firefighter of the city that last employed the member as a firefighter, as provided each year in the budget of that city. If the city that last employed the member as a firefighter no longer employs a full-paid firefighter, the member's or survivor's benefit may not be less than one-half the average regular monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter. In the case of volunteer firefighters, the retirement benefit may not exceed $75 per month. Distribution of the money provided for this purpose under 19-18-606(1) must be made according to subsection (2).

(2) (a) At the beginning of each fiscal year the division shall request and, except as provided in subsection (2)(b), the state auditor shall issue from the state special revenue fund and deliver to the division an amount certified to be equal to the total annual dollar difference between the total retirement benefits paid to all retirees or their surviving spouses or dependent children in the previous fiscal year and the total benefits payable on June 30, 1973. The division shall deposit this money into the pension trust fund.

(b) If insufficient money is contained in the state special revenue fund to pay the amount requested in subsection (2)(a), the auditor shall pay to the division the balance contained in the state special revenue fund. The division shall continue to request any portion of the amount requested under subsection (2)(a) not paid in previous fiscal years plus sufficient interest to reimburse the pension trust fund, which amounts must be paid to the division prior to determining whether sufficient cash remains in the special revenue fund to make any payments into the account established in 19-13-615. The auditor shall pay the requests as money in the state special revenue fund becomes available."

HeinOnline -- 1997 vol. II 1355 1997

**Section 35.** Section 19-13-1007, MCA, is amended to read:

**"19-13-1007. ~~Benefit~~ *Minimum benefit* adjustment.** (1) ~~For~~ *Except for persons who elect to be covered under [section 3],* a member retiring on or after July 1, 1973, who was hired before July 1, 1981, or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704(1)(a), the disability retirement benefit provided in 19-13-803(1), and the survivorship benefit provided in 19-13-902(1) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(2) For a member hired on or after July 1, 1981, or the member's surviving spouse or dependent children, the disability retirement benefit provided in 19-13-803(2) and the survivorship benefit provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(3) If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsections (1) and (2) must be adjustod on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(4) ~~If~~ *Except for persons who elect to be covered under [section 3], if* the employment of a vested member hired before July 1, 1981, is involuntarily discontinued because of the termination of employment of all full-paid firefighters in the city that employed the member, the member's service retirement benefit provided in 19-13-704(1)(b) and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 10 but less than 20 years of membership service, 2% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

**Section 36.** Section 19-13-1009, MCA, is amended to read:

**"19-13-1009. Supplement to retirement benefits for persons hired on or after July 1, 1981.** (1) ~~The~~ *Except for persons who elect to be covered under [section 3], the* division shall pay a supplemental benefit from the account provided for in 19-13-615 to each member hired on or after July 1, 1981, who has earned 20 years of membership service as an active firefighter or to the member's surviving spouse or dependent children. Except as provided in subsection (2), the supplemental benefit, when added to the service retirement benefit, must equal

HeinOnline -- 1997 vol. II 1356 1997

one-half the regular monthly compensation paid to a newly confirmed full-paid active firefighter of the city that last employed the member as a firefighter as provided each year in the budget of that city. If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's supplemental benefit must be calculated on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(2) If the amount available to the account is insufficient to fully fund the supplemental benefit provided for in subsection (1), the supplemental benefit for each eligible member or survivor must be reduced by an equal percentage so that the amount contained in the account is not exceeded."

**Section 37.** Section 25-1-201, MCA, is amended to read:

**"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of $120; and for filing a petition for legal separation, a fee of $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents ~~per~~ *a* page for the first five pages of each file, ~~per~~ *for each* request, and 25 cents ~~per~~ *for each* additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

HeinOnline -- 1997 vol. II 1357 1997

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must he remitted to the state ~~to be deposited as provided in 19-5-404~~ *general fund.*

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, ~~$14~~ *$23.60* must be deposited in and credited to the state general fund, *and* $6.40 must be deposited in and credited to the county general fund~~, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404~~.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, ~~$40~~ *$75* must be deposited in the state general fund, ~~$35 must be remitted to the state to be deposited as provided in 19-5-404,~~ $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be depesited in the general fund for district court oporations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservater, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state ~~to be deposited as provided in 19-5-404~~ *general fund.*

HeinOnline -- 1997 vol. II 1358 1997

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries."

**Section 38. Repealer.** Sections 19-3-1601, 19-3-1602, 19-3-1603, 19-7-708, 19-7-709, 19-7-710, 19-8-1101, 19-8-1102, and 19-8-1103, MCA, are repealed.

**Section 39. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 19, chapters 3, 7, and 8, and the provisions of Title 19, chapters 3, 7, and 8, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 19, chapter 5, and the provisions of Title 19, chapter 5, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 19, chapters 2, 6, 9, and 13, and the provisions of Title 19, chapters 2, 6, 9, and 13, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 19, chapter 3, and the provisions of Title 19, chapter 3, apply to [section 4].

(5) [Section 5] is intended to be codified as an integral part of Title 19, chapter 2, and the provisions of Title 19, chapter 2, apply to [section 5].

**Section 40. Effective date.** [This act] is effective July 1, 1997.

Approved April 17, 1997

## CHAPTER NO. 288

[HB 384]

AN ACT EXCLUDING FROM INHERITANCE TAXES ANY INTEREST IN AND THE REAL PROPERTY AND TANGIBLE PERSONAL PROPERTY OF CLOSELY HELD BUSINESSES THAT ARE TRANSFERRED TO THE LINEAL DESCENDANTS OF THE DECEDENT'S GRANDPARENTS; AMENDING SECTIONS 72-16-101, 72-16-453, AND 72-16-455, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Exemption for closely held business property.** (1) The value of any interest in a closely held business represented by real property and tangible personal property and all real property and tangible personal property of a closely held business, as defined in 72-16-453, that is transferred to the lineal descendants of the decedent's grandparents is exempt from the tax imposed under parts 1 through 8.

(2) Property owned by a closely held business is considered as being owned proportionately by or for its shareholders, partners, or owners.

HeinOnline -- 1997 vol. II 1359 1997

(3) For the purposes of this section, "tangihle personal property" means property, other than intangihle property as defined in 72-16-101, that is owned by a closely held husiness. The term does not include an ownership interest in the closely held business.

**Section 2.** Section 72-16-101, MCA, is amended to read:

**"72-16-101. Definitions.** In parts 1 through 8, the following definitions apply:

(1) ~~The words "county~~ *"County* treasurer", "public administrator", and "county attorney" ~~shall be taken to~~ mean the treasurer, public administrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

(2) ~~The word "decedent" shall include~~ *"Decedent" includes* the testator, intestate, grantor, bargainor, vendor, or donor.

(3) ~~The words "estate"~~ *"Estate"* and "property" ~~shall be taken to~~ mean the real and personal property or interest ~~therein~~ *in the property* passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees and not ~~as~~ the property or interest ~~therein~~ *in the property* of the decedent, grantor, donor, or vendor and ~~shall include~~ *include* all personal property within or ~~without~~ *outside of* the state.

(4) "Intangible" or "intangible property", when used without other qualifications, ~~shall be taken to include~~ *includes but is not limited to* all ~~moneys~~ *money*, stocks, bonds, notes, securities, *leaseholds, contracts,* and credits of all kinds, secured or unsecured.

(5) ~~The terms "joint"~~ *"Joint"* and "jointly" refer to ownership of property by two or more persons having as one of the incidents of ~~such~~ *the* ownership the right of survivorship in the surviving owner or owners upen the death of one of the owners. This definition does not affect the concept of property owned as tenants in common, and this type of ownership ~~shall continue~~ *continues* to be recognized ~~where~~ *when* applicable.

(6) ~~The word "transfer" shall be taken to include~~ *"Transfer" includes* the passing of property or any interest ~~therein~~ *in the property,* in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, hargain, sale, gift, or appointment in the manner ~~herein~~ prescribed *in parts 1 through 8* to each individual or corporation."

**Section 3.** Section 72-16-453, MCA, is amended to read:

**"72-16-453. Closely held business defined — qualification.** (1) For the purposes of *[section 1] and* 72-16-452, the ~~term~~ *following definitions apply:*

*(a) "Closely held business" means:*

*(i) a trade or business carried on as a sole proprietorship;*

*(ii) a partnership carrying on a trade or business if the partnership had 15 or fewer partners; or*

*(iii) a corporation carrying on a trade or business if the corporation had 15 or fewer shareholders.*

*(b)* ~~"interest~~ *"Interest* in a closely held business" means:

~~(a)~~*(i)* an interest as a *sole* proprietor in a trade or business carried on as a proprietorship;

~~(b)~~*(ii)* an interest as a partner in a partnership carrying on a trade or business if:

~~(i)~~*(A)* 20% or more of the total capital interest in the partnership ~~is~~ *would be* taxable under Title 72, chapter 16, part 3, *except for [section 1],* as a transfer from the decedent; or

~~(ii)~~*(B)* the partnership had 15 or fewer partners;

~~(c)~~*(iii)* stock in a corporation carrying on a trade or business if:

~~(i)~~*(A)* 20% or more in value of the voting stock of the corporation ~~is~~ *would be* taxable under Title 72, chapter 16, part 3, *except [section 1],* as a transfer from the decedent; or

~~(ii)~~*(B)* the corporation had 15 or fewer shareholders.

(2) Determination for qualification under subsection (1)*(b)* must be made as of the time immediately before the decedent's death.

(3) Stock or a partnership interest held by a husband and wife as joint tenants or tenants in common is treated as owned by one shareholder or one partner, as the case may be.

(4) Property owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For the purposes of this subsection, a person is a beneficiary of a trust only if ~~he~~ *the person* has a present interest in the trust.

(5) All stock and all partnership interests held by the decedent or by any member of ~~his~~ *the decedent's* family within the meaning of section 267(c)(4) of the Internal Revenue Code is treated as being owned by the decedent."

**Section 4.** Section 72-16-455, MCA, is amended to read:

**"72-16-455. Partnership interests and stock not readily tradable.** (1) If the personal representative elects the benefits of this section, at ~~such~~ *the* time and in ~~such~~ *the* manner as the department may prescribe:

(a) for the purposes of 72-16-453~~(1)(b)(i)~~*(1)(b)(ii)(A)* or ~~(1)(c)(i)~~ *(1)(b)(iii)(A),* whichever is appropriate, and for the purposes of 72-16-456, any capital interest in a partnership and any nonreadily tradable stock, which after the application of 72-16-453(2) through (5) is treated as owned by the decedent, ~~shall~~ *must* be treated as taxable under Title 72, chapter 16, part 3, in determining the value of a transfer from the decedent;

HeinOnline -- 1997 vol. II 1361 1997

(b) the personal representative ~~shall~~ *must* be treated as having selected under 72-16-452(3) the date prescribed by 72-16-441 for the payment of the tax without interest; and

(c) section 72-16-461 does not apply.

(2) For the purposes of this section, "nonreadily tradable stock" means stock for which at the time of the decedent's death there was no market on the stock exchange or in an over-the-counter market."

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 72, chapter 16, part 3, and the provisions of Title 72, chapter 16, part 3, apply to [section 1].

**Section 6. Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to estates of persons who die after December 31, 1996.

Approved April 18, 1997

# CHAPTER NO. 289

[HB 408]

AN ACT EXEMPTING FROM REVIEW OF DEVELOPMENT PLANS A PARCEL OF 1 ACRE OR MORE WITH AN EXISTING WELL AND SEPTIC SYSTEM; AND AMENDING SECTION 76-4-125, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-4-125, MCA, is amended to read:

**"76-4-125. Review of development plans — land divisions excluded from review.** (1) Plans and specifications of a subdivision, as defined in this part, ~~shall~~ *must* be submitted to the reviewing authority, and the reviewing authority shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the reviewing authority ~~shall~~ *must* be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present to the reviewing authority a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, and information required by the reviewing authority.

(b) The reviewing authority ~~must~~ *shall* give final action of the proposed plan within 60 days unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(2) A subdivision excluded from the provisions of chapter 3 ~~shall~~ *must* be submitted for review according to the provisions of this part, except that the following divisions *or parcels*, unless ~~such~~ *the* exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that ~~no~~ *a* dwelling or structure requiring water or sewage disposal ~~is to~~ *may not* be erected on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision; ~~and~~

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule; *and*

*(d) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer, if:*

*(i) the remainder is served by a public or multifamily sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or*

*(ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.*

*(3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that, prior to the transfer of the parcel to be segregated from the remainder referenced in subsection (2)(d)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."*

Approved April 18, 1997

# CHAPTER NO. 290

[HB 422]

AN ACT ELIMINATING THE REQUIREMENT THAT THE ORIGINAL OF CERTAIN DOCUMENTS FILED BY FACSIMILE WITH THE SECRETARY OF STATE BE RECEIVED BY AND FILED WITH THE SECRETARY OF STATE WITHIN 5 DAYS OF THE RECEIPT AND FILING OF THE FACSIMILE; AMENDING SECTIONS 30-9-403, 30-9-431, 30-13-221, 30-13-341, 35-1-218, 35-2-120, 35-8-207, 35-10-112, 35-12-615, AND 35-15-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-9-403, MCA, is amended to read:

**"30-9-403. What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 30-9-402 and subsection (1)(a)~~, provided that the original document is received within 5 working days of the receipt of the facsimile copy~~ *of this section*. If all

other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. ~~A facsimile copy may be filed under subsection (1)(a) if it:~~

~~(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and~~

~~(ii) is legible and the same size as the original.~~

~~(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1)(b), the filing of the facsimile copy is void.~~

~~(e)~~*(c)* A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in subsection (6), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until 60 days after termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, after which it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to the lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if the filing officer has retained a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state~~,~~ or, in other cases after 1 year after the lapse, upon approval by the local government records destruction subcommittee provided for in 2-6-403. The filing officer shall arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if the filing officer

HeinOnline -- 1997 vol. II 1364 1997

physically destroys the financing statements of a period more than 5 years past, those ~~which~~ *that* have been continued by a continuation statement or ~~which~~ *that* are still effective under subsection (6) ~~shall~~ *must* be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing. The filing officer shall hold the statement or a microfilm or other photographic copy or a copy produced according to rules adopted by the secretary of state for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing must be set pursuant to subsection (12).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagers in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee under the financing statement or, if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within 1 working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that the secretary of state shall establish. The computer system must allow access to financing statement information by any type of communications ~~which~~ *that* conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

HeinOnline -- 1997 vol. II 1365 1997

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document ~~which~~ *that* does not specifically indicate the county of the principal debtor's residence on its face.

(11) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(12) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit all fees in the enterprise fund in the state treasury. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

**Section 2.** Section 30-9-431, MCA, is amended to read:

**"30-9-431. Filing of a facsimile copy.** (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part~~, provided that he receives the original document within 5 working days of the receipt of the facsimile copy~~. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. ~~A facsimile copy may be filed under this section if it:~~

~~(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and~~

~~(b) is legible and the same size as the original.~~

~~(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.~~

~~(4)~~*(2)* A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document."

**Section 3.** Section 30-13-221, MCA, is amended to read:

**"30-13-221. Filing of a facsimile copy.** (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part~~, provided that he receives the original document within 5~~

~~working days of the receipt of the facsimile copy~~. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. ~~A facsimile copy may be filed under this section if it:~~

~~(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and~~

~~(b) is legible and the same size as the original.~~

~~(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.~~

~~(4)~~*(2)* A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document."

**Section 4.** Section 30-13-341, MCA, is amended to read:

**"30-13-341. Filing of ~~a~~ facsimile copy.** (1) The secretary of stato may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part~~, provided that he receives the original document within 5 working days of the receipt of the facsimile copy~~. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. ~~A facsimile copy may be filed under this section if it:~~

~~(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and~~

~~(b) is legible and the same size as the original.~~

~~(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.~~

~~(4)~~*(2)* A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document."

**Section 5.** Section 35-1-218, MCA, is amended to read:

**"35-1-218. Facsimile filing — requirements — liability.** (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter ~~provided that the~~

~~secretary of state receives the original document within 5 working days of the receipt of the facsimile copy~~. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) ~~A facsimile copy is entitled to be filed under this section if it is:~~

~~(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and~~

~~(b) legible and the same size as the original.~~

~~(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.~~

~~(5)~~ A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document."

**Section 6.** Section 35-2-120, MCA, is amended to read:

**"35-2-120. Facsimile filing.** (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to he filed under 35-2-119, 35-2-121 through 35-2-123, 35-2-1003, 35-2-1108 through 35-2-1112, and this section and the signatures on the facsimile copy in the same manner as an original for purposes of 35-2-119, 35-2-121 through 35-2-123, 35-2-1003, 35-2-1108 through 35-2-1112, and this section ~~provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy~~. If all other requirements are met, tbe date of filing relates back to the date of receipt of the facsimile copy.

(2) ~~A facsimile copy is entitled to be filed under this section if it is:~~

~~(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and~~

~~(b) legible and the same size as the original.~~

~~(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.~~

~~(5)~~ A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document."

**Section 7.** Section 35-8-207, MCA, is amended to read:

"**35-8-207. Filing of facsimile copy.** (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter~~, provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy~~. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. ~~A facsimile copy may be filed under this section if it:~~

~~(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and~~

~~(b) is legible and the same size as the original.~~

~~(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.~~

~~(4)~~*(2)* A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document."

**Section 8.** Section 35-10-112, MCA, is amended to read:

"**35-10-112. Facsimile filing — requirements — liability.** (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter ~~provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy~~. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) ~~A facsimile copy is entitled to be filed under this section if it is:~~

~~(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and~~

~~(b) legible and the same size as the original.~~

~~(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.~~

~~(5)~~ A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document."

**Section 9.** Section 35-12-615, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1369 1997

"**35-12-615. Filing of a facsimile copy.** (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter~~, provided that he receives the original document within 5 working days of the receipt of the facsimile copy~~. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. ~~A facsimile copy may be filed under this section if it:~~

~~(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and~~

~~(b) is legible and the same size as the original.~~

~~(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.~~

~~(4)~~*(2)* A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document."

**Section 10.** Section 35-15-211, MCA, is amended to read:

"**35-15-211. Filing of a facsimile copy.** (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter~~, provided that he receives the original document within 5 working days of the receipt of the facsimile copy~~. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. ~~A facsimile copy may be filed under this section if it:~~

~~(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and~~

~~(b) is legible and the same size as the original.~~

~~(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.~~

~~(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.~~

~~(4)~~*(2)* A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document."

HeinOnline -- 1997 vol. II 1370 1997

**Section 11. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 1997

# CHAPTER NO. 291

[HB 468]

AN ACT AUTHORIZING THE SECRETARY OF STATE TO DEVELOP AND IMPLEMENT A STATEWIDE ELECTRONIC FILING SYSTEM; REQUIRING THAT IF AN ELECTRONIC FILING SYSTEM IS DEVELOPED AND IMPLEMENTED BY THE SECRETARY OF STATE, THE SECRETARY OF STATE SHALL PROMULGATE RULES REGARDING ACCESS, SECURITY, AND INTEGRITY AND OTHER MATTERS RELEVANT TO THE SYSTEM; ALLOWING THE DEVELOPMENT AND IMPLEMENTATION OF A STATEWIDE ELECTRONIC FILING SYSTEM TO BE PHASED IN; AND AMENDING SECTION 2-15-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Electronic filing system — requirements — rules.** (1) As authorized by 2-15-401, the secretary of state may develop and implement a statewide electronic filing system to accommodate the electronic filing of records and documents that are required to be filed in the office of the secretary of state.

(2) If the secretary of state develops and implements a statewide electronic filing system, the secretary of state shall establish a central data base for all records and documents filed electronically with the secretary of state.

(3) If the secretary of state develops and implements a statewide electronic filing system, the secretary of state shall adopt rules that:

(a) provide procedures for entering data;

(b) provide security and protection of information in the system and monitor the data base and other components of the system to ensure that unauthorized entry is precluded;

(c) require standardized information for entry into the system;

(d) prescribe an identification procedure for a person filing records or other documents or otherwise accessing the system;

(e) require each individual who is required to sign a document that is filed electronically to be specifically identified as acknowledging the document and giving assent to the electronic filing through an identification procedure unique to that individual;

(f) prescribe a procedure for certification of electronic filings by the secretary of state; and

(g) prescribe a procedure for converting an electronic filing to a paper copy and for certifying the paper copy for a person requesting a papor copy.

HeinOnline -- 1997 vol. II 1371 1997

(4) In accordance with 2-17-501, the secretary of state shall cooperate with the department of administration in the development of any electronic filing system.

(5) This section may not be construed to affect any requirement that a particular individual or officer of an organization acknowledge a document. Any person using an identification procedure in place of a signature or facsimile signature for any electronic filing is subject to the same civil and criminal penalties applicable to a person providing a signature or facsimile signature.

(6) An electronic filing system developed and implemented under this section may be constructed in phases as resources and technology allow.

**Section 2.** Section 2-15-401, MCA, is amended to read:

**"2-15-401. Duties of secretary of state — *authority.*** *(1)* In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

~~(1)~~*(a)* attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform other duties as may be devolved upon the secretary of state by resolution of the two houses or either of them;

~~(2)~~*(b)* keep a register of and attest the official acts of the governor, including all appointments made by the governor, with date of commission and names of appointees and predecessors;

~~(3)~~*(c)* affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

~~(4)~~*(d)* record in proper books all articles of incorporation filed in the secretary of state's office;

~~(5)~~*(e)* take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to do the same;

~~(6)~~*(f)* certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

~~(7)~~*(g)* furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;

~~(8)~~*(h)* keep a fee book in which must be entered all fees, commissions, and compensation earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which must be verified annually by the secretary of state's affidavit entered in the fee book;

~~(8)~~*(i)* file in the secretary of state's office descriptions of seals in use by the different state officers;

~~(10)~~*(j)* discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required by law;

~~(11)~~*(k)* register marks as provided in Title 30, chapter 13, part 3;

~~(12)~~*(l)* report annually to the legislative services division all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

~~(13)~~*(m)* keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

*(2) The secretary of state may develop and implement a statewide electronic filing system as described in [section 1]."*

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 4, and the provisions of Title 2, chapter 15, part 4, apply to [section 1].

Approved April 18, 1997

## CHAPTER NO. 292

[HB 543]

AN ACT PROHIBITING AN INSURANCE COMPANY FROM REQUIRING AN INSURED PERSON TO USE A SPECIFIC AUTOMOBILE BODY REPAIR SHOP; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Designation of specific automobile body repair shops prohibited.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular automobile repair business or location; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or provides an incentive or inducement for an insured person to use a particular automobile repair business or location.

(2) For the purposes of this section, an incentive or inducement does not include:

(a) providing an insured person or a customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or customer that offer a warranty for the automobile repair services provided by the businesses or locations;

(b) providing an insured person or a customer with a list of particular body shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile repair business or location.

(3) The insured may use a business or location at the insured's sole discretion, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222.

(4) If the insured person uses an automobile repair business or location not on a list provided under subsection (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

(5) It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

(6) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section.

(7) For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 1997

# CHAPTER NO. 293

[HB 571]

AN ACT PROVIDING FOR THE EFFECT OF A RELEASE OR COVENANT NOT TO SUE; REVISING THE PRINCIPLES GOVERNING LIABILITY AND THE DETERMINATION OF LIABILITY WHEN MULTIPLE PERSONS ARE AT FAULT; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Montana Supreme Court, in Plumb v. District Court, 927 P.2d 1011, 53 St. Rep. 1187 (1996), recently declared unconstitutional portions of Montana's comparative negligence statute because it failed to provide an opportunity for a nonparty to defend oneself, and it required the plaintiff to act in a dual capacity by requiring that the plaintiff represent nonparties; and

WHEREAS, the Montana Supreme Court also recognized in Plumb that parties who settle represent the single exception for fair apportionment of liability under third-party practice rules; and

WHEREAS, the Montana Supreme Court has recognized that the Legislature may alter tort causes of action to promote legitimate state interests; and

WHEREAS, the Legislature helieves that the policy of the stato is that claimants, defendants, and other potentially liable persons should he held responsible to the extent of individual fault; and

WHEREAS, the Legislature has retained joint and several liability, hut modified it hecause of that policy; and

WHEREAS, the current system of modified joint and several liahility must permit a consideration of the fault attrihutahle to parties who settle or are released for the modified system to be operative; and

WHEREAS, the Legislature believes that a claimant who enters into a settlement or covenant not to sue does so because the claimant has made a considered judgment that the agreement is in the claimant's best intorests; and

WHEREAS, the Legislature intends that the liahility of persons who settle or are released and who may share in the responsihility for a tort cause of action be considered by the trier of fact and apportioned a percentage of damages according to their negligence; and

WHEREAS, the Legislature believes that the percent credit rule, rather than the dollar credit rule, more accurately reflects the basis for comparative negligence, which apportions liability according to the porcentage of individual negligence.

THEREFORE, the Legislature finds it appropriate to pass legislation addressing the concerns raised by the Montana Supreme Court and to accomplish the Legislature's objectives of allocating liability on the hasis of individual negligence, encouraging fair settlements that accurately reflect potential liahility, and permitting the allocation of a percentage of liability to persons who settle or are released and are found to be partially or wholly responsible.

*Be it enacted by the Legislature of the State of Montana:*

**Scction 1. Release — covenant not to sue.** A release or covenant not to sue given to one of two or more porsons liable in tort for the same injury, death, damage, or loss:

(1) does not discharge any other tortfeasor from liability for that tortfeasor's several pro rata share of liability for the injury, death, damage, or loss unless the release or covenant not to sue provides otherwise;

(2) reduces the aggregate claim against the other tortfeasors to the extent of any percentage of fault attributed hy the trier of fact under 27-1-703(6) to the tortfeasor to whom the release or covenant is given;

(3) discbarges the tortfeasor to whom it is given from all liability for contribution.

**Section 2.** Section 27-1-702, MCA, is amended to read:

**"27-1-702. Comparative negligencc — cxtcnt to which contributory negligence bars recovery in action for damages.** Contributory negligence ~~shall~~ *does* not bar recovery in an action by ~~any~~ *a* person or ~~his~~ *the person's* legal

HeinOnline -- 1997 vol. II 1375 1997

representative to recover damages for negligence resulting in death or injury to *the* person or property if ~~such~~ *the contributory* negligence was not greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought, but any damages allowed ~~shall~~ *must* be diminished in the propertion to the ~~amount~~ *percentage* of negligence attributable te the person recovering."

**Section 3.** Section 27-1-703, MCA, is amended to read:

"**27-1-703. Multiple defendants — determination of liability.** (1) Except as provided in subsections (2) and (3), ~~whenever~~ *if* the negligence of a party ~~in any~~ *to an* action is an issue, each party against whom recovery may be allowed is jointly and severally liahle for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the ~~amount~~ *percentage* of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the ~~amount~~ *percentage* attributahle to the claimant *and to any person with whom the claimant has settled or who the plaintiff has released from liability.*

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of ~~any~~ *a* party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may he joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligenco of the claimant, injured person, defendants, and third-party defendants. The liability of ~~nonparties, including~~ persons released from liability by the claimant ~~and persons immune from liability to~~ *and persons with whom* the claimant~~,~~ *has settled* must also be considered hy the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. ~~Contribution must be proportional to the liability of the parties against whom recovery is allowed.~~ Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a propertional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a ~~nonparty,~~

HeinOnline -- 1997 vol. II 1376 1997

~~which may be referred to as a nonparty defense~~ *person with whom the claimant has settled or who the claimant has released from liability.*

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of ~~nonparties, including~~ persons released from liability by the claimant ~~and persons immune from liability to the claimant, if a nonparty defense is properly asserted in accordance with this subsection (6)~~ *or with whom the claimant has settled.* A finding of negligence of a ~~nonparty~~ *person with whom the claimant has settled or who has been released from liability by the claimant* is not a presumptive or conclusive finding as to that ~~nonparty~~ *person* for purposes of a prior or subsequent action involving that ~~nonparty~~ *person.*

*(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:*

*(i) a person who is immune from liability to the claimant;*

*(ii) a person who is not subject to the jurisdiction of the court; or*

*(iii) any other person who could have been, but was not, named as a third party.*

*(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).*

~~(c)~~*(e)* ~~The burden of proof as to a nonparty's liability is on the defendant or defendants who affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to the injury of the claimant or alter other proof requirements.~~ *A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:*

*(i) the negligence of the person who the claimant has released or with whom the claimant has settled;*

*(ii) any standard of care applicable to the person who the claimant released or with whom the claimant settled; and*

*(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.*

~~(d)~~*(f)* A ~~nonparty defense must be~~ *defendant alleging that a settled or released person is at fault in the matter shall* affirmatively ~~pleaded as a part of~~ *plead the settlement or release as a defense in* the answer. A defendant who gains actual knowledge of a ~~nonparty defense~~ *settled or released person* after the filing of that defendant's answer may plead the defense *of settlement or release* with reasonable promptness, as determined by the trial court, in a manner that is consistont with:

(i) giving tbe defendant a reasonable opportunity to discover the existence of a ~~nonparty defense~~ *settled or released person*;

*(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and*

~~(ii)~~*(iii)* giving the claimant a reasonable opportunity to defend against ~~a nonparty~~ *the* defense~~; and~~

~~(iii) giving the claimant a reasonable opportunity, if appropriate, to add the nonparty as an additional defendant to the action before the expiration of the period of limitation applicable to the claim. However, this subsection (iii) does not extend the period of limitation or revive the action if the period of limitation has expired.~~

~~(c)~~*(g)* If a defendant ~~asserts a nonparty defense~~ *alleges that a settled or released person is at fault in the matter,* the defendant shall notify each ~~nonparty~~ *person* who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each ~~nonparty~~ *settled or released person* at the ~~nonparty's~~ *person's* last-known address by certified mail, return receipt requested."

**Section 4. Applicability.** [This act] applies to causes of action that arise on or after [the effective date of this act].

**Section 5. Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 1997

# CHAPTER NO. 294

[HB 575]

AN ACT PROHIBITING CERTAIN CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS, COOPERATIVES, AND OTHER ORGANIZATIONS FROM CONTRIBUTING TO THE SUPPORT OR OPPOSITION OF BALLOT ISSUES; REMOVING FROM THE PROHIBITION AN EXEMPTION FOR CERTAIN NONPROFIT CORPORATIONS; DESCRIBING EXPENDITURES MADE BY A POLITICAL COMMITTEE FOR THE PURPOSE OF VOLUNTARY SPENDING LIMITS; AMENDING SECTIONS 13-35-227 AND 13-37-250, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-35-227, MCA, is amended to read:

**"13-35-227. Prohibited contributions from corporations *for candidates or political parties.*** (1) (a) ~~Except as provided in subsection (4), a~~ *A* corporation may not make a contribution or an expenditure in connection with a candidate~~, a ballot issue,~~ or a political committee ~~which~~ *that* supports or opposes a candidate~~, a ballot issue,~~ or a political party.

HeinOnline -- 1997 vol. II 1378 1997

(b) For purposes of this section, "corporation" refers to for-profit and nonprofit corporations.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to he used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from ~~an individual who is a shareholder, an employee, or a member~~ *individuals who are shareholders, employees, or members* of the corporation.

~~(4) The provisions of subsection (1) prohibiting corporate contributions to or expenditures in connection with a ballot issue do not apply to a nonprofit corporation formed for the purpose, among others, of promoting political ideas and that:~~

~~(a) does not engage in business activities;~~

~~(b) has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;~~

~~(c) does not accept foreign or domestic for-profit corporations as members; and~~

~~(d) does not accept in the aggregate more than 5% annually of its total revenue from foreign or domestic for-profit corporations.~~

~~(5)~~*(4)* A person who violates this section is subject to the civil penalty provisions of 13-37-128."

**Section 2. Prohibited contributions for ballot issues.** (1) A business corporation, nonprofit corporation, religious corporation, professional corporation, business trust, limited liability company, close corporation, partnership, limited partnership, mining partnership, cooperative association, agricultural association, cooperative agricultural marketing association, rural cooperative, utility association, or other association or organization exempt from taxation under 15-31-102 or 26 U.S.C. 501(c) may not make a contribution or an expenditure in connection with a ballot issue or to a political committee that supports or opposes a ballot issue.

(2) A person or political committee may not accept or receive a contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicitod from individuals who are shareholders, employees, or memhers of an organization described in subsection (1).

(4) A person who violates this section is subject to the civil penalty provided in 13-37-128.

**Section 3.** Section 13-37-250, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1379 1997

**"13-37-250. Voluntary spending limits.** (1) (a) ~~Beginning January 1, 1997, the~~ *The* following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices,..... is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101(12)(b), who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

(a) ~~all loans made or received by the committee;~~

~~(b)~~ all committee *loans or* expenditures made by check or cash; and

~~(c)~~*(b)* the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed $150,000.

(4) ~~Beginning January 1, 1997, any~~ *A* political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of $5,000 to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner."

**Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 2].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 17, 1997

HeinOnline -- 1997 vol. II 1380 1997

# CHAPTER NO. 295

[SB 49]

AN ACT REVISING THE DISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAXES AND OIL AND NATURAL GAS PRODUCTION TAXES FOR DEFICIENCY ASSESSMENTS OR FOR OVERPAYMENT OF THE TAXES; REQUIRING THAT DEFICIENCY ASSESSMENTS FOR LOCAL GOVERNMENT SEVERANCE TAXES BE COLLECTED IN THE SAME MANNER AS OIL AND NATURAL GAS DEFICIENCY ASSESSMENTS; REQUIRING THAT DEFICIENCY ASSESSMENTS FOR CERTAIN LOCAL GOVERNMENT SEVERANCE TAXES BE DISTRIBUTED AS CURRENT REVENUE; REQUIRING THAT CREDITS OR REFUNDS FOR THE OVERPAYMENT OF OIL AND NATURAL GAS PRODUCTION TAXES OR LOCAL GOVERNMENT SEVERANCE TAXES BE WITHHELD FROM CURRENT DISTRIBUTIONS; REQUIRING THE DEPARTMENT OF REVENUE TO DEMAND THE AMOUNT OF REFUND FOR OVERPAYMENTS FROM THE COUNTY TO WHICH THE TAX WAS ORIGINALLY DISTRIBUTED; AMENDING SECTIONS 15-36-314 AND 15-36-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-36-314, MCA, is amended to read:

**"15-36-314. Deficiency assessment — *local government severance tax deficiency assessment* — review — interest.** (1) When the department determines that the amount of the tax due, *including the amount due for the local government severance tax,* is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

*(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.*

*(b) Any local government severance taxes that are collected on oil and natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as current revenue for the purposes of distribution and must be distributed pursuant to 15-36-324(8)(a).*

~~(2)~~*(3)* A deficiency assessment must bear interest until paid at the rate of 1% a month or fraction of a month, computed from the original due date of the return."

**Section 2.** Section 15-36-315, MCA, is amended to read:

**"15-36-315. Credit *or refund* for overpayment — *refund from county* — interest on overpayment.** (1) If the department determines that the amount of tax, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or

HeinOnline -- 1997 vol. II 1381 1997

its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

*(2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any tax period or any refund or portion of a refund, which has not been distributed pursuant to 15-36-324, must be withheld from the current distribution made pursuant to 15-36-324.*

*(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to 15-36-324 and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county to which the tax was originally distributed. The county treasurer shall remit the amount demanded within 30 days of the receipt of notice from the department.*

*(3) A refund that is paid by the department for an overpayment of the local government severance tax for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as issued for the current distribution period for distribution purposes, and the refund must be apportioned in the same manner as taxes are distributed pursuant to 15-36-324(8)(a).*

~~(2)~~*(4)* Except as provided in subsection ~~(3)~~ *(5)*, interest must be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-36-314 beginning from the due date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

~~(3)~~*(5)* (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1."

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to any local government severance tax deficiency assessments or refunds collected or refunded by the department of revenue for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995.

**Section 4. Effective date.** [This act] is effective on passago and approval.

Approved April 17, 1997

HeinOnline -- 1997 vol. II 1382 1997

# CHAPTER NO. 296

[SB 55]

AN ACT AMENDING THE MONTANA MEDICAL CARE SAVINGS ACCOUNT ACT OF 1995 TO ALLOW ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNT; PROVIDING DEFINITIONS AND EXCEPTIONS; AMENDING SECTIONS 15-61-102, 15-61-203, AND 15-61-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-61-102, MCA, is amended to read:

**"15-61-102. Definitions.** As used in this chapter, unless it clearly appears otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a health care insurer as defined in 33-22-125;

(c) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50; ~~or~~

(d) an employer if the employer has a self-insured health plan under ERISA;

*(e) the account holder of or an employee for whose benefit the account in question is established;*

*(f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;*

*(g) an attorney licensed to practice law in this state;*

*(h) a licensed public accountant or a person who is an enrolled agent allowed to practice before the United States internal revenue service.*

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

HeinOnline -- 1997 vol. II 1383 1997

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406.

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to 15-61-201."

**Section 2.** Section 15-61-203, MCA, is amended to read:

**"15-61-203. Withdrawal of funds from account for purposes other than medical expenses and long-term caro.** (1) An employee or account holder may withdraw money from the individual's medical care savings account for any purpose other than an eligible medical expense or the long-term care of the employee or account bolder or a dependent of the employee or account holder only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder.

(2) If the employee or account holder withdraws money from the account other than for eligible medical expenses or long-term care or other than on the last business day of the account administrator's business year, the administrator shall withhold from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a penalty to the department of revenue an amount equal to 10% of the amount of the withdrawal. Payments niade to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the employee or account holder.

*(3) For the purposes of this section, "last business day of the account administrator's business year", as applied to an account administrator who is also the account holder or an employee, means the last weekday in December."*

**Section 3.** Section 15-61-204, MCA, is amended to read:

**"15-61-204. Administration of account.** (1) An account administrator shall administer the medical care savings account from which the payment of claims is made and has a fiduciary duty to the person for whose benefit the account is administered. *Except for reporting and remitting of penalties to the department of revenue, a financial institution shall administer a medical savings account as a regular deposit. A financial institution is not responsible for the use or application of funds.*

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrater

HeinOnline -- 1997 vol. II 1384 1997

administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity for the long-term care of the employee or account holder or a dependent of the employee or account holder, or paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses or for a long-term care insurance policy or annuity of the employee or account holder or a dependent of the employee or account holder that is otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder or a dependent of the employee or account holder in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses. *The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the account administrator or the employer of the account holder.*

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or account holder to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time *that* the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

*(7) In the case of an account administrator who is also the account holder or an employee:*

*(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;*

*(b) the account administrator may not use funds held in an account to pay expenses of administering the account;*

*(c) documentation of eligible medical expenses must be maintained but is not required to be submitted to the account administrator;*

*(d) contributions to a medical savings account must be established in a separate account and be segregated from other funds;*

HeinOnline -- 1997 vol. II 1385 1997

*(e) the account holder is subject to the same yearend reporting requirements as all other account administrators; and*

*(f) the account holder is required to forward the 10% penalty on funds withdrawn for noneligible medical expenses to the state."*

**Section 4. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to medical savings accounts created prior to [the effective date of this act].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 18, 1997

# CHAPTER NO. 297

[SB 100]

AN ACT CLARIFYING THE CLASSIFICATION OF FOREST LAND FOR PROPERTY TAX PURPOSES; CLARIFYING THE PROPERTY TAX RATE APPLIED TO FOREST LAND; REVISING THE DEFINITIONS OF "FOREST LAND" AND "FOREST PRODUCTIVITY VALUE"; AMENDING SECTIONS 15-6-143, 15-44-102, AND 15-44-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-143, MCA, is amended to read:

**"15-6-143. Class ten property — description — taxable percentage — alternative classification.** (1) Class ten property includes all forest lands as defined in 15-44-102.

(2) Class ten property is taxed at ~~the percentage rate "P"~~ *0.79%* of its forest productivity value.

~~(3) For taxable years beginning January 1, 1994, and thereafter, the taxable percentage rate "P" applicable to class ten property is 4%/B, where B is the certified statewide percentage increase to be determined by the department of revenue as provided in subsection (4). The taxable percentage rate "P" must be rounded downward to the nearest 0.01% and must be calculated by the department before July 1, 1994.~~

~~(4) (a) Prior to July 1, 1994, the department shall determine the certified statewide percentage increase for class ten property using the formula B = X/Y, where:~~

~~(i) X is the appraised value, as of January 1, 1994, of all property in the state, excluding use changes occurring during the preceding year, classified under class ten as class ten is described in this section; and~~

~~(ii) Y is the appraised value, as of January 1, 1993, of all property in the state that would be classified under class ten as class ten is described in this section as this section reads in 1993.~~

~~(b) B must be rounded downward to the nearest 0.0001%.~~"

**Section 2.** Section 15-44-102, MCA, is amended to read:

"**15-44-102. Definitions.** For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Culmination of mean annual increment" means the point of optimum net wood production on an acre of forest land.

(2) "Cultivated Christmas trees" means Christmas trees that are grown on land prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled for the exclusive purpose of raising Christmas trees.

(3) "Department" means the department of revenue.

(4) "Forest" means forest land and the timber on the land.

(5) "Forest land" means contiguous land of 15 acres or more in one ownership that is capable of producing timber that can be harvested in commercial quantity and is producing timber unless the trees have been removed by man through harvest, including clearcuts, or by natural disaster, including but not limited to fire. Forest land includes land:

(a) that has not been converted to another use; ~~or~~ *and*

(b) ~~that has a dedicated use that is evidenced by a statement of intent by the owner for the eventual harvest of timber~~ *on which the annual net wood production equals or exceeds 25 cubic feet an acre at the culmination of mean annual increment.*

(6) "Forest productivity value" means the value of forest land for assessment purposes, which value is determined only on the basis of its ~~ability~~ *potential* to produce timber, other forest products, and associated agricultural products through an income approach provided for in 15-44-103.

(7) "Harvest" means an activity related to the cutting or removal of timber for use or sale as a forest product.

(8) "Landowner" means an individual, corporation, association, company, firm, joint venture, syndicate, or trust.

(9) "Mean annual net wood production" means the average net usable volume of wood *that* 1 acre of forest land will grow in 1 year under average current and actual forest conditions and under current and reasonable management practices for each forest valuation zone established under 15-44-103.

(10) "Stumpage value" means the amount that timber would sell for under an arm's-length transaction made in the ordinary course of business, expressed in terms of dollars per unit of measure.

(11) "Timber" means all wood growth on privately owned land, mature or immature, alive or dead, standing or down, that is capable of furnishing raw material used in the manufacture of lumber or other forest products. The term does not include cultivated Christmas trees."

HeinOnline -- 1997 vol. II 1387 1997

**Section 3.** Section 15-44-103, MCA, is amended to read:

**"15-44-103. Legislative intent — value of forest lands — valuation zones.** (1) In order to encourage landowners of private forest lands to retain and improve their holdings of forest lands, to promote better forest practices, and to encourage the investment of capital in reforestation, forest lands must be classified and assessed under the provisions of this section.

(2) The forest productivity value of forest land must be determined by:

(a) capitalizing the value of the mean annual net wood production at the culmination of mean annual increment plus other agriculture-related income, if any; less

(b) annualized expenses, including but not limited to the establishment, protection, maintenance, improvement, and management of the crop over the rotation period.

(3) To determine the forest productivity value of forest lands, the department shall:

(a) divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone; and

(b) establish a uniform system of forest land classification that takes into consideration the productive capacity of the site to grow forest products and furnish other associated agricultural uses.

(4) In computing the forest land valuation schedules for each forest valuation zone to take effect on January 1, 1994, the department shall determine the productive capacity value of all forest lands in each forest valuation zone using the formula V = I/R, where:

(a) V is the per-acre forest productivity value of the forest land;

(b) I is the per-acre net income of forest lands in each valuation zone and is determined by the department using the formula I = (M x SV) + AI - C, where:

(i) I is the per-acre net income;

(ii) M is the mean annual net wood production;

(iii) SV is the stumpage value;

(iv) AI is the per-acre agriculture-related income; and

(v) C is the per-unit cost of the forest product and agricultural product produced, if any; and

(c) R is the capitalization rate determined by the department as provided in subsection (6).

(5) Net income must:

(a) be calculated for each year of a base period, which is the most recent 5-year period for which data is available;

HeinOnline -- 1997 vol. II 1388 1997

(b) be based on a rolling average of stumpage value of timber harvested within the forest valuation zone and on the associated production cost data for the base period from sources considered appropriate by the department; and

(c) include agriculture-related net income for the same time period as the period used to determine average stumpage values.

(6) The capitalization rate must be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the ~~federal land bank~~ *Northwest farm credit serviees, agricultural credit* association of Spokane, Washington, plus the effective tax rate.

(7) The effective tax rate must be calculated for each year of the base period by dividing the total estimated tax due on forest lands subject to the provisions of this section by the total forest value of those lands.

(8) For the purposes of this section, if forest service sales are used in the determination of stumpage values, the department shall take into account purchaser road credits.

(9) In determining the forest productivity value of forest lands and in computing the forest land valuation schedules, the department shall use information and data provided by the university of Montana-Missoula."

**Seetion 4. Effeetive date — retroactive applieability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

Approved April 17, 1997

# CHAPTER NO. 298

[SB 112]

AN ACT CREATING A VIATICAL SETTLEMENT ACT; PROVIDING FOR LICENSURE OF VIATICAL SETTLEMENT PROVIDERS AND BROKERS; PROVIDING FOR REGULATION BY THE INSURANCE COMMISSIONER; PROVIDING AUTHORITY TO PROMULGATE RULES; PROVIDING MINIMAL REQUIREMENTS FOR VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR EXAMINATION OF LICENSEES AND LICENSE APPLICANTS; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING FOR CONDITIONS PRECEDENT TO VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR CONFIDENTIALITY; AND PROVIDING REQUIREMENTS FOR PAYMENT PURSUANT TO VIATICAL SETTLEMENT CONTRACTS.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 15] grants rulemaking authority to the insurance commissioner. The rulemaking authority is consistent with the requirements of Public Law 104-191, H.R. 3103, which provides for the adoption of standards promulgated by the national association of insurance commissioners. The cemmissioner in adepting rules needs to establish trade practice standards for regulating advertising and solicitation of

HeinOnline -- 1997 vol. II 1389 1997

viatical settlement contracts, for evaluating reasonableness of payments under viatical settlement contracts, and for determining the forms necessary to effectively administer the bill. The rules adopted should be consistent with any regulations adopted under Public Law 104-191, H.R. 3103. [Section 15] also requires the commissioner to adopt rules that establish fees that are commensurate with those required under 33-22-708.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 15] may be cited as the "Viatical Settlement Act".

**Section 2. Definitions.** As used in [sections 1 through 15], unless the context requires otherwise, the following definitions apply:

(1) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other consideration:

(i) offers or advertises the availability of viatical settlement contracts;

(ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a terminal illness or condition te viatical settlement providers; or

(iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate holders and one or more viatical settlement providers.

(b) Viatical settlement broker does not mean an atterney, accountant, or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or consultant is paid by the viatical settlement provider.

(2) "Viatical settlement contract" means a written agreement between a viatical settlement provider and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:

(a) the terms establish that the viatical settlement provider pays something of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider; and

(b) the policyholder or certificate holder holds an irrevocable right under the policy or certificato to name the beneficiary.

(3) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical settlement contracts or offers to enter into or negotiate viatical settlement contracts.

(b) A viatical settlement provider may use the term "life settlement provider" to describe the business transacted under the license and may use the term "life settlement contract" instead of "viatical settlement contract".

(c) Viatical settlement provider does not mean:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy only as collateral for a loan;

(ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127 or pursuant to the laws of the state to which the policy was subject when issued;

(iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; or

(iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must be reasonable and subject to the standards imposed on licensees under [section 4].

**Section 3. License application.** (1) A person may not act as or purport to be a viatical settlement provider or viatical settlement broker unless licensed as a viatical settlement provider or viatical settlement broker under [sections 1 through 15].

(2) In order to obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, an applicant shall apply for the license on forms prescribed by the commissioner and shall pay the fee required for the application.

(3) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(4) If an applicant is a corporation, the corporation must be:

(a) incorporated or organized under the laws of this state; or

(b) a foreign corporation authorized to transact business in this state.

(5) If the applicant is a partnership, the partnership must be organized under the laws of this state.

**Section 4. Issuance of license.** (1) The commissioner may issue a license to the applicant if the commissioner determines that the applicant:

(a) has satisfied all of the requirements for the license for which an application is made;

(b) has not engaged in conduct that would authorize the commissioner to refuse to issue a license under [sections 1 through 15]; and

(c) is financially responsible and has a good business reputation.

HeinOnline -- 1997 vol. II 1391 1997

(2) The commissioner may issue a license to a nonresident applicant only if the nonresident applicant files with the commissioner in writing an appointment of the commissioner to be the agent of the applicant upon whom all legal process in any action or proceeding against the applicant may be served. In the appointment, the applicant shall agree that any lawful process against the applicant that is served upon the commissioner is of the same legal force and validity as if served upon the applicant and that the authority will continue in force as long as any liability remains outstanding in this state. An appointment under this subsection becomes effective on the date that the commissioner issues the license to the applicant.

(3) If the commissioner denies an application, the commissioner shall inform the applicant and state the grounds for the denial.

(4) An individual may act as a viatical settlement provider or viatical settlement broker under the authority of the license of a firm or of a corporate viatical settlement provider whether or not the individual holds a license as a viatical settlement provider if:

(a) the individual is a member or employee of the firm or is an employee, officer, or director of the corporation; and

(b) the individual is designated by the firm or corporation on its license application or on a form that amends or supplements the application as being authorized to act as a viatical settlement provider under the authority of the license.

**Section 5. Expiration of license.** (1) A license issued under [sections 1 through 15] expires on its expiration date unless it is renewed on or before its expiration date.

(2) Unless the commissioner designates another date, a license expires on the last day of the month in which the second anniversary of the initial issuance date of the license occurs and on the last day of the month of the second anniversary following each renewal.

**Section 6. Notification by licensee of material change affecting qualification for license.** A licensee shall immediately notify the commissioner of any material change in ownership or control or in any other matter affecting the qualification of the licensee for the license in this state, including keeping the commissioner informed about personnel and address changes.

**Section 7. Snspension — revocation — refusal to issue or renew license.** (1) The commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee or is guilty of one or more of tbe following:

(a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;

(b) a pattern of unreasonable payments to policyholders or certificate holders;

(c) falsification of an application for the license or renewal of the license or misrepresentation or engagement in any other dishonest act in relation to the application;

(d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;

(e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;

(g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms of probation set by the commissioner;

(h) refusal hy a licensee to be examined or to produce accounts, records, or files for examination, refusal by any officers or employees to give information with respect to the affairs of the licensee, or refusal to perform any other legal obligation as to the examination, when required by the commissioner;

(i) affiliation with or under the same general management or interlocking directorate or ownership as another viatical settlement provider, viatical settlement broker, or insurer, any of which unlawfully transacts business in this state;

(j) failure at any time to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner; or

(k) violation of any rule or order of the commissioner or any provision of Montana law.

(2) The commissioner may suspend or refuse to renew a license immediately and without hearing if the commissioner determines that one or both of the following circumstances exist:

(a) the licensee is insolvent;

(b) the financial condition or business practices of the licensee otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) The commissioner may refuse to issue a license in the name of any firm, partnership, or corporation if the commissioner believes that any officer, employee, stockholder, or partner who may materially influence the conduct of the applicant does not meet the standards of this section.

(4) A viatical settlement provider or viatical settlement broker holding a license that has not been renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's request.

(5) The commissioner may take any other administrative action authorized under Montana law in addition to or in lieu of the actions authorized under [sections 1 through 15].

HeinOnline -- 1997 vol. II 1393 1997

**Section 8. Terms of contract.** (1) A viatical settlement contract must be in writing. A viatical settlement provider shall establish in the contract the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

(2) A viatical settlement provider may not use a viatical settlement contract in this state unless the viatical settlement provider has filed the contract form with the commissioner and the commissioner has approved the contract form according to the provisions set forth in 33-1-501. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder or certificate holder.

(3) Each viatical settlement contract entered into in this state must contain a provision enabling the policyholder or certificate holder to rescind tbe contract not later than the 30th day after the date on which the contract is executed by all parties or not later than the 15th day after the policyholder or certificate holder receives the viatical settlement proceeds, whicbever is the longer period. In order to rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to the viatical settlement provider.

**Section 9. Annual report by provider.** Unless the commissioner grants a time extension, a viatical settlement provider shall file a report for the preceding calendar year with the commissioner on or before March 1 of each year. The report must be in tbe form and must contain the information that the commissioner prescribes. The report must be verified as follows:

(1) if the viatical settlement provider is a corporation, hy at least two principal officers of the viatical settlement provider;

(2) if the viatical settlement provider is a partnership, by two partners; or

(3) if tbe viatical settlement provider is not a corporation or a partnership, by the provider's owner and manager.

**Section 10. Examination of business and practices of licensee or applicant — maintenanee of business records.** (1) The commissioner may examine the business and practices of any licensee or applicant for a license when tbe commissioner determines an examination to be necessary. The commissioner may order a licensee or applicant to produce any records, books, files, or otlier information reasonably necessary to ascertain whether the licensee or applicant is acting or bas acted in violation of the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred in conducting any examination.

(2) A viatical settlement provider shall maintain records of all transactions of viatical settlement contracts of the viatical settlement provider and shall make tbe records available to the commissioner for inspection during reasonable business hours. The records must be maintained for a poriod of not less than 5 years from the date of their creation.

HeinOnline -- 1997 vol. II 1394 1997

(3) The commissioner may at any time require a licensee to fully disclose the identity of all stockholders, partners, officers, and employees.

(4) The names of and individual identification data for all policyholders and certificate holders who have entered viatical settlement contracts with viatical settlement providers are confidential and may not he disclosed except as considered necessary hy the commissioner in administration of [sections 1 through 15].

**Section 11. Disclosure of information to policyholder.** A viatical settlement provider shall disclose the information specified in this section to the policyholder or certificate holder entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed by all parties. The disclosure must be in the form prescribed by the commissioner. The information must include the following:

(1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should he sought from a personal tax adviser. Viatical settlement brokers, viatical settlement providers, or their respective employees or agents may not act as personal tax advisers for purposes of tbis disclosure requirement.

(3) the fact that the viatical settlement could be subject to the claims of creditors;

(4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for medicaid or other gevernment benefits or entitlement and that advice should he obtained from the appropriate agencies;

(5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as provided in [section 8]. The disclosure must state the deadlines for rescission and the return of proceeds received.

(6) the date by which the funds will be available to the policyholder or certificate holder and the source of the funds; and

(7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract.

**Section 12. Conditions precedent to entering into viatical settlement contract.** (1) Before a viatical settlement provider enters into a viatical settlement contract with a policyholder or certificate holder who has a terminal illness or condition, the viatical settlement provider shall first obtain the following:

(a) a written statement from an attending physician that the policyholder or certificate holder is of sound mind and not under constraint or undue influence; and

(b) a witnessed document in which the policyholder or certificate holder:

(i) consents to the viatical settlement contract;

(ii) acknowledges that the illness or condition is terminal;

(iii) represents that the policyholder or certificate holder has a full and complete understanding of the viatical settlement contract;

(iv) confirms that the policyholder or certificate holder has a full and complete understanding of the benefits of the life insurance policy;

(v) releases the medical records of the policyholder or certificate holder relating to the terminal illness or condition; and

(vi) acknowledges that the policyholder or certificate holder has entered into the viatical settlement contract freely and voluntarily.

(2) A viatical settlement provider may enter a viatical settlement contract only after the individual whose life would be the subject of the viatical settlement contract is determined to have a terminal illness or condition, as follows:

(a) if the individual is the policyholder or certificate holder, an attending physician of the policyholder or certificate holder shall make the determination; or

(b) if the individual is a person other than the policyholder or certificate holder, an attending physician of the individual or of the policyholder or certificate holder shall make the determination.

(3) For purposes of this section, "attending physician" means a medical doctor, a doctor of osteopathy, or a naturopathic physician licensed in this state, who is primarily responsible for the treatment or a portion of treatment of the individual whose life would be the subject of the viatical settlement contract.

**Section 13. Prohibitions on finder's fee — solicitations — discrimination — false or misleading advertising or solicitation — misuse of confidential information.** (1) A licensee may not pay or offer to pay a finder's fee, commission, or other compensation to a person described in this subsection (1) in connection with a policy insuring the life of an individual with a terminal illness or condition. The prohibition under this subsection (1) applies with respect to payments or offers of payment to:

(a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured individual;

(b) any person other than a physician, attorney, or accountant described in subsection (1)(a) who provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the insured individual when the individual is other than the policyholder or certificate holder; or

(c) any person other than one described in subsection (1)(a) or (1)(b) who acts as an agent of the policyholder, certificate holder, or insured individual.

(2) A licensee may not solicit an investor who could influence the treatment of the illness or condition of the individual whose life would be the subject of a viatical settlement contract.

HeinOnline -- 1997 vol. II 1396 1997

(3) All information solicited or obtained from a policyholder or certificate holder by a licensee is subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection, a licensee must be considered an insurance-support organization as defined in 33-19-104.

(4) A licensee may not discriminate in the making of a viatical settlement contract on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and may not discriminate between persons who have dependents and persons who do not have dependents.

(5) A person licensed pursuant to [section 4] may not engage in any false or misleading advertising, solicitation, or practice as described in 33-18-203.

(6) A porson licensed pursuant to [section 4] may not sell another product of insurance to the contract holder unless approval is obtained from the commissioner.

**Section 14. Payment to escrow or trust account — lump-sum payment.** (1) Immediately upon receipt of documents from the policyholder or certificate holder effecting the transfer of the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately upon receipt of acknowledgment of the transfer from the insurer.

(2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement contract in a lump sum except as provided in this subsection. A viatical settlement provider may not retain any portion of the proceeds. A viatical settlement provider may make installment payments only if the viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial instrument issued by a financial institution authorized to engage in the business of a financial institution in this state.

(3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed to the policyholder or certificate holder renders the contract void.

**Section 15. Rules — standards — bond.** The commissioner may, in accordance with the provisions of 33-1-313, adopt rules for the purpose of carrying out [sections 1 through 15]. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is available, as well as model standards developed by the national association of insurance commissioners.

(2) shall require a bond and an errors and omissions insurance policy of both kinds of licensees; and

HeinOnline -- 1997 vol. II 1397 1997

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts; and

(b) fees that are commensurate with fees charged pursuant to 33-2-708.

**Section 16. Codification instruction.** [Sections 1 through 15] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 15].

Approved April 17, 1997

# CHAPTER NO. 299

[SB 127]

AN ACT CLARIFYING THAT THE WHOLESALE VALUE OF AGRICULTURAL IMPLEMENTS AND MACHINERY FOR PROPERTY TAX PURPOSES IS THE AVERAGE WHOLESALE VALUE; SPECIFYING THE OFFICIAL GUIDE TO BE USED BY THE DEPARTMENT OF REVENUE IN DETERMINING THE AVERAGE WHOLESALE VALUE OF AGRICULTURAL IMPLEMENTS AND MACHINERY; REQUIRING THE DEPARTMENT TO USE A COMPARABLE PUBLICATION OR WHOLESALE VALUE CATEGORY IN DETERMINING THE WHOLESALE VALUE; AMENDING SECTION 15-8-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

HeinOnline -- 1997 vol. II 1398 1997

(a) the wholesale value for agricultural implements and machinery is the ~~loan value~~ *average wholesale value category* as shown in ~~the Official Guide, Tractor and Farm Equipment~~ *Guides 2000, Northwest Region Official Guide*, published hy the ~~national farm and power equipment dealers association~~ *North American equipment dealers association*, St. Louis, Missouri; *If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.*

(b) for agricultural implements and machinery not listed in ~~the~~ *an* official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in ~~Title~~ *Titles* 15 and ~~Title~~ 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value estahlished for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

**Section 2. Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years heginning after December 31, 1996.

Approved April 17, 1997

HeinOnline -- 1997 vol. II 1399 1997

# CHAPTER NO. 300

[SB 134]

AN ACT EXEMPTING A HOSPITAL DISTRICT FROM PROPERTY TAX LIMITATION LAW IF AUTHORIZED BY THE ELECTORATE OF THE DISTRICT; LIMITING THE NUMBER OF MILLS THAT MAY BE LEVIED BY AN EXEMPTED HOSPITAL DISTRICT; AND AMENDING SECTION 15-10-412, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-10-412, MCA, is amended to read:

**"15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not prohibit a further increase in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

HeinOnline -- 1997 vol. II 1400 1997

(4) The limitation on the amount of taxes levied does not prohibit a further increase in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in class four is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in ~~revenues~~ *revenue* resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) except as provided in subsection (8)(a), the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but the mills levied may not exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

HeinOnline -- 1997 vol. II 1401 1997

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) (a) Except as provided in subsection (8)(b), if a taxing unit has levied additional mills under subsection (7)(a) to compensate for a decrease in taxable valuation, it may continue to levy additional mills to equal the revenue from property taxes for the 1986 tax year when the taxing unit's taxable valuation is greater than 95% but less than 100% of the taxing unit's taxable valuation in tax year 1986.

(b) When the taxable valuation of a taxing unit that levied additional mills under subsection (7)(a) or (8)(a) is equal to or greater than the taxing unit's taxable valuation in tax year 1986, it may not levy additional mills to compensate for a subsequent decrease in taxable valuation unless the conditions of subsection (7)(a) are satisfied.

(9) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categeries, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (9);

(i) levies for economic development authorized pursuant to 90-5-112(4);

(j) levies authorized under 7-6-502 for juvenile detention programs;

(k) levies authorized under 76-15-531 and 76-15-532 for conservation district special administrative assessments;

(l) elementary and high school districts; and

(m) voted poor fund levies authorized under 53-2-322.

(10) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(11) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2); ~~and~~

*(iii) a hospital district, as provided in Title 7, chapter 34, part 21, if authorized by the electorate of the district. A levy for the support of the hospital district may not exceed the 3-mill levy limit authorized in 7-34-2133 unless a voted special levy is authorized under 7-34-2134.*

~~(iii)~~*(iv)* a rail authority, as provided in Title 7, chapter 14, part 16, authorized by a board of county commissioners. A levy for the support of a rail authority may not exceod the 6-mill limit established in 7-14-1632.

(12) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(13) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402.

(14) A taxing jurisdiction that included special improvement district revolving fund levies in the limitation on the amount of taxes levied prior to April 22, 1993, may continue to include the amount of the levies within the dollar

HeinOnline -- 1997 vol. II 1403 1997

amount due in each taxing unit for the 1986 tax year even if the necessity for the revolving fund has diminished and the levy authority has been transferred."

Approved April 17, 1997

# CHAPTER NO. 301

[SB 213]

AN ACT REVISING THE PROPERTY TAX EXEMPTION FOR A DISABLED VETERAN OR SURVIVING SPOUSE; INCREASING THE INCOME LIMITATIONS APPLICABLE TO THE PROPERTY TAX EXEMPTION FOR A DISABLED VETERAN OR A SURVIVING SPOUSE; AMENDING SECTION 15-6-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-211, MCA, is amended to read:

**"15-6-211. Certain disabled or deceascd veterans' residenees exempt.** (1) A residence, including the lot on which it is built, *that is* owned and occupied by a veteran or a veteran's spouse is exempt from property taxation ~~under the following conditions. The~~ *if the* veteran ~~must~~:

(a) ~~have been~~ *was* killed while on active duty or ~~have~~ died as a result of a service-connected disability; or

(b) if living:

(i) ~~have been~~ *was* honorably discharged from active service in any branch of the armed services;

(ii) ~~be~~ *has been* rated 100% disabled ~~due to~~ *because of* a service-connected disahility by the United States department of veterans affairs or its successor~~; and~~*; and*

~~(iii) have an annual adjusted gross income, as reported on the latest federal income tax return, of not more than $15,000 for a single person and $18,000 for a married couple~~

*(iii) has an annual adjusted gross income, as reported on the latest federal income tax return, of not mere than $30,000 for a single person and $36,000 for a married couple.*

(2) ~~Property shall continue to be exempt~~ *The propcrty tax exemption* under this section *remains in effect* ~~so~~ *as* long as the property is the primary residence owned and occupied by the veteran or, if the veteran is deceased, by the veteran's spouse and the speuse:

(a) is the owner and occupant of tlie house;

(b) has an annual adjusted gross income, as reported on tlie latest federal income tax return, of not more than ~~$15,000~~ *$25,000*;

(c) is unmarried; and

(d) has obtained from the United States department of veterans affairs a letter indicating that the veteran was 100% service-connected disabled at the time of death or that the veteran died while on active duty or as a result of a service-connected disability."

**Section 2. Effective date — applicability.** [This act] is effective January 1, 1998, and applies to property tax years beginning after December 31, 1997.

Approved April 17, 1997

# CHAPTER NO. 302

[SB 216]

AN ACT GENERALLY REVISING PROCEDURES FOR POSTJUDGMENT REVIEW IN CRIMINAL CASES; CLARIFYING THE STANDARDS FOR APPELLATE REVIEW OF A DEATH SENTENCE; CLARIFYING THE REQUIRED CONTENTS OF POSTCONVICTION RELIEF PETITIONS; CLARIFYING THE GROUNDS FOR RELIEF THAT MAY BE RAISED AND DECIDED IN A POSTCONVICTION PROCEEDING; AMENDING SECTIONS 46-18-310, 46-21-104, AND 46-21-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, it is the public policy of the State of Montana to provide porsons accused of crimes with a fair and speedy trial and direct appellate review of legal issues fairly presented to the trial court; and

WHEREAS, the privilege of the writ of habeas corpus is preserved by Article II, section 19, of the Montana Constitution; and

WHEREAS, the Legislature has set forth in Title 46, chapter 21, MCA, procedures for protecting an offender's right to postconviction review of the judgment; and

WHEREAS, there is no federal constitutional right to a specific statutorily prescribed postconviction procedure; and

WHEREAS, it is the Legislature's intent that decisions of Montana juries and judgments of Montana trial courts in criminal cases, including death ponalty cases, be respected and given finality by other reviewing courts unless errors affecting an offender's substantial rights have occurred; and

WHEREAS, amendments to Montana's postconviction relief and death penalty statutes will further the goal of finality by codifying certain interpretations of those statutes by the Montana Supreme Court and clarifying legislative intent with respect to other provisions.

THEREFORE, it is the policy of the State of Montana to prescribe and limit, consistent with constitutional safeguards of the criminal justice process, the authority of an appellate or other reviewing court to consider legal and factual issues determined by the trial or sentencing court.

HeinOnline -- 1997 vol. II 1405 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-310, MCA, is amended to read:

**"46-18-310. Supreme court's determination as to the sentence.** *(1)* The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

~~(1)~~*(a)* whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

~~(2)~~*(b)* whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

~~(3)~~*(c)* whether the sentence of death is excessive or disproportionate to the penalty imposed in ~~similar~~ *other* cases *in which a sentencing hearing was held pursuant to 46-18-301, whether the sentence imposed was death or a sentence other than death*, considering both the crime and the defendant. The court shall include in its decision a reference to those ~~similar~~ *other* cases it took into consideration.

*(2) The supreme court shall uphold the sentencing court's findings of fact issued pursuant to 46-18-306 unless those findings are clearly erroneous. The supreme court may not substitute its judgment for that of the sentencing court in assessing the credibility of witnesses; drawing inferences from testimonial, physical, documentary, or other evidence; or resolving conflicts in the evidence presented at the sentencing hearing or considered by the sentencing court."*

**Section 2.** Section 46-21-104, MCA, is amended to read:

**"46-21-104. Contents of petition.** (1) The petition for postconviction relief must:

(a) identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations;

(b) identify any previous proceedings that the petitioner may have taken to secure relief from ~~his~~ *the* conviction; and

(c) ~~have~~ *identify all facts supporting the grounds for relief set forth in the petition and have* attached ~~any~~ affidavits, records, or other evidence ~~supporting its allegations or state why the evidence is not attached~~ *establishing the existence of those facts.*

(2) The petition must be accompanied by a supporting memorandum, including appropriate arguments and citations and discussion of authorities."

**Section 3.** Section 46-21-105, MCA, is amended to read:

**"46-21-105. Amendment of petition — waiver of grounds for relief.** (1) All grounds for relief claimed by a petitioner under 46-21-101 must be raised in the original or amended petition. The original petition may he amended only once. At the request of the state or on its own motion, the court shall set a deadline for the filing of the amended petition. If a hearing will be held, the deadline must

be reasonably in advance of the hearing but may not be less than 30 days prior to the date of the hearing. Those grounds for relief not raised in the original or amended petition are waived unless the court on hearing a subsequent petition finds grounds for relief that could not reasonably have been raised in the original or amended petition.

(2) When a petitioner has been afforded *the opportunity for* a direct appeal of the petitioner's conviction, grounds for relief that *were or* could reasonably have been raised on direct appeal may not be raised ~~in the original or amended petition,~~ *considered, or decided in a proceeding brought under this chapter.*

*(3) For purposes of this section, "grounds for relief" includes all legal and factual issues that were or could have been raised in support of the petitioner's claim for relief."*

**Section 4. Coordination instruction.** If House Bill No. 222 is passed and approved and if it includes a section that amends the first sentence of subsection (2) of 46-21-105, then the amendments in House Bill No. 222 to the first sentence of subsection (2) of 46-21-105 are void.

**Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 17, 1997

# CHAPTER NO. 303

[SB 219]

AN ACT CREATING THE CRIMINAL OFFENSE OF SURREPTITIOUS VISUAL OBSERVATION OR RECORDATION IN A PLACE OF RESIDENCE; PROVIDING AN EXCEPTION FOR LEGITIMATE INVESTIGATIVE PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Surreptitious visual observation or recordation in a place of residence — exceptious.** (1) A person commits the offense of surreptitious visual observation or recordation if a person purposely or knowingly hides, waits, or otherwise loiters in the vicinity of a private dwelling house, apartment, or other place of residence for the purpose of:

(a) watching, gazing at, or looking upen any occupant in the residence in a surreptitious manner; or

(b) by means of an electronic or mechanical recording device, surreptitiously recording the visual image of any occupant in the residence.

(2) Subsection (1) does not apply to a law enforcement officer, an agent or employee of an insurer, or a private investigator licensed pursuant to 37-60-301 or to any person engaged in fraud detection, prevention, or prosecution pursuant

HeinOnline -- 1997 vol. II 1407 1997

to 2-15-2015 or 39-71-211, while the officer, agent, employee, or private investigator is acting in the course and scope of employment for legitimate investigative purposes.

(3) A person convicted of the offense of surreptitious visual observation or recordation shall be fined an amount not to exceed $500 or be incarcerated in the county jail for a torm not to exceed 6 months, or both. Upon a second conviction, a porson shall be fined an amount not to exceed $1,000 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person shall be fmed an amount not to exceed $10,000 or be incarcerated for a term not to exceed 5 years, or both.

**Section 2. Codifieation instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chaptor 5, part 2, and the provisions of Title 45 apply to [section 1].

**Section 3. Coordination instruction.** If both [this act] and House Bill No. 200 are passed and approved and if House Bill No. 200 includes a section criminalizing the surreptitious taking of a person's picture in certain rooms in a business establishment, then House Bill No. 200 and [section 1 of this act] must be codified together in Title 45, chapter 5, and the combined section must read:

"NEW SECTION. **Section 1. Surreptitious visual observation or recordation — place of residenee — public establishment — exceptions.** (1) A person commits the offense of surreptitious visual observation or recordation in a place of residence if a person purposely or knowingly hides, waits, or otherwise loiters in the vicinity of a private dwelling house, apartment, or other place of residence for the purpose of:

(a) watching, gazing at, or looking upon any occupant in the residenco in a surreptitious manner; or

(b) by means of an electronic or mechanical recording device, surreptitiously recording the visual image of any occupant in the residence.

(2) An owner, manager, or employee of a business or a landlord who knowingly surreptitiously records a visual image of a person in a restroom, washroom, shower, bedroom, fitting room, or other room used by a customer, guest, tenant, or member of the public to, with a reasonable expectation of privacy, change or try on clothes, bathe, perform intimate bodily functions, or appear nude or partially nude or in underclothes commits the offense of surreptitious visual recordation in a public establishment.

(3) Subsections (1) and (2) do not apply to a law enforcement officer, an agent or employee of an insurer, or a private investigator licensed pursuant to 37-60-301 or to any porson engaged in fraud detection, prevention, or prosecution pursuant to 2-15-2015 or 39-71-211 while the officer, agent, employee, or privato investigator is acting in the course and scope of employment for legitimate investigative purposes.

(4) (a) A person convicted of the offense of surreptitious visual observation or recordation in a place of residence shall be fined an amount not to exceed $500 or be incarcerated in the county jail for a term not to exceed 6 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed $1,000 or be incarcerated for a term not to exceed 1 year, or both. Upen a third or

HeinOnline -- 1997 vol. II 1408 1997

subsequent conviction, a person shall be fined an amount not to exceed $10,000 or be incarcerated for a term not to exceed 5 years, or both.

(h) A person convicted of the offense of surreptitious visual recordation in a public establishment shall be fined an amount not to exceed $1,000 or incarcerated for a term not to exceed 6 months, or both, if the victim was an adult and shall be fined an amount not to exceed $5,000 or incarcerated for a term not to exceed 2 years, or both, if the victim was a minor."

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 17, 1997

# CHAPTER NO. 304

[SB 234]

AN ACT PROHIBITING DISCRIMINATION AGAINST VICTIMS OF ABUSE IN ALL LINES OF INSURANCE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Unfair discrimination against victims of abuse prohibited.** (1) An insurer, health maintenance organization, or health service corporation may not unfairly discriminate against a victim of abuse.

(2) For purposes of this section, "abuse" means the occurrence between family members, current or former household members, or intimate partners of one or more of the following:

(a) purposely, knowingly, or recklessly subjecting another person, including a minor child, to bodily injury, severe emotional distress, psychological trauma, sexual assault, or sexual intercourse without consent;

(b) subjecting another person, including a minor child, to false imprisonment or unlawful restraint or confinement.

(3) For purposes of this section, "abuse" includes purposely or knowingly engaging in a course of conduct toward a family member, current or former household member, or intimate partner that constitutes stalking in violation of 45-5-220.

(4) The following acts, when based on the insured's status as a victim of abuse, are prohibited as unfairly discriminatory:

(a) denying, refusing to issue, renew, or reissue, canceling, or otherwise terminating an insurance policy, certificate of coverage delivered or issued for delivery in Montana, subscriber contract, or health care services agreement;

(b) restricting or excluding coverage under an insurance policy or certificate delivered or issued for delivery in Montana;

(c) adding a premium differential to any insurance policy or certificate delivered or issued for delivery in Montana on the basis that the applicant or insured has been the victim of abuse; or

HeinOnline -- 1997 vol. II 1409 1997

(d) excluding or limiting coverage for losses or denying a claim.

(5) Upon written request of the insured or an applicant, an insurer that takes an underwriting action that adversely affects a victim of abuse on the basis of a medical condition or property or casualty risk that the insurer knows is related to abuse shall explain to the insured or applicant in writing the reason for the insurer's action.

(6) (a) This section does not prohibit an insurer from underwriting, classifying risk, or administering a contract of insurance as otherwise allowed by law based on property or casualty risk or medical information that the insurer knows is related to abuse as long as the insurer underwrites, classifies risk, or administers the contract of insurance on the basis of the applicant's or insured's property or casualty risk or medical condition and not on the applicant's or insured's status as a victim of abuse.

(b) This section does not prohibit or otherwise limit an insurer's ability to elicit information from or about an applicant or insured as otherwise provided by law.

(7) This section may not be construed to alter or modify any conditions, exclusions, or limitations clearly stated in an insurance policy or certificate delivered or issued for delivery in Montana that are not otherwise inconsistent with the provisions of subsection (4).

(8) An insurer may not be held civilly or criminally liable for the death of or physical injury to an insured that is related to acts of abuse resulting from any action taken in a good faith effort to comply with the requirements of this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 17, 1997

# CHAPTER NO. 305

[SB 259]

AN ACT PROVIDING LICENSURE FOR TEACHERS OF MANICURING AND FOR ESTHETICIANS, ESTHETICS INSTRUCTORS, SCHOOLS OF ESTHETICS, AND ESTHETICS SALONS; AND AMENDING SECTIONS 37-31-101, 37-31-203, 37-31-301, 37-31-302, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, AND 37-31-331, MCA.

HeinOnline -- 1997 vol. II 1410 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-31-101, MCA, is amended to read:

**"37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Bootb" means any part of a cosmetology, ~~salon or~~ manicuring, *or esthetics* salon that is rented or leased for the performance of cosmetologist, *manicuring, or esthetics* services, as specified in 39-51-204(1)(l).

(3) "Cosmetology salon" means *the* premises, *a* building, or *a* part of a building in which ~~is practiced~~ a branch or combination of branches of cosmetology or the occupation of a bairdresser and cosmetician or cosmetologist ~~and that must have a manager-operator in charge~~ *is practiced by a person licensed under the provisions of this chapter.*

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

*(5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.*

*(6) "Esthetics" means skin care of the face, neck, and hands, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.*

*(7) "Esthetics salon" means the premises, a building, or a part of a building in which the art of esthetics is practiced.*

~~(5)~~*(8)* "Manicuring" includes nail care of tbe hands and feet and the application and maintenance of artificial nails.

~~(5)~~*(9)* "Manicuring salon" means *the* premises, a building, or *a* part of a building in which the art of manicuring is practiced.

~~(7)~~*(10)* "Practice and teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", *"esthetics",* and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant cosmetologists, whicb work is done for tbe embellisbment, cleanliness, and beautification of tbe hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform tbeir services witbout compensation for demonstration purposes in any regularly established store or place of business bolding a license from the state of Montana as a store or place of business."

**Section 2.** Section 37-31-203, MCA, is amended to read:

**"37-31-203. Rulemaking powers.** The board shall prescribe rules for:

(1) the conduct of its business;

HeinOnline -- 1997 vol. II 1411 1997

(2) the qualification, examination, and registration of applicants to practice cosmetology, ~~or~~ manicuring, *or esthetics* or to teach cosmetology, *manicuring, or esthetics*;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology, ~~and schools of~~ manicuring, *and esthetics* for apprentices and students;

(6) the qualification and registration of applicants for booth rental licenses; and

(7) generally the conduct of the persons, firms, or corporations affected by this chapter."

**Section 3.** Section 37-31-301, MCA, is amended to read:

**"37-31-301. Prohibited acts.** (1) Without an appropriate license issued under this chapter, it is unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology ~~or~~, ~~school of~~ manicuring, *or esthetics*;

(c) manage or operate a cosmetology salon, manicuring salon, *esthetics salon*, or booth;

(d) teach in a school of cosmetology ~~or school of manicuring~~, *manicuring, or esthetics*;

(e) practice manicuring for compensation;

(f) practice as a finger waver; *or*

*(g) practice esthetics for compensation.*

(2) It is unlawful:

(a) for a person who owns, manages, or controls a cosmetology salon to employ or use an unlicensed person as a cosmetologist ~~or~~, *a* manicurist, *or an esthetician*;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed salon as provided in this chapter, except when a licensed operator is requested:

(i) by a customer to go to a place other than a licensed salon and is sent to the customer from a licensed salon; or

(ii) by a handicapped or homebound customer to ge to the customer's place of residence;

HeinOnline -- 1997 vol. II 1412 1997

(d) for a person who owns, manages, or controls a manicuring salon to employ or use an unlicensed person as a manic rist;

*(e) for a person who owns, manages, or controls an esthetics salon to employ or use an unlicensed person as an esthetician;*

~~(e)~~*(f)* to operate a manicuring school *or a school of esthetics* without complying with 37-31-311;

~~(f)~~*(g)* to violate any of the provisions of this chapter."

**Section 4.** Section 37-31-302, MCA, is amended to read:

**"37-31-302. License required to practice, teach, or operate salon, booth, or school.** (1) A person may not practice or teach cosmetology, ~~or practice or teach~~ manicuring, *or esthetics* without a license.

(2) A place may not be used or maintained for the teaching of cosmetology, ~~or~~ manicuring, *or esthetics* for compensation except under a certificate of registration.

(3) A person may not operate or manage a cosmetology salon, ~~or~~ a manicuring salon, *or an esthetics salon* or practice cosmetology, ~~or~~ manicuring, *or esthetics* without a ~~manager-operator~~ license.

(4) A person may not operate or conduct a school of cosmetology, ~~or a school of~~ manicuring, *or esthetics* ~~and~~ *or* teach the art of cosmetology, ~~or~~ manicuring, *or esthetics* without a license to teach cosmetology, *manicuring, or esthetics.*

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, or corporation desiring to operate a cosmetology salon shall make an application to the department for a certificate of registration and license. The application must be accompanied by the annual registration fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid."

**Section 5.** Section 37-31-304, MCA, is amended to read:

**"37-31-304. Qualifications of applicants for license to practice.** (1) Before a person may practice cosmetology, the person shall obtain a license to practice cosmetology from the department. Before a person may practice manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology. *Before a person may practice esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.*

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant may not be less than 18 years of age, must be of good moral character, and must possess a high school diploma or the equivalent of a high school diploma recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or the equivalent of a high school diploma. The board shall adopt by rule

HeinOnline -- 1997 vol. II 1413 1997

procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a registered cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to fitness to practice cosmetology.

(3) (a) To be eligible to take the examination to practice manicuring, an applicant may not be less than 18 years of age; must be of good moral character; possess a high school diploma, the equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical program; and must have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma, the equivalent of a high school diploma, or a vocational-technical program certificate of completion. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (3)(a) shall file with the department a written application to take the examination and deposit with the department the required examination fee.

*(4) (a) To be eligible to take the examination to practice esthetics, an applicant:*

*(i) may not be under 18 years of age;*

*(ii) must be of good moral character;*

*(iii) must possess a high school diploma, the equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical program; and*

*(iv) must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a registered school of cosmetology or a registered school of estheties. A person may apply to the board for an exception to the educational requirement of a high school diploma, the equivalent of a high school diploma, or a vocational-technical program certificate of completion. The board shall adopt by rule procedures for granting an exception.*

*(b) A person qualified under subsection (4)(a) shall:*

*(i) file with the department a written application to take the examination;*

*(ii) deposit with the department the required examination fee; and*

*(iii) pass an examination as to fitness to practice esthetics."*

**Section 6.** Section 37-31-305, MCA, is amended to read:

**"37-31-305. Qualifications of applicants for license to teach.** (1) Before a person may teach manicuring *or esthetics* to persons seeking only to be

licensed to practice manicuring or *esthetics, or to* teach cosmetology, the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a cosmetologist for 3 continuous years immediately ~~prior to~~ *before* taking the ~~teachers'~~ *teacher's* examination.

*(3) Before a person may teach manicuring to a person seeking only to be licensed to practice manicuring, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach manicuring.*

*(4) To be eligible to take an examination to obtain a license to teach manicuring, a person must:*

*(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and*

*(b) (i) have a license to practice manicuring or cosmetology issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or*

*(ii) have been actively engaged as a manicurist or a cosmetologist for 3 continuous years immediately before taking the teacher's examination.*

*(5) Before a person may teach esthetics to a person seeking only to be licensed to practice esthetics, the person shall, unless already licensed to teach cosmetology, obtain a license from the department to teach esthetics.*

*(6) To be eligible to take an examination to obtain a license to teach esthetics, a person must:*

*(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and*

*(b) (i) have a license to practice esthetics or cosmetology issued by the department and have received a diploma from a registered school licensed as a teacher-training unit certifying satisfactory completion of 650 hours of student teacher training; or*

*(ii) have been actively engaged as an esthetician or a cosmetologist for 3 continuous years immediately before taking the teacher's examination."*

**Section 7.** Section 37-31-308, MCA, is amended to read:

**"37-31-308. Examination — reexamination — exemption for handicapped persons.** (1) Examinations for a license to practice cosmetology,

HeinOnline -- 1997 vol. II 1415 1997

~~or~~ manicuring, *or esthetics* or to teach cosmetology, *manicuring, or esthetics* must be held at places and times specified by the board. The examinations must be supervised by the board. The examinations may not be confined to a specific method or system. The examinations must be conducted by persons who hold current licenses to practice in the profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring *or a license to practice esthetics* shall meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology, *manicuring, or esthetics* shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology, ~~or~~ manicuring, *or esthetics* by the department of public health and human services are, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a cosmetology, ~~school or~~ *a* manicuring, *or an esthetics* school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

**Section 8.** Section 37-31-311, MCA, is amended to read:

**"37-31-311. Schools — certificate of registration — requirements — bond — curriculum.** (1) A person, firm, partnership, or corporation may not operate a school for the purpose of teaching cosmetology, *manicuring, or esthetics* for compensation ~~or for the purpose of teaching manicuring for compensation~~ unless a certificate of registration has been first obtained from the department. Application for the certificate must be filed with the department on a form prescribed by the board.

(2) A school for teaching cosmetology may not be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times in the immediate supervision of the work of the school or other teachers who the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of cosmetology.

HeinOnline -- 1997 vol. II 1416 1997

(c) It maintains a school term of not less than 2,000 hours and prescribes a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction must be prescribed by tbe board.

(d) It keeps a daily record of tbe attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) An owner or person in charge of a scbool of cosmetology may not permit a person to sleep in or use for residential purposes or for any otber purpose that would make the room unsanitary a room used wbolly or in part for a school of cosmetology.

(3) A school for teaching manicuring may not be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and tbe following requirements:

(a) It possesses apparatus and equipment tbe board determines necessary for tbe ready and full teaching of all subjects or practices of manicuring.

(b) It maintains a scbool term and a course of practical training and technical instruction as prescribed by the board.

(c) An owner or person in charge of a scbool of manicuring may not permit a person to sleep in or use for residential purposes or for any other purpose that would make the reom unsanitary a room used wholly or in part for a school of manicuring.

*(4) A school for teaching esthctics may not be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and the following requirements:*

*(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.*

*(b) It maintains a school term and a coursc consisting of not less than 650 hours of practical training and technical instruction as prescribed by thc board.*

*(c) An owner or person in charge of a school of esthetics may not pcrmit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.*

~~(4)~~*(5)* Licenses or certificates of registration for scbools of cosmetology, ~~and schools of~~ manicuring, *or esthctics* may be refused, revoked, or suspended, as provided in 37-31-331.

~~(5)~~*(6)* A teacber or student teacber may not be permitted to practice cosmetology, ~~or~~ manicuring, *or esthetics* on the public in a school of cosmetology, ~~or a school of~~ manicuring, *or esthetics*. A school tbat enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

~~(6)~~*(7)* Tbe board may make further rules necessary for the propor conduct of scbools of cosmetology, ~~and schools of~~ manicuring, *and esthetics*.

HeinOnline -- 1997 vol. II 1417 1997

~~(7)~~*(8)* The board shall require the person, firm, partnership, or corporation operating a school of cosmetology, ~~or a school of~~ manicuring, *or esthetics* to furnish a good and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

~~(8)~~*(9)* A professional cosmetology, ~~salon or~~ manicuring, *or esthetics* salon may not be operated in connection with a school of cosmetology, ~~or school~~ of manicuring, *or of esthetics*.

~~(9)~~*(10)* The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology, *manicuring, or esthetics*."

**Section 9.** Section 37-31-312, MCA, is amended to read:

"**37-31-312. Inspection.** (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting cosmetology salons and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a cosmetology salon, manicuring salon, *esthetics salon,* booth, school of cosmetology, ~~or~~ school of manicuring, *or school of esthetics* during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, a cosmetology, ~~salon or~~ manicuring, *or esthetics* salon shall pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetology, ~~salon or~~ manicuring, *or esthetics* salon, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetology, ~~salon or~~ manicuring, *or esthetics* salon to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The department shall cause an inspector, appointed as provided in subsection (1), to conduct an annual inspection of each cosmetology, ~~salon and~~ manicuring, *and esthetics* salon in the state."

**Section 10.** Section 37-31-331, MCA, is amended to read:

"**37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.** (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetology salon, manicuring salon, *esthetics salon, or a* school of cosmetology, ~~or school of~~ manicuring, *or esthetics* to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of cosmetology salons, manicuring salons, *esthetics salons, or* schools of cosmetology, ~~or schools of~~ manicuring, *or esthetics*;

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

HeinOnline -- 1997 vol. II 1418 1997

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department te issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing."

Approved April 18, 1997

# CHAPTER NO. 306

[SB 284]

AN ACT ALLOWING INDIVIDUAL OWNERS OF TRACTS OF LAND 3 ACRES OR SMALLER IN SIZE LOCATED WITHIN THE BOUNDARIES OF CERTAIN URBANIZED IRRIGATION DISTRICTS THAT ARE NOT BEING SERVED BY THE IRRIGATION DISTRICT WORKS TO BE ELIMINATED FROM ASSESSMENTS OVER AND ABOVE CURRENT INDEBTEDNESS; AMENDING SECTIONS 85-7-411 AND 85-7-1802, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1. Small-tract petition to exclude land from district.** (1) When an irrigation district bas become urbanized to such a degree that the average parcel size in tbe district is less tban 3 acres, a person holding title to a tract of land meeting the criteria in 85-7-1802(2) may petition tbe district court for an exclusion of the person's tract from an irrigation district, a subdistrict, or a combination of a district and subdistrict. The petition must be signed by all persons who hold title to the tract to be excluded and must specify:

(a) the name of tbe irrigation district;

(b) the name and address of tbe persons holding title to the tract;

(c) evidence of title to the tract to be excluded, as provided in 85-7-101 and 85-7-102;

(d) a copy of a map or plat of tbe irrigation district showing the location of the tract sought to be excluded and the relation of that land to tbe works of the district;

(e) a statement, corroborated by adequate documentation, tbat the users of tbe tract do not and cannot feasibly obtain water from the irrigation district through existing irrigation works;

(f) a copy of a recent tax statement documenting assessment of the tract by the irrigation district; and

(g) a request tbat the tract be excluded.

HeinOnline -- 1997 vol. II 1419 1997

(2) Prior to filing the petition with the court, the petitioner shall mail a copy of the completed petition to the irrigation district subject to the petition.

(3) The petitioner shall file the petition, proof of mailing pursuant to subsection (2), and a $20 fee with the clerk of the district court for the court in which the irrigation district was created.

(4) Within 15 days of the date of the filing of the petition, the irrigation district may file an objection to the petition. To be valid, the objection must provide sufficient evidence that the conditions set forth in 85-7-1802(2) do not apply to the tract petitioned for exclusion.

(5) If a valid objection is filed, the court may hold a hearing if necessary to resolve the facts of the petition.

(6) The court shall grant the petition for exclusion:

(a) if no objections are filed within 15 days of filing the petition; or

(b) upon determination of the court that the petition is sufficient.

(7) The court shall forward to the irrigation district a copy of the order granting the exclusion.

(8) A petition granted in this section excludes the petitioned tract from the irrigation district for all purposes, except that it remains subject to assessment for any existing district debt.

**Section 2.** Section 85-7-411, MCA, is amended to read:

**"85-7-411. Alteration and determination of subdistrict acreage.** (1) Land may be deleted from or added to the subdistrict in the same manner provided for irrigation districts in 85-7-1801 through 85-7-1810 *and in [section 1]*.

(2) Land in a subdistrict that is deleted from an irrigation district remains in the subdistrict unless it is specifically deleted from the subdistrict according to subsection (1).

(3) The taxable area of the land in the subdistrict may be determined in the manner provided in 85-7-1841 through 85-7-1845."

**Section 3.** Section 85-7-1802, MCA, is amended to read:

**"85-7-1802. Elimination of ~~lands~~ *land* from district.** *(1)* Whenever ~~lands have~~ *land has* been included within the boundaries of an established and organized irrigation district, which from ~~their~~ *its* location or conformation cannot be successfully irrigated by the irrigation works or system already constructed or proposed to be constructed or the cost of irrigating the ~~same~~ *land* will become burdensome upon the landowners of the district, a majority ~~in number~~ of the holders of title or evidence of title to the land included in ~~such~~ *the* district (such holders of title or evidence of title also representing a majority in acreage of ~~said lands~~ *that land*) may *in conformance with 85-7-1803 through 85-7-1807* petition the district court of the county in which the ~~lands~~ *land* of the district or the greater portion ~~thereof are~~ *of that land is* situated for an order or decree changing

HeinOnline -- 1997 vol. II 1420 1997

the boundaries of the district by ~~the elimination therefrom of such lands~~ *eliminating that land from the district.*

*(2) Whenever a tract of record is located within an irrigation district that is partially within or adjacent to a first-class city that had a population greater than 40,000 and less than 55,000 as shown by the 1990 census, is 3 acres or smaller in size, is located within 5 miles of the exterior boundary of an incorporated city, and is not served by any district canal, system, facility, or other undertaking, the owner of the tract may petition to eliminate the tract from a district pursuant to [section 1].*"

**Section 4. Effective date.** [This act] is effective July 1, 1997.

**Section 5. Termination.** [This act] terminates December 31, 1998.

**Section 6. Codifieation instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 7, part 18, and the provisions of Title 85, chapter 7, part 18, apply to [section 1].

**Section 7. Saving clause.** (1) [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

(2) A proceeding under [section 1] initiated prior to [the termination date of this act] but not completed prior to [the termination date of this act] is not terminated by the termination of [this act] but must continue under [section 1] as it read prior to termination until the proceeding is concluded.

Approved April 18, 1997

# CHAPTER NO. 307

[SB 325]

AN ACT PROHIBITING THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY FROM INSPECTING METALLIC AND NONMETALLIC NONCOAL MINES, OTHER THAN SAND AND GRAVEL OPERATIONS, AS LONG AS THE FEDERAL MINE SAFETY AND HEALTH LAWS ARE IMPLEMENTED AND ENFORCED IN MONTANA BY THE FEDERAL GOVERNMENT; AMENDING SECTIONS 50-71-321, 50-72-201, AND 50-72-202, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, since 1977, the United States has established a comprehensive program pursuant to the Federal Mine Safety and Health Act of 1977 (MSHA) to ensure the safety of mine workers in every state, including Montana; and

WHEREAS, with the maturation and full implementation of MSHA, the State of Montana mine safety program is now substantially duplicated by the federal program, which provides Montana mine workers with protection at least as comprehensive as protection afforded by current provisions of state law; and

WHEREAS, the Legislature desires to avoid needless duplication of public effort and the unnecessary expenditure of public funds; and

HeinOnline -- 1997 vol. II 1421 1997

WHEREAS, the Legislature finds it appropriate to bring the state mine inspection program te an honorable conclusion for metallic and nonmetallic noncoal mines (other than sand and gravel operations), provided that duplication of effort with the federal mine inspection program continues to exist, recognizing that enforcement of MSHA by federal mine inspectors is comprehensive and sufficient enough to fully protect the health and safety of Montana mine workers; and

WHEREAS, recognizing that mine safety training is presently conducted at public expense with state and federal funds, it is the Legislature's desire and intent that mine safety training programs sufficient to meet the requirements of MSHA be made available by privately funded associations, such as the Montana Mining Association's training program.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-71-321, MCA, is amended to read:

"**50-71-321. Periodic inspections.** (1) *Except as provided in 50-72-201 and 50-72-202,* ~~The~~ *the* department shall inspect from time to time all the places of employment defined in the Montana Workers' Compensation Act as being hazardous and the machinery and appliances ~~therein contained~~ *in those places of employment* for the purpose of determining ~~whether they conform to law~~ *compliance.*

(2) A report of ~~such~~ *a* periodic inspection ~~shall~~ *must* be filed in the office of the department and a copy ~~thereof~~ *of that report must be* given *to* the employer. ~~Such~~ *The* report ~~shall~~ *may* not be open to public inspection or made public except on order of the department or by the department in the course of a hearing or proceeding."

**Section 2.** Section 50-72-201, MCA, is amended to read:

"**50-72-201. Inspectors.** *(1) Except as provided in subsection (2), as long as the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., is administered and enforced with respect to metallic and nonmetallic mines in Montana by means that include regular inspections of mines by federal inspectors, the department is not authorized to conduct inspections of those mines. If regular inspections of Montana metallic and nonmetallic mines by federal inspectors in the enforcement of the federal act are discontinued by federal action,* ~~The~~ *the* department ~~shall~~ *is authorized to* employ an adequate number of qualified ~~metal~~ *metallic* and nonmetallic mine inspectors necessary for the enforcement of this chapter and shall prescribe their powers, duties, and responsibilities.

*(2) The department is authorized to employ an adequate number of qualified inspectors for sand and gravel mining operations and to prescribe the powers, duties, and responsibilities of those inspectors."*

**Section 3.** Section 50-72-202, MCA, is amended to read:

"**50-72-202. Inspections and investigations — *when* authorized.** *(1) Except as provided in subsection (2), as long as the Federal Mine Safety and Health Act of 1977 is administered and enforced with respect to metallic and nonmetallic mines in Montana by means that include regular inspection of mines by federal inspectors, the department is not authorized to make inspections in those mines. If inspections of Montana metallic and nonmetallic mines by federal inspectors in*

HeinOnline -- 1997 vol. II 1422 1997

*the enforcement of the federal act are discontinued by federal action,* ~~The~~ *the* department is authorized ~~at any time~~ to ~~cause to be made such~~ *make* inspections and investigations ~~as it shall deem~~ *that are* necessary in surface and underground mines ~~which~~ *that* are subject to this chapter:

~~(1)~~*(a)* for the purpose of obtaining, ~~utilizing~~ *using*, and disseminating information relating to health and safety conditions in ~~such~~ mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating ~~therein~~ *in surface and underground mines*; and

~~(2)~~*(b)* for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this chapter.

*(2) The department is authorized to make inspections and investigations with respect to sand and gravel mining operations for the purposes prescribed under subsections (1)(a) and (1)(b).*"

**Section 4. Effective date.** [This act] is effective July 1, 1998.

Approved April 18, 1997

# CHAPTER NO. 308

[SB 331]

AN ACT REVISING WORKERS' COMPENSATION ACT PAYMENTS FOR HOSPITAL REIMBURSEMENTS; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upen a clear demonstration of cost-effectiveness of the services in returning the injured worker te actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) The insurer shall reimburse a worker for reasonahle travel expenses incurred in travel to a medical provider for treatment of an injury only if the

HeinOnline -- 1997 vol. II 1423 1997

travel is incurred at the request of the insurer. Reimhursement must he at the rates allowed for reimburseinent of travel hy state employees.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), tbe insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition; or

(ii) when necessary to monitor tbe status of a prosthetic device.

(g) If the worker's treating pbysician believes that palliative or maintenance care that would otherwise not be coinpensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment, the treating physician shall first request approval from the insurer for the treatment. If approval is not granted, tbe treating physician may request approval from the department for the treatment. The department shall appoint a panel of physicians, including at least one treating physician from the area of specialty in which tbe injured worker is being treated, pursuant to rules tbat the department inay adopt, to review the proposed treatment and determine its appropriateness.

(h) Notwithstanding any other provisions of this chapter, the department, hy rule and upen tho advice of tbe professional licensing hoards of practitioners affected by the rule, may exclude from compensability any inedical treatment that the departmont finds to be unscientific, unproved, outmoded, or experimental.

(2) The departinent sball annually establish a scbedule of fees for medical ~~nonhospital~~ services *not provided at a hospital that are* necessary for the treatment of injured workers. Charges submitted by providers niust be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule. The department sball establish utilization and treatment standards for all medical services provided for under this chapter in consultation with the standing medical advisory committees provided for in 39-71-1109.

(3) *(a)* The department shall establish rates for hospital services necessary for tbe treatment of injured workers. ~~Beginning January 1, 1995, the rates may be based on per diem or diagnostic related groups. The rates established by the department pursuant to this subsection may not be less than medicaid reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities. For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.~~

HeinOnline -- 1997 vol. II 1424 1997

*(b) Except as provided in subsection (3)(g), for the fiscal year beginning July 1, 1997, rates for services provided at a hospital must be the greater of:*

*(i) 69% of the hospital's January 1, 1997, usual and customary charges; or*

*(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.*

*(c) Except as provided in subsection (3)(g), beginning July 1, 1998, the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.*

*(d) The department may establish a fee schedule for hospital outpatient services rendered on or after July 1, 1998. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.*

*(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.*

*(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.*

*(g) For a hospital licensed as a medical assistance facility pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).*

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must he resolved by a hearing before the department upen written application of a party to the dispute.

(7) (a) After the initial visit, the worker is respensible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by tbe insurer or is a visit to a preferred provider as requested by the insurer.

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

HeinOnline -- 1997 vol. II 1425 1997

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time *that* the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605."

**Section 2. Effective date — applicability.** [This act] is effective July 1, 1997, and applies to services provided on or after [the effective date of this act].

Approved April 18, 1997

# CHAPTER NO. 309

[SB 344]

AN ACT REQUIRING THE SECRETARY OF STATE TO COMPILE AND MAINTAIN A LIST OF ALL REGISTERED ELECTORS IN THE STATE; REQUIRING COUNTY OFFICIALS TO FORWARD VOTER REGISTRATION LISTS TO THE SECRETARY OF STATE; REQUIRING THE SECRETARY OF STATE TO FURNISH UPON REQUEST A CURRENT LIST OF REGISTERED ELECTORS TO ANY ELECTOR FOR NONCOMMERCIAL USE AND REQUIRING THE SECRETARY OF STATE TO CHARGE FEES COMMENSURATE WITH THE COST OF COMPILING, MAINTAINING, AND PROVIDING THE LIST; PROVIDING THAT THE SECRETARY OF STATE MAY NOT BE PROVIDED WITH THE SOCIAL SECURITY NUMBERS OF REGISTERED ELECTORS; AMENDING SECTIONS 13-2-114 AND 13-2-115, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Election administrator to provide list of electors to secretary of state.** (1) The election administrator in each county shall provide to the secretary of state a list by precinct of all registered electors in the county. The list must include the following information, when possible, for each elector:

(a) name;

(b) mailing address;

(c) precinct number;

(d) registration number assigned by the county election administrator pursuant to 13-2-114;

(e) residence address;

(f) telephone number;

(g) date of birth;

(h) gender;

(i) legislative house district; and

(j) date of registration.

(2) (a) Except as provided in subsection (2)(b), the list provided pursuant to subsection (1) must be a paper copy.

(b) If the county election administrator also maintains the information in other media, such as on a computer disk or tape, and the secretary of state requests the information in that media, the county election administrator shall also provide the list in that media.

(3) In odd-numbered years, the list of electors required by subsection (1) must be delivered to the secretary of state by December 15.

(4) In even-numbered years, the list of electors required by subsection (1) must be delivered to the secretary of state:

(a) for a primary election, no later than July 1, and the list must indicate any changes made up to and including the date of the June primary; and

(b) for a general or special election, 30 days prior to the close of registration before the election.

(5) Each election administrator may provide the secretary of state with a supplemental list of electors in even-numbered years, giving the additions, deletions, and changes made between the time that the previous list was compiled and the close of registration.

**Section 2.** Section 13-2-114, MCA, is amended to read:

"**13-2-114. Registration numbers to be assigned.** (1) The registration form for each elector ~~shall~~ *must* be assigned a number by the election administrator, using a system of numbering that best accommodates the filing system and list preparation method used. The election administrator may adopt the use of the elector's social security number as the registration number. If social security numbers are used, they may not be:

*(a) provided to the secretary of state to be included on the list of electors required by [section 1];*

*(b)* printed on lists of registered voters *prepared by the election administrator or by the secretary of state;* or

*(c)* released as public information.

(2) If social security numbers are used as the registration number, the election administrator may assign an alternative number for any elector who does not have a social security number or who declines to provide the number. A system of assigning alternative numbers ~~shall~~ *must* be developed in consultation with the secretary of state.

HeinOnline -- 1997 vol. II 1427 1997

(3) Upon receipt hy the election administrator of a properly completed registration card, the registration of the elector is complete and the election administrator shall assign a registration number."

**Seetion 3.** Section 13-2-115, MCA, is amended to read:

**"13-2-115. Registration lists to be prepared.** (1) Except as provided in suhsection (5), immediately after registration is closed, the election administrator shall prepare and must have printed lists of all registered electors in each precinct. Names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used. A preliminary list of registered electors may be printed before the close of registration for an election. If a preliminary list is printed, a supplementary list must be printed after the close of registration.

(2) A copy of the list of registered voters must be displayed at the polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(3) The list of registered electors prepared for a primary election may be used for the general election if a supplemental list giving the additions and deletions since the primary list was prepared is printed. The election administrator may prepare lists for a special election, but lists are not required to be printed for special elections.

(4) Lists of registered voters need not be printed if the election will not be held.

*(5) The election administrator shall forward a list of all registered electors in the county to the secretary of state, as provided in [section 1]. The secretary of state shall use the lists submitted by election administrators to compile and maintain a list of all registered electors in the state. Upon written request, the secretary of state shall furnish to any elector, for noncommercial use, a current list of registered electors. Upon delivery of the list to the elector, the secretary of state shall charge and collect a fee commensurate with the cost of compiling and maintaining the list and of reproducing the list in the format requested by the elector.*

~~(5)~~*(6)* If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the registrar may not include the address on any list of registered voters but shall list only the name or names."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 2, part 1, and the provisions of Title 13, chapter 2, part 1, apply to [section 1].

**Section 5. Coordination instruction.** If Senate Bill No. 361 is passed and approved, the following subsection must be added to [section 1(1) of this act]:

"(k) whether the elector's name is on the active or inactive list of electors."

**Seetion 6. Effective date.** [This act] is effective July 1, 1997.

Approved April 17, 1997

HeinOnline -- 1997 vol. II 1428 1997

# CHAPTER NO. 310

[SB 349]

AN ACT REVISING THE WORKERS' COMPENSATION REGULATORY FUNCTIONS OF THE DEPARTMENT OF LABOR AND INDUSTRY; PERMITTING AN INSURER ACCESS TO THE WORKERS' COMPENSATION DATA BASE SYSTEM; ELIMINATING DEPARTMENT OF LABOR AND INDUSTRY CERTIFICATION OF TRADE GROUPS THAT WISH TO PURCHASE GROUP INSURANCE; ELIMINATING OBSOLETE REFERENCES TO THE ASSIGNED RISK POOL; CLARIFYING THE ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; ELIMINATING THE UNDERINSURED EMPLOYERS' FUND; CLARIFYING THE PROCEDURES RELATING TO COMPROMISE SETTLEMENTS AND LUMP-SUM CONVERSIONS; CLARIFYING REHABILITATION PLAN AGREEMENTS; ELIMINATING MEDICAL ADVISORY COMMITTEES; ELIMINATING PLAN NO. 2 DEPOSIT REQUIREMENTS; PROVIDING FOR REFUND OF PLAN NO. 2 INSURER DEPOSITS AND THE TRANSFER OF SURPLUS FUNDS IN THE UNDERINSURED EMPLOYERS' FUND TO THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; AMENDING SECTIONS 20-15-403, 33-2-119, 39-71-225, 39-71-401, 39-71-433, 39-71-503, 39-71-504, 39-71-704, 39-71-721, 39-71-741, AND 39-71-2314, MCA; REPEALING SECTIONS 39-71-431, 39-71-531, 39-71-532, 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, AND 39-71-2206, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-15-403, MCA, is amended to read:

**"20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, ~~39-71-2206,~~ 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

**Section 2.** Section 33-2-119, MCA, is amended to read:

**"33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner may~~, in his discretion,~~ suspend or revoke an

HeinOnline -- 1997 vol. II 1429 1997

insurer's certificate of authority if, after a hearing ~~thereon~~, ~~he~~ *the commissioner* finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders~~;~~

~~(c) failed to accept an equitable apportionment of assigned coverage as required by 39-71-431~~.

(2) The commissioner shall, after a hearing ~~thereon~~, suspend or revoke an insurer's certificate of authority if ~~he~~ *the commissioner* finds that the insurer:

(a) is in unsound condition or in ~~such~~ *a* condition or using ~~such~~ methods or practices in the conduct of its business ~~as to~~ *that* render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper claim arising under its policies, whether the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to the third person, or without just cause compels the insured or claimant to accept less than the amount due ~~him~~ *the claimant* or to employ attorneys or to bring suit against the insurer or insured to secure full payment or settlement of the claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer ~~which~~ *that* transacts direct insurance in Montana without having a certificate of authority ~~therefor~~, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, ~~in his discretion and~~ without advance notice or a hearing ~~thereon~~, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

**Section 3.** Section 39-71-225, MCA, is amended to read:

**"39-71-225. Workers' compensation data base system.** (1) The department shall develop a workers' compensation data base system to generate

management information about Montana's workers' compensation system. The data base system must be used to collect and compile information from insurers, employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

*(2)* Data collected must be used to provide:

*(a)* management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

~~(a)~~*(i)* performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enbance cost control;

~~(b)~~*(ii)* information on medical, indemnity, and rehabilitation costs, utilization, and trends; ~~and~~

~~(c)~~*(iii)* information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

*(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claim adjuster on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation; and*

*(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution.*

~~(2)~~*(3)* The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation data base system.

~~(3)~~*(4)* The workers' compensation data base system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

HeinOnline -- 1997 vol. II 1431 1997

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections ~~(3)(a)~~ *(4)(a)* through ~~(3)(h)~~ *(4)(h)*;

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

~~(4)~~*(5)* ~~(a) The department shall take all steps necessary to have the workers' compensation data base system fully operational by July 1, 1995.~~

~~(b) After the workers' compensation data base system is operational, the~~ *The* department shall publish ~~an annual~~ *an annual* report ~~and may publish quarterly reports~~ on the information compiled.

*(6) Users of information obtained from the workers' compensation data base under this section are liable for damages arising from misuse or unlawful dissemination of data base information."*

**Section 4.** Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or ~~salesman~~ *salesperson* performing under a license issued by the board of realty regulation;

(f) employment of a direct seller as defined in 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey performing under a license issued by the board of horseracing from the time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

HeinOnline -- 1997 vol. II 1433 1997

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liahility company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liahility company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, hrother, or sister of a corporate officer who owns 20% or more of the numher of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to he bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 hut may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. ~~There is no~~ *There is a $25* fee for the ~~initial~~ *initial* application. ~~Any subsequent application.~~ *Any subsequent application renewal* must be ~~accompanied by a $25 application fee~~ *accompanied by a $25 application fee.* The application fee must be deposited in the administration fund estahlished in 39-71-201 ~~to offset the costs of administering the program~~ *to offset the costs of administering the program.*

(c) When an application is approved hy the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for ~~1 year~~ *3 years* following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall ~~annually~~ *every 3 years* submit a renewal application. A renewal application must he submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the departinent at least 30 days prior to the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department inay impese the penalty for each false statement or misrepresentation. The penalty must be paid te the uninsured employers' fund. The hien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the departinent denies the application for exemption, the applicant inay contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure estahlished in 39-51-2403 and 39-51-2404.

HeinOnline -- 1997 vol. II 1434 1997

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

**Section 5.** Section 39-71-433, MCA, is amended to read:

"**39-71-433. Group purchase of workers' compensation insurance.** (1) ~~On receiving approval of the department, two~~ *Two* or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

~~(2) To be eligible to join a new group that is forming, the department shall determine that a business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of the other entities participating in the group.~~

HeinOnline -- 1997 vol. II 1435 1997

~~(3) The department shall establish a certification program for groups organized under this section and shall issue to eligible business entities certificates of approval that authorize formation and maintenance of a group.~~

~~(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this section.~~

~~(5) A group certified under this section may add additional members without approval from the department if the additional members meet the specific criteria identified in the original application and any modifications to the criteria, as approved by the department.~~

~~(6)~~*(2)* A group ~~certified~~ *formed* under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but ~~cannot~~ *may not* refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual pelicies.

~~(7)~~*(3)* A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

~~(8)~~*(4)* A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, the eligibility requirements to join the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management. ~~A group shall file a copy of its plan of operation with the department.~~"

**Section 6.** Section 39-71-503, MCA, is amended to read:

"**39-71-503. Administration of fund — appropriation.** (1) The department shall administer the fund and shall pay *from it all expenses of administering the fund, all loss adjustment expenses for claims of injured employees of uninsured employers, and* all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes ~~preference~~ *precedence* over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. ~~The cost of administration of the fund must be paid out of the money in the fund.~~

(3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

HeinOnline -- 1997 vol. II 1436 1997

**Section 7.** Section 39-71-504, MCA, is amended to read:

**"39-71-504. Funding of fund — option for agreement between department and injured employee.** The fund is funded in the following manner:

(1) *(a)* The department may require that the uninsured employer pay to the fund a penalty of either up to ~~double~~ *double* the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or ~~$200~~ *$200*, whichever is greater. *In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.* ~~In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.~~

~~(2)~~*(b)* The fund shall ~~receive~~ *collect* from an uninsured employer an amount equal to all benefits paid or to be paid from the fund te an injured employee of the uninsured employer.

~~(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) must be paid to the uninsured employers' fund rather than the subsequent injury fund.~~

~~(4)~~*(2)* The department may enter inte an agreement with the injured employee or the employee's heneficiaries to assign to the employee or the beneficiaries all or part of the funds ~~received~~ *collected* by the department from the uninsured employer pursuant to subsection ~~(2)~~ *(1)(b)*."

**Section 8.** Section 39-71-704, MCA, is amended to read:

**"39-71-704. Payment of medical, bospital, and related services — fee schedules and bospital rates — fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After tbe happening of a compensable injury and subject to other provisions of tbis chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for tbose periods as the nature of the injury or the process of recovery requires.

(b) The insurer sball furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

HeinOnline -- 1997 vol. II 1437 1997

(d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury only if the travel is incurred at the request of the insurer. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition; or

(ii) when necessary to monitor the status of a prosthetic device.

(g) If the worker's treating physician believes that palliative or maintenance care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment, the treating physician shall first request approval from the insurer for the treatment. If approval is not granted, the treating physician may request approval from the department for the treatment. The department shall appoint a panel of physicians, including at least one treating physician from the area of specialty in which the injured worker is being treated, pursuant to rules that the department may adopt, to review the proposed treatment and determine its appropriateness.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical nonhospital services necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule. ~~The department shall establish utilization and treatment standards for all medical services provided for under this chapter in consultation with the standing medical advisory committees provided for in 39-71-1109.~~

(3) The department shall establish rates for hospital services necessary for the treatment of injured workers. Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The rates established by the department pursuant to this subsection may not be less than medicaid reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities. For services available in Montana, insurers are not required to pay facilities located

HeinOnline -- 1997 vol. II 1438 1997

outside Montana rates that are greater than those allowed for services delivered in Montana.

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by the insurer or is a visit to a preferred provider as requested by the insurer.

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605."

**Section 9.** Section 39-71-721, MCA, is amended to read:

**"39-71-721. Compensation for injury causing death — limitation.** (1) (a) If an injured employee dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's biweekly payments as provided in 39-71-741~~(5)~~*(3)*.

HeinOnline -- 1997 vol. II 1439 1997

(2) To beneficiaries as defined in 39-71-116(5)(a) through (5)(d), weekly compensation benefits for an injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, hut in no event may it exceed the decedent's actual wages at the time of death.

(3) To beneficiaries as defined in 39-71-116(5)(e) and (5)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, suhject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(5)(b) through (5)(d).

(6) In all cases, benefits must be paid to beneficiaries.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702."

**Section 10.** Section 39-71-741, MCA, is amended to read:

**"39-71-741. Compromise settlements and lump-sum payments.** (1) *By written agreement filed with the department, benefits under this chapter may be converted in whole or in part into a lump sum. An agreement is subject to department approval. If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved. The department shall directly notify a claimant of a department order approving or disapproving a claimant's compromise or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve an agreement to convert the following benefits to a lump sum only under the following conditions:*

(a) ~~Benefits under this chapter may be converted in whole or in part to a lump sum:~~

~~(i)~~ *all benefits* if a claimant and an insurer dispute the initial compensability of an injury; and

~~(ii) if the claimant and insurer agree to a settlement.~~

~~(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a~~ *there is a* reasonable dispute over compensahility.;

~~(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.~~

HeinOnline -- 1997 vol. II 1440 1997

~~(2) (a)~~*(b)* ~~Permanent~~ *permanent* partial disability benefits ~~may be converted in whole or in part to a lump-sum payment if:~~

~~(i)~~ *if* an insurer has accepted initial liability for an injury~~; and~~

~~(ii) the claimant and the insurer agree to a lump-sum conversion.~~

~~(b)~~ The total of any *permanent partial* lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703.

~~(c) An agreement is subject to department approval.~~ The department may disapprove an agreement *under this subsection (1)(b)* only if the department determines that the lump-sum conversion amount is inadequate. ~~If disapproved, the department shall set forth in detail the reasons for disapproval.~~

~~(d) Upon approval, a compromise and release settlement may not be reopened by the department.~~

~~(3)~~*(c)* ~~Permanent~~ *permanent* total disability benefits ~~may be converted in whole or in part to a lump sum. The~~ *if the* total of all lump-sum conversions in part that are awarded to a claimant ~~may~~ *do* not exceed $20,000. ~~A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department.~~ The approval or award of a lump-sum *permanent total disability* payment *in whole or in part* by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

~~(a)~~*(i)* relates to:

~~(i)~~*(A)* the necessities of life;

~~(ii)~~*(B)* an accumulation of debt incurred prior to the injury; or

~~(iii)~~*(C)* a self-employment venture that is considered feasible under criteria set forth by the department; or

~~(b)~~*(ii)* arises subsequent to the date of injury or arises because of reduced income as a result of the injury*; or*

*(d) except as otherwise provided in this chapter, all other compromise settlements and lump-sum payments agreed to by a claimant and insurer.*

~~(4)~~*(2)* Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection ~~(5)(b)~~ *(3)(b).*

~~(5)~~*(3)* (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

HeinOnline -- 1997 vol. II 1441 1997

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

~~(6) Subject to the other provisions of this section, the department shall approve or deny in writing compromise settlements and lump-sum payments agreed to by workers and insurers. The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.~~

~~(7)~~*(4)* A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute~~,~~ for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision."

**Section 11.** Section 39-71-2314, MCA, is amended to read:

"**39-71-2314. State fund ~~—assigned risk plan~~** ***subject to laws applying to state agencies.*** ~~(1) If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.~~

~~(2)~~ The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

**Section 12. Transfer of deposits and surplus funds.** (1) All deposits held in trust by the department of labor and industry pursuant to 39-71-2206 must be returned to the insurer who made the deposit on or before December 31, 1997.

(2) Any surplus funds remaining in the underinsured employers' fund on [the effective date of this act] must be deposited in the uninsured employers' fund provided for in 39-71-502.

**Section 13. Repealer.** Sections 39-71-431, 39-71-531, 39-71-532, 39-71-533, 39-71-534, 39-71-1013, 39-71-1109, and 39-71-2206, MCA, are repealed.

**Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 15. Effective date.** [This act] is effective July 1, 1997.

Approved April 17, 1997

HeinOnline -- 1997 vol. II 1442 1997

# CHAPTER NO. 311

[HB 28]

AN ACT REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE TRUSTEES OF A SCHOOL DISTRICT, UPON REQUEST AND IN COMPLIANCE WITH STATE AND FEDERAL CONFIDENTIALITY LAWS, TO DISCLOSE REQUIRED STUDENT ASSESSMENT DATA TO INTERESTED PARTIES; AND AMENDING SECTIONS 20-3-106 AND 20-3-324, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-3-106, MCA, is amended to read:

**"20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district ~~revenues~~ *revenue* in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

HeinOnline -- 1997 vol. II 1443 1997

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute BASE aid and special education allowable cost payments in support of the BASE funding program, in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(15) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(16) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(17) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(18) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(19) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(20) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(21) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(22) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(23) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(24) license texthook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(25) as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(26) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(27) administer the traffic education program in accordance with the provisions of 20-7-502;

(28) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(29) review school building plans and specifications in accordance with the provisions of 20-6-622;

(30) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

(31) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

*(32) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for any test required by the board of public education;*

~~(32)~~*(33)* administer the distribution of gnaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

~~(33)~~*(34)* perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

**Seetion 2.** Section 20-3-324, MCA, is amended to read:

"**20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative porsonnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections cbapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with tbe provisions of the districts chapter of this title;

HeinOnline -- 1997 vol. II 1445 1997

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) estahlish, maintain, budget, and finance the transpertation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the honds parts of this title;

(13) when applicable, establisb, financially administer, and hudget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and porsonal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain tbe instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reperts or health records maintained by the district pertaining to the child;

HeinOnline -- 1997 vol. II 1446 1997

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided hy a local civic group.

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110; ~~and~~

*(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education; and*

~~(25)~~*(26)* perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Approved April 18, 1997

# CHAPTER NO. 312

[SB 201]

AN ACT PROVIDING FOR A DEATH SENTENCE FOR A PERSON CONVICTED TWICE OF SEXUAL INTERCOURSE WITHOUT CONSENT WHO INFLICTED SERIOUS BODILY INJURY ON A PERSON DURING THE COMMISSION OF EACH OFFENSE; AND AMENDING SECTIONS 45-5-503 AND 46-18-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-503, MCA, is amended to read:

**"45-5-503. (Temporary) Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall

HeinOnline -- 1997 vol. II 1447 1997

be punished by life imprisonment or by imprisonment in the state prison for a term of not less tban 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or hy imprisonment in the state prison for a terın of not less than 5 years or ınore than 100 years and may be fined not ınore than $50,000, except as provided in 46-18-222.

(4) In addition to any sentence imposed under suhsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and tiine of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the atteınpt or commission.

**45-5-503. (Effective July 1, 1997) Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section hased on the age of the person's speuse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life iınprisonıment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upen anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or hy imprisonment in the state prison for a term of not less than 4 years or ınore than 100 years and ınay be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or hy imprisonment in the state prison for a terın of not less than 5 years or more than 100 years and ınay be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

*(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:*

*(i) punished by death as provided in 46-18-301 through 46-18-310; or*

*(ii) punished as provided in 46-18-219.*

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in tbe course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

**Section 2.** Section 46-18-303, MCA, is amended to read:

"**46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation ~~which~~ *that*, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in ~~subsection (1)(a) of~~ 45-5-102 *(1)(a)*, and the victim was a peace officer killed while performing ~~his~~ *the officer's* duty.

(7) The offense was aggravated kidnapping ~~which~~ *that* resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the stato prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual cenduct, or incest, and the victim was less than 18 years of age.

HeinOnline -- 1997 vol. II 1449 1997

*(10) The offense was sexual intercourse without consent and the defendant has a previous conviction of sexual intercourse without consent in this state or of an offense under the laws of another state or of the United States that if committed in this state would be the offense of sexual intercourse without consent and the defendant inflicted serious bodily injury upon a person in the course of committing each offense."*

Approved April 18, 1997

# CHAPTER NO. 313

[HB 234]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 28, OF THE MONTANA CONSTITUTION PROVIDING THAT CRIMINAL LAWS MUST BE BASED ON PRINCIPLES OF PUBLIC SAFETY AND RESTITUTION FOR VICTIMS AS WELL AS PREVENTION AND REFORMATION.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Article II, section 28, of The Constitution of the State of Montana is amended to read:

**"Section 28. ~~Rights~~ *Criminal justice policy — rights* of the convicted.** *(1)* ~~Laws for the~~ *Laws for the* punishment of crime shall be ~~founded on~~ *founded on* the principles ~~of prevention and reformation~~ *of prevention, reformation, public safety, and restitution for victims.*

*(2)* ~~Full~~ *Full* rights ~~are~~ *are* restored ~~by~~ *by* termination of state supervision for any offense against the state."

**Section 2. Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1998 by printing on the ballot the full title of this act and the following:

☐ FOR revising the principles of criminal laws to include public safety and restitution.

☐ AGAINST revising the principles of criminal laws to include public safety and restitution.

Approved April 23, 1997

# CHAPTER NO. 314

[HB 365]

AN ACT CREATING THE OFFENSE OF CAUSING A PARTIAL-BIRTH ABORTION; ALLOWING A PARTIAL-BIRTH ABORTION TO SAVE THE LIFE OF A WOMAN; PROVIDING DEFINITIONS; PROVIDING PENALTIES; AND AMENDING SECTION 50-20-109, MCA.

HeinOnline -- 1997 vol. II 1450 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Offense of partial-birth abortion — exception — definitions — penalties.** (1) Except as provided in this section, a person commits an offense if the person purposely, knowingly, or negligently causes a partial-birth abortion.

(2) Subsection (1) does not apply to:

(a) a partial-birth abortion caused to save the life of a woman because the woman's life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or

(b) the woman upon whom a partial-birth abortion is performed.

(3) As used in this section, the following definitions apply:

(a) "Knowingly" has the meaning provided in 45-2-101.

(b) "Negligently" has the meaning provided in 45-2-101.

(c) "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

(d) "Purposely" has the meaning provided in 45-2-101.

(4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall be punished by:

(a) a fine of not more than $50,000;

(b) imprisonment in a correctional facility for a term of not less than 5 years and not more than 10 years; or

(c) both fine and imprisonment as provided in subsections (4)(a) and (4)(b); and

(d) permanent revocation of the license of the physician performing the partial-birth abortion. The provisions of 37-1-203 and 37-1-205 do not apply to a physician whose license is revoked pursuant to this section.

**Section 2.** Section 50-20-109, MCA, is amended to read:

**"50-20-109. Control of practice of abortion.** (1) ~~An~~ *Except as provided in [section 1], an* abortion may not be performed within the state of Montana:

(a) except hy a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment, the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection (1)(c) may only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by the physician, setting forth in detail the facts relied upon in making the judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with the judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) ~~of this section~~ must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) A physician, facility, or other person or agency may not engage in solicitation, advertising, or other form of communication that has the purpose of inviting, inducing, or attracting a person to come to the physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) The utilization plan of a physician assistant-certified may not provide for performing abortions.

(6) Violation of subsections (1)~~, (2),~~ *through* (3)~~,~~ and (5) is a felony. Violation of subsection (4) is a misdemeanor."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [section 1].

Approved April 19, 1997

# CHAPTER NO. 315

[SB 2]

AN ACT GENERALLY REVISING, CLARIFYING, AND CONSOLIDATING THE LAWS GOVERNING WORK PROGRAMS FOR INMATES; AUTHORIZING THE USE OF INMATE LAROR FOR THE REMOVAL OF GRAFFITI FROM PROPERTY AND EQUIPMENT OF INSTITUTIONS; AUTHORIZING THE USE OF INMATE LABOR FOR THE REMOVAL OF LITTER FROM THE PROPERTY OF INSTITUTIONS, PUBLIC ROADS, AND PUBLIC PARKS; PROVIDING FOR SECURING INMATES WHILE PERFORMING WORK; ALLOWING THE DEPARTMENT OF CORRECTIONS TO DONATE SURPLUS FOOD GROWN OR PRODUCED TO CERTAIN ENTITIES; AMENDING SECTIONS 53-1-301, 53-1-304, 53-30-111, 53-30-131, AND 53-30-132, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 53-1-301, MCA, is amended to read:

**"53-1-301. Permitted institutional industries~~,~~ — powers of ~~departments, and incentive pay to inmates~~ *department*.** (1) ~~Except as~~

~~provided in subsection (4), the department of corrections or the~~ *The* department of public health and human services may:

(a) establish industries in institutions that will result in the production or manufacture of products and the rendering of services as *that* may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) ~~obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;~~

~~(c)~~ contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction ~~and for the employment of inmates in federally certified prison industries programs~~;

~~(d)~~*(c)* print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

~~(e)~~*(d)* fix the sale price for goods produced or manufactured at institutions. Prices may not exceed prices existing in the open market for goods of comparable quality.

~~(f)~~*(e)* require institutions to purchase needed goods from other institutions *or from prison industries*;

~~(g)~~*(f)* provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

~~(h) provide for construction projects, up to the aggregate sum of $25,000 per project, performed by residents of institutions, except when the construction work is covered by a collective bargaining agreement;~~

~~(i)~~*(g)* provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

~~(j) provide for the manufacture at an institution of motor vehicle license plates and other related articles;~~

~~(k)~~*(h)* sell manufactured ~~or agricultural~~ products ~~and livestock~~ on the open market; *and*

~~(l) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;~~

~~(m)~~*(i)* pay ~~an inmate or~~ *a* resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which the ~~inmate or~~ resident is working;

~~(n) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and~~

~~(c) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.~~

(2) (a) Except as provided for in subsection (2)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for each program~~, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.~~

~~(3) Premiums for workers' compensation and occupational disease coverage must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.~~

~~(4) Except as provided in subsection (5), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.~~

~~(5) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.~~"

**Section 2.** Section 53-1-304, MCA, is amended to read:

"**53-1-304. Supervision of industries program.** The industries program must be supervised by the director ~~of the department of corrections or~~ of the department of public health and human services or the director's designated representative, provided *that* the administration of the industries program is separate from the administration of any institution where the program may be located."

**Section 3.** Section 53-30-111, MCA, is amended to read:

"**53-30-111. Clothing and money furnished on discharge or parole.** The state prison shall furnish suitable clothing te a discharged or paroled inmate. An inmate discharged and delivered te the custody of the federal government or another state ~~shall~~ *must* receive $5. All other discharged or paroled inmates may receive "gate money" in an amount up to $100. The department of corrections

HeinOnline -- 1997 vol. II 1454 1997

may establish rules that allow it to deduct up to one-fourth of an inmate's wages earned under ~~53-1-301~~ *53-30-132* and hold that money in a special account to be disbursed to the inmate when the inmate is discharged or paroled. This amount is in addition to the "gate money"."

**Section 4.** Section 53-30-131, MCA, is amended to read:

"**53-30-131. Prison industries training program — purpose and scope.** (1) In addition to any ~~institutional~~ *correctional facility* industry operated at the Montana state prison ~~under Title 53, chapter 1, part 3~~, the department of corrections shall conduct a prison industries training program.

(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates te worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with geod production and work habits, and providing them with a means to earn money that will be available to them upon release.

(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, livestock, furniture, office and electrical equipment, and motor vehicles. The products and services, with the exception of livestock and agricultural products producod from the Montana state prison ranch and products or services of a federally certified prison industries program, may he provided only to stato agencies, local government units, school districts, authorities, and other gevernmental entities.

*(5) The department may donate surplus food grown or produced at the prison to local food banks, nonprofit organizations, and low-income persons."*

**Section 5.** Section 53-30-132, MCA, is amended to read:

"**53-30-132. Inmate participation and status *in prison work programs* — prison industries *and vocational* training program — wages and benefits.** *(1) The department of corrections may:*

*(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;*

*(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;*

HeinOnline -- 1997 vol. II 1455 1997

*(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;*

*(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;*

*(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.*

*(f) require a correctional facility to purchase needed goods from other correctional facilities;*

*(g) provide for the repair and maintenance of property and equipment of institutions by inmates;*

*(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;*

*(i) provide for construction projects, up to the aggregate sum of $25,000 a project, performed by inmates, except when the construction work is covered by a collective bargaining agreement;*

*(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;*

*(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;*

*(l) sell manufactured or agricultural products and livestock on the open market;*

*(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;*

*(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;*

*(o) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and*

*(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.*

*(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.*

*(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.*

~~(1)~~*(4)* While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage ~~commensurate with their production function~~ *in accordance with subsection (5).* ~~Wages must be established at a rate that encourages efficient production and effective levels of inmate participation.~~ Inmates employed in a federally certified prison industries program must be paid as provided in ~~53-1-301(2)~~ *subsection (5).*

*(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:*

*(i) knowledge and skill;*

*(ii) attitude toward authority;*

*(iii) physical effort;*

*(iv) responsibility for equipment and materials; and*

*(v) regard for safety of others.*

*(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.*

*(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.*

~~(2)~~*(7)* Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

~~(3)~~*(8)* Able-bodied persons committed to ~~the~~ *a* Montana ~~state~~ prison as adult offenders must be required to perform work as provided for by the department of corrections, *including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work.*"

**Section 6. Effective date.** [This act] is effective July 1, 1997.

Approved April 19, 1997

HeinOnline -- 1997 vol. II 1457 1997

# CHAPTER NO. 316

[HB 44]

AN ACT LIMITING THE FINANCIAL TRANSACTIONS OF CORRECTIONAL FACILITY INMATES; AND PROVIDING FOR DISCLOSURE OF INMATES' ACCOUNTS IN FINANCIAL INSTITUTIONS AND MONITORING OF THEIR ACCOUNTS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Limits on inmate financial transactions.** (1) An inmate of the Montana state prison in Deer Lodge or the women's correctional system in Billings shall use the prison inmate trust account system administered by the department of corrections to send money out of or receive money in the facility unless the department grants the inmate an exception. If an inmate accumulates a balance in excess of $200 in the inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution or costs of incarceration. The department may charge an inmato a minimum fee, not to exceed $1.60 each month to administer the inmate's account.

(2) (a) Money forfeited under subsection (1) to the payment of restitution must be paid in tbe following order:

(i) to the victim until the victim's unreimbursed pecuniary loss is satisfied;

(ii) to tbe crime victims compensation and assistance account provided for in 53-9-109 until the account is fully reimbursed for compensation to the victim;

(iii) to any other government agency that has compensated the victim for the victim's pecuniary loss;

(iv) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(b) If the inmate's sentence did not provide for the payment of restitution or if there is a balance of money after restitution has heen paid under subsection (2)(a), money forfeited under subsection (1) must be appliod to the inmate's costs of incarceration.

(3) The department shall adopt rules establishing criteria for forfeiture of funds under suhsection (1). The rules must contain clear guidelines regarding forfeiture that ensure restitution under subsection (2) hut that:

(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility; and

(b) do inhibit any inmate's ability to deal in contraband or illegal acts within or outside the correctional facility.

**Section 2. Inmate financial disclosure and account monitoring.** (1) Upon incarceration at the Montana state prison in Deer Lodgo or the women's correctional system in Billings, an inmate shall:

(a) make full disclosure of all the inmate's accounts in financial institutions to the department of corrections in writing and under oath;

(b) sign a release authorizing any financial institution in which the inmate has an account of any kind to provide the department with copies of records of any transaction in the account during the inmate's term of incarceration in the prison or correctional system. Released copies of records are confidential criminal justice information as defined in 44-5-103.

(c) sign a release authorizing the department to monitor any inmate account in a financial institution.

(2) Failure of an inmate to disclose information under subsection (1)(a) or sign a release under subsection (1)(b) or (1)(c) is an offense under 45-7-302.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 1, part 1.

Approved April 21, 1997

# CHAPTER NO. 317

[HB 65]

AN ACT INCREASING THE PENALTY FOR NEGLIGENT VEHICULAR ASSAULT THAT RESULTS IN SERIOUS BODILY INJURY TO ANOTHER; AND AMENDING SECTION 45-5-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-205, MCA, is amended to read:

**"45-5-205. Negligent vehicular assault — penalty.** (1) ~~If a~~ *A* person *who negligently* operates a motor vehicle ~~in a negligent manner and he is driving~~ while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and ~~his conduct is the cause of~~ *who causes* bodily injury to another~~, he~~ commits the offense of negligent vehicular assault.

(2) ~~A~~ *Subject to subsection (3), a* person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or *shall be* imprisoned in the county jail for a term not to exceed 1 year, or both, *and shall be ordered to pay restitution as provided in 46-18-241.*

*(3) (a) A person convicted of the offense of negligent vehicular assault who caused serious bodily injury to another shall be fined an amount not to exceed $10,000 or shall be incarcerated for a term not to exceed 5 years, or both, and shall be ordered to pay restitution as provided in 46-18-241.*

*(b) If a term of incarceration is imposed, the judge may suspend the term of incarceration upon the condition of payment of any fine imposed and of restitution. If the person does not pay the fine or restitution, the term of incarceration may be imposed."*

Approved April 21, 1997

HeinOnline -- 1997 vol. II 1459 1997

# CHAPTER NO. 318

[HB 66]

AN ACT ESTABLISHING A CHILD-CARE RESOURCE AND REFERRAL AND CHILD-CARE IMPROVEMENT GRANT PROGRAM; DEFINING "PROFESSIONAL TRAINING", "SCHOOL AGE", AND "SCHOOL-AGE CARE"; SPECIFYING PRIORITIES; AMENDING SECTIONS 52-2-703 AND 52-2-711, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the "traditional" American family with the father working and the mother at home to care for the children now constitutes only 25% of all American families; and

WHEREAS, an estimated 40,000 of 70,000 Montana children under 6 years of age need child care, while only ahout 25,000 licensed or registered child-care slots are available; and

WHEREAS, a shortage of before- and after-school programs for school-age children places children at risk for delinquency and teen pregnancy; and

WHEREAS, the availability of day care is critical to the success of welfare-to-work programs; and

WHEREAS, high-quality care is essential to the healthy development of Montana's children, and professional training for child-care providers is the single most effective way to ensure quality care; and

WHEREAS, funding limitations prevent many child-care providers from starting day-care or school-age care businesses and from ohtaining professional training.

STATEMENT OF INTENT

A statement of intent is required for this bill because 52-2-711, as amended, directs the department of public health and human services to adopt rules to administer the grant program. It is the intent of the legislature that grant awards be consistent with the legislative priorities set forth in this bill and that additional grants be consistent with the state child-care plan as developed by the child-care advisory council. The department is encouraged to also adopt rules that will formally provide for an advisory task force as previously used to advise the department on grant awards.

*Be it enactcd by the Legislature of the State of Montana:*

**Section 1.** Section 52-2-703, MCA, is amended to read:

**"52-2-703. Definitions.** In this part, the following definitions apply:

(1) "Child" means a person under 13 years of age *or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.*

(2) "Day care" or "child care" means care for children provided hy an adult, other tban a parent of the children or other person living with the children as a

parent, on a regular basis for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours.

(3) "Day-care center" means an out-of-home place in which day care is provided to 13 or more children on a regular basis.

(4) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day-care home, a day-care center, a group day-care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Family day-care home" means a private residence in which day care is provided to three to six children on a regular basis.

(7) "Group day-care home" means a private residence or other structure in which day care is provided to 7 to 12 children on a regular basis.

(8) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(9) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(10) *"Professional training" means training for early childhood or school-age care providers that is recognized as professional development by a national education or certification organization or by a higher education institution.*

*(11)* "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

~~(11)~~*(12)* "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify compliance with the prescribed standards and promulgated rules.

~~(12)~~*(13)* "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this part and the applicable standards for family day-care homes and group day-care homes.

HeinOnline -- 1997 vol. II 1461 1997

~~(13)~~*(14)* "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or moro consecutive weeks.

~~(14)~~*(15)* (a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection ~~(14)(a)~~ *(15)(a)* in a step or adoptive relationship.

*(16) "School age" means a person who is at least 5 years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age.*

*(17) "School-age care" means an adult-supervised program that is provided for school-age children during nonschool hours."*

**Section 2.** Section 52-2-711, MCA, is amended to read:

**"52-2-711. Resource and referral *and day-care improvement* grant ~~programs~~ *program*.** (1) *(a)* There is a grant program established within the department for the allocation of grant money to local child-care resource and referral programs *and for improving the availability of quality child care and school-age day care.*

*(b) Program funds may include money from the following sources:*

*(i) funds specifically appropriated by the legislature for use under this section;*

*(ii) private gifts, grants, and donations;*

*(iii) federal or foundation grants awarded to the state for the purposes of this section; and*

*(iv) any other money made available for the purposes of this section.*

(2) *(a)* The department may award grants to private, nonprofit organizations and public organizations that demonstrate the ability to provide child-care resource and referral services.

~~(3)~~*(b)* To be eligible for a grant from the department as a resource and referral agency for a local area, an organization:

~~(a)~~*(i)* shall maintain a data base of child-care services in the community, including day-care facilities and preschools, ~~that~~ *which* the organization continually updates;

~~(b)~~*(ii)* shall include on the staff of the organization at least one individual wbo has expertise in child development;

~~(c)~~*(iii)* ~~shall~~ *must* have the capability te provide resource and referral services in the local area;

~~(d)~~*(iv)* must be able to respend to requests for information or assistance in a timely fashion;

~~(e)~~*(v)* must be committed to providing services to all segments of the general public;

~~(f)~~*(vi)* must be able to provide parents with a checklist to identify quality child-care services;

~~(g)~~*(vii)* must be able to provide information on the availability of child-care subsidies;

~~(h)~~*(viii)* shall maintain and make available to the public ~~a~~ *the* number of all referrals made by the resource and referral agency; and

~~(i)~~*(ix)* shall otherwise satisfy regulations promulgated by the department pursuant to this part.

*(3) (a) The department may award grants for improving the availability of quality child care and school-age day care and for consumer education.*

*(b) The following grant applications must be given priority:*

*(i) grant applications for professional training for day-care or school-age care providers;*

*(ii) grant applications for the startup of school-age care programs or facilities when a community need has been demonstrated;*

*(iii) grant applications for consumer education; and*

*(iv) grant applications for preservation or expansion of existing care programs that fill a demonstrated need.*

*(4) The department shall adopt rules to administer the provisions of this section."*

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1997

## CHAPTER NO. 319

[HB 72]

AN ACT OFFICIALLY DESIGNATING THE KOREAN VETERANS' MEMORIAL IN STODDEN PARK, BUTTE, MONTANA, AS A STATE KOREAN VETERANS' MEMORIAL; AND DIRECTING THAT THE MEMORIAL BE IDENTIFIED ON OFFICIAL STATE MAPS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. State Korean veterans' memorial.** (1) The Korean veterans' memorial located in Stodden Park, Butte, Montana, dedicated to the men and

HeinOnline -- 1997 vol. II 1463 1997

women who served the United States in the Republic of Korea, is an official state Korean veterans' memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of a state Korean veterans' memorial on official state maps.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply to [section 1].

Approved April 21, 1997

# CHAPTER NO. 320

[HB 77]

AN ACT REQUIRING RECITATION OF THE PLEDGE OF ALLEGIANCE IN PUBLIC SCHOOLS; PROVIDING THAT A STUDENT OR TEACHER MUST BE EXCUSED FROM PARTICIPATION IF THE STUDENT'S OR TEACHER'S CONVICTIONS PRECLUDE PARTICIPATION; REQUIRING A SCHOOL DISTRICT TO INFORM STUDENTS AND TEACHERS OF THE RIGHT NOT TO PARTICIPATE IN PLEDGE RECITATION; PROHIBITING A SCHOOL DISTRICT FROM USING A STUDENT'S OR TEACHER'S REFUSAL TO PARTICIPATE FOR EVALUATION PURPOSES; CLARIFYING THAT A TEACHER WHO EXERCISES THE RIGHT NOT TO PARTICIPATE IN THE PLEDGE RECITATION IS STILL REQUIRED TO TEACH SUBJECTS RELATED TO THE FLAG IN A PRESCRIBED CURRICULUM; AND AMENDING SECTION 20-4-301, MCA.

WHEREAS, the United States Supreme Court has consistently ruled that a state may require recitation of the pledge of allegiance so long as any student or teacher objecting to participation for any reason is allowed to nondisruptively refuse to participate; and

WHEREAS, courts have also ruled that a student who refuses to participate in the pledge of allegiance cannot be compelled to take any particular action, such as standing, remaining seated, or leaving the room during group recitation of the pledge; and

WHEREAS, in an effort to educate students in the American values of patriotism and love of country and to pass on the feelings of civic pride and commitment to America, the Board of Public Education, as one small step in increasing Montana students' awareness of their heritage as Americans, enacted a policy on January 26, 1989, recommending that teachers in every public school classroom begin the day with recitation of the pledge of allegiance while allowing an excuse from participation for any student or teacher who objects for any reason; and

WHEREAS, in 1980 the United States Supreme Court let stand the decision in Palmer v. Board of Education of City of Chicago, 603 F.2d 1271 (7th Cir. 1979), certiorari denied, 444 U.S. 1026 (1980), which held that while a teacher may not be required to participate in the pledge of allegiance, the teacher, despite any

personal convictions, may be required to teach subjects related to the flag or other patriotic matters in the prescribed curriculum; and

WHEREAS, section 20-4-301, MCA, requires a teacher to provide moral and civic instruction by endeavoring to impress students with the principles of morality, truth, justice, and patriotism; to instruct students in the principles of free government; and to train them to comprehend the rights, responsibilities, and dignity of American citizenship.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Pledge of allegiance required — exemption for students and teachers.** (1) Except as provided in subsection (4), the pledge of allegiance to the flag of the United States of America must be recited in all public schools of the state.

(2) The recitation required in subsection (1) must be conducted at the beginning of the first class:

(a) of each school day in kindergarten through grade 6; and

(b) of each school week in grades 7 through 12.

(3) The recitation must be conducted:

(a) by each individual classroom teacher or the teacher's surrogate; or

(b) over the school intercom system by a faculty member or person designated by the principal.

(4) A school district shall inform all students and teachers of their right to not participate in recitation of the pledge. Any student or teacher who, for any reason, objects to participating in the pledge exercise must be excused from participation. A student or teacher who declines to participate in the pledge may engage in any alternative form of conduct so long as that conduct does not materially or substantially disrupt the work or discipline of the school.

(5) If a student or teacher declines to participate in the recitation of the pledge pursuant to this section, a school district may not for evaluation purposes include any reference to the student's or teacher's not participating.

**Section 2.** Section 20-4-301, MCA, is amended to read:

**"20-4-301. Duties of teacher — nonpayment for failure to comply.** (1) ~~Any~~ *A* teacher under contract with a district shall:

(a) conform to and enforce the laws, board of public education policies, and ~~the~~ policies of the trustees of the district;

(b) ~~utilize~~ *use* the course of instruction prescribed by the trustees;

(c) keep, in a neat and businesslike manner, a teacher's register in the form and on the blanks prescribed by the superintendent of public instruction;

(d) within 10 days after the conclusion of each school semester, prepare a report in the manner and on the forms prescribed by the superintendent of public instruction, which must include the pupil attendance and absence data from ~~his~~

HeinOnline -- 1997 vol. II 1465 1997

*the* teacher's register that is necessary to calculate ANB. The report must be submitted to:

(i) the district superintendent, if there is one;

(ii) tbe principal of the school, if there is one and tbere is no district superintendent; or

(iii) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal.

(e) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books, and supplies; and

(f) provide moral and civic instruction by:

(i) endeavoring to impress the pupils with the principles of morality, truth, justice, and patriotism, *including any curriculum related to the flag prescribed by the trustees*;

(ii) teaching the pupils to avoid idleness, profanity, and falsehood;

(iii) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities, and dignity of American citizensbip.

(2) The trustees are autborized to withhold the salary warrant of any teacher who does not comply with the provisions of subsection (1)(a) or (1)(b) until the teacher does comply with the provisions.

(3) The trustees may not pay any ~~teacher his~~ *teacher's* last month's salary until ~~he has provided~~ a complete and accurate semester report *has been provided* to the required person, as determined by the person and as required in subsection (1)(d) ~~of this section~~."

**Section 3. Codifieation instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20, cbapter 7, part 1, apply to [section 1].

Approved April 21, 1997

# CHAPTER NO. 321

[HB 93]

AN ACT DESIGNATING PORTIONS OF FORT BENTON CITY STREETS AND STATE AND U.S. HIGHWAYS FROM FORT BENTON THROUGH HAVRE INTO SASKATCHEWAN, CANADA, AS THE "OLD FORTS TRAIL".

WHEREAS, north central Montana is rich in diverse historic resources; and

WHEREAS, cultural tourism is an important industry in north central Montana; and

WHEREAS, on January 27, 1996, the Fort Assinniboine Preservation Association, the Havre Area Chamber of Commerce, Fort Benton's River and Plains Society and Fort Restoration Committee, and governmental entities in Saskatchewan, Canada, formed the Old Forts Trail Association; and

WHEREAS, the Old Forts Trail Association wishes to promote cultural tourism in north central Montana, southeastern Alberta, and southwestern Saskatchewan by designating the Old Forts Trail; and

WHEREAS, the routes that the Old Forts Trail Association seek to commemorate provided vital military and economic links among the outposts and towns of north central Montana, southeastern Alherta, and southwestern Saskatchewan in the 19th century; and

WHEREAS, formal recognition of the Old Forts Trail would enlighten the public about a significant period in the development of north central Montana, southeastern Alberta, and southwestern Saskatchewan; would attract more visitors to north central Montana and Canada; and would encourage tourists to stay in the area, thereby fostering the local economy.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Old forts trail.** Beginning at the Old Fort park in Fort Benton, proceeding west via 20th street to Saint Charles street, along Saint Charles street to state highway 387, along state highway 387 to U.S. highway 87 to Havre, continuing along state highway 233 and into Canada on Saskatchewan 21, the Old Forts Trail is established.

**Section 2. Markers — commemorative highways.** (1) As funds are available under subsection (2), the department may design and erect signs along the commemorative highways designated in 60-1-202 through 60-1-206 and [section 1] identifying the routes and providing interpretive information.

(2) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsection (1) and may expend the money received for those purposes.

**Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 2].

Approved April 21, 1997

# CHAPTER NO. 322

[HB 125]

AN ACT REVISING AND CLARIFYING INTERMEDIATE SENTENCING OPTIONS; REVISING THE HOME ARREST LAW; REVISING THE LAW RELATING TO COMMUNITY CORRECTIONS PROGRAMS AND FACILITIES; AMENDING SECTIONS 46-18-201, 46-18-1001, 46-18-1002, 46-18-1003, 53-1-203, 53-30-302, 53-30-303, 53-30-312, 53-30-313, 53-30-314,

HeinOnline -- 1997 vol. II 1467 1997

53-30-315, 53-30-321, 53-30-322, AND 53-30-326, MCA; AND REPEALING SECTIONS 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, 46-23-426, 53-30-324, AND 53-30-325, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because 53-1-203 gives the department of corrections authority to adept administrative rules relating to the future building or expanding of new prerelease centers. The legislature intends the rules to address, at a minimum:

(1) a procedure for notifying residents in an area in which a new prerelease center or expansion of an existing center is contemplated;

(2) a procedure and timetable for public notice, public comment, and a public hearing on a new prerelease center or expansion of an existing center; and

(3) siting criteria to be used to determine the suitability of a specific site for a new prerelease center or expansion of an existing center.

The rules are not intended to address plans that have been approved by a community for a new or expanded prerelease facility on [the effective date of this act].

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impese upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

*(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order*

*that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;*

~~(ix)~~*(x)* community service;

~~(x)~~*(xi)* home arrest as provided in Title 46, chapter 18, part 10;

~~(xi)~~*(xii)* any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

~~(xii)~~*(xiii)* payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

~~(xiii)~~*(xiv)* any combination of the restrictions or conditions in subsections (1)(a)(i) through ~~(1)(a)(xii)~~ *(1)(a)(xiii).*

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in suhsection (1)(a).

(c) impose a fme as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections *for a period not to exceed 5 years* for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; ~~or~~

*(g) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or*

~~(g)~~*(h)* impose any combination of subsections (1)(b) through ~~(1)(f)~~ *(1)(g).*

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution te the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow

HeinOnline -- 1997 vol. II 1469 1997

part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in ~~the~~ *a* state prison, including placement of the offender in a community corrections facility or program *or a prerelease center or prerelease program*. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the *court subsequently sentences the* offender ~~is subsequently sentenced~~ to ~~the~~ *a* state prison ~~or the women's correctional system~~, the court shall state ~~its~~ *the* reasons why ~~alternatives~~ *it did not select an alternative* to imprisonment ~~were not selected~~, based on the criteria contained in 46-18-225.

*(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.*

**46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or

HeinOnline -- 1997 vol. II 1470 1997

conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

*(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;*

~~(ix)~~*(x)* community service;

~~(x)~~*(xi)* home arrest as provided in Title 46, chapter 18, part 10;

~~(xi)~~*(xii)* any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

~~(xii)~~*(xiii)* payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

~~(xiii)~~*(xiv)* any combination of the restrictions or conditions in subsections (1)(a)(i) through ~~(1)(a)(xii)~~ *(1)(a)(xiii)*.

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections *for a period not to exceed 5 years* for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; ~~or~~

HeinOnline -- 1997 vol. II 1471 1997

*(g) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or*

~~(g)~~*(h)* impose any combination of subsections (1)(b) through ~~(1)(f)~~ *(1)(g)*.

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense bas sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court sball state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the impesition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including

HeinOnline -- 1997 vol. II 1472 1997

placement of the offender in a community corrections facility or program *or a prerelease center or prerelease program.* In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the *court subsequently sentences the* offender ~~is subsequently sentenced~~ to ~~the~~ *a* state prison ~~or the women's correctional system~~, the court shall state ~~its~~ *the* reasons why ~~alternatives~~ *it did not select an alternative* to imprisonment ~~were not selected~~, based on the criteria contained in 46-18-225.

*(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.*

~~(12)~~*(13)* Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

**Section 2.** Section 46-18-1001, MCA, is amended to read:

**"46-18-1001. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living area approved by the supervising authority.

(b) When more than one residence or family are located on a single piece of property, the term does not include the residence of any other person who is not part of the social unit formed by the offender's immediate family.

(2) "Home arrest" means the use of a person's home for purposes of confinement *and home arrest procedures and conditions imposed under this part. It does not include intensive supervision by the department of corrections.*

(3) "Monitoring device" means an electronic device or apparatus ~~that is limited in capability to~~ *capable of* recording or transmitting information concerning the offender's presence in or absence from the home. The device ~~must be minimally intrusive~~ *may include an apparatus for testing the offender's breath for the presence of alcohol. A telephone alone is not a monitoring device.*

(4) "Supervising authority" means~~:~~

*(a)* in the case of an adult felon, the ~~corrections division of the~~ department of corrections;

*(b)* in the case of an adult misdemeanant, a court-approved entity other than ~~the corrections division of~~ the department of corrections; or~~;~~

*(c)* in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity appointed by the court.

(5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date of the present conviction."

HeinOnline -- 1997 vol. II 1473 1997

**Section 3.** Section 46-18-1002, MCA, is amended to read:

**"46-18-1002. Home arrest — petition — agreement.** (1) An offender may petition a sentencing court for an order directing that all or a portion of a sentence of imprisonment ~~in the county jail or state prison~~ be served under conditions of home arrest. *The term of home arrest may not exceed 6 months.* Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the offender's sentence.

*(2) The petition must include:*

*(a) either a statement by the department of corrections that it has a monitoring device available for its use on the offender or information from the offender as to a private company that can and will implement the home arrest, along with the name and credentials of the company and the type of monitoring device to be used;*

*(b) the place of any employment of the offender and the name of the offender's supervisor;*

*(c) if the offender has been accepted into one, a plan for participation in an educational, treatment, or training program;*

*(d) the source and amount of any income of the offender; and*

*(e) the address at which the home arrest will occur and a list of any other persons who will reside at that address during all or part of the home arrest, their ages, and their relationship to the offender.*

~~(2)~~*(3)* The sentencing judge shall ~~study the records of all persons petitioning for home arrest and, in his discretion, may:~~

~~(a) refer the case to the appropriate supervising authority for approval and acceptance into the home arrest program. The supervising authority may accept or reject any referral.~~

~~(b) conduct hearings on the desirability of granting home arrest;~~

~~(c) order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state prison. The time actually spent in home arrest pursuant to this section may not exceed 6 months or the maximum term of imprisonment imposed, whichever is shorter.~~

~~(d) issue a warrant for a person when there is reason to believe the person has violated the conditions of home arrest, conduct hearings on the matter, and order imprisonment in the county jail or state prison upon proof of violation; and~~

~~(e) grant final discharge from arrest.~~

~~(3) A home arrestee shall execute a written agreement with the court setting forth all the conditions of home arrest. The order of home arrest must incorporate that agreement and must order compliance with its terms. The order and agreement must be transmitted to the supervising authority and to the appropriate jail or prison official.~~

~~(4) Time spent in home arrest must be credited against the maximum term of imprisonment imposed for the offender pursuant to law.~~ *refer the petition to*

*the supervising authority. The supervising authority shall review the petition and accept or reject the offender for home arrest. If the offender is rejected, the sentencing judge shall dismiss the petition. If the offender is accepted, the sentencing judge may conduct a hearing on the petition and grant or deny the petition. An order for home arrest must incorporate the home arrest plan, with any modifications by the court, and require compliance with the plan. The clerk of court shall give the county attorney a copy of the order.*

~~(5)~~*(4)* ~~Home arrest must be under the supervision of the supervising authority.~~ A home arrestee is subject to the decisions *and applicable rules* of the supervising authority during the period of supervision. ~~Fees for supervision or equipment usage must be paid directly to the clerk of the sentencing court and must be distributed by the clerk to the supervising authority.~~

*(5) The offender shall file with the court the written and notarized consent to the home arrest signed by each adult who will reside with the offender during all or part of the home arrest."*

**Section 4.** Section 46-18-1003, MCA, is amended to read:

**"46-18-1003. Home arrest — conditions — fees — consent of cohabitors.** (1) A home arrestee must be confined to ~~his~~ *the arrestee's* home under conditions imposed by the sentencing court, which may include but are not limited to the following:

(a) The bome arrestee must be confined to ~~his~~ *the arrestee's* home at all times except when:

(i) working at approved employment or traveling directly to and from employment;

(ii) seeking employment;

(iii) undergoing medical, psychiatric, or mental health treatment or participating in an approved counseling or aftercare program;

(iv) attending an ~~approved~~ educational institution or program *approved by the supervising authority*;

(v) attending a regularly scheduled religious service at a place of worship;

(vi) participating in an approved community service program; or

(vii) conforming to a schedule prepared by the supervising authority, specifically setting forth the times when ~~he~~ *the arrestee* may be absent from the home and the locations where ~~he~~ *the arrestee* may be during those times.

~~(b) The home arrestee may not commit another offense during the period of home arrest.~~

~~(c)~~*(b)* The home arrestee may not change the place of home arrest or the schedule without prior approval of the supervising authority.

~~(d)~~*(c)* The home arrestee shall maintain a telephone ~~or other approved~~ *in the home and the ordered* monitoring device ~~in the home or~~ on the arrestee's person at all times.

HeinOnline -- 1997 vol. II 1475 1997

~~(e)~~*(d)* Conditions set by the court or the supervising authority may include:

(i) restitution;

(ii) supervision fees under 7-32-2245, 46-18-702, ~~or~~ 46-18-703, *or 46-23-1031*;

(iii) any of the conditions imposed on persons on probation or conditional discharge under 46-23-1011 or 46-23-1021.

(2) ~~A written and notarized consent agreement must be filed with the court by every adult who will share the offender's home during the term of home arrest.~~ *An arrest warrant may be issued if the supervising authority has reason to believe that the home arrestee has violated a condition of the home arrest. Upon arrest, the supervising authority shall notify the sentencing court and give the court a written report on the violation. The court shall conduct a hearing and, if the violation is established, may revoke the home arrest and require the home arrestee to serve all or a part of the sentenee. If imposition of sentence was suspended, the court may impose any sentence that could have been originally imposed. Time spent under home arrest must be credited against any sentence to be served.*

~~(3) Violation of the provisions of any condition of home arrest may subject the home arrestee to prosecution under 45-7-306.~~"

**Section 5.** Section 53-1-203, MCA, is amended to read:

**"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529, *rules necessary for the siting, establishment, and expansion of prerelease centers,* and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. ~~However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole.~~ *However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease eenter may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determinsd to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.*

(b) subject to the functions of the department of administration, lease or purchase lands for use by ~~institutions~~ *correctional facilities* and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all ~~institutions~~ *correctional facilities* for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in ~~the institutions~~ *correctional faeilities*;

HeinOnline -- 1997 vol. II 1476 1997

(c) contract with private, nonprofit Montana corporations to establish and maintain ~~community-based~~ prerelease centers for purposes of preparing inmates of ~~the Montana~~ *a* state prison who are approaching parole eligibility or discharge for release into the community, *providing an alternative placement for offenders who have violated parole, and providing a sentencing option for felony offenders pursuant to 46-18-201.* The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs~~, including the supervised release program provided for in Title 46, chapter 23, part 4~~. This subsection does not affect the department's authority to operate and maintain ~~community-based~~ prerelease centers.

(d) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of ~~institutions~~ *corrections*, including programs and facilities for the ~~diagnosis, treatment, care, and aftercare~~ *custody, supervision, treatment, and skill development* of persons placed in ~~institutions~~ *correctional facilities or programs*;

(f) encourage the establishment of programs at the local and ~~institutional~~ *state* level for the rehabilitation and education of ~~adult~~ felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of supervision and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of supervision and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of supervision and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need of supervision and who are referred or committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for children in need of temperary protection or correctional services; and

(ii) coordinate and apply the principles of modern ~~institutional~~ *correctional* administration to the ~~institutions in~~ *facilities and programs administered by* the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 years.

HeinOnline -- 1997 vol. II 1477 1997

The provisions of 18-3-104 and 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c). *Prior to entering into a contract for a period of 10 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit division shall review the contract and make recommendations or comments to the legislative audit committee. The committee may make recommendations or comments to the department. The department shall respond to the committee, accepting or rejecting the committee recommendations or* comments prior te entering into the contract.

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substituto care for youth in need of supervision and delinquent youth in youth care facilities."

**Section 6.** Section 53-30-302, MCA, is amended to read:

**"53-30-302. Purpose.** It is the purpose of this part to:

(1) encourage the development of community corrections facilities and programs by units of local government, tribal governments, and nongovernmental agencies;

(2) reduce court commitments to the state ~~penitentiary~~ *prisons* through diversion of ~~low-risk, nonviolent felony~~ offenders *determined appropriate by the community corrections board* to community corrections facilities and programs;

*(3) reduce the use of jail space for offenders who need a structured environment, treatment, counseling, and supervision but who may not require incarceration;*

*(4) provide a local facility for employed offenders so that they may maintain their employment under a structured environment and receive treatment, counseling, and supervision;*

~~(3)~~*(5)* provide a procedure by which units of local government, tribal governments, and nongovernmental agencies may provide corrections services to the sentencing courts; and

~~(4)~~*(6)* include citizen participation in the policymaking and program planning related to community corrections facilities and programs through the formation of local community corrections boards."

**Section 7.** Section 53-30-303, MCA, is amended to read:

**"53-30-303. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections board" means a community corrections board as provided in 53-30-312.

(2) "Community corrections facility or program" means a community-based or community-oriented facility or program, other than a jail, that:

(a) is *established by a local or tribal government and* operated by a unit of local government, a tribal government, or a nongovernmental agency; and

(b) provides programs and services to aid offenders in:

HeinOnline -- 1997 vol. II 1478 1997

(i) obtaining and holding regular employment;

(ii) enrolling in and maintaining academic courses;

(iii) participating in vocational training programs;

(iv) utilizing the resources of the community to meet their personal and family needs;

(v) obtaining the benefits of specialized treatment services that exist within the community; and

(vi) paying restitution or performing community restitution to crime victims.

~~(3) "Crime of violence" means:~~

~~(a) an offense in which a person uses or possesses and threatens the use of a deadly weapon during the commission or attempted commission of an offense, including felony assault, kidnapping, aggravated kidnapping, robbery, arson, burglary, aggravated burglary, escape, or intimidation;~~

~~(b) an offense, other than an offense in which negligence is an element of the offense, in which the person causes serious bodily injury or death to a person other than the person committing the offense during the commission or attempted commission of an offense; or~~

~~(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.~~

~~(4)~~*(3)* "Department" means the department of corrections created in 2-15-2301.

~~(5)~~*(4)* "Nongovernmental agency" means a person, private, nonprofit agency, corporation, association, labor organization, or other nongovernmental entity.

~~(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime of violence.~~

~~(7)~~*(5)* "Offender" means a person who has entered a plea of guilty or has been convicted of a ~~felony~~ *criminal offense*. ~~The term does not include a person who has committed a crime of violence.~~

~~(8)~~*(6)* "Tribal government" means a federally recognized Indian tribe within the state of Montana.

~~(8)~~*(7)* "Unit of local government" means a county, city, town, or city-county consolidated government."

**Section 8.** Section 53-30-312, MCA, is amended to read:

**"53-30-312. Creation of community corrections boards — membership — appointment — terms — compensation.** (1) A unit of local government, the governing bodies of two or more units of local government, or a tribal government may establish a community corrections board.

(2) A community corrections board consists of ~~nine~~ *three to seven* members, must, when possible, be gender-balanced and have racial parity, and must ~~be appointed as follows~~ *include*:

(a) one local law enforcement officer;

~~(b) one county attorney;~~

~~(c) one district court judge;~~

~~(d)~~*(b)* one probation and parole officer; *and*

~~(e) one local private employer or representative of the department of labor and industry;~~

~~(f) one mental health professional;~~

~~(g) one person representing local or tribal drug and alcohol treatment programs; and~~

~~(h)~~*(c)* ~~two members~~ *one member* of the public.

(3) Members of a community corrections board must be ~~nominated by representatives of units of local government or a tribal government and~~ appointed by the ~~district court judges~~ *chief executive officer of the unit of local government* or the tribal ~~judges~~ *government* in the judicial district in which community corrections facilities or programs are established.

(4) Members of a community corrections board shall serve for a term of 4 years.

(5) Members of a community corrections board shall serve without compensation except as otherwise decided by the units of local government or a tribal government."

**Section 9.** Section 53-30-313, MCA, is amended to read:

**"53-30-313. Powers and duties of community corrections boards.** (1) A community corrections board may establish and enforce standards for:

(a) the operation of community corrections facilities and programs operated by the unit of local government or a tribal government served by the community corrections board; and

(b) the conduct of offenders placed in local community corrections facilities and programs.

(2) The community corrections board, together with ~~the department and~~ the judicial district, shall establish procedures for screening offenders who are to be placed in the community corrections facility or program. The screening must take into account the aptitude, attitude, and social and occupational skills of the offender and the risk of harm the offender may present to ~~himself~~ *the offender* and others.

(3) A community corrections board may accept, reject, or reject after acceptance the placement of any offender in the community corrections facility or program. If an offender is rejected by the community corrections board after

HeinOnline -- 1997 vol. II 1480 1997

initial acceptance, the ~~offender must be remanded to the custody of the~~ sheriff of the county in which the facility or program is located *must take custody of the offender*. The community corrections board shall notify in writing the sentencing judge who, after considering the board's reasons for rejection, shall appropriately modify the sentencing order."

**Section 10.** Section 53-30-314, MCA, is amended to read:

**"53-30-314. Community corrections facilities and programs operated by tribal governments.** (1) A tribal government may establish, maintain, and operate a community corrections facility or program to serve the needs of offenders who are sentenced to the facility or program by a judge as provided in 53-30-321.

~~(2) A tribal government may enter into an agreement with the department, pursuant to Title 18, chapter 11, part 1, for the purpose of providing community corrections facilities or programs for offenders. The agreement must provide for strict accountability procedures and practices for the conduct and supervision of offenders assigned or sentenced to a facility or program operated by a tribal government.~~

~~(3)~~*(2)* A tribal government operating a community corrections facility or program may accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant to an agreement with a unit of local government, a nongovernmental agency, or a judicial district. If an offender is rejected by the tribal government after initial appearance and the offender is a court referral, the ~~offender must be remanded to the custody of the~~ sheriff of the county in which the facility or program is located *must take custody of the offender*. The tribal government shall notify in writing the sentencing judge who, after considering the tribal government's reasons for rejection, shall appropriately modify the sentencing order."

**Section 11.** Section 53-30-315, MCA, is amended to read:

**"53-30-315. Community corrections facilities and programs operated by nongovernmental agencies.** (1) Except as provided in subsection (2), a nongovernmental agency may establish, maintain, and operate a community corrections facility or program to serve the needs of offenders who are sentenced to the facility or program by a judge as provided in 53-30-321.

(2) A nongovernmental agency may not establish a community corrections facility or program unless approved by the local community corrections board in a local government or tribal government that has established a community corrections board.

~~(3) A nongovernmental agency may enter into a contract or agreement with the department for the purpose of providing community corrections facilities or programs for offenders. The contract or agreement must provide for strict accountability procedures and practices for the conduct and supervision of offenders assigned or sentenced to a facility or program operated by a nongovernmental agency.~~

~~(4)~~*(3)* A nongovernmental agency operating a community corrections facility or program may accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant to a contract or agreement with a

HeinOnline -- 1997 vol. II 1481 1997

unit of local government, a tribal government, or a judicial district. If an offender is rejected by the nongovernmental agency after initial acceptance and the offender is a court referral, the ~~offender must be remanded to the custody of the~~ sheriff of the county in which the facility or program is located *must take custody of the offender.* The nongovernmental agency shall notify in writing the sentencing judge who, after considering the agency's reasons for rejection, shall appropriately modify the sentencing order."

**Section 12.** Section 53-30-321, MCA, is amended to read:

**"53-30-321. Authority of judge to utilize community corrections facilities or programs ~~—procedure~~ — restrictions.** (1) Subject to the restrictions contained in subsection ~~(3)~~ *(2)*, a judge may order placement of ~~a nonviolent felony~~ *an* offender in a community corrections facility or program operated by a unit of local government, a tribal government, or a nongovernmental agency. ~~If a judge orders placement of an offender in a community corrections facility or program, the judge shall indicate in the sentencing order that the offender would have been sentenced to prison if the community corrections facility or program had not been available.~~

~~(2) Placement of an offender in a community corrections facility or program may be ordered only if:~~

~~(a) the community corrections facility or program is operated by a unit of local government, a tribal government, or a nongovernmental agency that has entered into a contract or agreement with the department to provide community corrections services for offenders; and~~

~~(b) funding for the placement is available.~~

~~(3)~~*(2)* A judge may not order placement of an offender in a residential community corrections facility or program for a period exceeding 1 year. After completing the residential community corrections portion of ~~his~~ *a* sentence, an offender shall serve the remainder of ~~his~~ *the* sentence under normal probation supervision, if applicable.

~~(4)~~*(3)* An offender is not eligible for parole while serving a sentence in a community corrections facility or program.

~~(5)~~*(4)* The probation and parole officers for the judicial district shall include in their presentence report to the sentencing judge recommendations for utilization of a community correctional facility or program that has been approved for use by the judicial district."

**Section 13.** Section 53-30-322, MCA, is amended to read:

**"53-30-322. Powers and responsibilities of department. — ~~rulemaking authority.~~** The department ~~shall~~ *may*:

(1) ~~with the active and full participation of the~~ *upon the request of a* local community corrections board, ~~establish minimum standards for the operation~~ *provide assistance in the planning* of community corrections facilities and programs ~~operated by a unit of local government, a tribal government, or a nongovernmental agency that has entered into a contract or agreement with the department to provide services for offenders~~; *and*

(2) ~~review and evaluate all community corrections facilities and programs established under this part, subject to the requirements established in section 14, Chapter 554, Laws of 1991~~ *contract with a community corrections facility or program for the provision of services for offenders under the custody of the department. The contract must address facility or program review and evaluation, accounting and reporting standards, and reimbursement of the facility or program*;

~~(3) prescribe accounting and reporting standards for all units of local government, tribal governments, and nongovernmental agencies that have entered into a contract or agreement with the department;~~

~~(4) reimburse units of local government, tribal governments, or nongovernmental agencies for community correctional services at a rate to be negotiated by the department;~~

~~(5) adopt rules necessary to carry out the provisions of this part.~~"

**Section 14.** Section 53-30-326, MCA, is amended to read:

"**53-30-326. Escape from custody.** An offender is guilty of escape ~~from official detention~~ and shall be punished as provided in 45-7-306 if, without proper authorization, ~~he~~ *the offender*:

(1) fails to remain within the extended limits of ~~his~~ *the offender's* confinement or fails to return within the time specified to a community corrections facility or program to which ~~he~~ *the offender* has been assigned, sentenced, or transferred; or

(2) leaves ~~his~~ *the offender's* place of employment or neglects or fails to return to the community corrections facility or program after being specifically ordered to do so."

**Section 15. Repealer.** Sections 46-23-401, 46-23-405, 46-23-411, 46-23-412, 46-23-421, 46-23-422, 46-23-426, 53-30-324, and 53-30-325, MCA, are repealed.

**Section 16. Coordination instruction.** If Senate Bill No. 109 and [this act] are both passed and approved, then the amended language in 53-1-203(1)(e), (f), and (m)(ii) in Senate Bill No. 109, reference bill as amended, is void.

**Section 17. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 21, 1997

# CHAPTER NO. 323

[HB 190]

AN ACT PROVIDING THAT THE ISSUE OF THE DISPOSAL OF A RECORD BE SUBMITTED TO THE LOCAL GOVERNMENT RECORDS COMMITTEE IF THERE IS NOT UNANIMOUS APPROVAL OF THE DISPOSAL OF THE

HeinOnline -- 1997 vol. II 1483 1997

RECORD BY THE LOCAL GOVERNMENT RECORDS DESTRUCTION SUBCOMMITTEE; REQUIRING THE LOCAL GOVERNMENT RECORDS COMMITTEE TO ESTABLISH A RETENTION AND DISPOSITION SCHEDULE FOR CATEGORIES OF RECORDS AND TO PUBLISH THE SCHEDULES AND UPDATES TO THE SCHEDULES; REQUIRING THE LOCAL GOVERNMENT RECORDS COMMITTEE TO ESTABLISH SCHOOL RECORDS RETENTION SCHEDULES; AND AMENDING SECTIONS 2-6-403 AND 20-1-212, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 2-6-403, MCA, is amended to read:

"**2-6-403. Duties and responsibilities.** (1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The *local government records* committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and a representative of the department of commerce. Unless specifically authorized by statute *or by the retention and disposition schedule*, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of tbe subcommittee. When approval is required, a request for the disposal or destruction of any local government records must be submitted to tbe subcommittee by the entity concerned. *If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must be referred to the local government records committee for approval. When approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule.*

(3) The local government records committee ~~may by unanimous approval establish categories of records for which a disposal request is not required, providing that those records are retained for the designated retention period~~ *shall establish a retention and disposition schedule for categories of records for which a disposal request is not required. The committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.*

*(4) The committee shall establish school records retention schedules by September 1, 1997.*

~~(4)~~*(5)* The committee shall respond to requests for technical advice on matters relating to local government records.

~~(5)~~*(6)* The committee shall provide leadership and coordination in matters affecting the records of multiple local governments."

**Section 2.** Section 20-1-212, MCA, is amended to read:

"**20-1-212. Destruction of records by school officer.** (1) Upon the order of the board of trustees ~~and with the written approval of the local government records destruction subcommittee provided for in 2-6-403~~, a school officer may

HeinOnline -- 1997 vol. II 1484 1997

destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, *and, with written approval of the local government records destruction subcommittee provided for in 2-6-403, any records not referenced in the retention and disposition schedule* ~~and~~ that are no longer needed hy the office.

(2) Student records must be permanently kept, and employment records must be kept for 10 years after termination."

Approved April 21, 1997

# CHAPTER NO. 324

[HB 320]

AN ACT CLARIFYING THE COSTS FOR WHICH THE DEPARTMENT OF TRANSPORTATION IS RESPONSIBLE WHEN HIGHWAY CONSTRUCTION REQUIRES UTILITY RELOCATION; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT HOLD A PUBLIC HEARING TO DETERMINE THE NECESSITY OF FACILITY RELOCATION; ALLOWING THE DEPARTMENT TO ADOPT RULES REFLECTING THE CHANGES IN THE DEPARTMENT'S REIMBURSEMENT RESPONSIBILITIES; AMENDING SECTIONS 60-4-401, 60-4-402, AND 60-4-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this hill because it allows the department of transportation to modify rules to reflect changes in its reimbursement responsibilities to utilities for facility relocation. The legislature intends that the department's rules address the changes in the definition of "cost of relocation", the removal of the hearing process, and the full reimbursement of costs associated with relocating small publicly owned water and sewer utilities.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 60-4-401, MCA, is amended to read:

**"60-4-401. Relocation — definitions.** For the purposes of ~~the sections relating to relocation of utilities facilities~~ *this part, unless otherwise indicated,* terms are defined as follows:

(1) *(a)* "Cost of relocation" ~~includes~~ *means* the ~~entire~~ amount paid hy the utility *for material, labor, and equipment* properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

*(b) "Cost of relocation" does not mean engineering costs for designing, locating, staking, inspecting, or any other incidental costs of engineering.*

*(2) "Facility" means a utility's tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances impacted by a project on a federal-aid system or state highway.*

~~(2)~~*(3)* "Federal-aid systems" includes the *following, as defined in 60-2-125:*

(a) national highway system;

(b) primary highway system;

(c) secondary highway system; and

(d) urban highway system.

~~(3) "Interstate system" includes any highway now included or which may hereafter be included as a part of the national system of interstate and defense highways provided for in Title 23, U.S.C.~~

*(4) "State highway" means that term, as defined in 60-2-125.*

~~(4)~~*(5)* "Utility" includes publicly, privately, and cooperatively owned utilities."

**Section 2.** Section 60-4-402, MCA, is amended to read:

**"60-4-402. Relocation of utility facilities — ~~hearings — order~~ *rules*.** ~~(1) After appropriate hearings, the~~ *Except as provided in 60-4-403(2) and (3), the* department may adopt reasonable ~~regulations~~ *rules* for the *reimbursement to a utility for the costs of* installation, construction, maintenance, repair, renewal, or relocation of ~~tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of a utility in, on, along, over, across, through, or under a project on any of the federal-aid systems~~ *facilities*.

~~(2) The department shall give written notice of the place and time of a public hearing to determine the necessity of a relocation of facilities to all concerned not less than 20 days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.~~

~~(3) After the hearing, the department may determine that the facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the order of the department. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.~~"

**Section 3.** Section 60-4-403, MCA, is amended to read:

**"60-4-403. Relocation — costs.** ~~Seventy-five percent~~ *(1) Except as provided in subsections (2) and (3), 75%* of all costs of relocation, ~~including the costs of acquisition of new right-of-way, of~~ dismantling, and ~~of~~ removal, must be paid by the department as a cost of federal-aid systems construction.

*(2) The department shall pay for the entire cost of relocating a publicly owned water or sewer facility with 500 or fewer service connectors under the following conditions:*

*(a) the facility has had 500 or fewer subscribers during the entire year before the letting of the project contract; and*

*(b) the relocation is the result of state highway or federal-aid system construction.*

HeinOnline -- 1997 vol. II 1486 1997

*(3) The department shall pay for 85% of all costs of relocating a publicly owned water or sewer facility with more than 500 but fewer than 1,000 service connectors, subject to the following conditions:*

*(a) the facility had more than 500 but fewer than 1,000 subscribers during the entire year before the letting of the project contract; and*

*(b) the relocation is the result of state highway or federal-aid highway system construction."*

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1997

# CHAPTER NO. 325

[HB 431]

AN ACT PROHIBITING THE UNAUTHORIZED CHANGING OF A CUSTOMER'S TELECOMMUNICATIONS SERVICES PROVIDER; GRANTING RULEMAKING AUTHORITY TO THE PUBLIC SERVICE COMMISSION; ESTABLISHING LIABILITY FOR VIOLATIONS; PROVIDING A PENALTY FOR VIOLATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants rulemaking authority to the public service commission for the purposes of preventing and punishing unauthorized changes in a customer's choice of a telecommunications services provider.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose.** The purpose of [sections 1 through 6] is to prohibit telecommunications carriers, including carriers not otherwise regulated by the commission, from switching a customer's telecommunications services from one telecommunications carrier to another without the customer's consent.

**Section 2. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Commission" means the public service commission provided for in 2-15-2602.

(2) "Customer" means a person who has purchased telecommunications services from a telecommunications carrier.

(3) "Local exchange company" means the same as provided in 53-19-302.

(4) "Primary interexchange carrier" means the telecommunications carrier from which a customer chooses to purchase long distance services.

(5) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services is considered a telecommunications carrier only to the extent that the person is

engaged in providing telecommunications services. The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

**Section 3. Prohibition — exceptions.** (1) A telecommunications carrier may not honor a request by any person other than a customer to change the customer's primary interexchange carriers or local exchange company except:

(a) when the requesting carrier has obtained from the customer a document signed by the customer that contains clear and conspicuous disclosure of the customer's request for a change in telecommunications carrier;

(b) when the customer affected by the change initiates the contact with the carrier in order to request the change; or

(c) when the carrier who has initiated the change has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) must be signed hy the customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

**Section 4. Rulemaking authority.** The commission may adopt rules to implement [sections 1 through 6].

**Section 5. Telecommunications carrier liability — penalty for violation.** (1) A telecommunications carrier who initiates an unauthorized change in the customer's telecommunications carrier in violation of [section 3] is liable:

(a) to the customer for all intrastate long distance charges, interstate long distance charges, monthly service charges, carrier switching fees, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) to the customer's original telecommunications carrier for all charges related to reinstating service to the customer.

(2) A telecommunications carrier who purposely or knowingly initiates an unauthorized change of a customer's telecommunications carrier under [section 3] is guilty of a misdemeanor and shall be punished as provided in 46-18-212.

(3) The remedies provided by this section are in addition to any other remedies available by law.

**Section 6. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1 through 6].

**Section 7. Coordination instruction.** If Senate Bill No. 89 and [this act] are both passed and approved, then [section 16] of the introduced version of Senate Bill No. 89 is void.

HeinOnline -- 1997 vol. II 1488 1997

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1997

# CHAPTER NO. 326

[SB 16]

AN ACT REQUIRING MANDATORY DISCLOSURE BETWEEN PARTIES OF ALL ASSETS AND LIABILITIES SUBJECT TO EQUITABLE DIVISION OF THE MARITAL ESTATE IN CASES OF MARRIAGE DISSOLUTION OR NULLITY OR LEGAL SEPARATION; PROVIDING PENALTIES FOR FAILURE TO COMPLY; AMENDING SECTIONS 40-4-201 AND 40-4-208, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, it is the policy of the State of Montana to:

(1) marshal, preserve, and protect marital estate assets and liabilities that exist at the date of separation in order to avoid dissipations of the marital estate before distribution;

(2) ensure fair and sufficient child and spousal support awards; and

(3) achieve an equitable division of marital estate assets and liabilities on the dissolution or nullity of marriage or legal separation of the parties, as provided under Montana law; and

WHEREAS, sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery; and

WHEREAS, in order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as joint or separate, together with a disclosure of all income and expenses of the parties; and

WHEREAS, each party has a continuing duty to update and augment material changes to that disclosure so that at the time that the parties enter into an agreement for the resolution of any of these issues or at the time of trial on these issues, each party will have as full and complete knowledge of the relevant underlying facts as is reasonably possible under the circumstances of the case without the need of formal discovery requests pursuant to the Montana Rules of Civil Procedure.

THEREFORE, the Legislature of the State of Montana finds it appropriate to enact the following provisions relating to disclosure of marital estate assets and liabilities.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 8], the following definitions apply:

HeinOnline -- 1997 vol. II 1489 1997

(1) "Asset" includes hut is not limited to any real or personal property of any nature however and whenever acquired, whether the property is tangible or intangible, whether the property is currently existing or contingent, and whether the title is in the name of the husband or wife, or both.

(2) "Default judgment" does not include a stipulated judgment or any judgment pursuant to a marital settlement agreement.

(3) "Earnings and accumulations" includes income from any source.

(4) "Expenses" includes but is not limited to all personal living expenses, but does not include business-related expenses.

(5) "Liability" includes but is not limited to any debt or obligation, however and whenever acquired, whether the debt or obligation is currently existing or contingent or is in the name of the husband or wife, or both.

(6) "Marital estate" includes all assets and liabilities.

**Section 2. Preliminary declaration of disclosure — penalty.** (1) Within 60 days of service of a petition for dissolution or nullity of marriage or for legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury. The parties may, by written stipulation or by oral stipulation made in open court, agree to change the time for exchange of preliminary declarations of disclosure.

(2) The preliminary declaration of disclosure may not be filed with the court, except on the court's order.

(3) The preliminary declaration of disclosure must set forth with sufficient particularity, which a person of reasonable and ordinary intelligence can ascertain, all of the following:

(a) the identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of an asset or liability; and

(b) the declarant's percentage of ownership in each asset and percentage of obligation for each liability when property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(4) A declarant may amend the declarant's preliminary declaration of disclosure without permission of the court.

(5) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

(6) In addition to any other civil or criminal remedy available under law for the commission of perjury, the court may set aside the judgment, or part of the judgment, if the court discovers that a party has committed perjury in the preliminary declaration of disclosure.

HeinOnline -- 1997 vol. II 1490 1997

**Section 3. Final declaration of disclosure — failure to disclose current income and expense declaration — penalty.** (1) (a) Each party shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury:

(i) before or at the time that the parties enter into an agreement for the resolution of property or support issues, other than pendente lite support; or

(ii) in the event that the case goes to trial, no later than 45 days before the first assigned trial date.

(b) The parties may, by written stipulation or by oral stipulation made in open court, agree to change the time for exchange of final declarations of disclosure.

(2) The final declaration of disclosure must include all material facts and information regarding the:

(a) characterization of all assets and liabilities;

(b) valuation of all assets that are contended to be marital or for which it is contended that the marital estate has an interest;

(c) amounts of all obligations that are contended to be marital obligations or for which it is contended that the marital estate has liability; and

(d) expenses and earnings and accumulations of each party that have been set forth in the income and expense declaration.

(3) Along with the final declaration of disclosure, each party shall serve on the other party an updated income and expense declaration unless a current income and expense declaration is on file.

(4) The failure of a party to disclose an asset or liability on the final declaration of disclosure is presumed to be grounds for the court, without taking into account the equitable division of the marital estate, to award the undisclosed asset to the opposing party or the undisclosed liability to the noncomplying party.

(5) In addition to any other civil or criminal remedy available under law for the commission of perjury, the court may set aside the judgment, or part of the judgment, if the court discovers, within 5 years from the date of entry of judgment, that a party has committed perjury in the final declaration of disclosure.

**Section 4. Execution and service of final declaration of disclosure and current income and expense declaration.** Absent good cause, the court may not enter a judgment with respect to the parties' property rights unless each party has executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party.

**Section 5. Noncomplying declarations — requests to comply — remedies.** (1) A party who has served on the other party a preliminary declaration of disclosure under [section 2] or a final declaration of disclosure

HeinOnline -- 1997 vol. II 1491 1997

under [section 3] and who has provided the information required in the declarations with sufficient particularity may, within a reasonable time, request from a noncomplying party preparation of the appropriate declaration of disclosure or further particularity in a declaration.

(2) If a noncomplying party fails to comply with a request under subsection (1), the complying party may file either or both of the following:

(a) a motion to compel a further response;

(b) a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(3) If a party fails to comply with any provision of [sections 1 through 8], the court shall, in addition to any other remedy provided by law, order the noncomplying party to pay to the complying party any reasonable attorney fees or costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

**Section 6. Liquidation — transfer of marital estate assets to avoid encumbrance, devaluation, or market or investment risk — authority of court.** (1) Except as provided in subsection (2), at any time during the proceedings, the court may, upon application of a party and for good cause and after consideration of the relative nature, scope, and extent of the marital estate, order the liquidation or transfer of title of marital estate assets to avoid unreasonable encumbrance, devaluation, or market or investment risk.

(2) The court may not grant an application under subsection (1) unless the appropriate declaration of disclosure has been served on the opposing party by the moving party as provided in [sections 2 through 4].

**Section 7. Default judgments — disclosures.** In the case of a default judgment, a petitioner may waive the final disclosure requirements of [sections 3 and 4]. However, the petitioner shall comply with the preliminary declaration of disclosure requirements of [section 2].

**Section 8. Attorney work product privilege — protective orders — Montana Rules of Civil Procedure.** A disclosure required by [sections 2 through 4] does not abrogate the attorney work product privilege or the formal discovery procedures provided by the Montana Rules of Civil Procedure or does not impede the power of the court to issue protective orders.

**Section 9.** Section 40-4-201, MCA, is amended to read:

**"40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) ~~In~~ *Subject to subsection (7), in* a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon

HeinOnline -- 1997 vol. II 1492 1997

the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced hy the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request tbe parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms ~~shall~~ *must* be set forth in the decree of dissolution or legal separation and the parties ~~shall~~ *must* be ordered to perform them; or

(b) if the separation agreement provides that its terms ~~shall~~ *may* not be set forth in the decree, the decree ~~shall~~ *must* identify the separation agreement and state tbat the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in tbe decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except *as provided in subsection (7) and except* for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

*(7) The decree may be modified, as provided in [sections 1 through 8], for failure to disclose assets and liabilities."*

**Section 10.** Section 40-4-208, MCA, is amended to read:

**"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) ~~Whenever~~ *Except as provided in [sections 1 through 8], whenever* the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) ~~Whenever~~ *Except as provided in [sections 1 through 8], whenever* the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

HeinOnline -- 1997 vol. II 1493 1997

(iii) upon application by the department of public health and human services, whenever the department of public health and human services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. ~~A~~ *Except as provided in [sections 1 through 8], a* modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(c) The nonexistence of a medical support order, as defined in 40-5-804, or a violation of a medical support order justifies an immediate modification of child support in order to:

(i) provide for the actual or anticipated costs of the child's medical care;

(ii) provide or maintain a health benefit plan or individual health insurance coverage for the child; or

(iii) eliminate any credit for a medical support obligation when it has been permitted or used as a credit in the determination of the child support obligation.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Provisions for the support of a child are terminated by emancipation of the child or the child's graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

*(6) The decree may be modified, as provided in [sections 1 through 8], for failure to disclose assets and liabilities."*

**Section 11. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 40, chapter 4, and the provisions of Title 40, chapter 4, apply to [sections 1 through 8].

**Section 12. Applicability.** [This act] applies to proceedings commenced on or after October 1, 1997.

Approved April 21, 1997

HeinOnline -- 1997 vol. II 1494 1997

# CHAPTER NO. 327

[SB 191]

AN ACT AUTHORIZING THE CREATION OF A RESORT AREA DISTRICT; PROVIDING AN ELECTION PROCESS BY WHICH A RESORT AREA DISTRICT MAY BE CREATED; PROVIDING FOR THE ELECTION OF MEMBERS TO THE BOARD OF DIRECTORS OF A RESORT AREA DISTRICT; ENABLING THE ADMINISTRATION OF A RESORT AREA DISTRICT; ALLOWING THE BOARD OF DIRECTORS OF A RESORT AREA DISTRICT TO EXPEND REVENUE FROM A RESORT AREA TAX; AMENDING SECTIONS 7-6-4465 AND 7-6-4469, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** For the purposes of [sections 1 through 20], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of directors of the resort area district.

(2) "Resort area" means a resort area created under 7-6-4468.

(3) "Resort area district" means a district created under [sections 1 through 20] that has been established as a resort area under 7-6-4468.

**Section 2. Resort area district authorized.** Electors residing within the boundaries of a resort area may create a resort area district by proceeding under the provisions of [sections 1 through 20].

**Section 3. Petition to create resort area district.** (1) Electors residing within a resort area may present, at a regular meeting, a petition requesting the establishment of a resort area district to the board of county commissioners of the county in which the proposed resort area district is located. The potition must be signed hy at least 10% of the registered voters within the resort area.

(2) When the area to be included within the proposed resort area district lies in more than one county, the electors within a resort area shall present a petition to the board of county commissioners in each county. Each petition must contain the signatures of at least 10% of the registered voters of the resort area that lies within that county.

(3) The petition must include a description or map of the existing resort area boundaries. The petition may not describe proposed resort area district boundaries that are different from the existing resort area boundaries designated pursuant to 7-6-4468.

**Section 4. Notice of petition — hearing required.** (1) The board of county commissioners shall publish the text of the petition described in [section 3], as provided in 7-1-2121, in each county in which the proposed resort area district lies and shall publish the date, time, and place that a public hearing on the petition will be held.

(2) In addition to the requirements of subsection (1), the board of county commissioners shall publish the text of the petition described in [section 3] in a

newspaper of general circulation in the county within which the proposed resort area district lies.

(3) A person wishing to comment on the creation of the proposed resort area district may file, by first-class mail or otherwise, comments with the clerk and recorder of the county in which the proposed resort area district lies.

(4) If the resort area lies within two or more counties, the provisions of this section apply to each county.

**Section 5. Hearing on petition.** (1) At the hearing for which notification has occurred under [section 3], the board of county commissioners shall accept comments supporting and opposing the petition. The board of county commissioners may adjourn the hearing from time to time, but the hearing must be completed within 4 weeks of its commencement.

(2) Upon concluding the hearing on the petition, the board of county commissioners shall determine whether the petition complies with the requirements of [sections 1 through 20] and enter its determination into the minutes of a regularly scheduled meeting.

**Section 6. Election required — notice.** (1) Upon a determination that the petition complies with the provisions of [sections 1 through 20], the board of county commissioners of each county in which the resort area lies shall give notice of an election to be held in the proposed resort area district for the purpose of determining whether a resort area district should be created. The election must be held in conjunction with a regular or primary election.

(2) Notice of the election must be made as provided in 13-1-108 and must:

(a) describe the purpose of the proposed resort area district; and

(b) state the name of the proposed resort area district, which must include the words "resort area district".

**Section 7. Conduct of election on question of creating resort area district.** The election on the question of creating a resort area district must be conducted as provided by Title 13 with respect to general and school elections, except as otherwise provided by [sections 1 through 20].

**Section 8. Qualifications to vote on question of creating resort area district.** A person is not entitled to vote at an election authorized by [sections 1 through 20] unless the person possesses all of the qualifications required of electors under the general election laws of the state and is a resident of the proposed resort area district.

**Section 9. Resolution creating resort area district upon favorable vote.** (1) If a majority of the votes cast on the question of creating the resort area district are in favor of creating the resort area district, the board of county commissioners shall enter into its minutes an order, by resolution, creating the resort area district.

(2) Immediately following adoption of the resolution creating the resort area district, the board of county commissioners shall file with the secretary of state and the county clerk and recorder a copy of the resolution.

HeinOnline -- 1997 vol. II 1496 1997

**Section 10. Certificate of incorporation from secretary of state.** Within 10 days of receiving a copy of the resolution described in [section 9], the secretary of state shall issue a certificate stating that the resort area district has been established under the laws of the state of Montana. The secretary of state shall file a copy of the certificate with the clerk and recorder in each county in which the resort area district is located.

**Section 11. General powers of resort area district.** (1) A resort area district created under [sections 1 through 20] may:

(a) have perpetual succession;

(b) sue and be sued in any court of competent jurisdiction;

(c) acquire by any legal means real and personal property necessary to the full exercise of its powers; and

(d) make contracts, employ labor, and do all acts necessary for the full exercise of its powers.

(2) The board shall exercise the powers described in [sections 1 through 20].

**Section 12. Board powers related to administration and expenditure of resort tax revenue.** The board of a resort area district created under [sections 1 through 20] may:

(1) appropriate and expend revenue from a resort tax for any activity, undertaking, or administrative service authorized in the resolution creating a resort area and adopting a resort tax; and

(2) adopt administrative ordinances necessary to aid in the collection or reporting of resort taxes and in the expenditure of resort tax revenue.

**Section 13. Resort area district to be governed by board — composition — qualifications — term of office.** (1) The board is the governing body of the resort area district and is composed of five members, to be elected as provided in [section 14].

(2) To qualify for the board, a person must be a resident of the resort area district.

(3) Directors shall serve for a term of 4 years from the date of their election, except, of the directors elected at the first regular election, three directors shall serve for a term of 2 years and two shall serve for a term of 4 years.

(4) At the first meeting of the board, the directors shall determine by lot which of them shall serve the terms less than 4 years. Each succeeding term is 4 years.

**Section 14. Board — election — term.** (1) The first election of the board must be held at the next regular, primary, or school election immediately succeeding the creation of the resort area district. Each succeeding election must be held every 2 years to coincide with the election for local government officials as provided in 13-1-104(2).

HeinOnline -- 1997 vol. II 1497 1997

(2) A petition of nomination, signed by at least five electors from within the resort area district, may be filed with the election administrator in any county containing a portion of the resort area district. A nominating petition must be filed at least 135 days and not fewer than 75 days hefore the election.

**Section 15. Canvass of vote.** (1) The board of county commissioners shall canvass the returns of the first election of the board. After the first election and canvass, the board shall meet as a canvassing board for resort area district elections and shall canvass the returns within 4 days after any resort area district election.

(2) If the resort area district lies in more than one county, the board of county commissioners whose county contains the largest percentage of the territory of the resort area district shall canvass the returns of the first election.

**Section 16. Board — vaeancy.** If a vacancy on the board occurs by death, resignation, or removal from the resort area district, the remaining directors shall appoint a director to fill the vacancy. The term of the appointment coincides with the term that became vacant.

**Section 17. Board — mectings.** (1) The board shall meet at a regularly scheduled time and place. The board shall provide public notice of any change in the time and place of the board meetings.

(2) All board meetings are open to the public unless, under the terms of Article II, section 9, of the Montana constitution or 2-3-203, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure.

(3) A majority of the hoard constitutes a quorum for the transaction of business.

(4) The board may act only by ordinance or resolution.

**Seetion 18. Referendum to dissolve rcsort area district.** (1) Upon receipt of a petition to dissolve the resort area district, signed by more than 50% of the electors of the resort area district, the board shall set a date for a public hearing on dissolution of the resort area district. The hearing date may not be fewer than 45 days or more than 60 days after the date on which the board schedules the date of the hearing. A notice of the public hearing on dissolution must be published as provided in 7-1-2121. The published notice must include notice to creditors of the resort area district to present claims owed by the resort area district to the board prior to the date set for the dissolution hearing.

(2) After the hearing, the board shall submit the question of the resort area district's dissolution to a vote of the electors.

**Seetion 19. Conduct of election on question of dissolving resort area distriet — qualification of electors.** (1) The election on the question of dissolving the resort area district must be conducted as provided by Title 13 with respect to general and school elections, except as otherwise provided by [sections 1 through 20].

(2) The qualifications for electors described in [section 8] apply for electors on the question of dissolution.

**Section 20. Resolution dissolving resort area district upon favorable vote.** (1) If a majority of the votes cast on the question of dissolving the resort area district are in favor of dissolving the resort area district, the board of county commissioners shall enter into its minutes an order, by resolution, dissolving the resort area district. The resolution must contain, explicitly or by reference, an orderly plan of dissolution.

(2) Immediately following adoption of the resolution dissolving the resort area district, the board of county commissioners shall file with the secretary of state and the county clerk and recorder a copy of the resolution.

(3) The resort area district is dissolved as provided in the plan of dissolution.

**Section 21.** Section 7-6-4465, MCA, is amended to read:

**"7-6-4465. Resort tax administration.** (1) In this section, "governing body" means:

*(a)* the governing body of a resort community ~~or~~;

*(b)* if the resort tax has been approved by the electors of a resort area, the board of county commissioners; *or*

*(c) if the electors of the resort area establish a resort area district, the district board of directors.*

(2) Not less than 30 days prior to the date *that* the resort tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the resort taxes. This administrative ordinance may he amended at any time as may be necessary to effectively administer the resort tax.

(3) The administrative ordinance must specify:

(a) the times *that* taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the resort tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of resort taxes and the methods and procedures to be used in enforcing the collection of resort taxes due; and

(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of $1,000 or 6 months' imprisonment, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of resort taxes, not to exceed 50% of the resort taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

HeinOnline -- 1997 vol. II 1499 1997

(iv) any other penalties that may be applicable for violation of an ordinance.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the resort tax consistent with 7-6-4463;

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the resort taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the resort tax payment received from them by the governing body 10 days prior to the collection due date established by the administrative ordinance.

(c) other administrative details necessary for the efficient and effective administration of the tax."

**Section 22.** Section 7-6-4469, MCA, is amended to read:

**"7-6-4469. Use of resort area tax.** (1) ~~Unless~~ *(a) Except as provided in subsection (1)(b) or unless* otherwise provided by the resolution approved by the electors under 7-6-4464, the board of county commissioners shall appropriate and spend revenue derived from a resort area tax for the purpose stated in the resolution.

*(b) If the electors of a resort area have established a resort area district, the district board of directors shall appropriate and spend revenue derived from a resort area tax for the purpose stated in the resolution.*

(2) ~~The~~ *If the electors of a resort area have not established a resort area district, the* resort area shall reimburse the board of county commissioners for costs associated with the collection, administration, and litigation of the resort area tax."

**Section 23. Codification instruction.** [Sections 1 through 20] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 20].

**Section 24. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 25. Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1997

HeinOnline -- 1997 vol. II 1500 1997

# CHAPTER NO. 328

[SB 212]

AN ACT REQUIRING A JURY AWARD OF PUNITIVE DAMAGES TO BE UNANIMOUS AS TO LIABILITY AND AMOUNT; AMENDING SECTION 27-1-221, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 27-1-221, MCA, is amended to read:

**"27-1-221. Punitive damages — liability — proof — award.** (1) Subject to the provisions of 27-1-220 and this section, reasonable punitive damages may be awarded when the defendant has been found guilty of actual fraud or actual malice.

(2) A defendant is guilty of actual malice if ~~he~~ *the defendant* has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and:

(a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or

(h) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff.

(3) A defendant is guilty of actual fraud if ~~he~~ *the defendant*:

(a) makes a representation with knowledge of its falsity; or

(b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.

(4) Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. The contract definitions of fraud expressed in Title 28, chapter 2, do not apply to proof of actual fraud under this section.

(5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence but less than beyond a reasonable doubt.

(6) Liability for punitive damages must be determined by the trier of fact, whether judge or jury. *An award of punitive damages must be unanimous as to liability and amount.*

(7) (a) Evidence regarding a defendant's financial affairs, financial condition, and net worth is not admissible in a trial to determine whether a defendant is liable for punitive damages. When the jury returns a verdict finding a defendant liable for punitive damages, the amount of punitive damages must then be determined by the jury in an immediate, separate proceeding and be submitted to the judge for review as provided in subsection (7)(c). In the separate proceeding

HeinOnline -- 1997 vol. II 1501 1997

to determine the amount of punitive damages to be awarded, the defendant's financial affairs, financial condition, and net worth must be considered.

(b) When an award of punitive damages is made by the judge, ~~he~~ *the judge* shall clearly state ~~his~~ *the* reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:

(i) the nature and reprehensibility of the defendant's wrongdoing;

(ii) the extent of the defendant's wrongdoing;

(iii) the intent of the defendant in committing the wrong;

(iv) the profitability of the defendant's wrongdoing, if applicable;

(v) the amount of actual damages awarded by the jury;

(vi) the defendant's net worth;

(vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act;

(viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and

(ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.

(c) The judge sball review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (7)(b). If after review the judge determines that the jury award of punitive damages should be increased or decreased, ~~he~~ *the judge* may do so. The judge shall clearly state ~~his~~ *the* reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (7)(b).

(8) ~~Nothing in this~~ *This* section is *not* intended to alter the Montana Rules of Civil Procedure governing discovery of a defendant's financial affairs, financial condition, and net worth."

**Section 2. Applicability.** [This act] applies to causes of action that arise after [the effective date of this act].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1997

# CHAPTER NO. 329

[SB 224]

AN ACT GENERALLY REVISING THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTIONS 75-20-102, 75-20-104, 75-20-201, 75-20-207, 75-20-208, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-225, 75-20-226, 75-20-301, 75-20-302, 75-20-303, 75-20-304, 75-20-402, 75-20-403, 75-20-406, 75-20-1202, AND 75-20-1205, MCA; REPEALING SECTIONS

HeinOnline -- 1997 vol. II 1502 1997

75-20-202, 75-20-205, 75-20-218, 75-20-220, 75-20-221, 75-20-222, 75-20-227, 75-20-501, AND 75-20-503, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Expedited review.** (1) The department shall issue a certification decision within 180 days from the date on which an application is considered complete for a facility that:

(a) is unlikely to result in significant adverse environmental impacts based on the criteria listed in [section 2]; or

(b) is presently in existence and proposed for upgrade, reconstruction, or relocation and is unlikely to result in significant impacts pursuant to [section 2].

(2) A facility that qualifies for expedited review is exempt from undergoing an alternative siting study, except as provided in 75-1-201.

**Section 2. Criteria for identifying proposed facilities that qualify for expedited review.** (1) In order for a facility to qualify for expedited review under [section 1], the department shall make a significance determination of the impacts associated with a proposed facility. This determination is the basis of the department's decision concerning whether the proposed facility qualifies for expedited review.

(2) The department shall consider the following criteria in determining the significance of each impact that the proposed facility has on the quality of the human environment:

(a) the severity, duration, geographic extent, and frequency of occurrence of the impact;

(b) (i) the probability that the impact will occur if the proposed action occurs; or

(ii) reasonable assurance in keeping with the potential severity of an impact that the impact will not occur;

(c) growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts;

(d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values;

(e) the importance to the state and to society of each environmental resource or value that would be affected;

(f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or to a decision in principle about future actions;

(g) potential conflict with local, state, or federal laws, requirements, or formal plans; and

(h) the degree to which the impacts on the human environment are likely to create a high level of public concern.

(3) An impact may be adverse, beneficial, or both. If none of the adverse effects of the impact are significant, expedited review is required.

**Section 3. Board review of department decisions.** A person aggrieved by the final decision of the department on an application for a certificato, the renewal of a certificate, or the issuance of an air or water quality decision, opinion, order, certification, or permit under this chapter may within 30 days appeal the decision to the board under the contested case procedures of Title 2, chapter 4, part 6.

**Section 4.** Section 75-20-102, MCA, is amended to read:

**"75-20-102. Policy and legislative findings.** (1) It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations, to protect the environmental life-support system from degradation and prevent unreasonahle depletion and degradation of natural resources, and to provide for administration and enforcement te attain these objectives.

(2) The legislature finds that the construction of additional power or energy conversion facilities may be necessary to meet the increasing need for electricity, energy, and other products and that these facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of power and energy conversion facilities will *not* produce ~~minimal~~ *unacceptable* adverse effects on the environment and upen the citizens of this state by providing that a power or energy conversion facility may not be constructed or operated within this state without a certificate of environmental compatibility ~~and public need~~ acquired pursuant to this chapter.

*(3) The legislature also finds that it is the purpose of this chapter to:*

*(a) ensure protection of the state's environmental resources, including but not limited to air, water, animals, plants, and soils;*

*(b) ensure consideration of socioeconomic impacts;*

*(c) provide citizens with thc opportunity to participate in facility siting decisions; and*

*(d) establish a coordinated and efficient method for the processing of all authorizations required for regulated facilities under this chapter."*

**Section 5.** Section 75-20-104, MCA, is amended to read:

**"75-20-104. (Temporary) Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is oporated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of environmental compatibility ~~and public need~~ issued by the ~~board~~ *department* under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temperary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if ~~such~~ *the* activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain procoedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection ~~(8)(b)~~ *(8)(c)* or ~~(8)(c)~~ *(8)(d)*, including upgrading to a design capacity covered by subsection ~~(8)(b)~~ *(8)(c)*, except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating ~~150~~ *250* megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

HeinOnline -- 1997 vol. II 1505 1997

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iv) enriching uranium minerals or any addition thereto; or

(v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or any addition thereto;

*(b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts that would be defined in 75-20-104(8)(a):*

*(i) emitting 300 tons a year of particulate matter at 10 microns or less;*

*(ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title 75, chapter 2;*

*(iii) directly affecting:*

*(A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;*

*(B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;*

*(C) habitat used by a threatened or endangered species of plant or animal as designated pursuant to 16 U.S.C. 1531, et seq.; or*

*(D) one of the following exclusion areas:*

*(I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;*

*(II) national primitive areas;*

*(III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;*

*(IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271, et seq.;*

*(V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or*

*(iv) that would require a permanent workforee greater than 300 workers.*

~~(b)~~*(c)* each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts ~~and up to and including 115~~ *but less than 230* kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

~~(c)~~*(d)* each pipeline, whether partially or wholly within the stato, greater than 17 inches in inside diameter and 30 miles in lengtb, and associated facilities;

HeinOnline -- 1997 vol. II 1506 1997

~~(d)~~*(e)* any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million ~~Btu~~ *Btu's* por hour or more or any addition thereto, excopt pollution control facilities approved by the department and added to an existing plant;

~~(e)~~*(f)* any underground in situ gasification of coal*; or*

*(g) an energy-related project for which the department has granted a petition pursuant to 75-20-201(5).*

(9) "Person" means any individual, group, firm, partnership, corporation, *limited liability company,* cooperative, association, gevernment subdivision, government agency, local gevernment, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regnlation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of lieat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

**75-20-104. (Effective July 1, 1997) Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation liuks of any kind, aqueducts, diversion dams, pipelimes, transmission substations, storage ponds, reservoirs, and any other devico or equipment associated with tlie production or delivery of the energy form or product produced hy a facility, except that the term does not include a facility or a natural gas or crude oil gethering line 17 inches or less in inside diameter.

(4) "Board" means the hoard of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of environmental compatihility ~~and public need~~ issued by tbe ~~board~~ *department* under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action tbat would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary boringe te ascertain foundation conditions;

HeinOnline -- 1997 vol. II 1507 1997

(b) the fracturing of underground formations hy any means if ~~such~~ *the* activity is related to the possihle future development of a gasification facility or a facility employing geothermal resources hut does not include the gathering of geological data by horing of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection ~~(8)(b)~~ *(8)(c)* or ~~(8)(c)~~ *(8)(d)*, including upgrading to a design capacity covered hy subsection ~~(8)(b)~~ *(8)(c)*, except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating ~~50~~ *250* megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(ii) producing 25 million cubic feet or more of gas derived from coal por day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iii) producing 25,000 barrels of liquid hydrocarbon products por day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iv) enriching uranium minerals or any addition thereto; or

(v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or any addition thereto;

*(b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts that would be defined in 75-20-104(8)(a):*

*(i) emitting 300 tons a year of particulate matter at 10 microns or less;*

*(ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title 75, chapter 2;*

*(iii) directly affecting:*

*(A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;*

*(B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;*

*(C) habitat used by a threatened or endangered species of plant or animal as designated pursuant to 16 U.S.C. 1531, et seq.; or*

*(D) one of the following exclusion areas:*

*(I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;*

*(II) national primitive areas;*

*(III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;*

*(IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271, et seq.; or*

*(V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or*

*(iv) that would require a permanent workforce greater than 300 workers.*

~~(b)~~*(c)* each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts ~~and up to and including 115~~ *but less than 230* kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

~~(c)~~*(d)* each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

~~(d)~~*(e)* any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million ~~Btu~~ *Btu's* per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

~~(e)~~*(f)* any underground in situ gasification of coal*; or*

*(g) an energy-related project for which the department has granted a petition pursuant to 75-20-201(5).*

(9) "Person" means any individual, group, firm, partnership, corporation, *limited liability company,* cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

HeinOnline -- 1997 vol. II 1509 1997

**Section 6.** Section 75-20-201, MCA, is amended to read:

**"75-20-201. Certificate required — operation in conformance — certificate for nuclear facility — applicability to federal facilities.** (1) ~~A~~ *Except for a facility under diligent onsite physical construction or in operation on January 1, 1973, a* person may not commence to construct a facility in the state without first applying for and obtaining a certificate of environmental compatibility ~~and public need~~ issued with respect to the facility by the ~~board~~ *department*.

(2) A facility with respect to which a certificate is issued may not ~~thereafter~~ be constructed, operated, or maintained except in conformity with the certificate and any terms, conditions, and modifications contained ~~therein~~ *within the certification*.

(3) A certificate may only be issued pursuant to this chapter.

(4) If the ~~board~~ *department* decides to issue a certificate for a nuclear facility, it shall report ~~such~~ *the* recommendation to the applicant and may not issue the certificate until ~~such~~ *the* recommendation is approved by a majority of the voters in a statewide election called by initiative or referendum according to the laws of this state.

*(5) A person that proposes to construct an energy-related project that is not defined as a facility pursuant to 75-20-104(8) may petition the department to review the energy-related project under the provisions of this chapter.*

~~(5)~~*(6)* This chapter applies, to the fullest extent allowed by federal law, to all federal facilities and to all facilities over which an agency of the federal government has jurisdiction."

**Section 7.** Section 75-20-207, MCA, is amended to read:

**"75-20-207. Notice requirement for certain electric transmission lines.** Whenever a person plans to construct an electric transmission line or associated facilities ~~of a design capacity of more than 69 kilovolts and up to and including 115 kilovolts that is more than 10 miles in length~~ *under the provisions of 75-20-104(8)(c)(ii)*, it must provide public notice to persons residing in the area in which any portion of the electric transmission facility may be located and to the department. This notice must be made no less than 180 days prior to the commencement of acquisition of right-of-way by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing ~~such~~ a summary to the department. The notice must inform the property owners of their rights under this chapter concerning the location of the facility and that more information concerning their rights may be obtained from the department."

**Section 8.** Section 75-20-208, MCA, is amended to read:

**"75-20-208. Certain electric transmission lines — verification of requirements.** (1) Prior to constructing a transmission line under 75-20-104~~(8)(b)(ii)~~*(8)(c)(ii)*, the person planning to construct the line shall provide to the department within 36 months of the date of the public notice

provided under 75-20-207, unless extended by the ~~board~~ *department* for good cause:

(a) copies of the right-of-way agreements or options for a right-of-way containing sufficient information to establish landowner consent to construct the line; and

(b) sufficient information for the department to verify ~~to the board~~ that the requirements of 75-20-104~~(8)(b)(ii)~~*(8)(c)(ii)* are satisfied.

(2) The provisions of 75-20-104~~(8)(b)(ii)~~*(8)(c)(ii)* do not apply to any facility for which public notice under 75-20-207 has been given but for which the requirements of subsection (1) of this section have not been complied with."

**Section 9.** Section 75-20-211, MCA, is amended to read:

**"75-20-211. Application — filing and contents — proof of service and notice.** (1) (a) An applicant shall file with the department an application for a certificate under this chapter and for the permits required under the laws administered by the department in the form that ~~the board requires~~ *is required* under applicable rules, containing the following information:

(i) a description of the proposed location and of the facility to be built;

(ii) a summary of any studies that have been made of the environmental impact of the facility;

~~(iii) a statement explaining the need for the facility;~~

~~(iv)~~*(iii)* for facilities defined in 75-20-104~~(8)(b)~~*(8)(c)* and ~~(8)(c)~~ *(8)(d), a statement explaining the need for the facility,* a description of reasonable alternate locations for the facility, a general description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the proposed location is best suited for the facility;

~~(v)~~*(iv)* (A) for facilities as defined in 75-20-104~~(8)(b)~~*(8)(c)* and ~~(8)(c)~~ *(8)(d),* baseline data for the primary and reasonable alternate locations; or

(B) for facilities as defined in 75-20-104(8)(a), ~~(8)(d)~~ *(8)(b), (8)(e),* and ~~(8)(e)~~ *(8)(f),* baseline data for the proposed location and, at the applicant's option, any alternative locations acceptable to the applicant for siting the facility;

~~(vi)~~*(v)* at the applicant's option, an environmental study plan to satisfy the requirements of this chapter; and

~~(vii)~~*(vi)* other information that the applicant considers relevant or that ~~the board by order or rule or~~ the department by order or rule may require.

(b) A copy or copies of the studies referred to in subsection (1)(a)(ii) must be filed with the department, if ordered, and must be available for public inspection.

(2) An application may consist of an application for two or more facilities in combination that are physically and directly attached te each other and are operationally a single operating entity.

(3) An application must be accompanied by proof of service of a copy of the application on the chief executive officer of each unit of local government, county

HeinOnline -- 1997 vol. II 1511 1997

commissioner, city or county planning boards, and federal agencies charged with the duty of protecting the environment or of planning land use in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located and on the following state government agencies:

(a) environmental quality council;

(b) department of public service regulation;

(c) department of fish, wildlife, and parks;

(d) department of natural resources and conservation;

(e) department of commerce;

(f) department of transportation.

(4) The copy of the application must be accompanied by a notice specifying the date on or about which the application is to be filed.

(5) An application must also be accompanied by proof that public notice of the application was given to persons residing in the area in which any portion of the proposed facility is proposed or is alternatively proposed to be located, by publication of a summary of the application in those newspapers that will substantially inform those persons of the application."

**Section 10.** Section 75-20-213, MCA, is amended to read:

"**75-20-213. Supplemental material — amendments.** (1) An application for an amendment of an application or a certificate must be in the form and contain the information that the ~~board~~ *department* by rule or ~~the department~~ by order prescribes. Notice of an application must be given as set forth in 75-20-211(3) through (5).

(2) An application may be amended by an applicant any time prior to the department's recommendation. If the proposed amendment is such that it prevents the department or the agencies listed in 75-20-216~~(5)~~*(6)* from carrying out their duties and responsibilities under this chapter, the department may require additional filing fees as the department determines necessary, or the department may require a new application and filing fee.

(3) The applicant shall submit supplemental material in a timely manner as requested by the department or as offered by the applicant to explain, support, or provide the detail with respect to an item described in the original application, without filing an application for an amendment. The department's determination as to whether information is supplemental or whether an application for amendment is required is conclusive."

**Section 11.** Section 75-20-215, MCA, is amended to read:

"**75-20-215. Filing fee — accountability — refund — use.** (1) (a) A filing fee must be deposited in the state special revenue fund for the use of the department in administering *Title 75, chapter 1, and* this chapter. The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application under this chapter.

The fee may not exceed the following scale based upon the estimated cost of the facility:

(i) 4% of any estimated cost up to $1 million; plus

(ii) 1% of any estimated cost over $1 million and up to $20 million; plus

(iii) 0.5% of any estimated cost over $20 million and up to $100 million; plus

(iv) 0.25% of any amount of estimated cest over $100 million and up te $300 million; plus

(v) 0.125% of any amount of estimated cost over $300 million and up to $1 billion; plus

(vi) 0.05% of any amount of estimated cost over $1 billion.

(b) The department may allow in its discretion a credit against the fee payable under this section for the development of information or providing of services required under this chapter or required for preparation of an environmental impact statement *or assessment* under the Montana or national environmental policy acts. The applicant may submit the information to the department, together with an accounting of the expenses incurred in preparing the information. The department shall evaluato the applicability, validity, and usefulness of the data and determine the amount that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that it is necessary to carry out its responsibilities under this chapter.

(2) (a) The department may contract with an applicant for the development of information, provision of services, and payment of fees required under this chapter. The contract may centinue an agreement entered into pursuant to 75-20-106. Payments made to the department under a contract must be credited against the fee payable pursuant te this section. Notwithstanding the provisions of this section, the revenue derived from the filing fee must be sufficient to enable the department, the board, and the agencies listed in 75-20-216~~(5)~~*(6)* to carry out their responsibilities under this chapter. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department, provided that ~~no one~~ *an* installment may *not* exceed 20% of the total filing fee provided for in subsection (1).

(3) The estimated cost of upgrading an existing transmission substation may not be included in the estimated cost of a proposed facility for the purpose of calculating a filing fee.

(4) If an application consists of a combination of two or more facilities, the filing fee must be based on the total estimated cost of the combined facilities.

(5) The applicant is entitled to an accounting of money expended and to a refund with interest at the rate of 6% a year of that portion of the filing fee not

HeinOnline -- 1997 vol. II 1513 1997

expended by the department in carrying out its responsibilities under this chapter. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(6) The revenue derived from filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its and the board's other responsibilities under this chapter."

**Section 12.** Section 75-20-216, MCA, is amended to read:

**"75-20-216. Study, evaluation, and report on proposed facility — assistance by other agencies.** (1) After receipt of an application, the department shall within ~~90~~ *60* days notify the applicant in writing that:

(a) the application is in compliance and is accepted as complete; or

(b) the application is not in compliance and shall list the deficiencies. Upon correction of these deficiencies and resubmission by the applicant, the department shall within 30 days notify the applicant in writing that the application is in compliance and is accepted as complete.

(2) Upon receipt of an application complying with 75-20-211 through 75-20-213, 75-20-215, and this section, the department shall commence an intensive study and evaluation of the proposed facility and its effects, considering all applicable criteria listed in 75-20-301 ~~and 75-20-503~~, and shall issue a decision, opinion, order, certification, or permit as provided in subsection (3). The department shall use, to the extent that it considers applicable, valid and useful existing studies and reports submitted by the applicant or compiled by a state or federal agency.

(3) ~~The~~ *Except as provided for in [section 1], the* department shall issue within 1 year following the date of acceptance of an application ~~and the board of environmental review, if applicable, within an additional 6 months shall issue~~ any decision, opinion, order, certification, or permit required under the laws, *other than those contained in this part,* administered by the department ~~or the board of environmental review and this chapter~~. ~~The department and the board shall determine compliance with all standards, permit requirements, and implementation plans under their jurisdiction for the proposed location or any proposed alternate location in their decision, opinion, order, certification, or permit. The~~ *A* decision, opinion, order, certification, or permit, with or without conditions, ~~is conclusive on all matters that the department~~ *must be made under those laws.* ~~and the board administer, and on any of the criteria specified in 75-20-503(2) through (7) that are a part of the determinations made under the laws administered by the department and the board. Although the decision, opinion, order, certification, or permit issued under this subsection is conclusive, the board~~ *Nevertheless, the department* retains authority to make the determination required under 75-20-301~~(2)(c)~~*(1)(c) or (3).* The decision, opinion, order, certification, or permit must be used in the final site selection process. Prior to the issuance of a preliminary decision by the department and pursuant to rules adopted by the ~~board~~ *department*, the department shall provide an opportunity for public review and comment.

(4) ~~Within 22 months~~ *Except as provided in [section 1], within 1 year* following acceptance of an application for a facility ~~as defined in 75-20-104(8)(a)~~

HeinOnline -- 1997 vol. II 1514 1997

~~and (8)(d) and for a facility as defined in 75-20-104(8)(b) and (8)(c) that is more than 30 miles in length and within 1 year for a facility as defined in 75-20-104(8)(b) and (8)(c) that is 30 miles or less in length~~, the department shall ~~make a report to the board~~ *issue a report* that must contain the department's studies, evaluations, recommendations, other pertinent documents resulting from its study and evaluation, and an environmental impact statement or analysis prepared pursuant to the Montana Environmental Policy Act, if any. If the application is for a combination of two or more facilities, the department shall ~~make its report to the board~~ *issue its report* within the greater of the lengths of time provided for in this subsection for either of the facilities.

*(5) For projects subject to joint review by the department and a federal land management agency, the department's certification decision may be timed to correspond to the record of decision issued by the participating federal agency.*

~~(5)~~*(6)* The departments of transportation; commerce; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of expertise. The report may include opinions as to the advisability of granting, denying, or modifying the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the costs of compiling information and issuing the required report."

**Section 13.** Section 75-20-225, MCA, is amended to read:

**"75-20-225. Certificate renewal — application — contents — filing fee.** (1) A certificate holder for a facility, as defined in 75-20-104(8)(a)(i) *or (8)(b)*, may apply for renewal of a certificate prior to the certificate lapsing.

(2) An applicant for a renewal of a certificate shall file with the department an application in the form that the board requires by rule.

(3) An application for renewal of a certificate must include updated information on the matters listed in 75-20-211(1)(a) that have changed since the original application and other information that the board requires by rule for certification. The matters listed in 75-20-211~~(1)(a)(iv)~~*(1)(a)(iii)* and ~~(1)(a)(v)~~ *(1)(a)(iv)* for the alternate locations must be updated only if the board determines that within the certified location significant changes have occurred to warrant a review of alternate locations.

(4) An application filed under subsection (1) must comply with the provisions of 75-20-211(3) through (5).

(5) Except as provided in this subsection, the applicant shall pay a filing fee to the department in accordance with 75-20-215(2). The fee is in addition to any previous filing fee paid for processing the original application for a certificato pursuant to 75-20-215. The fee may not exceed the following scale:

(a) 0.125% of any estimated cost up to $300 million; plus

(h) 0.063% of any estimated cost over $300 million."

**Section 14.** Section 75-20-226, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1515 1997

**"75-20-226. Renewal study — *renewal hearing — decision.*** (1) Upon receipt of a completed application for renewal of a certificate, the department shall evaluate the updated information and any significant changes in ~~need,~~ alternatives, technology, baseline environment, and the environmental impacts of a facility that have taken place since the original study performed in granting the certificate, considering the applicable criteria listed in 75-20-301 ~~and 75-20-503~~ and the original ~~board~~ *department* findings and certificate conditions.

(2) The department ~~and the board~~, within 10 months of acceptance of a complete renewal application, shall complete the statutory duties established in 75-20-216(3). Any air or water quality decision, opinion, order, certification, or permit must be used as part of ~~their~~ *its* decisionmaking process under ~~75-20-227 and subsection~~ *subsections* (3)*, (5), and (6)* ~~of this section~~ *of this section.*

(3) Within 12 months following acceptance of a complete application for renewal of a certificate, the department shall ~~make a report to the board~~ *issue a report.* This report must contain the department's studies, evaluations, recommendations, and other pertinent documents resulting from its study and evaluation and an updated environmental impact statement or analysis pursuant to the Montana Environmental Policy Act. The department's report must be directed to the question of whether the original ~~board~~ *department* findings and conditions have been or need to be altered as a result of any significant changes in ~~need,~~ alternatives, technology, baseline environment, or environmental impact since issuance of the certificate, considering the applicable criteria listed in 75-20-301 ~~and 75-20-503~~.

(4) The departments of transpertation; commerce; fish, wildlife, and parks; natural resources and conservation; revenue; and public service regulation shall report to the department information relating to the impact of the proposed site on each department's area of responsibility. The report may include opinions as to the advisability of renewing the certificate. The department shall allocate funds obtained from filing fees to the departments making reports to reimburse them for the cost of compiling information and issuing the required reports.

*(5) Within 45 days after completion of the report pursuant to 75-20-226, the department shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the renewal application or renewing the certificate with such changes in the terms and conditions as the board considers appropriate.*

*(6) The department may not renew a certificate either as proposed by the applicant or as modified by the department unless it finds and determines that the criteria in 75-20-301, considering any significant changes in need, alternatives, technology, baseline environment, and environmental impact, have been met."*

**Section 15.** Section 75-20-301, MCA, is amended to read:

**"75-20-301. Decision of ~~board~~ *department* — findings necessary for certification.** (1) ~~Within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon the terms, conditions, or modifications of the construction, operation, or maintenance of the facility that the board~~

HeinOnline -- 1997 vol. II 1516 1997

~~considers appropriate.~~ *Within 45 days after issuance of the report pursuant to 75-20-216, for facilities defined in 75-20-104(8)(c) and (8)(d),*

~~(2) The board may not grant a certificate unless it finds and determines~~ *the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines*:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

~~(d) each of the criteria listed in 75-20-503;~~

~~(e)~~*(d)* in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

~~(f)~~*(e)* that the location of the facility as proposed conforms to applicable state and local laws and regulations, except that the ~~board~~ *department* may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside the directly affected government subdivisions;

~~(g)~~*(f)* that the facility will serve the public interest, convenience, and necessity;

~~(h)~~*(g)* that the department or board has issued any necessary air or water quality decision, opinion, order, certification, or permit as required by 75-20-216(3); and

~~(i)~~*(h)* that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands ~~and compatible with the environmental criteria listed in 75-20-503~~.

~~(3)~~*(2)* In determining that the facility will serve the public interest, convenience, and necessity under subsection ~~(2)(g)~~ *(1)(f)*, the ~~board~~ *department* shall consider:

(a) the items listed in subsections ~~(2)(a)~~ *(1)(a)* and ~~(2)(b)~~ *(1)(b)*;

(b) the benefits to the applicant and the state resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

HeinOnline -- 1997 vol. II 1517 1997

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

~~(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant apply only to utility facilities described in 75-20-104(8)(a)(i), (8)(b), (8)(c), and (8)(d).~~

*(3) Within 45 days after issuance of the report pursuant to 75-20-216, for facilities defined in 75-20-104(8)(a), (8)(b), and (8)(e) through (8)(g), the department shall approve a facility as proposed or as modified or an alternative to a proposed facility if the department finds and determines:*

*(a) that the facility or alternative incorporates all reasonable, cost-effective mitigation of significant environmental impacts; or*

*(b) that unmitigated impacts, including those that cannot be reasonably quantified or valued in monetary terms, do not pose any threat of serious injury or damage to:*

*(i) the environment; or*

*(ii) the social and economic conditions of inhabitants of the affected area; or*

*(iii) the health, safety, or welfare of area inhabitants.*

*(4) To be considered an alternative to a proposed facility defined in 75-20-104(8)(a) and (8)(b), the alternative must:*

*(a) meet the objective of the applicant's proposal;*

*(b) be available to the applicant; and*

*(c) be reasonable and specific to the applicant's proposed site.*

*(5) Consideration of alternatives for facilities defined in 75-20-104(8)(c) and (8)(d) may not be a basis for requiring considerations of alternative sites for facilities defined in 75-20-104(8)(a) and (8)(b).*

*(6) For facilities defined in 77-20-104(8), if the department cannot make the findings required in 75-20-301, it shall deny the certificate."*

**Section 16.** Section 75-20-302, MCA, is amended to read:

**"75-20-302. Conditions imposed.** (1) If the ~~board~~ *department* determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon the modification, provided that the persons residing in the area affected by the modification have been given reasonable notice of the modification.

~~(2) In making its findings under 75-20-301(2)(a) for a facility defined in 75-20-104(8)(a)(i), the board may condition a certificate upon actual load growth reaching a specified level or on availability of other planned energy resources.~~

*(2) The department may require the applicant to post performance bonds to guarantee successful reclamation and revegetation of the project area."*

HeinOnline -- 1997 vol. II 1518 1997

**Section 17.** Section 75-20-303, MCA, is amended to read:

**"75-20-303. Opinion issued with decision — contents.** (1) In rendering a decision on an application for a certificate, the ~~board~~ *department* shall issue an opinion stating its reasons for the action taken.

(2) If the ~~board~~ *department* has found that any regional or local law or regulation that would be otherwise applicable is unreasonably restrictive, it shall state in its opinion the reasons that it is unreasonably restrictive.

(3) ~~Any~~ *A* certificate issued by the ~~board~~ *department* must include the following:

(a) an environmental evaluation statement related to the facility being certified. The statement must include hut is not limited to analysis of the following information:

(i) the environmental impact of the proposed facility; and

(ii) any adverse environmental effects that cannot be avoided by issuance of the certificate;

(b) a plan for monitoring environmental effects of the proposed facility;

(c) a plan for monitoring the certified facility site between the time of certification and completion of construction;

(d) a time limit as provided in subsection (4); and

(e) a statement signed by the applicant showing agreement to comply with the requirements of this chapter and the conditions of the certificate.

(4) (a) The ~~board~~ *department* shall issue as part of the certificate the following time limits:

(i) For a facility as defined in 75-20-104~~(8)(b)~~*(8)(c)* or ~~(8)(c)~~*(8)(d)* that is more than 30 miles in length, construction must he completed within 10 years.

(ii) For a facility as defined in 75-20-104~~(8)(b)~~*(8)(c) or (8)(d)* that is 30 miles or less in length, construction must be completed within 5 years.

(iii) For a facility as defined in 75-20-104(8)(a), *(8)(b), and (8)(e) through (8)(g),* construction must begin within 6 years and continue with due diligence in accordance with preliminary construction plans estahlished in the certificate.

(b) Unless extended or renewed, a certificate lapses and is void if tho facility is not constructed or if construction of the facility is not commenced within the time limits provided in this sectlon.

(c) The time limit may be extended for a reasonable poriod upon a showing by the applicant to the ~~board~~ *department* that a geed faith effort is being undertaken to complete construction under subsections (4)(a)(i) and (4)(a)(ii) or to begin construction under subsection (4)(a)(iii). Under this suhsection, a good faith effort includes the process of acquiring any necessary state or federal permit or certificate for the facility and the process of judicial review of a pormit or certificate."

HeinOnline -- 1997 vol. II 1519 1997

**Section 18.** Section 75-20-304, MCA, is amended to read:

**"75-20-304. Waiver of provisions of certification proceedings.** (1) The ~~board~~ *department* may waive compliance with any of the provisions of 75-20-216 ~~through 75-20-222, 75-20-501,~~ and this part if the applicant makes a clear and convincing showing to the ~~board~~ *department* at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 ~~through 75-20-222, 75-20-501,~~ and this part.

(2) The ~~board~~ *department* may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The ~~board~~ *department* shall waive compliance with the requirements of 75-20-301~~(2)(c)~~*(1)(c)*, ~~(3)(b)~~ *(2)(b)*, and ~~(3)(c)~~ *(2)(c)* and the requirements of 75-20-211~~(1)(a)(iv)~~*(1)(a)(iii)* and ~~(1)(a)(v)~~*(1)(a)(iv)*~~,~~ *and* 75-20-216(3)~~, and 75-20-303(3)(a)(iv)~~ relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the ~~board~~ *department* at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution ~~such a~~ *the* waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in 75-20-104~~(8)(b)~~*(8)(c)*, ~~(8)(c)~~ *(8)(d)*, ~~(8)(d)~~ *(8)(e)*, or ~~(8)(e)~~ *(8)(f)*, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in 75-20-104(8)(a) *or (8)(b)* to the extent that the process or portion of the facility is not subject to an air or water quality permit issued by the department ~~or board~~.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection must be credited toward the fee paid under 75-20-215 to

HeinOnline -- 1997 vol. II 1520 1997

the extent that the data or evidence presented at the hearing or the decision of the ~~board~~ *department* under subsection (3) can be used in making a certification decision under this chapter.

(7) The ~~board~~ *department* may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

**Section 19.** Section 75-20-402, MCA, is amended to read:

"**75-20-402. Monitoring.** The ~~board and the~~ department shall monitor the operations of all certificated facilities for ensuring continuing compliance with this chapter and certificates issued under this chapter and for discovering and preventing noncompliance with this chapter and the certificates. The applicant shall pay all expenses related to the monitoring plan estahlished in 75-20-303(3)(b) or (3)(c) to the extent federal funds available for the facility, as determined by the department, have not been provided for those purposes."

**Section 20.** Section 75-20-403, MCA, is amended to read:

"**75-20-403. Revocation or suspension of certificate.** Following notice and an opportunity for a hearing, a certificate may be revoked or suspended by the ~~board~~ *department*:

(1) for any material false statement in tlie application or in accompanying statements or studies required of the applicant if a true statement would have warranted tlie ~~board's~~ *department's* refusal to grant a certificate;

(2) for failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) for violation of any provision of tbis chapter, the rules issued ~~thereunder~~ *under this chapter*, or orders of the ~~board or~~ department."

**Section 21.** Section 75-20-406, MCA, is amended to read:

"**75-20-406. Judicial review of board ~~and department~~ decisions.** (1) ~~Any active party, as defined in 75-20-221,~~ *A person* aggrieved hy the final decision of the board on an application for a certificate may obtain judicial review of that decision by tlie filing of a petition in a state district court of competent jurisdiction.

(2) The judicial review procedure is tlie ~~same as that~~ *procedure* for contested cases under the Montana Administrative Procedure Act.

(3) When tlie ~~board or department conducts hearings pursuant to 75-20-216(3) and 75-20-218 and the~~ applicant is granted a permit or certification, with or without conditions, pursuant to the laws administered by the department and the board and this chapter, the decision may he appealed only in conjunction with tlie final decision of tlie board as provided in *[section 2] and* subsections (1) and (2) *of this section*. If an air or water quality permit or certification is denied hy tlie department or the hoard, the applicant may:

(a) appeal the denial under the appellate review procedures provided in the air and water quality laws administered by the department and the board; or

HeinOnline -- 1997 vol. II 1521 1997

(b) reserve the right to appeal the denial by the department or the board until after the board has issued a final decision *as provided in [section 2].*

(4) ~~Nothing in this~~ *This* section may *not* be construed to prohibit the board from holding a hearing as provided in this section on all matters that are not the subject of a pending appeal by the applicant under subsection (3)(a)."

**Section 22.** Section 75-20-1202, MCA, is amended to read:

**"75-20-1202. Definitions.** As used in 75-20-201, ~~through~~ 75-20-203, and this part, the following definitions apply:

(1) "Facility", as defined in 75-20-104(8), is further defined to include any nuclear facility as defined in subsection (2)(a).

(2) (a) "Nuclear facility" means each plant, unit, or other facility designed for or capable of:

(i) generating 50 megawatts of electricity or more by means of nuclear fission;

(ii) converting, enriching, fabricating, or reprocessing uranium minerals or nuclear fuels; or

(iii) storing or disposing of radioactive wastes or materials from a nuclear facility.

(b) Nuclear facility does not include any small-scale facility used solely for educational, research, or medical purposes not connected with the commercial generation of energy."

**Section 23.** Section 75-20-1205, MCA, is amended to read:

**"75-20-1205. Emergency approval authority invalid for nuclear facilities.** Notwithstanding the provisions of 75-20-304(2) and (3), the board may not waive compliance with any of the provisions of ~~this part or~~ 75-20-201 ~~through~~ *and* 75-20-203 *or this part* relating to certification of a nuclear facility."

**Section 24. Repealer.** Sections 75-20-202, 75-20-205, 75-20-218, 75-20-220, 75-20-221, 75-20-222, 75-20-227, 75-20-501, and 75-20-503, MCA, are repealed.

**Section 25. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 75, chapter 20, and the provisions of Title 75, chapter 20, apply to [sections 1 through 3].

**Section 26. Applicability.** A person who, prior to January 1, 1997, has filed a correct and complete air quality permit application with the department of environmental quality for a power plant capable of generating less than 150 megawatts is not subject to the provisions of Title 75, chapter 20.

**Section 27. Effective date.** [This act] is effective July 1, 1997.

Approved April 21, 1997

HeinOnline -- 1997 vol. II 1522 1997

# CHAPTER NO. 330

[SB 273]

AN ACT ALLOWING FOR THE SUBORDINATION OF A WATER RESERVATION TO A CERTIFICATE OF WATER RIGHT; AMENDING SECTIONS 85-2-316 AND 85-2-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-316, MCA, is amended to read:

"**85-2-316. Reservation of waters.** (1) The state or any political subdivision or agency of the state or the United States or any agency of the United States may apply to the department to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its trihutaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant uuless waived by the department upon a showing of good cause by the applicant.

HeinOnline -- 1997 vol. II 1523 1997

(4) (a) The department may not adopt an order reserving water unless the applicant establishes to the satisfaction of the department by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the department may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends te use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The department sball limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams ~~can~~ *may* be allocated at the discretion of the department.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may issue the permit subject to terms and conditions that it considers necessary for the protection of tbe objectives of the reservation.

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, sball inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and he responsihle, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budgot limitations, to develop a plan.

(b) Upon actual application of water to the proposed heneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect tlie appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9), as follows:

(a) A reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a water reservation in a basin in which no otlier notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a reservation.

(b) Upon receiving a notice of intention to apply for a water reservation, the department shall identify all potential water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the department may extend the time for preparing tlie application.

(d) The department may by order subordinate a water reservation to a permit *or a certificate for ground water development* issued pursuant to this part if:

HeinOnline -- 1997 vol. II 1525 1997

(i) the permit application *or the notice of completion of ground water development* was accepted by the department before the date of the order granting the reservation; ~~and~~

(ii) the effect of subordinating the reservation to one or more permits *or certificates for ground water development* does not interfere substantially with the purpose of the reservation*; and*

*(iii) in the case of a certificate for ground water development, the reservant consents to the subordination.*

(e) The department shall by order establish the relative priority of reservations approved under this section that have the same day of priority. A reservation may not adversely affect any rights in existence at that time.

(10) The department shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. When the objectives of the reservation are not being met, the department may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.

(11) The department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upen the fillng of a water right transfer certificate with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) ~~Nothing in this~~ *This* section ~~vests~~ *does not vest* the department with the authority to alter a water right that is not a reservation.

HeinOnline -- 1997 vol. II 1526 1997

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other stato agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

**Section 2.** Section 85-2-331, MCA, is amended to read:

"**85-2-331. Reservations within Missouri River basin and Little Missouri River basin.** (1) The state or an agency or political subdivision of the state or the United States or an agency of the United States that desires to apply for a reservation of water in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for reservations within the Missouri River basin and the Little Missouri River basin.

(3) (a) The department shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for reservations of water in tbe Missouri River basin above Fort Peck dam.

(b) The department shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) The departmient shall determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) Water reservations approved by the department under this section have a priority date of July 1, 1985, in tlie Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department ~~issues~~ *issued* a permit under Title 85, chapter 2, part 3, prior to tlie granting of a reservation under this section, the department may subordinate the reservation to the permit if it finds that the subordination does not interfere substantially witli the purpose of any reservation. *If the department issued a certificate for ground water development under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the department may subordinate the reservation to the certificate if it finds that the subordination does not interfere substantially with the purpose of any reservation and the reservant consents to the subordination.* The department shall by order establish the relative priority of applications approved under this section."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1997

HeinOnline -- 1997 vol. II 1527 1997

# CHAPTER NO. 331

[SB 286]

AN ACT PROVIDING FOR THE INSPECTION OF THE CONSTRUCTION OF A PUBLIC BUILDING OR ALTERATION OF PRIMARY FUNCTION AREAS FOR ACCESSIBILITY TO PERSONS WITH DISABILITIES; REQUIRING ACCESSIBLE EXTERIOR ROUTES; REGULATING THE ALTERATION OF A PRIMARY FUNCTION AREA; PROVIDING FOR A DISCLAIMER ON BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY; AMENDING SECTIONS 50-60-101, 50-60-201, AND 50-60-203, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Inspeetions.** (1) The construction of a public building or alteration to a primary function area of a public building must he inspected for physical accessibility to persons with disabilities.

(2) The inspection must include the building site, including applicable exterior features, such as parking areas, passenger loading zones, private sidewalks, and the accessibility from adjacent public sidewalks, public streets, and public transportation stops.

(3) (a) The inspections must be completed by state building inspectors in areas not covered by a municipal or county building code.

(b) (i) Municipalities and counties that have adopted a building code may assign appropriately trained personnel to perform site inspections conducted pursuant to this part.

(ii) Municipalities and counties conducting inspections pursuant te this section must have an enforcement mechanism in place to ensure compliance with the accessibility provisions of this part, including hut not limited to denying building permits or certificates of occupancy, injunctions, or otlier civil enforcement procedures allowed by law.

(4) Existing public buildings tliat are not undergoing an alteration to a primary function area are not subject to the inspection provisions of this section.

**Section 2. Disclaimer.** A building permit or certificate of occupancy issued by the state or by a municipality or county must contain a statement that reads: "Coinpliance witli tlie requirements of tlie state building code for pliysical accessibility to persons with disabilities does not necessarily guarantee compliance witli the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Fair Housing Amendments Act of 1988, Title 49, cbapter 2, commonly known as the Montana Human Rights Act, or otlier similar federal, state, or local laws that mandate accessibility to commercial construction or multifamily housing."

**Section 3. Aceessible exterior routes — exceptions.** (1) Except as provided in subsection (6), for a public building, an accessible exterior route must be provided from public transportation stops located within the boundary of tbe building site, from accessible parking and accessible passenger loading zones within the boundaries of tlie building si'te, and from public sidewalks that are

HeinOnline -- 1997 vol. II 1528 1997

immediately adjacent to the building site, if sidewalks exist, to the building's accessible entrance served by tbe transportation stops, parking and loading zones, or sidewalks.

(2) (a) When more than one public building is located on a site, at least one accessible exterior route must connect accessible elements, facilities, and buildings that are on the site.

(b) For the purposes of [section 4] and this section, "element" means an architectural or mechanical component of a public building, facility, space, or site and includes but is not limited te telephones, curb ramps, doors, drinking fountains, seating, and water closets.

(3) An accessihle exterior route between accessihle public parking and an accessihle building entrance must be the most practical direct route.

(4) (a) A person or entity constructing a public building is not required to fully comply with the provisions of this section if the person can demonstrate tbat due to characteristics of the terrain, it is structurally impractical to fully comply.

(b) Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features.

(c) The person or entity shall comply with the provisions of this section to the extent tbat compliance is not structurally impractical.

(d) The department shall adopt rules to assist all interested parties involved in the design, construction, and inspection processes in determining structural impracticality.

(5) (a) If a paved parking lot is not planned or present for a public building, a person or entity constructing the public building is not required to pave the entiro lot, unless otberwise reqnired by law, ordinance, or applicablo building code, but shall provide pavement or a similarly firm, stable, and slip-resistant surface for parking spaces designated for persons with disabilities.

(b) An accessihle exterior route with a suitably firm, stable, and slip-resistant surface must be provided from the designated parking spaces to an accessible building or facility entrance.

(c) The total number of designated accessible parking spaces in a parking lot or area must be the number provided for in the applicable state or local government building code.

(6) An accessible route is not required in cases wliere tliere is not a pedestrian route for the general public.

(7) Tbe state, municipalities, and counties shall use tho same accessibility standards.

**Section 4. Alteration of primary function area.** (1) An alteration that affects or could affect the use of or access to a primary function area in a public building must be made to ensure, to the extent possible, that the path of travel to the altered primary function area and the restrooms, telephones, and drinking

HeinOnline -- 1997 vol. II 1529 1997

fountains serving the altered primary function area are readily accessible and usable by persons with disabilities.

(2) (a) A person or entity is not required to make alterations to provide an accessible path of travel to an altered primary function area if in terms of cost and scope the alterations to the path of travel are disproportionate to the cost of the alterations to the primary function area. Alterations to a path of travel to an altered primary function area must be considered disproportionate if the cost exceeds 20% of the cost of the alterations to the primary function area. This subsection does not prohibit an expenditure to alter a path of travel that exceeds 20% of the cost of the alterations to a primary function area.

(b) If the cost of altering a path of travel to an altered primary function area is disproportionate as provided in subsection (2)(a), the path of travel must be made accessible to the extent possible without incurring disproportionate costs. The alterations to the path of travel must be made by providing, in the following order or priority:

(i) an accessible entrance and accessible exterior route to the accessible entrance from accessible parking and passenger loading zones or from a public sidewalk if the public sidewalk is immediately adjacent to the public building site;

(ii) an accessible path of travel to the altered primary function area;

(iii) accessible restrooms for each sex or a single unisex restroom when allowed by the applicable building code; and

(iv) accessible elements, including but not limitod to storage spaces and alarms.

(3) A person or entity subject to the provisions of this section is also subject to the provisions of [section 3(5)(a) and (5)(b)].

**Section 5.** Section 50-60-101, MCA, is amended to read:

**"50-60-101. Definitions.** As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

*(1) "Alteration" means any change, addition, or modification in construction or occupancy.*

~~(1)~~*(2)* "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" ~~shall~~ *must* be construed as though followed by the words "or part or parts ~~thereof~~ *of the building*".

~~(2)~~*(3) (a)* "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or *any* compilation ~~thereof~~ enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

*(b)* The term does not include zoning ordinances.

HeinOnline -- 1997 vol. II 1530 1997

~~(3)~~*(4)* "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

~~(4)~~*(5)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(5)~~*(6)* "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

~~(6)~~*(7) (a)* "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation. ~~"Factory-built building"~~

*(b) The term* does not include manufactured housing constructed after June 15, 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

~~(7)~~*(8)* "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

~~(8)~~*(9)* "Local legislative body" means the council or commission charged with governing the municipality.

~~(9)~~*(10)* "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection ~~(10) of this section~~ *(11)*.

~~(10)~~*(11)* (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the department may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 1/2 miles of the corporate limits of a municipality.

(c) Distances ~~shall~~ *must* be measured in a straight line in a horizontal plane.

*(12) "Primary function area" means an area of a building or facility in which a major activity for which the building or facility is designed is carried out. Primary function areas include but are not limited to a customer service lobby of a savings institution, a cafeteria dining area, and meeting rooms of a conference center. Areas that are not primary function areas include but are not limited to*

*boiler rooms, storage rooms, employee lounges, janitorial closets, entrances, corridors, and restrooms.*

*(13) "Public building" means a building or facility owned or operated by a governmental entity or a private sector building or facility that is open to members of the public.*

*(14) "Public sidewalk" means a sidewalk located in a public right-of-way.*

~~(11)~~*(15)* "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

~~(12)~~*(16)* "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

*(17) "Site" means a parcel of land bounded by property lines or a designated portion of a public right-of-way.*

~~(12)~~*(18)* "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~(14)~~*(19)* "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

**Section 6.** Section 50-60-201, MCA, is amended to read:

"**50-60-201. Purpose of state building code.** The state building code ~~shall~~ *must* be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials ~~consonant~~ *consistent* with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements ~~which~~ *that* tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements ~~which~~ *that* tend to ~~increase~~ unnecessarily *increase* construction costs, ~~retard~~ unnecessarily *prevent* the use of proven new materials ~~which~~ *that* have been found adequate through experience or testing, or provide

HeinOnline -- 1997 vol. II 1532 1997

unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

*(4) ensure that any newly constructed public buildings and certain altered public buildings are readily accessible to and usable by persons with disabilities, according to the principles applicable to accessibility to public buildings for persons with disabilities in the state building code;*

~~(4)~~*(5)* ~~ensure that any new buildings constructed with public funds are accessible to and functional for physically handicapped persons according to the principles applicable to accessibility to public buildings for handicapped persons adopted, recommended, or issued as Part II, Uniform Federal Accessibility Standards, as it reads in the Federal Register dated August 7, 1984, and as the department may amend by rule to reflect changes in the principles~~ *ensure statewide uniformity in the inspection and enforcement of exterior features of all newly constructed public buildings and certain altered public buildings, including building sites, for physical accessibility to people with disabilities*;

~~(5)~~*(6)* encourage efficiencies of design and insulation ~~which~~ *that* enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of ~~such~~ *the* equipment;

~~(6)~~*(7)* encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems ~~which~~ *that* promote the efficient use of energy."

**Section 7.** Section 50-60-203, MCA, is amended to read:

**"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, *accessibility to persons with disabilities,* sanitation, and conservation of energy. The department may amend or repeal the rules.

(b) In adopting rules concerning the conservation of energy, the department shall conform those rules to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances in single-family dwellings."

HeinOnline -- 1997 vol. II 1533 1997

**Section 8. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 50, chapter 60, part 2, and the provisions of Title 50, chapter 60, part 2, apply to [sections 1 through 4].

**Section 9. Applicability.** [This act] applies to the construction or alteration of buildings subject to the provisions of [this act] for which the applicable building permits are obtained on or after October 1, 1997.

Approved April 21, 1997

# CHAPTER NO. 332

[SB 310]

AN ACT PROVIDING AN ALTERNATIVE FAIR MARKET SECURITY ASSURANCE FOR RENEWABLE RESOURCE LOANS TO WATER USERS' ASSOCIATIONS; INCREASING THE DOLLAR AMOUNT FOR CERTAIN LOANS; AUTHORIZING THE DEPABTMENT OF NATURAL RESOURCES AND CONSERVATION TO ATTACH ADDITIONAL PROPERTY TO SECURE LOANS; PROVIDING THAT LOAN FUNDS MAY NOT BE USED FOR PROJECT OPERATION AND MAINTENANCE; AMENDING SECTIONS 85-1-603, 85-1-613, AND 85-1-615, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-1-603, MCA, is amended to read:

**"85-1-603. Renewable resource loan debt service fund created — coal severance tax allocated — renewable resource loan loss reserve fund created.** (1) (a) There is created a renewable resource loan debt service fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan debt service fund, as received:

(i) 0.95% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35;

(ii) any principal and accrued interest under 85-1-613~~(4)(a)~~*(5)(a)* received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(iii) all interest income earned on proceeds of renewable resource grant and loan program bonds;

(iv) revenue or money otherwise required to be paid into the renewable resource grant and loan program state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the renewable resource loan loss reserve fund as the result of a loan loss.

(2) (a) There is a renewable resource loan loss reserve fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the renewable resource loan loss reserve fund all accrued interest under 85-1-613~~(4)(b)~~*(5)(b)* received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the renewable resource loan loss reserve fund must be transferred to the renewable resource loan debt servico fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."

**Section 2.** Section 85-1-613, MCA, is amended to read:

"**85-1-613. Limits on loans.** (1) ~~A~~ *A* loan to a private person *that is not a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2,* for a renewable resource grant and loan program project may not be made from the renewable resource grant and loan program state special revenue account or the renewable resource loan proceeds account if the loan exceeds the lesser of ~~$200,000~~ *$200,000* or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors *that* it considers important.

*(2) A loan to a private person that is a water users' association or ditch company organized and incorporated pursuant to Title 85, chapter 6, part 1, or Title 35, chapter 1, part 2, may not be made from the renewable resouree grant and loan program state special revenue account or the renewable resouree loan proceeds account if the loan would exceed the lesser of $300,000 or an amount representing the annual debt service on the loan that would exceed 80% of the annual net revenue of the system that would be pledged for payment of the loan. In determining the amount of annual net revenue that may be pledged for payment of the loan, annual expenses for operation and maintenance must be subtracted from the gross revenue of the system.*

~~(2)~~*(3)* A loan to the state or a local government for a renewable resource grant and loan program project may not be made by the department from the renewable resource grant and loan program state special revenue account or renewable resource loan proceeds account if the loan exceeds the lesser of ~~$200,000~~ *$200,000* or the project sponsor's remaining debt capacity.

~~(3)~~*(4)* The period for repayment of loans may not exceed 30 years.

~~(4)~~*(5)* The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.

*(6) A loan made under this part may not be used for the cost of operation and maintenance of a project."*

HeinOnline -- 1997 vol. II 1535 1997

**Section 3.** Section 85-1-615, MCA, is amended to read:

**"85-1-615. Security interests — purchase, operation, and resale of encumbered property.** (1) The state has a lien upon a project constructed with money from the renewable resource grant and loan state special revenue account or the renewable resource loan proceeds account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, *shares of stock in a water users' association, revenue of a water users' association, accounts receivable of a water users' association, water purchase agreements,* and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under 85-1-604(3)(d) or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and *that* the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in subsection (2)(a) and operate property as provided in subsection (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower."

**Section 4. Applicability.** (1) [This act] applies retroactively, within the meaning of 1-2-109, to loans made by the department of natural resources and conservation from the renewable resource grant and loan program to water users' associations for existing projects that were initiated after July 1, 1995.

(2) [This act] applies to loans made by the department of natural resources and conservation from the renewable resource grant and loan program to water users' associations for new projects initiated after [the effective date of this act].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1997

HeinOnline -- 1997 vol. II 1536 1997

# CHAPTER NO. 333

[SB 369]

AN ACT REVISING THE LAW RELATING TO ENDANGERING THE WELFARE OF CHILDREN; PROHIBITING A PERSON FROM CONTACTING A CHILD LESS THAN 16 YEARS OF AGE FOR CERTAIN PURPOSES; AND AMENDING SECTION 45-5-622, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 45-5-622, MCA, is amended to read:

"**45-5-622. Endangering ~~the~~ welfare of children.** (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if ~~he~~ *the parent, guardian, or other person* knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not ~~he~~ *the parent, guardian, or other person* is supervising the welfare of the child, commits the offense of endangering the welfare of children if ~~he~~ *the parent, guardian, or other person* knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of an intoxicating substance by the child; or

(ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon ~~his~~ *the child's* place of residence without the consent of ~~his~~ *the child's* parents or guardian; or

(ii) engage in sexual conduct.

*(3) A parent, guardian, or other person supervising the welfare of a child less than 16 years of age may verbally or in writing request a person who is 18 years of age or older and who has no legal right of supervision or control over the child to stop contacting the child if the requestor believes that the contact is not in the child's best interests. If the person continues to contact the child, the parent, guardian, or other person supervising the welfare of the child may petition or the county attorney may upon the person's request petition for an order of protection under Title 40, chapter 15. To the extent that they are consistent with this subsection, the provisions of Title 40, chapter 15, apply. A person who purposely or knowingly violates an order of protection commits the offense of endangering the welfare of children and upon conviction shall be sentenced as provided in subsection (4).*

~~(3)~~*(4)* A person convicted of endangering the welfare of children shall be fined *an amount* not to exceed $500 or *be* imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of

endangering the welfare of children shall be fined *an amount* not to exceed $1,000 or *be* imprisoned in the county jail for any term not to exceed 6 months, or both.

~~(4)~~*(5)* On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

~~(5)~~*(6)* The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

Approved April 21, 1997

# CHAPTER NO. 334

[SB 31]

AN ACT PROVIDING FOR CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS; AND PROVIDING APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Chemical treatment of sex offenders.** (1) A person convicted of a first offense under 45-5-502(3), 45-5-503(3), or 45-5-507(4) may, in addition to the sentence imposed under those sections, be sentenced to undergo medroxyprogesterone acetate treatment or its chemical equivalent, administered by the department of corrections or its agent pursuant to subsection (4).

(2) A person convicted of a second or subsequent offense under 45-5-502(3), 45-5-503, or 45-5-507 may, in addition to the sentence imposed under those sections, be sentenced to undergo medroxyprogesterone acetato treatment or its chemical equivalent, administered by the department of corrections or its agent pursuant to subsection (4).

(3) A person convicted of a first or subsequent offense under 45-5-502, 45-5-503, or 45-5-507 who is not sentenced to undergo medroxyprogesterone acetate treatment or its chemical equivalent may voluntarily undergo such treatment, which must be administered by the department of corrections or its agent and paid for by the department of corrections.

(4) Treatment under subsection (1) or (2) must begin 1 week before release from confinement and must continue until the department of corrections determines that the treatment is no longer necessary. Failure to continue treatment as ordered by the department of corrections constitutes a criminal contempt of court for failure to comply with the sentence, for which the sentencing court shall impose a term of incarceration without possibility of parole of not less than 10 years or more than 100 years.

(5) Prior to chemical treatment under this section, the person must be fully medically informed of its effects.

HeinOnline -- 1997 vol. II 1538 1997

(6) A state employee who is a professional medical person may not be compelled against the employee's wishes to administer chemical treatment under this section.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 5, and the provisions of Title 45 apply to [section 1].

**Section 3. Applicability.** [Section 1] applies to offenses committed after [the effective date of this act], except that subsection (3) of [section 1] also applies to offenses committed before [the effective date of this act].

Vetoed by Governor; veto overridden April 19, 1997

# CHAPTER NO. 335

[SB 271]

AN ACT PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY A MAJORITY OF THE MEMBERS OF THE ADMINISTRATIVE CODE COMMITTEE MAY NOT BE ADOPTED UNTIL THE END OF THE 6-MONTH PERIOD DURING WHICH THE RULE MUST BE ADOPTED, UNLESS PRIOR TO THAT TIME, THE COMMITTEE MEETS AND DOES NOT MAKE THE SAME OBJECTION; PROVIDING THAT AN ADMINISTRATIVE RULE OBJECTED TO BY THE ADMINISTRATIVE CODE COMMITTEE BEFORE THE RULE IS ADOPTED IS IN SOME CIRCUMSTANCES NOT EFFECTIVE UNTIL AFTER ADJOURNMENT OF THE NEXT REGULAR SESSION OF THE LEGISLATURE; AMENDING SECTIONS 2-4-305 AND 2-4-306, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-4-305, MCA, is amended to read:

**"2-4-305. Requisites for validity — authority and statement of reasons.** (1) The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ *register*, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation

HeinOnline -- 1997 vol. II 1539 1997

to the specific section or sections in the Montana Code Annotated that the rule purports to implement.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must he within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule adopted is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) A rule is not valid unless it is adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended propesal notice or the adoption notice to correct deficiencies in statements of reasonable necessity, in citations of authority for rules, and in citations of sections implemented by rules.

*(9) If a majority of the members of the administrative code committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."*

**Section 2.** Section 2-4-306, MCA, is amended to read:

**"2-4-306. Filing, format, and effective date — dissemination of emergency rules.** (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

HeinOnline -- 1997 vol. II 1540 1997

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules ~~which~~ *that* are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance ~~therewith~~ *with this chapter*. ~~He~~ *The secretary of state* shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, ~~which shall~~ *that must* be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing ~~such~~ copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403 or the revenue oversight committee has conducted a poll in accordance with 5-18-109, the results of the poll ~~shall~~ *must* be published with the rule.

(4) Each rule ~~shall become~~ *is* effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ *is* the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule ~~shall become~~ *is* effective immediately upon filing with the secretary of state or at a stated date following publication in the register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons ~~therefor shall~~ *for the finding must* be filed with the rule. The agency shall take appropriate measures to make emergency rules known to ~~every~~ *each* person who may be affected by them.

*(c) if, following written administrative code committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):*

*(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or*

*(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns."*

**Section 3. Applicability.** [This act] applies to rules objected to under [this act] after [the effective date of this act].

Vetoed by Governor; veto overridden April 19, 1997

HeinOnline -- 1997 vol. II 1541 1997

# CHAPTER NO. 336

[HB 20]

AN ACT PROVIDING A TEMPORARY FISHING LICENSE FOR MONTANA RESIDENTS; REQUIRING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SET THE TERMS AND CONDITIONS OF THE LICENSE BY ADMINISTRATIVE RULE; PROVIDING THAT A PORTION OF THE LICENSE FEE BE USED TO PURCHASE RECREATIONAL FACILITIES IN A LIKE MANNER AS OTHER FISHING LICENSE FEES; AND AMENDING SECTION 87-1-605, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Class A-8—resident temporary fishing license.** (1) Any resident, as defined in 87-2-102, who is a holder of a valid wildlife conservation license is entitled to a resident temporary fishing license authorizing the holder to fish with hook and line in designated waters, for a poriod of time determined by the commission and indicated on tbe license, upon payment to any agent of the department authorized to issue fishing licenses of the amount determined by tbe commission. Cost of the license and length of time for which the license is effective must be set:

(a) at an amount that is less than the Class A resident fishing license; and

(b) at an amount and for a length of time that the commission determines will serve at a reasonable price the needs of residents who fish occasionally.

(2) Terms and conditions of the license must be prescribed by rules of the commission.

**Section 2.** Section 87-1-605, MCA, is amended to read:

**"87-1-605. (Temporary) Fees used to purchase recreational facilities.** (1) One dollar of the fee for a Class A resident fishing license, *10% of the fee for a Class A-8 resident temporary fishing license,* $1 of the fee for a Class B-4 nonresident fishing license, and $5 of the fee for a Class B nonresident fishing license must be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation and maintenance must equal at least 50% of the money set aside each year under this section and must be expended as provided in subsection (3). The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses or stream, river, or lake frontages and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages but are in addition to those funds. The funds used for operation and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.

(3) Operation and maintenanco money set aside each year under this section must be expended based on the following priority:

(a) weed management;

(b) streambank restoration; and

(c) general operation and maintenance. (Terminates July 1, 1999—sec. 4, Ch. 428, L. 1995.)

**87-1-605. (Effective July 1, 1999) Fees used to purchase recreational facilities.** (1) One dollar of the fee for a Class A resident fishing license, *10% of the fee for a Class A-8 resident temporary fishing license,* $1 of the fee for a Class B-4 nonresident fishing license, and $5 of the fee for a Class B nonresident fishing license must be used for the purchase, operation, development, and maintenance of fishing accesses; stream, river, and lake frontages; and the land considered necessary to provide recreational use of fishing accesses and stream, river, and lake frontages.

(2) The amount of funds used for operation, development, and maintenance may not exceed 25% of the money set aside each year under this section. The funds raised under this section may not be used in lieu of any funds or sources of funds currently being used for acquisition or purchase of fishing accesses or stream, river, or lake frontages and the land considered necessary te provide recreational use of fishing accesses and stream, river, and lake frontages but are in addition to those funds. The funds used for operation, development, and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, part 3, and the provisions of Title 87, chapter 2, part 3, apply to [section 1].

Approved April 22, 1997

# CHAPTER NO. 337

[HB 68]

AN ACT ABOLISHING GOVERNMENTAL LIABILITY FOR NEGLIGENT TORT DAMAGES TO PERSONS INJURED ON THE PREMISES OF A CORRECTIONAL INSTITUTION WHILE SERVING A SENTENCE IMPOSED UPON CONVICTION OF A CRIME; AMENDING SECTION 2-9-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-9-108, MCA, is amended to read:

**"2-9-108. Limitation on governmental liability for damages in tort.** (1) ~~Neither the~~ *The* state, a county, municipality, taxing district, ~~nor~~ *or* any other political subdivision of the state is *not* liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $750,000 for each claim and $1.5 million for each occurrence.

*(2) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of negligence of an officer, agent, or employee of that entity by a person while the person was confined in or was otherwise in or on the premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction of a*

HeinOnline -- 1997 vol. II 1543 1997

*criminal offense. The immunity granted by this subsection does not extend to serious bodily injury or death resulting from negligence or to damages resulting from medical malpractice, gross negligence, willful or wanton misconduct, or an intentional tort. The subsection does not create an exception from the dollar limitations provided for in subsection (1).*

~~(2)~~*(3)* ~~No~~ *An* insurer is *not* liable for excess damages unless ~~such~~ *the* insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived."

**Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 3. Two-thirds vote required.** Because [section 1] abolishes governmental liability for negligent torts, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1997

# CHAPTER NO. 338

[HB 76]

AN ACT PROVIDING FOR CORRECTION OF ELECTOR ADDRESSES IN CONJUNCTION WITH MAILED BALLOT ELECTIONS; ALLOWING FORWARDING OF MAILED BALLOTS; REQUIRING ELECTION ADMINISTRATORS TO PROVIDE A FORM FOR THE ELECTOR TO CORRECT THE ELECTOR'S MAILING ADDRESS; PROVIDING THAT AN OTHERWISE VALID MAILED BALLOT THAT HAS NOT BEEN CORRECTED BY THE ELECTOR AS TO THE RETURN ADDRESS IS NOT A VALID BALLOT; AND AMENDING SECTIONS 13-19-106, 13-19-206, AND 13-19-311, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 13-19-106, MCA, is amended to read.

**"13-19-106. General requirements for mail ballot election.** A mail ballot election must be conducted substantially as follows:

(1) Official ballots must be prepared and all other initial procedures followed as otherwise provided hy law, except that mail hallots are not required to bave stubs.

(2) An official ballot must he mailed to every qualified elector of the political subdivision conducting the election.

HeinOnline -- 1997 vol. II 1544 1997

*(3) Each return/verification envelope must contain a form prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.*

~~(3)~~*(4)* The elector shall mark the ballot at home and place it in a secrecy envelope.

~~(4)~~*(5)* The elector shall then place the secrecy envelope containing ~~his~~ *the elector's* ballot in a return/verification envelope and shall return it hy mailing it or delivering it in person to a place of deposit designated by the election administrator so that it is received ~~prior to~~ *before* a specified time on election day.

~~(5)~~*(6)* Once returned, election officials shall first qualify the suhmitted ballot hy examining the return/verification envelope to determine whether it is submitted hy a qualified elector who has not previously voted.

~~(6)~~*(7)* If the ballot ~~so~~ qualifies and is otherwise valid, officials shall then opon the return/verification envelope and remove the secrecy envelope, which is then voted by depositing it unopened in an official hallot box.

~~(7)~~*(8)* After the close of polls on election day, voted ballots must be counted and canvassed as otherwise provided hy law."

**Section 2.** Section 13-19-206, MCA, is amended to read:

**"13-19-206. Distributing materials to electors — procedure.** For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot, except that the election administrator may include separate ballots for each type of election being held concurrently;

(b) a secrecy envelope;

(c) a return/verification envelope; and

(d) complete written instructions for voting and returning ballots; and

(3) ensure that each packet is:

~~(a) clearly marked on its face with words stating the appropriate postal regulation language to prohibit forwarding of the packet;~~

~~(b)~~*(a)* addressed to a single individual elector at the most current address available from the official registration records; and

~~(c)~~*(b)* deposited in the United States mail with sufficient prepaid postage for it to be delivered to the elector's address."

HeinOnline -- 1997 vol. II 1545 1997

**Section 3.** Section 13-19-311, MCA, is amended to read:

**"13-19-311. Valid ballots — requirements.** (1) Only valid ballots may be counted in an election conducted under this chapter.

(2) For the purpose of this chapter, a ballot is valid only if:

(a) it is sealed in the secrecy envelope and returned in the return/verification envelope;

(b) the elector's signature on the affidavit on the return/verification envelope is verified pursuant to 13-19-310; and

(c) it is received before 8 p.m. on election day.

(3) A ballot is invalid if:

(a) more than one ballot is enclosed in a single return/verification or secrecy envelope unless there are multiple elections being held at the same time and there is only one ballot for each election in the envelope; or

(b) any identifying marks are placed on the ballot by the elector.

*(4) Failure of an elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address in conjunction with a mailed ballot, as provided in 13-19-106, invalidates an otherwise valid mailed ballot."*

Approved April 22, 1997

# CHAPTER NO. 339

[HB 172]

AN ACT REVISING DEFINITIONS RELATED TO PERMANENT, TEMPORARY, AND SEASONAL POSITIONS; PROVIDING FOR A CATEGORY OF EMPLOYEE CALLED A SHORT-TERM WORKER; DEFINING "SHORT-TERM WORKER"; CLARIFYING PROVISIONS FROM WHICH CERTAIN EMPLOYEES ARE EXEMPT; REMOVING THE EXEMPT STATUS OF TEACHERS UNDER THE AUTHORITY OF THE DEPARTMENTS OF CORRECTIONS AND PUBLIC HEALTH AND HUMAN SERVICES; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ADMINISTER A STATE SICK-PAY PLAN; AMENDING SECTIONS 2-18-101, 2-18-102, 2-18-103, 2-18-104, 2-18-111, 2-18-304, 2-18-601, 2-18-603, 2-18-611, 2-18-618, 39-29-101, AND 39-30-103, MCA; REPEALING SECTION 2-18-605, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-18-101, MCA, is amended to read:

**"2-18-101. Definitions.** As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

HeinOnline -- 1997 vol. II 1546 1997

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may be used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(6) "Class series benchmark" means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.

(7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(8) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

(9) "Department" means the department of administration created in 2-15-1001.

(10) Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

(11) "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

(12) "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

(13) "Job sharing" means the sharing by two or more persons of a position ~~that is considered an aggregate or permanent position~~.

(14) "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.

(15) "Market salary" means the midpoint in a pay grade provided in 2-18-312, based on the average base salary that other employers pay to employees in comparable occupations as determined by the department's salary survey of the relevant labor market.

(16) "Permanent ~~position~~ *employee*" means ~~a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ *an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.*

(17) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period ~~in a permanent position~~.

(18) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

(19) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

(20) "Program" means a combination of planned efforts to provide a service.

(21) "Seasonal ~~position~~ *employee*" means a ~~position so designated on the appropriate agency list of authorized positions referenced in 2-18-206 and that is a permanent position but that is interrupted by the seasonal nature of the position~~ *permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.*

(22) *"Short-term worker" means a person who:*

*(a) is hired by an agency for an hourly wage established by the agency;*

*(b) may not work for the agency for more than 90 days in a continuous 12-month period;*

*(c) is not eligible for permanent status;*

*(d) may not be hired into another position by the agency without a competitive selection process; and*

*(e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance benefits provided in part 7.*

*(23)* "Temporary ~~position~~ *employee*" means ~~a position so designated on the appropriate agency list of authorized positions referenced in 2-18-206, created~~ *an employee who:*

*(a) is designated as temporary by an agency* for a definite period of time not to exceed ~~9~~ *12* months;

HeinOnline -- 1997 vol. II 1548 1997

*(b) performs temporary duties or permanent duties on a temporary basis;*

*(c) is not eligible for permanent status;*

*(d) is terminated at the end of the employment period; and*

*(e) is not eligible to become a permanent employee without a competitive selection process."*

**Section 2.** Section 2-18-102, MCA, is amended to read:

**"2-18-102. Personnel administration — general policy setting.** (1) Except as otherwise provided by law or collective bargaining agreement, the department shall:

(a) encourage and exercise leadership in the development of effective personnel administration within the several agencies in the state and make available the facilities of the department to this end;

(b) foster and develop programs for recruitment and selection of capable persons for ~~permanent, seasonal, temporary, and other types of positions~~ *employment* and for the improvement of employee effectiveness, including training, ethical conduct, safety, health, counseling, welfare, discipline, grievances, and evaluation for productivity and retention in permanent status;

(c) foster, develop, and promote job sharing in agencies;

(d) investigate from time to time the operation and effect of parts 1 and 2 of this chapter and the policies made under those parts and report the findings and recommendations to the governor;

(e) establish policies, procedures, and forms for the maintenance of records of all employees in the state service;

(f) apply and carry out parts 1 and 2 and the policies under those parts and perform any other lawful acts that may be necessary or desirable to carry out the purposes and provisions of parts 1 and 2.

(2) The department may delegate authority granted to it under parts 1 and 2 to agencies in the state service that effectively demonstrate the ability to carry out the provisions of parts 1 and 2, provided that the agencies remain in compliance with policies, procedures, timetables, and standards established by the department.

(3) The department shall develop and issue personnel policies for the state and shall adopt rules to implement this part, except 2-18-111. Adequate public notice must be given to all interested parties of proposed changes or additions to the personnel policies before the date on which they are to take effect. If requested by any of the affected parties, the department shall schedule a public hearing on proposed changes or additions to the personnel policies before the date on which they are to take effect.

(4) The department shall develop model rules of conduct for all state employees based upon the provisions of Title 2, chapter 2. The department shall provide employees with a pamphlet summarizing the provisions of Title 2,

HeinOnline -- 1997 vol. II 1549 1997

chapter 2. Each state agency shall adopt the model rules of conduct and additional rules appropriate to the specific circumstances of the agency."

**Section 3.** Section 2-18-103, MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** (1) Parts 1 ~~and 2~~ *through 3 and 10* do not apply to the following ~~positions~~ *officers and employees* in state government:

(a) elected officials;

(b) county assessors and their chief ~~deputy~~ *deputies*;

(c) employees of the office of consumer counsel;

(d) judges and employees of the judicial branch;

(e) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(f) officers or members of the militia;

(g) agency heads appointed by the governor;

(h) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(i) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

~~(j) teachers under the authority of the department of corrections or the department of public health and human services;~~

~~(k)~~*(j)* investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

~~(l)~~*(k)* four professional staff positions under the board of oil and gas conservation;

~~(m)~~*(l)* assistant director for security of the Montana state lottery;

~~(n)~~*(m)* executive director and senior investment officer of the Montana board of science and technology development;

~~(o)~~*(n)* executive director and employees of the state compensation insurance fund;

~~(p)~~*(o)* state racing stewards employed by the executive secretary of the Montana board of horseracing;

~~(q)~~*(p)* executive director of the Montana wheat and barley committee;

~~(r)~~*(q)* commissioner of banking and financial institutions; and

~~(s)~~*(r)* training coordinator for county attorneys.

HeinOnline -- 1997 vol. II 1550 1997

(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative branch, other than the office of consumer counsel:

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102."

**Section 4.** Section 2-18-104, MCA, is amended to read:

**"2-18-104. Exemption for personal staff — limit.** (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from ~~the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013~~ *parts 1 through 3 and 10.*

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 10."

**Section 5.** Section 2-18-111, MCA, is amended to read:

**"2-18-111. Hiring preference for residents of Indian reservations for state jobs within reservation — rules.** (1) A state agency that operates within an Indian reservation shall give a preference in hiring for ~~a position of~~ employment with the state agency to an Indian resident of the reservation who has substantially equal qualifications for the position.

(2) The commissioner of labor and industry shall enforce this section~~,~~ *and* investigate complaints of its violation~~,~~ and may adopt rules to implement this section.

(3) For the purposes of this section, the following definitions apply:

(a) *"Employment" means being employed as a permanent, temporary, or seasonal employee as defined in 2-18-101 for a state position. The term does not include:*

*(i) a state elected official;*

*(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;*

*(iii) appointment by an elected official to a public office if the appointment is provided for by law; or*

HeinOnline -- 1997 vol. II 1551 1997

*(iv) engagement as an independent contractor or employment by an independent contractor.*

*(b)* "Indian" means a person who is enrolled or who is a lineal descendant of a person enrolled upon an enrollment listing of the bureau of Indian affairs or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

~~(b) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position. The term does not include:~~

~~(i) a state elected office;~~

~~(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;~~

~~(iii) appointment by an elected official to a public office if the appointment is provided for by law; or~~

~~(iv) engagement as an independent contractor or employment by an independent contractor.~~

(c) "State agency" means a department, office, board, bureau, commission, agency, or other instrumentality of the executive or judicial branches of the government of this state."

**Section 6.** Section 2-18-304, MCA, is amended to read:

"**2-18-304. Longevity allowance.** (1) (a) (i) Effective July 1, 1995, through the last day of the pay period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied by the number of completed, contignous 5-year periods of uninterrupted state service.

(ii) Effective on the first day of the pay period that includes Octoher 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state servico must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) Service to the state is not interrupted by authorized leaves of ahsence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be

credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

*(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service."*

**Section 7.** Section 2-18-601, MCA, is amended to read:

**"2-18-601. Definitions.** For the purpose of this part, except 2-18-620, the following definitions apply:

(1) "Agency" means any legally constituted department, board, or commission of state, county, or city government or any political subdivision thereof.

(2) "Break in service" means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) "Continuous employment" means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(4) "Employee" means any person employed by an agency except elected state, county, and city officials, schoolteachers, and persons contracted as independent contractors or hired under personal services contracts.

(5) "Full-time employee" means an employee who normally works 40 hours a week.

(6) "Holiday" means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(7) "Part-time employee" means an employee who normally works less than 40 hours a week.

(8) "Permanent employee" means ~~an employee who is assigned to a position designated as permanent on the appropriate list of authorized positions referenced in 2-18-206 and approved as such in the biennium budget~~ *a permanent employee as defined in 2-18-101.*

(9) "Seasonal employee" means ~~an employee assigned to a position designated as seasonal on the appropriate agency list of authorized positions referenced in 2-18-206 and for which the agency has a permanent need but which is interrupted by the seasonal nature of the assignment~~ *a seasonal employee as defined in 2-18-101.*

*(10) "Short-term worker" means a short-term worker as defined in 2-18-101.*

~~(10)~~*(11)* "Sick leave" means a leave of absence with pay for a sickness suffered by an employee or ~~his~~ *a member of the employee's* immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606.

HeinOnline -- 1997 vol. II 1553 1997

~~(11)~~*(12)* ~~"Sick pay plan" means a plan that:~~

~~(a) provides for an agency to make payments in lieu of wages to employees on account of sickness or accident disability; and~~

~~(b) meets the requirements of 42 U.S.C. 409(b) or (d).~~

~~(12)~~ "Temporary employee" means ~~an employee assigned to a position designated as temporary on the appropriate agency list of authorized positions referenced in 2-18-206, created for a definite period of time not to exceed 9 months~~ *a temporary employee as defined in 2-18-101.*

~~(13)~~*(13)* "Transfer" means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

~~(14)~~*(14)* "Vacation leave" means a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."

**Section 8.** Section 2-18-603, MCA, is amended to read:

**"2-18-603. Holidays — observance when falling on employee's day off.** (1) *(a)* ~~Any~~ *A* full-time employee who is scheduled for a day off on a day ~~which~~ *that* is observed as a legal holiday, except Sundays, ~~shall be~~ *is* entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and ~~his~~ *the employee's* supervisor, whichever allows a day off in addition to the employee's regularly scheduled days off, provided the employee is in a pay status on ~~his~~ *the employee's* last regularly scheduled working day immediately before the holiday or on ~~his~~ *the employee's* first regularly scheduled working day immediately after the holiday.

*(b)* Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

*(c) A short-term worker may not receive holiday pay.*

(2) For purposes of this section, the term "employee" does not include nonteaching school district employees."

**Section 9.** Section 2-18-611, MCA, is amended to read:

**"2-18-611. Annual vacation leave.** (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned ~~shall~~ *must* be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees ~~shall~~ earn vacation credits. However, ~~such persons~~ *seasonal employees* must be employed *for* 6 qualifying months before they may use the vacation credits. In order to qualify, ~~such~~ *seasonal* employees ~~must~~ *shall* immediately report back for work when operations resume in order to avoid a break in service.

HeinOnline -- 1997 vol. II 1554 1997

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees ~~do not~~ earn vacation leave credits~~, except that a temporary employee who is subsequently hired into a permanent position within the same jurisdiction without a break in service and temporary employees who are employed continuously longer than 6 months may count as earned leave credits for the immediate term of temporary employment~~ *but may not use the credits until after working for 6 qualifying months.*

*(6) A short-term worker, as defined in 2-18-101, may not earn vacation leave credits, and time worked as a short-term worker does not apply toward the person's rate of earning vacation leave credits."*

**Section 10.** Section 2-18-618, MCA, is amended to read:

**"2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) *A short-term worker may not earn sick leave credits.*

*(6)* An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time ~~he~~ *the employee* terminates ~~his~~ employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits ~~he had~~ accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, ~~he~~ *the employee* is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

~~(6)~~*(7)* An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency may not be credited with ~~any~~ sick leave for which the employee has previously been compensated.

HeinOnline -- 1997 vol. II 1555 1997

~~(7)~~*(8)* Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

~~(8)~~*(9)* An employee may contribute any portion of ~~his~~ *the employee's* accumulated sick leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts ~~his~~ *the employee's* accumulated sick leave. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

~~(9)~~*(10)* A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave."

**Section 11.** Section 39-29-101, MCA, is amended to read:

"**39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs.

(3) "Disabled veteran" means a person:

(a) whether or not the person is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the department of veterans affairs or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(5) "Position" means a *position occupied by a* permanent, temporary, or seasonal ~~position~~ *employee* as defined in 2-18-101 for ~~a~~ *the* state ~~position~~ or a similar permanent, temporary, or seasonal ~~position~~ *employee* with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges charactorized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training; or

HeinOnline -- 1997 vol. II 1557 1997

(b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions."

**Section 12.** Section 39-30-103, MCA, is amended to read:

**"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a handicapped person determined by the department of public health and human services to have a 100% disability who is unable to use the employment preference because of the person's disability.

(2) "Handicapped person" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in ~~subsections~~ *subsection* (3)(a)~~(i) through (3)(a)(v)~~, current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in ~~subsections~~ *subsection* (3)(a)~~(i) through (3)(a)(v)~~, or current participants in a federally authorized employment program is not an initial hiring.

(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

HeinOnline -- 1997 vol. II 1558 1997

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(5) "Position" means a *position occupied by a* permanent or seasonal ~~position~~ *employee* as defined in 2-18-101 for ~~a~~ *the* state ~~position~~ or a *position occupied by a* similar permanent or seasonal ~~position~~ *employee* with a public employer other than the state. However, the term does not include:

(a) a *position occupied by a* temporary ~~position~~ *employee* as defined in 2-18-101 for ~~a~~ *the* state ~~position~~ or *a* similar temporary ~~position~~ *employee* with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

**Section 13. Repealer.** Section 2-18-605, MCA, is repealed.

**Section 14. Effective date.** [This act] is effective July 1, 1997.

Approved April 22, 1997

HeinOnline -- 1997 vol. II 1559 1997

# CHAPTER NO. 340

[HB 199]

AN ACT REQUIRING NOTICE TO THE SPONSOR OF A BILL THAT BECOMES LAW THAT INITIAL RULEMAKING IMPLEMENTING THE BILL HAS BEGUN; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-4-302, MCA, is amended to read:

"**2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice ~~shall~~ *must* include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views ~~thereon~~.

(2) (a) The notice ~~shall~~ *must* be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to *the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to* persons who have made timely requests to the agency for notice of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member ~~thereof which~~ *of those entities who* has filed a request with the administrative code committee when ~~such~~ *the* request has been forwarded to the agency as provided in subsection (2)(b).

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the Montana Administrative Register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice *required by subsections (1) and (2)(a)* ~~shall~~ *must* be published and mailed at least 30 days in advance of the agency's intended action.

*(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section.*

(3) If any statute provides for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained ~~herein~~ *in this section*. However, ~~in no case may~~ the notice period *may not* be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing ~~shall~~ *must* be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the administrative code

HeinOnline -- 1997 vol. II 1560 1997

committee, or by an association having not less than 25 members who will be directly affected.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not he followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing ~~herein~~ *in this section* alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of any hearing on the intended action, the person designated by the agency to preside at the hearing shall read aloud the "Notice of Function of Administrative Code Committee" appearing in the register.

*(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."*

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1997

# CHAPTER NO. 341

[HB 268]

AN ACT PROVIDING FOR MEDROXYPROGESTERONE ACETATE TREATMENT OR ITS CHEMICAL EQUIVALENT FOR CERTAIN SEX OFFENDERS; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upen the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

HeinOnline -- 1997 vol. II 1561 1997

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor

or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentenco or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentenco of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentenco of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was susponded.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program. *If [the person is subject to the provisions of [section 1 of Senate Bill No. 31]], the person shall also[, as provided in [section 1 of Senate Bill No. 31],] undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.*

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

**46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

HeinOnline -- 1997 vol. II 1563 1997

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up te the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant te the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentonce, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are impesod.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shali consider any elapsed time and either expressly allow part or all of it as a credit against the sentonce or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the impesition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was impesed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or susponded. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In impesing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. *If [the person is subject to the provisions of [section 1 of Senate Bill No. 31]], the person shall also [, as provided in [section 1 of Senate Bill No. 31],] undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.*

HeinOnline -- 1997 vol. II 1565 1997

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

**Section 2. Coordination instruction.** (1) If [section 1] of Senate Bill No. 31 is not passed and approved, then the bracketed language in that part of [section 1 of this act] that amends 46-18-201(10), in both versions, is void and the phrase "recommended by the department of corrections and included in the sentence" must be reinserted.

(2) If [section 1] of Senate Bill No. 31 is passed and approved, then:

(a) the words "medically safe" are inserted after "sentenced to underge" in each place in which that phrase appears in subsections (1) through (3) of [section 1] of Senate Bill No. 31;

(b) the words "or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both" are inserted after the word "equivalent" in each place in which "equivalent" appears in subsections (1) and (2) of [section 1] of Senate Bill No. 31; and

(c) the words "or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both," are inserted after the word "equivalent" in subsection (3) of [section 1] of Senate Bill No. 31.

**Section 3. Application.** [This act] applies to offenses committed after October 1, 1997.

Vetoed by Governor; veto overridden April 21, 1997

# CHAPTER NO. 342

[HB 202]

AN ACT ESTABLISHING MONTANA HIGHWAY 3 BETWEEN BILLINGS AND GREAT FALLS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Montana highway 3.** (1) The portion of Montana highway 3 and U.S. highway 12 from Billings to Harlowton via Lavina, proceeding north on U.S. highway 191 to U.S. highway 87, northwest along U.S. highway 87 te Montana highway 200, continuing along Montana highway 200 through the intersection with U.S. highway 89, and along U.S. highway 87/89 to Great Falls is designated as Montana highway 3.

HeinOnline -- 1997 vol. II 1566 1997

(2) The department shall erect and maintain signs designating Montana highway 3 along the route established in subsection (1) and shall accomplish the signing changes required in this section in accordance with the department's normal sign maintenance and replacement schedule.

**Section 2. Effective date.** [This act] is effective July 1, 1997.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Approved April 22, 1997

# CHAPTER NO. 343

[HB 231]

AN ACT GENERALLY REVISING DOMESTIC RELATIONS STATUTES REGARDING THE CUSTODY AND VISITATION OF CHILDREN INVOLVED IN A MARRIAGE DISSOLUTION; REVISING APPLICABLE TERMINOLOGY; REQUIRING ADOPTION OF A FINAL PARENTING PLAN THAT INCLUDES SPECIFIC PROVISIONS IN THE BEST INTERESTS OF THE CHILD, AN OPTION FOR DISPUTE RESOLUTION OR MEDIATION EXCEPT IN CASES OF PROVEN CHILD OR SPOUSAL ABUSE, AND AN OPTION FOR PERIODIC REVIEW OF THE PARENTING PLAN; ALLOWING ADOPTION OF AN INTERIM PARENTING PLAN DURING THE TIME DISSOLUTION PROCEEDINGS ARE PENDING; REQUIRING DESIGNATION OF ONE PARENT AS CUSTODIAN FOR APPLICABILITY OF FEDERAL OR STATE LAWS; REQUIRING THAT PARENTS RECEIVE INFORMATION REGARDING PARENTAL RESPONSIBILITY AND CONTACT WITH THE CHILD IN DISPUTED CASES; ALLOWING THE TRIAL COURT TO DETERMINE THE APPROPRIATE LEVEL OF EVALUATION NECESSARY TO ESTABLISH PARENTING ARRANGEMENTS; PROVIDING A FEE FOR FILING A PETITION FOR CONTESTED AMENDMENT OF A PARENTING PLAN TO DEFRAY THE COSTS OF IMPLEMENTING THE COURT-SANCTIONED EDUCATIONAL PROGRAM ON THE EFFECTS OF DIVORCE ON CHILDREN IN DISPUTED CASES AND THE COST OF PARENTING EDUCATION WHEN ORDERED FOR THE INVESTIGATION AND PREPARATION OF A REPORT CONCERNING PARENTING ARRANGEMENTS; REVISING APPROPRIATE TERMINOLOGY IN GRANDPARENT VISITATION STATUTES AND APPLICABLE CRIMINAL STATUTES; AMENDING SECTIONS 25-1-201, 40-1-105, 40-1-213, 40-1-402, 40-4-103, 40-4-104, 40-4-105, 40-4-109, 40-4-110, 40-4-123, 40-4-201, 40-4-204, 40-4-205, 40-4-211, 40-4-212, 40-4-213, 40-4-214, 40-4-215, 40-4-216, 40-4-217, 40-4-219, 40-4-220, 40-4-221, 40-4-225, 40-4-226, 40-4-302, 40-4-307, 40-6-211, 40-6-221, 40-9-101, 40-9-102, 45-5-304, 45-5-631, 45-5-632, AND 45-5-633, MCA; REPEALING SECTIONS 40-4-222, 40-4-223, 40-4-224, 40-6-222, 40-6-223, 40-6-224, AND 40-6-231, MCA; AND PROVIDING AN APPLICABILITY DATE.

HeinOnline -- 1997 vol. II 1567 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 25-1-201, MCA, is amended to read:

**"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of $120; ~~and~~ for filing a petition for legal separation, a fee of $120; *and for filing a petition for a contested amendment of a final parenting plan, a fee of $120;*

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five pages of each file, per request, and 25 cents per additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through ~~(8)~~ *(9)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court oporations. The remaining

HeinOnline -- 1997 vol. II 1568 1997

portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a potition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a potition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court oporations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a pertion of judicial salaries.

*(9) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and*

HeinOnline -- 1997 vol. II 1569 1997

*preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).*"

**Section 2.** Section 40-1-105, MCA, is amended to read:

"**40-1-105. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings ~~coming~~ under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage ~~shall~~ *must* be entitled, "In re the Marriage of..... and.....". A ~~custody~~ *parenting* or support proceeding ~~shall~~ *must* be entitled, "In re the ~~(custody)~~ *(parenting)* (support) of.....".

(3) The initial pleading in all proceedings under this chapter ~~shall~~ *must* be denominated a potition. A responsive pleading ~~shall~~ *must* he denominated a response. Other pleadings, and all pleadings in other matters under this chapter, ~~shall~~ *must* be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment"."

**Section 3.** Section 40-1-213, MCA, is amended to read:

"**40-1-213. Judicial approval.** (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party ~~aged~~ 16 or 17 years *of age* who has no parent capable of consenting to ~~his~~ *the party's* marriage or bas the consent of hoth parents or of the parent having the actual care, ~~custody~~ *parenting authority*, and control to ~~his~~ *the party's* marriage, if capable of giving consent, or of ~~his~~ *the party's* guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a desiguated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve ~~his~~ *the party's* best ~~interest~~ *interests*. Pregnancy alone does not establish that the best ~~interest~~ *interests* of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization."

**Section 4.** Section 40-1-402, MCA, is amended to read:

"**40-1-402. Declaration of invalidity.** (1) Tbe district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time that the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;

HeinOnline -- 1997 vol. II 1570 1997

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time that the marriage was entered into, the other party did not know of the incapacity;

(c) a party was under ~~the age of~~ 16 years *of age* or was ~~aged~~ 16 or 17 years *of age* and did not have the consent of the party's parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within the times specified, but ~~in no event may~~ a declaration of invalidity *may not* be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or guardian, ~~prior to~~ *before* the time that the underaged party reaches the age at which the party could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time ~~prior to~~ *before* the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and ~~custody~~ *parenting* of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

(6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a marriage:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license and certificate are recorded; or

HeinOnline -- 1997 vol. II 1571 1997

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of invalidity in the appropriate record."

**Section 5.** Section 40-4-103, MCA, is amended to read:

**"40-4-103. Application of the Montana Rules of Civil Procedure.** (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chaptor.

(2) A proceeding for dissolution of marriage or legal separation ~~shall~~ *must* be entitled, "In re the Marriage of..... and.....". A ~~custody~~ *parenting* or support proceeding ~~shall~~ *must* be entitled, "In re the ~~(custody)~~ *(parenting)* (support) of.....".

(3) The initial pleading in all proceedings under this chapter ~~shall~~ *must* be denominated a petition. A responsive pleading ~~shall~~ *must* be denominated a response. Other pleadings, and all pleadings in otber matters under this chapter, ~~shall~~ *must* be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, ~~shall~~ *may* not be awarded to one of the parties but ~~shall~~ *must* provide that it affects tbe status previously existing between the parties in the manner decreed."

**Section 6.** Section 40-4-104, MCA, is amended to read:

**"40-4-104. Dissolution of marriage — legal separation.** (1) The district court sball enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this stato while a member of the armed services and that the domicile or military presence has been maintained for 90 days ~~next~~ preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings ~~shall~~ *must* be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) that there is serious marital discord ~~which~~ *that* adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for ~~child custody~~ *parenting*, the support of any child entitled to support, the maintenance of either spouse, and tbe disposition of property.

HeinOnline -- 1997 vol. II 1572 1997

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects."

**Section 7.** Section 40-4-105, MCA, is amended to read:

**"40-4-105. Procedure — commencement — pleadings — abolition of existing defenses.** (1) The verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ *must* allege that the marriage is irretrievably broken and ~~shall~~ *must* set forth:

(a) the age, occupation, and residence of each party and ~~his~~ *the party's* length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) there is serious marital discord ~~which~~ *that* adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support~~, custody, and visitation~~ of the children and maintenance of a spouse; ~~and~~

(f) *a proposed parenting plan, if applicable; and*

*(g)* the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. ~~No~~ *A* decree may *not* be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter."

**Section 8.** Section 40-4-109, MCA, is amended to read:

**"40-4-109. Independence of provisions of decree or temporary order.** If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit ~~visitation~~ *parental contact with the child* is not suspended but ~~he~~ *the party* may move the court to grant an appropriate order."

HeinOnline -- 1997 vol. II 1573 1997

**Section 9.** Section 40-4-110, MCA, is amended to read:

**"40-4-110. Costs — ~~attorney's~~ *professional* fees.** *(1)* The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 ~~of this title~~ and for ~~attorney's~~ *professional* fees, including sums for legal *and professional* services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the ~~attorney~~ *professional*, who may enforce the order in ~~his~~ *the professional's* name.

*(2) The purpose of this section is to ensure that both parties have timely and equitable access to marital financial* resources for costs incurred before, during, and after a proceeding under chapters 1 and 4."

**Section 10.** Section 40-4-123, MCA, is amended to read:

**"40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-4-121.

(2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage or for ~~child custody~~ *parenting* is pending between the parties. From the time of the certification of the pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced in district court.

(3) An action brought under 40-4-121 may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse."

**Section 11.** Section 40-4-201, MCA, is amended to read:

**"40-4-201. Separation agreement.** (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, ~~custody~~ *parenting*, and ~~visitation of~~ *parental contact with* their children. *In cases in which children are involved, the separation agreement may contain a parenting plan as required in [section 20].*

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, ~~custody~~ *parenting*, and ~~visitation of~~ *parental contact with* children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

HeinOnline -- 1997 vol. II 1574 1997

(3) If the court finds the separation agreement unconscionable, it may request *that* the parties ~~to~~ submit a revised separation agreement or *it* may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms ~~shall~~ *must* be set forth in tbe decree of dissolution or legal separation and the parties ~~shall be~~ ordered to perform them; or

(b) if the separation agreement provides that its terms ~~shall~~ *may* not be set forth in tbe decree, the decree ~~shall~~ *must* identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the suppert, ~~custody~~ *parenting*, or ~~visitation of~~ *parental contact with the* children, the decree may expressly preclude or limit modification of terms set forth in the decree if *provided for in* the separation agreement ~~so provides~~. Otberwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree."

**Seetion 12.** Section 40-4-204, MCA, is amended to read:

**"40-4-204. Child support — orders to address health insurance — withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child suppert, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the ~~custodial parent~~ *parents*;

(c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) ~~the financial resources and needs of the noncustodial parent;~~

~~(f)~~ the age of the child;

~~(g)~~*(f)* the cost of day care for the child;

~~(h)~~*(g)* any ~~custody arrangement~~ *parenting plan* that is ordered or decided upon; and

~~(i)~~*(h)* the needs of any person, other than the child, whom either parent is legally obligated to suppert.

HeinOnline -- 1997 vol. II 1575 1997

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or *that it* is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds

HeinOnline -- 1997 vol. II 1576 1997

the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(6) For the purposes of income withholding under subsection (5), each district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support *obligation* to be paid, *without need for further court order:*

*(i) to the person with whom the child resides by legal order;*

*(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;*

*(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or*

*(iv) to the court for the benefit of the minor child* ~~to:~~

~~(i) the legal custodian of the minor child;~~

~~(ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or~~

~~(B) the court for the benefit of the minor child;~~

~~(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or~~

~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child support~~.

(b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need

for an amendment to the judgment, decree, or order or for any further action by the court."

**Section 13.** Section 40-4-205, MCA, is amended to read:

**"40-4-205. ~~Representation of child~~ *Guardian ad litem.*** (1) The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's support, ~~custody~~ *parenting*, and ~~visitation~~ *parental contact*. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human services or any of its staff may not be appointed for this purpose.

(2) The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related to the child's support, ~~custody~~ *parenting*, and ~~visitation~~ *parental contact*;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to make written reports to the court concerning the child's support, ~~custody~~ *parenting*, and ~~visitation~~ *parental contact*;

(d) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's support, ~~custody~~ *parenting*, and ~~visitation~~ *parental contact*; and

(e) to perform other duties as directed by the court.

(3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or ~~custodians~~ *caretakers*.

(4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived."

**Section 14.** Section 40-4-211, MCA, is amended to read:

**"40-4-211. ~~Child custody jurisdiction~~ *Jurisdiction* — commencement of *parenting* proceedings.** (1) A court of this state competent to decide ~~child custody~~ *parenting* matters has jurisdiction to make a ~~child custody~~ *parenting* determination by initial or ~~modification~~ *amended* decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the ~~proceeding~~ *proceedings* and the child is absent from this state because of ~~his~~ *the child's* removal or retention by ~~a~~ *any* person ~~claiming his custody or for other reason~~ and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and ~~his~~ *the* parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect ~~him~~ *the child* because ~~he~~ *the child* has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine ~~custody of~~ *parenting of* the child; and

(ii) it is in ~~his~~ *the child's* best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a ~~child custody~~ *parenting* determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction te determine ~~his custody~~ *parenting of the child.*

(4) A ~~child custody~~ *parenting plan* proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for ~~custody of the child~~ *parenting* in the county in which ~~he~~ *the child* is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for ~~custody of the child~~ *parenting* in the county in which ~~he~~ *the child* is permanently resident or found, but only if ~~he~~ *the child* is not ~~in the physical custody of~~ *physically residing with* one of ~~his~~ *the child's* parents.

(5) Notice of a ~~child custody~~ *parenting* proceeding ~~shall~~ *must* be given to the child's parent, guardian, ~~custodian~~ *caretaker*, those persons ~~having physical custody of~~ *with whom* the child *is physically residing*, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties."

**Section 15.** Section 40-4-212, MCA, is amended to read:

**"40-4-212. Best ~~interest~~ *interest* of child.** (1) The court shall determine ~~custody~~ *the parenting plan* in accordance with the best ~~interest~~ *interest* of the

HeinOnline -- 1997 vol. II 1579 1997

child. The court shall consider all relevant *parenting* factors, ~~including~~ *which may include* but *are* not limited to:

(a) the wishes of the child's parent or parents ~~as to custody~~;

(b) the wishes of the child ~~as to a custodian~~;

(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who ~~may~~ significantly ~~affect~~ *affects* the child's best interest;

(d) the child's adjustment to home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child; ~~and~~

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;

*(h) continuity and stability of care;*

*(i) developmental needs of the child;*

*(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests;*

*(k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests;*

*(l) whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests. In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).*

*(m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions.*

(2) A de facto ~~custody~~ *parenting* arrangement, in the absence of a prior ~~custody~~ *parenting* decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) ~~Custody should be granted to the parent who has provided most of the primary care during the child's life.~~

~~(b)~~ A ~~custody~~ *parenting plan* action brought by a parent within 6 months after a child support action against that parent is vexatious.

HeinOnline -- 1997 vol. II 1580 1997

*(b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan.*

~~(4) The following are rebuttable presumptions:~~

~~(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.~~

~~(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support.~~"

**Section 16.** Section 40-4-213, MCA, is amended to read:

"**40-4-213. ~~Temporary orders~~ *Interim parenting plan.*** (1) A party to a ~~custody~~ *parenting* proceeding may move for ~~a temporary custody order~~ *an interim parenting plan*. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may ~~award temporary custody~~ *adopt an interim parenting plan* under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any ~~temporary custody order~~ *interim parenting plan* is vacated unless a parent ~~or the child's custodian~~ moves that the proceeding continue as a ~~custody~~ *parenting* proceeding and the court finds, after a hearing, that the circumstances of the parents and the best ~~interest~~ *interests* of the child require that a ~~custody decree~~ *parenting plan* be ~~issued~~ *adopted. A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection.*

(3) If a ~~custody~~ *parenting* proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any ~~temporary custody order~~ *interim parenting plan* is vacated. *A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection.*

*(4) Adoption of a final parenting plan under [section 20] vacates any interim parenting plan adopted under this section. A child support delinquency existing at the time that an interim parenting plan is vacated remains a judgment subject to collection.*"

**Section 17.** Section 40-4-214, MCA, is amended to read:

"**40-4-214. Interviews.** (1) The court may interview the child in chambers to ascertain the child's wishes as to ~~his custodian~~ *residence* and ~~as to visitation~~ *parental contact*. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given ~~shall~~ *must* be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court."

HeinOnline -- 1997 vol. II 1581 1997

**Section 18.** Section 40-4-215, MCA, is amended to read:

**"40-4-215. Investigations and reports.** (1) ~~In contested custody proceedings and in other custody proceedings if~~ *If* a parent or ~~the child's custodian~~ *a court-appointed third party* requests, *or if the court finds that a parenting proceeding is contested,* the court may order an investigation and report concerning ~~custodial~~ *parenting* arrangements for the child. *The investigator may be the child's guardian ad litem or other professional considered appropriate by the court.* The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the ~~parent or the child's custodian~~ *person* requesting the investigation is a recipient of ~~aid to families with dependent children~~ *cash assistance undsr the temporary assistance for needy families block grant,* food stamps, or public assistance and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and repert must be paid according to the final order. *The cost of the educational evaluation under subsection (2)(a) must be paid from the fees for filing petitions for contested amendment of a parenting plan, as provided in 25-1-201(9).*

*(2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation and preparation of the report, which may include one or more of the following:*

*(a) parenting education;*

*(b) mediation pursuant to 40-4-301;*

*(c) factfinding by the investigator; and*

*(d) psychological evaluation of the parties.*

~~(2)~~*(3)* In preparing a repert concerning a child, the investigator may consult any person who ~~may have~~ *has* information about the child and the child's potential ~~custodial~~ *parenting* arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. ~~The~~ *Except as required for children 16 years of age or older, the* investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the ~~parent or the child's custodian~~ *persons or entities authorized by law to grant or withhold access to the records.* The child's consent must be obtained if the child has reached the age of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection ~~(3)~~ *(4)* are fulfilled, the investigator's report may be received in evidence at the hearing.

~~(3)~~*(4)* The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. ~~The~~ *When consistent with state and federal law, the* investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reperts, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection ~~(2)~~ *(3)*, and tbe names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has

HeinOnline -- 1997 vol. II 1582 1997

consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. *The results of the investigation must be included in the court record and may, without objection, be sealed.*"

**Section 19. Final parenting plan — purpose and objectives.** The objectives of a final parenting plan are to:

(1) protect the best interest of the child, consistent with 40-4-212;

(2) provide for the physical care of the child;

(3) maintain the child's emotional stability and minimize the child's exposure to parental conflict;

(4) provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future amendment to the final parenting plan;

(5) set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in [section 20]; and

(6) encourage the parents, when appropriate under [section 20], to meet their responsibilities to their minor children through agreements in the parenting plan rather than through judicial intervention.

**Section 20. Final parenting plan criteria.** (1) In every dissolution proceeding, proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation proceeding that involves a child, each parent or both parents jointly shall submit to the court, in geod faith, a proposed final plan for parenting the child, which may include the allocation of parenting functions. A final parenting plan must be incorporated into any final decree or amended decree, including cases of dissolution by default. As used in this section, parenting functions means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child, which may include:

(a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) attending to the daily needs of the child such as feeding, physical care, development, and grooming, suporvision, spiritual growth and development, health care, day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;

(d) ensuring the interactions and interrelationship of the child with the child's parents and siblings and with any other porson who significantly affects the child's best interest; and

(e) exercising appropriato judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances.

HeinOnline -- 1997 vol. II 1583 1997

(2) Based on the best interest of the child, a final parenting plan may include, at a minimum, provisions for:

(a) designation of a parent as custodian of the child, solely for the purposes of all other state and federal statutes that require a designation or determination of custody, but the designation may not affect either parent's rights and responsibilities under the parenting plan;

(b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

(c) a residential schedule specifying the periods of time during which the child will reside with each parent, including provisions for holidays, birthdays of family members, vacations, and other special occasions;

(d) finances to provide for the child's needs;

(e) any other factors affecting the physical and emotional health and well-being of the child;

(f) periodic review of the parenting plan when requested by either parent or the child or when circumstances arise that are foreseen by the parents as triggering a need for review, such as attainment by the child of a certain age or if a change in the child's residence is necessitated;

(g) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including contempt of court;

(h) allocation of parental decisionmaking authority regarding the child's:

(i) education;

(ii) spiritual development; and

(iii) health care and physical growth;

(i) the method by which future disputes concerning the child will be resolved between the parents, other than court action; and

(j) the unique circumstances of the child or the family situation that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

(3) The court may in its discretion order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, or court action.

(4) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, and either parent may make emergency decisions affecting the child's safety or health. When mutual decisionmaking is designated in the parenting plan but cannot be achieved regarding a particular issue, the parents shall make a good faith effort to resolve the issue through any dispute resolution process provided for in the final parenting plan.

HeinOnline -- 1997 vol. II 1584 1997

(5) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.

(6) The court shall order that the parenting plan be sealed except for access by the parents, guardian, or other person having custody of the child.

**Section 21.** Section 40-4-216, MCA, is amended to read:

**"40-4-216. Hearings.** (1) ~~Custody~~ *Parenting plan* proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court ~~deems~~ *considers* necessary to determine the best interest of the child.

(3) The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a ~~custody~~ *parenting* hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a ~~custody~~ *parenting* proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record."

**Section 22.** Section 40-4-217, MCA, is amended to read:

**"40-4-217. ~~Visitation~~ *Notice of intent to move.*** (1) ~~A parent who is not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.~~

~~(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.~~

~~(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; however, the court may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.~~

~~(4) As long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).~~

~~(5) The~~ *A parent who intends to change residence shall, unless precluded under [section 20], provide* written notice ~~required by subsection (4)~~ *to the other parent.*

*(2) If a parent's change in residence will significantly affect the child's contact with the other parent, notice* must be served personally or given by certified mail

HeinOnline -- 1997 vol. II 1585 1997

not less than 30 days before the proposed change in residence *and must include a proposed revised residential schedule.* Proof of service must be filed with the court that ~~issued the custody order~~ *adopted the parenting plan*. ~~The purpose of the notice is to allow the noncustodial parent to seek a modification of the parent's visitation schedule.~~ *Failure of the parent who receives notice to respond to the written notice or to seek amendment of the residential schedule pursuant to 40-4-219 within the 30-day period constitutes acceptance of the proposed revised residential schedule.*

~~(6) (a) If a noncustodial parent or other person residing in the noncustodial parent's household has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent has 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.~~

~~(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.~~

~~(c) This subsection (6) applies to the following crimes:~~

~~(i) deliberate homicide, as described in 45-5-102;~~

~~(ii) mitigated deliberate homicide, as described in 45-5-103;~~

~~(iii) sexual assault, as described in 45-5-502;~~

~~(iv) sexual intercourse without consent, as described in 45-5-503;~~

~~(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;~~

~~(vi) incest, as described in 45-5-507;~~

~~(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);~~

~~(viii) endangering the welfare of children, as described in 45-5-622;~~

~~(ix) partner or family member assault of the type described in 45-5-206(1)(a);~~

~~(x) sexual abuse of children, as described in 45-5-625.~~"

**Section 23.** Section 40-4-219, MCA, is amended to read:

"**40-4-219. ~~Modification~~ *Amendment of parenting plan — mediation.*** (1) The court may in its discretion ~~modify~~ *amend* a prior ~~custody decree~~ *parenting plan* if it finds, upon the basis of facts that have arisen since the prior ~~decree~~ *plan* or that were unknown to the court at the time of entry of the prior ~~decree~~ *plan*,

that a change has occurred in the circumstances of the child ~~or the child's custodian~~ and that the ~~modification~~ *amendment* is necessary to serve the best interest of the child. ~~and if it further finds that~~ *In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether*:

(a) the ~~custodian agrees~~ *parents agree* to the ~~modification~~ *amendment*;

(b) the child has been integrated into the family of the petitioner with consent of the ~~custodian~~ *parents*;

(c) ~~the child's present environment endangers seriously the child's physical, mental, moral, or emotional health and that the harm likely to be caused by a change of environment is outweighed by its advantages to the child;~~

~~(d)~~ the child is 14 years of age or older and desires the ~~modification~~ *amendment*;

~~(e)~~*(d)* ~~the custodian~~ *one parent has* willfully and consistently:

(i) ~~refuses~~ *refused* to allow the child to have any contact with the ~~noncustodial~~ *other* parent; or

(ii) ~~attempts~~ *attempted* to frustrate or deny *contact with the child by* the ~~noncustodial parent's exercise of visitation rights~~ *other parent*; or

~~(f)~~*(e)* ~~the custodial parent~~ *one parent* has changed or intends to change the child's residence ~~to another state~~ *in a manner that significantly affects the child's contact with the other parent.*~~.~~

(2) A court may modify a de facto ~~custody~~ *parenting* arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume ~~the custodian~~ *a parent* is not acting in the child's best interest if the ~~custodian~~ *parent* does any of the acts specified in subsection ~~(1)(c)~~ *(1)(d)* or (8).

(4) The court may ~~modify~~ *amend* the prior ~~decree~~ *parenting plan* based on subsection ~~(1)(f)~~ *(1)(e)* to provide a new ~~visitation~~ *residential* schedule *for parental contact with the child* and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking ~~modification~~ *frivolous or repeated amendment* if the court finds that the ~~modification~~ *amendment* action is vexatious and constitutes harassment.

(6) A ~~custody decree~~ *parenting plan* may be ~~modified~~ *amended* upon the death of ~~the custodial~~ *one* parent pursuant to 40-4-221.

(7) As used in this section, "prior ~~custody decree~~" *parenting plan"* means a ~~custody~~ *parenting* determination contained in a judicial decree or order made in a ~~custody~~ *parenting* proceeding. *In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.*

HeinOnline -- 1997 vol. II 1587 1997

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection ~~(8)(c)~~ *(8)(b)*, the other parent or any other person who has heen granted ~~custody of~~ *rights to* the child pursuant to court order may file an objection to the current ~~custody~~ *parenting* order with the court. The parent or other person having ~~custody~~ *rights to the child pursuant to court order* shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 20 days from the notice to respond. If the ~~other~~ parent *who receives notice of objection* fails to respond within 20 days, the ~~custody~~ *parenting* rights of ~~the other~~ *that* parent are suspended until further order of the court. If ~~the other~~ *that* parent responds and objects, a hearing must be held within 30 days of the response.

~~(b) The other parent has the burden at the hearing to prove that custody by the other parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.~~

~~(c)~~ This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625.

*(9) Except in cases of physical abuse or threat of physical abuse by one parent against the other parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the court may, in its discretion, order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, and court action."*

**Section 24.** Section 40-4-220, MCA, is amended to read:

**"40-4-220. Affidavit practice.** (1) ~~A~~ *Unless the parties agree to an interim parenting plan or an amended parenting plan, the moving* party seeking ~~a temporary custody order~~ *an interim parenting plan* or ~~modification~~ *amendment* of a ~~custody decree~~ *final parenting plan* shall submit, together with ~~his~~ *the* moving papers, an affidavit setting forth facts supporting the requested ~~order~~ *plan* or

~~modification~~ *amendment* and shall give notice, together with a copy of ~~his~~ *the* affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, *based on the best interests of the child*, in which case it shall set a date for hearing on an order to show cause why the requested ~~order~~ *plan* or ~~modification~~ *amendment* should not be granted.

(2) (a) A party seeking ~~a temporary custody order~~ *an interim parenting plan* may request that the court grant a temporary ~~assignment of custody~~ *order providing for living arrangements for the child* ex parte. ~~He~~ *The party* shall ~~so~~ *make the* request in ~~his~~ *the* moving papors and shall submit an affidavit showing that:

(i) no previous ~~determination of custody~~ *parenting plan* has been ~~made~~ *ordered* by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary ~~custody were placed with the person designated~~ *living arrangements for the child were as proposed* by the moving party; or

(ii) although a previous ~~determination of custody~~ *parenting plan* has been ~~made~~ *ordered, an emergency situation has arisen in* the chiid's present environment ~~endangers his physical or emotional health~~ *that is detrimental to the child's best interests* and an immediate change ~~of custody would serve~~ *in the parenting plan is necessary* to protect the ~~child's physical or emotional health~~ *child*.

(b) If the court finds from the affidavits submitted by the moving party that ~~a temporary assignment of custody~~ *the interim parenting plan proposed by the moving party* would be in the child's best interest under the standards of 40-4-212 or that the child's ~~physical or emotional health is endangered~~ *present environment is detrimental to the child's best interest* and would be protected by ~~a temporary assignment of custody~~ *the interim parenting plan*, the court shall make an order ~~placing temporary custody with the person designated~~ *implementing the interim parenting plan proposed* by the moving party ~~or with some other person designated by the court and~~. *The court* shall require all parties to appear and show cause within 20 days from the execution of the ~~order~~ *interim parenting plan* why~~, in the case of a temporary order issued under subsection (2)(a)(i),~~ the ~~temporary order~~ *interim parenting plan* should not remain in effect until further order of court ~~or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order~~."

**Section 25.** Section 40-4-221, MCA, is amended to read:

**"40-4-221. Determination of ~~custody~~ *child's care* upon death of ~~custodial~~ parent.** (1) Upon the death of a parent ~~granted custody of a child, custody shall pass to the noncustodial parent unless~~, one or more parties named in subsection (2) *may* request a ~~custody~~ *parenting plan* hearing. The ~~noncustodial~~ *surviving* parent ~~shall~~ *must* be a party in any proceeding brought under this section.

(2) Upon the death of a parent ~~granted custody of a child~~, any of the following parties may request a ~~custody~~ *parenting plan* hearing ~~and seek custody of the child~~:

HeinOnline -- 1997 vol. II 1589 1997

(a) the ~~noncustodial~~ natural parent;

(b) the surviving spouse of the deceased ~~custodial~~ parent;

(c) a person nominated by the will of the deceased ~~custodial~~ parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other porson if that person has actual physical control over the child;

(f) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of ~~custody shall be~~ *a parenting plan is* governed by this part."

**Section 26.** Section 40-4-225, MCA, is amended to read:

**"40-4-225. Access to records by ~~noncustodial~~ parent.** Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent ~~because such parent is not the child's custodial parent~~ *who is a party to a parenting plan*."

**Section 27.** Section 40-4-226, MCA, is amended to read:

**"40-4-226. ~~Court-ordered~~ *Court-sanctioned* educational program on effects of dissolution of marriage on children.** (1) In a proceeding for dissolution of marriage involving a minor child or in a ~~custody modification~~ *parenting plan* proceeding involving a minor child, a court shall inform the parties, excluding the minor child, of available educational programs concerning the effects of dissolution of marriago on children and, if the court finds that it would be in the best interest of the minor child, ~~may~~ *shall* order the parties to attend a *court-sanctioned* program. The program may be divided into sessions. The program must be educational in nature and may not be designed for individual therapy.

(2) ~~Any facts presented at an educational session resulting from a referral under this section may not be considered in a dissolution of a marriage or a custody modification proceeding, nor may a report resulting from an educational session become part of the record of the dissolution or proceeding unless the parties have stipulated in writing to the contrary.~~

~~(3) The fees or costs of an educational session under this section must be borne by the parties and may be assessed by the court in an equitable manner.~~ *The cost of implementing the court-sanctioned educational program for each district court, provided for in subsection (1), must be paid from the fees for filing petitions for contested amendment of a parenting plan, provided for in 25-1-201(9). Costs may inelude parenting evaluation and guurdian ad litem services.*"

**Section 28.** Section 40-4-302, MCA, is amended to read:

**"40-4-302. Mediation proceeding — tolling of statute of limitations.** (1) The purpose of a mediation proceeding is to reduce the acrimony that may

HeinOnline -- 1997 vol. II 1590 1997

exist between the parties and to develop an agreement that is supportive of the best interests of a child involved in the proceeding.

(2) The mediator shall attempt to effect a settlement of the ~~child custody~~ *parenting*, child support, ~~visitation~~ *parental contact with the child*, maintenance, or property settlement dispute. The mediator may not use coercive measures to effect the settlement. The mediator may recommend that a party obtain assistance from other resources in the community.

(3) Subject to 40-4-301(1), the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement.

(4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The tolling commences on the date the parties agree in writing to participate in the mediation or when the court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by the mediator."

**Section 29.** Section 40-4-307, MCA, is amended to read:

"**40-4-307. Mediator qualifications.** A mediator ~~shall~~ *must* meet the following minimum qualifications:

(1) knowledge of the court system and the procedures used in family law matters;

(2) knowledge of other resources in the community to which the parties may be referred for assistance;

(3) if applicable, knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and ~~child custody~~ *parenting* research; and

(4) knowledge of the mediation process."

**Section 30.** Section 40-6-211, MCA, is amended to read:

"**40-6-211. Obligations of parents for the support and education of their children.** The parent or parents ~~entitled to the custody~~ of a child ~~must~~ *shall* give ~~him~~ *the child* support and education suitable to ~~his~~ *the child's* circumstances."

**Section 31.** Section 40-6-221, MCA, is amended to read:

"**40-6-221. ~~Custody~~ *Parenting*, services, and earnings of child.** The father and mother of an unmarried minor child are equally entitled to the ~~custody~~ *parenting*, services, and earnings of the child. If either parent ~~be~~ *is* dead or unable or refuses to ~~take the custody~~ *exercise parenting* or has abandoned ~~his or her~~ *the* family, the other *parent* is entitled to the ~~custody~~ *parenting*, services, and earnings of the child, unless ~~custody~~ *care of the child* is determined otherwise pursuant to 40-4-221."

HeinOnline -- 1997 vol. II 1591 1997

**Section 32.** Section 40-9-101, MCA, is amended to read:

**"40-9-101. Application of Montana Rules of Civil Proccdure.** (1) Except as otherwise provided, the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

(2) A proceeding for ~~grandparent~~ *grandparent-grandchild contact* ~~visitation~~ under this section and 40-9-102 ~~shall~~ *must* be entitled, "In re the ~~visitation~~ *grandparent-grandchild contact* of....."

(3) The initial pleading in all proceedings under this section and 40-9-102 ~~shall~~ *must* be denominatod a petition. A responsive pleading ~~shall~~ *must* be denominated a response. Other pleadings ~~shall~~ *must* be denominated as provided in the Montana Rules of Civil Procedure."

**Section 33.** Section 40-9-102, MCA, is amended to read:

**"40-9-102. ~~Grandparent~~ *Grandparent-grandchild contact* ~~visitation rights~~.** (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable ~~visitation~~ rights *to contact with the child*, including but not limited to ~~visitation~~ rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of public health and human services must be given notice of a petition for ~~grandparent~~ *grandparent-grandchild contact* ~~visitation~~ regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) ~~Visitation rights~~ *Grandparent-grandchild contact* granted under this section may be granted only upon a finding by the court, after a hearing, that the ~~visitation~~ *contact* would be in the best interest of the child.

(3) A person may not petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:

(a) the child;

(h) the child's parent, guardian, or custodian; or

(c) the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to ~~visitation~~ *grandparent-grandchild contact* when the interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. ~~Visitation rights~~ *Grandparent-grandchild contact* granted under this section ~~terminate~~ *terminates* upon the adoption of the child by a person other than a stepparent or a grandparent."

**Section 34.** Section 45-5-304, MCA, is amended to read:

**"45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that the person has no legal right to do so, the person:

HeinOnline -- 1997 vol. II 1592 1997

~~(a)~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

~~(b) prior to the entry of a court order determining custodial rights, takes, entices, or withholds any child from the other parent when the action manifests a purpose to substantially deprive that parent of parental rights; or~~

~~(c) is one of two persons who has joint custody of a child under a court order and takes, entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the other parent of parental rights.~~

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody ~~prior to~~ *before* arraignment. With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody ~~prior to~~ *before* arrest."

**Section 35. Parenting interference.** (1) A person commits the offense of parenting interference if, knowing that the person has no legal right to do so, the person:

(a) before the entry of a court order determining parenting rights, takes, entices, or withholds a child from the other parent when the action manifests a purpose to substantially deprive that parent of parenting rights; or

(b) is one of two persons who has parenting authority of a child under a court order and takes, entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the other parent of parenting rights.

(2) A person convicted of the offense of parenting interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if the person voluntarily returns the child before arraignment. With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if the person voluntarily returns the child before arrest.

**Section 36.** Section 45-5-631, MCA, is amended to read:

**"45-5-631. ~~Visitation interference~~ *Interference with parent-child contact.*** (1) A person who has ~~legal custody of a minor child~~ *been granted parent-child contact under a parenting plan* commits the offense of ~~visitation~~ interference *with parent-child contact* if ~~he~~ *the person* knowingly or purposely prevents, obstructs, or frustrates the ~~visitation~~ rights of ~~a~~ *another* person entitled to ~~visitation~~ *parent-child contact* under an existing court order.

(2) A person convicted of the offense of ~~visitation~~ interference *with parent-child contact* shall he fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 5 days, or hoth."

**Section 37.** Section 45-5-632, MCA, is amended to read:

**"45-5-632. Aggravated ~~visitation~~ interference *with parent-child contact*.** (1) A person who commits the offense of ~~visitation~~ interference *with parent-child contact* by changing the residence of the minor child ~~over whom he has legal custody~~ to another state without giving written notice as required in 40-4-217, *unless the notice requirement has been precluded under [section 20],* or without written consent of the person entitled to ~~visitation~~ *parent-child contact* pursuant to an existing court order commits the offense of aggravated ~~visitation~~ interference *with parent-child contact.*

(2) A person convicted of the offense of aggravated ~~visitation~~ interference *with parent-child contact* shall be fined an amount not to exceed $1,000 or be imprisoned in the state prison for a term not to exceed 18 months, or hoth."

**Section 38.** Section 45-5-633, MCA, is amended to read:

**"45-5-633. Defenses to ~~visitation~~ interference *with parent-child contact* and aggravated ~~visitation~~ interference *with parent-child contact*.** (1) A person does not commit the offense of ~~visitation~~ interference *with parent-child contact* or aggravated ~~visitation~~ interference *with parent-child contact* if ~~he~~ *the person* acts:

(a) with the consent of the person entitled to ~~visitation~~ *parent-child contact*;

(b) under an existing court order; or

(c) with reasonable cause.

(2) Return of the child ~~prior to~~ *before* arrest is a defense only with respect to the first commission of ~~visitation~~ interference *with parent-child contact* or aggravated ~~visitation~~ interference *with parent-child contact.*"

**Section 39. Repealer.** Sections 40-4-222, 40-4-223, 40-4-224, 40-6-222, 40-6-223, 40-6-224, and 40-6-231, MCA, are repealed.

**Section 40. Codification instruction.** (1) [Sections 19 and 20] are intended to he codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, part 2, apply to [sections 19 and 20].

(2) [Section 35] is intended to he codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [section 35].

**Section 41. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before October 1, 1997.

**Section 42. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

HeinOnline -- 1997 vol. II 1594 1997

**Section 43. Applicability.** [This act] applies to proceedings begun after October 1, 1997, including proceedings regarding modification of orders or decrees existing on October 1, 1997.

Approved April 22, 1997

# CHAPTER NO. 344

[HB 271]

AN ACT INCREASING THE PENALTY FOR THE INTENTIONAL IMPORTATION, INTRODUCTION, OR TRANSPLANTATION OF FISH IN VIOLATION OF TITLE 87, CHAPTER 5, PART 7; AND AMENDING SECTION 87-5-721, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-5-721, MCA, is amended to read:

**"87-5-721. Penalty — license and permit revocation and denial.** (1) Except as provided in subsection (2), a person who violates a provision of this part is guilty of a misdemeanor punishable as provided in 87-1-102, and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of ~~a misdemeanor~~ *an offense* punishable by a fine of not less than $500 or more than ~~$1,000~~ *$5,000* ~~or~~ *and* imprisonment for ~~not more than 6 months, or both;~~ *up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend $500 of the fine amount.*

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

(c) upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued under this title and the privilege to hunt, fish, or trap in this state for not less than 24 months. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for the lifetime of that person."

Approved April 22, 1997

HeinOnline -- 1997 vol. II 1595 1997

# CHAPTER NO. 345

[HB 479]

AN ACT PROVIDING THAT A PERSON WHO IS CHRONICALLY INCAPACITATED BY ILLNESS OR INJURY MAY REQUEST TO BE PERMANENTLY EXCLUDED FROM JURY DUTY AND FROM THE LIST OF JURORS; AND AMENDING SECTIONS 3-15-313 AND 3-15-402, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-15-313, MCA, is amended to read:

**"3-15-313. Who may be excused — affidavit to claim excuse — *permanent exclusion for chronically incapacitated.*** (1) The court or jury commissioner with the approval of the court shall excuse a person from jury service upon finding that jury service would entail undue hardship for the person or the public served by the person.

(2) If a person believes jury service would entail undue hardship for ~~him~~ *the person* or the public served, ~~he~~ *the person* may make and transmit an affidavit to the jury commissioner for which ~~he~~ *the person* is summoned, stating ~~his~~ *the person's* occupation or ~~such~~ other facts ~~as he~~ *that the person* believes will excuse ~~him~~ *the person* from jury service. The affidavit ~~shall~~ *must* be filed with the jury commissioner, who shall transmit it to the court. The court or jury commissioner with the approval of the court may excuse a prospective juror from jury service if the prospective juror satisfies the provisions of subsection (1).

*(3) A person who is chronically incapacitated by illness or injury may request a permanent exclusion from jury service by making and transmitting an affidavit to the jury commissioner of the person's place of residence. The affidavit must include a certification by the person's physician that the person is chronically incapacitated by illness or injury. The affidavit must be filed with the jury commissioner, who shall transmit it to the court. The court or jury commissioner with the approval of the court may permanently excuse a prospective juror from jury service if the prospective juror satisfies the provisions of this subsection (3).*

*(4) For purposes of subsection (3), a person is chronically incapacitated if the person has a condition due to an illness or injury that restricts the person's ability to leave the person's place of residence without the aid of supportive devices, such as crutches, a cane, a wheelchair, or a walker, that restricts the person's ability to leave home without the use of special transportation or the assistanee of another person or thot causes leaving home to be medically contraindicated. Examples of factors to be taken into account in determining whether chronic incapacitation exists include but are not limited to the following:*

*(a) paralysis by a stroke or other cause;*

*(b) blindness;*

*(c) senility;*

*(d) loss of the use of a person's extremities requiring the assistance of another in leaving the person's place of residence;*

HeinOnline -- 1997 vol. II 1596 1997

*(e) arteriosclerotic heart disease of such severity that a person must avoid all stress and physical activity; or*

*(f) a psychiatric problem if the illness is manifested in part by a refusal to leave home or is of such a nature that it would not be considered safe for the person to leave home unattended, even if there are no physical limitations."*

**Section 2.** Section 3-15-402, MCA, is amended to read:

**"3-15-402. Selection of qualified persons.** ~~At~~ *(1) Subject to subsection (2), at* the meeting specified in 3-15-401, the officers present ~~must~~ *shall* select from the most recent list of all registered electors, as prepared hy the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name ~~so~~ appearing on ~~said~~ *the* list ~~shall~~ *must* be assigned a number ~~which shall~~ *that must* be placed opposite the name on the jury list and ~~shall~~ *must* be considered the number of the juror opposite whose name it appears. ~~Said~~ *The* numbers ~~shall~~ *must* be consecutive from "1" to the total number of jurors. A person's name may not appear on a jury list for more than one court during a 1-year term.

*(2) The list prepared under subsection (1) may not include the name of a person permanently excluded from jury service under 3-15-313."*

Approved April 22, 1997

# CHAPTER NO. 346

[HB 594]

AN ACT ELIMINATING THE BOARD OF PASSENGER TRAMWAY SAFETY; ELIMINATING THE FUNCTIONS AND DUTIES OF THE BOARD OF PASSENGER TRAMWAY SAFETY; AMENDING SECTIONS 23-2-702, 23-2-734, AND 50-60-104, MCA; REPEALING SECTIONS 2-15-1896, 23-2-701, 23-2-705, 23-2-711, 23-2-712, 23-2-713, 23-2-714, 23-2-715, 23-2-716, 23-2-717, 23-2-718, 23-2-721, 23-2-722, 23-2-723, 23-2-724, 23-2-725, AND 23-2-732, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-2-702, MCA, is amended to read:

**"23-2-702. Definitions.** As used in this part, the following definitions apply:

~~(1) "Area" means the area, terrain, or ski slopes served by a passenger tramway.~~

~~(2) "Board" means the board of passenger tramway safety provided for in 2-15-1896.~~

~~(3) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.~~

HeinOnline -- 1997 vol. II 1597 1997

~~(4) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages, or directs the operation of a passenger tramway.~~

~~(5)~~*(1)* "Passenger tramway" means a device used to transport passengers by means of any of the following:

(a) two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(b) multicar aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(c) skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable or similar devices;

(d) chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans or similar devices;

(e) a J-bar, T-bar, or platterpull, so-called, and similar types of devices or means of transportation ~~which~~ *that* pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) rope tow, a type of transportation ~~which~~ *that* pulls the skier, riding on skis as the skier grasps the rope or wire rope manually, or similar devices.

*(2) "Ski area operator" or "operator" means a person, firm, or corporation and its agents and employees having operational and administrative responsibility for ski trails and improvements.*

*(3) "Skier" means a person admitted to a ski area or using the ski trails, areas, and other improvements within the ski area. The term does not include a person using an aerial passenger tramway.*

*(4) "Ski trails" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing."*

**Section 2.** Section 23-2-734, MCA, is amended to read:

**"23-2-734. Duties of operator with respect to passenger tramways.** A ski area operator shall construct, operate, maintain, and repair any passenger tramway ~~in accordance with the rules of the board. However, nothing in this section relieves an~~ *An* operater ~~from~~ *has* the duty of taking whatever ~~other~~ actions are necessary to properly construct, operate, maintain, and repair a passenger tramway."

**Section 3.** Section 50-60-104, MCA, is amended to read:

**"50-60-104. Inspection fees.** The department shall establish a schedule of fees and may collect fees for the inspection of plans and specifications and for the

inspection of buildings, factory-built buildings, recreational vehicles, ~~tramways,~~ or any other facility or structure."

**Section 4. Repealer.** Sections 2-15-1896, 23-2-701, 23-2-705, 23-2-711, 23-2-712, 23-2-713, 23-2-714, 23-2-715, 23-2-716, 23-2-717, 23-2-718, 23-2-721, 23-2-722, 23-2-723, 23-2-724, 23-2-725, and 23-2-732, MCA, are repealed.

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved April 22, 1997

# CHAPTER NO. 347

[SB 19]

AN ACT GENERALLY REVISING STATE BUDGETING LAWS; REQUIRING THAT THE LEGISLATIVE FINANCE COMMITTEE PREPARE RECOMMENDATIONS INVOLVING MAJOR BUDGETARY MATTERS FOR AN ENSUING LEGISLATIVE SESSION; CLARIFYING TYPES OF INFORMATION CONTAINED IN AND THE MANNER AND TIMES FOR PREPARING PROPOSED BUDGETS AND REPORTS; REDUCING THE NUMBER OF REPORTS MADE TO THE BUDGET DIRECTOR; REDEFINING "BASE BUDGET", "PRESENT LAW BASE", AND "PROGRAM" FOR THE PURPOSES OF PREPARING THE STATE BUDGET; CHANGING THE MANNER OF DETERMINING WHETHER AN AGENCY IS IN SUBSTANTIAL COMPLIANCE WITH THE BUDGET; CHANGING THE APPROVAL AND REPORTING PROCEDURES FOR PROGRAM TRANSFERS; PROVIDING FOR BUDGET AMENDMENTS UNDER THE LONG-RANGE BUILDING PROGRAM; CLARIFYING THE PROVISIONS RELATING TO AUTHORITY TO MAKE EXPENDITURES IN THE SECOND YEAR OF A BIENNIUM; AMENDING SECTIONS 5-12-205, 5-12-303, 17-4-107, 17-4-108, 17-7-102, 17-7-111, 17-7-112, 17-7-121, 17-7-122, 17-7-123, 17-7-124, 17-7-132, 17-7-138, 17-7-139, 17-7-204, 17-7-211, 17-7-301, AND 17-8-101, MCA; REPEALING SECTION 17-3-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-12-205, MCA, is amended to read:

**"5-12-205. Powers and duties of committee.** The committee ~~may~~:

(1) *may* organize, adopt rules to govern its proceedings, and meet as often as necessary, upon the call of the presiding officer, to advise and consult with the legislative fiscal analyst;

(2) *may* employ and, in accordance with the rules for classification and pay adopted by the legislative council, set the salary of the legislative fiscal analyst. The legislative fiscal analyst shall serve at the pleasure of and be responsible for providing services to the committee.

(3) *may* exercise the investigatory powers of a standing committee under chapter 5, part 1, of this title; *and*

*(4) shall, before each regular and special legislative session involving budgetary matters, prepare recommendations to the house appropriations committee and the senate finance and claims committee on the application of certain budget issues. At a minimum, the recommendations must include procedures for the consistent application during each session of inflation factors, the allocation of fixed costs, and the personal services budget. The committee may also make recommendations on other issues of major concern in the budgeting process, such as estimating the cost of implementing particular programs based upon present law."*

**Section 2.** Section 5-12-303, MCA, is amended to read:

**"5-12-303. Fiscal analysis information from state ageneies.** (1) The legislative fiscal analyst may investigate and examine the costs and ~~revenues~~ *revenue* of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of the confidential records and information provided for under the laws administered hy the stato agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns.

~~(4) The budget director shall furnish the legislative fiscal analyst with copies of all budget requests, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, at the time of submission to the budget director as provided by law and, if requested, all underlying and supporting documentation. In preparing the executive budget for the next biennium for submission to the legislature, the budget director shall use the base budget, the present law base, and new proposals as defined in 17-7-102.~~

~~(5) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst:~~

~~(a) by October 10, a preliminary budget reflecting the base budget and, by November 1, a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium;~~

~~(b) by November 15, a preliminary budget that must meet the statutory requirements for submission of the budget to the legislature and a summary of the preliminary budget designed for distribution to members and members elect of the legislature;~~

~~(c) by November 12, a paper copy and an electronic copy of the documents that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity; and~~

~~(d) by December 15, all amendments to the preliminary budget.~~

~~(6)~~*(4)* Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public. In preparing the budget analysis for the next biennium for submission to the legislature, the legislative fiscal analyst shall use the base budget, the present law base, and new proposals as defined in 17-7-102.

~~(7)~~*(5)* This section does not authorize publication or public disclosure of information if the law prohibits publication or disclosure."

**Section 3.** Section 17-4-107, MCA, is amended to read:

**"17-4-107. Writeoff procedures.** ~~(1)~~ The department may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies ~~that~~ *if the accounts* have been transferred to the department pursuant to 17-4-104 and ~~that~~ are uncollectible or *if* the continued pursuance of the collection of *the* accounts would cost the state more than the amount collected. ~~The procedures must be established in accordance with subsection (2).~~

~~(2) The department may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies that are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. The procedures must include the reporting to the budget director of any canceling and writing off of accounts receivable.~~"

**Section 4.** Section 17-4-108, MCA, is amended to read:

**"17-4-108. Circumstances under which previously written-off debt may be collected.** If a debt previously written off under 17-4-107~~(1)~~ subsequently becomes collectible, the department shall proceed to collect the money due pursuant to 17-4-105(1) and 17-4-106."

**Section 5.** Section 17-7-102, MCA, is amended to read:

**"17-7-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Additional services" means different services or more of the same services.

(2) "Agency" means ~~each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government, except for purposes of capital projects administered by the department of administration, for which institutions are treated as one department and university units as one system.~~

~~(3) "Approved long-range building program budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within an agency to increase the appropriation of another capital project within that agency or to obtain financing to expand a project with funds that were not available for consideration by the legislature.~~ *all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public money by virtue of an appropriation from the legislature under 17-8-101.*

~~(4)~~*(3)* "Approving authority" means:

(a) the governor or the governor's designated representative for executive branch agencies;

(b) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(c) the speaker for the house of representatives;

(d) the president for the senate;

(e) appropriate legislative committees or a designated representative for legislative branch agoncies; or

(f) the board of regents of higher education or its designated representative for tbe university system.

~~(5)~~*(4)* "Base budget" means ~~that level of funding authorized by the previous legislature~~ *the resources for the operation of state government that are of an ongoing and nonextraordinary nature in the current biennium. The base budget may not exceed that level of funding authorized by the previous legislature.*

~~(6)~~*(5)* "Budget amendment" means a ~~legislative~~ *temporary* appropriation ~~to increase spending authority for the special revenue fund, proprietary funds, or unrestricted subfund, contingent on total compliance with all budget amendment procedures~~ *as provided in Title 17, chapter 7, part 4.*

~~(7) "Effectiveness measure" means a criterion for measuring the degree to which the objective sought is attained.~~

~~(6)~~*(6)* "Emergoncy" means a catastrophe, disaster, calamity, or other serious unforeseen and unanticipated circumstance that has occurred subsequent to the time that an agency's appropriation was made, that was clearly not within the contemplation of the legislature and the governor, and that affects one or more functions of a state agency and the agency's expenditure requirements for the performance of the function or functions.

*(7) "Funds subject to appropriation" means those funds required to be paid out of the treasury as set forth in 17-8-101.*

~~(9)~~*(8)* "Necessary" means essential to the public welfare and of a nature that cannot wait until the next legislative session for legislative consideration.

HeinOnline -- 1997 vol. II 1602 1997

~~(10)~~*(9)* "New proposals" means requests to provide new nonmandated services, to change program services, to eliminate existing services, or to change sources of funding. For purposes of establishing the present law base, the distinction between new proposals and the adjustments to the base budget to develop the present law base is to be determined by the existence of constitutional or statutory requirements for the proposed expenditure. Any proposed increase or decrease that is not based on those requirements is considered a new proposal.

~~(11)~~*(10)* "Present law base" means that ~~additional~~ level of funding needed under present law to maintain operations and services at the level authorized by the previous legislature, including but not limited to:

(a) changes resulting from legally mandated workload, caseload, or enrollment increases or decreases;

(b) changes in funding requirements resulting from constitutional or statutory schedules or formulas;

(c) inflationary or deflationary adjustments; and

(d) elimination of nonrecurring appropriations.

~~(12) "Priority listing" means a ranking of proposed expenditures in order of importance.~~

~~(13)~~*(11)* "Program" means ~~a combination of resources and activities designed to achieve an objective or objectives~~ *a principal organizational or budgetary unit within an agency.*

~~(14) "Program size" means the magnitude of a program, such as the size of clientele served or the volume of service in relation to the population or area.~~

~~(15) "Program size indicator" means a measure to indicate the magnitude of a program.~~

~~(10)~~*(12)* "Requesting agency" means the agency of state government that has requested a specific budget amendment.

~~(17)~~*(13)* "University system unit" means the board of regents of higher education; office of the commissioner of higher education; university of Montana, with campuses at Missoula, Butte, Dillon, and Helena; Montana state university, with campuses at Bozeman, Billings, Havre, and Great Falls; the agricultural experiment station, with central offices at Bozeman; the forest and conservation experiment station, with central offices at Missoula; the cooperative extension service, with central offices at Bozeman; the bureau of mines and geology, with central offices at Butte; the fire services training school at Great Falls; and the community colleges at Miles City, Glendive, and Kalispell."

**Section 6.** Section 17-7-111, MCA, is amended to read:

**"17-7-111. ~~Agency~~ *Preparation of state budget — agency* program budgets — form distribution and contents.** (1) *(a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time*

*period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.*

*(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:*

*(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and*

*(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.*

*(2)* In the preparation of a state budget, the budget director shall, not later than ~~July 1 in the year preceding the convening of the legislature~~ *the date specified in 17-7-112(1),* distribute to all ~~state offices and departments, including the judicial branch and the legislative branch,~~ *agencies* the proper forms *and instructions* necessary for the preparation of budget estimates *by the budget director.* These forms must he prescribed by the hudget director to procure the information required hy subsection ~~(2)~~ *(3). The forms must be submitted to the budget director by the date provided in 17-7-112(2) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.*

~~(2)~~*(3)* The agency budget ~~requests, when completed by the budget office,~~ *request* must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary *of funds subject to appropriation* for the current base budget expenditures, *including statutory appropriations,* and for each ~~modification~~ *present law adjustment and new proposal* request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. ~~The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained in the summary by fund and, when applicable, organizational unit.;~~

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current *biennium* and *estimated for the* subsequent biennium;

~~(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;~~

~~(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented must include the following:~~

~~(i)~~*(c)* a statement of *the* agency ~~goals and objectives~~ *mission* and a statement of goals and objectives for each program of the agency. The goals and objectives

must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives. ~~The goals and objectives must contain a list of duties prioritized by the department director to reflect the director's opinion concerning the importance of the duties assigned to the agency by law.~~

~~(ii)~~*(d)* actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; ~~and~~

~~(iii)~~*(e)* actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category~~;~~

~~(c)~~*(f)* a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to oporate, administer, or manage the program~~;~~ *and*

~~(f)~~*(g)* other information the budget director feels is necessary for the preparation of a budget.

~~(3)~~*(4)* The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by ~~department,~~ institution, agency, or branch, by funding source, with a description of each proposed project.

(b) the proposed pay plan schedule for all executive branch employees *at the program level by fund*, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

*(c) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.*

~~(4)~~*(5)* The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection ~~(4)~~ *(5)*. The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts

HeinOnline -- 1997 vol. II 1605 1997

relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itomized by revenue source and project for each year of the current and ensuing bienniums.

~~(5)~~*(6)* The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any otber way. The data is subject to the same restrictions on disclosure as are individual income tax returns."

**Section 7.** Section 17-7-112, MCA, is amended to read:

**"17-7-112. Submission ~~deadline~~ *deudlines — budgeting schedule.*** *The following is the schedule for the preparation of a state budget for submission to the legislature convening in the following year:*

*(1) By August 1, forms necessary for preparation of budget estimates must be distributed pursuant to 17-7-111(2).*

~~(1)~~*(2)* ~~It is the duty of~~ *By September 1,* each ~~department,~~ agency~~, and office, including the Montana university system, to~~ *shall* suhmit the information required under 17-7-111 to the budget director ~~on or before September 1 in the even year preceding the convening of the legislature~~. The department of justice sball submit information received from counties concerning the state's sbare of county attorney salaries.

~~(2)~~*(3)* ~~Between August 15 and~~ *By* September ~~30~~ *1, in the year preceding the convening of the legislature,* tbe *budget* director ~~must~~ *shall* submit each stato agency's budget request required under ~~17-7-111(2)~~ *17-7-111(3)* to the legislative fiscal analyst. The transfer of budget information must be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner tbat facilitates an even transfer of budget information ~~during the month of September and~~ that allows each office to maintain a reasonable staff workflow.

*(4) By October 10, the budget director shall furnish the legislative fiscal analyst with a preliminary budget reflecting the base budget in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.*

~~(5)~~*(5)* ~~If any department, institution, university unit, or agency fails to present the information within the time specified in this section, the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare and submit to the legislative fiscal analyst and the governor by~~ *By* October 30, a budget request *must be prepared by the budget director and submitted to the legislative fiscal analyst* on behalf of ~~the~~ *any* ~~department, institution, university unit, or~~ agency*, that did not present the information required by this section. The budget request must be* based upon the budget director's studies of the operations, plans, and needs of the ~~department,~~ institution, university unit, or agency.

HeinOnline -- 1997 vol. II 1606 1997

*(6) By November 1, the budget director shall furnish the legislative fiscal analyst with a present law base for each agency and a copy of the documents that reflect the anticipated receipts and other means of financing the base budget and present law base for each fiscal year of the ensuing biennium. The material must be in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst.*

*(7) By November 12, the budget director shall furnish the legislative fiscal analyst with the documents, in a format agreed upon by both the office of budget and program planning and the legislative fiscal analyst, that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity.*

~~(4)~~*(8)* ~~The~~ *By November 15, the* proposed pay plan schedule required by 17-7-111~~(3)~~*(4), a preliminary budget that meets the statutory requirements for submission of the budget to the legislature, and a summary of the preliminary budget designed for distribution to members and members-elect of the legislature* must he submitted to the legislative fiscal analyst ~~no later than November 15 in the year preceding the convening of the legislature~~.

*(9) By December 15, the budget director shall submit a preliminary budget to the governor and to the governor-elect, if there is one, as provided in 17-7-121, and shall furnish the legislative fiscal analyst with all amendments to the preliminary budget.*

*(10) By January 7, recommended changes proposed by a governor-elect must be transmitted to the legislative fiscal analyst and the legislature as provided in 17-7-121."*

**Section 8.** Section 17-7-121, MCA, is amended to read:

**"17-7-121. Preliminary budget preparation and submission to governor and governor-elect.** (1) Upon receipt of the completed forms and other available data and information, the hudget director shall examine the same for the purpose of determining the necessity of the disbursements and funds requested and shall, on or hefore ~~December 15 in the year preceding the convening of the legislature~~ *the date established in 17-7-112*, suhmit in writing to the governor and to the governor-elect, if ~~one~~ there ~~be~~ *is one*, a preliminary budget for the ensuing bienniuni containing the detailed information ~~hereinafter~~ required to be set forth in the budget to be submitted by the governor to the legislature.

(2) If ~~so~~ requested by the governor-elect, the governor shall incorporate in the budget, as a separate section, ~~such~~ *the* estimates, comments, and recommendations ~~as~~ *that* the governor-elect may wish to make, and *by the date established in 17-7-112,* this section of tbe budget ~~shall~~ *must* be transmitted to the legislature *and the legislative fiscal analyst* without change. It is the duty of the governor-elect in recommending changes to show a balance between proposed disbursements and anticipated receipts."

**Section 9.** Section 17-7-122, MCA, is amended to read:

**"17-7-122. Preparation of bndget.** (1) The governor sball, following the receipt of tbe preliminary budgot from the budget director, have prepared a budget for the ensuing bienniuni and shall submit the hudget to the legislative

HeinOnline -- 1997 vol. II 1607 1997

fiscal analyst in accordance with ~~5-12-303~~ *17-7-112* for inclusion in the combined governor's budget and budget analysis report.

(2) Legislative branch budget proposals must be included in the budget submitted by the governor without changes.

(3) Judicial branch budget proposals must be included in the budget submitted by the governor, but expenditures above the current base budget need not be part of the balanced financial plan pursuant to 17-7-123."

**Section 10.** Section 17-7-123, MCA, is amended to read:

**"17-7-123. Form of executive budget.** The budget submitted must set forth a balanced financial plan *of funds subject to appropriation* for *each accounting entity and for* the state government for each fiscal year of the ensuing biennium~~, which~~ *. The base level* plan must consist of:

(1) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements~~, classifying receipts and disbursements contained therein by fund and, when applicable, organizational unit~~;

(2) ~~an analysis of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;~~

~~(3) a detailed analysis of receipts by accounting entity within fund indicating classification and source of funds~~ *budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium*;

~~(4)~~*(3)* ~~a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented must include the following:~~

~~(a) a summary of~~ *the* departmental ~~goals and objectives~~ *mission* and a statement of goals and objectives for each program of the department;

~~(b)~~*(4)* ~~actual~~ *base budget* disbursements for the completed fiscal year of the current biennium, estimated *comparable* disbursements for the current fiscal year, and the ~~current~~ *proposed present law* base budget ~~and the current base budget~~ plus new proposals, if any, for each department and each program of the department;

~~(c) a reference for each program as required under 17-7-111(2)(c); and~~

~~(d)~~*(5)* a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, *including:*

*(a) explanations of appropriation and revenue measures included in the budget that involve policy changes; and*

*(b) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures,* and other matters considered necessary *for comprehensive public and legislative consideration of the state budget*; ~~and~~

~~(5)~~*(6)* ~~detailed recommendations for the state long-range building program. Each recommendation must be presented by department, institution, agency, or branch by funding source, with a description of each proposed project. An appropriation measure must be presented by project, source of funding, and department, agency, institution, or branch for which the project is primarily intended.~~ *a report on:*

*(a) enterprise funds, including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and*

*(b) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.*

*(7) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst."*

**Section 11.** Section 17-7-124, MCA, is amended to read:

**"17-7-124. Additional budget data.** In addition to the budget required in 17-7-123, the governor shall prepare and make available on request *a detailed analysis of receipts by accounting entity within each fund type indicating classification and source of funds.*~~:~~

~~(1) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information available must include the following:~~

~~(a) a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department; and~~

~~(b) schedules showing the number of employees who were given a pay grade change under the pay schedule implemented pursuant to 2-18-303 and the net cost to the agency for the grade changes for the biennium. The changes must be listed in tabular form by:~~

~~(i) position description;~~

~~(ii) grade assigned prior to the completed fiscal year;~~

~~(iii) grade assigned during the completed fiscal year;~~

~~(iv) grade assigned during the current fiscal year;~~

~~(v) recommended grade for the ensuing biennium;~~

~~(vi) dollar difference for the upgrade or downgrade for each position; and~~

HeinOnline -- 1997 vol. II 1609 1997

~~(vii) net cost to the agency for grade changes.~~

~~(2) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions by department, institution, or agency of the state; and~~

~~(3) information submitted by agencies as required by 17-7-111.~~"

**Section 12.** Section 17-7-132, MCA, is amended to read:

"**17-7-132. Right ~~of officers~~ to appear on consideration of budget.** The ~~department of administration~~ *budget director* and representatives of ~~the executive officers,~~ agencies~~, and institutions of the state and other state agencies~~ expending or applying for state ~~moneys~~ *money* may and, when requested by either the house of representatives or the senate, shall appear and be heard with respect to any budget bill."

**Section 13.** Section 17-7-138, MCA, is amended to read:

"**17-7-138. Operating budget.** (1) *(a)* Expenditures by a state agency must be made in substantial compliance with ~~an operating budget approved by an approving authority~~ *the budget approved by the legislature.* ~~Substantial compliance means that a first-level category in the operating budget may not be exceeded by more than 5%.~~ *Substantial compliance may be determined by conformity to legislative intent as established in the narrative accompanying the general appropriations act. An explanation of any significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a change is time-sensitive, the approving authority may approve the change prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee.* Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget by August 1 of each fiscal year. An approved original operating budget must comply with state law and any statement of intent adopted as part of a bill.

*(b) For the purposes of this subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:*

*(i) the expenditure change exceeds $1 million; or*

*(ii) the expenditure change exceeds 25% of a budget category and the change is greater than $25,000. If there have been other changes to the budget category in the current fiscal year, all the changes, including the change under consideration, must be used in determining the 25% and $25,000 threshold.*

HeinOnline -- 1997 vol. II 1610 1997

(2) The expenditure of money appropriated in the general appropriations act to the university system units, as defined in 17-7-102, is contingent upon approval of an operating budget by October 1 of each fiscal year. All otber requirements in this section apply to the university system.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the oporating budget for money appropriated by another law except a law appropriating money for the stste pay plan or any portion of the state pay plan. Each oporating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget and any approved cbanges on the statewide budget and accounting system. Forms used for changing an oporating budget must reference the current, complete, and approved operating budget, show the preposed changes to the operating budget, and reference any otber pending documents to change the operating budget."

**Section 14.** Section 17-7-139, MCA, is amended to read:

"**17-7-139. Program transfers.** *(1)* Unless prohibited by law, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. ~~The transfer may not exceed 5% of the total agency appropriation, excluding statutory appropriations, administrative authorizations, and budget amendments.~~ *An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled mecting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee.* All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaiming the reason for the transfer must be suhmittod by the requesting agency to the approving autbority and the office of budget and program planning. Upon approval of the transfer, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer.

*(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:*

*(a) the budget transfer exceeds $1 million; or*

*(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than $25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer*

HeinOnline -- 1997 vol. II 1611 1997

*under consideration, must be used in determining the 25% and $25,000 threshold."*

**Section 15.** Section 17-7-204, MCA, is amended to read:

**"17-7-204. Long-range building program.** The executive budget for all state agencies ~~shall~~ *must* include detailed recommendations for the state long-range building program presented ~~in a priority listing~~ *in order of importance by fund type*. Each recommendation ~~shall~~ *must* be presented by ~~department, institution,~~ agency~~,~~ or branch hy funding source, with a description of each proposed project, an explanation of the problem to he addressed by the proposed project, altornative inethods of addressing the problem, the rationale for the selection of a particular altornative, and a projection of increased operating costs incident to the project for the next three bienniums."

**Section 16.** Section 17-7-211, MCA, is amended to read:

**"17-7-211. Expansion to be autborized — *budget amendment.*** *(1)* An existing capital project may not be expanded beyond the scope of the project approved by the legislature unless the expansion of the project is authorized by ~~an approved~~ *a* long-range huilding program budget amendment *approved by the budget director.*

*(2) A proposed long-range building program budget amendment must be submitted to the budget director through the architecture and engineering division of the department of administration. The budget director, through a long-range building program budget amendment, may authorize:*

*(a) the transfer of excess funds appropriated to a capital project within an agency to increase the appropriation of another capital project within that agency; or*

*(b) financing to expand a project with funds that were not available for consideration by the legislature."*

**Section 17.** Section 17-7-301, MCA, is amended to read:

**"17-7-301. Autborization to expend during first year of biennium from appropriation for second year — proposed supplemental appropriation defined — limit on second-year expenditures.** (1) ~~A state department, institution, or~~ *An* agency ~~of the executive branch desiring authorization to~~ *may* make expenditures during the first fiscal year of the biennium from appropriations for tho second fiscal year of the biennium ~~shall submit~~ *if authorized by the general appropriations act. An agency that is not authorized in the general appropriations act to make first-year expenditures may be granted spending authorization by the approving authority upon submission and approval of* a proposed supplemental appropriation to the ~~governor~~ *approving authority* ~~through the budget director~~. The proposal suhmitted to the ~~governor~~ *approving authority* must include a plan for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations. If the ~~governor~~ *approving authority* finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will he insufficient for the operation and maintenance of the ~~department, institution, or~~ agency during the year for which the appropriation was made, the ~~governor~~ *approving authority*

HeinOnline -- 1997 vol. II 1612 1997

shall, after careful study and examination of the request and upon review of the recommendation ~~of~~ *for executive branch proposals by* the hudget director, suhmit the proposed supplemental appreprietion to the legislative fiscal analyst.

(2) The plan for reducing expenditures required hy subsection (1) is not required if the proposed supplemental appropriation is:

(a) due to an unforeseen and unanticipated emergency for fire suppression;

(b) requested by the suporintendent of public instruction, in accordance with the provisions of 20-9-351, and is to complete the state's funding of guaranteed tax base aid, transportation aid, or equalization aid to elementary and secondary schools for the current biennium; or

(c) requested hy the attorney general and:

(i) is to pay the costs associated with litigation in which the departnient of justice ~~must~~ *is required to* provide representation to the state of Montana; or

(ii) in accordance with the provisions of 7-32-2242, is to pay costs for which the department of justice is responsible for confinement of an arrested porson in a detention center.

(3) Upon receipt of the recommendation of the legislative finance committee pursuant to 17-7-311, the ~~governor~~ *approving authority* nıay authorize an expenditure during the first fiscal year of the hiennium to he made from the appropriation for the second fiscal year of the biennium. Except as provided in subsection (2), the ~~governor~~ *approving authority* shall require tlie agency to implement the plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations.

(4) The ~~department, institution, or~~ agency ınay expend the amount authorized by the ~~governor~~ *approving authority* only for the purposes specified in the authorization.

(5) The ~~governor~~ *approving authority* shall report to the next legislature in a special section of the budget the amounts expended as a result of all authorizations granted by the ~~governor~~ *approving authority* and shall request that any necessary supplemental appropriation bills be passed.

(6) As used in this part, "proposed supplemental appropriation" nieans an application for authorization to make expenditures during the first fiscal year of the hiennium from appropriations for the second fiscal year of the biennium.

(7) (a) Except as provided in subsections (2) and (7)(b), an agency nıay not make expenditures in the second year of the biennium that, if carried on for the full year, will require a deficiency appropriation, commonly referred to as a "supplemental appropriation".

(b) An agency sball prepare and, to the extent feasihle, implement a plan for reducing expenditures in the second year of the hiennium that contains agency expenditures within appropriations. The approving authority is responsible for ensuring the implementation of the plan. If, in the second year of a hiennium, mandated expenditures that are required hy state or federal law will cause an agency to exceed appropriations or availahle funds, the agency shall reduce all nonmandated expenditures pursuant to the plan in order to reduce to the greatest

HeinOnline -- 1997 vol. II 1613 1997

extent possible the expenditures in excess of appropriations or funding. An agency may not transfer funds between fund types in order to implement a plan."

**Section 18.** Section 17-8-101, MCA, is amended to read:

**"17-8-101. Appropriation and disbursement of money from treasury.** (1) Except as provided in subsection (5), money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (3), ~~must~~ *may* be paid out of the treasury only on appropriation made by law.

(2) Money deposited in the enterprise fund type, internal service fund type, debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, and agency fund type may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting the disbursement.

(3) Subject to the provisions of subsection ~~(8)~~ *(7)*, money paid into the state treasury through error or under circumstances~~,~~ such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law~~,~~ may be refunded upon the submission of a verified claim approved by the department of administration.

(4) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(5) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

~~(6) The office of budget and program planning shall include in the budget submitted to the legislature a report on:~~

~~(a) enterprise funds, including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and~~

~~(b) internal service fund type fees and charges, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Internal service fund type fees and charges must be approved by the legislature in the general appropriations act. Fees and charges in any biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.~~

~~(7)~~ Any accounts in the enterprise fund or the internal service fund created after July 1, 1995, must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The

department shall report annually to the office of hudget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

~~(8)~~*(7)* Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and otherwise requires an appropriation."

**Section 19. Repealer.** Section 17-3-109, MCA, is repoaled.

**Section 20. Effective date.** [This act] is effective July 1, 1997.

Approved April 22, 1997

# CHAPTER NO. 348

[SB 79]

AN ACT CREATING A MONTANA LIVING TRUST ACT; PROVIDING FOR THE REGULATION OF LIVING TRUSTS BY THE STATE AUDITOR; PROVIDING CRIMINAL AND CIVIL PENALTIES AND REMEDIES FOR VIOLATIONS OF THE ACT; PROVIDING FOR A REPORT TO THE 1999 REGULAR SESSION OF THE LEGISLATURE; AND PROVIDING A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] requires the state auditor to adopt forms and rules to implement [sections 1 through 15]. A form or rule may not be adopted unless there is a determination that it is in the public interest or necessary and appropriate for the protection of consumers and consistent with the purpose of [sections 1 through 15].

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 15] may be cited as the "Montana Living Trust Act".

**Section 2. Purpose.** The purpose of [sections 1 through 15] is to regulate the marketing and sale of living trusts in Montana and to provide civil remedies for fraudulent and deceptive sales practices.

**Section 3. Definitions.** As used in [sections 1 through 15], unless the context requires otherwise, the following definitions apply:

(1) (a) "Living trust" means either an irrevocable or a revocable inter vivos trust.

(b) The term does not include an account with a POD designation, as defined in 72-6-201.

(2) "Offer" or "offer to sell" includes an attempt or offer to dispose of a living trust for value or a solicitation of an offer to buy a living trust for value.

(3) "Person" means an individual, corporation, partnership, association, joint-stock company, or unincorporated organization.

HeinOnline -- 1997 vol. II 1615 1997

(4) "Sale" includes each contract of sale, contract to sell, or disposition of a living trust for value.

**Section 4. Licensure — exemption.** (1) A porson may not offer or sell a living trust in this state unless the person:

(a) is registered as an investment adviser or investment adviser representative under 30-10-201; and

(b) has applied for and been granted a license under this section.

(2) Subsection (1) does not apply to the preparation, acceptance, or discussion of a living trust for an individual client, when the preparation of the living trust is based upon the client's particular financial circumstance, by:

(a) an attorney licensed to practice law in this state;

(b) an employee of a state or national bank with trust powers or a trust corporation; or

(c) a person on behalf of an educational, charitable, or religious institution, when done in conjunction with an attorney licensed to practice law in this state.

(3) In any proceeding under [sections 1 through 15], the burden of proving that a person preparing a living trust is excluded from the license requirement is on the person claiming the exclusion.

(4) A person may apply for a license to offer and sell living trusts by filing an application in the form that the state auditor prescribes and paying the fee required in subsection (5).

(5) The state auditor shall issue a license to offer or sell a living trust to a person who:

(a) is registered as an investment adviser or investment adviser representative under 30-10-201;

(b) correctly files an application for the license with the state auditor; and

(c) pays an application fee in the same amount as the amount paid by the person for original registration as an investment adviser or investment adviser representative.

(6) The state auditor may issue an order denying, suspending, or revoking tbe effectiveness of any pending application or approved license if any provision of [sections 1 through 15] or any rule, order, or condition imposed by [sections 1 through 15] has been willfully violated in counection with the offer or sale of a living trust by a person involved in the assembling, drafting, executing, offering, or selling of the living trust.

(7) The license is effective until December 31 following issuance of the license or until another date that the state auditor establishes by rule unless the license is suspended or revoked.

(8) A person may renew a license annually, prior to the termination date of the license, if the person:

HeinOnline -- 1997 vol. II 1616 1997

(a) is registered as an investment adviser or investment adviser representative under 30-10-201; and

(b) pays a renewal fee in the same amount as the amount paid by the person for annual renewal as an investment adviser or investment adviser representative.

**Section 5. Administration.** (1) The administration of the provisions of [sections 1 through 15] is under the general supervision and control of the state auditor. The state auditor shall adopt forms and rules necessary to implement [sections 1 through 15].

(2) A document is filed when it is received by the state auditor. The state auditor shall keep a register of all applications for licenses to offer and sell living trusts in this state. The register must he open for puhlic inspection. The information contained in or filed with an application must be made available to the public.

(3) Upon request and at a reasonable charge, the state auditor shall furnish to any person photostatic or other copies, certified under the seal of office if requested, of any entry in the register or any document filed with the state auditor that is a matter of public record. In any proceeding or prosecution under [sections 1 through 15], a certified copy is prima facie evidence of the contents of the entry or document certified.

(4) A person who has received a license to offer and sell living trusts in this state shall make and keep accounts and other records as required by the state auditor. The records are subject at any time to reasonable periodic, special, or other examination, within or outside this state, by representatives of the state auditor if necessary to protect the public interest or for the protection of consumers.

**Section 6. Scope.** [Sections 1 through 15] apply to any person who sells or offers to sell a living trust in this stato or when an offer to buy a living trust is made and accepted in this state. An offer to sell or buy is made in this state, whether or not either party is then present in this state, if the offer either originates in this state or is directed by the offeror to this state and is received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

**Section 7. Fines and fees — deposit to general fund.** All fines and fees received by the state auditor pursuant to [sections 1 through 15] must be deposited in the general fund. If, in any year, the fines and fees do not cover the cost of administering [sections 1 through 15], the state auditor may increase the fees by rule to the extent necessary to cover the expected costs of administering [sections 1 through 15] for the following year.

**Section 8. Consent to service of process — manner of service.** (1) An applicant under [sections 1 through 15] shall file with the state auditor, in the form the state auditor prescribes, an irrevocable consent appointing the state auditor as the applicant's agent for the purpose of receiving service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator that arises under [sections 1 through 15] or any rule or order adopted or issued pursuant to [sections 1

HeinOnline -- 1997 vol. II 1617 1997

through 15]. Service on the state auditor has the same force and validity as if served personally on the applicant or the applicant's successor, executor, or administrator.

(2) Service may be made by leaving a copy of the process in the office of the state auditor, but service is not effective unless:

(a) the plaintiff sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the state auditor; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or at a later date as the court allows.

**Section 9. Fraudulent and other prohibited practices.** (1) It is unlawful for a person, in connection with the offer or sale of any living trust, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact;

(c) fail to state a material fact necessary to render any statement made not misleading; or

(d) engage in any other act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for a person to sell a living trust to a person for whom a living trust is not suitable.

**Section 10. Misleading filings.** It is unlawful for a person to knowingly make or cause to be made a materially false or misleading statement in any document filed with the state auditor or in any proceeding under [sections 1 through 15].

**Section 11. Unlawful representation concerning approval of application.** The fact that an application for a license to offer or sell living trusts has been filed or approved in this state does not constitute a finding by the state auditor that any document filed under [sections 1 through 15] is true, complete, and not misleading. The state auditor's approval of an application for a license to offer or sell a living trust may not be construed as a determination of the merits of any transaction or a recommendation of any person or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

**Section 12. Investigations and subpoenas.** (1) The state auditor may:

(a) issue subpoenas, compel testimony, and conduct hearings as provided in Title 2, chapter 4, parts 1 and 6;

(b) make public or private investigations or examinations within or outside this state that the state auditor considers necessary to:

HeinOnline -- 1997 vol. II 1618 1997

(i) determine whether a license to sell or offer to sell living trusts should be granted, denied, or revoked;

(ii) determine whether a person has violated or is about to violate a provision of [sections 1 through 15] or any rule or order adopted or issued pursuant to [sections 1 through 15]; or

(iii) aid in the enforcement of [sections 1 through 15] or in the prescribing of rules and forms under [sections 1 through 15];

(c) require or permit a person to file a statement in writing, under oath or otherwise as the state auditor may determine, relating to the facts and circumstances concerning a matter to be investigated; and

(d) publish information concerning a violation of [sections 1 through 15] or any rule or order adopted or issued pursuant to [sections 1 through 15].

(2) A person is not excused from attending a hearing or from producing a document or record before the state auditor or in obedience to a subpoena of the state auditor or any officer designated by the state auditor or pursuant to any proceeding instituted by the state auditor on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or forfeiture. This section does not prohibit the state auditor from granting immunity from prosecution for any transaction, matter, or thing concerning which a witness is compelled to testify if the state auditor determines, in the state auditor's discretion, that justice would be served. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpeena.

**Section 13. Injunctions and other remedies — limitations on actions — criminal sanctions.** (1) If it appears to the state auditor that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of [sections 1 through 15], the state auditor may:

(a) issue an order directing the person to cease and desist from committing or continuing the act or practice until a hearing can be held pursuant to Title 2, chapter 4, part 6; or

(b) without issuing an order to cease and desist, bring an action in any court of competent jurisdiction to enjoin any acts or practices and to enforce compliance with [sections 1 through 15] or any rule or order adopted or issued pursuant to [sections 1 through 15]. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The state auditor may not be required to post a bond.

(2) A final judgment or decree under subsection (1)(b) determining that a person has violated [sections 1 through 15] in an action brought by the state auditor for the violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in any action maintained pursuant to [section 15].

(3) The state auditor may, after giving reasonable notice and an opportunity for a hearing pursuant to Title 2, chapter 4, part 6, impose a fine not to exceed $10,000 for each violation upon a person found to have engaged in an act or

HeinOnline -- 1997 vol. II 1619 1997

practice constituting a violation of any provision of [sections 1 through 15] or any rule or order adopted or issued pursuant to [sections 1 through 15]. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the state auditor in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to Title 2, chapter 4, part 6. If a person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the state auditor and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of the right to do business in this state under [sections 1 through 15].

(4) An administrative or civil action may not be maintained by the state auditor under this section to enforce a liability founded on a violation of [sections 1 through 15] or any rule or order adopted or issued pursuant to [sections 1 through 15] unless it is brought within 2 years after discovery by the state auditor of the facts constituting the violation.

(5) Any person who purposely or knowingly violates any provision of [sections 1 through 15] or who purposely or knowingly violates any rule or order adopted or issued pursuant to [sections 1 through 15] shall upon conviction be fined not more than $10,000 or imprisoned for a term of not more than 10 years, or both. An indictment or information may not be returned under [sections 1 through 15] more than 8 years after the alleged violation. However, the time limitation period may be extended to allow commencement of a prosecution within 1 year after the date the state auditor or other prosecuting officer becomes aware of the violation on which the action is based.

(6) The state auditor may refer evidence concerning violations of [sections 1 through 15] or of any rule or order adopted or issued pursuant to [sections 1 through 15] to the attorney general or proper county attorney, who may, with or without the referral, institute the appropriate criminal proceedings under [sections 1 through 15].

(7) Nothing in [sections 1 through 15] limits the power of the state to punish a person for any conduct that constitutes a crime.

**Section 14. Judicial review of orders.** A person aggrieved by a final order of the state auditor may obtain judicial review of the order as provided in Title 2, chapter 4, part 7.

**Section 15. Civil liabilities — limitations on actions.** (1) A person who offers or sells a living trust in violation of [section 4] or offers or sells a living trust by means of fraud or misrepresentation is liable to the person buying the living trust, who may sue either at law or in equity to recover the consideration paid for the living trust, together with interest, at 10% a year from the date of payment, costs, and reasonable attorney fees.

(2) A person who directly or indirectly controls an offeror or seller who is liable under subsection (1) or a partner, officer, director, associate, or employee of the offeror or seller who participates or materially aids in the offer or sale is liable jointly and severally with the offeror or seller if the nonseller knew or in the exercise of reasonable care should have known of the violation. Contribution may be required among liable persons.

HeinOnline -- 1997 vol. II 1620 1997

(3) A person who has made or engaged in the performance of a contract in violation of any provision of [sections 1 through 15] or any rule or order adopted or issued pursuant to [sections 1 through 15] or who has acquired any purported right under the contract with knowledge of the violation may not hase any suit on the contract. Any condition, stipulation, or provision hinding a person acquiring a living trust to waive compliance with any provision of [sections 1 through 15] or any rule or order adopted pursuant to [sections 1 through 15] is void as against public policy and the public interest.

(4) (a) Except as provided in subsection (4)(b), an action may not be maintained under this section to enforce any liability founded on a violation of [section 4], fraud, or misrepresentation unless it is brought within 2 years after discovery of the violation or after the time the discovery should have been made by the exercise of reasonable diligence.

(b) An action may not be maintained under this section to enforce any liability unless it is brougbt within 5 years after the transaction on which the action is based.

**Section 16. Report to legislature.** The state auditor shall, as provided in 5-11-210, report to the 1999 regular session of the legislature on the implementation of [sections 1 through 15]. The report must include a detailed record of tbe types of complaints received, a summary of any fines impesed and received, and any other actions taken to enforce compliance with [sections 1 through 15].

**Section 17. Codification instruction.** [Sections 1 through 15] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 15].

**Section 18. Termination.** [This act] terminates October 1, 1999.

Approved April 22, 1997

## CHAPTER NO. 349

[SB 89]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF TELECOMMUNICATIONS SERVICES IN RESPONSE TO THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; PROVIDING FOR THE REGISTRATION OF TELECOMMUNICATIONS PROVIDERS; ESTABLISHING A DUTY TO INTERCONNECT TELECOMMUNICATIONS CARRIERS AND PROVIDING FOR NEGOTIATED, MEDIATED, AND ARBITRATED INTERCONNECTION AGREEMENTS; REQUIRING LIMITED PUBLIC SERVICE COMMISSION APPROVAL OF INTERCONNECTION AGREEMENTS; PROVIDING FOR THE DESIGNATION OF CARRIERS ELIGIBLE FOR FEDERAL UNIVERSAL SERVICE SUPPORT; PROVIDING FOR THE AUTHORIZATION OF FEDERALLY FUNDED DISCOUNTS FOR INTRASTATE SERVICES UNDER CERTAIN CIRCUMSTANCES TO SCHOOLS, LIBRARIES, AND HEALTH CARE PROVIDERS; ESTABLISHING STANDARDS FOR WHOLESALE PRICING OF TELECOMMUNICATIONS SERVICES, INCLUDING

HeinOnline -- 1997 vol. II 1621 1997

INDIVIDUAL NETWORK ELEMENTS; PROHIBITING CERTAIN SUBSIDIES; AMENDING THE LAWS REGARDING PROMOTIONAL OFFERINGS BY REGULATED TELECOMMUNICATIONS PROVIDERS; INCREASING THE AMOUNT OF ASSISTANCE IN THE TELEPHONE LOW-INCOME ASSISTANCE PROGRAM; ESTABLISHING AN INTERIM UNIVERSAL ACCESS TO THE ADVANCED TELECOMMUNICATIONS SERVICES PROGRAM ADMINISTERED BY THE PUBLIC SERVICE COMMISSION; PROVIDING A DISCOUNT FOR USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR CERTAIN PUBLIC ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND ACCESS POINTS, SCHOOLS, LIBRARIES, HEALTH CARE PROVIDERS, AND TRIBAL COLLEGES; ESTABLISHING A SURCHARGE ON RETAIL REVENUE DERIVED FROM INTRASTATE TELECOMMUNICATIONS SERVICES IN THE STATE; REQUIRING THE PUBLIC SERVICE COMMISSION TO MAKE RECOMMENDATIONS TO THE 56TH LEGISLATURE REGARDING UNIVERSAL ACCESS AND SERVICE; CREATING A UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS SERVICES; PROVIDING FOR THE TELECOMMUNICATIONS SERVICES SUPPORTED BY THE FUND AND OPERATION OF THE FUND THROUGH A CONTRIBUTION FROM TELECOMMUNICATIONS CABRIERS BASED UPON A PERCENTAGE OF THE TELECOMMUNICATIONS CARRIERS' RETAIL REVENUE; PROVIDING THAT THE FUND BE ADMINISTERED BY A PRIVATELY CONTRACTED ENTITY UNDER THE DIRECTION OF THE PUBLIC SERVICE COMMISSION; PROVIDING FOR DISTRIBUTIONS FROM THE FUND TO ELIGIBLE TELECOMMUNICATIONS CARRIERS; ESTABLISHING A COMMITTEE TO MONITOR FEDERAL IMPLEMENTATION OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996; APPROPRIATING FUNDS FOR THE COMMITTEE; AMENDING SECTIONS 2-4-102, 69-3-305, 69-3-803, 69-3-805, 69-3-806, 69-3-807, AND 69-3-1001, MCA; REPEALING SECTIONS 69-6-101, 69-6-102, AND 69-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this hill because rulemaking authority is granted to the public service commission.

[Section 3] authorizes the public service commission to adopt procedural rules relating to mediation and arbitration for interconnection proceedings.

Under the interim universal access provisions of [sections 20 through 26], the public service commission is to establish surcharge rates as provided in [section 25]. The surcharge rates must take into account different cost structures among telecommunications carriers, particularly the wireless and CATV industry. The retail revenue for tbese providers should be based on an equitable, per access line, revenue equivalent. The commission sball also set the surcharge rate to produce the ameunt of revenue necessary to fund tbe program. The formulation should consider any overlapping federal discounts. The commission sbould appoint an oversigbt group, consisting of users and industry participants, to meet quarterly with the commission to review revenue, discounts, and the administration of [sections 20 through 26]. The public service commission shall also establish a method for paying discount reimbursements in accordance with [section 25]. The public service commission sliall cooperate with the department of revenue in

HeinOnline -- 1997 vol. II 1622 1997

determining rates, administering offsets against any surcharges, and other matters necessary for the administration of [sections 20 through 26].

The department of revenue shall administer the collection of the surcharge by rule. Because of the limited duration of the program, it is contemplated that the rules and administration be minimal, flexible, and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the implementation of [sections 20 through 26].

Under [section 13], the public service commission shall administer a contract with a third party that will manage the universal service fund for telecommunications services on a daily basis. The third party is responsible for the collection of contributions to the fund. The third party is also responsible for setting the amount of contribution based on total retail revenue of telecommunications carriers operating in Montana. The public service commission shall adopt procedural rules for the collection of the contributions. The public service commission shall also adopt rules allowing the third party to assess late fees and interest on late payments of contributions. The rules must set interest rates and ponalties for late payments.

[Section 14] authorizes the public service commission to adopt procedural rules relating to the collection of contributions to the universal service fund. [Section 14] authorizes the public service commission to adopt rules for the assessment of late fees and interest on contributions to the fund.

[Section 15] requires the public service commission to adopt rules establishing affordability benchmarks for local service.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Interconnection — construction and effect.** [Sections 1 through 19] do not grant any jurisdiction to the commission over telecommunications carriers except as expressly set forth in [sections 1 through 19], and [sections 1 through 19] may not be construed to limit or repeal exemptions from the commission's jurisdiction otherwise recognized by statute or law. Legislation may not be considered to suporsede or modify any provision of [sections 1 through 19] except to the extent that the legislation does so expressly.

**Section 2. Interconnection — jurisdiction.** In addition to the authority granted to the commission in 69-3-102 to supervise and regulato public utilities, the commission has authority, for the purposes of implementing [sections 1 through 9], over all telecommunications carriers.

**Section 3. Rulemaking authority.** The commission may adopt rules of procedure to implement [sections 6 through 10].

**Section 4. Duty to interconnect.** (1) The purpose of this section is to implement specific provisions of the federal Telecommunications Act of 1996, Public Law 104-104.

(2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

(b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

HeinOnline -- 1997 vol. II 1623 1997

(c) In addition to the duties provided for in subsection (2)(b), each incumbent local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(c).

(3) (a) Except under the circumstances set forth in subsection (4), the provisions of subsection (2)(c) do not apply to a rural telephone company until:

(i) the company has received a bona fide request for interconnection, services, or network elements; and

(ii) the commission determines under subsection (3)(b) that the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)).

(b) The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the commission. The commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption provided by subsection (3)(a). Within 120 days after the commission receives notice of the request, the commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254 (other than 47 U.S.C. 254(b)(7) and (c)(1)(D)). Upon termination of the exemption, the commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with the federal communications commission's regulations.

(4) The exemption provided by subsection (3)(a) does not apply with respect to a request from a cable operator providing video programming and seeking to provide any telecommunications service in the area in which the rural telephone company was providing video programming on February 8, 1996.

(5) (a) A local exchange carrier with fewer than 2% of the nation's subscriber lines, installed in the aggregate nationwide, may petition the commission for a suspension or modification of the application of a requirement of subsection (2)(b) or (2)(c) to telephone exchange service facilities specified in the petition. The commission shall grant the petition for the suspension or modification to the extent and for the duration that the commission determines:

(i) is necessary:

(A) to avoid a significant adverse economic impact on users of telecommunications services generally;

(B) to avoid imposing a requirement that is unduly economically burdensome; or

(C) to avoid imposing a requirement that is technically infeasible; and

(ii) is consistent with the public interest, convenience, and necessity.

(b) The commission shall act upon any petition filed under subsection (5)(a) within 180 days after receiving the petition. Pending action, the commission may suspend enforcement of the requirement to which the petition applies with respect to the petitioning carrier.

**Section 5. Voluntary negotiation of interconnection agreements.** Upon receiving a request for interconnection, services, or network elements

pursuant to [section 4], an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier without regard to the duties set forth in [section 4(2)(b) or (2)(c)]. The agreement must include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement.

**Section 6. Mediation of interconnection agreements.** Upon the written request of any party negotiating an agreement for interconnection with another telecommunications carrier, the commission may designate a mediator, who may be a commission member, to mediate any differences arising in the course of the negotiation.

**Section 7. Arbitration of interconnection issues.** (1) The commission has the authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed on February 8, 1996, according to the duties in subsections (3) through (14) of this section. Except as expressly provided in this section, the provisions of the Montana Administrative Procedure Act do not apply to arbitrations conducted under the authority granted by this section.

(2) During the period from the 135th to the 160th day, inclusive, after the date on which an incumbent local exchange carrier receives a request for negotiation under [section 4], the carrier or any other party to the negotiation may petition the commission to arbitrate any open issues. A party that petitions the commission under this section shall, at the same time as it submits the petition, provide the commission all relevant documentation concerning the following:

(a) the unresolved issues;

(b) the position of each of the parties with respect to those issues; and

(c) any other issue discussed and resolved by the parties.

(3) A party petitioning the commission under this section shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the commission receives the petition.

(4) A nonpetitioning party to a negotiation under [section 4] may respond to the other party's petition and provide any additional information that it wishes within 25 days after the commission receives the petition.

(5) The commission shall limit its consideration to those issues set forth by the parties to the negotiation in the petition for arbitration and the response to the petition.

(6) The commission may appoint a hearings examiner for arbitration proceedings under this section. The hearings examiner shall file with the commission a proposed decision within the time set by order of the commission. A hearings examiner must be assigned with regard to the expertise required for the particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the commission shall determine the affidavit or motion as a part of the record in the case. The commission may disqualify the hearings examiner and appoint another hearings examiner. The affidavit must state the facts and the

HeinOnline -- 1997 vol. II 1625 1997

reasons for the belief that the hearings examiner should he disqualified and must be filed not less tban 10 days before tbe original date set for the hearing.

(7) Participation in the arbitration proceeding must be limited to the telecommunications carrier requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and the Montana consumer counsel.

(8) Negotiations among the telecommunications carriers may continue, pending a final decision hy the arbitrator.

(9) Unless otherwise agreed to by the parties, the commission shall, within 10 days of the filing of a request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and a hearing date.

(10) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties are entitled to be heard, present evidence material to the issues, and cross-examine witnesses appearing at the hearing. Parties must be allowed to conduct discovery pursuant to the schedule determined by the arbitrator, and the discovery must be conducted pursuant to the Montana Rules of Civil Procedure.

(11) The commission may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being arbitrated and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The commission shall regulate the course of the hearings and tbe need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

(12) The commission shall issue its final decision no later than 9 months after the request for negotiations on a petition issued under [section 4]. When the commission files its final decision or when the bearings examiner files the proposed decision with the commission, each party must be simultaneously given a copy delivered personally or by certified mail. The decision must:

(a) ensure the resolution of issues presented by the parties and ensure that the resolution meets the requirements of [section 4] and this section;

(b) establish rates for interconnection, services, or access to unbundled network elements pursuant to 47 U.S.C. 252(d); and

(c) provide a schedule for implementation of the terms and conditions of the decision by the parties.

(13) If the person who conducted the hearing becomes unavailable to the commission, the commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(14) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an arbitration proceeding,

HeinOnline -- 1997 vol. II 1626 1997

after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

**Section 8. Approval of arbitration decision.** (1) If the commission has not approved or rejected in its entirety an agreement adopted by arbitration under [section 7(12)] within 30 days of submission by the parties, the agreement is considered approved.

(2) The commission may reject the agreement only if the commission finds that the agreement does not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by the federal communications commission or the standards set forth in 47 U.S.C. 252(d). Upon rejection of an agreement, the commission shall provide the parties with written findings as to any deficiencies.

**Section 9. Approval of interconnection agreements.** (1) Within 90 days of filing of an interconnection agreement adopted by negotiation of the parties to an agreement, the commission shall approve or reject the agreement, or the agreement is considered approved.

(2) The commission may reject an agreement filed under this section only if the commission finds that:

(a) the agreement or a portion of the agreement discriminates against a telecommunications carrier not a party to the agreement; or

(b) the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity.

(3) Upon rejecting an agreement filed under this section, the commission shall issue written findings detailing any deficiencies in the agreement.

**Section 10. Determination of eligible carrier status — universal service support.** (1) The commission is authorized to designate telecommunications carriers as eligible for federal universal service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, and for any Montana universal service funds. This authorization applies to all telecommunications carriers notwithstanding the carrier's exemption from further regulation by the commission.

(2) Upon the petition of a telecommunications carrier, or upon its own motion, the commission shall designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible telecommunications carrier for a service area designated by the commission. In the case of an area served by a rural telephone company, the term "service area" means the company's "study area" for federal universal service support unless the federal communications commission establishes a different definition of service area for the company. The term "service area" for all other telecommunications carriers means a geographic area such as a census block or grid block as established by the commission for the purpose of determining federal universal service obligations and support mechanisms.

(3) Upon receiving a petition from a telecommunications carrier and consistent with the public interest, convenience, and necessity, the commission

HeinOnline -- 1997 vol. II 1627 1997

may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one telecommunications carrier for a service area, so long as each additional requesting telecommunications carrier meets the requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier for an area served hy a rural telephone company, the commission shall find that the designation is in the puhlic interest.

(4) If no telecommunications carrier will provide the services that are supported by universal service support mechanisms under 47 U.S.C. 254(c) to all or a part of an unserved community that requests service, the commission shall determine which telecommunications carrier is best able to provide the service to the requesting unserved community. Any telecommunications carrier ordered to provide service under this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible telecommunications carrier for that community or the unserved portion of the community.

(5) The commission shall permit an eligible telecommunications carrier to relinquish its designation as an eligible carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed 1 year after the commission approves relinquishment under this section, within which the purchase or construction must be completed.

**Section 11. Universal service policies.** The legislature finds that universally available telecommunications services are essential te the health, welfare, and economic well-being of the citizens of Montana. The federal Telecommunications Act of 1996, Public Law 104-104, requires a transition to local competition. Implicit subsidies have historically been used to further the puhlic policy of keeping local rates to customers in high-cost areas at affordable levels. The federal act and the transition to competition require that all subsidies used to keep local rates at affordable levels be explicit. Additionally, the federal act's universal service provisions establish a system of discounts for schools, libraries, and health care providers. Securing these discounts can be dependent on state actions. In order to preserve and advance the goal of universal service in the new competitive environment established by the federal act, the legislature finds that a new Montana universal service fund, supported by contributions from the telecommunications carriers operating in Montana, should be created that will:

(1) not duplicate the federal universal service fund mandated by the Telecommunications Act of 1996 but that will complement the federal fund hy providing additional funding as necessary to ensure universal service in the state of Montana;

HeinOnline -- 1997 vol. II 1628 1997

(2) he competitively and technologically neutral in both funding and distribution;

(3) provide a specific, predictable, and sufficient mechanism of support for high-cost areas; and

(4) allow for implementation of the federal support system for telecommunications services provided to schools, libraries, and health care providers.

**Section 12. Universal service fund cstablished — purpose.** (1) Pursuant to a determination of need, the commission shall establish and administer a fund to assist eligible telecommunications carriers in providing affordable telecommunications services in high-cost areas. The fund must provide support for the following services:

(a) voice grade access to the public switched network, including some usage;

(h) dual-tone multifrequency (DTMF or "touch tone") signaling or its equivalent;

(c) single-party service;

(d) access to emergency services, including access to 9-1-1, where available, and access to enhanced 9-1-1 when requested by a telecommunications carrier's local community and when the telecommunications carrier has technical capacity to provide it;

(e) access to operator services;

(f) access to interexchange services; and

(g) access to directory assistance.

(2) The fund must support only access to tlie services listed in suhsections (1)(d) through (1)(g) and not support the services themselves.

(3) The fund must be administered to ensure that its operation is competitively and technologically neutral.

**Section 13. Fund administrator.** (1) A fiscal agent and daily administrator must be selected to receive and distribute funds under [sections 11 through 15].

(2) The fiscal agent must be selected by tlie commission based upon a competitive bidding process after an opportunity for puhlic comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of tbe fiscal agent must be determined by a contract consistent with [sections 11 through 15]. The contract term of the fiscal agent must expire December 31, 1999.

(3) The fiscal agent shall provide quarterly reports of fund activities to the commission and shall provide audits annually by a certified public accountant in a manner determined by and under the direction of the commission.

(4) The financial accounts of the fiscal agent must be available at reasonable times to any telecommunications carrier in the state and to the public. Tlie

HeinOnline -- 1997 vol. II 1629 1997

commission may investigate the accounts and practices of the fiscal agent and enter orders concerning the accounts and practices.

**Seetion 14. Contributions to fund.** (1) The fiscal agent shall collect contrihutions from all telecomniunications carriers on a quarterly basis, based on a July 1 to June 30 fiscal year. Initial contributions to the fund may only be collected for the 2-nionth period prior to the effective date of distributions froni the fund and must be calculated as follows:

(a) determine the total retail revenue for all telecommunications carriers for the immediately precedmg calendar year;

(b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant to [section 15];

(c) compute a uniform percentage of the amount determined in subsection (1)(a) tbat will produce an amount equal to the fund total calculated in subsection (1)(h);

(d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund shortfalls or excesses in the previous fiscal year; and

(e) send notice of the current uniforni percentage and appropriate remittance forms to each telecomniunications carrier at least 2 months prior to the effective date of the application of the percentage.

(2) The commission shall adopt procedural rules to govern collection of the contrihutions required by this section, as well as rules allowing the fiscal agent and daily administrator to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in the district courts of Montana.

(3) Any reduction in telecommunications carrier access expenses because of the removal of implicit subsidies inlierent in teleconimunications carrier access rates must be passed through to Montana end-user customer retail rates.

**Seetion 15. Distributions from fund — calculation of costs.** (1) Suhject to the requirements of this section, payments from the fund inust be made by the fiscal agont to qualifying eligible teleconimunications carriers, on a monthly basis, pursuant to rules adopted by the conimission.

(2) Only eligible telecommunications carriers that offer the telecommunications services described in [section 12(1)] to all customers in a designated support area and that advertise the availability of the telecommunications services and the charges for the teleconimunications services using media of general distribution may receive support from the fund for the designated support area.

(3) Distributions must be calculated for the designated support areas estahlished by the conimission. In the case of an area served by a rural telephone company, the term "designated support area" nieans tne rural telephone company's Montana service area unless the rural telephone company voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications services under subsection (6). After adoption of a proxy

model, the rural telephone company's designated support area must be an area designated by the commission, which may be smaller than a wire center. The term designated support area for all other telecommunications carriers means a geographic area as established by the commission, which must be smaller than a wire center.

(4) Support for the services listed in [section 12(1)] must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark in that support area. The commission shall adopt rules to determine affordability benchmarks.

(5) Except as provided in subsection (6), for rural telephone companies and other eligible telecommunications carriers offering services in a designated support area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:

(a) If an additional eligible telecommunications carrier has not been designated pursuant to [section 10(3)], the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport costs, and customer operations costs assigned to the telecommunications services set forth in [section 12(1)], which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(b) Upen the designation of an additional eligible telecommunications carrier pursuant to [section 10(3)] in a designated support area served by a rural telephone company, the additional eligible telecommunications carrier has access to the fund on the same basis as the rural telephone company. Upen the designation of the additional eligible telecommunications carrier, both the carrier and the rural telephone company must receive distributions from the fund based upon the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. The support for each line for each geographic area must be based upon the rural telephone company's costs, as determined in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the commission.

(6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies and for rural telephone companies voluntarily electing to use a cost prexy medel, the average cost for each line in designated support areas must be calculated based on the cost proxy model adopted by the commission. This total per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(7) In determining any proxy mechanism under this section, the commission shall use a model that:

(a) targets support to a geographic area smaller than a wire center;

HeinOnline -- 1997 vol. II 1631 1997

(h) uses acceptable outside plant design and costing principles;

(c) uses reasonable switch design and costing principles;

(d) includes a reasonable share of the joint and common costs of the telecommunications carrier;

(e) meets standards for documenting model logic and the sources of cost data input; and

(f) meets reasonableness tests to ensure that model outputs are representative of costs that can be reasonably expected in the construction of a network and that the network is capable of providing telecommunications services that meet the telecommunications services quality standards of the commission and federal regulators.

(8) An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications services or facilities if the rates charged to an eligible telecommunications carrier by the other telecommunications carrier have been reduced by a contribution from universal service funds under this section.

(9) Costs of administering the fund must be paid from the fund.

**Section 16. Discounts for schools, libraries, and health care providers.** The commission is authorized to estahlish intrastate discounts to schools, libraries, and health care providers and to perform administrative functions necessary as a condition of federal universal service support if the discounts are recovered through the federal universal service fund.

**Section 17. Wholesale pricing standards.** (1) Except as provided in subsection (2), if the commission is requested by a telecommunications carrier to establish wholesale prices for services provided by a telecommunications carrier, the commission may not establish a wholesale price using a default proxy discount value to be applied to the applicable retail price. The commission shall establish wholesale prices using company-specific costs.

(2) This section does not apply to the prices, terms, and conditions of a final or interim arbitrated interconnection agreement, arhitration decision, or appeal from an agreement or decision if the request for arbitration was filed on or before March 1, 1997.

**Section 18. Pricing of individual network elements.** (1) Except as provided in subsection (4), if the commission is requested by a telecommunications carrier to establish the prices of the individual network elements used to provide telecommunications services, the commission shall set those prices at a just and reasonable level sufficient to recover the actual cost of providing those elements, including:

(a) a reasonable share of the joint and common costs so that the telecommunications carrier has a reasonable opportunity to recover these costs;

(b) depreciation costs that are based upon forward-looking asset lives consistent with asset lives of other telecommunications carriers and that reflect an amortization of any underdepreciated investment;

HeinOnline -- 1997 vol. II 1632 1997

(c) a reasonable share of the costs associated with fill factors, recognizing spare capacity required to fulfill eligible telecommunications carrier responsibilities; and

(d) a fair return on investments.

(2) The actual cost of providing the elements included in suhsections (1)(a) through (1)(d) must be determined without reference to a rate-of-return or other rate-based proceeding.

(3) If a telecommunications carrier uses average prices for services to end users without regard to the customer's location, the commission shall similarly establish an average cost and wholesale price for each individual network element sold to other telecommunications carriers. The commission may depart from average pricing for network elements only to the extent that the retail prices to end users of a telecommunications carrier have departed from average pricing.

(4) This section does not apply to the prices, terms, and conditions of a final or interim arhitrated interconnection agreement, arbitration decision, or appeal from an agreement or decision if the request for arbitration was filed on or before March 1, 1997.

**Section 19. Prohibited subsidies.** The commission may not subsidize the price of any telecommunications service, including wholesale prices or the prices of individual network elements, by reducing the prices to reflect an allocation or credit of revenue from the operations of an affiliated company of the carrier of telecommunications services, including a publishing affiliate.

**Section 20. Interim universal access program — purpose.** (1) There is an interim universal access program.

(2) The purpose of the interim universal access program is to further the geal of universal access to advanced telecommunications services in Montana by:

(a) increasing safety net coverage through wbich advanced telecommunications services would, at a minimum, he available through a library, school, or other specified type of public institution in every community in the state;

(b) encouraging innovation in communities to bring advanced services to Montana's rural areas; and

(c) assisting communities that have already succeeded in obtaining services when ongoing transport costs threaten the continued availability of these services.

**Section 21. Interim universal access program — definitions.** As used in [sections 20 though 27], the following definitions apply:

(1) "Administrator" means the public servico commission.

(2) "Advanced services" means high-speed (56 kbps and above), dedicated or switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

HeinOnline -- 1997 vol. II 1633 1997

(3) "Health care provider" means any one of, or a consortium of, the following institutions located in Montana:

(a) postsecondary educational institutions offering health care instruction;

(b) community health care centers or health centers providing health care to migrants;

(c) local health departments or agencies;

(d) community mental health centers;

(e) not-for-profit hospitals; and

(f) rural health clinics.

(4) "Library" means a library located in Montana that is eligible for participation in state-based plans for funds under Title III of the Library Services and Construction Act (20 U.S.C. 335c, et seq.).

(5) "School" means:

(a) an elementary school or secondary school that meets the definition set forth in subsections (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801) and that does not have an endowment of more than $50 million; or

(b) a bureau of Indian affairs elementary and secondary school.

(6) "Tribal college" means a college recognized by the United States government as a tribal college.

**Section 22. Interim universal access program — public access points.** At a minimum, all public access points must provide the general public access to advanced telecommunications services that are not subscription-based. The access must be provided free of charge and at convenient hours on a walk-in basis. Public access points may offer subscription- based services, such as electronic mail, but are not required to administer these types of services.

**Section 23. Interim universal access program — funded services — application for services.** (1) The universal access program provides funding through discounts only for advanced services for use by public access points, schools, tribal colleges, libraries, and health care providers approved by the administrator.

(2) The first priority of the program is to provide funding for at least one public access point in each Montana community. Subject to available funding, the program shall also provide funding for advanced services to schools, tribal colleges, libraries, and health care providers.

(3) The administrator shall establish discount levels for services in each of the following categories:

(a) public access points;

(b) education services to schools and tribal colleges for distance learning, electronic access to educational resources, and electronic delivery or reception of educational programming;

(c) library services for libraries not serving as public access points for electronic access to information and library services; and

(d) rural health services to rural health care providers for access to similar services as urban health care providers and to ensure electronic access to health care services.

(4) To receive discounted services under the interim universal access program, public access providers, schools, tribal colleges, libraries, and health care providers shall apply for the discounts. The application must be accompanied by a resolution of support from the governing body of the appropriato city, county, or tribal governmnent in which the applicant is located.

**Section 24. Interim universal access program — serviees provided at discounts — reimbursements.** (1) Telecommunications carriers shall provide advanced services to eligible users at specified discounts. The amount of tbe discount must be reimbursed to the provider from the interim universal access account established in [section 26].

(2) Except as provided in subsection (3), the advanced discount is equal to 50% of the best cost rate available to any business customer for an equivalent of one 56 kbps dedicated circuit to the nearest access point for the requested service. However, the cost to the eligible user may not exceed $100 a month.

(3) If funds from tbe interim universal access account are not sufficient to fully reimburse for discounts authorized in subsection (2), the amount of the discounts to each eligible user must be reduced proportionally.

(4) Even if best cost rates available to any business customer increase by more than 5%, the amount payable by an eligible user may not increase by more than 5% during tbe period from [the effective date of this section] to January 1, 2000.

(5) Subject to restrictions in federal law, if interstate universal access services are established by the federal communications commission, federal funding for universal access services must be used to reduce state funding for intrastate services.

**Section 25. Interim universal access program — funding — surcharge rate.** (1) (a) The interim universal access program is funded by a surcharge based on the retail revenue for all intrastate telecommunications services in the state. The surcharge must be determined by the administrator by rule. The surcbarge must be set and applied to all telecommunications carriers on a competitively neutral basis.

(b) The rate of the surcharge must be set to raise $250,000 during tlie fiscal year ending June 30, 1998, and $500,000 during the fiscal year ending June 30, 1999. The rate may be changed, by rule, as necessary.

(c) The payment of the surcharge is an explicit subsidy and may be shown as a separate line item on each carrier's retail telecommunications services bills.

HeinOnline -- 1997 vol. II 1635 1997

(d) The surcharge may be applied only to telecommunications services. Customer premise equipment is not considered a telecommunications service.

(2) The surcharge is payable quarterly to the department of revenue and deposited by the department in the interim universal access account established in [section 26]. The department may by rule:

(a) establish the form of a reporting statement to be filed by telecommunications carriers subject to the surcharge;

(b) set the date after the end of a fiscal quarter that the quarterly payment must be made;

(c) provide for recordkeeping by telecommunications providers subject to the surcharge; and

(d) provide methods to pay the surcharge, including offsets of surcharges owed against discounted services to be reimbursed, and to pay refunds of overpayment of the surcharge.

(3) (a) The collection of a surcharge under this section is subject to:

(i) the deficiency assessment, review, interest, and penalty provisions of 15-53-105;

(ii) the penalty and interest for delinquency and waiver provisions of 15-53-111;

(iii) the estimation of tax on failure te file a statement provisions of 15-53-112;

(iv) the warrant for distraint provisions of 15-53-113; and

(v) the statute of limitations provisions of 15-53-115.

(b) Any reference to the tax under sections listed in subsection (3)(a), either by cite to a section of law or literally to the tax, refer, for the purposes of this section, to the surcharge imposed by this section.

**Section 26. Interim universal access program — account.** An interim universal access account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to [section 25] must be paid te the state treasurer for deposit in the account. After payment of refunds, the balance of the account must be used for the purposes described in [section 24].

**Section 27. Commission to make recommendations on universal access and service.** The public service commission shall examine and make recommendations to the 56th legislature on universal access and service. The commission shall:

(1) review the impact on universal access and service in Montana of any federal universal service fund that results from current federal communications rulemaking under the federal Telecommunications Act of 1996; and

(2) evaluate the extent to which the federal universal service fund falls short of supporting legislatively defined universal access and service goals in Montana.

HeinOnline -- 1997 vol. II 1636 1997

(3) The commission may develop plans and propose legislation that would ensure the attainment of universal access and service goals in Montana.

**Section 28.** Section 2-4-102, MCA, is amended to read:

**"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the Administrative Rules of Montana and the Montana Administrative Register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works.;

*(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and [section 7].*

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(6) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(7) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but nothing in this chapter may be construed to prevent an agency from admitting any person as a party for limited purposes.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

HeinOnline -- 1997 vol. II 1637 1997

(9) "Register" means the Montana Administrative Register.

(10) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

(11) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

**Section 29.** Section 69-3-305, MCA, is amended to read:

"**69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) A public utility may not:

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, has or may have the effect of changing the rates, tolls, charges, or payments.

HeinOnline -- 1997 vol. II 1638 1997

(2) The rates, tells, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under 69-3-809.

(5) (a) A provider of regulated telecommunications service may offer, for a limited period of time, ~~either~~ rebates, *price* ~~or~~ reductions, or waivers of ~~installation~~ charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing ~~of services that remain fully tariffed requires~~ *for services other than basic local exchange access to end users does not require* advance approval of the commission. *Informational price lists must be filed with the commission on or before the date that the promotion begins. Promotional offerings for basic local exchange access to end users and packaged services that include basic local exchange access to end users require advance approval of the commission. The commission shall approve, deny, or upon a showing of good cause set for hearing an application for a promotional discount within 30 days of the filing of the application. If the commission has not acted on the application within the permitted time period, the application is considered granted.* ~~A promotional offering may not combine monopoly services with competitive services unless authorized by the commission.~~

(b) A public utility providing electricity or natural gas may offer grants and subsidized loans to install energy conservation and nonfossil forms of energy generation systems in dwellings.

(c) The commission may define the appropriate scope of promotions, rebates, market trials, and grants and subsidized loans, either hy rule or in response to complaints. The commission may determine whether a particular sales activity or grant or subsidized loan program under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities and grant and subsidized loan programs that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(6) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. ~~This, however~~ *However, this* does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

**Section 30.** Section 69-3-803, MCA, is amended to read:

**"69-3-803. Definitions.** As used in this part, the following definitions apply:

~~(1)~~*(1)* "Commission" means the puhlic service commission.

*(2) "Eligible telecommunications carrier" means a telecommunications provider designated by the commission under [section 10].*

*(3) "Fund" means the universal service fund established in [section 12].*

*(4) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:*

*(a) on February 8, 1996, provided telephone exchange service in the area; and*

*(b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.*

~~(2)~~*(5)* "Private telecommunications service" means a system, including the construction, maintenance, or operation ~~thereof~~ *of the system*, for the provision of telecommunications service or any portion of ~~such~~ *the* service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

~~(3)~~*(6) (a)* "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

*(b)* ~~Regulated telecommunications service~~ *The term* does not include the provision of terminal equipment used to originate or terminate ~~such~~ *the regulated* service, private telecommunications service, ~~resale of telecommunications service,~~ one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

~~(4) "Resale of telecommunications service" means the resale of regulated telecommunications service, with or without adding value, provided any value added would not otherwise be subject to regulation.~~

*(7) "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana and are billed for a service address in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission.*

*(8) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:*

*(a) provides common carrier service to any local exchange carrier study area that does not include either:*

*(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or*

*(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;*

*(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;*

*(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or*

*(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.*

*(9) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.*

*(10) "Telecommunications carrier" or "carrier" means any provider of telecommunications services. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged in providing telecommunications serviees. The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226."*

**Section 31.** Section 69-3-805, MCA, is amended to read:

**"69-3-805. ~~Manner of regulation~~ *Registration* of telecommunications ~~service~~ *providers*.** (1) Before any person or entity provides ~~regulated~~ telecommunications service within the state of Montana, it shall file with the commission a notice including:

(a) the name, ~~and~~ address, *and telephone number* of the provider;

(b) ~~a narrative description of the regulated telecommunications service to be offered and the geographic area and markets to be served;~~

~~(c) initial tariffs for the regulated telecommunications service;~~

~~(d) such other information as the commission may require to accomplish the purpose of this chapter.~~ *the name, address, and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the provider;*

*(c) a description of the provider's existing operations and general service and operating areas in any other jurisdictions;*

*(d) a list of the provider's parent, subsidiary, and affiliated companies, together with principal addresses and telephone numbers of each;*

*(e) initial tariffs or price lists for regulated telecommunications services, including a narrative description of thc regulated telecommunications to be offered and the geographic area and markets to be served;*

*(f) a general description of the facilities and equipment that will be used to provide services, including whether the service will be offered on a facilities basis, a resale basis, or a combination of both of them;*

HeinOnline -- 1997 vol. II 1641 1997

*(g) a statement of whether the provider intends to draw from the federal or state universal service fund or other explicit support funds, including a statement of whether the provider intends to seek the commission's designation as an eligible telecommunications carrier;*

*(h) disclosure of any formal actions against it by any court or state or federal regulatory agency that resulted in any type of penalty or sanction within the 5 years prior to the date of filing the notice;*

*(i) if the provider is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the provider's agent for service of process in Montana, and the date of creation of the business entity; and*

*(j) other information from regulated telecommunications carriers as the commission may require to accomplish the purposes of this chapter.*

(2) ~~The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter.~~ *The commission may waive any of the requirements set forth in subsection (1).*

*(3) The provider shall file with the commission a report of any judgment, penalty, or sanction entered in any other jurisdiction that could adversely affect the provider's ability to provide communications services in Montana."*

**Section 32.** Section 69-3-806, MCA, is amended to read:

**"69-3-806. Prohibition against cross-subsidization.** ~~(1) No~~ *A* provider of regulated telecommunications ~~service~~ *services* may *not* use current ~~revenues~~ *revenue* earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services ~~which~~ *that* are not regulated or are not tariffed. Expenses incurred in conjunction with services *that are* not regulated or *that are* not tariffed under this chapter may not be attributed to services ~~which~~ *that* are subject to regulation for any reason.

~~(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title.~~"

**Section 33.** Section 69-3-807, MCA, is amended to read:

**"69-3-807. Regulation of rates and charges.** (1) ~~As to telecommunications service that is provided under regulation, the~~ *The* commission may establish specific rates, tariffs, or fares for the provision of ~~the~~ *regulated telecommunications* service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under terms and conditions that best serve the declared policy of this state. For a service detariffed under this subsection, the provider shall maintain a current price list on file with the commission and shall provide notice of changes in the price list as prescribed by the commission. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in ~~lieu thereof~~ *the alternative* may:

(a) totally detariff the service;

(h) detariff rates for the service hut retain tariffs for service standards and requirements;

(c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

(d) provide ~~such~~ other rate or service regulation as will promote the purposes of this part.

(3) Except as provided in subsection (4), in determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) other factors that the commission may prescribe through rulemaking that aro appropriate to fulfill the purposes of this part.

(4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that action consistent with the provisions of 69-3-802 and with the public interest. Noncompetitive local exchange access to end-users and carrier access services may not be detariffed.

(5) A provider of regulated message telecommunications service and related services shall average its service rates on its routes of similar distance within the state unless otherwise authorized by the commission. ~~Nothing contained in this~~ *This* subsection may *not* be construed to prohibit volume discounts, discounts in promotional offerings, or other discounts as long as the discounts are not offered in a discriminatory manner.

~~(6) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available.~~"

**Section 34.** Section 69-3-1001, MCA, is amended to read:

"**69-3-1001. Creation of program — amount of assistance.** (1) There is a telephone ~~low-income~~ *low-income* assistance program to provide an eligible subscriber with a discount in the monthly charge for local exchange service in the telephone network.

(2) ~~This~~ *The commission shall set the* discount in the charge for local exchange service ~~is the greater of:~~

~~(a) $2~~ *that is at least $3.50* a month for each eligible subscriber~~; or~~

~~(b)~~ *but not more than* the amount ~~necessary to obtain the matching waiver available under applicable orders and regulations of the federal communications commission~~ *that is the difference between the otherwise applicable current rate for local exchange service and the rate as it was on [the effective date of this section].*"

**Section 35. Telecommunications committee.** (1) There is a telecommunications committee. The committee consists of:

(a) two members of the senate, one from each political party, appointed by the committee on committees of the senate;

(b) two members of the house of representatives, one from each political party, appointed by the speaker of the house; and

(c) a representative of the public service commission appointed by the public service commission.

(2) The committee shall monitor federal implementation of the federal Telecommunications Act of 1996, Public Law 104-104. The committee shall recommend to the 56th legislature policies, practices, and statutory changes that are required to implement or conform to the federal implementation.

(3) The office of the consumer counsel shall provide staff assistance to the committee.

**Section 36. Appropriation.** (1) Subject to funds being available pursuant to subsection (2), there is appropriated from the state special revenue fund up to $30,000 to the office of the consumer counsel for purposes of [section 35].

(2) The telecommunications committee may accept gifts, grants, and donations for deposit in the state special revenue fund for purposes of [section 35].

**Section 37. Codification instruction.** [Sections 1 through 27] are intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [sections 1 through 27].

**Section 38. Repealer.** Sections 69-6-101, 69-6-102, and 69-6-103, MCA, are repealed.

**Section 39. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 40. Effective date.** [This act] is effective on passage and approval.

**Section 41. Termination.** [Sections 11 through 15] terminate December 31, 1999.

Approved April 22, 1997

HeinOnline -- 1997 vol. II 1644 1997

# CHAPTER NO. 350

[SB 118]

AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC ACCOMMODATIONS, CAMPGROUNDS, AND TRAILER COURTS; PROVIDING DEFINITIONS; CLARIFYING THAT A BED AND BREAKFAST IS A PUBLIC ACCOMMODATION; AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR EXPIRATION AND CANCELLATION OF LICENSES; AMENDING SECTIONS 50-51-102, 50-51-103, 50-51-201, 50-51-207, 50-51-212, 50-52-102, AND 50-52-203, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because additional rulemaking authority, beyond that already granted by 50-51-103 and 50-52-102, is being given to the department of public health and human services. The rulemaking authority will allow the department to adopt rules for establishments regulated by Title 50, chapter 51, in the following areas:

(1) requirements for food service;

(2) requirements for hed and breakfast establishments;

(3) requirements to implement staggered license expiration dates; and

(4) requirements addressing reimbursement of local governments for inspections and enforcement.

The amended rulemaking authority in 50-52-102 will clarify the department's authority to adopt rules for establishments regulated by Title 50, chapter 52, in the following areas:

(1) requirements to ensure tbat establishments have safe and sanitary facilities and systems;

(2) requirements for service buildings or facilities;

(3) requirements for plan review;

(4) requirements addressing nuisances that could cause the spread of disease or illness;

(5) requirements to implement staggered license expiration dates;

(6) requirements addressing licensing of establishments and operator requirements; and

(7) requirements addressing reimbursement of local governments for inspection and enforcement.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 50-51-102, MCA, is amended to read:

**"50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

HeinOnline -- 1997 vol. II 1645 1997

*(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:*

*(a) breakfast is served and is included in the charge for a guest room; and*

*(b) the number of daily guests served does not exceed 18.*

~~(1)~~*(2)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2)~~*(3)* "Establishment" means a *bed and breakfast,* hotel, motel, roominghouse, boardinghouse, or tourist home.

~~(3)~~*(4)* "Hotel" or "motel" includes:

*(a)* a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, *or* public lodginghouse~~, or~~;

*(b)* a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

~~(4)~~*(5)* "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a *bed and breakfast,* hotel, motel, boardinghouse, tourist home, or roominghouse.

~~(5)~~*(6)* "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

~~(5)~~*(7)* "Tourist home" means ~~an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.~~ *a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.*

~~(7)~~*(8)* "Transient guest" means a guest for only a brief stay, such as the traveling public."

**Section 2.** Section 50-51-103, MCA, is amended to read:

**"50-51-103. Department authorized to adopt rules.** The department may adopt ~~and enforce~~ rules ~~to preserve~~ *governing the operation of bed and breakfasts, hotels, motels, roominghouses, boardinghouses, and tourist homes to protect* the public health and safety. ~~These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life safety code.~~ *These rules may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal systems, refuse collection and disposal, registration and supervision, fire and life safety, food service, rules*

HeinOnline -- 1997 vol. II 1646 1997

*for bed and breakfast establishments, staggered license expiration dates, and reimbursement of local governments for inspections and enforcement."*

**Section 3.** Section 50-51-201, MCA, is amended to read:

**"50-51-201. License required.** (1) ~~Each year, every~~ *A* person engaged in the business of conducting or operating a *bed and breakfast,* hotel, motel, tourist bome, boardinghouse, or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, when more than one of each type of establishment is operated on the same premises and under the same management, only one license is required that must enumerate on the certificate the types of establishments licensed.

(3) Before a license may he issued by the department, it must be validated by the local health officer or, if there is no local health officer, tbe sanitarian, in the county where the establishment is located."

**Section 4.** Section 50-51-207, MCA, is amended to read:

**"50-51-207. Expiration date of license.** *(1)* ~~Each~~ *Except as provided in subsection (2), each* license ~~shall expire~~ *expires* on December 31 following its date of issue unless canceled for cause.

*(2) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term implementing staggered license terms may be prorated by the department."*

**Section 5.** Section 50-51-212, MCA, is amended to read:

**"50-51-212. Cancellation of license for multiple-type establishment — *definition.*** *(1)* When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department ~~(~~.

*(2) For the purposes of this section,* ~~a multiple-type establishment~~ *"multiple-type establishment"* includes two or more of the following: *bed and breakfast,* hotel, motel, or tourist home~~)~~."

**Section 6. Rules for bed and breakfast establishments.** The department, in adopting rules establishing rules for bed and hreakfast establishments, shall consult with bed and breakfast operators. The department shall establish a negetiated rulemaking conmittee, as provided in Title 2, chapter 5, part 1, to consider matters proposed by the department that affect bed and breakfast establishments.

**Section 7.** Section 50-52-102, MCA, is amended to read:

**"50-52-102. Department to adopt rules.** The department ~~shall~~ *may* adopt rules for constructing and operating campgrounds, trailer courts, work camps, and youth camps to ~~insure sanitation and~~ protect *the* public health *and safety. The rules may include rules to:*

HeinOnline -- 1997 vol. II 1647 1997

*(1) ensure that establishments have safe and sanitary facilities and systems, including drinking water, sewage disposal, and solid waste disposal systems;*

*(2) regulate service buildings or facilities associated with any activity regulated by this chapter, including laundry and food service facilities;*

*(3) provide for review and approval of plans and specifications for establishments;*

*(4) address nuisances that could cause the spread of disease or illness;*

*(5) implement staggered license expiration dates;*

*(6) address licensing of establishments under this chapter and operator requirements; and*

*(7) provide for reimbursing local governments for inspections and enforeement of this chapter."*

**Section 8.** Section 50-52-203, MCA, is amended to read:

**"50-52-203. Expiration date of license.** ~~Licenses~~ *(1) Except as provided in subsection (2), licenses* expire on December 31 of the year in which they are issued *unless canceled for cause.*

*(2) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term implementing staggered license terms will be prorated by the department."*

**Section 9. Right to renewal.** (1) The department shall renew licenses as a matter of right, unless conditions exist that are grounds for cancellation or denial of a license.

(2) Renewal may be ohtained annually by paying the required annual license fee.

**Section 10. Codification instruction.** (1) [Section 6] is intended to be codified as an integral part of Title 50, chapter 51, and the provisions of Title 50, chapter 51, apply to [section 6].

(2) [Section 9] is intended to be codified as an integral part of Title 50, chapter 52, and the provisions of Title 50, chapter 52, apply to [section 9].

**Section 11. Effective dates.** (1) [Sections 2, 6, 7, and 10 and this section] are effective on passage and approval.

(2) [Sections 1, 3 through 5, 8, and 9] are effective October 1, 1997.

Approved April 22, 1997

HeinOnline -- 1997 vol. II 1648 1997

# CHAPTER NO. 351

[SB 297]

AN ACT PROVIDING FOR REPORTING OF DEATH BY SUDDEN INFANT DEATH SYNDROME; DEFINING "SUDDEN INFANT DEATH SYNDROME"; PROVIDING FOR A SUDDEN INFANT DEATH SYNDROME CAUSE OF DEATH IN CERTAIN INFANT DEATHS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Sectiou 1. Sudden infant death syndrome — findings — definition.** (1) As used in [section 2] and this section, "sudden infant death syndrome" means the sudden death of an infant under 1 year of age that remains unexplained after a thorough case investigation, including the performance of a complete autopsy, an examination of the death scene, and a review of the clinical history.

(2) The legislature recognizes that research has shown that sudden infant death syndrome is a leading cause of death among children from 1 month to 1 year of age. The legislature finds and declares that sudden infant death syndrome is a serious problem within Montana and that public interest is served by research and study of sudden infant death syndrome and its potential causes and indications.

**Section 2. Cause of death — sudden infant death syndrome.** When the coroner's findings are consistent with sudden infant death syndrome, the coroner may state on the death certificate that sudden infant death syndrome was the cause of death.

**Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 15, and the provisions of Title 50, chapter 15, apply to [sections 1 and 2].

**Section 4. Effcctive date.** [This act] is effective July 1, 1997.

Approved April 22, 1997

# CHAPTER NO. 352

[SB 314]

AN ACT REVISING GENERAL VENUE STATUTES; AND AMENDING SECTIONS 25-2-118 AND 25-2-122, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 25-2-118, MCA, is amended to read:

**"25-2-118. Residence of defendant.** ~~Unless otherwise specified in this part:~~

(1) ~~except~~ *Except* as provided in subsection (3), the proper place of trial for all civil actions is the county in which the defendants or any of them ~~may~~ reside at the commencement of the action~~;~~.

(2) ~~if~~ *If* none of the defendants reside in the state, the proper place of trial ~~is any county the plaintiff designates in the complaint~~ *for a contract action is as provided in 25-2-121(1)(b) or (2) and the proper place of trial for a tort action is as provided in 25-2-122(2) or (3)*~~.~~

(3) ~~the~~ *The* proper place of trial ~~of~~ *for* an action brought pursuant to Title 40, chapter 4, is the county in which the petitioner has resided during the 90 days preceding the commencement of the action."

**Section 2.** Section 25-2-122, MCA, is amended to read:

**"25-2-122. Torts.** (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, the proper place of trial for a tort action is:

(a) the county in which the defendants~~,~~ or any of them~~,~~ reside at the commencement of the action; or

(b) the county ~~where~~ *in which* the tort was committed. If the tort is interrelated with and dependent upon a claim for breach of contract, the tort was committed, for the purpose of determining the proper place of trial, in the county ~~where~~ *in which* the contract was to be performed.

(2) If the defendant is a corporation incorporated in a state other than Montana, the proper place of trial for a tort action is:

(a) the county in which the tort was committed;

(b) the county in which the plaintiff resides; or

(c) the county in which the corporation's resident agent is located, as required by law~~, or in the first judicial district~~.

*(3) If the defendant is a resident of a state other than Montana, the proper place of trial for a tort action is:*

*(a) the county in which the tort was committed; or*

*(b) the county in which the plaintiff resides."*

Approved April 21, 1997

## CHAPTER NO. 353

[SB 342]

AN ACT REVISING THE BASIN CLOSURE, WATER LEASING, AND TEMPORARY CHANGE STATUTES AS THEY APPLY TO THE UPPER CLARK FORK RIVER BASIN; ALTERING THE COMPOSITION OF THE UPPER CLARK FORK BASIN STEERING COMMITTEE; AMENDING SECTIONS 85-2-337, 85-2-338, AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-337, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1650 1997

"**85-2-337. Ground water permit applications — report required.** (1) During the period of basin closure provided in 85-2-336(1), an applicant for a ground water permit in the Upper Clark Fork River basin shall submit a report prepared by a professional engineer or hydrologist ~~verifying that~~ *addressing the hydrologic connection between* the source of the ground water ~~is not a part of or substantially or directly connected to~~ *and* surface water. If the applicant fails to submit the report required in this section, the application is considered defective and must be processed pursuant to 85-2-302.

(2) *Except as provided in subsection (3), the department may not issue a permit to appropriate ground water in the Upper Clark Fork River basin unless the applicant proves by a preponderance of evidence,* ~~In~~ *in* addition to the criteria of 85-2-311, ~~the department shall find, based on substantial credible evidence,~~ that the source of the ground water is not a part of or substantially or directly connected to surface water.

*(3) The department may issue a permit to appropriate ground water if the application includes an augmentation plan and if the applicant proves by a preponderance of evidence, in addition to the criteria of 85-2-311, that the augmentation plan provides sufficient augmentation water in amount, time, and location to replace depletions to senior water rights."*

**Section 2.** Section 85-2-338, MCA, is amended to read:

"**85-2-338. Upper Clark Fork River basin steering committee — membership and duties — comprehensive management plan.** (1) There is an Upper Clark Fork River basin steering committee. The *steering committee has 22 members, who must be appointed as follows:*

*(a) Each of the six conservation districts in the basin may appoint a member.*

*(b) Each of the six county commissions in the basin may appoint a member.*

*(c) The* department director shall appoint the ~~members of the committee, selecting them~~ *remaining 10 committee members and any additional committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee membership includes a balance of affected basin interests and is in conformance with subsection (2).*

*(2) Steering committee members must be selected* on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee must include but is not limited to representatives from affected:

(a) ~~agricultural organizations~~ *agriculture*;

(b) conservation districts;

(c) departments of state government;

(d) environmental organizations;

(e) industries;

(f) local governments;

(g) reservation applicants;

(h) utilities; and

(i) water ~~user organizations~~ *users not otherwise represented.*

*(3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and may serve more than one term.*

*(4) Initial term lengths must be staggered in conformance with the following:*

*(a) conservation district appointees shall initially serve for 4 years;*

*(b) county commissioner appointees shall initially serve for 2 years; and*

*(c) as determined by the department, half of the department appointees shall initially serve for 2 years and the remainder shall initially serve for 4 years.*

~~(2)~~*(5)* The steering committee, consistent with the Upper Clark Fork River basin comprehensive management plan, shall:

(a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary changes;

~~(b) make recommendations to the 1997 legislature concerning representation, terms, and the method of appointing members to the steering committee;~~

~~(c)~~*(b)* prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot program as provided in 85-2-439;

~~(d)~~*(c)* prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;

~~(e)~~*(d)* provide a forum for all interests to communicate about water issues;

~~(f)~~*(e)* provide education about water law and water management issues;

~~(g)~~*(f)* identify short-term and long-term water management issues and problems and identify alternatives for resolving them;

~~(h)~~*(g)* identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

~~(i)~~*(h)* assist in facilitating the resolution of water-related disputes;

~~(j)~~*(i)* provide coordination with other basin management and planning efforts;

~~(k)~~*(j)* advise government agencies about water management and permitting activities;

~~(l)~~*(k)* consult with local governments within the Upper Clark Fork River basin; and

~~(m)~~*(l)* report periodically to the legislature."

**Section 3.** Section 85-2-402, MCA, is amended to read:

**"85-2-402. (Temporary) Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant te 85-2-408 *or 85-2-439* for instream flow to benefit the fishery resource, the applicant has a pessessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a pormit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

HeinOnline -- 1997 vol. II 1653 1997

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriater proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

HeinOnline -- 1997 vol. II 1654 1997

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

HeinOnline -- 1997 vol. II 1655 1997

(12) A person holding an issued permit or change approval that has not heen perfected may change the place of diversion, place of use, purpose of use, or place of storage hy filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

**85-2-402. (Effeetive July 1, 1999) Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, hy applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for whicli a permit has heen issued or for which water has been reserved.

(b) Except for a temporary change authorization pursuant to 85-2-408 or for water use pursuant to 85-2-439 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a heneficial use.

(d) Except for a temporary change authorization pursuant to 85-2-408 *or 85-2-439* for instream flow to henefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to heneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitliolder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have heen met only if a valid ohjection is filed. A valid ohjection must contain substantial credible information establishing to the satisfaction of the department that the critoria in suhsection (2)(f) or (2)(g), as applicable, may not he met.

HeinOnline -- 1997 vol. II 1656 1997

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) tbe proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion tbat results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds tbat the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-stato transportation and use of its public waters are not in conflict witb the public welfare of its citizens or the conservation of its wators, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

HeinOnline -- 1997 vol. II 1657 1997

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved hy clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, tbe department and, if applicahle, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages withiu the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more bearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed cbango if it determines that such a change might adversely affect the rights of other persous.

(8) The department or the legislature, if applicable, may approve a chango subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The departmeut may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the departmeut that the appropriation has been completed. The notification must contain a certified statement hy a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for

hearing, require the appropriator to show cause why the change approval should not he modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued hy the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995.)

**85-2-402. (Effective July 1, 2005) Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves hy a preponderance of evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a heneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted hy the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

HeinOnline -- 1997 vol. II 1659 1997

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

HeinOnline -- 1997 vol. II 1660 1997

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a

HeinOnline -- 1997 vol. II 1661 1997

person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section."

**Section 4. Upper Clark Fork River basin change and lease validity — limitations.** All temporary changes and leases authorized under 85-2-439 that are entered into prior to June 30, 2005, remain valid until the expiration date of the temporary change and lease. A temporary change or lease authorized under 85-2-439 may not be renewed or otherwise extended after June 30, 2005.

**Section 5. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [section 4].

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1997

# CHAPTER NO. 354

[SB 368]

AN ACT REGULATING BUSINESS PRACTICES RELATING TO THE SALE AND IMPORTATION OF VIDEO GAMBLING MACHINES; AMENDING SECTIONS 23-5-152, 23-5-612, 23-5-614, AND 23-5-631, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-5-152, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1662 1997

**"23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise prohibited — exceptions.** (1) Except as provided in 23-5-153 and subsections (2) through ~~(4)~~ *(5)* of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly:

(a) have in the person's possession or under the person's control or permit to be placed, maintained, or kept in any room, space, enclosure, or huilding owned, leased, or occupied by or under the person's management or control an illegal gambling device; or

(b) operate an illegal gambling enterprise.

(2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(3) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state ~~and are manufactured only for export from the state~~.

(b) A person may not manufacture an illegal gambling device ~~for export from the state~~ without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing tlie license.

~~(c)~~*(4) (a)* A person licensed under subsection (3) *may conduct only those activities authorized under this subsection (4).*

*(b) A licensee* may hring an illegal gambling device, *including an illegal video gambling machine,* into the stato if:

(i) the illegal gambling device contains a component that will be used by the licensee to manufacture an illegal gambling device for export from the state; or

(ii) the illegal gambling device will be reconditioned, refurbished, repaired, or otherwise substantially modified in preparation for export from the state; and

(iii) the illegal gambling device will be exported from the state; and

(iv) the licensee has notified the department and received authorization from the department to brimg the illegal gambling device into tlie state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

*(c) A licensee may also bring an illegal video gambling machine into the state if:*

*(i) the illegal video gambling machine will be reconditioned, refurbished, repaired, or otherwise substantially modified for conversion to an authorized video gambling machine; and*

*(ii) the licensee has notified the department and has received authorization from the department to bring the illegal video gambling machine into the state. The licensee is subject to reporting requirements provided for in rules adopted under subsection (3)(a).*

HeinOnline -- 1997 vol. II 1663 1997

~~(4)~~*(5)* An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) in any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity."

**Section 2.** Section 23-5-612, MCA, is amended to read:

"**23-5-612. Machine permits — fee.** (1) The department, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) (a) The department shall charge an annual permit fee of $200 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of $25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall ~~retain~~ *deposit* 50% of the total permit fee collected under subsection (2)(a) and 100% of the machine transfer processing fee collected under subsection (2)(b) *in the state special revenue fund* for purposes of administering this part *and for other purposes provided by law*. The balance of the fee collected under subsection (2)(a) must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury."

**Section 3.** Section 23-5-614, MCA, is amended to read:

"**23-5-614. Sale of video gambling machines ~~by operator or lienholder~~.** (1) A licensed operator who is not licensed as a manufacturer, distributor, or route operator may sell up to 20 video gambling machines in a calendar year if the operator:

(a) had obtained permits for the machines and legally operated them prior to the sale; and

(b) sells the machines to another licensed operator or to a licensed manufacturer, distributor, or route operator.

(2) A lienholder who acquires title to video gambling machines through a foreclosure action involving a licensed manufacturer, distributor, route operator, or operator may sell the machines to a licensed manufacturer, distributor, route operator, or operator.

HeinOnline -- 1997 vol. II 1664 1997

*(3) A licensed manufacturer or distributor may sell video gambling machines and associated equipment approved by the department for delivery to any jurisdiction outside of this state if the sale and transportation of the machines or equipment complies with all applicable local, tribal, state, and federal laws and regulations. Prior to the date of the sale, the seller shall notify the department of the terms of the sale, the identities of the seller, purchaser, and person to whom the shipment will be made, the type and number of machines or equipment to be sold, and the method of shipment and provide the department with the approval of the jurisdiction in which the machines or equipment will be received. A person convicted of purposely or knowingly violating this subsection shall be punished as provided in 23-5-162."*

**Section 4.** Section 23-5-631, MCA, is amended to read:

**"23-5-631. Examination and approval of new video gambling machines and associated equipment — fee.** (1) The department shall examine and may approve a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment that is manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used. *A licensed manufacturer or distributor may bring a video gambling machine or associated equipment authorized by this chapter into the state for research and development on behalf of a licensed manufacturer prior to submission of the machine or equipment to the department for approval.*

(2) A video gambling machine or associated equipment or a modification to an approved machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer is licensed as required in 23-5-625.

(3) All video gambling machines or associated equipment approved by the department of commerce prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer seeking the examination and approval of a new video gambling machine or associated equipment or a modification to an approved machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and modifications to approved machines and associated equipment and to issue refunds for overpayments.

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine or associated equipment or a modification to an approved machine or associated equipment prior to its distribution and placement for play by the public. A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributer, route operator, or operator unless the machine or equipment has been approved by the department."

HeinOnline -- 1997 vol. II 1665 1997

**Section 5. Effective dates.** (1) [Section 1 and this section] are effective on passage and approval.

(2) [Sections 2 through 4] are effective July 1, 1997.

Approved April 22, 1997

# CHAPTER NO. 355

[SB 394]

AN ACT AUTHORIZING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SEPARATE NONRESIDENT DEER LICENSES FROM THE NONRESIDENT BIG GAME COMBINATION LICENSES FOR THE PURPOSE OF DEER MANAGEMENT; ALLOWING THE COMMISSION TO SET THE FEE FOR THE NONRESIDENT ELK COMBINATION LICENSE WITHOUT A DEER TAG AND FOR THE SEPARATED NONRESIDENT DEER COMBINATION LICENSE, TO DETERMINE THE NUMBER OF LICENSES WITHIN ESTABLISHED LIMITS, AND TO SET CONDITIONS ON THE USE OF THE LICENSES; AMENDING SECTIONS 87-1-301 AND 87-2-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

STATEMENT OF INTENT

This bill establishes the authority of the fish, wildlife, and parks commission to modify, by rule, the structure of nonresident elk and deer licenses within the general framework established by law as needed for the effective management of big game animals. It is the intent of the legislature that in its initial rulemaking process, the commission utilize an advisory committee, including representatives of hunting and fishing organizations, outfitters, and landowners, to make recommendations regarding the structure of nonresident hunting licenses as authorized by this bill. It is also the intent of the legislature that commission rules not authorize more nonresident elk and deer hunters than are prescribed by current law.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-1-301, MCA, is amended to read:

**"87-1-301. Powers of commission.** (1) The commission shall:

(a) set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) establish the hunting, fishing, and trapping rules of the department;

(c) establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) have the power within the department to establisb wildlife refuges and bird and game preserves;

HeinOnline -- 1997 vol. II 1666 1997

(e) approve all acquisitions or transfers by the department of interests in land or water;

(f) review and approve the budget of the department prior to its transmittal to the budget office; and

(g) review and approve construction projects whose estimated cost is more than $1,000 but less than $5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth.

*(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:*

*(i) separate deer licenses from nonresident elk combination licenses;*

*(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;*

*(iii) condition the use of the deer licenses; and*

*(iv) limit the number of licenses sold.*

*(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders for the biologically sound management of big game populations of deer and elk and to control the impacts of those deer and elk populations on uses of private property."*

**Section 2.** Section 87-2-504, MCA, is amended to read:

**"87-2-504. (Temporary) Class B-7 and B-8—nonresident deer licenses.** *(1) (a)* Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses:

*(i)* Class B-7, deer A tag, ~~$150~~ *$175*;

*(ii)* Class B-8, deer B tag, ~~$50; and will entitle~~ *$75.*

*(b) The license entitles* the holder to hunt the game animal or animals authorized by the license ~~held~~ and to possess the carcasses of those animals as authorized by ~~department~~ *commission* rules.

HeinOnline -- 1997 vol. II 1667 1997

*(2)* Unless purchased as part of a *Class* B-10 or *Class* B-11 license, a Class B-7 license ~~must~~ *may* be assigned for use in a specific administrative region or *regions or a* portion of a specific administrative region *or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts.* If purchased as part of a Class *B-10 or Class* B-11 license, the Class B-7 license is valid throughout the state, *except as provided in [section 3(1)(d)].* Not more than 5,000 Class B-7 licenses may be sold in any license year. ~~Money received from the sale of Class B-7 licenses in excess of 1,700 must be used as provided in 87-1-242(1).~~

*(3) The commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions.* (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

**87-2-504. (Effective March 1, 2006) Class B-7 and B-8—nonresident deer licenses.** *(1) (a)* Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who will be 12 years of age or older prior to September 15 of the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses:

*(i)* Class B-7, deer A tag, ~~$100~~ *$175*;

*(ii)* Class B-8, deer B tag, ~~$50; and will entitle~~ *$75.*

*(b) The license entitles* the holder to hunt the game animal or animals authorized by the license ~~held~~ and to possess the carcasses of those animals as authorized by ~~department~~ *commission* rules.

*(2)* Unless purchased as part of a *Class* B-10 or *Class* B-11 license, a Class B-7 license ~~must~~ *may* be assigned for use in a specific administrative region or *regions or a* portion of a specific administrative region *or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts.* If purchased as part of a Class *B-10 or Class* B-11 license, the Class B-7 license is valid throughout the state, *except as provided in [section 3(1)(d)].*

*(3) The commission may condition the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portion of a hunting district, groups of districts, or administrative regions."*

**Section 3. Separation of Class B-7 license from Class B-10 license for deer management purposes — disposition of license revenue.** (1) The commission may by rule separate the Class B-7 license from the Class B-10 license and sell the separated Class B-7 license, giving a preference to any Class B-10 license holder to purchase one of the separated Class B-7 licenses. In the case of separated Class B-7 licenses that are not purchased by Class B-10 license holders, the commission, for purposes of sound deer management:

(a) may authorize the sale of not more than 5,000 Class B-7 licenses that have been separated from the Class B-10 licenses, as limited by 87-2-504;

HeinOnline -- 1997 vol. II 1668 1997

(b) may authorize all or a portion of the separated Class B-7 licenses to be sold as Class B-11 combination licenses;

(c) shall set the fees for the separated licenses as follows:

(i) the fee for a Class B-10 license without the deer tag may not be more than the fee set in 87-2-505 for licenses in the general category and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268; and

(ii) the fee for the separated Class B-11 licenses may not be more than the fees specified in 87-2-510 for licenses in the general and landowner-sponsored categories and may not be more than the fee set by the commission for licenses in the outfitter-sponsored category as specified in 87-1-268;

(d) may assign the separated Class B-7 or Class B-11 licenses for use in specific administrative regions, portions of administrative regions, hunting districts, or portions of hunting districts;

(e) may allocate a portion of the separated Class B-7 or Class B-11 licenses among the general and landowner-sponsored categories established in 87-2-510 and 87-2-511 but not count those licenses as part of the statutory quotas, with the Class B-7 licenses then subject to the requirements and procedures of 87-2-511;

(f) may allocate a portion of the separated Class B-7 or Class B-11 licenses to the outfitter-sponsored catogory subject to the requirements and procedures of 87-2-511, except that licenses in the outfitter-sponsored category may not comprise more than one-third of the licenses issued pursuant to this section and the number issued, when added to the number of Class B-11 licenses issued under 87-1-268, may not exceed 2,300 in any license year; and

(g) may condition the separated Class B-7 and Class B-11 licenses as appropriate and necessary to manage the harvest of deer, including restricting the use of a license to either mule deer or whitetail deer.

(2) The revenue from any Class B-11 licenses that have been separated from Class B-10 licenses must be deposited in the state special revenue account to the credit of the department and not allocated pursuant to other statutory requirements generally applicable te Class B-11 licenses. The revenue from Class B-10 licenses sold without a deer tag must be allocated in the same manner as revenue from Class B-10 licenses sold with a deer tag.

**Section 4. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 87, chapter 2, part 5, and the provisions of Title 87, chapter 2, part 5, apply to [section 3].

**Section 5. Effective date.** [This act] is effective on passage and approval.

**Section 6. Termination.** [This act] terminates October 1, 2001.

Approved April 22, 1997

HeinOnline -- 1997 vol. II 1669 1997

# CHAPTER NO. 356

[HB 251]

AN ACT PROVIDING THAT IN CIVIL ACTIONS, THE COURT MAY ASSESS THE REASONABLE PUBLIC EXPENSES OF IMPANELING THE JURY IF THE COURT OR THE JURY DETERMINES THE CASE OF A PARTY TO BE FRIVOLOUS OR MAINTAINED FOR PURPOSES OF HARASSMENT; AND AMENDING SECTION 3-15-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-15-205, MCA, is amended to read:

**"3-15-205. Costs of impaneling jury ~~after settlement reached~~.** *(1)* In ~~any~~ *a* civil action before a court of record in which the parties substantially agree to a settlement of the issues prior to impanelment of the jury and either settle the action or stipulate to a continuance~~,~~ and *then* fail or refuse to inform the court or clerk of court of ~~such~~ *the* settlement or request a continuance and a jury is impaneled, the court may, upon hearing, assess the reasonable public expenses of impaneling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 ~~and such other costs as may have been incurred by the court~~, against any party.

*(2) In civil actions, the court may assess against a party the reasonable public expenses of impaneling a jury, including jury fees and mileage expenses paid or owing under 3-15-201, if the court on an issue of law or the jury on an issue of fact determines that the party's case is frivolous or maintained for purposes of harassment. The court shall instruct the jury regarding the provisions of this subsection.*

*(3)* Costs collected under this section ~~shall~~ *must* be deposited in the county general fund unless the county has a district court fund. If the county has a district court fund, the costs must be deposited in ~~such~~ *the district court* fund."

Approved April 22, 1997

# CHAPTER NO. 357

[HB 281]

AN ACT APPROPRIATING TO THE DEPARTMENT OF LABOR AND INDUSTRY $140,000 FOR FISCAL YEARS 1998 AND 1999 FROM THE FUND BALANCE OF THE STATE SPECIAL REVENUE ACCOUNT ESTABLISHED FOR THE DEPOSIT OF FEES COLLECTED BY THE DEPARTMENT OF COMMERCE FROM PERMIT FEES FOR THE ENFORCEMENT OF THE STATE PLUMBING CODE, FROM INSPECTION FEES FOR THE INSPECTION OF ELECTRICAL INSTALLATIONS, AND FROM FEES FOR THE INSPECTION OF BUILDINGS, FACTORY-BUILT BUILDINGS, RECREATIONAL VEHICLES, TRAMWAYS, OR OTHER FACILITIES OR STRUCTURES TO FUND APPRENTICESHIP INSTRUCTION PROGRAMS; REQUIRING THAT FEES FOR INSPECTIONS BE COMMENSURATE WITH

HeinOnline -- 1997 vol. II 1670 1997

PROGRAM COSTS; AMENDING SECTIONS 50-60-104, 50-60-508, AND 50-60-604, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-60-104, MCA, is amended to read:

"**50-60-104. Inspection fees.** The department shall establish a schedule of fees and may collect fees for the inspection of plans and specifications and for the inspection of buildings, factory-built buildings, recreational vehicles, tramways, or any other facility or structure. *The fees must be commensurate with the cost of the inspections and with appropriations for other purposes.*"

**Section 2.** Section 50-60-508, MCA, is amended to read:

"**50-60-508. Permit fees.** (1) Tbe department of commerce shall establish permit fees in accordance witb the Montana Administrative Procedure Act, and the fees ~~shall~~ *must* be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code *and for other purposes as established by law.*

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached ~~shall~~ *must* be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings ~~shall~~ *must* be based on the number of plumbing fixtures, gas systems, water heaters, and tbe like involved. *The fees established pursuant to this section must be commensurate with the costs of the administration and enforcement of this part and with appropriations for other purposes.*"

**Section 3.** Section 50-60-604, MCA, is amended to read:

"**50-60-604. Department to make inspections, issue inspection tags, and establish fees.** The department of commerce sball make inspections of electrical installations, issue inspection tags for these installations, and establish and charge a reasonable and uniform fee for tbe inspections~~, which may not exceed~~. *The fee must be commensurate with* the expense of providing the inspection *and with appropriations for other purposes.*"

**Section 4. Appropriation.** The following money is appropriated from the fund balance of tbe state special revenue account established for the deposit of fees collected by the department of commerce under 50-60-104, 50-60-508, and 50-60-604 to the department of labor and industry to fund apprenticeship instruction programs pursuant to 39-6-103:

| | |
|---|---|
| Fiscal year 1998 | $140,000 |
| Fiscal year 1999 | 140,000 |

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved April 22, 1997

HeinOnline -- 1997 vol. II 1671 1997

# CHAPTER NO. 358

[HB 302]

AN ACT REQUIRING A PROTOCOL FOR REFERRING DENTISTS WHO ARE IMPAIRED BY HABITUAL INTEMPERANCE OR DRUG USE OR BY MENTAL ILLNESS OR CHRONIC PHYSICAL ILLNESS TO A REHABILITATION PROGRAM; PROVIDING FOR THE REPORTING OF IMPAIRED DENTISTS; PROVIDING IMMUNITY FOR PERSONS PROVIDING INFORMATION; PROVIDING FOR NOTIFICATION TO THE BOARD OF DENTISTRY OF A DENTIST FAILING TO COOPERATE WITH THE REFERRAL; AND AUTHORIZING THE BOARD OF DENTISTRY TO COMPEL A DENTIST TO PARTICIPATE IN AN EVALUATION TO DETERMINE IMPAIRMENT.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Rehabilitation.** The board shall establish a protocol for the referral to a board-approved rehabilitation program for licensed dentists who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

**Section 2. Report of incompetence or unprofessional conduct.** (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed dentist, professional standards review organization, the Montana dental association or any component society of the association, and any other person may report to the board any information that the dentist, organization, association, society, or person has that appears to show that a dentist is physically or mentally impaired by habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate porsonnel of the program endorsed by the board under [section 1] in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses te satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare; or

HeinOnline -- 1997 vol. II 1672 1997

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.

**Section 3. Compelling licensce evaluation.** The board has the right to compel an evaluation of a licensee, after notice to the licensee and a hearing if requested by the licensee, based on information reported pursuant to [section 2]. The evaluation must be conducted at a facility authorized to conduct evaluations under a program referred to in [section 1].

**Section 4. Immunity of person providing information.** A person, organization, association, society, or health care facility that in good faith provides information to the state board of dentistry pursuant to [section 2] is not subject to suit for civil damages as a result of providing the information.

**Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 37, chapter 4, and the provisions of Title 37, chapter 4, apply to [sections 1 through 4].

Approved April 22, 1997

# CHAPTER NO. 359

[HB 337]

AN ACT PROVIDING LIMITS ON LIABILITY FOR DENTISTS WHO PROVIDE CARE OR ASSISTANCE FOR CHARITABLE PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Scction 1. Limits on liability of dentist who provides services withiout compensation.** A dentist, dental surgeon, or oral surgeon licensed under Title 37, chapter 4, who, for charitable purposes, provides care or assistance without compensation, except for reimbursement for supplies, is not liable for civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by the dentist, dental surgeon, or oral surgeon.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and the provisions of Title 27, chapter 1, part 7, apply to [section 1].

**Section 3. Applicability.** [This act] applies to services rendered on or after [the effective date of this act].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1997

HeinOnline -- 1997 vol. II 1673 1997

# CHAPTER NO. 360

[HB 447]

AN ACT PERMITTING TEMPORARY PRIVATE SECURITY GUARDS; AMENDING SECTIONS 37-60-301, 37-60-309, AND 37-60-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Temporary security guard may work under licensee — record and temporary identification card required.** (1) This chapter does not prohibit a person from working as a temporary private security guard if:

(a) the person is not employed by a licensed private security guard for more that 30 consecutive days or for more than 30 days in a calendar year; and

(b) the person does not wear, carry, possess, or have access to a firearm in the performance of the person's duties until a background check on tbe person has been completed by the board and the board is satisfied that the person has met the qualifications specified in 37-60-303(5).

(2) The licensee shall file with the department:

(a) a completed application for licensure for the person within 5 days of hiring the person to work as a temporary security guard, to allow the department to conduct an in-state background check;

(b) a quarterly repert accurately documenting the total number of days or hours and in what capacity each person has been employed durmg each calendar year; and

(c) notice that a temperary security guard has been terminated within 5 days of the termination date.

(3) The department shall keep a record of the name and address of each person working as a temporary security guard until the person's employment with a licensee is terminated.

(4) Within 2 days of receiving the results of the in-state background check for a temporary security guard, the department shall issue a temporary identification card to the temporary security guard. The temporary identification card must contain the information prescribed by the board by rule.

(5) A licensee who assigns a temporary security guard to a business shall notify the business that a background check may not have been completed on the temporary security guard.

**Section 2.** Section 37-60-301, MCA, is amended to read:

**"37-60-301. License required.** (1) Except as provided in 37-60-105 *and [section 1]*, it is unlawful for any person te act as or perform the duties, as defined in 37-60-101, of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. Those persons licensed on April 18, 1983, shall retain

their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.

(2) It is unlawful for any unlicensed person to act as, pretend to he, or represent to the public that the person is licensed as a private investigator, a contract security company, a proprietary security organization, or a private security guard.

(3) A person who knowingly engages an unlicensed private investigater, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411."

**Section 3.** Section 37-60-309, MCA, is amended to read:

**"37-60-309. Form of license and identification ~~card~~ *cards*.** The license, ~~and~~ identification card, *and temporary identification card for temporary security guards* ~~shall~~ *must* be in ~~such~~ *a* form ~~as may be~~ determined by the hoard."

**Section 4.** Section 37-60-310, MCA, is amended to read:

**"37-60-310. Display of license and identification card.** (1) A license ~~shall~~ *must* at all times he pested in a conspicuous place in the principal place of business of the licensee.

(2) ~~Any~~ *A* holder of an identification card *or a temporary identification card* ~~must~~ *shall* carry tlie card ~~on his person~~ while performing ~~his~~ *the cardholder's* duties. ~~Any~~ *A* peace officer of this state or any of its political suhdivisions may request to see the card at any reasonable time, and the card must he shown."

**Section 5. Codification instruction.** [Section 1] is intended to he codified as an integral part of Title 37, chapter 60, part 3, and the provisions of Title 37, chapter 60, part 3, apply to [section 1].

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1997

## CHAPTER NO. 361

[HB 567]

AN ACT PROVIDING PERMANENT FUNDING FOR ADDITIONAL YEARS OF SERVICE TO BE PURCHASED UNDER THE STATE EMPLOYEE PROTECTION ACT FOR A MEMBER INVOLUNTARILY TERMINATED FROM MEMBERSHIP; CREATING A METHOD OF FUNDING JOB RETRAINING, RELOCATION EXPENSES, AND HEALTH INSURANCE FOR A STATE EMPLOYEE WHO IS INVOLUNTARILY TERMINATED; IMPOSING A TIME LIMIT FOR A STATE EMPLOYEE PARTICIPATING IN THE JOB REGISTRY PROGRAM; PROVIDING THAT THE UNEXPENDED BALANCE IN ANY SPECIFIC APPROPRIATION MAY BE USED IN THE SUCCEEDING YEAR TO FUND JOB TRAINING, HEALTH INSURANCE BENEFITS, RELOCATION, AND THE PURCHASE OF SERVICE YEARS; AMENDING SECTIONS 2-18-1203, 17-7-304, AND 19-2-706, MCA; AND PROVIDING AN EFFECTIVE DATE.

HeinOnline -- 1997 vol. II 1675 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-18-1203, MCA, is amended to read:

**"2-18-1203. General protection — job register — seniority preference.** (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature is entitled to:

(a) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of 1 year from the date of separation.

(b) access to any job retraining and career development programs provided by the state through the Job Training Partnership Act service delivery areas dislocated worker programs, provided that the employee begins participating in a program within 1 year after the elimination of the employee's position; and

(c) inclusion in a special job register from which all agencies, except an agency attempting to hire for a position exempt under 2-18-103 or 2-18-104, shall attempt to hire employees prior to seeking applications from the general public. The employee must be listed in the job register according to the occupational categories in which the employee is qualified for employment. *An employee's eligibility to participate in the job register terminates 2 years from the effective date of the employee's layoff or 2 years from the date of the employee's completion of job training provided under subsection (1)(b), whichever is later.*

(2) (a) An agency attempting to hire from the job register shall consider the employee's qualifications and length of state service. If two or more employees listed in the job register are equally qualified for a vacant position, the agency shall select the employee with the longest continuous state service.

(b) If there is not an employee listed on the job register who meets the job qualifications for the vacant position, the agency may hire a qualified external applicant or establish a training assignment, according to state policy.

*(3) Each state agency shall pay to the department of labor and industry a set amount that is equal to the department's average cost of providing the retraining and development services for state employees in the previous fiscal year for each involuntarily terminated state employee who requests access to any job training and career development program provided by the department."*

**Section 2.** Section 17-7-304, MCA, is amended to read:

**"17-7-304. (Temporary) Disposal of unexpended appropriations.** (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made *or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.*

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman,

HeinOnline -- 1997 vol. II 1676 1997

Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning. (Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)

**17-7-304. (Effective July 1, 1997) Disposal of unexpended appropriations.** (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made *or may be used to fund the provisions of 2-18-1203 through 2-18-1205 and 19-2-706 in the succeeding year.*

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board

HeinOnline -- 1997 vol. II 1677 1997

of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated."

**Section 3.** Section 19-2-706, MCA, is amended to read:

**"19-2-706. Additional service for member involuntarily terminated from membership service.** (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection ~~(2)~~ *(3)* if:

(a) the employee is a member of the public employees', game wardens', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature on or after ~~January 1, 1995~~ *July 1, 1997*, but before July 1, ~~1997~~ *1999*;

(c) the employee is eligible for a normal service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

*(2) The cost of each year of service purchased under this section is the total actuarial cost of purchasing the service based on the most recent actuarial valuation of the retirement system.*

~~(2)~~*(3)* The employer of an eligible member under subsection (1) shall pay *a portion of* the total cost of purchasing up to 3 years of additional service that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, or 19-8-904. *The employer-paid portion applied toward the service purchase must be calculated using the formula A x B x C when:*

*(a) A is equal to a maximum of 3 additional years of service that the member is eligible to purchase;*

*(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and*

*(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service purchased by the terminated employee.*

*(4) The member shall pay the difference, if any, between the full actuarial cost of the service to be purchased and the amount contributed by the employer under*

HeinOnline -- 1997 vol. II 1678 1997

*subsection (3).* A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section. *A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).*

~~(3) A retired member who was involuntarily terminated because of a reduction in force on or after January 1, 1995, but before April 21, 1995, and whose effective date of retirement was before April 21, 1995, is eligible for the involuntary termination benefits described in this section if a properly completed application for those benefits is received by the division on or before June 1, 1995.~~

~~(4)~~*(5)* The board may allow an employer to pay the contributions required under subsection ~~(2)~~ *(3)* in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

~~(5)~~*(6)* A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year forfeits the additional service. The employer's contribution to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. As used in this subsection, the same jurisdiction means all agencies of the state, including the university system."

**Section 4. Coordination instruction.** If Senate Bill No. 78 and [this act] are passed and approved, a person who elects to receive benefits under the provisions of [this act] is ineligible to receive a severance payment under the provisions of Senate Bill No. 78.

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved April 22, 1997

# CHAPTER NO. 362

[SB 84]

AN ACT REQUIRING THE BOARD OF REGENTS, UPON APPROPRIATION OF FUNDS, TO PROVIDE FINANCIAL ASSISTANCE TO RESIDENT NONBENEFICIARY STUDENTS ATTENDING TRIBALLY CONTROLLED COMMUNITY COLLEGES IN MONTANA; PROVIDING REQUIREMENTS FOR RECEIPT OF MONEY; PROVIDING FOR A REVERSION OF UNSPENT FUNDS TO THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, seven tribally controlled community colleges exist in the State of Montana; and

WHEREAS, the tribal community colleges provide a quality, low-cost, and accessible college program to Indian and non-Indian students each year; and

HeinOnline -- 1997 vol. II 1679 1997

WHEREAS, resident nonbeneficiary students do not qualify for financial support through the Bureau of Indian Affairs or under the Tribally Controlled Community College Assistance Act of 1978; and

WHEREAS, as a result of House Bill No. 544, enacted by the 1995 Legislature, the Board of Regents entered into contracts with tribal community colleges to provide financial assistance to approximately 589 resident nonbeneficiary students in the 1997 biennium; and

WHEREAS, without continuing state support, tribal community colleges will not be able to serve resident nonbeneficiary students without increasing student fees, which may result in students dropping out of college.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Financial assistance for resident nonbeneficiary students.** (1) Subject to a line item appropriation for purposes of this section, the regents shall provide financial assistance to tribally controlled community colleges for enrolled resident nonbeneficiary students.

(2) Each tribal community college shall apply for this assistance to the regents. Except as provided in subsection (6), the money must be distributed on a prorated basis according to the resident nonbeneficiary student enrollment in each tribal community college during the previous year. To qualify, a resident nonbeneficiary student shall meet the residency requirements as prescribed for the system by the regents. The distribution for any student is limited to a maximum of $1,500 each year for each full-time equivalent student.

(3) An expenditure is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation by the northwest association of schools and colleges;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the regents to provide the regents with information relating to eligibility of resident nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the system; and

(c) filing with the regents evidence that the college's enrollment of Indian students is at least 51%, as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) If funding is available pursuant to subsection (1), the legislature intends that the money be an amount in addition to the system budget approved in the general appropriations act.

(5) All funds appropriated under subsection (1) that are unspent revert to the state general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall:

(a) grant to resident nonbeneficiary students who meet the residency requirements, as prescribed for the system by the regents, fee waivers in the same

HeinOnline -- 1997 vol. II 1680 1997

percentage as the number of Indian students who are receiving fee waivers to attend a unit of the system bears to the total enrollment in the system; and

(b) subtract the costs of resident nonbeneficiary fee waivers granted under subsection (6)(a) from the total amount of prorated money to be distributed.

(7) The calculation in subsection (6) is not intended to allow the university system to retain the calculated amount of funds. Waivers must be given to eligible students.

**Section 2. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the presidents of the seven Montana tribally controlled community colleges.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 25, part 4, and the provisions of Title 20, chapter 25, part 4, apply to [section 1].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1997

# CHAPTER NO. 363

[SB 269]

AN ACT AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO STUDY, WITH THE COOPERATION OF THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF CORRECTIONS, AND CERTAIN OTHER STATE AGENCIES, A SEPARATE PAY PLAN FOR PROTECTIVE SERVICES PROFESSIONALS; DEFINING "PROTECTIVE SERVICES PROFESSIONAL" FOR THE PURPOSE OF THE STUDY; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP DRAFT LEGISLATION FOR REVIEW BY THE 56TH LEGISLATURE FOR THE IMPLEMENTATION OF A SEPARATE PAY PLAN FOR PROTECTIVE SERVICES PROFESSIONALS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Protective services professionals' pay schedules.** (1) The department shall study, with the cooperation of the department of justice, the department of transportation, the department of corrections, and other state agencies with personnel who will be included on the schedule, a pay schedule for protective services professionals. The pay schedule must be implemented for the period beginning July 1, 1999, and ending June 30, 2001. Insofar as the pay schedule applies to employees of a collective bargaining unit, its implementation is a negotiable subject under 39-31-305.

(2) "Protective services professional" means:

(a) a highway patrol officer, as defined in 61-1-305, except the chief, as defined in 61-1-302;

(b) an agent, as described in 44-2-111;

(c) a person authorized by the department of transportation or the department of justice to conduct an inspection pursuant to 61-9-501;

(d) a person whose primary work function is to supervise or otherwise guard persons incarcerated in a component of the department of corrections described in 53-1-202(2); or

(e) a person in an occupation identified by the department that is similar to those in subsections (2)(a) through (2)(d).

**Section 2. Report to legislature.** By November 1, 1998, the department of administration shall submit to the 56th legislature a report on the results of the study conducted pursuant to [section 1]. The report may contain proposed legislation to implement the pay schedule developed pursuant to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 1997.

Approved April 22, 1997

# CHAPTER NO. 364

[HB 58]

AN ACT ELIMINATING THE LICENSING AND PERMITTING OF POSTSECONDARY EDUCATIONAL INSTITUTIONS BY THE DEPARTMENT OF COMMERCE; AMENDING SECTION 2-6-109, MCA; AND REPEALING SECTIONS 20-30-101, 20-30-102, 20-30-103, 20-30-104, 20-30-105, 20-30-201, 20-30-202, 20-30-203, 20-30-301, 20-30-302, 20-30-303, 20-30-304, 20-30-305, 20-30-306, 20-30-401, 20-30-402, 20-30-403, 20-30-404, AND 20-30-405, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-6-109, MCA, is amended to read:

**"2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty.** (1) Except as provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not he used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection.

HeinOnline -- 1997 vol. II 1682 1997

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or to lists of persons holding driver's licenses provided for under 61-5-126.

(5) This section does not prevent an agency from providing a list to persons ~~providing prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted from that chapter as provided in 20-30-102, or~~ *providing prelicensing or continuing education courses subject to state law or* subject to Title 33, chapter 17.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a third party with tax-exempt status under section 501(c)(3) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the third party.

(9) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

**Section 2. Repealer.** Sections 20-30-101, 20-30-102, 20-30-103, 20-30-104, 20-30-105, 20-30-201, 20-30-202, 20-30-203, 20-30-301, 20-30-302, 20-30-303, 20-30-304, 20-30-305, 20-30-306, 20-30-401, 20-30-402, 20-30-403, 20-30-404, and 20-30-405, MCA, are repealed.

Approved April 23, 1997

# CHAPTER NO. 365

[HB 238]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CREDIT UNIONS; CONFORMING DIVIDEND PAYMENT PROVISIONS TO FEDERAL LAW; INCREASING THE TRIGGER AMOUNT FOR REPORTING TO THE BOARD LOANS TO OFFICIALS; REVISING CAPITAL ACCOUNTS AND CAPITAL RESERVE REQUIREMENTS FOR CORPORATE CREDIT UNIONS TO CONFORM WITH FEDERAL REGULATIONS; ALLOWING CREDIT UNIONS TO HOLD FUNERAL PLAN TRUSTS; DEFINING AND AUTHORIZING WITH RESTRICTIONS "PAID-IN CAPITAL"; AND AMENDING SECTIONS 32-3-502, 32-3-608, 32-3-803, 32-3-804, 32-3-805, 32-3-807, 72-37-102, AND 72-37-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-3-502, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1683 1997

"**32-3-502. Dividends.** ~~(1)~~ At ~~such~~ *the* intervals and for ~~such~~ *the* periods ~~as~~ *that* the board of directors ~~may authorize~~ *authorizes* and after ~~provision~~ *providing* for the required reserves, the board of directors may declare dividends to be paid from the undivided earnings at ~~such~~ *the* rates and upon ~~such~~ *the* classes of shares ~~as are determined by~~ *that* the board *determines*. ~~Such~~ *The* dividends ~~shall~~ *must* be paid on all ~~paid up~~ shares outstanding at the close of the period for which the dividend is declared.

~~(2) Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportionate share of such dividend.~~

~~(3) Dividend credit for a month may be accrued on shares which are or become fully paid up during the first 15 days of that month.~~"

**Section 2.** Section 32-3-608, MCA, is amended to read:

"**32-3-608. Loans to officials.** (1) A credit union may make loans to its directors, employees, loan officers, *and* credit manager~~,~~ and to members of its supervisory and credit committees~~, provided that~~ *if*:

(a) the loan complies with ~~all lawful~~ *the* requirements ~~under~~ *of* this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers; and

(b) ~~any such~~ *the* loan or aggregate of loans to any one director or committee member ~~which exceeds $2,500~~ *that exceeds $20,000* plus pledged shares ~~must be reported to~~ *must be reported to* the board of directors. Loans to directors and committee members may not exceed an aggregate of 20% of unimpaired capital of the credit union.

(2) A credit union may permit directors, employees, loan officers, *the* credit manager, and members of its supervisory and credit committees to act as comakers, guarantors, or endorsers of loans to other members, except when ~~any such~~ *the* loan standing alone or when added to any outstanding loan or loans to the comaker, guarantor, or endorser exceeds ~~$2,500~~ *$20,000*, ~~approval of~~ *a report to* the board of directors is required."

**Section 3.** Section 32-3-803, MCA, is amended to read:

"**32-3-803. Voting representative — conflict of interest.** (1) Each credit union that is a member of a corporate credit union may designate one person to be its voting representative in the corporate credit union. The person must be designated by the board of directors of the member credit union. The voting representative ~~must be~~ *is* eligible to hold office in the corporate credit union as if the person were a member of the corporate credit union.

(2) (a) A director, committee member, officer, agent, or employee may not in any manner participate in the deliberation or determination of any question affecting that person's personal pecuniary interest.

(b) A director, officer, agent, or employee may not in any manner participate in the determination of any matter material in amount, as defined by rule by the department, affecting the pecuniary interest of any corporation, partnership, or association, other than the corporate credit union, in which that person has a

HeinOnline -- 1997 vol. II 1684 1997

direct or indirect interest, except for matters involving payment of dividends to the membership.

(3) The department shall adopt rules implementing this section in substantial conformance with Title 12, part 704, Code of Federal Regulations."

**Section 4.** Section 32-3-804, MCA, is amended to read:

"**32-3-804. Additional rights and powers — department rules.** (1) Except as limited by this part and rules adopted pursuant to this part, a corporate credit union has all of the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this part.

(2) A corporate credit union may, as permitted by rules of the department, make loans to other credit unions and provide correspondent services and other financial services to other credit unions.

(3) A corporate credit union may, as permitted by rules of the department, invest in and grant loans to associations of credit unions, central funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A corporate credit union may, as permitted by rules of the department, borrow and accept money from any source and issue notes or debentures.

(5) A corporate credit union may, as permitted by rules of the department, make reasonable and prudent investments.

(6) The department shall adopt rules governing corporate credit union loans, borrowing, investments, strategic planning, funds management, capital goals, and services. The rules must be in substantial conformance with Title 12, part 704, Code of Federal Regulations.

(7) A corporate credit union may issue membership capital ~~share deposit~~ accounts as provided in 32-3-805.

*(8) A corporate credit union may issue paid-in capital and nonmember paid-in capital as provided in [section 9].*

~~(8)~~*(9)* A corporate credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors, elect exemption of insurance on share accounts under the provisions of Title II of the Federal Credit Union Act."

**Section 5.** Section 32-3-805, MCA, is amended to read:

"**32-3-805. Membership capital ~~share deposits~~ *accounts.*** (1) A corporate credit union may issue membership capital ~~share deposit or MCSD~~ accounts to members *that are available to cover losses that exceed reserves and undivided earnings and paid-in capital.*

(2) (a) For purposes of this section, "membership capital ~~share deposit" or "MCSD~~ account" means a share, deposit, *term certificate, adjusted balance,* or other account that:

(i) is established, at a minimum, as a ~~12 month~~ *3-year* notice account;

(ii) is limited to members;

HeinOnline -- 1997 vol. II 1685 1997

(iii) is not subject to share insurance coverage by the national credit union share insurance fund or otber deposit insurers; and

(iv) in the event of liquidation of the corporate credit union, is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured obligations to shareholders and tbe national credit union share insurance fund.

(b) ~~An MCSD account is not repayable until notice is given by the account holder credit union that the account holder credit union intends to withdraw MCSD account funds from the corporate credit union~~ *Upon written notice of intent to withdraw membership capital, the balance of the account will be frozen with no annual adjustment until the conclusion of the notice period*, except in the case of a credit union that is placed into liquidation, is purchased and assumed, or is merged.

*(c) Upon notification of intent to withdraw, the amount of the account on notice that may be considered membership capital is reduced by a constant monthly amortization that ensures that the recognition of membership capital is fully amortized at the end of the notice period.*

*(d) The full balance of a membership capital account that has been placed on notice, not just the remaining nonamortized portion, is available to absorb losses in excess of reserves and undivided earnings and of paid-in capital until the funds are released by the corporate credit union at the conclusion of the notice period.*

(3) ~~An MCSD~~ *A membership capital* account may not be used to pledge borrowings.

(4) Corporate credit unions that issue ~~MCSD~~ *membership capital* accounts sball disclose *the terms and conditions of the account when it is opened and* at least annually ~~to their members the terms and conditions under which the accounts are issued~~ *thereafter*."

**Section 6.** Section 32-3-807, MCA, is amended to read:

"**32-3-807. Corporate reserves — department rules.** (1) A corporate credit union shall maintain a minimum ~~ratio of risk based~~ capital ~~reserves~~ to ~~risk weighted~~ assets *ratio* according to rules adopted by the department in substantial conformance with Title 12, part 704, Code of Federal Regulations.

(2) The department shall adopt rules for the administration of subsection (1)."

**Section 7.** Section 72-37-102, MCA, is amended to read:

"**72-37-102. Deposit of money — trust fund.** (1) Within 30 days after receipt, ~~the~~ *a* party to ~~the~~ *a* contract *for a prearranged funeral plan or related services* holding ~~said~~ money in trust according to 72-37-101 shall deposit ~~said~~ *the* money in a banking institution or invest ~~said~~ *the* money in the stock of a savings or building and loan association *or in the shares of a credit union* organized under tbe laws of the state of Montana or of the United States ~~of America~~ and having its principal place of business in ~~the~~ *this* state~~,~~. ~~the~~ *The* deposits of *the money* ~~which~~ *in a* banking institution or the ~~stock liability~~ *investment in* ~~of which~~ *a* savings or building and loan association *or credit union* ~~are~~ *must be* insured by an instrumentality of the federal government.

HeinOnline -- 1997 vol. II 1686 1997

(2) ~~Said~~ *The* deposits or investments ~~shall be and~~ constitute a trust fund for the benefit of the person who has contracted for ~~such property and services upon his death~~ *a prearranged funeral plan or related services*. ~~Such~~ *The* money ~~shall~~ *must* be deposited in a separate account in the name of the depositor as trustee for the person who has contracted for ~~such property and services upon his death~~ *a prearranged funeral plan or related services*."

**Section 8.** Section 72-37-103, MCA, is amended to read:

**"72-37-103. Report of institution holding deposited money.** A banking institution, ~~or~~ savings or building and loan association, *or credit union* receiving money in trust under 72-37-102 shall report to the department of commerce before February 1 of each year all amounts received and held in trust. This report ~~shall~~ *must* show the name and address of each trustee and ~~cestui que~~ *beneficiary of a* trust, the principal amount remaining, and the interest or dividends paid on each ~~such~~ account."

**Section 9. Paid-in capital defined — authorized.** (1) "Paid-in capital" means accounts or other interests of a corporate credit union that:

(a) may not exceed reserves and undivided earnings;

(b) may include both member paid-in capital and nonmember paid-in capital;

(c) are available to cover losses that exceed reserves and undivided earnings;

(d) are not insured by the national credit union share insurance fund (NCUSIF) or other share or deposit insurers;

(e) are callable only at the option of the corporate credit union and only if the corporate credit union meets its minimum level of required capital after the funds are called; and

(f) in the event of liquidation of the corporate credit union, are payable only after satisfaction of all liabilities of the liquidation estate, including uninsured share obligations to the shareholders, the NCUSIF, and membership capital holders.

(2) (a) A corporate credit union may issue paid-in capital to its members.

(b) Member paid-in capital must have an initial maturity of 20 years.

(c) A corporate credit union may not condition membership, services or prices for services on a member's ownership of paid-in capital.

(d) When a paid-in capital instrument has a remaining maturity of 5 years, the amount of the instrument that may be considered paid-in capital for the purposes of this part is reduced by a constant monthly amortization that ensures the recognition of paid-in capital is fully amortized when the instrument has a remaining maturity of 3 years.

(e) The terms and conditions of any member paid-in capital instrument must be disclosed to the recorded owner of the instrument at the time the instrument is created and at least annually thereafter.

HeinOnline -- 1997 vol. II 1687 1997

(3) A corporate credit union may issue nonmember paid-in capital accounts. However, the corporate credit union may only issue the accounts after approval by the department and the national credit union administration (NCUA), and following an evaluation by the NCUA of the strategic purpose and financial impact of issuing the accounts, the corporate credit union's financial condition and management capabilities, the maturity and capital amortization schedules of the paid-in capital instrument; and the participation, voting, acceleration, redemption, or other rights of the holder.

**Section 10. Codification instruction.** [Section 9] is intended to be codified as an integral part of Title 32, chapter 3, part 8, and the provisions of Title 32, chapter 3, part 8, apply to [section 9].

Approved April 23, 1997

# CHAPTER NO. 366

[HB 391]

AN ACT IMPLEMENTING THE ONE-STOP BUSINESS LICENSING PILOT PROJECT; PROVIDING THAT CERTAIN LICENSEE RENEWAL DATES BE AN ANNIVERSARY DATE ESTABLISHED BY RULE; GRANTING AUTHORITY TO THE BOARD OF REVIEW TO ADOPT RULES GOVERNING THE USE OF ELECTRONIC MEANS OF VERIFYING INFORMATION REQUIRED FOR LICENSURE; ALLOWING CERTAIN LICENSEES TO PAY FEES BY CREDIT CARD AND ALLOWING RELEVANT LICENSING AGENCIES TO DISCOUNT FEES ACCORDINGLY; DESIGNATING THE DEPARTMENT OF REVENUE AS THE AGENCY RESPONSIBLE FOR ADMINISTERING THE LICENSING PILOT PROJECT; AND AMENDING SECTIONS 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, AND 82-15-105, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] grants rulemaking authority to the board of review established in 30-16-302 for the purpose of implementing a one-step business licensing pilot project required by the 54th Legislature.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Rulemaking.** The board of review established in 30-16-302:

(1) shall adopt rules governing the identification and use of electronic forms of signature to fulfill licensing requirements for licensees included in this part;

(2) may adopt rules to establish the anniversary date for the renewal of licenses issued to licensees included in this part; and

(3) shall consult with the pertinent licensing agency before issuing rules concerning license renewal dates.

HeinOnline -- 1997 vol. II 1688 1997

**Section 2.** Section 16-11-120, MCA, is amended to read:

**"16-11-120. Cigarette licenses.** Every wholesaler, subjobber, retailer, or cigarette vendor shall obtain a license from the department before engaging in the business of wholesaler, subjobber, retailer, or cigarette vendor. A separate application and a separate license ~~shall be~~ *is* required for each place of business owned, controlled, or operated by ~~such~~ *the* wholesaler, subjobber, retailer, or cigarette vendor within the state of Montana. Application forms ~~shall require~~ *must include* the type and general description of applicant organizations, names of all known owners, and ~~such~~ other pertinent information as the department may require in regularly promulgated ~~regulations~~ *rules. The department shall comply with rules issued by the board of review established in 30-16-302 with respect to the form of electronic verification of information required or acceptable for licensing purposes.*"

**Section 3.** Section 16-11-122, MCA, is amended to read:

**"16-11-122. License fees — renewal.** (1) Each application for a wholesaler's license ~~shall~~ *must* be accompanied by a fee of $50.

(2) Each application for a subjobber's license ~~shall~~ *must* be accompanied by a fee of $50.

(3) Each application for a retailer's license ~~shall~~ *must* be accompanied by a fee of $5.

(4) *The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.*

*(5)* These licenses ~~shall~~ *must* be renewed annually *on or before the anniversary date established by rule by the board of review established in 30-16-302 and* upon payment of the annual fee ~~in the amount set forth above~~ and ~~shall be~~ *are* effective for 1 year, without proration, and are not transferable."

**Section 4.** Section 30-12-203, MCA, is amended to read:

**"30-12-203. Licensing of weighing devices.** (1) A person may not knowingly operate or use an unlicensed weighing device in trade or commerce for ascertaining the weight of any commodity.

(2) A license must be obtained by making application to the department upon blank forms to be provided by the division of weights and measures. Each license must require at least one inspection per year.

(3) An application must be accompanied by the proper fee as established by this section *except that fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.*

HeinOnline -- 1997 vol. II 1689 1997

WEIGHING DEVICES

| Capacity | Fees |
|---|---|
| 499 pounds or less | $ 12.00 |
| 500 pounds through 1,999 pounds | 20.00 |
| 2,000 pounds through 7,999 pounds | 40.00 |
| 8,000 pounds through 60,000 pounds | 100.00 |
| 60,001 pounds or more | 175.00 |

(4) The capacity of a weighing device must be determined by the manufacturer's rated capacity.

(5) All licenses must be annual and expire on ~~December 31~~ *the anniversary date established by rule by the board of review established in 30-16-302.*

(6) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid before ~~July 1~~ *the first day of the sixth month* of the year in which the license fee is due. A person failing to pay the renewal license fee before ~~July 1~~ *the first day of the sixth month of the year in which the license fee is due* forfeits the right to use the weighing device, and it must be taken out of service by the division of weights and measures until the renewal fee and late renewal fee are paid.

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part."

**Section 5.** Section 30-13-203, MCA, is amended to read:

**"30-13-203. Application for registration of assumed business name.** ~~All persons~~ *A person* transacting business in this state under an assumed business name shall ~~execute and file with the~~ *register with the* secretary of state, on forms furnished by the secretary of state *or by electronic means established by the board of review established in 30-16-302*, an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and address, including the street name and number, of applicant;

(2) the complete name of *the* proposed assumed business name;

(3) date of first use, in commerce, of *the proposed* assumed business name;

(4) description of business transacted under *the proposed assumed* ~~such~~ name; and

(5) the name of county or counties in which business is being transacted."

**Section 6.** Section 30-13-206, MCA, is amended to read:

**"30-13-206. Term and renewal of assumed business name registration.** (1) Registration of an assumed business name is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state *or by electronic means*

*established by rule by the board of review established in 30-16-302*, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of registration of an assumed business name, the secretary of state shall notify the applicant of record of the pending expiration by addressing a notice to the last-known address of the applicant.

(3) (a) Subject to subsection (3)(b), if the applicant or person in whose name an assumed business name is registered fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration.

(b) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall again notify the limited liability partnership of the pending expiration and give the limited liability partnership an additional 90 days within which to renew its registration. If the limited liability partnership fails to renew its registration within the second 90-day period, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership."

**Section 7.** Section 30-13-210, MCA, is amended to read:

**"30-13-210. Filing amendment to registration of assumed business name — issuance of certificate ~~thereon~~.** (1) One original and one copy of an amendment to the registration of an assumed business name~~, executed and verified on forms furnished by the secretary of state, shall~~ *must* be delivered to the secretary of state. The application for amended registration of an assumed business name ~~shall~~ *must* include but ~~not be~~ *is not* limited to the following information:

(a) complete assumed business name prior to adoption of amendment;

(b) complete new assumed business name, if applicable;

(c) name and address of the registrant, including street name and number of the business office;

(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with ~~such~~ *the* registered assumed business name;

(e) the name of the county or counties in which the name is being used;

(f) if there is a change in the identity of the county or counties or addition of a county or counties in which the assumed business name is being used or is to be used, the name~~(s)~~ of the new county or counties;

(g) if a person or persons having an interest in a business with a registered assumed name withdraws or dies, a statement of ~~such~~ *that* fact; and

(h) a statement that the amended registration of assumed business name supersedes the original registration and all amendments ~~thereto~~ *to the original registration*.

HeinOnline -- 1997 vol. II 1691 1997

(2) If the secretary of state finds that the application for amended registration of *the* assumed business name complies with this part, ~~he~~ *the secretary of state* shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing ~~thereof~~;

(b) file the original in ~~his~~ *the secretary of state's* office; and

(c) issue a certificate of amendment, to which ~~he~~ *the secretary of state* shall affix the copy.

(3) The certificate of amendment, together with the copy of the amendment ~~affixed thereto by the secretary of state~~ *required in subsection (1)*, ~~shall~~ *must* be returned to the registrant.

(4) The failure of the registrant of an assumed business name to comply with the requirements of this section ~~shall result~~ *results* in the cancellation by the secretary of state of the registration."

**Section 8.** Section 30-13-217, MCA, is amended to read:

**"30-13-217. Fees and charges to be established and collected by secretary of state.** (1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this part and commensurate with costs:

(a) fees for filing documents and issuing certificates; and

(b) miscellaneous charges.

(2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this section.

(3) In addition to the fees and charges in subsection (1), the secretary of state shall charge and collect from each limited liability partnership a license fee of:

(a) $50 at the time of registration under 30-13-203; and

(b) $50 at the time of each renewal of registration under 30-13-206 through 30-13-208.

*(4) Fees and charges established under this section may be paid by credit card and may be discounted for payment processing charges paid by the secretary of state to a third party.*"

**Section 9.** Section 30-16-103, MCA, is amended to read:

**"30-16-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of review" means the body established to provide policy direction to the department *of revenue* in designing and recommending to the legislature the implementation of a plan for a business registration and licensing system.

(2) "Department" means the department of commerce established in 2-15-1801.

HeinOnline -- 1997 vol. II 1692 1997

(3) (a) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity.

(b) License does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, and Title 75, which are excluded from the coverage of this chapter.

(4) "Person" means an individual, sole proprietorship, partnership, association, cooperative, limited liability company, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

(5) "Plan" means the business registration and licensing system ~~document,~~ *and the procedures developed by the board of review* ~~which is~~ *that are* under the administrative control of the department *of revenue*."

**Section 10.** Section 30-16-301, MCA, is amended to read:

**"30-16-301. Business registration and licensing plan — ~~duties~~ *administration.*** ~~(1) Before January 1, 1997, the department shall develop a plan:~~

~~(a) to establish an information service detailing all state licenses that are required in order to engage in business in Montana and the locations for applying for those licenses; and~~

~~(b) for a uniform method by which all state agencies may identify businesses.~~

~~(2) The method developed under subsection (1)(b) must include a phased approach to:~~

~~(a) complete a requirements analysis and specification document, including an overview systems design;~~

~~(b) complete a detailed requirements analysis, including a general systems design;~~

~~(c) establish interagency procedures for effectuating the plan;~~

~~(d) select those licenses that will be included in the initial implementation of the plan and the date and manner in which the licenses will be integrated into the plan; and~~

~~(e) complete a cost-benefit analysis of the final implementation of the plan.~~

~~(3) The department shall on January 2, 1997, recommend to the legislature any statutory or budgetary changes for implementing the plan.~~

~~(4) Each state agency shall review its licenses and recommend to the legislature on January 2, 1997, those licenses that should be eliminated or consolidated and justify those that should be retained.~~

~~(5)~~*(1) The provisions of [section 1], 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 50-50-201, 50-50-203, 50-50-205,*

*50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. [Section 1], 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:*

*(a) an anniversary date for license renewal that is set by the board of review;*

*(b) an electronic means of verifying the information required in the license application; and*

*(c) credit card discounts in relation to fees required for licensure.*

*(2)* The department *of revenue* shall designate a deputy director in charge of *administering* the plan whose duties include those of executive secretary of the board of review."

**Section 11.** Section 30-16-302, MCA, is amended to read:

"**30-16-302. Board of review.** (1) There is a board of review. The board of review's duty is to provide policy direction to the department *of revenue* in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, commerce, environmental quality, revenue, justice, and public health and human services, the secretary of state, the director of the office of budget and program planning, the commissioner of labor and industry, the president of the senate or a designee, and the speaker of the house or a designee.

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action;

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues; and

(d) recommend, in questionable cases, whether a particular license falls within the scope of this chapter.

(4) In developing a recommended plan for streamlined registration and licensing procedures, the board of review shall consider the experience gained from the consolidated employer registration process implemented by the department of revenue and the department of labor and industry."

**Section 12.** Section 50-50-201, MCA, is amended to read:

"**50-50-201. License required.** (1) Except as provided in 50-50-202, a person operating an establishment shall procure an annual license from the department.

HeinOnline -- 1997 vol. II 1694 1997

(2) A separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one license is required for a person owning and operating one or more vending machines.

(4) ~~Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located~~ *A license issued by the department is not valid unless signed in accordance with 50-50-214.*"

**Section 13.** Section 50-50-203, MCA, is amended to read:

"**50-50-203. Application for license.** An application for a license is made to the department on forms and contains information required by the department *or is an application for a license that is in compliance with rules established by the board of review established in 30-16-302.*"

**Section 14.** Section 50-50-205, MCA, is amended to read:

"**50-50-205. Licnse fee — late fee — preemption of local authority — exception.** (1) For each license issued, the department shall collect a fee of $60. It shall deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 7.5% of the fees into the general fund, and 7.5% of the fees into the account provided for in 50-50-216.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ *the licensee's* current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-50-216.

(3) A county or other local government may not impose an inspection fee or charge in addition te the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment.

*(4) The fees in subsections (1) and (2) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. However, the discounting of license fees may not reduce the fees paid into the local board inspection fund account established in 50-2-108.*"

**Section 15.** Section 50-50-207, MCA, is amended to read:

"**50-50-207. Expiration date of license.** *(1) Except as provided in subsection (2),* ~~Licenses~~ *licenses* expire on Decemher 31 following the date of issue unless canceled for cause.

*(2) License renewals provided for in 16-11-122, 30-12-203, 50-50-207, 80-7-106, and 82-15-105 expire on the anniversary date established by rule by the board of review established in 30-16-302.*"

HeinOnline -- 1997 vol. II 1695 1997

**Section 16.** Section 50-50-214, MCA, is amended to read:

**"50-50-214. Notification of and validation by local health officer.** (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located *or until the license is otherwise validated by the local health officer and is in accordance with rules established by the board of review established in 30-16-302.*

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal."

**Section 17.** Section 80-7-106, MCA, is amended to read:

**"80-7-106. License required — application and payment of license fee.** (1) A firm engaging in the business of selling or distributing nursery stock in this state shall obtain a license for each nursery from the department.

(2) The license must be in the name of the firm seeking the license and expires on ~~December 31~~ *the anniversary date established by rule by the board of review established in 30-16-302* ~~following the date of issue~~. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter *and in the form determined by rule by the board of review established in 30-16-302.*

(3) (a) A nursery that earns less than $1,000 in gross annual sales of nursery stock and that submits a notarized affidavit to that effect to the department is exempt from licensing.

(b) A nursery that earns $1,000 but less than $3,000 in gross annual sales of nursery stock and that submits a notarized affidavit to that effect to the department shall pay a license fee of $30.

(c) A nursery that earns $3,000 or more in gross annual sales of nursery stock shall pay a license fee of $95.

(4) A new applicant or a firm failing to renew a license ~~by January 1 of each year~~ *on or before the annual anniversary date provided for in subsection (2)* shall pay an additional nonrefundable application fee of $25 for each license.

(5) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.

(6) If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee.

*(7) The fees required by the provisions of this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.*"

HeinOnline -- 1997 vol. II 1696 1997

**Section 18.** Section 81-9-201, MCA, is amended to read:

**"81-9-201. Meat establishment license — fees and renewals.** (1) It is unlawful for a person, firm, or corporation to engage in the business of slaughtering livestock or poultry or processing, storing, or wholesaling the meat products of either without having a license issued by the department. The department shall establish an annual fee for a license issued under this section, to be paid into the state special revenue fund for the use of the department.

(2) All licenses expire *each year* on ~~December 31 of the year~~ *the anniversary date established by rule by the board of review established in 30-16-302* ~~in which they are issued~~ and ~~shall~~ *must* be renewed by the department on request of the licensee. However, when the department finds that the establishment for which the license is issued is not conducted in accordance with the rules and orders of the board made under 81-2-102, the department shall revoke the license and may not renew it until the establishment is in a sanitary condition in accordance with department rules.

(3) A person, firm, or corporation violating this section or any rule or order promulgated by authority of 81-2-102 is guilty of a misdemeanor and upon conviction shall be fined not ~~to exceed~~ *more than* $500."

**Section 19.** Section 81-20-201, MCA, is amended to read:

**"81-20-201. Egg dealer's and egg grader's licenses — fee.** (1) ~~No~~ *A* person may *not* buy, sell, or deal in eggs without first obtaining a license from the department of livestock for each establishment at which business is conducted. A licensee shall send to the department the reports ~~which~~ *that* are requested by the department. The department shall establish a license fee for dealers buying eggs for sale at retail and for dealers buying eggs for resale at wholesale. All licenses ~~shall~~ *must* be posted in a conspicuous place in each place of business. Licenses expire ~~March 31~~ *each year on the anniversary date established by rule by the board of review established in 30-16-302* ~~each year after the date of issuance~~.

(2) A person buying, selling, or dealing in eggs, a major portion of which are produced by ~~his~~ *the person's* own fowl, or in amounts less than an average of 25 cases per month, is exempt from the requirements of this section.

(3) Wholesale and retail dealers who handle more than 25 cases of eggs per month supplying eggs to consumers must, when selling candled eggs, sell only eggs candled by or under the supervision of experienced and licensed graders. The department shall establish a fee for a grader's license. All candlers and graders must pass an examination required by the department. The license expires ~~March 31~~ *each year on the anniversary date established by rule by the board of review established in 30-16-302* ~~each year after the date of issuance~~."

**Section 20.** Section 82-15-105, MCA, is amended to read:

**"82-15-105. Licenses and fees — status of license on transfer of ownership.** (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until licensed by the department. The license must be obtained by the dealer by making application to the department upon blank forms provided by the department. A dealer who has not been issued a license and who

HeinOnline -- 1997 vol. II 1697 1997

is found selling, offering for sale, delivering, or distributing petroleum products shall upon conviction be punished as provided by this part.

(2) The department shall adopt rules establishing license fees based upon the measuring devices used by the dealer. *The fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.* The fees must be deposited in the state special revenue fund of the department for use in administrating and enforcing this part.

(3) All licenses are annual and expire on ~~December 31~~ *the anniversary date established by rule by the board of review established in 30-16-302* ~~of each year~~. There is an additional charge of 50% on all license fees that are not paid before March 1 of each year in which the vehicle tank, meter, or measuring device is in use. If the fee is not paid, the equipment must be sealed and removed from service by the department. It is unlawful for anyone to use a device removed from service or to break the seal until all fees have been paid.

(4) If ownership of a measuring device changes and the device:

(a) remains at the same location, the license transfers to the new owner and remains in effect until December 31 of that year;

(b) is moved to a new location, the license is void, and the new owner shall:

(i) apply for a new license that will expire on ~~December 31~~ *the anniversary date* of that year, *as provided in subsection (3)*; and

(ii) pay the applicable fees."

**Section 21. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 30, chapter 16, part 1, and the provisions of Title 30, chapter 16, part 1, apply to [section 1].

**Section 22. Coordination instruction.** If Senate Bill No. 61 and [this act] are both passed and approved, then the language in 50-50-207 must read as follows:

"**50-50-207. Expiration date of license.** *(1) Except as provided in subsections (2) and (3), each* ~~Licenses expire~~ *license expires* on December 31 following the date of issue unless canceled for cause.

*(2) Except as provided in subsections (1) and (3), the department may amend or issue licenses to provide for staggered license expiration dates. The department may provide for initial license terms of greater than 12 months but not more than 23 months in adopting staggered license expiration dates, and the license fee must be prorated accordingly. Upon expiration of a license that has been amended or issued to provide a term of greater than 12 months and subsequent payment of the required license fee, the license must be renewed for a period of 12 months commencing on the day following the expiration date of the amended or issued license.*

*(3) License renewals provided for in 16-11-122, 30-12-203, 50-50-207, 80-7-106, 81-9-201, and 82-15-105 expire on the anniversary date established by rule by the board of review established in 30-16-302."*

Approved April 23, 1997

HeinOnline -- 1997 vol. II 1698 1997

# CHAPTER NO. 367

[HB 521]

AN ACT REVISING THE GENERAL RULES FOR DETERMINING RESIDENCE; PROVIDING THAT A CLAIM OF RESIDENCE WITHIN MONTANA FOR ANY PURPOSE ESTABLISHES A PERSON'S RESIDENCE FOR ALL PURPOSES; AND AMENDING SECTION 1-1-215, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 1-1-215, MCA, is amended to read:

**"1-1-215. Residence — rules for determining.** Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where ~~one~~ *a person* remains when not called elsewhere for labor or other special or temporary purpose and to which ~~he~~ *the person* returns in seasons of repose.

(2) There ~~can~~ *may* only be one residence. *If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.*

(3) A residence cannot be lost until another is gained.

(4) The residence of ~~his~~ *a minor's* parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom ~~he~~ *the minor* customarily resides is the residence of the unmarried minor ~~child~~. In case of a controversy, the district court may declare which parental residence is the residence of an unmarried minor ~~child~~.

(5) The residence of an unmarried minor who has a parent living cannot be changed by either ~~his~~ *the minor's* own act or that of ~~his~~ *the minor's* guardian.

(6) The residence can be changed only by the union of act and intent."

Approved April 23, 1997

# CHAPTER NO. 368

[HB 596]

AN ACT EXEMPTING COMMON TRUST FUNDS, AS DEFINED BY FEDERAL LAW, FROM THE CORPORATION LICENSE TAX AND CORPORATION INCOME TAX; AMENDING SECTION 15-31-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-31-102, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1699 1997

**"15-31-102. Organizations exempt from tax — unrelated business income not exempt.** (1) Except as provided in subsection (3), there ~~shall~~ *may* not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of ~~such~~ *the* society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit, ~~and~~ no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income ~~therefrom~~ *from the property*, and turning over the entire amount ~~thereof~~ *of the income*, less expenses, to an organization ~~which~~ *that* itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep;.

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes ~~such~~ *that* ~~an~~ election under

federal law, each person who at any time is a shareholder of ~~such~~ *the* corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit, ~~and~~ no part of the net income of which inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller~~.~~;

*(n) common trust fund as defined in 26 U.S.C. 584(a).*

(2) In determining the license fee to be paid under this part, there ~~shall~~ *may* not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code~~,~~ *of* 1954, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 ~~shall~~ *must* be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section ~~must~~ *shall* file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

**Section 2. Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

Approved April 23, 1997

# CHAPTER NO. 369

[HB 612]

AN ACT CHANGING THE DISTRIBUTION OF CORPORATE LICENSE TAX PAYMENTS FROM BANKS AND SAVINGS AND LOAN ASSOCIATIONS TO COUNTIES TO PROVIDE FOR PAYMENTS BASED ON A 5-YEAR AVERAGE; AMENDING SECTIONS 15-31-141, 15-31-701, AND 15-31-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-31-141, MCA, is amended to read:

**"15-31-141. Consolidated returns — computation and procedure — ~~prohibition on financial institutions~~.** (1) Corporations ~~which~~ *that* are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary

business operation described in subsection (2)(b), permission to file a consolidated return is given by the department ~~of revenue~~. For purposes of this section, a "unitary business operation" means ene in which:

(a) the business operations conducted by the corporations in the affiliated greup are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group ~~are incorporated and~~ operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) ~~of this section~~ are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(5) Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, ~~such~~ *the* assets of the corporation ~~as~~ *that* are required for the purposes of this chapter, and ~~such~~ *any* other information ~~as~~ *that* the department may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, ~~such~~ *the* assets of the corporation ~~as~~ *that* are required for the purposes of this chapter, and ~~such~~ *any* other information ~~as~~ *that* the department may require, but excluding intercorporate stockholdings and intercorporate accounts. ~~In case~~ *If* it ~~shall appear~~ *appears* to the department that any arrangement exists in ~~such~~ a manner ~~as to~~ *that* improperly ~~reflect~~ *reflects* the business done, the segregable assets, or the entire net income earned from business done in this state, the department ~~is authorized and empowered to~~ *may* equitably adjust the tax in ~~such~~ *a* manner ~~as~~ *that* it may determine.

~~(6) (a) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of nonfinancial institutions, thereby distorting the true income of each financial organization.~~

~~(b) In accordance with subsection (6)(a), financial institutions are prohibited from filing consolidated returns under this section.~~

~~(7)~~*(6)* (a) When an affiliated group elects to file a consolidated return under the provisions of this section, a corporation of the affiliated group shall file a separate return for any portion of its taxable year in which its income is not included in the consolidated return of the group. The separate return must be

filed no later than the 15th day of the 5th month following the close of the taxable year for which a consolidated return of the affiliated group is filed.

(b) A 1-month to 6-month extension of time is automatically allowed for filing a return~~, provided that~~ *if* on or before the due date of the return, an application for an extension is made by the corporation. The application must be made on forms prescribed by the department."

**Section 2.** Section 15-31-701, MCA, is amended to read:

**"15-31-701. Department ~~of revenue~~ — special duties for transmitting corporation license tax ~~revenues~~ *revenue* collected from banks or savings and loan associations to counties.** (1) ~~Within 30 days after receiving corporation license tax returns and payments from banks or savings and loan associations, the~~ *The* department ~~of revenue~~ shall transmit to the county treasurer ~~of the county in which the business is located~~ the ~~revenues~~ *revenue* calculated under 15-31-702(1)(b).

(2) If the department ~~of revenue~~ determines, under the provisions of 15-31-503 and 15-31-531, that a bank or savings and loan association owes more taxes than shown on the original return or has paid more than the tax, penalty, or interest due in any year, it shall notify the bank or savings and loan association pursuant to 15-1-211. Review may be sought pursuant to 15-1-211. ~~County treasurers shall issue warrants for their portion of the overpayment received and interest, as provided in 15-31-531.~~

(3) The department shall continue to exercise all its duties and powers outlined in this title with respect to auditing returns and enforcing payment of the corporation license taxes owed by banks and savings and loan associations. ~~Any delinquent taxes collected from the sale of property of a bank or savings and loan association under the provisions of 15-31-525 shall be transmitted to the county in which the corporation owing the delinquent taxes is located.~~ The only ~~duties~~ *duty* of the county treasurers in this regard ~~are issuing refunds and~~ *is* distributing the taxes *received pursuant to 15-31-702(1)(b)* to local taxing jurisdictions."

**Section 3.** Section 15-31-702, MCA, is amended to read:

**"15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations.** (1) All corporation license taxes, interest, and penalties collected from banks and savings and loan associations must, in accordance with the provisions of 15-1-501, be distributed in the following manner:

(a) ~~20%~~ *Twenty percent* must be allocated as provided in 15-1-501(3)~~; and~~.

(b) ~~80%~~ *Eighty percent* is statutorily appropriated, as provided in 17-7-502, for allocation to the various taxing jurisdictions within the county in which ~~the~~ *a* bank or savings and loan association is located.

(2) The corporation license taxes, interest, and penalties distributed under subsection (1)(b) must be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

HeinOnline -- 1997 vol. II 1703 1997

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed hy a bank or savings and loan association involves hranches or offices in more than one taxing jurisdiction, the department ~~of revenue~~ shall provide a method by rule for equitable distribution among those taxing jurisdictions.

*(5) All corporation license taxes paid from consolidated returns in which 50% or more of the income is from banks or savings and loan associations must be distributed as provided in subsection (1).*

*(6) (a) The department shall annually distribute to each county having a bank or savings and loan association a percentage of the total amount collected pursuant to subsection (1), including penalties, interest, or additional taxes from assessments and less any refunds, from July 1 of the previous year through June 30 of the current year. The distribution must be sent to each county treasurer for distribution to the taxing jurisdictions in each district on or before August 1 of each year.*

*(b) The percentage for distribution must be calculated by taking an average of the ratios of total bank tax liability within a school district to total bank tax liability for all school districts in which a bank or savings and loan association is located in each of the 5 years preceding the current year. The total tax liability must be computed for each year by including all returns filed during that year and all amended returns and adjustments to tax filings made by the department during that year, no matter to which tax year the amended return actually applied."*

**Seetion 4. Effeetive date — applicability — retroaetive applicability.** (1) [This act] is effective on passage and approval.

(2) [Section 1] applies retroactively, within tbe meaning of 1-2-109, to tax years after December 31, 1996.

(3) [Sections 2 and 3] apply to revenue collected after July 1, 1997.

Approved April 23, 1997

# CHAPTER NO. 370

[SB 124]

AN ACT GENERALLY REVISING THE LAWS ADMINISTERED BY THE PUBLIC EMPLOYEES' RETIREMENT BOARD; PROVIDING THAT FEDERAL TAX LAWS GOVERNING QUALIFICATION OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEMS SUPERSEDE CONFLICTING STATE STATUTES; GIVING THE BOARD RULEMAKING AUTHORITY; DEFINING "STATUTORY BENEFICIARY" AND "TERMINATION OF EMPLOYMENT" OR "TERMINATION OF SERVICE"; ALLOWING MEMBERS OF THE GAME WARDENS' RETIREMENT SYSTEM TO QUALIFY PERIODS OF ABSENCE FROM COVERED EMPLOYMENT BECAUSE OF SERVICE-CONNECTED

HeinOnline -- 1997 vol. II 1704 1997

INJURY OR ILLNESS; CLARIFYING CERTAIN SERVICE CREDIT PROVISIONS; ALLOWING MAILINGS FOR CERTAIN NONPROFIT ORGANIZATIONS; CLARIFYING CERTAIN DEFINITIONS; REVISING CERTAIN PROVISIONS RELATED TO FAMILY LAW ORDERS; REVISING CERTAIN OPTIONAL MEMBERSHIP PROVISIONS; REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING BENEFIT COMMENCEMENT DATES FOR ALL SYSTEMS; ALLOWING CANCELLATION OF DISABILITY BENEFITS AND AN EXCEPTION TO REINSTATEMENT PROVISIONS; REVISING CERTAIN PROVISIONS RELATED TO BENEFICIARY DESIGNATION AND SURVIVOR BENEFIT OPTIONS; AMENDING SECTIONS 2-6-109, 19-2-303, 19-2-701, 19-2-702, 19-2-704, 19-2-801, 19-2-802, 19-2-907, 19-3-401, 19-3-412, 19-3-504, 19-3-511, 19-3-513, 19-3-1015, 19-3-1104, 19-3-1601, 19-5-103, 19-5-601, 19-5-801, 19-6-501, 19-6-612, 19-7-501, 19-7-612, 19-7-708, 19-7-801, 19-8-601, 19-8-712, 19-8-1101, 19-9-801, 19-9-904, 19-9-905, 19-13-701, 19-13-804, 19-13-805, AND 19-17-102, MCA; REPEALING SECTIONS 19-3-903 AND 19-3-1006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 1 and 3] give the puhlic employees' retirement board authority to adopt administrative rules.

A fundamental purpose of the public employee retirement systems is to provide members with a federal income tax-deferred retirement plan. To qualify for federally deferred income tax status, each retirement plan must conform with the requirements of section 401 of the Internal Revenue Code, which may be amended from time to time.

It is the intent of the legislature that Montana statutory provisions in conflict with section 401 of the Internal Revenue Code and related federal regulations and that would result in a retirement plan being disqualified are ineffective or must be interpreted so that the retirement plans may retain tax-deferred status.

It is the further intent of the legislature to clarify when a member of a retirement system becomes a retiree. The retirement date is the date on which the member accepts the first benefit payment. An inactive member who has not met all eligibility requirements for retirement, including proper submission of a written application for retirement benefits, should not be considered a "retiree" during the period of time before the member actually began receiving benefit payments, even though the member may later receive payments retroactive to an earlier commencement date. Because retirees may not earn membership service or purchase service credits in the retirement systems and active and inactive members may not receive benefit adjustments granted to current retirees, it is imperative to the actuarial soundness of the systems to clarify the retirement date of each member.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Retaining qualified plan status — board rulemaking authority.** If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal

Revenue Code and consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the system to retain tax-deferred status. The board may adopt rules to implement this section.

**Section 2. Absence due to injury or illness.** (1) Time, not to exceed 5 years, during which a member is absent because of an injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for the absence unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.

(5) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence.

**Section 3. Time of commencement of benefit.** (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated covered service, and filed the appropriate written application.

(b) A member may apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last

HeinOnline -- 1997 vol. II 1706 1997

day of membership service or, if requested by the inactive member in writing, on the first day of a later month following receipt of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits commence on the first day of the month following the official's last full month in office. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating final average salary under the retirement system in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

(4) Monthly survivorship benefits must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

**Section 4.** Section 2-6-109, MCA, is amended to read:

**"2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty.** (1) Except as provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or to lists of persons holding driver's licenses provided for under 61-5-126.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted from that chapter as provided in 20-30-102, or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

HeinOnline -- 1997 vol. II 1707 1997

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a ~~third-party~~ *retiree organization formed for board-administered retirement system participants and* with tax-exempt status under section ~~501(c)(3)~~ *501(c)(4)* of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the ~~third-party~~ *organization*.

(9) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

**Section 5.** Section 19-2-303, MCA, is amended to read:

**"19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is ~~an~~ *a paid* employee of an employer ~~and who~~, is making the required contributions ~~to the system based on the member's compensation paid by the employer~~, *and is properly reported to the division for the most current reporting period.*

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

HeinOnline -- 1997 vol. II 1708 1997

(9) "Benefit" means the service or disability retirement or survivorship benefit *payment* provided hy a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing ~~annuity~~ *monthly benefit* after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been inade to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" ineans the person designated by a ineinber *or payment recipient* to receive any survivorship benefits or lump-sum payments upon the death of the member *or payment recipient*, including annuities derived from the benefits or payments.

(15) "Disability" means a tetal inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of perinanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Division" ineans the public employees' retireinent division of the departinent of administration.

(17) "Employee" means a person who is employed by an employer in any capacity and whose salary is paid by the employer.

(18) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(19) "Essential elements of the pesition" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the pesition exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(20) "Fiscal year" means any year commencing with July 1 and ending the following June 30.

(21) "Inactive member" means a member who ~~has terminated service with an employer and has not withdrawn the member's accumulated contributions from the retirement system~~ *is not an active or retired member*.

(22) "Member" ineans any person with accumulated contributions and service credited with a retirement system or receiving a retireinent benefit on account of the person's previous service credited in a retireinent systeiii.

HeinOnline -- 1997 vol. II 1709 1997

(23) "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(24) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

(25) "Pension" means *benefit* payments for life derived from contributions to a system made from state- or employer-controlled funds.

(26) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

(27) "Regular contributions" means contributions required from members under a retirement system.

(28) "Regular interest" means interest at the rate set from time to time by the board.

(29) "Retirement" or "retired" means the status of a member who has terminated from service ~~with~~ *and has received and accepted* a retirement benefit ~~under~~ *from* a retirement system.

(30) "Retirement benefit" means the periodic benefit payable ~~following~~ *as a result of* service, early, or disability retirement under a retirement system. *An annuity is not a retirement benefit.*

(31) "Retirement system" *or "system"* means one of the public employee retirement systems enumerated in 19-2-302.

(32) "Service" means employment of an employee in a position covered by a retirement system.

(33) *"Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.*

*(34)* "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to tho inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

~~(34)~~*(35)* "Survivorship benefit" means payments for life to the *statutory or designated* beneficiary of a deceased member who died while in service under a retirement system.

~~(35)~~*(36) "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes*

*of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.*

*(37)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(36)~~*(38)* "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(37)~~*(39)* "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

**Section 6.** Section 19-2-701, MCA, is amended to read:

**"19-2-701. Service credit.** Subject to the provisions of chapters 3, 5 through 9, and 13 ~~of this title~~, a member must receive 1 month of service credit for each full month of service under rules adopted by the board. Service credits must be used in calculating a retirement or survivorship benefit. *A retired member is not eligible to earn service credit.*"

**Section 7.** Section 19-2-702, MCA, is amended to read:

**"19-2-702. Membership service.** A member *who is not retired* must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The service must be used to determine:

(1) whether a member is vested;

(2) when the member is eligible for early or normal service retirement or disability retirement; or

(3) the eligibility of beneficiaries for survivorship benefits."

**Section 8.** Section 19-2-704, MCA, is amended to read:

**"19-2-704. Purchasing service credits allowed.** (1) Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition to the mandatory employee contributions required by the retirement system in which the member participates for the purpose of purchasing service credits as provided by the statutes governing the retirement system.

(2) A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all or a portion of the member's accumulated contributions on deposit in a pension trust fund from which service is being transferred to the pension trust fund of another plan in which service is being credited. The transfer of contributions may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the accumulated contributions on depesit in a pension trust fund is being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall

HeinOnline -- 1997 vol. II 1711 1997

identify at the time of the transfer the taxed and tax-deferred amounts being transferred.

*(3) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase, qualify, or transfer service credits, membership service, or contributions."*

**Section 9.** Section 19-2-801, MCA, is amended to read:

**"19-2-801. Designation of beneficiary.** In the absence of any ~~statutorily designated persons~~ *statutory beneficiaries,* ~~the~~ *designated* beneficiaries ~~of a member~~ are the natural persons~~, charitable organizations, or trusts for the benefit of natural living persons~~ that the member *or payment recipient* designates on the memhership card *or other form provided by the division.* Unless otherwise provided by statute, a member *or payment recipient* may revoke the designation and name different *designated* beneficiaries by filing *with the board* a new membership card ~~with the board~~ *or other form provided by the division."*

**Section 10.** Section 19-2-802, MCA, is amended to read:

**"19-2-802. Effect of no designation *or no surviving designated beneficiary.*** (1) If a ~~living~~ *statutory or designated* beneficiary~~, existing charitable organization, or natural living person who is the beneficiary of a trust is not designated~~ *does not survive the member or payment recipient,* the estate of the member *or payment recipient* is ~~the designated beneficiary~~ *entitled to any lump-sum payment or retirement benefit accrued but not received prior to the statutory or designated beneficiary's death.* If the estate would not be probated but for the amount due from the retirement system, all of the amount due~~, including retirement benefits accrued but not received prior to death,~~ must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a llviug person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the retirement division, that there are no living individuals in the groups preceding the group of which the person is a member and tbat the estato of the deceased will not be probated.

HeinOnline -- 1997 vol. II 1712 1997

(4) The payment must he in full and complete discharge and acquittance of the board and system on account of the memher's *or payment recipient's* death."

**Section 11.** Section 19-2-907, MCA, is amended to read:

**"19-2-907. Alternate payees — family law orders.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17; and

(b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interosts granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) A family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship henefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. *Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be apportioned to an alternate payee.*

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing henefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

HeinOnline -- 1997 vol. II 1713 1997

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of tbe alternate payee, or tbe life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.

(6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The hoard may adopt rules to implement this section.

*(7) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board."*

**Section 12.** Section 19-3-401, MCA, is amended to read:

**"19-3-401. Membership — inactive vested members — inactive nonvested members.** (1) Except as otherwise provided in this chapter, all ~~eligible~~ employees shall become members on the first day of ~~covered employment~~ *service*. Each ~~eligible employee~~ *employer* shall file with the board information affecting ~~the employee's~~ *their employees'* status as ~~a member~~ *members* of the retirement system as the board may require.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvestod member and is not eligihlo for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) Every employee who reenters service shall become a member unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as service in determining eligihility for membership under this chapter."

HeinOnline -- 1997 vol. II 1714 1997

**Seetion 13.** Section 19-3-412, MCA, is amended to read:

**"19-3-412. Optionai membership.** *(1)* The following employees in covered employment may become members of the retirement system at their option at any time during their employment in a covered position by filing a membership card with the board:

~~(1)~~*(a)* elected officials of the state or local governments who are paid on a salary or wago basis rather than on a per diem or other reimbursement basis;

~~(2)~~*(b)* part-time employees serving in employment that does not exceed ~~the equivalent of 120 working days~~ *a total of 960 hours of employment covered by this chapter* in any fiscal year;

~~(3)~~*(c)* employees directly appointed by the governor;

~~(4)~~*(d)* employees working 6 months or less for the legislative branch to perform work related to the legislative session;

~~(5)~~*(e)* the chief administrative officer of any city or county;

~~(6)~~*(f)* employees of county hospitals or rest homes in the sixth- and seventh-class counties.

*(2) If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement."*

**Seetion 14.** Section 19-3-504, MCA, is amended to read:

**"19-3-504. Absence due to illness or injury.** (1) Time, not to exceed 5 years, during which a member is absent from service ~~by reason~~ *because* of injury or illness ~~determined within 1 year after the end of the absence as arising out of and in the course of the member's employment~~ is considered membership service *if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment.* However, the member may not earn service credits for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service credits and membership ~~credits~~ *service.*

(2) (a) ~~Any~~ *A* member absent because of an employment-related injury ~~that entitles~~ *entitling* the member to workers' compensation payments may, *upon the member's return to service,* contribute to the retirement system~~, upon the member's return to service,~~ an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date tbe member contributes for the period of ahsence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute ~~an amount equal to what its~~ employer contributions ~~would have been had the member not been absent from service. In addition, the employer may contribute an amount equal to the interest accruing~~ *for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest* on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make ~~a contribution~~ *an interest payment* shall do so for all employees similarly

HeinOnline -- 1997 vol. II 1715 1997

situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

(4) Payment of the employee's contributions that are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.

(5) A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 *or for the period of time during which retirement benefits are received if the member retires during the absence.*"

**Section 15.** Section 19-3-511, MCA, is amended to read:

"**19-3-511. Transfer of service credits and contributions from teachers' retirement system.** (1) An active member may at any time before retirement make a written election with the board to qualify in the public employees' retirement system all of the member's service in the teachers' retirement system for which the member either has received or is eligible to receive a refund.

*(2)* The amount that must be paid or transferred to the retirement system to qualify this service under this section is the sum of subsections (2)*(a)* and ~~(3)~~ *(2)(b), as follows:*

~~(2) In addition to the amounts directly paid or transferred by the member under subsection (3), the~~

*(a) The* teachers' retirement system shall transfer ~~to the public employees' retirement system~~ an amount equal to 72% of the amount payable by the member.

~~(3)~~*(b)* The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

~~(4)~~*(3)* The amount of service credit granted in subsection (1) must be on a month-by-month basis. Military service credit transferred from the teachers' retirement system must be included in the 5-year maximum military service credit provided for in 19-3-503.

~~(5)~~*(4)* Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit qualified under this section and the amount paid to the retirement system under ~~subsections~~ *subsection* (2) ~~and (3)~~.

~~(6)~~*(5)* If an active member who also has service credit in the teachers' retirement system dies before the member qualifies this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle the member's designated beneficiary to a survivorship benefit,

HeinOnline -- 1997 vol. II 1716 1997

the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to qualify this service in the public employees' retirement system as provided in ~~subsections~~ *subsection* (2) ~~and (3)~~.

*(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request."*

**Section 16.** Section 19-3-513, MCA, is amended to read:

**"19-3-513. Election to purchase additional service.** (1) At any time before retirement, a person who became a member of the retirement system before July 1, 1989, and who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service credit purchased under this section, a member shall ~~contribute~~ *make additional contributions* to the pension trust fund *in* an amount equal to the member's compensation for the 12-month period ~~immediately~~ *of full-time service most recently* preceding the date *on which* the member elects to purchase the service multiplied by the combined employee and employer contribution rates contained in 19-3-315 and 19-3-316. ~~Contributions~~ *Additional contributions* may be made in a lump-sum payment or ~~by making additional contributions~~ in installments as agreed upon by the member and the board. *Inactive members shall pay interest from the date of termination to the date of payment. Active members shall pay interest from the date of contracting to the date of payment. The board shall set interest rates and approve contracts.*

(3) (a) Except as provided in subsection (3)(b), after January 1, 1990, a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for service retirement."

HeinOnline -- 1997 vol. II 1717 1997

**Section 17.** Section 19-3-1015, MCA, is amended to read:

**"19-3-1015. Medical examination of disability retiree — cancellation and reinstatement.** (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to porform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines the member is not incapacitated or if the member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board sball notify the member in writing as to the chango in status. if the disabled member disagrees with the hoard's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) ~~A~~ *(a) Except as provided in subsections (3)(b) and (3)(c), a* member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in ~~the same classification~~ *a comparable pay and benefit category* with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

*(b) A member who is employed by an employer terminates any right to reinstatement provided by this section.*

*(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.*

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to bave been discontinued coincident with the commencement of the member's retirement benefit."

**Section 18.** Section 19-3-1104, MCA, is amended to read:

**"19-3-1104. Cancellation of disability retirement benefit upon reemployment.** ~~Any~~ *A* person receiving a *disability* retirement benefit who becomes an employee is considered reinstated to service from retirement, and the person's *disability* retirement benefit ~~is~~ *must be* canceled."

HeinOnline -- 1997 vol. II 1718 1997

**Section 19.** Section 19-3-1601, MCA, is amended to read:

**"19-3-1601. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a benefit recipient is eligible to receive a postretirement adjustment as provided in 19-3-1603 if the person is receiving a:

~~(a)~~ *monthly* service retirement benefit, ~~and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or~~

~~(b)~~ disability *retirement benefit,* or survivorship benefit.

(2) A benefit recipient is ineligible to receive a postretirement adjustment under subsection (1) unless the recipient has been receiving a monthly service, disability, or survivorship benefit for at least 24 consecutive months on or before June 30 in the year the adjustment is made."

**Section 20.** Section 19-5-103, MCA, is amended to read:

**"19-5-103. Call of retired judge for duty.** (1) Every judge or justice who has voluntarily retired after 8 years of service ~~shall~~ *must,* if physically and mentally able, be subject to call *for duty* by the supreme court or the chief justice to aid and assist the supreme court, any district court, or any water court under directions as the supreme court may give, including the examination of the facts, cases, and authorities cited, and the preparation of opinions for and on behalf of the supreme court, district court, or water court, or to serve as water judge. The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme court may adopt, perform any ~~and all~~ duties preliminary to the final disposition of cases that are not inconsistent with the constitution of the state.

(2) A retired judge or justice, when called to ~~service~~ *duty,* must be reimbursed for actual expenses, if any, in responding to the call. In addition, for each day of ~~service~~ *duty,* a retired justice or judge is entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial position in which the ~~service~~ *duty* is rendered minus an amount equal to one-twentieth of the monthly retirement benefit *that* the retired justice or judge is receiving, if any, for each day of ~~service~~ *duty* rendered."

**Section 21.** Section 19-5-601, MCA, is amended to read:

**"19-5-601. Disability retirement benefit.** In case of the disability of a member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of any service ~~to~~ *or duty for* the Montana judiciary ~~in the line of duty~~, the ~~member must receive a~~ *member's total* benefit *must* equal ~~to~~ one-half of the member's final current salary or the benefit provided in 19-5-502, whichever is greater."

**Section 22.** Section 19-5-801, MCA, is amended to read:

**"19-5-801. Payments upon employment-related death.** If the board finds that a member died as a direct and proximate result of injury received in the course of the member's service *or duty,* a survivorship benefit must be paid

HeinOnline -- 1997 vol. II 1719 1997

to the member's designated beneficiary. The survivorship benefit is the *greater of the* actuarial equivalent of a member's *serviee* retirement benefit ~~provided for in 19-5-502~~ *standing to the member's credit on the date of death or of the contingent annuitant's benefit, if applicable.* "

**Section 23.** Section 19-6-501, MCA, is amended to read:

**"19-6-501. Eligibility ~~and application~~ for service retirement benefit ~~— commencement of benefit~~.** (1) ~~(a)~~ A member first employed by the Montana highway patrol on or before July 1, 1985, is eligible to receive a service retirement benefit after completing 20 years or more of membership service and terminating service.

~~(b)~~*(2)* A member first employed by the Montana highway patrol after July 1, 1985, is eligible to receive a service retirement benefit when the member has reached age 50, completed 20 years or more of membership service, and terminated service.

~~(2) A member eligible to receive a retirement benefit, as provided in subsection (1), shall apply in writing to the division.~~

~~(3) (a) Except as provided in subsection (3)(b), the retirement benefit may commence on the first day of the month following the member's last day of covered service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.~~

~~(b) The retirement benefit for an eligible member who has terminated service must commence no later than the first day of the month following the member's 60th birthday.~~"

**Section 24.** Section 19-6-612, MCA, is amended to read:

**"19-6-612. Medical examinntion of disability retiree — cancellation of benefit.** (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) *or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability*. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must he canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

HeinOnline -- 1997 vol. II 1720 1997

(3) ~~A~~ *(a) Except as provided in subsection (3)(b), a* recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in ~~the same classification~~ *a comparable pay and benefit category* within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

*(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.*

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review."

**Section 25.** Section 19-7-501, MCA, is amended to read:

**"19-7-501. Eligibility ~~and application~~ for service retirement — ~~commencement of benefit.~~** ~~(1)~~ A member who has completed at least 20 years of membership service may retire on a service retirement benefit.

~~(2) A member electing to retire shall apply in writing to the board.~~

~~(3) (a) Except as provided in subsections (3)(b) and (3)(c), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.~~

~~(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 65th birthday.~~

~~(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of the term of office. An official electing this option may not earn service or compensation for purposes of final average salary under the retirement system in that month, and compensation earned in that month is not subject to employer or member contributions.~~"

**Section 26.** Section 19-7-612, MCA, is amended to read:

**"19-7-612. Medical examination of disability retiree — cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (2) *or when, if a position is available, the recipient cannot be reinstated under subsection (2) for reasons unrelated to the disability.* If the recipient refuses to submit to a

medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) ~~A~~ *(a) Except as provided in subsection (2)(b), a* person other than an elected official whose disability retirement benefit is canceled because the person is no longer incapacitated must be reinstated to the position held by the person immediately before the person's retirement or to a position in ~~the same classification~~ *a comparable pay and benefit category* within the person's capacity, whichever is first open. The fact that the person was retired for disability may not prejudice any right to reinstatement to duty that the person may have or claim to have.

*(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.*

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's department. If the board's findings are upheld, the public body shall pay the cost of the review."

**Section 27.** Section 19-7-708, MCA, is amended to read:

"**19-7-708. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a benefit recipient is eligible to receive a postretirement adjustment as provided in 19-7-710 if the recipient is receiving a:

~~(a)~~ *monthly* service retirement benefit, ~~and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or~~

~~(b)~~ disability *retirement benefit,* or survivorship benefit.

(2) A benefit recipient is ineligible to receive a postretirement adjustment under subsection (1) unless the monthly service, disability, or survivorship benefit has been paid for at least 24 consecutive months on or before June 30 in the year the adjustment is made."

**Section 28.** Section 19-7-801, MCA, is amended to read:

"**19-7-801. Membership in municipal police officers' retirement system prior to or following city-county consolidation — payment of benefits by two systems.** (1) A law enforcement officer who has not changed employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if the officer's combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which the officer last made contributions. A member who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue the election. However, credit for service in the public employees' retirement system that has not been transferred prior to January 1, 1979, may not be transferred.

HeinOnline -- 1997 vol. II 1722 1997

(2) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(3) The service retirement benefit of a member described in subsection (1) must be calculated separately for each system based on the service credited under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement benefit for an optional retirement benefit elected under 19-7-1001. The final salary or final average salary for each calculation must be based on the highest compensation earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit. ~~The combined benefit may not exceed 60% of the member's final salary or final average salary.~~

(4) Upon the death of a retired member receiving a service retirement benefit under this section, the survivor or contingent annuitant and the continuing benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the surviving spouse must receive a benefit equal to the municipal police officers' retirement system portion of the service retirement benefit as calculated at the time of the member's retirement. If the retired member leaves no surviving spouse or upon the death of the surviving spouse, the retired member's surviving dependent child, or children collectively if there are more than one, shall receive the same monthly benefits that a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The benefits must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata benefits to that child must cease and be paid to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit:

(i) the contingent annuitant must receive a continuing benefit as determined under 19-7-1001, if the retired member elected an optional retirement benefit; or

(ii) if the retired member did not elect an optional retirement benefit, any payment owed the retired member, including the excess, if any, of the retired member's accumulated contributions standing to the retired member's credit at the time of retirement less payments made to the retired member must be paid to the retired member's designated beneficiary."

**Section 29.** Section 19-8-601, MCA, is amended to read:

**"19-8-601. Time of retirement ~~—commencement of benefit.~~** ~~(1)~~ ~~Any~~ *A* member in service who has completed at least 20 years of membership service, reached the age of 50 years, and terminated service may retire with a service retirement benefit upon written application to the board.

~~(2) (a) Except as provided in subsection (2)(b), the retirement benefit may commence on the first day of the month following the member's last day of service or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.~~

~~(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 60th birthday.~~"

**Section 30.** Section 19-8-712, MCA, is amended to read:

"**19-8-712. Medical examination of disability retiree — cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) *or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability*. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) ~~A~~ *(a) Except as provided in subsection (3)(b), a* recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in ~~the same classification~~ *a comparable pay and benefit category* within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

*(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.*

(4) The department of fish, wildlife, and parks may request a medical or psychological review as to the ability of the recipient to return to work as a game warden. If the board's findings are upheld, the department of fish, wildlife, and parks shall pay the cost of the review."

**Section 31.** Section 19-8-1101, MCA, is amended to read:

"**19-8-1101. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a benefit recipient is eligible to receive a postretirement adjustment as provided in 19-8-1103 if the recipient is receiving ~~a~~:

~~(a)~~ *monthly* service retirement benefit, ~~and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or~~

~~(b)~~ disability *retirement benefit,* or survivorship benefit.

(2) A benefit recipient is ineligible to receive a postretirement adjustment under subsection (1) unless the monthly service, disability, or survivorship benefit has been paid for at least 24 consecutive months on or before June 30 in the year the adjustment is made."

**Section 32.** Section 19-9-801, MCA, is amended to read:

**"19-9-801. Eligibility for service retirement ~~—commencement of benefit~~.** (1) Members are eligible for retirement as provided in this section.

(2) A member is eligible to receive a service retirement benefit when the member has completed 20 years or more of membership service and has terminated service.

(3) A member who terminates service after completing at least 10 years of membership service but prior to completing 20 years of membership service is eligible to receive a service retirement benefit when the member has reached 50 years of age.

~~(4) (a) Except as provided in subsection (4)(b), the retirement benefit may commence on the first day of the month following the member's minimum retirement date or, if requested by the inactive member in writing, on the first day of the month following receipt of the written application.~~

~~(b) The retirement benefit for an eligible inactive member must commence no later than the first day of the month following the member's 55th birthday.~~"

**Section 33.** Section 19-9-904, MCA, is amended to read:

**"19-9-904. Termination of *disability* benefit.** The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient was retired. If an inactive member is determined by the board to be no longer disabled, the inactive member's disability retirement benefit must be canceled when the inactive member is offered a position under 19-9-905 *or when, if a position is available, the former employee could not be reinstated under 19-9-905 for reasons unrelated to the disability*. If the inactive member refuses to submit to a medical examination, the inactive member's disability retirement benefit must cease as of the date of the determination. The inactive member must be notified of the determination by the board. The board may review the status of an inactive member at any time."

**Section 34.** Section 19-9-905, MCA, is amended to read:

**"19-9-905. Reinstatement upon termination of *disability* benefit.** (1) ~~A~~ *(a) Except as provided in subsection (1)(b), a* retired member whose disability retirement benefit is cancelled as provided in 19-9-904 must be reinstated to the position held by the member immediately before retirement or to a position in ~~the same classification~~ *a comparable pay and benefit category* with duties within

HeinOnline -- 1997 vol. II 1725 1997

the member's capacity, whichever is first open. The board shall advise the employer that the disability retirement benefit has been cancelled and that the member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the member may have or claim to have.

*(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.*

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the retired member again becomes an active member by returning to service with an employer within 30 days following receipt of notice under 19-9-904, the member must be considered to have been continuously employed during the term of the member's disability. If the retired member fails to become an active member by returning to service with an employer within 30 days following receipt of the notice, the member's termination of service is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement date must be determined accordingly."

**Section 35.** Section 19-13-701, MCA, is amended to read:

**"19-13-701. Eligibility for service retirement ~~—commencement of benefit~~.** (1) A member who has completed 20 years or more of membership service is eligible for service retirement ~~commencing on the first day of the month following the member's last day of service~~.

(2) A vested member who terminates service before the minimum retirement date and keeps the member's accumulated contributions on deposit is eligible for service retirement commencing on the member's minimum retirement date.

~~(3) A vested inactive member may file a written application with the board requesting that the member's retirement benefit commence on the first day of the month following receipt of the application. However, the retirement benefit for an inactive vested member must commence no later than the first day of the month following the member's 55th birthday.~~"

**Section 36.** Section 19-13-804, MCA, is amended to read:

**"19-13-804. Medical examination of disability retiree — cancellation of benefit.** (1) The board, in its discretion, may require the recipient of a disability retirement benefit to undergo a medical examination at the board's expense. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on. Based on the results of the examination, the board shall determine whether the recipient has the physical or mental capacity to perform the essential elements required by the recipient's former position. If the board determines that the recipient is not incapacitated, ~~or~~ if the recipient refuses to submit to a medical examination, *or if, when a position is available, the recipient cannot be reinstated under 19-13-805 for reasons unrelated to the disability,* the recipient's disability

retirement benefit must be canceled. The board shall notify the recipient of this determination and the cancellation of the recipient's benefit.

(2) The cancellation of a disability retirement benefit because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit."

**Section 37.** Section 19-13-805, MCA, is amended to read:

**"19-13-805. Reinstatement upon termination of benefit.** (1) (a) ~~An inactive~~ *Except as provided in subsection (1)(c), a* member whose disability retirement benefit is canceled as provided in 19-13-804 must be reinstated to the position held by the member immediately before the member's retirement or to a position in ~~the same classification~~ *a comparable pay and benefit category* with duties within the member's capacity if an appropriate vacancy exists within the member's fire department. The board shall advise the employer that the disability retirement benefit has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that the member was retired for disability may not prejudice any right to reinstatement to duty that the inactive member may have or claim to have.

(b) If an appropriate vacancy does not exist within an inactive member's fire department when the member's disability benefit is canceled under 19-13-804, the member's benefit must be reinstated until a vacancy occurs.

*(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.*

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following receipt of notice under 19-13-804, the member is considered to have been continuously employed during the term of the member's disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of this notice, the member's termination of employment is considered to have occurred as of the member's disability retirement date and the retirement benefit, if any, to which the member becomes entitled on the member's service retirement must be determined accordingly."

**Section 38.** Section 19-17-102, MCA, is amended to read:

**"19-17-102. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

HeinOnline -- 1997 vol. II 1727 1997

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Disability" or "permanent total disability" ~~has the meaning~~ *means permanent total disability as* defined in 39-71-116.

(8) "Division" means the public employees' retirement division of the department.

(9) "Fire company" means a fire company organized in an unincorporated area, town, or village in accordance with 7-33-2311.

(10) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(11) "Member" means a volunteer firefighter who has service credited under this chapter.

(12) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay benefits under this chapter.

(13) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits from the pension trust fund.

(14) "Service" means cumulative periods of active membership that are credited only in full fiscal years.

(15) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

(16) "Surviving spouse" means the spouse married to a member when the member dies.

(17) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(18) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

**Section 39. Repealer.** Sections 19-3-903 and 19-3-1006, MCA, are repealed.

**Section 40. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 19, chapter 2, part 10, and the provisions of Title 19, chapter 2, part 10, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 19, chapter 8, part 9, and the provisions of Title 19, chapter 8, part 9, apply to [section 2].

HeinOnline -- 1997 vol. II 1728 1997

(3) [Section 3] is intended to he codified as an integral part of Title 19, chapter 2, part 9, and the provisions of Title 19, chapter 2, part 9, apply to [section 3].

**Section 41. Coordination instructions.** (1) If House Bill No. 170 is passed and approved and if it amends 19-3-513, then [section 16 of this act], amending 19-3-513, is void.

(2) If House Bill No. 170 is passed and approved and if it repeals 19-3-1601, 19-7-708, and 19-8-1101, regarding eligibility for postretirement adjustments, and if [this act] is passed and approved, then [sections 19, 27, and 31 of this act], amending 19-3-1601, 19-7-708, and 19-8-1101, are void.

(3) If House Bill No. 170 is passed and approved and if it amends 19-5-601, then [section 21 of this act], amending 19-5-601, is void and [section 16 of House Bill No. 170] must read:

**"Section 16.** Section 19-5-601, MCA, is amended to read:

**"19-5-601. Disability retirement benefit.** In case of the disability of a member, a disability retirement benefit must be granted the member in an amount actuarially equivalent to the service retirement benefit standing to the member's credit at the time of the member's disability retirement. If the disability is a direct result of any service ~~to~~ *or duty for* the Montana judiciary ~~in the line of duty~~, the ~~member must receive a benefit equal to~~ *member's disability retirement benefit must be:*

*(1) the greater of* one-half of the member's final current salary or ~~the benefit provided in 19-5-502, whichever is greater~~ *the contingent annuitant's benefit, if applicable, for a person not covered under [section 2]; or*

*(2) the greater of one-half of the member's final average salary or the contingent annuitant's benefit, if applicable, for a person covered under [section 2].*""

**Section 42. Retroactive applicability.** [Section 15] applies retroactively, within the meaning of 1-2-109, to the period beginning January 1, 1995.

**Section 43. Effective date.** [This act] is effective on passage and approval.

Approved April 23, 1997

# CHAPTER NO. 371

[SB 181]

AN ACT CLARIFYING CERTAIN PROVISIONS RELATING TO RESORT RETAIL ALL-BEVERAGES LICENSES; ESTABLISHING THAT A RESORT AREA, FOR THE PURPOSES OF A RESORT RETAIL ALL-BEVERAGES LICENSE, MAY NOT INCLUDE LAND OR IMPROVEMENTS LYING WITHIN THE BOUNDARIES OF AN INCORPORATED CITY OR TOWN; CLARIFYING THE MEANING OF THE TERMS "CONTROL" AND "RESORT AREA" FOR THE PURPOSES OF RESORT RETAIL ALL-BEVERAGES LICENSES; CLARIFYING HEARING NOTICE REQUIREMENTS FOR THE PURPOSES OF RESORT RETAIL ALL-BEVERAGES LICENSES;

HeinOnline -- 1997 vol. II 1729 1997

ESTABLISHING AN INITIAL $20,000 FEE TO OBTAIN A RESORT RETAIL ALL-BEVERAGES LICENSE; AMENDING SECTIONS 16-4-202 AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-4-202, MCA, is amended to read:

**"16-4-202. Resort *retail all-beverages* licenses.** (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail all-beverages licenses may be issued by the department under the terms ~~and as more particularly prescribed below~~ *of this section*. In addition to the licenses ~~as otherwise~~ set forth in this code, the department may issue resort retail all-beverages licenses in a resort area.

(2) *(a)* For the purposes of this section, ~~a resort area is defined as~~ *"resort area" means* a recreational facility meeting the qualifications determined by the department *and* as ~~hereinafter~~ *otherwise* provided *in this section.*

*(b) The term does not include any land or improvements that lie wholly within the boundaries of an incorporated city or town.*

(3) The department shall determine that the area for which licenses are to be issued is a resort area~~, such determination to be made under and~~ pursuant to rules ~~to be first promulgated on or before December 31, 1975~~.

(4) *(a)* In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of a resort retail all-beverages license, must:

*(i)* have a current actual valuation of resort or recreational facilities, including land and improvements ~~thereon~~, of not less than ~~$500,000~~ *$500,000*, at least half of which valuation must be for a structure or structures within the resort area~~,~~*;* ~~and must~~

*(ii)* be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5)*; and*

*(iii) contain a minimum of 50 acres of land* ~~of this section~~.

*(b)* ~~The word~~ *For the purposes of this section,* "control" ~~shall mean lands~~ *means land or improvements that are owned or that are* held under *contract,* lease, option, or permit.

(5) The resort area must be determined by the resort *area* developer or landowner by a plat setting forth the resort *area* boundaries~~,~~ *and* designating the ownership of the lands within the resort area~~, which~~. *The* plat must be verified by the resort *area* developer or landowner and filed with the department prior to the filing of any applications ~~by individuals~~ for *resort retail all-beverages* licenses within the resort area. ~~Such~~ *The* plat must show the location and general design of the buildings and other improvements *existing or* to be built in ~~said~~ *the resort* area ~~in which resort retail all-beverages licenses are to or may be located~~. A master plan for the development of the *resort* area may be filed by the resort *area* developer in satisfaction of this section.

HeinOnline -- 1997 vol. II 1730 1997

(6) ~~Upon such filing~~ *Within 7 days after the plat is filed,* the department shall ~~forthwith~~ schedule a public hearing to he held in Helena, Montana, to determine whether the facility proposed by the resort *area* developer or landowner is a resort area ~~within the meaning of the rules of the department~~. At least 30 days prior to the date of the hearing, the department shall puhlish notice ~~thereof, with a description of the location of the proposed resort area,~~ *of the hearing* in a newspaper published in the county or counties in which the resort *area* is located, once a week for 4 consecutive weeks. *The notice must include a description of the proposed resort area.* Each resort *area* developer or landowner shall, at the time of filing ~~his~~ *an* application, pay to the department an amount sufficient to cover the costs of ~~said~~ publication.

(7) ~~Persons~~ *Any person* may present ~~statements~~, *in person or in writing, a statement* to the department at the hearing ~~in person or in writing~~ in opposition *to* or support of the plat.

(8) Within 30 days ~~of~~ *after* the hearing, the department shall accept or reject the plat. If *the plat is* rejected, the department ~~must~~ *shall* state its reasons and set forth the conditions, if any, under which the plat will be accepted~~, and the~~. *The* decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort *area* may not be changed without ~~full~~:

*(a) a* hearing, *noticed and conducted in the same manner* as ~~above~~ provided *in subsections (6) and (7);* and

*(b)* the prior approval of the department, ~~which approval shall be~~ *determined* according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may ~~then~~ be filed with the department by persons for the issuance of resort retail all-beverages licenses within the resort area.

(b) Each applicant ~~must~~ *shall* submit plans showing the location, appearance, and floor plan of the premises for which application for a *resort retail all-beverages* license is made.

(c) If an applicant otherwise qualifies for a resort *retail all-beverages* license but the premises to be licensed are still in construction or are otherwise incomplete at the time ~~of such~~ *that* application *is made,* the department shall issue a letter stating that the license will be issued at ~~such~~ *the* time ~~as~~ *that* the qualifications for a licensed premises have been met, setting forth ~~such~~ *specific* time limitations and requirements as the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, ~~no~~ *a* resort retail all-heverages license may *not* be sold or transferred for operation at a location outside of tbe boundaries of the resort area.

(12) A resort retail all-beverages license ~~shall~~ *is* not ~~be~~ subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail all-beverages license ~~shall~~ *must* be issued by the departinent on the basis that the department has determined that ~~such~~ *the* license is justified

HeinOnline -- 1997 vol. II 1731 1997

by public convenience and necessity, in accordance with the procedure required in 16-4-207."

**Section 2.** Section 16-4-501, MCA, is amended to read:

**"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400; each subwarehouse, $400;

(c) each beer retailer, $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day *that* beer and table wine are sold at those events lasting 2 or more days but in no case ~~shall~~ *may* the fee be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses ~~shall~~ *must* be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual *renewal* fee for resort retail all-beverages licenses within a given resort area ~~shall be~~ *is* $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the

HeinOnline -- 1997 vol. II 1732 1997

premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in ~~subsection~~ *subsections (6) and* (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the *specified* annual renewal ~~fee~~ *fees*.

(8) The fee for one ~~all-beverage~~ *all-beverages* license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year.

(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 4. Effective date.** [This act] is effective July 1, 1997.

Approved April 23, 1997

HeinOnline -- 1997 vol. II 1733 1997

# CHAPTER NO. 372

[SB 315]

AN ACT MODIFYING THE DEFINITION OF "CONTAINER SITE"; AMENDING SECTION 75-10-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-103, MCA, is amended to read:

**"75-10-103. Definitions.** Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility~~,~~ *that:*

*(a) is* generally open to the public~~,~~ for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards*; or*

*(b) receives waste from waste collection vehicles and:*

*(i) is located in a fifth-, sixth-, or seventh-class county, as defined in 7-1-2111;*

*(ii) receives no more than 3,000 tons of waste each year;*

*(iii) has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of* liquid wastes; and

*(iv) is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.*

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(6) "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

HeinOnline -- 1997 vol. II 1734 1997

(7) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

(9) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(11) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, ~~a~~, *a* container site is not a component of a solid waste management system.

(12) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved April 23, 1997

# CHAPTER NO. 373

[SB 332]

AN ACT REQUIRING SOLID WASTE MANAGEMENT FACILITIES LICENSED PRIMARILY AS WASTE TIRE DISPOSAL SITES TO PROVIDE FINANCIAL ASSURANCE TO GUARANTEE THE PROPER MANAGEMENT AND DISPOSAL OF WASTE TIRES; REQUIRING A STUDY OF ISSUES REGARDING WASTE TIRES; AMENDING SECTIONS 75-10-203 AND 75-10-204, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it authorizes the department of environmental quality to adopt additional rules requiring that solid waste management systems that are licensed primarily for the management and disposal of waste tires provide financial assurance sufficient to cover the cost of transport, treatment, and disposal of the waste tires if the facility is not capable

HeinOnline -- 1997 vol. II 1735 1997

of proper management. It is the intent that the amount of financial assurance be adjusted as necessary if there are changing operational circumstances at the licensed facility and in the waste tire market. It is not the intent of the legislature to require licensing or financial assurance of retail facilities that store reusable tires for the purposes of recapping, retreading, or reuse as tires.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-203, MCA, is amended to read:

**"75-10-203. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(5) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

(6) (a) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste.

(b) The term does not include land application units, surface impoundments, injection wells, or waste piles.

(7) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local gevernmental entity, or any other gevernmental or private entity, whether organized for profit or not.

(8) "Resource recovery" means the recovery of material or energy from solid waste.

(9) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) "Resource recovery system" means a solid waste management system that provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

HeinOnline -- 1997 vol. II 1736 1997

(11) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of environmental quality, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable byproducts.

(12) "Solid waste management system" means a system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.

(13) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

*(16) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect."*

**Section 2.** Section 75-10-204, MCA, is amended to read:

**"75-10-204. Powers and duties of department.** The department shall, subject to the provisions of 75-10-107, adopt rules governing solid waste management systems that must include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 must submit to the department to

HeinOnline -- 1997 vol. II 1737 1997

enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting;

(6) fees related to the review of solid waste management system license applications;

(7) the renewal of solid waste management system licenses and related fees;

(8) a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana;

*(9) requirements to maintain financial assurance payable to the state of Montana with a surety satisfactory to the department in an amount sufficient to provide for waste tire treatment, removal, transportation, disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public;*

~~(9)~~*(10)* any other factors relating to the sanitary disposal or management of solid wastes."

**Section 3. Waste tire disposal sites — financial assurance required.** (1) A solid waste management system licensed pursuant to 75-10-221 for the sole or primary purpose of sterage, treatment, processing, or disposal of waste tires is required to provide and maintain financial assurance in accordance with rules of the department.

(2) Financial assurance required by this section must be sufficient to cover the cost of proper management of the waste tires stored at the facility, including but not limited to waste tire treatment, removal, transportation, disposal, fire suppression, or other measures necessary to protect the environment and the health, safety, and welfare of the public. The licensee may elect to provide financial assurance by any one method or a combination of methods satisfactory to the department, including but not limited to insurance, a guarantee, performance, or other surety bond, a letter of credit, qualification as a self-insurer, or other demonstration of financial capability.

(3) The department may require the owner or operator of the facility to modify the terms and conditions of financial assurance provided for the purposes of this section to adjust for changing circumstances at the facility, including but not limited to the number of waste tires accumulated without processing or disposal, availability of alternative waste tire markets, the financial viability of the facility operation, and the estimated costs of waste tire treatment, processing, transportation, and disposal alternatives.

**Section 4. Waste tire study.** (1) The environmental quality council shall study the issues associated with managing, processing, treating, transporting, and disposing of waste tires.

HeinOnline -- 1997 vol. II 1738 1997

(2) The environmental quality council shall report the results of the study, including any recommendations for legislation, to the legislature no later than October 1, 1998.

**Section 5. Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 3].

**Section 6. Applicability.** (1) [This act] applies to a facility that initially applied for or received a solid waste management system license pursuant to Title 75, chapter 10, part 2, after July 1, 1997.

(2) [This act] does not apply to a facility that was licensed pursuant to Title 75, chapter 10, part 2, prior to July 1, 1997.

**Section 7. Effective date.** [This act] is effective July 1, 1997.

Approved April 23, 1997

# CHAPTER NO. 374

[SB 379]

AN ACT GENERALLY REVISING CONSUMER LOAN LAWS; SPECIFYING THAT, WITH RESPECT TO LOANS ON WHICH CHARGES ARE MADE ON AN ADD-ON BASIS, THE INSTALLMENT CONTRACTED FOR MAY NOT BE SUBSTANTIALLY LARGER THAN ANY PRECEDING INSTALLMENT; SPECIFYING THAT, WITH RESPECT TO LOANS ON WHICH CHARGES ARE MADE ON AN ADD-ON BASIS, THE MINIMUM MONTHLY PAYMENTS MUST BE MADE IN AN AMOUNT THAT WOULD RESULT IN THE FULL REPAYMENT OF THE INITIAL LOAN ADVANCE, EXCLUSIVE OF ANY CHARGES, WITHIN A STATUTORILY-SPECIFIED MAXIMUM TERM; SETTING A 30-DAY LIMIT FOR CERTAIN CONSUMER LOAN LICENSEES TO RETURN TO CERTAIN BORROWERS A RELEASE OF THE MORTGAGE OR A REQUEST FOR RECONVEYANCE OF THE DEED OF TRUST OR TRUST INDENTURE ON REAL PROPERTY TAKEN AS SECURITY FOR A LOAN; AND AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-203, 32-5-302, 32-5-307, 32-5-503, AND 32-5-505, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 32-5-102, MCA, is amended to read:

**"32-5-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

*(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.*

*(b) Consumer loans do not include loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a.*

HeinOnline -- 1997 vol. II 1739 1997

~~(1)~~*(2)* "Consumer ~~type~~ loan business" means the business of making *consumer* loans ~~generally repayable in substantially equal installments~~ *as a licensee under this chapter.*

~~(2)~~*(3)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(3)~~*(4)* "License" means one or both of the licenses provided for by this chapter.

~~(4)~~*(5)* "Licensee" means the person holding a license.

~~(5)~~*(6)* "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business."

**Section 2.** Section 32-5-103, MCA, is amended to read:

**"32-5-103. Engaging in business of making *consumer* loans restricted.** (1) Except as provided in subsection (5), a person may not engage in the business of making *consumer* loans or advances of money on credit in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan or advance any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. A person engaged in business as a licensed pawnbroker may not become a licensee under this chapter~~, nor do any of the~~. *The* provisions of this chapter *do not* apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by tbe licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any act by a licensee in the making of a contract or in the collection of a loan made under the contract that violates the provisions of this chapter is void. The licensee has no right to collect, receive, or retain any principal, interest, or charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter."

**Section 3.** Section 32-5-203, MCA, is amended to read:

**"32-5-203. Conduct of other business in same office.** A licensee may conduct the business of making *consumer* loans under this chapter within any office, room, or place of business in which any other business *for which a license*

HeinOnline -- 1997 vol. II 1740 1997

*under this chapter is not required* is solicited or engaged in or in association or conjunction ~~therewith~~ *with the business. "Other business" may include making loans not primarily for personal, family, or household purposes,* unless the department ~~shall find~~ *finds*, after a hearing, that the other business is of ~~such~~ *a* nature that ~~such~~ *the* conduct tends to conceal evasion of this chapter or of the rules made ~~hereunder and shall~~ *under this chapter. If the department finds concealment or evasion, it shall* order ~~such~~ *the* licensee in writing to desist from ~~such~~ *the* conduct."

**Section 4.** Section 32-5-302, MCA, is amended to read:

**"32-5-302. Installment payment — contract period.** (1) A licensee may not enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making the contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or

(c) for more than $1,000 to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 48 calendar months from the date of making.

(2) Each loan contract requires payment of principal and charges in installments that are payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. ~~An~~ *With respect to a loan on which charges are made on an add-on basis, an* installment contracted for may not be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for the number of days in excess of 30 from the date of making may be added to the schedulod amount of the installments."

**Section 5.** Section 32-5-307, MCA, is amended to read:

**"32-5-307. Records to be kept.** Each licensee shall keep *or make available* in each licensed office ~~such~~ *the* books, accounts, and records ~~as~~ *that* the department ~~shall require~~ *requires* and ~~as~~ *that* are necessary to enable the department to determine whether the licensee is complying with this chapter and with the rules promulgated ~~thereunder~~ *under this chapter*. The licensee shall preserve ~~such~~ *the* records for at least 2 years after making the final entry on any loan recorded ~~thereon~~ *in the records*."

**Section 6.** Section 32-5-503, MCA, is amended to read:

**"32-5-503. Early payment.** The borrower may at any time pay all or any part of the unpaid balance in ~~his~~ *the borrower's* account, or if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to minimum payment requirements as determined by the licensee and set forth in the open-end loan agreement. ~~Minimum~~ *With respect to a loan on which charges are made on an add-on basis, minimum* monthly payments ~~shall~~ *must* be *made* in ~~such~~ *an* amount ~~as~~ *that* would result in the full

HeinOnline -- 1997 vol. II 1741 1997

repayment of the initial loan advance, exclusive of any charges, within the maximum term set forth for other loans of the same amount in 32-5-302(1)."

**Section 7.** Section 32-5-505, MCA, is amended to read:

"**32-5-505. Security.** A holder of a supplementary license may take a security interest in personal property to secure an open-end loan and may retain ~~any such~~ *the* security interest until the open-end account is terminated. A holder of a supplementary license may take a security interest in real property to secure an open-end loan and may retain ~~any such~~ *the* security interest until the open-end account is terminated~~; however~~. *However*, if there is no outstanding balance in the account and there is no commitment by the licensee to make additional advances, the licensee shall, within ~~10~~ *30* days following written request by the borrower, deliver to the borrower a release of the mortgage or a request for reconveyance of the deed of trust or trust indenture on any real property taken as security for a loan."

**Section 8. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 23, 1997

# CHAPTER NO. 375

[HB 111]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE IDENTIFICATION AND REGISTRATION OF SEXUAL AND VIOLENT OFFENDERS; PROVIDING FOR A SEXUALLY VIOLENT PREDATOR DESIGNATION; PROVIDING IMMUNITY FOR NEGLIGENCE; AMENDING SECTIONS 41-5-523, 44-6-101, 46-18-201, 46-23-501, 46-23-502, 46-23-503, 46-23-504, 46-23-505, 46-23-506, 46-23-507, AND 46-23-508, MCA; REPEALING SECTION 46-18-254, MCA; AND PROVIDING APPLICABILITY DATES.

WHEREAS, the Legislature finds that the danger of recidivism posed by sexual and violent offenders and the protection of the public from these offenders is of paramount concern to government and the people; and

WHEREAS, the Legislature further finds that law enforcement agencies' efforts to protect their communities, conduct investigations, and apprehend sexual and violent offenders is impaired by the lack of information about offenders who live within their jurisdictions; and

WHEREAS, the system of registering sexual and violent offenders provides law enforcement with information critical to preventing victimization and to resolving incidents of sexual or violent offenses promptly, including notification of the public when necessary to the continued protection of the community; and

WHEREAS, persons who have committed a sexual or violent offense have a reduced expectation of privacy because of the public's interest in safety; and

WHEREAS, the Legislature finds that releasing information about sexual or violent offenders to law enforcement agencies and, under certain circumstances,

HeinOnline -- 1997 vol. II 1742 1997

providing access to limited information about certain sexual offenders to the general public will further the primary governmental interest of protecting specific vulnerable groups and the public in general from potential harm.

THEREFORE, it is the policy of the State of Montana to assist local law enforcement agencies' efforts in protecting their communities by requiring that sexual or violent offenders register and to authorize the release of necessary and relevant information about sex offenders to the public.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance for rules adopted under [section 12] concerning the qualifications of sexual offender evaluators and concerning evaluations of sexual offenders. The legislature intends that sexual offender evaluators possess education and experience similar to the education and experience requirements of therapists certified by the Montana sex offender treatment association. The legislature further intends that rules for evaluating the risk of repeat offenses by sexual offenders include the following factors:

(1) whether the sexual offender has a mental abnormality;

(2) whether the sexual offender's conduct is repetitive and compulsive;

(3) whether drugs or alcohol played a part in the offense or offenses;

(4) whether the sexual offender served the maximum term for the offense or offenses;

(5) whether the offense or offenses involved a child;

(6) the age of the sexual offender at the commission of the offense or offenses;

(7) the relationship between the sexual offender and the victim or victims;

(8) whether the offense or offenses involved use of a weapon;

(9) the number, date, and nature of prior offenses;

(10) conditions of release that minimize risk of another offense, including whether the sexual offender is under supervision or receiving counseling and treatment;

(11) physical conditions that minimize the risk of another offense, such as advanced age or debilitating illness of the sexual offender;

(12) whether psychological or psychiatric profiles of the sexual offender indicate a risk of recidivism;

(13) the sexual offender's response to and participation in treatment;

(14) recent behavior of the sexual offender;

(15) recent threats or gestures by the sexual offender against persons; and

(16) a review of any victim impact statements.

HeinOnline -- 1997 vol. II 1743 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition — sentence to correctional facility — commitment to department — placement and evaluation of youth — restrictions.** (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making one or more of the following dispositions:

(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

(b) place the youth on probation;

(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(d) require a youth found to be delinquent to register as a ~~sex~~ *sexual or violent* offender ~~pursuant to 46-18-254 and 46-23-506~~ *under 46-23-504*;

(e) place the youth in an in-state residence that ensures that the youth is accountable, provides for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that resources are available for placement of the youth at that residence.

(f) commit the youth to the department. In an order committing a youth to the department:

(i) the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home;

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(g) order restitution by the youth or the youth's parents;

(h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

HeinOnline -- 1997 vol. II 1744 1997

(i) require the performance of community service;

(j) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(k) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(l) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may desiguate;

(m) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(f), place a youth in a residential treatment facility.

(n) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed or sentenced to a state youth correctional facility.

(ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must he moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not he placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

HeinOnline -- 1997 vol. II 1745 1997

(3) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering

all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contrihution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediato income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a chango in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

HeinOnline -- 1997 vol. II 1747 1997

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

**Section 2.** Section 44-6-101, MCA, is amended to read:

"**44-6-101. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under 44-6-102.

(4) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

(6) "Forensic DNA laboratory" means any laboratory oporated by state government that porforms DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

(7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

(8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

(9) "Violent offense" ~~means an offense~~ *has the meaning* contained in ~~45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-5-103 or an equivalent offense under federal law or the law of another state~~ *46-23-502.*"

**Section 3.** Section 46-18-201, MCA, is amended to read:

"**46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found gnilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upen the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

HeinOnline -- 1997 vol. II 1748 1997

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

HeinOnline -- 1997 vol. II 1749 1997

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~ Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

**46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for

HeinOnline -- 1997 vol. II 1750 1997

any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court

HeinOnline -- 1997 vol. II 1751 1997

shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in ~~46-18-254, 46-18-255, and~~ Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

HeinOnline -- 1997 vol. II 1752 1997

**Section 4.** Section 46-23-501, MCA, is amended to read:

**"46-23-501. Short title.** ~~Sections 46-18-254,~~ *Section* 46-18-255~~,~~ and this part may be cited as the "Sexual or Violent Offender Registration Act"."

**Section 5.** Section 46-23-502, MCA, is amended to read:

**"46-23-502. Definitions.** As used in ~~46-18-254,~~ 46-18-255~~,~~ and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

*(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.*

*(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.*

*(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.*

*(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.*

~~(2)~~*(6)* "Sexual offense" means:

(a) any violation of *or attempt, solicitation, or conspiracy to commit a violation of* 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection ~~(2)(a)~~ *(6)(a)*.

~~(3)~~*(7)* "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

*(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.*

~~(4)~~*(9)* "Violent offense" means:

(a) any violation of *or attempt, solicitation, or conspiracy to commit a violation of* 45-5-102, 45-5-103, 45-5-202, *45-5-206 (third or subsequent offense), 45-5-301 (when the victim is less than 18 years of age and the offender is not a parent of the victim),* 45-5-302, 45-5-303, 45-5-401, *45-5-603(1)(b),* or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection ~~(4)(a)~~ *(9)(a)*."

HeinOnline -- 1997 vol. II 1753 1997

**Section 6.** Section 46-23-503, MCA, is amended to read:

**"46-23-503. Release of sexual or violent offender from place of confinement — duties of official in charge.** *(1)* A sexual ~~of~~ *or* violent offender who is released from the custody of the department of corrections must be informed in writing *not less than 10 days* prior to release of the duty to register under ~~46-18-254, 46-18-255, and~~ this part by the official in charge of the place of confinement.

*(2)* ~~The~~ *Prior to the offender's release from custody, the* official shall obtain ~~the address at which the person expects to reside upon the person's release and report~~ *and give to the department of justice and to the sheriff of the county in which the offender intends to reside or, if the offender intends to reside in a municipality, to the chief of police of the municipality:*

*(a)* the address ~~to the department of corrections. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.~~ *at which the offender intends to reside upon release from the department's custody;*

*(b) the offender's fingerprints and photo, unless they are already in the possession of the department of justice, sheriff, or chief of police; and*

*(c) a form signed by and read to or by the offender stating that the offender's duty to register under this part has been explained to the offender."*

**Section 7.** Section 46-23-504, MCA, is amended to read:

**"46-23-504. Persons required to register — procedure.** (1) A sexual or violent offender ~~shall, within 14 days of conviction or release from prison or~~*:*

*(a) shall register immediately upon conclusion of the sentencing hearing if the offender is not sentenced to confinement or is not sentenced to the department and placed in confinement by the department;*

*(b) must be registered as provided in 46-23-503 at least 10 days prior to release from confinement if sentenced to confinement or sentenced to the department and placed in confinement by the department;*

*(c) shall register* within ~~14~~ *10* days of entering a county of this state for the purpose of residing or setting up a temporary domicile for ~~14~~ *10* days or more~~,~~ *if the offender was sentenced in another state.*

*(2)* ~~register, as required under 46-18-254, 46-18-255, and this part,~~ *Registration under subsection (1)(a) must be with the probation office having supervision over the offender. Registration under subsection (1)(c) must be* with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality. *Whichever person an offender registers with under subsection (1)(c) shall notify the other person of the registration.*

~~(2)~~*(3)* At the time of registering, the ~~person~~ *offender* shall sign a statement in writing giving the information required by the department *of justice*. The chief of police or sheriff shall fingerprint the ~~person~~ *offender*, unless the ~~person's~~ *offender's* fingerprints are on file with the department of justice, and shall photograph the ~~person~~ *offender*. Within 3 days, the chief of police or sheriff shall

send copies of the statement, fingerprints, and photographs to the ~~department and the~~ department of justice ~~and to the sheriff of the county where the person resides, if registration is with the chief of police~~.

*(4) The department of justice shall mail a registration verification form each 90 days to an offender designated as a level 3 offender under [section 12] and each year to a violent offender or an offender designated as a level 1 or level 2 offender under [section 12]. The form must require the offender's current address and notarized signature. Within 10 days after receipt of the form, the offender shall complete the form and return it to the department.*

~~(3)~~*(5)* The ~~person registered under this section~~ *offender* is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. *The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund.*

~~(4)~~*(6)* The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within ~~14~~ *10* days after entry of the judgment."

**Section 8.** Section 46-23-505, MCA, is amended to read:

**"46-23-505. Notice of change of address — duty to inform — forwarding of information.** If ~~a person~~ *an offender* required to register under ~~46-18-254, 46-18-255, and~~ this part changes residence, the ~~person~~ *offender* shall within 10 days *of the change* give written notification of the ~~person's~~ new address to the ~~law enforcement~~ agency with whom the ~~person~~ *offender* last registered. The ~~law enforcement~~ agency shall, within 3 days after receipt of the ~~information~~ *new address*, forward it to the ~~department, the~~ department of justice, ~~and the local law enforcement agency having jurisdiction over the new place of residence and~~ *which* shall forward a copy of the ~~statement~~ *new address*~~, fingerprints,~~ and ~~photographs of the person~~ *photograph* to the ~~local law enforcement agency~~ *sheriff* having jurisdiction over the new place of residence *and to the chief of police of the municipality of the new place of residence if the new place of residence is in a municipality*."

**Section 9.** Section 46-23-506, MCA, is amended to read:

**"46-23-506. Duration of registration.** (1) A ~~person~~ *sexual offender* required to register under ~~46-18-254, 46-18-255, and~~ this part shall ~~comply with 46-18-254, 46-18-255, and this part~~ *register* for the remainder of the ~~person's~~ *offender's* life, except as provided in subsection ~~(2)~~ *(3)* ~~of this section~~ or during a period of time during which the ~~person~~ *offender* is in prison.

*(2) A violent offender required to register under this part shall register:*

*(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing; or*

*(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of*

*the offender's life unless relieved of the duty to register as provided in subsection (3).*

~~(2)~~*(3)* At any time after 10 years ~~since the date of the offender's last conviction of a sexual or violent offense~~ *of registration*, the offender may petition ~~a district~~ *the sentencing* court *or the district court for the judicial district in which the offender resides* for an order relieving the offender of the duty to register ~~under 46-18-254, 46-18-255, and this part~~. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society. *If the offender was designated as a sexually violent predator under [section 12], the court is also required to find that the offender no longer suffers from a mental abnormality or personality disorder that makes the offender likely to engage in a predatory sexual offense.*

~~(3)~~*(4)* The offender may move that all or part of the proceedings in a hearing under subsection ~~(2)~~ *(3)* be closed to the public, or the judge may ~~take action~~ *close them* on the judge's own motion. ~~Notwithstanding closure of the~~ *If a* proceeding *is closed* to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy."

**Section 10.** Section 46-23-507, MCA, is amended to read:

**"46-23-507. Penalty.** A sexual or violent offender who knowingly fails to register, *verify registration, or keep registration current* under ~~46-18-254, 46-18-255, and~~ this part may be sentenced to a term of imprisonment of not more than 5 years or may be fined not more than $10,000, or both."

**Section 11.** Section 46-23-508, MCA, is amended to read:

**"46-23-508. Dissemination of information ~~in register~~.** *(1)* Information ~~in the register~~ maintained under ~~46-18-254 and~~ this part is confidential criminal justice information, as defined in 44-5-103, except that:

~~(1)~~*(a)* the name of a registered sexual *or violent* offender is public criminal justice information, as defined in 44-5-103; and

~~(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the~~

~~public. The court shall grant the order if the court finds that the information is necessary for public protection.~~

*(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:*

*(i) if an offender was given a level 1 designation under [section 12], the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;*

*(ii) if an offender was given a level 2 designation under [section 12], the agency with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:*

*(A) the offender's approximate, but not exact, address, such as by stating the neighborhood, town, or part of a county;*

*(B) the type of victim targeted by the offense;*

*(C) the name, photograph, and physical description of the offender;*

*(D) the offenses for which the offender is required to register under this part; and*

*(E) any conditions imposed by the court upon the offender for the safety of the public; and*

*(iii) if an offender was given a level 3 designation under [section 12], the agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii), except that the offender's exact address must be included. The agency shall also include the date of the offender's release from confinement or if not confined, the date the offender was sentenced, with a notation that the offender was not confined, and shall include the community in which the offense occurred.*

*(c) Prior to release of information under subsection (1)(b), a law enforcement agency may, in its sole discretion, request an in camera review by a district court of the determination by the law enforcement agency under subsection (1)(b). The court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.*

*(2) The identity of a victim of an offense for which registration is required under this part may not be released by a law enforcement agency without the permission of the victim."*

**Section 12. Sexual offender evaluations and designations — rulemaking authority.** (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender

HeinOnline -- 1997 vol. II 1757 1997

evaluators of the risk of a repeat offense and the threat an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the evaluator helieves that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement hy a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) (a) An offender designated as a level 2 or level 3 offender may petition the sentencing court to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

**Section 13. Expungement of records on reversal of conviction.** Upon final reversal of a conviction of a sexual or violent offense, the sentencing court shall order the expungement of any records kept by a court, law enforcement agency, or other state or local gevernment agency under this part.

**Section 14. Immunity from suit.** A state or local governmental entity, a private entity, or an officer or employee of an entity is not liable in negligence, except gross negligence or willful or wanton misconduct, for damages arising from a good faith discretionary release or dissemination of or good faith failure to release or disseminate information under this part.

**Section 15. Repealer.** Section 46-18-254, MCA, is repealed.

**Section 16. Codification instruction.** [Sections 12 through 14] are intended to he codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [sections 12 through 14].

**Section 17. Two-thirds vote required.** Because [this act] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the memhers of each house of the legislature for passage of [this act].

**Section 18. Applicability.** The provisions of [this act] relating to registration apply to:

(1) sexual offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after July 1, 1989; and

(2) violent offenders who are sentenced or who are in the custody or under the supervision of the department of corrections on or after October 1, 1995.

Approved April 24, 1997

# CHAPTER NO. 376

[HB 189]

AN ACT AUTHORIZING THE TRAINING, CERTIFICATION, AND APPOINTMENT OF SPECIALLY QUALIFIED DEPUTY STOCK INSPECTORS; EXTENDING THE APPLICATION OF CERTAIN TRAVEL PERMITS FOR ADDITIONAL TYPES OF LIVESTOCK; DELINEATING THE AUTHORITY OF SPECIALLY QUALIFIED DEPUTY STOCK INSPECTORS WITH RESPECT TO A CHANGE IN OWNERSHIP OF THE LIVESTOCK AND WITH RESPECT TO TRANSPORTING LIVESTOCK; REVISING THE DEFINITION OF "LIVESTOCK" AS THE TERM IS USED WITH RESPECT TO MARKS AND BRANDS; AMENDING SECTIONS 81-3-201 AND 81-3-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 81-3-201, MCA, is amended to read:

**"81-3-201. Definitions.** Unless tbe context requires otherwise, in this chapter, the following definitions apply:

(1) "Deputy state stock inspector" ıneans a person designated by the department as a deputy state stock inspector who does not receive a salary or compensation from the department.

(2) "Feedlot" means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to otbers for a fee.

(3) "Livestock" means a bovine animal, horse, mule, or ass, regardless of its age or sex~~, and includes bison, sheep, elk, and game farm animals, as defined in 87-4-406, exclusive of carnivores and omnivores~~.

(4) "Person" means an individual, partnership, corporation, association, firm, or entity not enumerated *that is* capable of owning or controlling livestock.

*(5) "Specially qualified deputy stock inspector" means a deputy state stock inspector who has been certified by the department, under rules adopted pursuant to 81-3-202, as qualified to conduct an inspection for a permanent transportation permit for a saddle, work, or show horse.*

~~(5)~~*(6)* "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector."

HeinOnline -- 1997 vol. II 1759 1997

**Section 2.** Section 81-3-211, MCA, is amended to read:

**"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits.** (1) For the purposes of this section:

(a) ~~"Members of the same family" means a group whose membership is determined by including an individual, the individual's spouse, and the individual's parents, children, grandchildren, and the spouses of each.~~

~~(b)~~ "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members ~~all~~ are *all* members of the same family; or

(iv) any other entity owned solely by members of the same family.

*(b) "Members of the same family" means a group whose membership is determined by including an individual, the individual's spouse, and the individual's parents, children, grandchildren, and the spouses of each.*

(c) "Rodeo producer" means a person who produces or furnishes livestock that is used for rodeo purposes.

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or a purchaser's agent to take possession of any livestock subject to title passing upon meeting or satisfaction of any conditions, unless the livestock have been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of the change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when the change of ownership transaction is accomplished without the livestock changing premises, involves part of a herd to which livestock have not been added other than by natural increase or after brand inspection, and is between:

(a) members of the same family;

(b) a member of one family and the same family's business entity; or

(c) the same family's business entities.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

HeinOnline -- 1997 vol. II 1760 1997

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock has been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of tbe *released* livestock ~~so released~~ directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, ~~where~~ *when* inspection is required by this section, ~~or where~~ *when a* change of ownership has occurred, or when moved under a market consignment permit or a market release certificate, must have in the person's possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrol officer, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 must be extended to livestock transported or sold under the permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for the owner's personal use or business or ~~where a purebred cow is~~ *if cattle are* being transported from county to county in this state by ~~its~~ *their* owner for show purposes and ~~where~~ there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transpertation, by the inspector issuing the certificate in order to serve as a travel permit in this stato for a period not to exceed 1 year for the ~~horse or cow~~ *horse or cattle* described ~~thereon~~ *in the certificate.* The permit becomes void upon any transfer of ownership or if the ~~horse or cow is~~ *horse or cattle are* to be removed from the state. ~~In such instances~~ *If the permit is void,* an inspection must be secured for removal and the endorsed certificate *must be* surrendered.

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of tlie horse until there is a change of ownership. To obtain a permit, a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner ~~must~~ *is required to* present proof of ownership to a ~~state~~ *state stock inspector or a specially qualified deputy* stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a ~~state~~ *state stock inspector or a specially qualified deputy* stock inspector, together with a permit fee established by the department, for each horse. The application must contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a ~~state~~ *state* stock inspector, a permanent transportation permit must be issued by the department to the owner for each horse, and the permit is valid for the life of the horse. If there is a change of ownership in a horse, the permit automatically is void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit is in lieu of other permits and certificates required under tlie provisions of this section. The state

HeinOnline -- 1997 vol. II 1761 1997

of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. A pormit is automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a hona fide rodeo producer ~~is~~ *are* being transported from county to county in this state by the owner for rodeo purposes and ~~where~~ there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described in the certificate. The certificate is effective for the calendar year for which it is issued. The certificate must be issued by a state stock inspector.

(d) An owner of livestock or the owner's agent may be issued one transportation permit in a 12-month period allowing the movement of the livestock into an adjoining county and return when the livestock ~~is~~ *are* heing moved for grazing purposes and when ~~it is~~ *they are* being moved to and from land owned or controlled by the owner of the livestock or the owner's agent. The permit is valid for a period of 8 months from the date of issuance and must be issued by a state stock inspector. The permit may be issued only if the livestock ~~is~~ *are* branded with the permittee's brand, which must be registered in Montana. The department shall estahlish a fee for the permit, to be paid to the state stock inspector at the time the permit is issued and remitted by the inspector to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1997

# CHAPTER NO. 377

[HB 193]

AN ACT CLARIFYING THE AUTHORITY OF THE LEGISLATIVE AUDITOR TO ACCESS CERTAIN TRANSACTIONS BETWEEN PUBLIC ENTITIES AND PRIVATE FOUNDATIONS OR ORGANIZATIONS SUPPORTING THE UNIVERSITY SYSTEM IN ORDER TO ENSUBE COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS; AMENDING SECTIONS 5-13-304 AND 18-1-118, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5-13-304, MCA, is amended to read:

**"5-13-304. Powers and duties.** The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct a special audit whenever the legislative auditor determines it necessary and shall so advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(7) have the authority to audit records of organizations and individuals receiving ~~grants~~ *funds or property* from or on behalf of the state to determine that the ~~grants~~ *funds or property* are administered in accordance with the ~~grant~~ *applicable* terms and conditions. Whenever a state agency enters into an agreement to ~~grant~~ *provide* resources under its control to others, the agency shall obtain the written consent of the ~~grantee~~ *recipient* to the audit provided for in this subsection."

**Section 2.** Section 18-1-118, MCA, is amended to read:

"**18-1-118. Access to records of contracting entities *and foundations*.** *(1)* Money may not be spent by a state agency under a contract with a nonstate entity unless the contract contains a provision that allows the legislative auditor sufficient access to the records of the nonstate entity to determine whether the parties have complied with the terms of the contract. The access to records is necessary to carry out the functions provided for in Title 5, chapter 13. A state agency may terminate a contract, without incurring liability, for the refusal of a nonstate entity to allow access to records as required by this section.

*(2) Public money or public property may not be transferred to a private foundation or organization established for the promotion, support, or encouragement of the university system unless the transfer:*

*(a) provides the legislative auditor sufficient access to the records of the private foundation or organization to allow compliance with Article VIII, section 12, and Article X, section 9(2)(d), of the Montana constitution; and*

*(b) provides the legislative auditor with annual financial reports that include audited financial statements.*

HeinOnline -- 1997 vol. II 1763 1997

*(3) Notwithstanding the provisions of subsection (2), this section does not permit the legislative auditor to audit the financial records of private donors to entities described in subsection (2).*"

**Section 3. Effective date.** [This act] is effective July 1, 1997.

**Section 4. Termination.** [This act] terminates July 1, 2001.

Approved April 24, 1997

# CHAPTER NO. 378

[HB 222]

AN ACT ADOPTING STANDARDS ESTABLISHED FOR DEATH PENALTY CASES BY THE FEDERAL ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996; IMPOSING A TIME LIMIT FOR THE SENTENCING HEARING IN A DEATH PENALTY CASE; GENERALLY REVISING LAWS PERTAINING TO POSTCONVICTION PROCEEDINGS; AMENDING SECTIONS 46-18-102, 46-18-301, 46-21-101, 46-21-102, 46-21-105, AND 46-21-201, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-102, MCA, is amended to read:

"**46-18-102. Rendering judgment and pronouncing sentence.** (1) The judgment ~~shall~~ *must* be rendered in open court.

(2) If the verdict or finding is not guilty, judgment ~~shall~~ *must* be rendered immediately and the defendant ~~shall~~ *must* be discharged from custody or from the obligation of ~~his~~ *the* bail bond.

(3) (a) ~~If~~ *Except as provided in 46-18-301, if* the verdict or finding is guilty, sentence ~~shall~~ *must* be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record ~~his~~ *the* reasons for imposing the sentence."

**Section 2.** Section 46-18-301, MCA, is amended to read:

"**46-18-301. Hearing on imposition of death penalty.** *(1)* When a defendant is found guilty of or pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in 46-18-303 and 46-18-304 for the purpose of determining the sentence to be imposed. The hearing ~~shall~~ *must* be conducted before the court alone.

*(2) (a) Subject to subsection (2)(b), the sentence must be pronounced and judgment rendered within 120 days after the defendant is found guilty or pleads guilty or within 120 days after the Montana supreme court enters a final decision on appeal.*

HeinOnline -- 1997 vol. II 1764 1997

*(b) The district court may allow not more than one extension of up to 60 days after entering findings of fact that the extension is necessary to prevent undue hardship to a party."*

**Section 3.** Section 46-21-101, MCA, is amended to read:

**"46-21-101. When validity of sentence may be challenged.** (1) A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court that imposed the sentence ~~or the supreme court~~ to vacate, set aside, or correct the sentence or revocation order.

(2) If the sentence was imposed by a justice's, municipal, or city court, the petition *may not be filed unless the petitioner has exhausted all appeal remedies provided by law. The petition* must be filed with the district court in the county where the lower court is located.

~~(3) If the person is in custody, the person may elect to file the petition directly with the supreme court.~~"

**Section 4.** Section 46-21-102, MCA, is amended to read:

**"46-21-102. When petition may be filed.** A *(1) Except as provided in subsection (2), a* petition for the relief referred to in 46-21-101 may be filed at any time within ~~5 years~~ *1 year* of the date ~~of~~ *that* the conviction *becomes final. A conviction becomes final for purposes of this chapter when:*

*(a) the time for appeal to the Montana supreme court expires;*

*(b) if an appeal is taken to the Montana supreme court, the time for petitioning the United States supreme court for review expires; or*

*(c) if review is sought in the United States supreme court, on the date that that court issues its final order in the case.*

*(2) A claim that alleges the existence of newly discovered evidence that, if proved and viewed in light of the evidence as a whole would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted, may be raised in a petition filed within 1 year of the date on which the conviction becomes final or the date on which the petitioner discovers, or reasonably should have discovered, the existence of the evidence, whichever is later."*

**Section 5.** Section 46-21-105, MCA, is amended to read:

**"46-21-105. Amendment of petition — waiver of grounds for relief.** (1) *(a)* All grounds for relief claimed by a petitioner under 46-21-101 must be raised in the original or amended *original* petition. The original petition may be amended only once. At the request of the state or on its own motion, the court shall set a deadline for the filing of ~~the~~ *an* amended *original* petition. If a hearing

HeinOnline -- 1997 vol. II 1765 1997

will be held, the deadline must be reasonably in advance of the hearing but may not be less than 30 days prior to the date of the hearing.

*(b)* ~~Those grounds for relief not raised in the original or amended petition are waived unless the court on hearing a subsequent petition finds~~ *The court shall dismiss a second or subsequent petition by a person who has filed an original petition unless the second or subsequent petition raises* grounds for relief that could not reasonably have been raised in the original or *an* amended *original* petition.

(2) When a petitioner bas been afforded a direct appeai of the petitioner's conviction, grounds for relief tbat could reasonably have been raised on direct appeal may not be raised in the original or *an* amended *original* petition *or in a second or subsequent petition. Ineffectiveness or incompetence of counsel in proceedings on an original or an amended original petition under this part may not be raised in a second or subsequent petition under this part."*

**Seetion 6.** Section 46-21-201, MCA, is amended to read:

**"46-21-201. Proeeedings on petition.** (1) *(a)* Unless the petition and the files and records of the case conclusively show tbat the petitioner is not entitled to relief, the court shall cause notice of the petition to be served upon the county attorney in the county in which the conviction took place and upon the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, tbe court may dismiss the petition as a matter of law for failure to state a claim for relief or it may ~~grant a prompt hearing on the petition,~~ *proceed to* determine the issue~~, and make findings of fact and conclusions with respect to the petition~~.

*(b) If the death sentence has been imposed, upon receipt of the response or responses to the petition, the court shall promptly hold a conference to determine a schedule for the expeditious resolution of the proceeding. The court shall issue a decision within 90 days after the hearing on the petition or, if there is no hearing, within 90 days after the filing of briefs as allowed by rule or by court order. If the decision is not issued during that period, a party may petition the supreme court for a writ of mandate or other appropriate writ or relief to compel the issuance of a decision.*

*(c) To the extent that they are applicable and are not inconsistent with this chapter, the rules of procedure governing civil proceedings apply to the proceeding.*

(2) If *the death sentence has not been imposed and* a hearing is required or *if* the interests of justice require, the court shall appoint counsel for a petitioner who qualifies for the appointment of counsel under Title 46, chapter 8, part 1.

*(3) (a) Within 30 days after a conviction for which a death sentence was imposed becomes final, the sentencing court shall notify the sentenced person that if the person is indigent and wishes to file a petition under this chapter, the court will appoint counsel who meets the Montana supreme court's standards for competency of appointed counsel in proceedings under this chapter for an indigent person sentenced to death.*

*(b) Within 75 days after a conviction for which a death sentence was imposed upon a person who wishes to file a petition under this chapter becomes final, the sentencing court shall:*

HeinOnline -- 1997 vol. II 1766 1997

*(i) appoint counsel to represent the person if the court finds that the person is indigent and either has accepted the offer of appointment or is unable to competently decide whether to accept the offer of appointed counsel;*

*(ii) if the offer is rejected by a person who understands the legal consequences of the rejection, enter findings of fact after a hearing, if the court determines that a hearing is necessary, stating that the person rejected the offer with an understanding of the legal consequences of the rejection; or*

*(iii) if the court finds that the petitioner is not indigent, deny appointment of counsel.*

*(c) The court may not appoint counsel who has previously represented the person at any stage in the case unless the person and the counsel expressly agree to the appointment.*

*(d) If a petitioner entitled to counsel under this subsection (3) is not indigent at the time that the court's determination is made under subsection (3)(b) but thereafter becomes indigent at any stage of the proceedings, the court shall appoint counsel as provided in subsection (3)(b)(i).*

*(e) The expenses of counsel appointed pursuant to this subsection (3) must be paid as provided in 46-8-201.*

*(f) Violation of this subsection (3) is not a basis for a claim or relief under this chapter.*

~~(3)~~*(4)* The court, for good cause, may grant leave to either party to use the discovery procedures availahle in criminal or civil proceedings. Discovery procedures may he used only to the extent and in the manner *that* the court has ordered or to which the parties have agreed.

~~(4)~~*(5)* The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

~~(5)~~*(6)* If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge ~~as~~ *that* may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed."

**Section 7. Attorney general petition to supreme court for competency standards.** Within 60 days after [the effective date of this section], the attorney general shall, in compliance with 28 U.S.C. 2261, petition the supreme court for a court order establishing standards for competency of counsel appointed to represent indigent persons in proceedings under Title 46, chapter 21, who are sentenced to death. The court may hold appropriate proceedings on the petition, appoint a commission to advise it on competency standards, and adopt standards.

**Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

HeinOnline -- 1997 vol. II 1767 1997

**Section 9. Applicability.** (1) Except as provided in subsection (2), [sections 3 through 6] apply to proceedings in which the conviction becomes final:

(a) after [the effective date of this section]; or

(b) during the 12 months prior to the [effective date of this section] if a petition under Title 46, chapter 21, is filed within the 12 months after [the effective date of this section].

(2) The provision in [section 6] that the notification must state that counsel to he appointed will meet supreme court standards for counsel applies to petitions for postconviction relief filed after [the effective date of standards adopted under section 7].

**Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) The provision in [section 6] that the notification must state that counsel to be appointed will meet supreme court standards for counsel is effective on [the effective date of standards adopted under section 7].

Approved April 24, 1997

# CHAPTER NO. 379

[HB 266]

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE, ITS REPRESENTATIVES, AND COUNTY AND CITY AUTHORITIES DURING ROUTINE INSPECTIONS TO REQUEST PROOF OF LICENSURE FOR ANY PERSON WHO IS REQUIRED TO BE LICENSED WHO IS INVOLVED WITH PLUMBING OR ELECTRICAL WORK AND TO REPORT LICENSE VIOLATIONS TO THE INSPECTOR'S EMPLOYING AGENCY; REQUIRING EACH EMPLOYING AGENCY TO REPORT LICENSE VIOLATIONS TO THE BOARD OF PLUMBERS OR THE STATE ELECTRICAL BOARD; AND AMENDING SECTIONS 50-60-510 AND 50-60-604, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-60-510, MCA, is amended to read:

**"50-60-510. ~~Inspection by department~~ *Inspections* to ~~insure~~ *ensure* compliance.** All plumbing and drainage systems may he inspected hy the department of commerce or ~~its~~ *an* authorized representative *or a municipality or county certified to perform an inspection pursuant to 50-60-302 in order* to ~~insure~~ *ensure* compliance with the requirements of the state plumbing code. *As part of any inspection, the inspector shall request proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with plumbing activities if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency and the employing agency shall in turn report the violation to the board of plumbers.*"

**Section 2.** Section 50-60-604, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1768 1997

"50-60-604. ~~Department to make inspections, issue inspection tags, and establish fees~~ ***Inspections — electrical permits — fees.*** The department of commerce *or an authorized representative or a municipality or county certified to perform an inspection pursuant to 50-60-302* shall ~~make inspections of~~ *inspect* electrical installations, issue ~~inspection tags~~ *electrical permits* for these installations, and establish and charge a reasonable and uniform fee for the inspections~~, which~~ *. The fee* may not exceed the expense of providing the inspection. *As part of any inspection, the inspector shall require proof of licensure from any person who is required to be licensed who is involved with or, in the inspector's judgment, appears to be involved with electrical installations if the person is on the site. The inspector shall report any instance of license violation to the inspector's employing agency, and the employing agency shall in turn report the violation to the board of electricians."*

Approved April 24, 1997

# CHAPTER NO. 380

[HB 538]

AN ACT CREATING A PILOT PROJECT FOR THE USE OF MEDICAL SAVINGS ACCOUNTS IN CONJUNCTION WITH THE MONTANA MEDICAID PROGRAM; PROVIDING FOR THE DESIGN OF THE PROJECT; PROVIDING FOR ADMINISTRATION OF THE PROJECT BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING THE POWERS AND DUTIES OF THE DEPARTMENT; REQUIRING CONTRACTS FOR THE ADMINISTRATION OF MEDICAL SAVINGS ACCOUNTS AND THE PROVISION OF HIGH-DEDUCTIBLE HEALTH CARE COVERAGE; REQUIRING REPORTS AND EVALUATION OF THE PROJECT; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Legislative findings and purpose.** The legislature finds that among the centrihuting causes of the increase in the cest of the medicaid program has been the lack of sufficient incentive by participants in the medicaid program to conserve gevernment funds used to pay for medicaid inedical benefits. The legislature believes that treatment of medicaid funds as the personal funds of medicaid recipients would provide that needed incentive. The purpose of [sections 1 through 10] is to create a pilot program by which the effect of that incentive may be tested by providing high-deductible health care coverage to a limited number of medicaid-eligible adults and miners and allowing those participants in a pilot project to keep a part of the state money that is not used by the participants for health care expenses below the amount at which coverage begins. In tbis way, the legislature will test the use of personal financial incentive to help reduce medicaid costs and educate medicaid consumers to make informed decisions about appropriate use of health care.

**Scction 2. Definitions.** As used in [sectiens 1 through 10], the following definitions apply:

HeinOnline -- 1997 vol. II 1769 1997

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Health care expenses" means expenses incurred for health care provided by the medicaid program.

(3) "High-deductible health care coverage" means coverage for the payment of health care expenses by a group medical expense disability policy, membership contract, subscriber contract, health services agreement, or certificate of insurance provided by a health insurer, health service corporation, or health maintenance organization having a deductible amount for each participant in an amount determined by the department.

(4) "Medicaid" means the Montana medicaid program established by 53-6-101.

(5) "Medical savings account" or "account" means an account established for the purposes of [sections 1 through 10] with a state or federally chartered bank, savings and loan association, credit union, trust company, or other corporate fiduciary determined by the department.

(6) "Participant" means an individual eligible for medicaid chosen by the department in the manner provided in [section 5] to participate in the pilot project.

(7) "Pilot project" or "project" means the medicaid medical savings account pilot project established by [sections 1 through 10].

**Section 3. Medicaid medical savings accounts — pilot project elements — project timelines — contracts.** (1) The department shall design a pilot project in accordance with [section 4] and this section for the use of medical savings accounts in conjunction with the Montana medicaid program. The department shall establish and administer the medical savings account and high-deductible health care coverage parts of the pilot project following approval of the waivers requested by the department pursuant to [section 6].

(2) The pilot project consists of the following elements:

(a) a design plan prepared by the department pursuant to a contract required by [section 4];

(b) a request submitted by the department pursuant to [section 6] to the U.S. health care financing administration for waivers, pursuant to 42 U.S.C. 1315, of requirements of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq.;

(c) establishment, funding, and management by the department pursuant to a contract required by [section 7] of medical savings accounts for participants chosen pursuant to [section 5];

(d) high-deductible health care coverage purchased by contract by the department in accordance with [section 8] for each participant for each fiscal year during the time of the pilot project;

(e) evaluation of the pilot project in the manner provided by [section 9] and reports to the legislative audit division and to the legislative fiscal division in the manner required by [section 10].

HeinOnline -- 1997 vol. II 1770 1997

(3) The pilot project begins with commencement of the design plan provided by [section 4]. Elements of the project as provided in subsection (2) of this section may be begun and completed at times determined by the department consistent with [sections 1 through 10]. However, medical savings accounts and high-deductible health care coverage for each participant must begin no later than January 1, 1999.

(4) Requests for proposals and contracts required or authorized by [sections 1 through 10] must comply in all respects with the provisions of Title 18. The department may also consult with the department of administration, the state insurance commissioner, and recognized experts in contracts for the types of services required or authorized by [sections 1 through 10] before committing the state to those contracts.

(5) The pilot project may not include mental health services.

**Section 4. Pilot project design plan required.** The department shall by contract create a design plan for the pilot project. The design plan must consist of the following project elements and the projected time periods and goals for each element:

(1) a report on participant profiles for use by insurers or others who may provide the high-deductible health care coverage and a cost analysis for provision of that coverage;

(2) a calculation for each fiscal year of the project of the number of participants to be chosen pursuant to [section 5], the amounts deposited for each participant into the participant's medical savings account, the projected cost per participant, and the annual projected savings resulting from the project prior to each project fiscal year;

(3) a request for proposals to develop the request for waivers to be submitted to the U.S. health care financing administration pursuant to [section 6];

(4) development of requests for proposals by which the department would contract for the administration of participant medical savings accounts pursuant to [section 7], including a nondiscriminatory methodology by which the department will determine the amount remaining within an account to be paid to a participant pursuant to [section 7(3)], and the provision of high-deductible health care coverage pursuant to [section 8];

(5) development of a methodology for measuring project outcomes in subject areas, including but not limited to cost, access, and health status of the project participants, as provided in [section 9];

(6) the method and subjects of an independent assessment of the pilot project in areas, including but not limited to cost-effectiveness, access, and quality, as provided in [section 9]; and

(7) the method and subjects of the reports required by [section 10].

**Section 5. Choice of pilot project participants.** The department shall, in a manner chosen by the department, offer participation in the pilot project to adult and minor individuals chosen in a manner to accurately represent those persons in Montana receiving benefits from the medicaid program. Participation

HeinOnline -- 1997 vol. II 1771 1997

in tbe pilot project by those individuals chosen by the department is voluntary. In offering participation in the project, the department sball explain the aspects and objectives of the project as they will affect participants and explain the responsibilities of participants. The department shall limit the number of participants to not less than 1,000 and not more than 5,000.

**Section 6. Request by department for waivers.** The department shall, by request for proposals, develop and suhmit to the U.S. health care financing administration a request for waivers from federal statutes and regulations necessary to obtain federal financial participation in the pilot project to the same extent that the federal government participates in the medicaid program. Contracts entered into by the department for this purpose must provide for the continuing support of the contractor during waiver negotiations.

**Section 7. Medical savings accounts — administration — payments — terms and conditions.** (1) Upon approval of the waivers requested pursuant to [section 6], the department shall, by request for proposals, provide for the administration of a medical savings account for each participant. The term of a contract entered into pursuant to the requests may be for a fiscal year or for another period determined hy the department that is consistent with appropriations for and the objectives of the pilot project.

(2) (a) Upon receipt of an appropriation for the purposes of this section, the department shall pay to the administrator of each participant's medical savings account an amount of money determined by the department and based upon the average statewide cost for medical assistance for each individual in the medicaid program.

(b) A contract for the administration of the pilot project must include payment of the amount into the account of each participant at the beginning of each month or at a payment interval during the time of the project as determined by the department. Administration must also include payment of participants' medical claims from the accounts, recordkeeping necessary for proper administration of the payments and accounts, and payment of amounts remaining in the account to tbe participant as provided in subsection (3).

(c) The department may require as part of the contract for the administration of the accounts that the contractor provide educational information to participants and accounting, auditing, and recordkeeping services necessary for project evaluation and reports as required by [sections 9 and 10].

(3) The terms of the contract for the administration of tbe pilot project must include payment within 90 days after the end of the fiscal year to each project participant, and each participant may retain an amount of money determined by the department and remaining in the account at the end of a fiscal year. The terms of the use of an account by a participant may also include requirements necessary for the proper administration and use of the account.

**Section 8. High-deductible health care coverage required.** Upon approval of the waivers requested pursuant to [section 6], the department shall, by request for proposals before the beginning of each fiscal year during the time of the pilot project, obtain high-deductible health care coverage for each participant. In making the request for proposals, the department shall provide to potential contractors the information concerning the project and participants

HeinOnline -- 1997 vol. II 1772 1997

reasonably determined by the department to be needed by potential contractors to adequately assess the degree of financial risk to be assumed by the successful contractor. The contract with the department must require the contractor to provide high-deductible health care coverage for each participant beginning with each fiscal year and ending at the end of each fiscal year during the time of the project.

**Section 9. Project evaluation — outcomes measurement — independent assessment.** (1) The department shall, by request for proposals, provide for evaluation of the project outcomes at the completion of the project and may provide for evaluation at other times as the department may determine. The evaluation must include an evaluation of the cost-effectiveness of the project, the degree of access to health care available to participants, and the health status of participants. A contract for project evaluation may be combined by the department with another contract made by the department pursuant to [sections 1 through 10].

(2) The department shall, by request for proposals, provide for an independent assessment of the project by a corporation, firm, partnership, or other business entity knowledgeable in the measurement of cost-effectiveness, access, quality of care, and health status of individuals receiving health care. A contract for the assessment may not be combined with another contract made by the department pursuant to [sections 1 through 10]. A contract required by this subsection must also require the contractor to provide information developed by the assessment to the U.S. health care financing agency or another agency of the federal government.

**Section 10. Reports required.** The department shall, at the conclusion of the project, provide a report to the legislative audit division and the legislative fiscal division containing those matters determined in the evaluation and independent assessment required by [section 9].

**Section 11. Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 53, chapter 6, and the provisions of Title 53, chapter 6, apply to [sections 1 through 10].

**Section 12. Effective date.** [This act] is effective July 1, 1997.

**Section 13. Termination.** [This act] terminates January 1, 2001.

Approved April 24, 1997

# CHAPTER NO. 381

[SB 51]

AN ACT COORDINATING COST-OF-LIVING ADJUSTMENTS FOR PROBATION OFFICERS WITH OTHER COUNTY OFFICIALS; AMENDING SECTIONS 41-5-704 AND 41-5-705, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-5-704, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1773 1997

"**41-5-704. Salary and expenses.** (1) A chief probation officer ~~shall~~ *must* receive ~~for his services~~ a salary specified by the court, depending on the formal training and experience of each respective officer~~, but such~~; *however, the* salary may *not* be ~~no~~ lower than ~~$17,000~~ *$24,000* a year *and may not be higher than $29,000 a year* ~~and no higher than $22,000 a year~~. In addition to ~~such~~ *the* salary, the court shall, on or before July 1 of each year, adjust and fix the salary of the chief probation officer for a cost-of-living increase by adding to ~~his~~ *the chief probation officer's* annual salary on July 1 of that year an increment, *as determined by the county governing body using the applicable formula provided in 7-4-2504, of up to 100%* ~~of 70%~~ of the ~~last~~ previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index. The cost-of-living increment for ~~the~~ *each* fiscal year ~~beginning July 1 of each subsequent fiscal year shall~~ *must* be added to all cost-of-living increments granted for previous years *unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year by the county governing body. If that is the case, the cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.* The salary of ~~such~~ *a chief probation* officer ~~shall~~ *must* be apportioned among and paid by each of the counties in which ~~such~~ *the* officer is appointed to act, in proportion to the cost allocation established under 41-5-104, except ~~where such~~ *when the* officer is appointed for one county, ~~such~~ *then that* county shall pay the entire salary.

(2) In addition to the compensation provided in subsection (1), each chief probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance*; however, years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increase.* Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

*(3) If the county governing body, in any subsequent fiscal year, restores for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1), the longevity increases provided for in subsection (2) must also be restored for those years that the cost-of-living increment was restored.*

~~(3)~~*(4)* For all authorized travel incident to ~~his~~ *a chief probation officer's* official duties in connection with the investigation, supervision, and transportation of youth, the chief probation officer ~~shall~~ *must*, in addition to ~~his office~~ *the officer's* salary, be reimbursed as provided in 2-18-501 through 2-18-503."

**Section 2.** Section 41-5-705, MCA, is amended to read:

"**41-5-705. Deputy probation officers — salary.** (1) The judge having jurisdiction of juvenile matters may ~~also~~ appoint ~~such additional~~ persons *to serve as deputy probation officers as the judge considers necessary*, giving preference to persons having the qualifications suggested for appointment as the chief probation officer~~, to serve as~~ *. The salaries of* deputy probation officers ~~as the judge deems necessary, their salaries to~~ *must* be fixed by the judge. ~~Such~~ *The* salaries ~~shall~~ *may* not exceed 90% or be less than 60% of the salary of the chief

HeinOnline -- 1997 vol. II 1774 1997

probation officer, excluding *the cost-of-living increase provided in this subsection and* longevity payments provided in 41-5-704.

*(2) In addition to the salary, the judge shall, on or before July 1 of each year, adjust and fix the salary of the deputy probation officer for a cost-of-living increase by adding to the deputy probation officer's annual salary on July 1 of that year an increment, as determined by the county governing body using the applicable formula provided in 7-4-2504, of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index. The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year by the county governing body. If that is the case, the cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments. The salary of a deputy probation officer must be apportioned among and paid by each of the counties in which the officer is appointed to act, in* proportion to the cost allocation established under 41-5-104, except when the officer is appointed for one county, then that county shall pay the entire salary.

~~(2)~~*(3)* In addition to ~~such salary~~ *the compensation provided in subsections (1) and (2),* each deputy probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance*; however, years of service during any year in which the salary was set at the same level as the salary of the prior fiscal year may not be included in any calculation of longevity increase.* Each longevity allowance must he based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

*(4) If the county governing body, in any subsequent fiscal year, restores for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (2), the longevity increases provided for in subsection (3) must also be restored for those years that the cost-of-living increment was restored.*

~~(3)~~*(5)* ~~If~~ *The salary of* a deputy probation officer ~~is~~ promoted to chief probation officer~~, his salary~~ may not be decreased by the appointment. ~~He~~ *The deputy probation officer* ~~shall retain~~ *retains* all longevity allowances earned during ~~his~~ service as a deputy."

**Section 3. Effective date.** [This act] is effective July 1, 1997.

Approved April 24, 1997

# CHAPTER NO. 382

[SB 83]

AN ACT AUTHORIZING THE CHARTERING OF FOREIGN CAPITAL DEPOSITORIES; PROVIDING FOR THE RIGHTS OF FINANCIAL PRIVACY, ASSET PROTECTION, AND SPECIALIZED SERVICES TO NONRESIDENT ALIENS WHO ARE DEPOSITORY CUSTOMERS; ESTABLISHING THE

HeinOnline -- 1997 vol. II 1775 1997

DEPARTMENT OF COMMERCE AS THE REGULATING AUTHORITY; MANDATING COMPLIANCE WITH CERTAIN FEDERAL BANKING LAWS; PROVIDING FOR A NEW SOURCE OF STATE REVENUE DERIVED FROM AN ASSESSMENT BASED ON THE VALUE OF ASSETS ON DEPOSIT; AMENDING SECTIONS 15-1-501, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 32-1-101, 32-1-102, 32-1-202, 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND 32-1-501, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose.** The legislature finds and declares that:

(1) political instability, economic insecurity, and financial risk outside the United States create incentives for the transfer and investment of foreign capital derived from legitimate estates and business activities to relatively safe places such as Montana;

(2) political conditions in some countries are contrary to the fundamental freedoms and individual liberties codified in international human rights law and contained in the Montana constitution;

(3) it is in the public interest of Montana to attract legally derived foreign capital for investment, revenue enhancement, and other economic development purposes as well as to facilitate tax abatement for residents and businesses in the state;

(4) the legislature has the authority, in connection with its effort to improve economic conditions in the state, to treat foreign persons differently than it does Montana citizens with respect to equal protection of the law;

(5) because the Internal Revenue Code prohibits Montana from offering the type of tax shelters to American citizens that are available to them in foreign jurisdictions and because few of the conditions prevalent in other countries that give rise to capital flight exist in the United States, Montana is both compelled and rationally motivated to offer specialized private financial services exclusively to foreign customers;

HeinOnline -- 1997 vol. II 1776 1997

(6) the state has the competence, capacity, and legitimate authority to charter and regulate financial institutions under the dual banking system of the United States;

(7) a prudent blend of financial privacy, asset protection, and profitability may offer foreign depositors unique opportunities to build and preserve their wealth in Montana;

(8) it is the intent of the legislature to protect both state and national interests by promoting legal and technical standards and procedures to deter, prevent, and detect money laundering and other types of financial crime.

**Section 2. Short title and scope.** (1) [Sections 1 through 46 and 65 through 67] may be cited as the "Montana Foreign Capital Depository Act".

(2) [Sections 1 through 46] set forth the terms and conditions under which a foreign or domestic financial institution may do business in Montana as a state-chartered foreign capital depository.

**Section 3. Definitions.** As used in [sections 1 through 46 and 65 through 67], unless the context requires otherwise, the following definitions apply:

(1) "Bank holding company" means a company registered under the federal Bank Holding Company Act of 1956, as amended.

(2) "Board" means the state banking board provided for in 2-15-1803.

(3) "Capital" means currency that is convertible to U.S. dollars or personal property, including tangible personal property.

(4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as defined in the Bank Secrecy Act (Public Law 91-508).

(5) "Charter" means a certificate issued by the state banking board through the commissioner to a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign capital depository.

(6) "Commissioner" means the commissioner of banking and financial institutions provided for in 32-1-211.

(7) "Controlling person" means a person who holds 5% or more of the equity in a depository or who is otherwise determined by the board to exercise controlling authority over decisions affecting the management and operation of the depository.

(8) "Customer" means a person who is using or has used the services of a foreign capital depository or for whom a foreign capital depository has acted as a fiduciary.

(9) "Department" means the department of commerce established in 2-15-1801.

(10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

HeinOnline -- 1997 vol. II 1777 1997

(11) "Foreign capital depository" or "depository" means a financial institution incorporated in Montana and chartered by the board to conduct business as a foreign capital depository in accordance with [sections 1 through 46].

(12) "Money laundering" is the process through which the existence, illegal source, true ownership, or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

(13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

(14) "Person" means an individual, partnership, corporation, limited liability company, association, trust, or other legal entity.

(15) "Supervisory agency" means any of the following:

(a) the attorney general and the department of justice, established by 2-15-2001, for the purpose of the enforcement of all criminal laws of the state;

(b) the department, for the purposes of the administration and enforcement of the state laws relating to the examination and supervision of a foreign capital depository;

(c) the commissioner, for the purposes of the administration and enforcement of the state laws relating to the chartering and supervision of a foreign capital depository;

(d) the board, for the purposes of chartering a foreign capital depository;

(e) the federal reserve system, when the chartered depository is a subsidiary of a financial institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign capital depository;

(f) the legislative audit division, established by 5-13-301, for the purposes of the administration of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

(g) the department of revenue, established by 2-15-1301, for the purposes of the administration and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

(h) the insurance department, established by 2-15-1902, and the commissioner of insurance, established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to the regulation of an insurer of accounts in a foreign capital depository.

(16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins, precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender.

**Section 4. Charter required — misrepresentation cause for disqualification.** (1) A person may not operate or conduct business as a depository in this state without a charter issued by the board.

(2) A depository shall post the charter certificate in a conspicuous place.

(3) A person who is found by the commissioner to have falsely represented to a customer that a charter had been obtained is permanently disqualified from obtaining a charter.

**Section 5. Protection of appellation.** A corporation that has not been issued a charter under the provisions of [section 8] may not transact business under a name or title that contains the words "foreign", "capital", and "depository" in any combination.

**Section 6. Applicability of banking laws.** The provisions of 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, part 5 (except 32-1-507), 32-1-901 through 32-1-912, and 32-1-921 apply to a foreign capital depository unless a section in [sections 1 through 46 and 65 through 67] or a rule or order issued under [sections 1 through 46 and 65 through 67] is inconsistent with any of the sections listed in this section.

**Section 7. Rulemaking authority.** (1) The board shall adopt rules to implement [sections 8, 9, and 12].

(2) The department shall adopt rules to implement [sections 13, 14, and 18] and to specify the conditions under which a depository may be found to be operating in a manner that is unsafe or unsound.

**Section 8. Charter eligibility and application requirements.** (1) In order to lawfully conduct business in Montana as a foreign capital depository, a person intending to own and operate a depository shall:

(a) obtain a state charter from the board through an application process established by the commissioner and administered by the department;

(b) make and file articles of incorporation in accordance with 32-1-301;

(c) submit an application to the board on a form provided by the commissioner. An application must be accompanied by:

(i) documents certifying that the identity of each director, executive officer, and controlling person of the proposed depository has been verified by means of a background check;

(ii) a written copy of the applicant's know your customer policy and a written description of the implementation method for the policy;

(iii) a detailed written description of the applicant's personnel training and preemployment screening programs, physical and technological security systems, and methods of compliance with applicable federal recordkeeping and reporting laws;

(iv) a business plan that includes projections of costs, profitability, and relevant changes in financial markets;

(v) the intended location of each depository office in the state;

HeinOnline -- 1997 vol. II 1779 1997

(vi) a document from a certified public accountant confirming that the applicant has financial assets in excess of liabilities in an amount established by board rule;

(vii) a nonrefundable charter application fee set by the board under [section 12] to be paid into the foreign capital depository account established in [section 17].

(2) A foreign capital depository may be a subsidiary of a foreign bank that has obtained approval from the federal reserve system to operate in the United States in accordance with the Foreign Bank Supervision Enhancement Act of 1991.

**Section 9. Charter application — grounds for denial.** (1) To safeguard the interests and the reputation of the state, the board shall deny a charter application if it finds that the applicant planning to operate the depository is not of good character or that the applicant is not financially sound.

(2) The board may find that the person planning to own, operate, or manage the depository is not of good character or financial integrity if a director, an executive officer, or a controlling person of the applicant has:

(a) been convicted of or has pleaded guilty or nolo contendere to any crime involving fraud, theft, conspiracy, racketeering, or money laundering;

(b) had a professional or occupational license suspended or revoked based on conduct involving an act of fraud or dishonesty;

(c) willfully made or caused to be made false or misleading statements in an application or report to the commissioner or has willfully omitted facts required in the report;

(d) willfully violated a provision of [section 4 or 8] or aided, abetted, counseled, commanded, induced, or procured the violation by another person of a provision of [section 4 or 8].

(3) Subsections (1) and (2) are not exclusive of other grounds on which the board may determine that an applicant for a depository charter is not of good character and therefore may not receive a charter.

(4) The board may authorize the commissioner to conduct or obtain from a private investigative service a background check on any director, executive officer, or controlling person of the depository for the purposes of determining whether an applicant is of good character.

(5) The board shall adopt rules concerning the method and process for determining whether an applicant for a charter is financially sound.

**Section 10. Suspension, revocation, and restoration of charter.** (1) The board may suspend or revoke the charter of a depository if the board finds that the depository or any director, executive officer, or controlling person of the depository has:

(a) violated a provision of [sections 1 through 46], a rule of the department established pursuant to [sections 1 through 46], the Bank Secrecy Act, or any implementing regulation of the Bank Secrecy Act;

HeinOnline -- 1997 vol. II 1780 1997

(b) failed to comply with an order of the commissioner;

(c) operated in a manner or condition that is unsafe or unsound;

(d) become insolvent in that the depository has ceased to pay its dehts in the ordinary course of business, it is unable to pay debts as they come due, or its liabilities exceed its assets;

(e) filed a petition for an adjudication of bankruptcy;

(f) knowingly made a false statement or report to the department;

(g) failed to pay the department of revenue the fee, penalty, or interest owed pursuant to [sections 58 through 60] before 5 p.m. on the last day of the 11th month after the date a deficiency assessment is mailed; or

(h) if the depository is a suhsidiary of a foreign bank holding company or another type of financial institution, had its operating license suspended or revoked in the country where the parent company is domiciled.

(2) Before suspending or revoking a charter, the board shall conduct a hearing in accordance with the Montana Administrative Procedure Act relating to a contested case.

(3) On the recommendation of the department, the board may reinstate a charter that has been suspended or revoked if the board finds that the depository has restored its integrity and financial soundness.

(4) At no time during or following the suspension, revocation, or reinstatement of a charter may a financial record pertaining to an individual account be disclosed except in accordance with rules for the conduct of examinations in [section 15] or in accordance with [sections 29 through 46].

**Section 11. Administrative orders by commissioner.** (1) In addition to or in lieu of the board's suspending or revoking the charter issued to a foreign capital depository, the commissioner may:

(a) issue a cease and desist order that specifies the activity that the depository may not undertake for the duration of the order;

(b) require a depository to take action as determined by the commissioner; or

(c) order the depository to pay a civil penalty in an amount not to exceed $10,000 for each violation or, in the case of a continuing violation, $10,000 for each day during which the violation continues.

(2) Orders issued by the commissioner pursuant to this section must be issued in compliance with the contested case procedure of the Montana Administrative Procedure Act.

**Section 12. Application, charter, and renewal fee.** (1) An applicant for a state charter shall pay a fee established by the board by rule. The application fee must be commensurate with the cost of conducting a background check on tbe person applying for the charter.

HeinOnline -- 1997 vol. II 1781 1997

(2) A successful applicant for a state charter shall pay to the department an initial charter fee of $50,000, less the amount paid for the application fee pursuant to subsection (1).

(3) A depository shall pay an annual charter renewal fee in an amount set by the board by rule but not to exceed $10,000.

(4) Fees collected pursuant to subsections (1) through (3) must be deposited in the foreign capital depository account established in [section 17].

**Section 13. Regulation and supervision — rules.** (1) To ensure that the department meets its responsibility for the prudential supervision of a foreign capital depository, the department shall adopt rules that:

(a) determine the processes and procedures necessary to ensure that the controlling persons and employees and the procedures of a depository are in compliance with [sections 1 through 46 and 65 through 67];

(b) establish the procedures for the conduct of examinations of a depository by the department, including the means by which the commissioner will verify that the depository's know your customer policy has been implemented;

(c) establish the form of suspicious activity reports and the conditions under which a suspicious activity report must be filed with the department;

(d) require a depository to submit to the department on request a written or electronic record of any transfer or withdrawal of cash from the depository in an amount equal to or greater than $10,000;

(e) require a depository to file an annual report with the department detailing the depository's:

(i) security measures designed to deter and prevent theft, fraud, and corruption;

(ii) procedures for filing suspicious activity reports with the U.S. department of the treasury and for keeping records and filing reports of transactions as required by federal law and regulation to combat money laundering and other criminal activities;

(iii) employee training programs regarding disclosure and other aspects of customer financial privacy; and

(iv) fulfillment of the know your customer policy recommended by the American bankers association or prescribed hy federal regulation.

(2) With respect to an action concerning the issuance, suspension, or revocation of a charter or an action pursuant to enforcement in [sections 65 through 67], the department shall adopt rules to determine prehearing discovery procedures, including the taking of depositions and the production of documents.

(3) In adopting rules for hearings, the department shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives to apply both to discovery procedures and to hearings.

HeinOnline -- 1997 vol. II 1782 1997

**Seetion 14. Costs of regulation.** A depository shall pay to the department an annual fee established by rule that is commensurate with the cost of conducting examinations of a depository by the department. The proceeds of the fee established by the department must be deposited in the foreign capital depository account created by [section 17].

**Section 15. Examinations.** (1) Except as provided in subsection (5), the department shall:

(a) examine, at least once every 12 months, each depository te:

(i) verify the depository's assets and liabilities;

(ii) ascertain the accuracy of the depository's books and records; and

(iii) determine whether the depository's methods of operation and conduct of business are in compliance with applicable laws and rules; and

(b) submit in writing to a depository examined in accordance with subsection (1)(a) a report of the examination's findings no later than 60 days after the completion of the examination.

(2) A contrelling persen or employee of a foreign capital depository shall exhibit to the department or an examiner from the federal reserve system on request the books, records, and accounts of the depository, except that the identity of a customer may not be disclosed to the department or any examiner unless the disclosure is necessitated by the department's procedure for verifying that the depository's know your customer policy has been implemented effectively.

(3) The department may issue subpoenas and administer oaths to any director, executive officer, controlling persen, or employee of a foreign capital depository. In case of a refusal to obey a subpoena issued by the department, the refusal may be reported to the district court of the district in which the depository is located. The court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(4) If a depesitory charter is issued to a foreign bank, the department may conduct an examination of the depository:

(a) in conjunction with supervisory personnel from the federal reserve system, or;

(b) without the assistance of federal reserve system personnel.

(5) The department may accept as the examination of a depository required by this section the findings or results of an examination conducted by the federal reserve system.

(6) A foreign capital depesitory shall keep its corporate records, financial records, and books of account in words and figures ef the English language, in Montana, and in a form satisfactory to the department.

(7) If a foreign capital depository is issued a charter to maintain two or more offices in the state, the depository shall designate one of its offices as its primary

HeinOnline -- 1997 vol. II 1783 1997

office for the purposes of keeping consolidated records and facilitating examinations by the department.

**Section 16. Special examinations — costs.** (1) Whenever in the judgment of the commissioner the condition of a depository or the actions of a customer necessitate an examination beyond that required by [section 15], the department may conduct additional examinations determined to be necessary and in connection with the additional examinations may charge the depository:

(a) an amount not to exceed $400 a day for each examiner engaged in the examination of the depository;

(b) the actual cost of travel expenses of the examiner in the event that travel outside this state is determined necessary by the commissioner; and

(c) a reasonable amount to recover the actual costs of counsel and other department resources.

(2) The money collected by the department pursuant to examination fees must be deposited in the foreign capital depository account established in [section 17].

**Section 17. Foreign capital depository account.** (1) There is an account in the state special revenue fund. Except for revenue derived in accordance with [sections 58 through 60], money from the foreign capital depository must be deposited in the account.

(2) The money in the account may be appropriated by the legislature to the department solely for the department's use in meeting its supervisory and regulatory obligations established in [sections 12 through 16].

**Section 18. Reports — contents and restrictions.** (1) A depository shall make a report to the department in the manner and at the time required by the commissioner.

(2) A report filed with the department must:

(a) contain the information required by rule; and

(b) be verified by two of the depository's executive officers. The verification must state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement in the report is true.

(3) A depository may not include any financial record, as defined in [section 30], of any customer in the report.

(4) The department may provide a copy of the report to another supervisory agency.

**Section 19. Recordkeeping and reporting — suspicious activity.** In addition to compliance with applicable provisions of the Bank Secrecy Act, a foreign capital depository shall:

(1) keep a written or electronic record of each wire transfer or other electronic means of transferring capital to the depository for at least 5 years when the transfer involves $3,000 or more; and

(2) comply with federal regulation and rules of the department concerning the form of a suspicious activity report and the conditions under which a suspicious activity report is required to be reported to a supervisory agency or to the U.S. department of the treasury.

**Section 20. Sale or transfer of charter prohibited — penalty.** (1) A charter issued by the board may not be sold, traded, transferred, or otherwise assigned to another corporation.

(2) A person who attempts to sell, trade, or transfer a depository charter or who knowingly accepts a depository charter in violation of subsection (1) is subject to civil and criminal penalties pursuant to [sections 66 and 67].

**Section 21. Dissolution — closing.** (1) The board may, upon a finding of negligence, misconduct, or any of the conditions specified in [section 9] dissolve the charter of a depository and remove any directors, executive officers, or employees prior to the dissolution in accordance with the provisions of Title 32, chapter 1, part 9.

(2) The department may close a depository and take possession of the books, records, and assets of the depository and hold them until the depository is authorized by the board to resume business or until its affairs are liquidated in accordance with Title 32, chapter 1, part 5.

(3) Except in accordance with the provisions in [sections 29 through 46], an individual financial record may not be disclosed in the process of dissolving or closing a depository, and the penalties for wrongful disclosure in [sections 29 through 46] apply to the board, the department, and the depository.

(4) A foreign capital depository may not close its primary office or cease operations without the written approval of the department.

(5) Voluntary dissolution of a depository must comply with the provisions of 32-1-501.

**Section 22. Depository services — allowed and mandated.** (1) A depository may:

(a) accept deposits in any currency or electronic form convertible to U.S. dollars;

(b) provide safe deposit and other storage services for the purpose of protecting the security of a customer's tangible personal property;

(c) convert cash deposits to purchase orders for platinum, palladium, gold, or silver bullion on behalf of or at the direction of a customer;

(d) purchase, sell, and pay interest to the customer derived from tax-exempt federal, state, county, or municipal bonds on behalf of or at the direction of a customer;

HeinOnline -- 1997 vol. II 1785 1997

(e) provide a customer with foreign currency in exchange for U.S. dollars in an equivalent monetary amount;

(f) perform trust and related fiduciary services, as provided in 32-1-107, but only if the depository has obtained a certificate from the department authorizing the depository to act as a trust company or the subsidiary of a trust company prior to engaging in trust activities;

(g) issue a debit card or an automatic teller machine card to a customer;

(h) charge interest in relation to a customer's use of a debit or automatic teller machine card;

(i) establish different types of deposit accounts for customers;

(j) offer deposit or safe deposit insurance provided under contract with a financial guaranty insurer approved by the insurance commissioner;

(k) charge fees related to the opening, management, and insuring of deposit accounts, the storage and maintenance of tangible personal property, the establishment and administration of trust accounts, and other lawful investment, legal, or financial services;

(l) set underwriting standards for each type of account that it offers to a customer; and

(m) establish a minimum deposit amount for any type of account as long as the minimum is not less than $200,000.

(2) A depository may in its discretion refuse an application for an account of any type.

(3) A depository shall:

(a) exercise extraordinary diligence in determining the genuine identity of a customer;

(b) protect the privacy of each customer as provided in [sections 29 through 46];

(c) in accordance with [sections 47 through 55], provide legal defense of a customer at the customer's request or on the request of the customer's legal representative in the event a civil judgment rendered against the depositor in a jurisdiction outside the United States is registered in Montana;

(d) with respect to precious metals accounts in [sections 25 through 28], comply with the statutory protections against securities fraud under Title 30, chapter 10;

(e) comply with federal reporting and recordkeeping requirements as provided in the Bank Secrecy Act, the Money Laundering Control Act of 1986, the Annunzio-Wylie Anti-Money Laundering Act, and implementing regulations of each of those acts concerning money laundering and other financial crimes.

**Section 23. Depository services — restrictions and prohibitions.** (1) A depository may not accept a depesit:

(a) from an individual who is a citizen or a resident of the United States;

(b) from a corporation, trust, or partnership if any shareholder, settlor, member, beneficiary, or partner is a citizen or a resident of the United States;

(c) in an amount valued at less than $200,000 in U.S. dollars.

(2) A depository may not:

(a) provide services to any customer who is not a nonresident alien;

(b) engage in lending or any related commercial banking services as defined in the Bank Act, except:

(i) in a case in which fiduciary lending is necessitated by a trust obligation and the depository has obtained a certificate from the department authorizing the depository to act as a trust company or the subsidiary of a trust company; or

(ii) in relation to a precious metals account as provided in [sections 25 through 28];

(c) transfer $10,000 or more of a customer's cash on deposit to another financial institution inside or outside the jurisdiction of the United States without submitting a record of the transaction to the commissioner and the attorney general that includes the customer's name, last-known address, and if the customer is an individual, passport number;

(d) accept a deposit from a customer who has been convicted of a state or federal felony in the United States or from a corporation of which a controlling person has been convicted of a state or federal felony in the United States.

**Section 24. Sale or trade of deposit accounts prohibited — transfers allowed.** (1) The legislature does not intend to create or facilitate the creation of a secondary market for depository accounts. Therefore, except for the condition set forth in subsection (2), the sale or trade of a deposit account by a depository is prohibited.

(2) A depository may permit the legal transfer of a deposit account from a customer to the customer's heir, spouse, or designated next of kin for the purposes of estate preservation and maintenance.

**Section 25. Precious metals accounts — purpose.** (1) The legislature acknowledges that:

(a) Montana is both a major gold producer and the only domestic source of commercially significant amounts of platinum and palladium, precious metals that have diverse uses in addition to serving as a store of exchangeable value;

(b) many nonresident aliens and foreign corporations place great value in the security inherent in precious metals as a hedge against currency depreciation, currency devaluation, and general inflation and prefer precious metals over other types of investments that may offer a higher or more certain rate of return;

(c) the expansion of the processing and refining capacity of the platinum and palladium mining operations in Montana's Stillwater complex may provide

HeinOnline -- 1997 vol. II 1787 1997

unique investment opportunities for nonresident aliens and a significant stimulus for economic development in the state; and

(d) helping to establish financial links between customers of the depository and products of the precious metals depository is in the economic interest of the state.

(2) The legislature further recognizes its responsibility to help deter money laundering and other financial crime and therefore acknowledges that restricting the liquidity of a precious metals account will reduce significantly any incentive there may be for a person to use a precious metals account for illicit purposes.

**Section 26. Definition.** For the purposes of [sections 1 through 46], a precious metals account is a depository account in which the depository, upon instructions of a customer, exchanges cash for a commensurately valued amount of platinum, palladium, gold, or silver bullion procured by the depository for the primary purpose of safekeeping over an extended period of time.

**Section 27. Account requirements — provisions.** (1) An agreement between the depository and a customer to establish a precious metals account must include the following provisions:

(a) a term of maturity that is not less than 36 months;

(b) a penalty for early withdrawal of an amount of precious metals that exceeds 20% of the monetary value of the total amount of precious metals in the account, with the monetary value to be equivalent to the spot market price of the precious metal listed in The Wall Street Journal on the date of the withdrawal;

(c) a requirement that the precious metals purchased by a customer be delivered to the depository within 7 days of verified payment of any part of the purchase price.

(2) A precious metals account may provide for limited withdrawal from the account by means of a debit card or an automatic teller machine card as long as the total amount withdrawn from the account prior to the maturity date established in subsection (1)(a) does not exceed 20% of the total monetary value of the precious metals in the account.

(3) A depository may charge a customer interest and a fee in relation to a cash withdrawal made in accordance with subsection (2).

**Section 28. Termination — settlement.** (1) Upon termination of a precious metals account, whether at or before the date of maturity, the terms of settlement must allow:

(a) the depository to convert the precious metals to currency at the spot market rate on the day of settlement; and

(b) the depository's right to delay settlement for not more than 5 business days.

**Section 29. Financial privacy — purpose.** The legislature finds and declares that:

HeinOnline -- 1997 vol. II 1788 1997

(1) the viability of one or more foreign capital depositories in Montana depends to a large extent upon both the secure nature of the depository and the confidential nature of customer accounts and safe deposits in the depository and upon the confidential nature of transactions between a customer and a depository. Therefore, the purpose of [sections 29 through 46] is to clarify and protect the confidential relationship between foreign capital depositories and their customers and to balance a customer's right of privacy with the governmental interest in obtaining information for specific purposes and by specified procedures as set forth in [sections 29 through 46]. The confidential relationship between a foreign capital depository and its customers is to be protected by restrictions on the disclosure of financial records to supervisory agencies and a prohibition against disclosure of financial records to other state and local agencies and to private individuals except under specified conditions.

(2) a state offering secure and confidential depository services to its customers must be mindful that significant amounts of capital are derived from or moved for illegal purposes and that the United States and other jurisdictions have passed laws and worked diligently to prevent money laundering and other offenses from being conducted as part of otherwise lawful transactions;

(3) in licensing and supervising the operation of one or more foreign capital depositories, Montana needs to enforce its own criminal laws vigorously. It is also imperative that Montana cooperate with United States law enforcement and other authorities to effectively deter and, when deterrence fails, detect, investigate, and prosecute perpetrators of financial crimes.

(4) the purpose of [sections 29 through 46] is not to avoid the application of the Bank Secrecy Act, the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986, and the Annunzio-Wylie Anti-Money Laundering Act, which are intended to prevent or deter money laundering and other financial crimes while maintaining a degree of secrecy of customer bank accounts from federal agencies, but rather to apply state law in those areas unregulated by these and other relevant federal laws. However, it is the intent of the legislature that if there is a clear and direct conflict between [sections 29 through 46] and applicable federal statutes, treaties, or regnlations that cannot be resolved by other means, then the state law should be preempted in order to maintain the efficacy and integrity of United States laws intended to combat financial crimes.

**Section 30. Definitions.** Unless the context requires otherwise, in [sections 29 through 46], the following definitions apply:

(1) "Financial institution" includes state and national banks, state and federal savings and loan associations, trust companies, investment companies, and state and federal credit unions. The term does not include a title insurer while engaging in the conduct of the business of title insurance, an underwritten title company, or an escrow company.

(2) (a) "Financial record" means:

(i) an original or copy of a record or document held by a foreign capital depository that directly or indirectly pertains to a customer of the depository;

HeinOnline -- 1997 vol. II 1789 1997

(ii) information contained in the original or copy of the record or document; or

(iii) the name of a customer.

(b) A record or document may, for the purposes of this subsection (2), be in a paper, electronic, or other format.

(3) "Investigation" includes an inquiry by a peace officer, as defined by 46-1-202, a sheriff, or a county attorney or an inquiry made for the purpose of determining whether there has been a violation of a law enforceahle by imprisonment, fine, or monetary liability.

(4) "Local agency" includes a county, city, town, or other local government entity.

(5) "State agency" means an office, department, division, bureau, board, or commission of state government that is not a supervisory agency, including the legislature.

(6) "Subpoena" includes subpoena duces tecum.

**Section 31. Request or receipt of records and information prohibited — exceptions — records to be maintained.** (1) Except as provided in [sections 39 and 40] and this section, an officer, employee, or agent of a state or local agency may not request or receive a copy of a financial record from a foreign capital depository unless the financial record is consistent with the scope and purpose of any investigation by the state or local agency, is described with particularity, and:

(a) the customer has authorized disclosure of the financial record in accordance with [section 34];

(b) the financial record is disclosed in response to an administrative subpoena that meets the requirements of [section 35];

(c) the financial record is disclosed in response to a search warrant that meets the requirements of [section 36]; or

(d) the financial record is disclosed in response to a judicial subpoena that meets the requirements of [section 37].

(2) The hurden of proving that a required disclosure of a financial record is consistent with the scope and purpose of an investigation is upon the state agency or the local agoncy requiring disclosure of the financial record.

(3) Nothing in [sections 34, 35, 36, or 37] or this section requires a foreign capital depository to inquire or determine whether a person seeking disclosure of a financial record has complied with the requirements of those sections if the customer authorization, administrative subpoena, search warrant, or judicial subpoena served upon or delivered to the depository pursuant to any of those sections shows compliance on its face.

(4) A foreign capital depository shall maintain for a period of 5 years a record of all disclosures by a depository of the financial records of a customer pursuant to [sections 29 through 46], including the identity of the person examining the

HeinOnline -- 1997 vol. II 1790 1997

financial records, the state or local agency that the person represents, and a copy of the customer authorization, administrative subpoena, search warrant, or judicial subpoena providing for examination or disclosure. A record of disclosures maintained pursuant to this subsection must be available, within 5 days of request, during normal business hours of the depository for review by the customer at the office or branch of the depository where the customer's account or safe deposit box was located when examined. A paper or electronic copy of the record of disclosures must be furnished by the depository to the customer upon request by the customer.

(5) This section does not prevent a state or local law enforcement agency from initiating contact with a foreign capital depository if there is reason to believe that the depository is a victim of a crime perpetrated by a customer. After contact by a law enforcement agency, if the foreign capital depository reasonably believes it is a victim of a crime, it may, in its discretion, disclose relevant financial records pursuant to [section 32(2)]. Conviction of or admission by a customer of a crime against the depository is conclusive on the issue of the reasonable belief of the depository.

**Section 32. Disclosure of record to agency prohibited — exceptions.** (1) Except as provided in [section 40] and this section, a foreign capital depository and a director, executive officer, controlling person, or employee of a foreign capital depository may not provide or authorize another person to provide a financial record to an officer, employee, or agent of a state or local agency.

(2) This section does not preclude a foreign capital depository, in its discretion, from initiating contact with and disclosing a relevant financial record to a supervisory agency concerning a suspected violation of state or federal law if the depository reasonably believes that a violation of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the reasonable belief of the depository.

**Section 33. Disclosure of record to private individual prohibited — exceptions.** (1) Except as provided in [section 40] and this section, a foreign capital depository and a director, executive officer, controlling person, or employee of a foreign capital depository may not provide or authorize another person to provide a financial record to an individual who is not an officer, employee, or agent of a state or local agency acting pursuant to Montana law or local ordinance or to an officer, employee, or agent of the United States acting pursuant to federal law.

(2) This section does not preclude a foreign capital depository, in its discretion, from initiating contact with and disclosing a relevant financial record to an appropriate state, local, or federal agency concerning a suspected violation of state or federal law if the depository reasonably believes that a violation of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the reasonable belief of the depository.

**Section 34. Customer authorization — form — notice to customer.** (1) A director, executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record if the customer to whom the record relates has authorized disclosure of the record on a form provided by the depository that:

HeinOnline -- 1997 vol. II 1791 1997

(a) is signed and dated by the customer;

(b) authorizes disclosure for a period set forth in the authorization statement;

(c) specifies the name of the person, supervisory agency, state agency, or local agency to whom or to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained; and

(d) identifies the financial record authorized to be disclosed.

(2) A foreign capital depository may not require a customer authorization to be signed by a customer as a condition of doing business with the depository.

(3) A customer may revoke an authorization by written notice to the foreign capital depository. The notice must contain a copy of the authorization to which it relates or contain the information originally required in the authorization to which it relates, must be signed and dated by the customer, and must contain a clear statement revoking the previous authorization.

(4) (a) A supervisory, state, or local agency obtaining a financial record pursuant to a customer authorization shall notify the customer in writing of the receipt of the financial record within 30 days of the agency's receipt of the financial record. However, by application to a judge of a court of competent jurisdiction in the county in which the financial record is located and upon a showing of good cause to believe that disclosure would impede the investigation, the notification requirements of this subsection (4)(a) may be extended for up to two additional 30-day periods. Thereafter, by application to a court upon a showing of extreme necessity for nondisclosure, the notification requirements of this subsection (4)(a) may be extended for up to three additional 30-day periods. At the end of that period or periods, the agency shall inform the customer that the customer has the right to make a written request as to the reason why the agency obtained the record. The notice must specify the financial record that was obtained and, if requested, the reason why the record was obtained.

(b) Whenever practicable, an application for an additional extension of the notification time provided in subsection (4)(a) must be made to the judge who granted the first extension of notification time. In deciding whether to grant an extension of the notification time, the judge shall provide the customer with prompt notification, consistent with the purpose of [sections 29 through 46].

**Section 35. Administrative subpoena.** (1) A director, executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record under [section 31(1)(b)] pursuant to an administrative subpoena otherwise authorized by law and served upon the foreign capital depository only if:

(a) the person issuing the administrative subpoena has served a copy of the subpoena on the customer pursuant to Rule 4D of the Montana Rules of Civil Procedure;

(b) the subpoena includes the name of the agency in whose name the subpoena is issued and the statutory purpose for which the record is to be obtained; and

HeinOnline -- 1997 vol. II 1792 1997

(c) 10 days have passed after service of the subpoena without the foreign capital depository or the customer moving to quash the subpoena.

(2) (a) The supervisory, state, or local agency issuing the administrative subpoena may not shorten or waive the requirements of subsection (1). However, the agency may petition a court of competent jurisdiction in the county in which the record is located, and the court, upon a showing of a reasonable inference that a law enforceable by the petitioning agency has been or is about to be violated, may order that service upon the customer pursuant to subsection (1)(a) or the 10-day period provided for in subsection (1)(c) be waived or shortened.

(b) For the purpose of this subsection (2), an "inference" is a deduction that may reasonably be drawn by the attorney general or the county attorney from facts relevant to the investigation.

(c) The petition may be presented to the court in person or by telephoned oral statement, which must be recorded and transcribed. In the case of telephonic petition, the recording of the sworn oral statement and the transcribed statement must be certified by the judge receiving it and must be filed with the clerk of the court.

(3) Except as provided in subsection (2) and this subsection, a foreign capital depository shall immediately notify a customer of the receipt of an administrative subpoena for a financial record of that customer. A court may order a depository to withhold notification to a customer of the receipt of an administrative subpoena when the court issues an order pursuant to subsection (2) and makes a finding that notice to the customer by the financial institution would impede the investigation.

**Section 36. Search warrants.** A director, executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record under [section 31(1)(c)] only if the officer, employee, or agent obtains a search warrant pursuant to Title 46, chapter 5, part 2. Examination of a financial record may occur as soon as the warrant is served upon the foreign capital depository. A foreign capital depository shall notify a customer of the receipt of a search warrant unless a court orders the depository to withhold notification to the customer upon a written finding that notice would impede the investigation.

**Section 37. Judicial subpoena.** (1) A director, executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record under [section 31(1)(d)] pursuant to a judicial subpoena only if one of the following has occurred:

(a) the subpoena is issued as otherwise authorized by law and served in compliance with Rule 4D of the Montana Rules of Civil Procedure and the requirements of subsections (1)(b), (1)(c), or (1)(d) have been met. In the event that actual service on the customer is not prohibited but has not been made prior to the time the financial record is required to be produced in response to the subpoena, the court shall, prior to turning over a record to the agency and upon

HeinOnline -- 1997 vol. II 1793 1997

good cause shown, make a finding that due diligence has been exercised by the agency in its attempt to effect service upon the customer.

(b) 10 days have passed after service of the subpoena on the customer and the depository without the customer or the depository having moved to quash the subpoena;

(c) the subpoena has been served upon the customer and the depository and a judge in a judicial proceeding to which the customer or the depository is a party rules that the subpoena should not be quashed. This subsection (1)(c) is not intended to preclude appellate remedies that may be available under existing law.

(d) the subpoena has been served upon the depository and a court orders that service of the subpoena upon the customer be delayed in accordance with this section. Service may be delayed for up to 30 days from the date of issuance of the judicial subpoena after the court makes a finding upon a written showing that service upon the customer would impede the investigation. The withholding of notification may be extended for additional 30-day periods if a court makes a finding upon a written showing, at the time of each extension, that service upon the customer would impede the investigation. Whenever practicable, an application for an extension of time must be made to the judge who issued the judicial subpoena. In deciding whether to grant an extension of the notification time, the judge shall endeavor to provide the customer with prompt notification, consistent with the purpose of [sections 29 through 46].

(2) If testimony is to be taken concerning a financial record or if a financial record is to be produced before a court, the 10-day period provided for in subsection (1)(b) may be shortened by the court upon a showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer within the shortened time period. The motion to quash the subpoena must be made, whenever practicable, in the judicial proceeding pending before the court.

(3) (a) A grand jury, upon resolution adopted by a majority of its members, may obtain financial records pursuant to a judicial subpoena based upon a written showing to a judge that there exists a reasonable inference that a crime within the jurisdiction of the grand jury has been committed and that the financial record sought is reasonably necessary to the jury's investigation of that crime. The judicial subpoena must be is personally signed and issued by a judge in accordance with 46-4-301 and must otherwise comply with the requirements of this section.

(b) For the purpose of this subsection (3), an "inference" is a deduction that may be reasonably drawn by the grand jury from facts relevant to the investigation.

(4) A showing required to be made pursuant to this section, as well as the court record of any finding made pursuant to the showing, must be sealed until one person named in the indictment to which the showing related has been arrested or until the end of the term of the grand jury if no indictment to which the showing relates has been returned. However, a court may unseal the showing and the court record relating te the showing on a written showing of good cause.

HeinOnline -- 1997 vol. II 1794 1997

**Section 38. Grounds for qnashing subpoena — duty of depository.** (1) A customer or a foreign capital depository has 10 days after service of an administrative or judicial suhpoena upon either of them to file a motion to quash the subpoena before the administrative agency issuing the subpoena or a court with jurisdiction over the subpoena. The motion to quash may be based upon one or more of the following grounds:

(a) the financial record sought is incompetent, irrelevant, or immaterial for the purpose for which it is sought;

(b) the release of the financial record would cause an unreasonable burden or hardship under the circumstances upon the customer or the depository;

(c) the supervisory, state, or local agency or other person seeking the financial record is attempting to harass the customer or the depository;

(d) there is no merit in the purpose for which the financial record is sought; or

(e) the suporvisory, state, or local agency or other person has not made a reasonable effort to first obtain the financial record or the equivalent of the record from some other source other than the depository, if some other source exists.

(2) A foreign capital depository shall move on the hasis of all appropriate grounds, including those set forth in subsection (1), to quash an administrative or judicial subpoena if the customer or the agent of the customer to whom the record relates has not received actual notice of the subpoena. If a foreign capital depository cannot determine from the customer or the customer's agent whether the customer or the agent has received actual notice of the subpoena, the depository shall move to quash the subpoena unless the customer and the depository have agreed in writing to the contrary.

(3) Failure of the customer or the depository to file a motion to quash the subpoena before the time established for the return of the subpoena constitutes a waiver of the right to object to the release or disclosure of the financial record.

(4) During the period for the filing of a motion to quash and continuing until a ruling is made upon a motion to quash, the depository shall, unless prohibited by the court, make available to its customer a copy of the subpoenaed financial record and shall preserve the original record without alteration.

(5) If a depository or a customer files a motion to quash an admimistrative or judicial subpoena issued pursuant to [section 35 or 37], the proceeding must be afforded priority on the calendar of the agency or the court.

(6) A depository may charge a customer a feo for the reasonable cost of representing the interests of the customer pursuant to this section.

**Section 39. Limitations on use of financial record.** (1) The original or a copy of a financial record ohtained by a state or local agency or another person pursuant to [sections 29 through 46] may not be used or retained in any form for a purpose other than the statutory purpose for which the record was originally obtained. The statutory purpose must be determined with reference to the statute, rule, or other law sought to be enforced in the proceeding for which the record was obtained.

HeinOnline -- 1997 vol. II 1795 1997

(2) A state or local agency may not provide a financial record obtained pursuant to [sections 29 through 46] to another state or local agency unless the other agency bas independently obtained authorization to receive the financial record pursuant to [sections 29 through 46]. This subsection does not prohibit:

(a) the transfer by one supervisory agency that obtained a financial record pursuant to [section 40(1)(c)] to another supervisory agency or supervisory agencies if that transfer otherwise complies with subsection (1); or

(b) the transfer of a financial record obtained pursuant to [section 36] by one criminal justice agency to anotber criminal justice agency in accordance with the Montana Criminal Justice Information Act of 1979.

(3) A supervisory, state, or local agency or a court obtaiming a financial record by administrative subpoena, search warrant, or judicial subpoena shall, at the request of a customer or foreign capital depository, provide for the in camera review of the record to determine whether the record contains material that is not expected to be the subject of the investigation, inquiry, or proceeding. The supervisory, state, or local agency or the court shall liberally grant requests for in camera hearings, protective orders, and other appropriate processes to protect the confidential nature of a financial record. The agency or court may permit public disclosure of a financial record only if it finds tbat disclosure is necessary for the fair resolution of an issue before it.

(4) Documents of a supervisory, state, or local agency and documents produced in court containing a financial record must be sealed by the agency or court at the conclusion of the proceedings in order to prevent access to the record and may be opened only for good cause sbown.

**Section 40. Authorized disclosures of finaneial reeords.** (1) [Sections 29 through 46] do not prohibit:

(a) disclosure by a foreign capital depository of a financial record that is not identified with or identifiable as being derived from a financial record of a particular customer by name;

(b) disclosure by a foreign capital depository to a department, agency, office, bureau, or commission of the United States of a financial record when required by federal statute or regulation or when required pursuant to the terms of a treaty or other agreement between the United States and the government of a foreign country;

(c) disclosure of a financial record by a foreign capital depository to a supervisory agency when the disclosure is conducted in response to an exercise of the agoncy's supervisory function. The scope of an agoncy's supervisory function must be determined by reference to statutes granting authority to examine, audit, or require reports concerning a financial record or foreign capital depository.

(2) Whenever the request, order, demand, or other requirement for disclosure of a financial record prohibits tbe release to a customer of the facts of a disclosure, a foreign capital depository may not disclose either the fact or nature of the request, order, demand, or otber requirement for disclosure or the depository's response to a customer or to any other person, except the officers and employees of the depository who are involved in responding to the request and to attorneys,

HeinOnline -- 1997 vol. II 1796 1997

auditors, and regulatory authorities who have a need to know in order to perform their duties and except as disclosure may be required by legal process.

**Section 41. Fee paid to foreign capital depository for disclosure of record.** Except for a supervisory agency, a state agency or local agency obtaining a financial record in accordance with [section 34, 35, 36, or 37] shall pay to the depository providing the financial record a reasonable fee commensurate with the depository's costs of searching for, assembling, copying, laheling, and transporting the financial record in question.

**Seetion 42. Confidentiality — supervisory agency personnel — penalty for violation.** (1) Except as required hy judicial order or as otherwise provided by [section 13 and sections 29 through 46], an employee of a supervisory agency who conducts an examination, investigation, or audit of a depository or who receives a report or another type of information about a depository from another employee of a supervisory agency may not disclose the identity of a customer to another person who is not officially associated with an examination, investigation, or audit of a depository.

(2) A person who knowingly violates subsection (1) must be removed from office and is guilty of a felony. Upon conviction, the person shall be punished by a fine of $10,000, by imprisonment in the state prison for not more than 10 years, or hy both fine and imprisonment.

**Scction 43. Civil liability for wrongful disclosure of financial record — damages and injunctive relief.** (1) A state or local agency that requests or receives a financial record in violation of [sections 29 through 46] is liable to the customer to whom the record relates in the amount of damages provided in subsection (4).

(2) A person who is not employed by a supervisory, state, or local agency or by a foreign capital depository and who requests or receives a financial record in violation of [sections 29 through 46] is liable to the customer to whom the record relates in the amount of damages provided in subsection (4).

(3) A director, executive officer, controlling person, or employee of a foreign capital depository who discloses or authorizes another to disclose a financial record in violation of [sections 29 through 46] is liable to the customer to whom the record relates in an amount of damages provided in subsection (4).

(4) Damages are equal to the sum of the following:

(a) $10,000, without regard to the type or number of records involved;

(b) actual damages sustained hy the customer; and

(c) costs incurred in the action to successfully enforce liability under this section, together with reasonable attorney fees.

(5) A foreign capital depository may exercise remedies provided in this section on behalf of a customer and in connection with the exercise of those remedies may act as the real party in interest. Damages recovered hy the depository must be deposited in an account of the customer, hut a depository may retain amounts recovered for its costs and reasonable attorney fees.

(6) The remedies provided in this section are not exclusive.

HeinOnline -- 1997 vol. II 1797 1997

(7) In addition to any other remedy allowed by law, a customer may bring an action for injunctive relief under Title 27, chapter 19, to enforce the provisions of [sections 29 through 46].

**Section 44. Unlawful disclosure of financial record — criminal penalties.** (1) A director, executive officer, controlling person, or employee of a foreign capital depository who discloses a financial record in violation of [sections 29 through 46] is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $5,000, by imprisonment in the state prison for not more than 1 year, or by both fine and imprisonment. This subsection imposes absolute liability.

(2) A director, executive officer, controlling person, or employee of a foreign capital depository or an officer, employee, or agent of a state or local agency who knowingly discloses a financial record in violation of [sections 29 through 46] is guilty of a felony and upon conviction shall be punished by a fine of $10,000, by imprisonment in the state prison for not more than 10 years, or by both fine and imprisonment.

**Section 45. Customer waiver invalid.** A waiver by a customer of a right that is not authorized to be waived by [sections 29 through 46] is not valid whether granted with or without consideration.

**Section 46. Limitation of actions.** An action to enforce a provision of [sections 29 through 46] must be commenced within 3 years after the date on which the violation occurred.

**Section 47. Asset protection — purpose and perspective.** (1) The legislature understands that asset protection includes the ability to minimize or avoid both the potential financial impact and loss of privacy resulting from lawsuits. The legislature also recognizes that asset protection is a vital component of a foreign capital depository, as defined in [section 3], that is designed to serve the interests of high net worth individuals who are not U.S. citizens and do not reside in the United States.

(2) The legislature further acknowledges that foreigu judgments rendered in a foreign state are, unlike judgments rendered in other states of the union under the United States constitution, not entitled by Montana courts to conclusive full faith and credit under common law and that the principle of comity that encourages one country to extend legal recognition to the judicial acts of another country does not apply to the relations between Montana and a foreign country.

(3) The Uniform Foreign Money-Judgments Recognition Act, Title 25, chapter 9, part 6, signifies a departure from comity because it codifies the principles of comity but with certain exceptions and modifications. [Sections 47 through 55] enact a further departure from comity that is intended to uphold the state's interest in extending to a customer of a foreign capital depository the maximum amount of privacy possible within prudential limits as well as state and federal law.

(4) [Sections 47 through 55] are not intended to circumscribe or conflict with the provisions of Title 25, chapter 9, part 5 or 6, except in a case in which a foreign judgment has been obtained against the customer of a foreign capital depository.

HeinOnline -- 1997 vol. II 1798 1997

**Seetion 48. Definitions.** Unless the context requires otherwise, in [sections 47 through 55], the fellowing definitions apply:

(1) "Comity" means the recognition of judicial acts that one country extends to another as a matter of custom, convenience, and expediency.

(2) "Foreign judgment" has the same meaning as defined in 25-9-602.

(3) "Foreign state" has the same meaning as defined in 25-9-602.

**Seetion 49. Defense against enforcement of foreign judgments — depository obligations.** A foreign capital depository shall, unless relieved of the responsibility by a waiver signed by a depository customer, provide a customer with competent legal counsel and defense against:

(1) the recognition in Montana of a foreign judgment rendered in a foreign state as provided in 25-9-605; and

(2) the execution of a foreign judgment in Montana pursuant to Title 25, chapter 13, or Title 25, chapter 14, but only to the extent that the execution would affect the customer's assets in the depository.

**Section 50. Filing fec.** A person seeking recognition of a foreign judgment rendered in a foreign state against a customer of the foreign capital depository shall pay a filing fee of $2,500 to the clerk of the court in which the judgment is filed.

**Section 51. Policy statement.** For the purposes of [sections 47 through 55], the legislature declares that the recognition of a foreign judgment pursuant to Title 25, chapter 9, part 6, and the execution of a foreign judgment against a customer of a foreign capital depository is repugnant to the public policy of the state if either would:

(1) facilitate the arbitrary or unlawful interference with an individual's privacy in contravention of international law;

(2) undermine the individual right of privacy and the right to private property provided for in the Montana constitution and state law;

(3) stimulate or engender lawsuits motivated by greed or pecuniary speculation and lacking a good faith argument or other legally sound purpose; or

(4) facilitate civil prosecution arising from class or ethnic hatred and nurtured by a corrupt legal system; and

(5) threaten the financial stability of the depository or the state by discouraging foreign depositors and investors from becoming customers or by encouraging customers to withdraw their capital from the depository.

**Section 52. Burden of preof — financial liabilities.** (1) A person seeking recognition of a foreign judgment pursuant to part 6 bears the burden of proving that:

(a) the judgment was rendered under a system that provides impartial tribunals or procedures that are compatible with the requirements of due process of law;

HeinOnline -- 1997 vol. II 1799 1997

(b) the foreign court had personal jurisdiction over the customer when the judgment was rendered; and

(c) the foreign court had jurisdiction over the subject matter.

(2) The customer or the foreign capital depository acting on behalf of a customer bears the burden of proving that any one of the grounds for nonrecognition provided for in 25-9-605(2) exist.

(3) If the court finds that the person seeking recognition of the foreign judgment has failed to prove the judgment valid in accordance with subsection (1) or if the customer or the depository succeeds pursuant to subsection (2), the court may not recognize the foreign judgment.

(4) If the person seeking recognition of a judgment under part 6 is unsuccessful in obtaining recognition of the judgment, that person shall pay the court costs and attorney fees for the parties opposing recognition or, if the customer has waived the depository's obligation provided for in [section 49], for the customer.

**Section 53. Damages — in camera hearing.** (1) The court in which recognition of a foreign judgment is sought may award damages against the person seeking recognition of a foreign judgment to compensate a customer for the customer's loss of privacy.

(2) The amount of the damages awarded pursuant to subsection (1) must bear a reasonable relationship to the person's ability to pay and may not exceed $1 million.

(3) Any part of a hearing necessary to determine the rights and obligations of the parties pursuant to [sections 47 through 55] and part 6 may be held in camera to protect the privacy of any of the parties.

**Section 54. Contingency fee arrangements prohibited.** A person seeking recognition of a foreign judgment against a customer of a foreign capital depository may not engage legal counsel on a contingency fee basis for the purpose of attaining recognition of the same foreign judgment.

**Section 55. Nonrecognition — proceedures to protect privacy.** (1) The court shall, at the request of a customer or a foreign capital depository, provide for an in camera review of the pertinent documents to protect the confidential nature of financial records.

(2) The court may permit public disclosure of a financial record or proceedings closed pursuant to subsection (1) only if it finds that disclosure is necessary for the fair resolution of an issue before it.

(3) Documents produced in court containing a financial record must be sealed by the court at the conclusion of the proceedings to prevent access to the record and may be opened only for good cause shown.

**Section 56. State revenue from depository — purpose and preference.** (1) The legislature recognizes that revenue gains to the state and the possibility of subsequent tax reduction for Montana taxpayers are among the most significant reasons for establishing a statutory framework for the foreign capital depository, as defined in [section 3], and that a relatively steady,

predictable flow of revenue is preferable to a volatile one. The legislature also acknowledges that the depository is subject to competitive pressures in the international financial services market. It is therefore in the state's interest to balance revenue expectations with incentives that will enhance the commercial attractiveness and viability of a depository.

(2) The legislature recognizes the hazards of fortune that may be suffered by customers of a depository who are citizens or residents of countries with unstable or repressive governments and recognizes that capital in a depository may be abandoned as a consequence of a customer's disappearance or untimely death. It is in the state's interest to provide a decent interval of time before determining that capital is abandoned and, in keeping with subsection (1), to allow a depository to charge a reasonable fee for the maintenance of the abandoned capital prior to its escheatment to the state.

**Section 57. Tax status — exemption guarantees.** (1) A foreign capital depository is exempt from the corporation license tax as provided in 15-31-102 until October 1, 2012.

(2) A transaction between the depository and a customer that involves tangible personal property, as defined in [section 3], is exempt from all forms of tax.

**Section 58. State revenue — assessment — collection — distribution.** (1) A foreign capital depository shall pay to the department on June 15 and December 15 of each year a fee that is equal to 0.75% of the total value of assets on deposit or in a safe deposit box. The total annual rate of assessment is 1.5%.

(2) The basis of the value ascribed to each asset is:

(a) the U.S. dollar exchange value of the currency on deposit on the date of assessment;

(b) the spot market price of the platinum, palladium, gold, or silver held in precious metals accounts, as defined in [section 26], as published in The Wall Street Journal on the date of assessment; or

(c) the market value of other tangible personal property held in safe deposit boxes or other accounts at the time of the assessment, as determined by the depository using a method approved by the department. The depository shall submit to the department within 60 days of the appraisal a report that documents the method and calculations of the appraisal.

(3) The semiannual assessment fee must be deposited into the general fund.

**Section 59. Revenue audits — charges.** (1) The department shall conduct an annual audit of a foreign capital depository to verify that internal financial records of the depository comply with state law and regulations pertaining to the depository and that fees owed to the state have been properly calculated and paid on time.

(2) A depository shall pay to the department the cost of an annual audit provided for in subsection (1).

HeinOnline -- 1997 vol. II 1801 1997

(3) The department may charge the depository up to $400 a day for each auditor involved in the conduct of an audit.

**Section 60. Deficiency assessment — notice — penalty and interest.** (1) If the department determines through an audit of a foreign capital depository that the amount collected pursuant to [section 59] is less than the amount owed hy the depository, the department shall send by certified mail to the depository a notice of the deficiency and require payment of the amount owed plus a 10% penalty within 60 days of the depository's receipt of the notice.

(2) The depository must bear the interest charge on any deficiency assessment issued by the department in accordance with subsection (1). The rate of interest charged to the depository may not exceed 12% a year.

**Section 61. Right of appeal.** A foreign capital depository that receives a notice of deficiency assessment may appeal the amount of the fee, penalty, or interest charged in accordance with 15-2-201.

**Section 62. Limitation on penalty and interest.** An amount of penalty or interest owed hy the depository pursuant to [section 60] may not be assessed or collected with respect to the year for which a semiannual fee is assessed unless the notice of tbe additional amount owed is mailed within 5 years from the date the fee was paid.

**Section 63. Action by attorney general.** An action may be brought by tbe attorney general in the name of the state at the request of the department to recover the amount of any fees, penalties, and interest due under [sections 58 through 61].

**Section 64. Abandoned capital — disposition — escbeatment.** (1) A foreign capital depository, as defined in [section 3], shall presume that capital on deposit in a depository account is abandoned in accordance with the provisions of 70-9-201.

(2) A depository shall dispose of the abandoned capital in the manner provided for in this chapter, except that:

(a) a notice of the property presumed abandoned may not be published as prescribed in 70-9-302;

(b) the record of deposit required under 70-9-309 may not be made available for public inspection; and

(c) all money received by the department of revenue as a consequeuce of the abandonment of capital in a depository must be deposited in the general fund.

(3) A foreign capital depository may deduct from property that is presumed to be abandoned a charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the depository and the owner under which the depository may impose the charge and if tbe depository regularly imposes the charge, which is not regularly reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not unconscionable.

HeinOnline -- 1997 vol. II 1802 1997

**Section 65. Injunctions.** The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) enjoin a violation of [sections 1 through 46], a rule adopted pursuant to [sections 1 through 46], the terms or conditions of a charter, or an order of the department or the board; or

(2) require compliance with [sections 1 through 46], a rule adopted pursuant to [sections 1 through 46], the terms or conditions of a charter, or an order of the department or the board.

**Section 66. Civil penalties.** (1) Except for the penalties for wrongful disclosure provided for in [section 43], a person who violates a provision of [sections 1 through 46], a rule adopted under [sections 1 through 46], the terms and conditions of a charter or an order of the department or the board is subject to a civil penalty not to exceed $10,000 for each day of violation. Each day of violation of [sections 1 through 46], a rule adopted under [sections 1 through 46], the terms or conditions of a charter, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upen request of the department, the atterney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of [sections 1 through 46], rules adopted under [sections 1 through 46], orders of the department or the board, or terms or conditions of a charter by injunction or other appropriate remedy; or

(b) action under [section 67].

**Section 67. Criminal penalties.** (1) Except for the penalties for wrongful disclosure provided for in [section 44], a person who knowingly operates a foreign capital depository without a charter, in violation of the terms or conditions of a charter, or in violation of [sections 1 through 46], a rule adopted pursuant to [sections 1 through 46], or an order of the departinent or board or a person who knowingly makes any false statements or representations in an application, report, or other document filed or maintained as required by [sections 1 through 46] or required hy rules adopted under [sections 1 tlirough 46] is suhject te a fme not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of a violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of [sections 1 through 46], rules adopted under [sections 1 through 46], orders of the department or the board, or terms or conditions of a charter by injunction or other appropriate remedy.

HeinOnline -- 1997 vol. II 1803 1997

**Section 68.** Section 15-1-501, MCA, is amended to read:

**"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (6) all money received from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) liquor license taxes under Title 16;

(d) telephone company license taxes under chapter 53; ~~and~~

(e) inheritance and estate taxes under Title 72, chapter 16; *and*

*(f) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in [section 58].*

(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 91.3% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 89.5% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(4) The department of revenue shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the general fund.

(6) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

HeinOnline -- 1997 vol. II 1804 1997

(7) All refunds of taxes must he attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

**Section 69.** Section 15-31-101, MCA, is amended to read:

**"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state ~~such~~ *the* percentage or percentages of its total net income for the preceding taxable year at the rate ~~hereinafter~~ set forth *in this chapter*. In the case of corporations having income from business activity which is taxable both within and ~~without~~ *outside of* this state, the license fee ~~shall~~ *must* be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation~~; however~~. *However*, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. *A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1, 2012.* For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

**Section 70.** Section 15-31-102, MCA, is amended to read:

**"15-31-102. Organizations exempt from tax — unrelated business income not exempt.** (1) Except as provided in subsection (3), there ~~shall~~ *may* not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of ~~such~~ *the* society, order, or association or their dependents;

HeinOnline -- 1997 vol. II 1805 1997

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) business league, chamber of commerce, or board of trade not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;

(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(b) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or ~~like~~ *similar* organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;

(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;

(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income ~~therefrom~~ *from property*, and turning over the entire amount ~~thereof~~ *of income*, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep;

(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes such an election under federal law, each person who at any time is a shareholder of ~~such~~ *the* corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.

(m) farmers' market association not organized for profit and no part of the net income of which inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

HeinOnline -- 1997 vol. II 1806 1997

*(n) foreign capital depository chartered under the provisions of [sections 4, 8, and 9].*

(2) In determining the license fee to be paid under this part, there ~~shall~~ *may* not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than $100 ~~shall~~ *must* be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section must file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

**Section 71.** Section 25-9-506, MCA, is amended to read:

"**25-9-506. Fees.** *(1) Except as provided for in subsection (2),* ~~Any~~ *a* person filing a foreign judgment shall pay to the clerk of court a fee of $60.

*(2) A person filing a judgment against a customer of a foreign capital depository, as defined in [section 3], shall pay to the clerk of court a fee of $2,500.*

*(3)* Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court."

**Section 72.** Section 25-9-603, MCA, is amended to read:

"**25-9-603. Applicability.** This part applies to any foreign judgment, *other than a judgment obtained against a customer of a foreign capital depository, as defined in [section 3],* that is final and conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is subject to appeal."

**Section 73.** Section 25-9-609, MCA, is amended to read:

"**25-9-609. Uniformity of interpretation.** ~~This~~ *Except for the provisions in [sections 47 through 55] pertaining to a customer of a foreign capital depository, as defined in [section 3], this* part must be construed to effectuate the general purpose to make uniform the law of those states that enact it."

**Section 74.** Section 32-1-101, MCA, is amended to read:

"**32-1-101. Short title — application — purpose.** (1) Parts 1 through 5 of this chapter ~~shall~~ *may* be known as the "Bank Act".

(2) The ~~bank act~~ *Bank Act* is applicable to:

(a) all corporations and persons specified in 32-1-102;

(b) corporations that subject themselves to the ~~bank act~~ *Bank Act*; ~~and~~

(c) persons, partnerships, or corporations who by violating the ~~bank act~~ *Bank Act* become subject to the penalties provided in the ~~bank act~~ *Bank Act; and*

*(d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign Capital Depository Act, [sections 1 through 46 and 65 through*

*67], specifically require foreign capital depositories to be subject to provisions of the Bank Act.*

(3) (a) The purpose of the ~~bank act~~ *Bank Act* is to provide Montana with a sound system of state-chartered banks by providing for and encouraging the development of state-chartered banks while restricting their activities to the extent necessary to protect the interests of depositors. The purpose includes:

(i) the sound conduct of the business of banks;

(ii) the conservation of bank assets;

(iii) the maintenance of adequate reserves against deposits;

(iv) the opportunity for banks to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;

(v) the opportunity for banks to serve the citizens of this state;

(vi) the opportunity for banks to participate in and promote the economic progress of Montana and the United States;

(vii) the opportunity for the management of banks to exercise business judgment in conducting the affairs of their institutions; and

(viii) modernization and simplification of the law governing banking by providing that banks have all the rights and powers granted corporations, except as otherwise provided in this chapter.

(b) The ~~bank act~~ *Bank Act* does not restrict the activities of banks for the purpose of protecting any person from competition from banks and does not confer any right or cause of action upon any competitor.

(c) The purpose contained in this subsection (3) constitutes the standards to be observed by the commissioner of banking and financial institutions in the exercise of authority under the ~~bank act~~ *Bank Act* and provides guidelines in the construction and application of the ~~bank act~~ *Bank Act.*"

**Section 75.** Section 32-1-102, MCA, is amended to read:

"**32-1-102. Institutions to which chapter is applicable.** (1) The word "bank" as used in this chapter means any corporation, *other than a foreign capital depository, as defined in [section 3],* ~~which~~ *that* has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, *except for the operations of a foreign capital depository,* whether ~~such~~ *the* deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt~~, provided that nothing herein applies~~. *This section does not apply* to or ~~includes~~ *include* money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of ~~his~~ *the agent's* principal.

HeinOnline -- 1997 vol. II 1808 1997

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for ~~such~~ *that* purpose.

(4) Banks are divided into the following classes:

(a) commercial banks;

(b) savings banks;

(c) trust companies;

(d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

*(6) Except for the provisions listed in [section 6], this chapter does not apply to foreign capital depositories."*

**Section 76.** Section 32-1-202, MCA, is amended to read:

**"32-1-202. Powers and duties of board.** The board shall:

(1) make final determinations upon applications for certificates of authorization for *foreign capital depositories,* new banks, branch banks, sales of branch banks, mergers, consolidations, and relocations of banks and branch banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the department as the duties and powers relate to banking *and to the regulation of foreign capital depositories."*

**Section 77.** Section 32-1-301, MCA, is amended to read:

**"32-1-301. Organization and incorporation — articles of incorporation.** (1) A person desiring to organize a banking corporation *or a foreign capital depository* shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth:

(a) the information required by 35-1-216(1);

(b) the name of the city or town and county in which the principal office of the corporation *or foreign capital depository* is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation *or foreign capital depository* is formed, which may be set forth by the use of the general terms

HeinOnline -- 1997 vol. II 1809 1997

defined in this chapter, with reference to each line of business in which the proposed corporation *or foreign capital depository* desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in 35-1-216(2).

(3) A banking corporation *or foreign capital depository* may not adopt or use the name of any other banking corporation or association *or foreign capital depository*, and the corporation name must comply with 35-1-308(2) through (4).

(4) A banking corporation *or a foreign capital depository* may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation *or foreign capital depository* to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation *or a foreign capital depository* may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

**Section 78.** Section 32-1-446, MCA, is amended to read:

"**32-1-446. Safe deposit department.** A bank *or a foreign capital depository* may conduct a safe deposit department. The liability of any bank *or foreign capital depository* for the safekeeping and protection of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to the renter of a box at the time of the rental~~, but in any event~~. *However,* the obligation of the bank *or foreign capital depository* is limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damaga by fire, theft, or other causes."

**Section 79.** Section 32-1-461, MCA, is amended to read:

"**32-1-461. Bonding of employees.** (1) The board of directors of ~~every~~ *a* bank *or foreign capital depository* shall require ~~that~~ *bonding for* all officers and employees of ~~banks~~ *the bank or foreign capital depository* whose duty includes the handling of ~~moneys~~ *money*, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers ~~be bonded~~.

(2) The board of directors shall by order entered upon the minute books of the board designate the officers and employees to be bonded and the amount of bonds to be given. ~~Such action~~ *Action* as to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds ~~shall~~ *must* be in ~~such~~ *a* form ~~as is~~ provided or approved by the department.

HeinOnline -- 1997 vol. II 1810 1997

(3) The bonds ~~shall~~ *must* be approved by the president of the bank *or the chief executive officer of the foreign capital depository,* and ~~his~~ *the president's or executive officer's* action *must be* reported to the board of directors.

(4) All bonds required by this section ~~shall~~ *must* be kept in the custody of the bank *or foreign capital depository* subject to inspection by examiners from the department~~; provided,~~. *However,* as far as possible, they may not be placed in the custody of the officer or employee for whom the ~~same~~ *bond* is given."

**Section 80.** Section 32-1-462, MCA, is amended to read:

**"32-1-462. Persons previously convicted under banking laws — bank *or depository* employment.** It ~~shall be~~ *is* unlawful for ~~anyone having~~ *a person who has* been convicted of ~~the violations~~ *a violation* of the banking laws of any state or nation to accept employment in a bank *or a foreign capital depository* in this state without first stating ~~said~~ *the relevant* facts to the directors of ~~said~~ *the* bank *or foreign capital depository.* ~~No such person shall~~ *A person who has been convicted of a banking law violation may not* be employed in ~~any~~ *a* bank *or a foreign capital depository* without the approval of the department, granted in writing after a full consideration of the facts."

**Section 81.** Section 32-1-464, MCA, is amended to read:

**"32-1-464. Fraud by director, officer, *agent,* or employee.** A director, *executive* officer, agent, or employee of a bank *or a foreign capital depository* is guilty of a felony if that person:

(1) knowingly receives or ~~possesses himself of any of its property, otherwise than~~ *takes possession of any bank or foreign capital depository property, except* in payment for a just demand, and with intent to defraud:

(a) ~~omits~~ *fails* to make or to cause or direct to be made a full and true entry of ~~it~~ *the receipt or possession* in its books and account; or

(b) concurs in ~~omitting~~ *failing* to make any material entry ~~thereof~~ *in its books and account*;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement ~~which~~ *that* is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that ~~corporation~~ *bank or foreign capital depository* as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department."

**Section 82.** Section 32-1-468, MCA, is amended to read:

**"32-1-468. Removal of directors, officers, or employees.** ~~Any~~ *A* director, officer, or employee of ~~any~~ *a* bank *or foreign capital depository who is* found by the department, after examination, to be negligent, dishonest, reckless, or incompetent ~~shall~~ *must* be removed from office by the board of directors of ~~such~~ *the* bank *or depository* on the written order of the department~~, and if~~. *If* the directors neglect or refuse to remove ~~such~~ *the* director, officer, or employee~~, in event~~ *and* any losses accrue to ~~such~~ *the* bank ~~thereafter~~ by reason of the negligence, dishonesty, recklessness, or incompetency of ~~such~~ *the* director,

HeinOnline -- 1997 vol. II 1811 1997

officer, or employee, ~~such~~ *the* written order of the department ~~shall be deemed to be~~ *is* conclusive evidence of the negligence of the directors failing to act ~~upon the same~~ as ~~herein~~ provided *in this section* in any action brought against them~~, or any of them,~~ by a depositor or creditor for recovery of ~~such~~ losses."

**Section 83.** Section 32-1-473, MCA, is amended to read:

**"32-1-473. Theft of ~~bank~~ funds by *directors*, officers, or employees.** ~~Any banker, officer,~~ *A* director, *officer*, or employee of ~~any~~ *a* bank *or foreign capital depository* who fraudulently appropriates or abstracts or misapplies any of the ~~moneys~~ *money*, funds, credits, or property of the bank *or depository* when owned by it or held in trust~~,~~ or *who* issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent ~~in any case~~ to injure or defraud the bank *or depository* or any person or corporation or to deceive any officer of the bank *or depository,* ~~or~~ any other person, or anyone appointed to examine the affairs of the bank *or depository* or any *other* person who with like intent, aids or abets any *director,* officer, ~~clerk,~~ or employee in the violation of this section is guilty of theft and upon conviction ~~thereof~~ shall be imprisoned in the state prison for a period of not ~~exceeding~~ *to exceed* 20 years or be fined an amount not ~~exceeding~~ *to exceed* $50,000, or both."

**Section 84.** Section 32-1-491, MCA, is amended to read:

**"32-1-491. Destruction of ~~bank~~ records.** (1) Banks *and foreign capital depositories* are required to preserve or keep their records of customer accounts for at least 8 years ~~next~~ after January 1 of the year following the time ~~of~~ *that* the ~~making of such~~ records~~; provided, however, that~~ *are made. However,* records showing unpaid balances in favor of depositors of ~~any banks shall~~ *a bank or foreign capital depository may* not be destroyed. ~~No liability shall~~ *Liability may not* accrue against ~~any~~ *a* bank *or depository* destroying any ~~such~~ records (except records ~~the~~ *of which* destruction ~~of which~~ is forbidden ~~hereby~~ *by this section*) after the expiration of the time provided in this section.

(2) The department shall adopt rules providing for retention schedules for bank records other than those records listed in subsection (1)."

**Section 85.** Section 32-1-492, MCA, is amended to read:

**"32-1-492. Reproduction of bank records — admissibility in evidence.** (1) *Except as provided in subsection (5),* ~~Banks~~ *banks* are ~~hereby~~ authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, and to preserve, store, use, and employ the ~~same~~ *copies* in carrying on business.

(2) In ~~any~~ *an* action or ~~proceedings~~ *proceeding* in which ~~any~~ bank records may be called in question or be demanded of ~~any~~ *a* bank or any officer or employee ~~thereof~~ *of a bank*, a showing that ~~such~~ *the* records have been destroyed in the regular course of business ~~shall be~~ *is* a sufficient excuse for the failure to produce them.

(3) Upon ~~such~~ *sufficient* showing, secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions ~~thereof~~ *of the records* (and photographic enlargements and prints

of microfilm reproductions), when made in the regular course of business, ~~shall be~~ *is* admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter) made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda ~~which~~ *that* were in existence on July 1, 1951, ~~shall be~~ *are* admissible in evidence in proof of the form, text, and content of ~~any said~~ *the* originals ~~which may be~~ *that were* destroyed in the regular course of business after July 1, 1951.

*(5) The reproduction of records of a foreign capital depository is subject to the provisions of [sections 29 through 46].*"

**Section 86.** Section 32-1-501, MCA, is amended to read:

"**32-1-501. Dissolution and disincorporation.** Commercial banks, savings banks, trust companies, ~~and~~ investment companies, *and foreign capital depositories* may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank, ~~or~~ trust company, *or foreign capital depository* may, upon a vote of two-thirds of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank, ~~or~~ trust company, *or foreign capital depository that wishes* ~~desiring~~ to voluntarily liquidate shall apply to the department for permission to ~~so~~ liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary dissolution. The board of directors of a bank, *trust company, or foreign capital depository* whose stockholders have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank, *trust company, or foreign capital depository*. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank, *trust company, or foreign capital depository*. Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling."

**Section 87. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 88. Codification instruction.** (1) [Sections 1 through 46 and 65 through 67] are intended to be codified as an integral part of Title 32, and only those provisions of Title 32 identified in [sections 1 through 46 and 65 through 67] as applicable to [sections 1 through 46 and 65 through 67] apply to [sections 1 through 46 and 65 through 67].

(2) [Sections 47 through 55] are intended to be codified as an integral part of Title 25, chapter 9, and the provisions of Title 25, chapter 9, apply to [sections 47 through 55].

HeinOnline -- 1997 vol. II 1813 1997

(3) [Sections 56 through 63] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 56 through 63].

(4) [Section 64] is intended to be codified as an integral part of Title 70, chapter 9, and the provisions of Title 70, chapter 9, apply to [section 64].

**Section 89. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 1997.

(2) [Section 7] is effective on passage and approval.

**Section 90. Termination.** [Sections 57 and 58] terminate September 30, 2012.

Approved April 24, 1997

# CHAPTER NO. 383

[SB 151]

AN ACT ALLOWING THE DEDUCTION OF THE COST OF PREMIUMS FOR HEALTH CARE INSURANCE AND LONG-TERM CARE INSURANCE FOR A TAXPAYER, THE TAXPAYER'S DEPENDENTS, AND THE TAXPAYER'S PARENTS AND GRANDPARENTS; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-121, MCA, is amended to read:

**"15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

~~(c) one-half of premium payments for medical care as provided in subsection (9);~~

*(c) premium payments for medical care as provided in subsection (7)(a);*

*(d) long-term care insurance premiums paid;*

(2) federal income tax paid within the tax year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and ~~(9)~~ *(10)* and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f), as follows:

HeinOnline -- 1997 vol. II 1814 1997

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(iii) a spouse who is unable to provide self-care because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services that are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(d) the amounts deductible in subsections (3)(a) through (3)(c), subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent that the expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

HeinOnline -- 1997 vol. II 1815 1997

(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the tax year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(7) ~~one-half of~~ *the entire amount of* premium payments *for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer*, except premiums deducted in determining Montana adjusted gross income *or for which a credit was claimed under 15-30-128*, for:

(a) insurance *that provides payment* for medical care, *as defined by 26 U.S.C. 213(d)*, made directly by the taxpayer; and

(b) long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner; ~~and~~

*(8) all premium payments made directly by the taxpayer for the benefit of the taxpayer for tax years beginning after December 31, 1994, for long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner; and*

~~(8)~~*(9)* contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159.

~~(9) For the purpose of subsection (7)(a), deductible medical insurance premiums are those premiums that provide payment for medical care as defined by 26 U.S.C. 213(d).~~

~~(10)~~*(10)* (a) Subject to the conditions of subsection (3), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (3)(d)(ii).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection ~~(10)~~ *(10)*. (Subsection ~~(8)~~ *(9)* terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)"

**Section 2. Coordination instructions.** If both House Bill No. 107 and [this act] are passed and approved, then:

(1) House Bill No. 107 is void;

(2) section 1 in [this act] is to read as follows:

**"Section 1.** Section 15-30-121, MCA, is amended to read:

**"15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(c) ~~one-half of~~ premium payments for medical care as provided in subsection ~~(9)~~ *(7)(a)*;

*(d) long-term care insurance premium payments as provided in subsection (7)(b);*

(2) federal income tax paid within the tax year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) and (9) and subject to the limitations and rnles as set out in subsections (3)(d) through (3)(f), as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(iii) a spouse who is unable to provide self-care because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services that are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished hy an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(d) the amounts deductible in subsections (3)(a) through (3)(c), suhject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent that the expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the comhined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductihle only if:

(A) hoth spouses are gainfully employed, in which case the expenses are deductihle ouly to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in suhsection (3)(a)(iii);

(iii) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must he divided equally between the spouses when filing separately en the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the tax year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(7) ~~one-half of~~ *the entire amount of* premium payments *made by the taxpayer*, except premiums deducted in determining Montana adjusted gross income *or for which a credit was claimed under 15-30-128*, for:

(a) insurance for medical care, *as defined in 26 U.S.C. 213(d),* ~~made directly by the taxpayer~~ *for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer*; and

(b) ~~long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner~~ *long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:*

*(i) the benefit of the taxpayer for tax years beginning after December 31, 1994; or*

*(ii) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996*; and

(8) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159.

~~(9) For the purpose of subsection (7)(a), deductible medical insurance premiums are those premiums that provide payment for medical care as defined by 26 U.S.C. 213(d).~~

~~(10)~~*(9)* (a) Subject to the conditions of subsection (3), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (3)(d)(ii).

HeinOnline -- 1997 vol. II 1819 1997

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection ~~(10)~~ *(9)*. (Subsection (8) terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)""

(3) section 3 in [this act] is to read as follows:

"NEW SECTION. **Section 3. Effective date — retroactive applicability.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

(2) [Section 1(7)(b)(i)] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994."

**Section 3. Effective date — retroactive applicability.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

(2) Section 15-30-121(8) applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

Approved April 24, 1997

# CHAPTER NO. 384

[SB 280]

AN ACT PROVIDING FOR AN INCREASE IN THE BASE SALARY OF COURT REPORTERS; FUNDING THE INCREASE BY A FEE INCREASE; ALLOWING A JUDGE TO SOLICIT BIDS FOR THE WORK PERFORMED BY A COURT REPORTER; AND AMENDING SECTIONS 3-5-602 AND 25-1-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 3-5-602, MCA, is amended to read:

**"3-5-602. Salary and expenses — apportionment.** (1) Each reporter is entitled to receive a base annual salary of not less than ~~$23,000~~ *$28,000* or more than ~~$30,000~~ *$35,000* and no other compensation except as provided in 3-5-604, *unless the judge decides to solicit bids for the work performed by the reporter, in which case the salary must be for the amount specified in the bid accepted by the judge.* The salary must be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties ~~comprising~~ *composing* the district for which the reporter is appointed and out of an appropriation made to the supreme court administrator as provided in subsection (2).

(2) The supreme court administrator shall determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and

HeinOnline -- 1997 vol. II 1820 1997

the amount appropriated for that purpose. Each county shall pay its portion of the remainder of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district. The judge or judges of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in the district on the basis prescribed in this subsection. The portion of the salary payable by a county is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511.

(3) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when on official business to a county of the reporter's judicial district other than the county in which the reporter resides. The expenses must be apportioned and are payable in the same way as the salary."

**Section 2.** Section 25-1-202, MCA, is amended to read:

"**25-1-202. Fee for court reporter.** In addition to other filing fees, a fee of ~~$10~~ *$20* must be paid to the clerk of the district court at the time of filing a civil action in the district court. The fee must be paid by the clerk into the treasury of the county where the action is filed, to be applied to the payment of the salary of the reporter. The prevailing party may have the amount paid by ~~him~~ *the prevailing party* taxed in ~~his~~ *the* bill of costs as proper disbursements."

Approved April 24, 1997

# CHAPTER NO. 385

[SB 290]

AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ADMINISTRATION FUND; ELIMINATING ASSESSMENT FUNDING TO THE DEPARTMENT OF COMMERCE AND PROVIDING SUBSTITUTE FUNDING FOR THE BOILER INSPECTION PROGRAM; CLARIFYING THOSE FEES THAT ARE DEPOSITED TO THE ADMINISTRATION FUND; REVISING THE METHOD OF ASSESSMENT AND THE ASSESSMENT BASE; REVISING THE PAYMENT AND COLLECTION REQUIREMENTS; PROVIDING FOR FORMATION OF A WORKERS' COMPENSATION REGULATION ADVISORY COUNCIL; AMENDING SECTIONS 39-71-201 AND 50-74-219, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-201, MCA, is amended to read:

"**39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the ~~various~~ *statutory* occupational safety acts the department ~~and the boiler inspections the department of commerce~~ must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The ~~following money collected by the~~

HeinOnline -- 1997 vol. II 1821 1997

department ~~must be deposited~~ *shall collect and deposit* in the state treasury to the credit of the workers' compensation administrative fund ~~and must be used for the administrative expenses of the department and for the administrative expenses of the department of commerce for the purposes of 50-74-101~~:

(a) all fees and penalties provided in 39-71-205 ~~and~~, *39-71-223*, 39-71-304, *39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337*; *and*

(b) ~~all fees paid for inspection of boilers as required by law;~~

~~(c)~~ all fees paid ~~from~~ *by* an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than ~~$200~~ *$500*. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon *a* claim ~~therefor~~."

**Section 2.** Section 39-71-201, MCA, is amended to read:

"**39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the ~~various~~ *statutory* occupational safety acts the department ~~and the boiler inspections the department of commerce~~ must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The ~~following money collected by the~~ department ~~must be deposited~~ *shall collect and deposit* in the state treasury to the credit of the workers' compensation administrative fund ~~and must be used for the administrative expenses of the department and for the administrative expenses of the department of commerce for the purposes of 50-74-101~~:

HeinOnline -- 1997 vol. II 1822 1997

(a) all fees and penalties provided in 39-71-205 ~~and~~, *39-71-223*, 39-71-304, *39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337*; *and*

~~(b) all fees paid for inspection of boilers as required by law;~~

~~(c)~~*(b)* all fees paid ~~from~~ *by* an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments ~~must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an~~ *must be 2.6% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:*

*(i) total compensation benefits paid; and*

*(ii) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.*

*(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 31 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).*

*(3) An* assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than ~~$200~~ *$500*. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to *an initial* assessment *equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.*

*(4) Payment of the assessment required by this section must be submitted by the employer under plan No. 1, plan No. 2, or plan No. 3 in:*

*(a) one installment made on or before July 1; or*

*(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.* ~~The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.~~

~~(2)~~*(5)* The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter,

including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without tbe state.

~~(3)~~*(6)* Disbursements from the administration money must be made after being approved by the department upon claim ~~therefor~~ *for disbursement.*"

**Section 3.** Section 50-74-219, MCA, is amended to read:

"**50-74-219. Fee for inspection.** *(1)* Whenever a department inspector inspects a boiler, a fee must be charged and collected by the department prior to issuance of an inspection certificate in accordance with the following schedule:

~~(1)~~*(a)* operating certificate, ~~$20~~ *$26*;

~~(2)~~*(b)* internal inspection, ~~$40~~ *$75*;

~~(3)~~*(c)* external inspection:

~~(a)~~*(i)* hot water heating and supply, ~~$15~~ *$30*;

~~(b)~~*(ii)* steam heating, ~~$20~~ *$40*; and

~~(c)~~*(iii)* power boiler, ~~$30~~ *$55*; and

~~(4)~~*(d)* special inspection, $50 per hour plus expenses.

*(2) Fees collected under this section must be deposited in a department state special revenue account for administration of the boiler inspection program.*"

**Section 4. Workers' compensation regulation advisory council.** (1) There is created a workers' compensation regulation advisory council pursuant to 2-15-122 to review the state's workers' compensation regulatory system and make recommendations to the governor regarding:

(a) appropriate regulatory goals;

(b) necessary regulatory activities to meet identified goals; and

(c) appropriate and equitable funding levels and funding mechanisms to meet identified goals.

(2) The council must comprise a broad spectrum of parties who have a direct interest in workers' compensation issues and must include but is not limited to representatives of:

(a) workers' compensation insurers;

(b) insured and self-insured employers;

(c) organized labor;

(d) the Montana chamber of commerce;

(e) the Montana hospital association;

(f) the Montana medical association;

HeinOnline -- 1997 vol. II 1824 1997

(g) the department of labor and industry;

(h) the Montana senate;

(i) the Montana house of representatives;

(j) the public.

(3) The council shall seek broad input for tbeir review, including but not limited to information regarding Montana's current regulations, national benchmarks, and other state regulatory schemes.

**Section 5. Required report.** For purposes of fees assessed on or after July 1, 1999, each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, shall file on March 31, 1999, in the form and containing the information required by the department of labor and industry a report of paid losses.

**Section 6. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 4].

**Section 7. Effective datcs — applicability.** (1) [Sections 1, 4 through 6, and 8 and this section] are effective on passage and approval.

(2) [Section 1] applies to fees assessed on insurers on or before June 30, 1999.

(3) [Section 2] is effective July 1, 1999, and applies to fees assessed on insurers on or after July 1, 1999.

(4) [Section 3] is effective July 1, 1997.

**Section 8. Termination.** [Sections 1 and 5] terminate June 30, 1999.

Approved April 24, 1997

# CHAPTER NO. 386

[SB 304]

AN ACT MODIFYING THE STOCK OWNERSHIP AND OTHER REQUIREMENTS NECESSARY FOR BEING EXEMPT FROM THE WORKERS' COMPENSATION ACT FOR AN OFFICER OR MANAGER OF A QUASI-PUBLIC OR PRIVATE CORPORATION, MANAGER-MANAGED LIMITED LIABILITY COMPANY, OR DITCH COMPANY; AND AMENDING SECTION 39-71-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose

HeinOnline -- 1997 vol. II 1825 1997

employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or ~~salesman~~ *salesperson* performing under a license issued by the board of realty regulation;

(f) employment of a direct seller as defined in 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of dolivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled

tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey performing under a license issued by the board of horseracing from the time *that* the jockey reports to the scale room prior to a race through the time *that* the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a potroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or managor is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager *either:*

*(A)* owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

*(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(q)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or*

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who ~~owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company~~ *meets the requirements of subsection (2)(q)(iii)(A) or (2)(q)(iii)(B);*

*(r) a person who is an officer or a manager of a ditch company as defined in 27-1-731.*

HeinOnline -- 1997 vol. II 1827 1997

(3) (a) A sole proprietor, a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is no fee for the initial application. Any subsequent application must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

HeinOnline -- 1997 vol. II 1828 1997

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Approved April 24, 1997

# CHAPTER NO. 387

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1997; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO FISCAL YEAR 1998; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Time limits.** The appropriations contained in [section 3] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it is appropriated upon conclusion of the final fiscal year for which its expenditures is authorized by [section 3].

**Section 2. Totals not appropriations.** The totals shown in [section 3] are for informational purposes only and are not appropriations.

**Section 3. Appropriations.** The following money is appropriated, subject to the terms and conditions of [sections 1 through 3]:

HeinOnline -- 1997 vol. II 1829 1997

| Agency and Program | FY | Amount | Fund |
|---|---|---|---|

DEPARTMENT OF LABOR AND INDUSTRY

Unemployment Insurance Division

All remaining fiscal year 1997 federal budget amendment authority for the UI phone claims grant is authorized to continue into fiscal year 1998.

| | | | |
|---|---|---|---|
| Job Service Division | | | |
| Trade Adjustment Act | 1997 | $1,265,000 | Federal Special |

All remaining fiscal year 1997 federal budget amendment authority for the Trade Adjustment Act is authorized to continue into fiscal year 1998.

DEPARTMENT OF TRANSPORTATION

Construction

All remaining fiscal year 1997 federal budget amendment authority for emergency relief is authorized to continue into fiscal year 1998.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS

Fisheries

All remaining fiscal year 1997 federal budget amendment authority for the Libby/Hungry Horse drawdown mitigation, pallid sturgeon, and Jocko hatchery are authorized to continue into fiscal year 1998.

| | | | |
|---|---|---|---|
| Field Services | | | |
| Game Damage Costs | 1997 | 275,000 | State Special |
| Wildlife Division | | | |
| Predator Control | 1997 | 58,342 | State Special |

All remaining fiscal year 1997 state special budget amendment authority for predator control is authorized to continue into fiscal year 1998.

STATE LIBRARY COMMISSION

Natural Resource Information System

All remaining fiscal year 1997 federal budget amendment authority for the Lewis & Clark conservation district water project and national geospatial data clearinghouse is authorized to continue into fiscal year 1998.

HeinOnline -- 1997 vol. II 1830 1997

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

Health Policy and Services

All remaining fiscal year 1997 federal budget amendment authority for the PKU disease contract and nutrition evaluation is authorized to continue into fiscal year 1998.

Disability Services

All remaining fiscal year 1997 federal budget amendment authority for the disability determination services is authorized to continue into fiscal year 1998.

MONTANA HISTORICAL SOCIETY

Library Program

All remaining fiscal year 1997 federal budget amendment authority for the national historic publications and records commission is authorized to continue into fiscal year 1998.

Museum Program

All remaining fiscal year 1997 federal budget amendment authority for the institute of museum services is authorized to continue into fiscal year 1998.

OFFICE OF PUBLIC INSTRUCTION

Distribution to Schools

All remaining fiscal year 1997 federal budget amendment authority for Title 1 migrant distribution and technology literacy distribution is authorized to continue into fiscal year 1998.

OPI Administration

All remaining fiscal year 1997 federal budget amendment authority for Title 1 migrant, Montana systems for transition services, technology literacy challenge, team nutrition training, and the bilingual education program is authorized to continue into fiscal year 1998.

DEPARTMENT OF LIVESTOCK

| | | | |
|---|---|---|---|
| Disease Control | | | |
| Disease Control -Bison | 1997 | 185,000 | State Special |

DEPARTMENT OF ADMINISTRATION

| | | | |
|---|---|---|---|
| Accounting and Management Support Division | | | |
| Taylor Grazing Fees | 1997 | 243,993 | Federal Special |

HeinOnline -- 1997 vol. II 1831 1997

DEPARTMENT OF ENVIRONMENTAL QUALITY

| | | | |
|---|---|---|---|
| Remediation Division | | | |
| Abandoned Mines Cleanup | 1997 | 2,675,000 | Federal Special |
| Planning Prevention and Assistance | | | |
| EPA/Drinking Water | 1997 | 85,000 | Federal Special |
| EPA/Zortman/Landusky | | | |
| Water Quality | 1997 | 90,000 | Federal Special |

All remaining fiscal year 1997 federal special budget amendment authority for the Zortman/Landusky mine water quality violation is authorized to continue into fiscal year 1998.

DEPARTMENT OF MILITARY AFFAIRS

| | | | |
|---|---|---|---|
| Army National Guard Division | | | |
| Army Community of Excellence | 1997 | 70,000 | Federal Special |
| Environmental Increase | 1997 | 230,000 | Federal Special |
| Quality of Life | 1997 | 570,000 | Federal Special |

All remaining fiscal year 1997 federal special budget amendment authority for the quality of life and army community of excellence is authorized to continue into fiscal year 1998.

| | | | |
|---|---|---|---|
| Disaster and Emergency Services | | | |
| FEMA Payments | 1997 | 15,200 | State Special |

DEPARTMENT OF CORRECTIONS

| | | | |
|---|---|---|---|
| Community Corrections | | | |
| Federal IV-E | 1997 | 350,000 | Federal Special |

PUBLIC SERVICE REGULATION

| | | | |
|---|---|---|---|
| Public Service Commission | | | |
| One-Call Damage Prevention | 1997 | 7,500 | Federal Special |

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 1997

# CHAPTER NO. 388

[SB 28]

AN ACT REQUIRING THAT AT LEAST ONE MEMBER OF THE TEACHERS' RETIREMENT BOARD BE ACTIVELY EMPLOYED AS A PUBLIC SCHOOL CLASSROOM TEACHER; REMOVING THE SUPERINTENDENT OF PUBLIC INSTRUCTION; DEFINING "CLASSROOM TEACHER";

HeinOnline -- 1997 vol. II 1832 1997

AMENDING SECTIONS 2-15-1010 AND 20-3-106, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-1010, MCA, is amended to read:

**"2-15-1010. Teachers' retirement board — terms — allocation — *definition.*** (1) There is a teachers' retirement board.

(2) The board consists of six members appointed by the governor, as follows:

(a) ~~the superintendent of public instruction;~~

~~(b) two~~ *three* persons appointed from the teaching profession who, *when appointed,* are *active* members of the retirement system~~;~~. *At least one of the three appointees must be actively employed as a public school classroom teacher and shall hold a class 1, 2, or 4 certificate pursuant to 20-4-106.*

~~(c)~~*(b)* two persons appointed as representatives of the public;

~~(d)~~*(c)* one member who ~~shall~~ *must* be a retired teacher who was a member of the retirement system at the time of retirement.

(3) Each appointed member of the board shall serve a term of 4 years. Each appointed member shall take and subscribe to the oath prescribed by ~~section 3 of~~ Article III, *section 3,* of the *Montana* constitution ~~of the state~~. The oath ~~shall~~ *must* be filed in the office of the secretary of state.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

*(5) As used in this section, "classroom teacher" means a staff member assigned professional activities of instructing pupils in self-contained classes or courses or in classroom situations."*

**Section 2.** Section 20-3-106, MCA, is amended to read:

**"20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) ~~serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;~~

HeinOnline -- 1997 vol. II 1833 1997

~~(5)~~ approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

~~(6)~~*(5)* approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

~~(7)~~*(6)* approve or disapprove school isolation within the limitations prescribed by 20-9-302;

~~(8)~~*(7)* generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

~~(9)~~*(8)* establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

~~(10)~~*(9)* approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

~~(11)~~*(10)* generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

~~(12)~~*(11)* prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

~~(13)~~*(12)* approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

~~(14)~~*(13)* distribute BASE aid and special education allowable cost payments in support of the BASE funding program, in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

~~(15)~~*(14)* provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

~~(16)~~*(15)* approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

~~(17)~~*(16)* request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

~~(18)~~*(17)* authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

~~(19)~~*(18)* prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

~~(20)~~*(19)* approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

HeinOnline -- 1997 vol. II 1834 1997

~~(21)~~*(20)* recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

~~(22)~~*(21)* collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

~~(22)~~*(22)* establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

~~(24)~~*(23)* license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

~~(25)~~*(24)* as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

~~(26)~~*(25)* supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

~~(27)~~*(26)* administer the traffic education program in accordance with the provisions of 20-7-502;

~~(25)~~*(27)* administer the school foed services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

~~(26)~~*(28)* review school building plans and specifications in accordance with the provisions of 20-6-622;

~~(30)~~*(29)* prescribe the method of identification and siguals to be used hy school safety patrols in accordance with the provisions of 20-1-408;

~~(31)~~*(30)* provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

~~(30)~~*(31)* administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

~~(33)~~*(32)* perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

**Section 3. Effective date.** [This act] is effective July 1, 1997.

Approved April 25, 1997

HeinOnline -- 1997 vol. II 1835 1997

# CHAPTER NO. 389

[SB 95]

AN ACT ALLOWING SPECIAL EDUCATION TUITION PAYMENTS IN EXCESS OF REGULAR TUITION COSTS FOR AN OUT-OF-DISTRICT PUPIL TO BE USED FOR THE PROGRAM IN WHICH THE SPECIAL EDUCATION PUPIL IS ENROLLED; AMENDING SECTIONS 20-5-324 AND 20-9-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-5-324, MCA, is amended to read:

**"20-5-324. Tuition report and payment provisions.** (1) At the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent:

(a) the name and district of residence of each child who is attending a school of the district under an approved mandatory out-of-district attendance agreement;

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each reported child; and

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state.

(2) The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) Except as provided in subsection (6), when a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(6) When a child has mandatory approval under the provisions of 20-5-321, the tuition and transportation obligation for an elementary school child attending a school outside of the child's county of residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for the child's county

HeinOnline -- 1997 vol. II 1836 1997

of residence or for a high school child attending a school outside the county of residence by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of residence.

(7) By Decemher 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district tuition or transpertation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transpertation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of puhlic instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3).

(9) (a) Any tuition receipts received under the provisions of ~~Title 20, chapter 7, part 4, or~~ 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) *Any tuition receipts received for the current school fiscal year for a pupil who is a child with disabilities that excced the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.*

*(c)* Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must he credited to the district general fund budget."

**Seetion 2.** Section 20-9-141, MCA, is amended to read:

**"20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowahle cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

HeinOnline -- 1997 vol. II 1837 1997

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323 *except the amount of tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2)*;

(B) revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-527, 61-3-537, and 67-3-204;

(C) oil and natural gas production taxes;

(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid; and

(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

HeinOnline -- 1997 vol. II 1838 1997

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 25, 1997

# CHAPTER NO. 390

[SB 270]

AN ACT CLARIFYING AND EXPANDING INSURANCE AND SECURITIES FRAUD; CREATING AN INSURANCE AND SECURITIES FRAUD EDUCATION AND PREVENTION PROGRAM; REQUIRING DISCLOSURE OF SUSPECTED INSURANCE AND SECURITIES FRAUD TO THE COMMISSIONER OF INSURANCE AND COMMISSIONER OF SECURITIES; CLARIFYING THE OFFENSE OF THEFT; AND PROVIDING PENALTIES FOR INSURANCE AND SECURITIES FRAUD.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Insurance and securities fraud education and prevention program.** The commissioner may:

(1) establish an insurance and securities fraud education and prevention program; and

(2) conduct investigations of insurance and securities fraud.

**Section 2. Insuranco fraud.** (1) A person commits the act of insurance fraud when in the course of offering or selling insurance, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment.

(2) The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

(3) In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income or refund received by the victim from the insurance.

HeinOnline -- 1997 vol. II 1839 1997

(4) The commissioner may require a person who commits insurance fraud to make full restitution to any insurer, purported insurer, or insurance producer who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

(5) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

(6) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

(7) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds commits the offense of theft and is punishable as provided in 45-6-301, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

**Section 3. Reporting requirements.** (1) An insurer, insurance producer, or other person who has reason to believe insurance fraud has occurred shall report the suspected fraud to the commissioner or to the insurance producer's or other person's insurer within 60 days of discovery of the occurrence. An insurer shall review a report given to the insurer, and if the insurer determines that thero is a reasonable likelihood that fraud bas occurred the insurer shall forward the report to the commissioner within 30 days of receipt.

(2) In the absence of malice, an insurer, insurance producer, or other person may not be subjected to civil liability for reporting or providing information or otherwise cooperating with an investigation of insurance fraud.

**Section 4. Sccurities restitution.** (1) The commissioner may, after conducting a hearing pursuant to 30-10-305, require a person found to have committed a violation of 30-10-301 to make restitution for all financial losses sustained by any person as a result of the violation. The commissioner may further require a person found to have violated 30-10-301 to pay 10% annual interest on the amount of restitution from the date of the violation, reasonable attorney fees, and costs associated with bringing the administrative action.

(2) An amount required to be paid under this section is in addition to all other penalties imposed by law. If a person fails to pay an amount referred to in this section, the amount required to be paid is a lien upon all of the assets and property of the person in this state and may be recovered by suit by the commissioner and remitted to the person ordered to receive restitution.

(3) The commissioner or a person awarded restitution may bring suit in a court of competent jurisdiction to recover the sums awarded, attorney fees, and costs incurred in obtaining a judgment.

(4) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

**Section 5. Reporting requirements.** (1) A broker-dealer, investment adviser, investment adviser representative, or other person who has reason to

believe fraud has occurred shall report the suspected fraud to the commissioner within 60 days of discovery of the occurrence.

(2) In the absence of malice, a broker-dealer, investment adviser, investment adviser representative, or other person may not be subjected to civil liability for reporting or providing information or otherwise cooperating with an investigation of fraud under this chapter.

**Section 6. Codification instruction.** (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 1, and the provisions of Title 33, chapter 1, apply to [sections 1 through 3].

(2) [Sections 4 and 5] are intended to be codified as an integral part of Title 30, chapter 10, part 3, and the provisions of Title 30, chapter 10, part 3, apply to [sections 4 and 5].

Approved April 25, 1997

# CHAPTER NO. 391

[HB 89]

AN ACT CREATING A LEGISLATIVE OVERSIGHT COMMITTEE ON STATE MANAGEMENT SYSTEMS; SPECIFYING THE APPOINTMENT OF MEMBERS TO THE COMMITTEE; DESCRIBING THE DUTIES, RESPONSIBILITIES, AND AUTHORITY OF THE COMMITTEE; PROVIDING FOR STAFF SUPPORT FOR THE COMMITTEE; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE COMMITTEE; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose.** The purpose of [sections 1 through 9] is to ensure legislative oversight of the laws governing state personnel, finance, and asset management. The committee created in [section 3] performs a general oversight function for the legislature, focusing on information technology within Montana state government and on the management of assets entrusted to the state. It is also the purpose of [sections 1 through 9] to enable the committee to fully pursue and examine opportunities for and advantages of installing an integrated system of asset management tools by employing an economical, effective, and ongoing transition from nonautomated or automated but not integrated legacy systems to a fully integrated, automated set of systems. The legislature also intends for the committee to conduct an ongoing evaluation of what, if any, legislative actions, including the appropriation of funds, are required to support the transition.

**Section 2. Definition.** In [sections 1 through 9], "committee" means the legislative oversight committee on state management systems created in [section 3].

**Section 3. Legislative oversight committee on state management systems — appointment and composition.** (1) There is a legislative oversight committee on state management systems.

(2) The committee consists of:

(a) two members of the senate appointed hy the committee on committees;

(b) two members of the house of representatives appointed by the speaker;

(c) two members of the legislative finance committee, including a member of the senate appointed by the committee on committees and a member of the house of representatives appointed by the speaker; and

(d) two members of the legislative audit committee, including a member of the senate appointed by the committee on committees and a member of the house of representatives appointed hy the speaker.

(3) Each appeinting authority in suhsections (2)(a) through (2)(d) may not appoint more than two members of the same political party.

(4) Members must be appointed before the 90th legislative day of a regular session.

**Section 4. Term of office — vacancies.** (1) Appointments to the committee are for 2 years. A member of the committee serves until the member's term of office as a legislator ends or the member's successor is appointed, whichever occurs first.

(2) A vacancy on the committee must be filled in the same manner as the original appointment.

(3) An appointment to the committee under subsection (2) is for the unexpired term of the original memher.

**Section 5. Officers.** (1) The committee shall elect one of its members as the presiding officer and may elect other officers it considers necessary.

(2) If the committee elects a vice presiding officer, the member elected may not be of the same pelitical party as the presiding officer.

**Section 6. Meetings and compensation.** (1) The committee shall meet at the request of the presiding officer or at the request of a majority of the committee members. The committee may meet during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

**Section 7. Powers and duties of committee — legislative oversight of state management systems — committee reports.** (1) The committee shall:

(a) exercise legislative oversight of information technology and state management systems, including without limitation the review of:

(i) propesed budgets;

(ii) proposed legislation; and

(iii) major contracts and personnel actions as those contracts or actions may apply to information technology or state management systems; and

(b) provide a forum for and actively solicit participation hy representatives of local governments in Montana to facilitate communication, collaboration, and cooperation between tbe state and its subdivisions with respect to information technology and the management of state and nonstate assets entrusted to the state.

(2) The committee may undertake the study of:

(a) the laws governing state personnel, finance, and asset management, with the goal of ensuring clear, internally consistent, and simplified statutory language based upon clear and consistent policy goals and ensuring that the state and its agencies are able to maintain strict accountability for both state and nonstate assets entrusted to the state;

(b) opportunities for and advantages of installing an integrated system of asset management tools by employing an economical and effective transition from currently nonautomated or automated but not integrated legecy systems to a fully integrated, automated set of systems and an evaluation of what, if any, legislative actions would be required to support such a transition; and

(c) other matters that the committee determines are relevant to its purpose.

(3) The committee may form active working groups of state management and information system professionals, including personnel from the department of administration, the office of budget and program planning, the legislative fiscal division, and the legislative audit division, as well as separate user groups, to meet separately and with tbe committee to identify problems and opportunities and to advise the committee regarding potential solutions and planning details.

(4) The committee may:

(a) review administrative rules relevant to information technology or state management systems for tlie purpose of determining compliance with Title 2, cbapter 17, part 5, and may take any action available as a remedy under the Montana Administrative Procedure Act; or

(b) by an affirmative vote of at least five members of the committee, contract for the preparation of an economic impact statement or require the department promulgating an administrative rule related to information technology or tlie management of state assets to prepare an economic impact statement, following the provisions of 2-4-405.

(5) The committee may investigate and issue reports on any matter concerning information technology or state management systems.

**Section 8. Staff support.** (1) The legislative services division shall provide research and legal support as requested by the committee if the request is within available staff resources as determined by the executive director of the legislative services division. The legislative services division shall also provide administrative and fiscal support to tbe committee.

(2) The committee may request staff assistance from:

HeinOnline -- 1997 vol. II 1843 1997

(a) the legislative branch;

(b) the department of administration or any other department of state government;

(c) the judiciary;

(d) representatives of local governments or the federal government; or

(e) private individuals or others having information or capacity to assist the committee in its activities.

**Section 9. Reports.** (1) The department of administration shall, at the request of the committee, report to the committee on the department's progress in meeting the requirements expressed in Title 2, chapter 17, part 5.

(2) The committee shall report its findings, conclusions, and options for legislative consideration on or before December 1 immediately before each regular legislative session.

**Section 10. Appropriation.** There is appropriated from the general fund to the legislative services division $20,000 for fiscal years 1998 and 1999 for the activities of the legislative oversight committee on state management systems created in [section 3]. This is a biennial appropriation.

**Section 11. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 5, and the provisions of Title 5 apply to [sections 1 through 9].

**Section 12. Transition.** If [this act] is approved after adjournment sine die of the 55th legislature, the appointments required in [section 3] must be made before June 15, 1997.

**Section 13. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 10] is effective July 1, 1997.

**Section 14. Termination.** [This act] terminates December 31, 2002.

Approved April 28, 1997

# CHAPTER NO. 392

[HB 118]

AN ACT PROVIDING THAT CERTAIN PROCUREMENT STATUTES REGARDING STATE BUILDINGS AND CONSTRUCTION DO NOT APPLY TO ENVIRONMENTAL REMEDIATION AND ABANDONED MINE RECLAMATION PROJECTS; AMENDING SECTION 18-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-2-101, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1844 1997

"**18-2-101. Definitions of building, costs, and construction.** In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, and 18-2-122:

(1) "building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state money;

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of transportation;

(d) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);

(2) "building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of *an environmental remediation or abandoned mine land reclamation project,* a highway, or a water conservation project, *unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed*;

(c) leased or to be leased by a state agency;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in 17-5-401 and 17-5-801."

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1997

# CHAPTER NO. 393

[HB 151]

AN ACT EXPANDING THE FISH, WILDLIFE, AND PARKS CRIMESTOPPERS ACT TO INCLUDE STATE PARKS-RELATED CRIMES; AMENDING SECTIONS 2-15-3404, 87-5-601, 87-5-602, 87-5-603, AND 87-5-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-3404, MCA, is amended to read:

"**2-15-3404. Fish, ~~and~~ wildlife, *and parks* crimestoppers board.** (1) There is a fish, ~~and~~ wildlife, *and parks* crimestoppers board.

(2) (a) The board consists of five members, four of whom are appointed by the director of the department of fish, wildlife, and parks, as follows:

(i) ~~the~~ *a* person within the department responsible for the enforcement of fish and wildlife laws;

(ii) a member of ~~a sportsmen's~~ *a hunter's, angler's,* or conservation group;

(iii) a member who is actively engaged in agricultural production; and

(iv) a member ~~of the public, appointed at large~~ *of the public with an interest in parks and recreation.*

(b) The fifth member is a member of the fish, wildlife, and parks commission who ~~shall~~ *must* be designated by the commission.

(3) The board shall elect a ~~chairman~~ *presiding officer* from its members.

(4) A member must be appointed for a term of 2 years and may be reappointed.

(5) (a) A vacancy must be filled within 14 days of occurrence in the same manner as the original appointment.

(b) A vacancy does not impair the right of the remaining members to exercise the powers of the board.

(6) The board is allocated to the department of fish, wildlife, and parks for administrative purposes only as provided in 2-15-121."

**Section 2.** Section 87-5-601, MCA, is amended to read:

**"87-5-601. Short title.** This part may be cited as the "Fish, ~~and~~ Wildlife, *and Parks* Crimestoppers Act"."

**Section 3.** Section 87-5-602, MCA, is amended to read:

**"87-5-602. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the fish, ~~and~~ wildlife, *and parks* crimestoppers board created in 2-15-3404.

(2) "Department" means the department of fish, wildlife, and parks.

(3) "Program" means the fish, ~~and~~ wildlife, *and parks* crimestoppers program created under 87-5-605."

**Section 4.** Section 87-5-603, MCA, is amended to read:

**"87-5-603. Functions of ~~the~~ board.** The board shall recommend to the department:

(1) the names of individuals to be rewarded for providing information used in detecting and combating fish, ~~and wildlife-related~~ *wildlife, and parks-related* crimes;

(2) the amount of any reward recommended; and

(3) means for promoting the program."

**Section 5.** Section 87-5-605, MCA, is amended to read:

**"87-5-605. Powers and duties of department — rules.** (1) The department shall:

(a) create, maintain, and promote a statewide fish, ~~and~~ wildlife, *and parks* crimestoppers program in order to assist law enforcement agencies in detecting and combating fish, ~~and wildlife-related~~ *wildlife, and parks-related* crimes; and

(b) consider the hoard's recommendations and take action on them.

(2) The department may:

(a) advise and assist in the creation and maintenance of local programs, *including neighborhood watch programs*;

(b) encourage the channeling of information from state and local programs to law enforcement agencies;

(c) foster the detection of fish, ~~and wildlife-related~~ *wildlife, and parks-related* crimes by the public;

(d) encourage the puhlic, through a reward program or otherwise, to provide information that assists in the prosecution of fish, ~~and wildlife-related~~ *wildlife, and parks-related* crimes;

(e) promote state and local programs through the media;

(f) accept gifts, grants, or donations for the furtherance of the program and spend these in compliance with the conditions of the gifts, grants, or donations; and

(g) adopt rules necessary to administer the provisions of this part."

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1997

## CHAPTER NO. 394

[HB 184]

AN ACT GENERALLY REVISING THE LAWS RELATING TO GUIDE OR HEARING DOGS; DEFINING THE TERM "SERVICE ANIMAL"; ALLOWING A PERSON WITH A DISABILITY TO BE ACCOMPANIED BY A SERVICE ANIMAL IN A PUBLIC PLACE; ALLOWING A SERVICE ANIMAL IN TRAINING IN A PUBLIC PLACE; ALLOWING FULL ACCESS TO HOUSING ACCOMMODATIONS TO A PERSON TRAINING A SERVICE ANIMAL; AND AMENDING SECTIONS 49-4-203 AND 49-4-214, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 49-4-203, MCA, is amended to read:

"49-4-203. ~~Definition~~ *Definitions.* *(1)* "Housing accommodation" means any real property or portion ~~thereof which~~ *of real property that* is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings ~~but~~. *The term* does not include any single-family residence the occupants of which furnish for compensation not more than one room ~~therein~~ *within the residence.*

*(2) "Service animal" means a dog or other animal individually trained to provide assistance to an individual with a disability."*

**Section 2.** Section 49-4-214, MCA, is amended to read:

**"49-4-214. Right to be accompanied by ~~a guide or hearing~~ *service* ~~dog~~ *animal — identification for service animals in training.*** (1) ~~Every~~ *A* ~~totally or partially blind or deaf~~ person *with a disability* has the right to be accompanied by a ~~guide or hearing~~ *service* ~~dog~~ *animal*, ~~especially trained for the purpose,~~ *or a service animal in training with identification complying with subsection (4)* in any of the places mentioned in 49-4-211(2) without being charged extra for the ~~guide or hearing~~ *service* ~~dog~~ *animal.* ~~He~~ *The person with a disability* is liable for any damage done to the ~~premises or facilities~~ *property* by ~~such~~ *the* ~~dog~~ *animal.*

(2) ~~Every~~ *A* ~~totally or partially blind or deaf~~ person *with a disability* who has a ~~guide or hearing~~ *service* ~~dog~~ *animal* or who obtains a ~~guide or hearing~~ *service* ~~dog~~ *animal* is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. ~~He~~ *The person with a disability* may not be required to pay extra compensation for the ~~guide or hearing~~ *service* ~~dog~~ *animal* but is liable for any damage done to the premises by the ~~guide or hearing~~ *service* ~~dog~~ *animal.*

*(3) A person who is training a service animal is entitled to the same rights and assumes the same responsibilities granted to a person with a disability in this section.*

*(4) For the purposes of this section, a service animal in training that is a dog shall wear a leash, collar, cape, harness, or backpack that identifies in writing that the dog is a service animal in training. Other service animals in training must also be identifiable by written identification as a service animal in training. The written identification for service animals in training must be visible and legible from a distance of at least 20 feet."*

Approved April 28, 1997

# CHAPTER NO. 395

[HB 185]

AN ACT EXEMPTING FROM REGISTRATION THE OFFER OR SALE OF SECURITIES BY A COOPERATIVE ASSOCIATION TO ITS MEMBERS OR AS NECESSARY OR INCIDENTAL TO ESTABLISHING MEMBERSHIP IN THE COOPERATIVE ASSOCIATION; AMENDING SECTION 30-10-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

HeinOnline -- 1997 vol. II 1848 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-10-105, MCA, is amended to read:

**"30-10-105. Exempt transactions -- *rulemaking*.** Except as expressly provided in this section, 30-10-201 through 30-10-207 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a hroker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has been no default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of ~~such~~ an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request the matter will be set ~~down~~ for hearing. If ~~no~~ *a* hearing is *not* requested and ~~none~~ is *not* ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if ~~he~~ *the person* sustains the burden of proof that ~~he~~ *the person* did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of ~~his~~ official duties;

HeinOnline -- 1997 vol. II 1849 1997

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in ~~some~~ *a* fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) tbe seller reasonahly believes that all tbe buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective huyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended;

(b) any transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive montbs if:

(i) tbe seller reasonably believes that all the buyers are purchasing for investment;

(ii) ~~no~~ *a* commission or other remuneration is *not* paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may he paid to a registered broker-dealer if the securities involved are registered with tbe United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees is tben present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at tbe place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting ~~any~~ *a* prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by ~~any~~ *a* subscriber;

HeinOnline -- 1997 vol. II 1850 1997

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, ~~(~~but not a sale~~)~~, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if ~~no~~ *a* stop, refusal, denial, suspension, or revocation order is *not* in effect and a public proceeding or examination looking toward ~~such~~ an order is not pending under either law;

(12) an offer, ~~(~~but not a sale~~)~~, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner ~~in his discretion~~ does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend ~~where~~ *when* the stockholder can elect to take a dividend in cash or stock;

(14) a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner ~~in his discretion~~ may adopt to serve the purposes of 30-10-102. The commissioner may ~~in his discretion~~ require that 30-10-201 through 30-10-207 apply to any or all transactional exemptions adopted by rule.

(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company as defined in 90-8-104, provided that the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this

HeinOnline -- 1997 vol. II 1851 1997

subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by ~~such~~ *the* payment is delivered into the possession of a depository, ~~(~~other than the seller~~)~~, that:

(i) (A) is a financial institution, ~~(~~meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state~~)~~;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances otber than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (19)(b), to he physically located within Montana at all times after the 7-day delivery period provided in subsection (19)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

(20) a transaction involving a commodity investment contract solely between persons engeged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of tbe commodity; ~~or~~

(21) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code~~.~~*; or*

*(22) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;*

*(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection (22) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished*

HeinOnline -- 1997 vol. II 1852 1997

*the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15, for the purposes of this subsection (22).*"

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved April 28, 1997

# CHAPTER NO. 396

[HB 207]

AN ACT GENERALLY REVISING PROVISIONS OF TELECOMMUNICATIONS SERVICES FOR THE DISABLED; PROVIDING FOR AN ADDITIONAL MEMBER ON THE COMMITTEE ON MONTANA TELECOMMUNICATIONS ACCESS SERVICES FOR THE DISABLED; AMENDING SECTIONS 2-15-2212, 53-19-301, 53-19-302, 53-19-303, 53-19-304, 53-19-306, 53-19-307, 53-19-308, AND 53-19-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-2212, MCA, is amended to read:

"**2-15-2212. Committee on telecommunications *access* services for the ~~handicapped~~ *disabled* — composition — allocation.** (1) There is a committee on *Montana* telecommunications *access* services for the ~~handicapped~~ *disabled*.

(2) The committee consists of ~~11~~ *12* members appointed by the governor as follows:

(a) four members who are ~~handicapped~~ *disabled*, two of whom must be deaf or hard-of-hearing;

(b) two members who are not ~~handicapped~~ *disabled*, one of whom must be engaged in a business other than a business in the telecommunications industry and one of whom must be a senior citizen;

(c) one member from the department of public health and human services;

(d) one member from the largest local exchange company in Montana;

(e) one member from an independent local exchanga company;

(f) one member from an interLATA interexchange carrier; ~~and~~

(g) one member from the public service commission*; and*

*(h) one member who is a licensed audiologist.*

(3) The committee is allocated to the department of public health and human services for administrative purposes only as provided in 2-15-121."

HeinOnline -- 1997 vol. II 1853 1997

**Section 2.** Section 53-19-301, MCA, is amended to read:

**"53-19-301. Legislative findings and declaration.** (1) The legislature finds and declares that many Montana citizens are physically ~~handicapped~~ *disabled* and are unable to use traditional telecommunications equipment and services without assistance. These citizens constitute a substantial and valuable resource within the United States and the state of Montana, and this segment of our population needs access to telecommunications services in order to function as contributing and productive members of our society.

(2) The legislature further finds and declares that the role of telecommunications in our world today is inestimable. Telecommunications is the primary vehicle of commerce and industry, the means to convey and receive information and knowledge, and the way we connect with others on a personal as well as business level. Telecommunications gives people independence and self-sufficiency, and it provides goods and services, human contact, and fellowship.

(3) The legislature further finds that access to telecommunications services should be provided to persons who are ~~handicapped~~ *disabled* not only for their own sake but for the benefit of society at large. Access to telecommunications services would enbance the business and personal lives of ~~handicapped~~ *disabled* persons, and its availability to the ~~handicapped~~ *disabled* would be an investment of benefit to all of Montana.

(4) Consistent with the findings stated in subsections (1) through (3), the legislature finds it appropriate to provide ~~handicapped~~ *disabled* persons access to telecommunications services by creating a program to make specialized telecommunications equipment and services available to the ~~handicapped~~ *disabled*."

**Section 3.** Section 53-19-302, MCA, is amended to read:

**"53-19-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Committee" means the committee on telecommunications *access* services for the ~~handicapped~~ *disabled* established in 2-15-2212.

~~(2) "Dual-party relay system" means a service that permits full and simultaneous communication between those using telecommunications devices for the deaf (TDD) and those using conventional telephone equipment.~~

~~(3)~~*(2)* "~~Handicapped~~ *Disabled*" means the condition of a person who is ~~blind,~~ deaf *and blind, deaf,* hard-of-hearing, or speech-inipaired.

~~(4)~~*(3)* "Local exchange company" means a telecommunications company that provides telephone access lines *or wireless service* to members of the general public who are its customers.

~~(5)~~*(4)* "Program" means the program established in 53-19-306.

~~(5)~~*(5)* "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person who is ~~handicapped~~ *disabled* to communicato with others by means of the conventional telephone network. The term includes but is not limited to ~~telecommunications devices for~~

~~the deaf (TDD)~~ *text telephones (TTY)*, amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, and telebraille.

*(6) "Telecommunications relay service" means a service that permits full and simultaneous communication between those using specialized telecommunications equipment and those using conventional telephone equipment.*

(7) "Telephone access line" means the telephone exchange access line or channel *or wireless service* that provides ~~access from the premises of a~~ *the* customer of a local exchange company *with access* to the telecommunications network to effect the transfer of information."

**Section 4.** Section 53-19-303, MCA, is amended to read:

**"53-19-303. Term of office — vacancies.** (1) Each member of the committee shall serve for a term of 3 years~~, except that the governor shall appoint four of the initial members to serve terms of 1 year and four of the initial members to serve terms of 2 years~~.

(2) A vacancy on the committee must be filled in the same manner as the original appointment."

**Section 5.** Section 53-19-304, MCA, is amended to read:

**"53-19-304. Officers — meetings — quorum — compensation.** (1) The committee shall choose a ~~chairman~~ *presiding officer* from its members.

(2) The committee shall meet at least ~~once every 3 months~~ *four times a year* and at ~~such~~ other times as determined by the ~~chairman~~ *presiding officer* or by a majority of the committee.

(3) ~~Six~~ *Seven* members of the committee constitute a quorum for the transaction of business.

(4) All members of the committee are entitled to reimbursement of expenses as provided in 2-18-501 through 2-18-503. Members of the committee who are not state employees are also entitled to receive compensation of $50 for each day *that* they are engaged in official business of the committee."

**Section 6.** Section 53-19-306, MCA, is amended to read:

**"53-19-306. Program established — purpose.** (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons who are ~~handicapped~~ *disabled.*

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons who are ~~handicapped~~ *disabled*; and

(b) provide a ~~dual-party relay~~ *telecommunications relay service* system to connect persons who are ~~handicapped~~ *disabled* with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101."

HeinOnline -- 1997 vol. II 1855 1997

**Section 7.** Section 53-19-307, MCA, is amended to read:

**"53-19-307. Provision of services.** In administering the program established in 53-19-306, the committee shall:

(1) develop an appropriate means test to determine eligibility for participation in the program;

(2) require that participants in the program be residents of Montana and that residency be maintained as a condition of eligibility for continued participation in the program;

(3) require that participants provide satisfactory evidence that they are ~~handicapped~~ *disabled* and would benefit from the use of specialized telecommunications equipment;

(4) provide specialized telecommunications equipment to participants ~~on the basis of a loan or lease arrangement that may include cost sharing between the handicapped person and his employer~~ *through loan, lease, cost sharing, or other methods that are determined appropriate by the committee*;

(5) determine the type of specialized telecommunications equipment it considers necessary and economically feasible for use by Montana's ~~handicapped~~ *disabled*;

(6) purchase or lease all specialized telecommunications equipment through bid by wholesale manufacturers on a competitive basis;

(7) require, as a condition of each equipment purchase or lease, that the original manufacturer provide repair and maintenance service for new and returned equipment;

(8) maintain records of each item of equipment, including the location, serial number, and telephone number of each device;

(9) *at the discretion of the committee,* require an appropriate security deposit for equipment at the time of delivery~~, which deposit~~ *that* must be refunded without interest when the equipment is returned;

(10) make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

(11) provide a ~~dual-party relay~~ *telecommunications relay service* system that~~, if feasible,~~ would be available statewide for operation 7 days a week, 24 hours a day, including holidays; *and*

(12) ~~implement the service described in subsection (11) within 2 years following July 1, 1989; and~~

~~(13)~~ adopt rules necessary to administer the program."

**Section 8.** Section 53-19-308, MCA, is amended to read:

**"53-19-308. ~~Dual-party relay~~ *Telecommunications relay service* system — requirements.** The committee shall contract with a qualified provider to design and implement a ~~dual-party relay~~ *telecommunications relay*

*service* system that fulfills the purpose described in 53-19-306. The committee shall require, under the terms of the contract, that:

(1) the system relay all messages promptly and accurately;

(2) the system maintain the privacy of persons using the system; and

(3) the provider preserve the confidentiality of all telephone communications, except in instances in which ~~such~~ *the* confidentiality would further a violation of the law."

**Section 9.** Section 53-19-310, MCA, is amended to read:

**"53-19-310. Fund for telecommunications services for the ~~handicapped~~ *disabled*.** (1) There is an account for telecommunications services for the ~~handicapped~~ *disabled* in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; and

(b) all charges billed and collected pursuant to 53-19-311.

(2) The money in the account is allocated to the committee for purposes of implementing this part.

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account."

**Section 10. Effective date.** [This act] is effective July 1, 1997.

Approved April 28, 1997

# CHAPTER NO. 397

[HB 263]

AN ACT AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ENTER INTO A CONTRACT WITH THE TRUSTEES OF ANY SCHOOL DISTRICT WITHIN THE COUNTY OR WITH ANY SCHOOL DISTRICT IN AN ADJOINING COUNTY TO ISSUE BONDS FOR THE JOINT CONSTRUCTION OF A FACILITY; CLARIFYING THE INTERLOCAL AGREEMENTS LAW TO INCLUDE A REFERENCE TO JOINT BONDING AUTHORITY; AMENDING SECTIONS 7-11-104, 20-9-404, AND 20-9-405, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-11-104, MCA, is amended to read:

**"7-11-104. Authorization to create interlocal agreements — *issuance of bonds for joint construction*.** ~~Any one~~ *One* or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking, *including the issuance of bonds for the joint construction of a facility under 20-9-404,* ~~which~~ *that* any of ~~said~~ *the*

HeinOnline -- 1997 vol. II 1857 1997

public agencies entering into the contract is authorized by law to perform. ~~Such~~ *The* contract ~~shall~~ *must* be authorized and approved by the governing body of each party to ~~said~~ *the* contract. ~~Such~~ *The* contract ~~shall set forth~~ *must outline* fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties."

**Section 2.** Section 20-9-404, MCA, is amended to read:

"**20-9-404. Contracts and bonds for joint construction.** The trustees of a school district may enter into a contract with the trustees of any school district within the county or with any school district in an adjoining county to provide for the joint construction of ~~vocational-technical secondary schools~~ *a facility* upon ~~such~~ terms and conditions ~~as may be~~ mutually agreed upon between ~~such~~ *the* districts. The trustees of any district executing a contract in accordance with this section may levy taxes and issue bonds for the purpose of constructing the facilities authorized by this section."

**Section 3.** Section 20-9-405, MCA, is amended to read:

"**20-9-405. Proportional joint ownership — disposition of ~~moneys~~ *money*.** The ~~vocational-technical secondary school~~ *facility* constructed under 20-9-404 ~~shall~~ *must* be jointly owned by the school districts contributing to its construction in proportion to the contribution of each district. The sale or other disposition of a district's interest in the ~~school shall~~ *facility must* be made in accordance with 20-6-604. ~~Moneys~~ *Money* received from the sale or disposition of a district's interest in a ~~vocational-technical secondary school shall~~ *facility must* be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees."

**Section 4. Applicability.** [This act] applies to contracts entered into after [the effective date of this act].

Approved April 28, 1997

## CHAPTER NO. 398

[HB 276]

AN ACT RELATING TO PATERNITY PROCEEDINGS; PROVIDING THAT WHEN THE CHILD SUPPORT ENFORCEMENT DIVISION IN A CASE UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT RECEIVES A WRITTEN CLAIM FROM A CHILD'S MOTHER THAT NAMES A PERSON AS THE ALLEGED NATURAL FATHER OF A CHILD, THE DEPARTMENT SHALL PROMPTLY TAKE REASONABLE STEPS TO LOCATE AND NOTIFY THE ALLEGED FATHER OF THE EXISTENCE OF THE CLAIM; AND AMENDING SECTION 40-5-232, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-5-232, MCA, is amended to read:

"**40-5-232. Establishment of paternity — notice of paternity determination — contents.** (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or

HeinOnline -- 1997 vol. II 1858 1997

otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In any proceeding under 40-5-231 through 40-5-237, if a person acknowledges paternity of a child in writing and the acknowledgment is filed with the department, the department may enter an order establishing legal paternity. As a part of a voluntary acknowledgment, the department shall provide information to the parents regarding the rights and responsibilities of acknowledging paternity. An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(4) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(5) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of paternity determination. The department may not serve the notice unless it has:

(a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

*(6) Regardless of whether the department has grounds to or intends to commence a paternity proceeding against the alleged father, when the child support enforcement division in a case under Title IV-D of the Social Security Act receives a written claim from a child's mother that names a person as the alleged natural father of the child, the department shall promptly take reasonable steps to locate and notify the alleged father of the existence of the claim. The notification must be given to the alleged father in a manner that places the demands of individual privacy above the merits of public disclosure. The notification must include the name of the mother and the date of birth or the projected date of birth if the child has not yet been born.*

~~(6)~~*(7)* Service on the alleged father of the notice of paternity determination must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

HeinOnline -- 1997 vol. II 1859 1997

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against the alleged father without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) the alleged father is subject to compulsory paternity blood testing;

(ii) a paternity blood test may result in a presumption of paternity; and

(iii) upon receipt of the paternity blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

~~(7)~~*(8)* The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

~~(8)~~*(9)* When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child."

Approved April 28, 1997

# CHAPTER NO. 399

[HB 308]

AN ACT AUTHORIZING THE SALE OF HARD CIDER; DEFINING "HARD CIDER"; IMPOSING A TAX ON THE IMPORTATION OR SALE OF HARD CIDER; CLARIFYING THAT THE ADDITIONAL TAX ON TABLE WINE DOES NOT APPLY AS AN ADDITIONAL TAX ON HARD CIDER; CLARIFYING THAT THE DEPARTMENT OF REVENUE MUST COLLECT THE TAX ON THE SALE OF HARD CIDER IN THE SAME MANNER IT NOW COLLECTS TAXES ON TABLE WINE; PROVIDING FOR THE DISTRIBUTION OF REVENUE RECEIVED FROM THE TAX ON HARD CIDER; AUTHORIZING LICENSED TABLE WINE DISTRIBUTORS TO SELL HARD CIDER UNDER A LICENSE TO SELL TABLE WINE; AMENDING SECTIONS 16-1-106, 16-1-411, 16-2-301, AND 16-3-418, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-1-106, MCA, is amended to read:

**"16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

~~(8)~~*(8)* "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

~~(9)~~*(9)* "Department" means the department of revenue, unless otherwise specified.

*(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.*

~~(10)~~*(11)* "Immediate family" means a spouse, dependent children, or dependent parents.

~~(11)~~*(12)* "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

~~(12)~~*(13)* "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

~~(12)~~*(14)* "Liquor" means an alcoholic beverage except beer and table wine.

~~(14)~~*(15)* "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

HeinOnline -- 1997 vol. II 1861 1997

~~(15)~~*(16)* "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(15)~~*(17)* "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

~~(17)~~*(18)* "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

~~(15)~~*(19)* "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

~~(19)~~*(20)* "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

~~(20)~~*(21)* "Rules" means rules adopted by the department or the department of justice pursuant to this code.

~~(21)~~*(22)* "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

~~(20)~~*(23)* "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

~~(23)~~*(24)* "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(24)~~*(25)* "Table wine" means wine that contains not more than 16% alcohol by volume *and includes cider*.

~~(25)~~*(26)* "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

~~(20)~~*(27)* "Warehouse" means a building or structure located in Montana *that is* owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

~~(27)~~*(28)* "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic

HeinOnline -- 1997 vol. II 1862 1997

heverages not defined in this subsection but made in the manner of wino and laheled and sold as wine in accordance with federal regulations are also wine."

**Section 2.** Section 16-1-411, MCA, is amended to read:

"**16-1-411. Tax on wine *and hard cider*.** (1) *(a)* A tax of 27 cents per liter is imposed on table wine, *except hard cider*, imported by a table wine distrihutor or the department.

*(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.*

(2) ~~(a)~~ The tax ~~on table wine imported by a table wine distributor~~ *imposed in subsection (1)* must be paid by the table wine distrihutor by the 15th day of the month following sale of the table wine *or hard cider* from the table wine distributor's warehouse. Failure to file a ~~table wine~~ tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

~~(b) The tax on table wine imported by the department must be collected at the time of sale.~~

(3) The tax paid by a table wine distributor in accordance with subsection (2)~~(a) and the tax collected by the department in accordance with subsection (2)(b)~~ must, in accordance with the provisions of 15-1-501, he distributed as follows:

(a) ~~16 cents~~ *59%* to the state general fund; ~~and~~

(b) ~~of the remaining 11 cents:~~

~~(i) 8 1/3 cents~~ *31%* to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and provention of alcoholism;

~~(ii) 1 1/3 cents~~ *(c) 5%* is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the counties, based on population, for the purpose established in 16-1-404; and

~~(iii) 1 1/3 cents~~ *(d) 5%* is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, *the following definitions apply:*

*(a)* "~~based~~ *Based* on population" means:

~~(a)~~*(i)* for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates puhlished by the U.S. bureau of the census as provided in 16-1-410(2); and

~~(b)~~*(ii)* for cities, the distribution described in 16-1-410*; and*

HeinOnline -- 1997 vol. II 1863 1997

*(b) "Table wine" has the meaning assigned in 16-1-106, but does not include hard cider."*

**Section 3.** Section 16-2-301, MCA, is amended to read:

**"16-2-301. Retail selling price on table wine — tax on certain table wine.** (1) The retail selling price at which table wine is sold at an agency liquor store is as determined by the agent.

(2) In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine sold by a table wine distributor to an agent as described in subsection (1). This additional tax must be paid to the department hy the distributor in the same manner as the tax under 16-1-411 is paid. The department shall deposit the tax paid under this section in the general fund.

*(3) For the purposes of this section, "table wine" does not include hard cider."*

**Section 4.** Section 16-3-418, MCA, is amended to read:

**"16-3-418. Dual appointments — equal support — alternate supplier.** (1) *(a)* A supplier may appoint one or more table wine distributors to distribute its table ~~wines~~ *wines* in a specified territory. If the supplier appoints two or more table wine distributors to sell its table ~~wines~~ *wines* in the same or overlapping territories, the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor.

*(b) A supplier may not appoint more than one table wine distributor to distribute its hard cider in a specified territory.*

*(c) For the purposes of this subsection (1), "table wine" has the meaning assigned in 16-1-106, but does not include hard cider.*

(2) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of ~~his~~ *the* license or a photocopy of ~~his~~ *the* license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell."

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved April 28, 1997

# CHAPTER NO. 400

[HB 352]

AN ACT PROVIDING THAT THE OWNER OR POSSESSOR OF STOLEN PERSONAL PROPERTY OR THE OWNER OF REAL PROPERTY CRIMINALLY MISUSED WITHOUT THE KNOWLEDGE OF THE OWNER IS NOT LIABLE IN THE ABSENCE OF GROSS NEGLIGENCE FOR INJURY OR DAMAGES ARISING OUT OF THE USE OR MISUSE OF THE PROPERTY WHILE THE PROPERTY IS POSSESSED BY ANOTHER; PROVIDING THAT THIS IMMUNITY DOES NOT AFFECT THE DOCTRINES OF NEGLIGENCE PER SE AND ATTRACTIVE NUISANCE; AND PROVIDING AN APPLICABILITY DATE.

HeinOnline -- 1997 vol. II 1864 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Property owner's immunity from damage caused by use of property unlawfully taken.** (1) The owner or possessor of personal property that is stolen is not liable in the absence of gross negligence for injury or damage arising out of the use of the property while the property is possessed by another. The owner of real property that is criminally misused by another without the owner's knowledge is not liable in the absence of gross negligence for injury or damage arising out of the misuse. This section includes property taken by theft, robbery, or burglary directly from the person's body or from a place of residence, tent or other recreational structure, or motor vehicle or boat that is owned, possessed, or used by the person owning or possessing the property.

(2) This section does not modify, amend, or eliminate the doctrines of negligence per se or attractive nuisance.

**Section 2. Two-thirds vote required.** Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

**Section 3. Applicability.** [This act] applies to injuries and damages occurring after October 1, 1997.

Approved April 28, 1997

# CHAPTER NO. 401

[HB 406]

AN ACT REVISING LANDLORD AND TENANT LAWS; REVISING LANDLORDS' RIGHTS AND DUTIES; DECREASING THE TIME PERIOD FOR A TENANT TO REMOVE ABANDONED PROPERTY AFTER NOTICE FROM THE LANDLORD; ALLOWING A LANDLORD TO COVER LABOR COSTS; AND AMENDING SECTIONS 70-24-103, 70-24-303, 70-24-430, 70-24-436, AND 70-25-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 70-24-103, MCA, is amended to read:

**"70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant *or landlord* has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(6) "Landlord" means:

(a) the owner, lessor, or sublessor of:

(i) the dwelling unit or the building of which it is a part; or

(ii) a mobile home park; or

(b) a manager of the premises who fails to disclose the managerial position.

(7) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.

(8) "Mobile home park" means a trailer court as defined in 50-52-101.

(9) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(10) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(11) "Person" includes an individual or organization.

(12) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13) "Rent" means all payments to be made to the landlord under the rental agreement.

(14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of

HeinOnline -- 1997 vol. II 1866 1997

which are provided by the landlord and one or more of which are used in common by occupants in the structure.

(16) "Single-family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(17) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

**Section 2.** Section 70-24-303, MCA, is amended to read:

**"70-24-303. Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector.** (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by ~~him~~ *the landlord*;

~~(e) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;~~

*(e) unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;*

~~(f)~~*(f)* supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

~~(g)~~*(g)* install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under ~~his~~ *the landlord's* control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency

HeinOnline -- 1997 vol. II 1867 1997

having a service for inspection of materials and workmanship at the factory during fabrication and assemhly.

(2) If the duty imposed by subsection (1)(a) ~~of this section~~ is greater than a duty imposed by subsections (1)(b) through ~~(1)(g)~~ *(1)(g)*, a landlord's duty ~~shall~~ *must* be determined hy reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in ~~subsections~~ *subsections* (1)(e) *and (1)(f) of this section* ~~and (1)(f) of this section~~ and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a) ~~of this section~~; and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection ~~(1)(g)~~ *(1)(g)*."

**Section 3.** Section 70-24-430, MCA, is amended to read:

**"70-24-430. Disposition of personal property abandoned by tenant after termination.** (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes *that* the tenant has abandoned all personal property ~~which~~ *that* the tenant has left on the premises~~,~~ and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises.

(2) The landlord sball inventory and store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage *and labor* charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storago. The landlord may store the property in a commercial storago company, in which case the storago cost includes the actual storage chargo plus the cost of removal of the property to the place of storago.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable atteinpt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

HeinOnline -- 1997 vol. II 1868 1997

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if ~~he~~ *the landlord* reasonably believes *that* the value of the property is so low that the cost of storage or sale exceeds the reasonable value ~~thereof~~ *of the property*.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that ~~he~~ *the tenant* intends to remove ~~his~~ *the* property and does not do so within ~~15~~ 7 days after delivery of the tenant's response, the tenant's property ~~shall be~~ *is* conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period *that* the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property ~~himself~~, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for ~~double~~ *actual* damages.

(7) A public or private sale authorized by this section ~~shall~~ *must* be conducted under the provisions of 30-9-504(3) or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, *labor,* and sale and any delinquent rent or damages owing on the premises and ~~must~~ *shall* remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds ~~shall~~ *must* be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, ~~shall~~ *must* revert to the general fund of the county available for general purposes."

**Section 4.** Section 70-24-436, MCA, is amended to read:

**"70-24-436. Mobile home parks — grounds for termination of rental agreement.** (1) A landlord of a mobile home park may terminate a rental agreement only by following the procedure set forth in 70-24-422, except as specifically provided in this section, and only for one or more of the following reasons:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement;

HeinOnline -- 1997 vol. II 1869 1997

(b) late payment of rent, late charges, or common area maintenance fees as established in the rental agreement three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by 70-24-422. For this subsection (1)(b), the notice period referred to in 70-24-422(1) is 30 days.

(c) violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park if the violation has not been remedied 24 hours after the violator is given written notice of the violation;

(d) two or more violations within a 12-month period of any combination of one or more mobile home park rules, the violation of which would have a significant adverse impact on the mobile home park or its residents and ~~which~~ *that* are so designated;

(e) two or more violations within a 12-month period of the same rule. For this subsection (1)(e), the notice period referred to in 70-24-422(1) is ~~60~~ *30* days.

(f) two or more violations of 70-24-321(1) within a 12-month period or any violation of 70-24-321(2);

(g) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises. For this subsection (1)(g), the notice period referred to in 70-24-422(1) is 30 days.

(h) endangers other residents or mobile home park personnel, or causes substantial damage to the mobile home park premises;

(i) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park, or the landlord's documentation of a violation of the provisions of Title 45, chapter 9;

(j) changes in the use of the land if the requirements of subsection (2) are met. For this subsection (1)(j), the notice period referred to in 70-24-422(1) is 180 days.

(k) a legitimate business reason, provided that the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the land composing the mobile home park from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the mobile home park.

HeinOnline -- 1997 vol. II 1870 1997

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice, the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner and tenant of the mobile home owner written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(b), only one notice ~~per~~ *for each* violation per month may be included in the calculation."

**Section 5.** Section 70-25-201, MCA, is amended to read:

**"70-25-201. Security deposit — deductions authorized therefrom.** (1) A landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent, late charges, utilities, penalties due under lease provisions, and other money owing to the landlord at the time of deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses, *including a reasonable charge for the landlord's labor.*

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) Cleaning charges may not be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time that the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, cleaning charges may not be deducted until written notice has been given to the tenant. The notice must include the cleaning not accomplished by the tenant and the additional and type or types of cleaning that need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 24 hours to complete the required cleaning. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit.

(4) A person may not deduct or withhold from the security deposit any amount for purposes other than those set forth in this section."

Approved April 28, 1997

# CHAPTER NO. 402

[HB 444]

AN ACT MAKING THE DESIGNATED MODEL YEAR OF CERTAIN PROPERTY SUBJECT TO A FEE IN LIEU OF TAX CORRESPOND WITH THE PURCHASE YEAR FOR THE PURPOSES OF IMPOSING FEES IN LIEU OF TAX IF THE PURCHASE YEAR PRECEDES THE MODEL YEAR; AMENDING SECTIONS 23-2-517, 23-2-615.1, 23-2-803, 61-3-522, 61-3-523, 61-3-527, AND 67-3-206, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-2-517, MCA, is amended to read:

"**23-2-517. Fees for motorboats, sailboats, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons.** (1) The owner of a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer shall pay a fee based on the length and age of the motorboat or sailboat as follows:

(a) The fee schedule for a motorboat at least 10 feet in length but less than 14 feet in length or sailboat at least 12 feet in length but less than 14 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $7.50;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $5.65; and

(iii) for a motorboat or sailboat 10 years of age or older, $3.75.

(b) The fee schedule for a motorboat or sailboat at least 14 feet in length but less than 16 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $15;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $11.25; and

(iii) for a motorboat or sailhoat 10 years of age or older, $7.50.

(c) The fee schedule for a motorboat or sailboat at least 16 feet in length but less than 17 feet in length is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $32;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $24; and

(iii) for a motorboat or sailboat 10 years of age or older, $16.

(d) The fee schedule for a motorboat or sailboat at least 17 feet in length but less than 19 feet in length is as follows:

HeinOnline -- 1997 vol. II 1872 1997

(i) for a motorboat or sailboat less than 5 years of age, $3 a foot or fraction of a foot;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $2.25 a foot or fraction of a foot; and

(iii) for a motorboat or sailboat 10 years of age or older, $1.50 a foot or fraction of a foot.

(e) The fee schedule for a motorboat or sailboat 19 feet in length or longer is as follows:

(i) for a motorboat or sailboat less than 5 years of age, $4 a foot or fraction of a foot;

(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $3 a foot or fraction of a foot; and

(iii) for a motorboat or sailboat 10 years of age or older, $2 a foot or fraction of a foot.

(2) The owner of a personal watercraft shall pay a fee based on the age of the watercraft as follows:

(a) The fee for a personal watercraft less than 4 years of age is $22.

(b) The fee for a personal watercraft 4 years of age or older is $15.

*(3) (a) Except as provided in subsection (3)(b), the age of a motorboat, sailboat, or personal watercraft is determined by subtracting the manufacturer's designated model year from the current calendar year.*

*(b) If the purchase year of a motorboat, sailboat, or personal watercraft precedes the designated model year of the motorboat, sailboat, or personal watercraft and the motorboat, sailboat, or personal watercraft is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.*

~~(2)~~*(4)* The fee for a motorized canoe, a canoe or kayak propelled by wind, or a motorized rubber raft is $7.50, regardless of its length or age.

~~(4)~~*(5)* The fee for a motorized pontoon is $20, regardless of its length or age."

**Section 2.** Section 23-2-615.1, MCA, is amended to read:

**"23-2-615.1. Fee in lieu of tax on snowmobiles.** (1) There is a fee in lieu of tax on snowmobiles.

(2) The fee for a snowmobile less than 4 years old is $22. In all other cases the fee is $15.

(3) *(a)* ~~The~~ *Except as provided in subsection (3)(b), the* age of a snowmobile is determined by subtracting the manufacturer's designated model year from the current calendar year.

*(b) If the purchase year of a snowmobile precedes the designated model year of the snowmobile and the snowmobile is originally titled in Montana, then the*

HeinOnline -- 1997 vol. II 1873 1997

*purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.*

(4) The fee need not he paid by a dealer for snowmobiles that constitute inventory of the dealership."

**Section 3.** Section 23-2-803, MCA, is amended to read:

**"23-2-803. Fee in lieu of tax on off-highway vehicles — exception — disposition of fees.** (1) There is a fee in lieu of tax on off-highway vehicles, other than off-highway vehicles constituting the inventory of a dealership licensed under 23-2-818, to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is $19. In all other cases the fee is $9.

(b) ~~The~~ *Except as provided in subsection (1)(c), the* age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.

*(c) If the purchase year of an off-highway vehicle precedes the designated model year of the off-highway vehicle and the off-highway vehicle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.*

(2) (a) Except as provided 'n subsection (2)(b), the county treasurer shall distribute all fees in lieu of tax collected on off-highway vehicles pursuant to this section in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(b) The county treasurer shall remit $1 of the fee in lieu of tax collected on an off-highway vehicle to the department of agriculture for deposit in the noxious weed management trust fund provided for in 80-7-811."

**Section 4.** Section 61-3-522, MCA, is amended to read:

**"61-3-522. Schedule of fees for motor homes.** (1) The owner of a motor home shall pay a fee based on tbe age of the motor home according to the following schedule:

| | |
|---|---|
| less than 2 years old | $250 |
| 2 years old and less than 3 years old | 230 |
| 3 years old and less than 4 years old | 195 |
| 4 years old and less than 5 years old | 150 |
| 5 years old and less than 6 years old | 125 |
| 6 years old and less than 7 years old | 100 |
| 7 years old and less than 8 years old | 75 |
| 8 years cid and older | 65 |

HeinOnline -- 1997 vol. II 1874 1997

(2) *(a)* ~~The~~ *Except as provided in subsection (2)(b), the* age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

*(b) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax."*

**Section 5.** Section 61-3-523, MCA, is amended to read:

**"61-3-523. Schedule of fees for travel trailers and campers.** (1) The fee imposed by 61-3-521 on a travel trailer *that is* less than 3 years old is $60. In all other cases the fee is $22.50.

(2) The fee imposed by 61-3-521 on a camper *that is* less than 3 years old is $52.50. In all other cases the fee is $22.50.

(3) *(a)* ~~The~~ *Except as provided in subsection (3)(b), the* age of a travel trailer or camper is determined by subtracting the manufacturer's designated model year from the current calendar year.

*(b) If the purchase year of a travel trailer or camper precedes the designated model year of the travel trailer or camper and the travel trailer or camper is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax."*

**Section 6.** Section 61-3-527, MCA, is amended to read:

**"61-3-527. Fee in lieu of tax for motorcycles — schedule of fees.** (1) (a) There is a fee in lieu of property tax imposed on motorcycles. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) need not be paid by a dealer for motorcycles that constitute inventory of the dealership.

(2) The owner of a motorcycle shall pay a fee based on the age of the motorcycle and the size of the engine, as follows:

(a) The fee schedule for a motorcycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

(i) less than 2 years old, $30;

(ii) 2 years old and less than 5 years old, $25;

(iii) 5 years old and less than 11 years old, $15; and

(iv) 11 years old and older, $10.

(b) The fee schedule for a motorcycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

(i) less than 2 years old, $70;

(ii) 2 years old and less than 5 years old, $55;

HeinOnline -- 1997 vol. II 1875 1997

(iii) 5 years old and less than 11 years old, $40; and

(iv) 11 years old and older, $30.

(c) The fee schedule for a motorcycle with an engine that measures 1,001 cubic centimeters and larger is as follows:

(i) less than 2 years old, $110;

(ii) 2 years old and less than 5 years old, $90;

(iii) 5 years old and less than 11 years old, $65; and

(iv) 11 years old and older, $40.

~~(d)~~*(3) (a)* ~~The~~ *Except as provided in subsection (3)(b), the* age of a motorcycle is determined by subtracting the manufacturer's designated model year from the current calendar year.

*(b) If the purchase year of a motorcycle [or quadricycle] precedes the designated model year of the motorcycle [or quadricycle] and the motorcycle [or quadricycle] is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax."*

**Section 7.** Section 67-3-206, MCA, is amended to read:

**"67-3-206. Schedule of fees in lieu of tax for aircraft.** (1) The appropriate fee in lieu of tax imposed on aircraft *is based on the age and type of aircraft and* must be determined from the following schedule:

| | YEARS | | | | |
|---|---|---|---|---|---|
| | 0 - 5 | 6 - 10 | 11 - 20 | 21 - 30 | 31 -40 |
| Single engine, fixed gear, 200 horsepower and under | $ 300 | $ 175 | $100 | $ 50 | $ 25 |
| Single engine, fixed gear, over 200 horsepower | 500 | 250 | 150 | 75 | 50 |
| Single engine, retractable gear, 200 horsepower and under | 600 | 300 | 175 | 100 | 75 |
| Single engine, retractable gear, over 200 horsepower | 700 | 400 | 200 | 125 | 100 |
| Multi-engine, piston engine | 800 | 500 | 250 | 175 | 150 |
| Helicopter, piston engine | 700 | 450 | 225 | 150 | 125 |
| Single engine jet helicopter, prop jet | 1,500 | 700 | 450 | 300 | 175 |
| Multi-engine jet helicopter, prop jet | 2,000 | 1,000 | 600 | 400 | 200 |
| Jet engine, no propeller | 3,000 | 1,500 | 800 | 500 | 250 |

HeinOnline -- 1997 vol. II 1876 1997

*(2) (a) Except as provided in subsection (2)(b), the age of an aircraft is determined by subtracting the manufacturer's designated model year from the current calendar year.*

*(b) If the purchase year of an aircraft precedes the designated model year of the aireraft and the aireraft is originally titled in Montana, then the purehase year is considered the model year for the purposes of calculating the fee in lieu of tax.*

~~(2)~~*(3)* The fee in lieu of tax imposed on any glider, ultralight, gyrocopter, balloon, homebuilt aircraft, antiques, or any aircraft over 40 years old is $20."

**Section 8. Coordination instructions.** (1) If Senate Bill No. 26 is passed and approved, then [section 10] of Senate Bill No. 26, second reading, second house, relating to the fee schedule for trailers having a declared weight of less than 26,000 pounds, must read as follows:

"NEW SECTION. **Section 10. Schedule of fees for trailers — exception.** (1) Except as provided in subsection (4), the owner of a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds shall pay the fee imposed pursuant to 61-3-521. The fee is based on the age and declared weight of the trailer or semitrailer according to the following schedule:

| Age (in years) | Declared Weight (in pounds) | | |
|---|---|---|---|
| | 0-6,000 | 6,001-16,000 | 16,001-25,999 |
| Less than 5 years old | $16 | $55 | $74 |
| 5 years old and less than 10 years old | 11 | 32 | 41 |
| 10 years old and older | 6 | 17 | 23 |

(2) (a) Except as provided in subsection (2)(b), the age of a trailer, pole trailer, or semitrailer is determined by subtracting the manufacturer's designated model year from the current calendar year. For trailers, pole trailers, and semitrailers that do not have a designated model year, the department shall determine a year of manufacture.

(b) If the purchase year of a trailer, pole trailer, or semitrailer precedes the designated model year of the trailer, pole trailer, or semitrailer *and the trailer, pole trailer, or semitrailer is originally titled in Montana*, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(3) The declared weight is the total unladen weight of the trailer, pole trailer, or semitrailer plus the maximum load declared by the owner to be carried on the trailer, pole trailer, or semitrailer.

(4) This section does not apply to a trailer, pole trailer, or semitrailer that has a declared weight of less than 26,000 pounds and that is registered through a proportional registration agreement under 61-3-721."

(2) If Senate Bill No. 57 is passed and approved and it amends 61-3-527 to impose a fee in lieu of tax on quadricycles, then the bracketed language in

HeinOnline -- 1997 vol. II 1877 1997

61-3-527(3)(b) of [this act], relating to quadricycles, is effective on [the effective date of section 6, amending 61-3-527, of this act]. If Senate Bill No. 57 is not passed and approved, then the bracketed language relating to quadricycles is void.

**Section 9. Effective dates — applicability.** (1) Except as provided in subsection (2), [this act] is effective January 1, 1998, and applies to property subject to a fee in lieu of tax purchased after December 31, 1997.

(2) [Section 2] and this section are effective July 1, 1997, and [section 2] applies to snowmobiles purchased after June 30, 1997.

Approved April 28, 1997

# CHAPTER NO. 403

[HB 491]

AN ACT REVISING THE LAWS RELATING TO THE TRANSFER OF TERRITORY FROM ONE SCHOOL DISTRICT TO ANOTHER; INCREASING THE FILING FEE TO $100; ALLOWING AN APPEAL TO THE DISTRICT COURT CONCERNING A TRANSFER; ELIMINATING THE DUTIES OF THE COUNTY COMMISSIONERS RELATING TO TRANSFERS; ELIMINATING THE VOTE OF THE PEOPLE IN THE CASE OF AN ELEMENTARY DISTRICT TRANSFER; CHANGING THE TIME LIMITATION FOR A BOUNDARY CHANGE FOR A HIGH SCHOOL DISTRICT; REQUIRING THAT A TRANSFER INVOLVING A K-12 DISTRICT MUST INCLUDE BOTH AN ELEMENTARY AND A HIGH SCHOOL TRANSFER; AMENDING SECTIONS 20-6-213, 20-6-314, 20-6-320, AND 20-6-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-6-213, MCA, is amended to read:

**"20-6-213. Transfer of territory from one elementary district to another.** (1) A majority of the registered electors of an elementary district who reside in territory that is a part of an elementary district may petition the county superintendent to transfer the territory in which they reside to another elementary district if:

(a) the territory to be transferred is contiguous to the district to which it is to be attached;

(b) the territory to be transferred is not located within 3 miles, over the shortest practical route, of an operating school of the district from which it is to be detached;

(c) the transfer of the territory will not reduce the taxable value of the district to less than $100,000 unless the remaining territory of the district will contain not less than 50,000 acres of nontaxable Indian land;

(d) the board of trustees of the school district that would receive the territory has approved *the proposed transfer* in writing ~~the transfer~~; and

HeinOnline -- 1997 vol. II 1878 1997

(e) the territory proposed to be transferred to another elementary district has not been included in a petition filed under this section in the previous 3 years.

(2) The petition must be addressed to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the elementary district to which it is to be transferred;

(b) state the reasons why the transfer is requested;

(c) state the number of elementary school-age children residing in the territory; and

(d) be accompanied by a ~~$50~~ *$100* nonrefundable filing fee.

(3) A petition that meets the criteria specified in subsection (1) and that contains all the information required by subsection (2) is considered a valid petition. On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) file the petition;

(b) set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

(c) give notice of the place, date, and time of the hearing. The notices must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(4) The county superintendent shall conduct the hearing as scheduled in accordance with the rules of procedure adopted by the superintendent of public instruction pursuant to 20-3-107(3), and any resident, taxpayer, or representative of the affected districts must, upon request, be heard.

(5) Within 30 days after the hearing, the county superintendent shall, after considering the testimony and exhibits presented at the hearing, issue findings of fact, conclusions of law, and an order. The county superintendent shall grant or deny the requested transfer of territory. The decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the elementary district.

(6) The decision of the county superintendent is final 30 days after its date unless it is appealed ~~to the board of county commissioners~~ *to the district court* by a resident, taxpayer, or representative of ~~the~~ *either* elementary ~~districts~~ *district* affected by the *petitioned* territory transfer.

~~(7) The decision of the board of county commissioners, after a hearing on the matter and consideration of the record from the county superintendent's hearing, is final 30 days after its date unless prior to that time it has been contested through the filing of a valid petition to submit the question to a vote of the people in the elementary district from which the land is to be transferred. In order for~~

HeinOnline -- 1997 vol. II 1879 1997

~~a petition to be valid, the petition must be signed by 20% of the electors of the elementary district who are qualified to vote in elections for that district under 20-20-301. When a valid petition is submitted under this subsection, the question of whether the territory must be transferred to another district must be put before the voters at the next regular school election in the affected elementary district. The results of the vote must be the final decision on the petition for transfer of territory.~~

~~(8)~~*(7)* Whenever a petition to transfer territory from one elementary district to another elementary district creates a joint elementary district or affects the boundary of an existing joint elementary district, the petition to transfer territory must be presented to the county superintendent of the county where the territory is located. The county superintendent shall notify any other county superintendents of counties with elementary districts affected by the petition, and the duties prescribed in this section for the county superintendent ~~and the board of county commissioners~~ must be performed jointly ~~by the county officials~~. *If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (4) and issuing the decision required in subsection (5). The decision issued under subsection (5) must be made by a majority of the county superintendents.*

*(8) A petition seeking to transfer elementary territory out of or into a K-12 district must be accompanied by a petition to transfer the same territory as high school territory in accordance with 20-6-320. In the case of a proposed transfer out of or into a K-12 district, an elementary petition that is not accompanied by the high school petition is invalid for the purpose of subsection (3).*"

**Section 2.** Section 20-6-314, MCA, is amended to read:

"**20-6-314. Time limitations for boundary changes.** ~~No~~ *A* high school district may *not* be created and ~~no~~ *a* high school district boundary may *not* be changed between the first day of ~~March~~ *January* and the second Monday of August of any calendar year except when:

(1) the entire territory of a high school district is annexed or attached to another high school district;

(2) the entire territory or portion of a joint high school district located in one county is annexed or attached to another high school district; or

(3) two or more districts are consolidated in their entirety."

**Section 3.** Section 20-6-320, MCA, is amended to read:

"**20-6-320. Transfer of territory from one high school district to another.** (1) A majority of registered electors of a high school district who reside in territory that is a part of a high school district may petition the county superintendent to transfer the territory in which they reside to another high school district if:

(a) the territory to be transferred is contiguous to the high school district to which it is to be attached;

HeinOnline -- 1997 vol. II 1880 1997

(b) the territory to be transferred is not located within 3 miles, over the shortest practical route, of an operating school of the high school district from which it is to be detached;

(c) the transfer of the territory will not reduce the taxable value of the district to less than $300,000 unless the remaining territory of the high school district contains not less than 50,000 acres of nontaxable Indian land;

(d) the board of trustees of the school district that would receive the territory has approved *the proposed transfer* in writing ~~the transfer~~; and

(e) the territory proposed to be transferred to another high school district has not been included in a petition filed under this section in the previous 3 years.

(2) The petition must be addressed to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the high school district to which it is to be transferred;

(b) state the reasons why the transfer is requested;

(c) state the number of high-school-age children residing in the territory; and

(d) be accompanied by a ~~$50~~ *$100* nonrefundable filing fee.

(3) A petition that meets the criteria specified in subsection (1) and that contains all the information required by subsection (2) is a valid petition. On receipt of a valid petition for a territory transfer, the county superintendent shall:

(a) ~~present the petition to the board of county commissioners for certification that the criteria set forth in subsection (1) have been met. The board shall, within 10 days of receiving the petition, return it to the county superintendent with certification, signed by a majority of the board, that the criteria have been met or with a notation, signed by a majority of the board, that the criteria have not been met. The board's certification is binding on the county superintendent unless the county superintendent believes that the certification is in error. A dispute between the board and the county superintendent on this issue must be decided by the superintendent of public instruction and the decision of the superintendent of public instruction on the matter is final.~~

~~(b)~~ file the petition; ~~as certified by the board of county commissioners.~~

~~(4) If the petition is certified or adjusted on appeal to the superintendent of public instruction to meet the criteria specified in subsection (1), the county superintendent shall:~~

~~(a)~~*(b)* set a hearing place, date, and time for consideration of the petition that is not more than 40 days after receipt of the petition; and

~~(b)~~*(c)* give notice of the place, date, and time of the hearing. The notices must be posted in the high school districts affected by the petition for the territory transfer in the manner prescribed in this title for school elections, with at least one notice posted in the territory to be transferred. *Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.*

HeinOnline -- 1997 vol. II 1881 1997

~~(5)~~*(4)* The county superintendent shall conduct the hearing as scheduled in accordance with the rules of procedure adopted by the superintendent of public instruction pursuant to 20-3-107(3), and any resident, taxpayer, or representative of either affected high school district must be heard.

~~(6)~~*(5)* Within 30 days after the hearing, the county superintendent shall, after considering the testimony and exhibits presented at the hearing, issue findings of fact, conclusions of law, and an order. The county superintendent shall grant or deny the requested transfer of territory. The decision must be based on the effects that the transfer would have on those residing in the territory proposed for transfer as well as those residing in the remaining territory of the high school district.

~~(7)~~*(6)* The decision of the county superintendent is final 30 days after its date unless it is appealed ~~pursuant to 20-3-107~~ to the ~~superintendent of public instruction~~ *district court* by a resident, taxpayer, or representative of either high school district affected by the petitioned territory transfer. ~~The decision of the superintendent of public instruction, after consideration of the record from the county superintendent's hearing, is final 30 days after its date. The final order of the superintendent of public instruction is subject to judicial review pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4.~~

~~(8)~~*(7)* If a petition to transfer territory from one high school district to another high school district would create a joint high school district or affect the boundary of any existing joint high school district, the petition must he presented to the county superintendent of the county where the territory proposed for transfer is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly ~~by such county officials~~. *If the number of county superintendents is an even number, the county superintendents shall jointly appoint a county superintendent from an unaffected county to join them in conducting the hearing required by subsection (4) and in issuing the decision required by subsection (5). The decision issued under subsection (5) must be made by a majority of the county superintendents.*

*(8) A petition seeking to transfer high school territory out of or into a K-12 district must be accompanied by a petition to transfer the same territory as elementary territory in accordance with 20-6-213. In the case of a proposed transfer out of or into a K-12 district, a high school petition that is not accompanied by an elementary petition is invalid for the purpose of subsection (3).*"

**Section 4.** Section 20-6-703, MCA, is amended to read:

"**20-6-703. Transitions after formation of K-12 school district.** (1) When an attachment order for a K-12 school district becomes effective on July 1 under the provisions of 20-6-701:

(a) the ~~board of county commissioners~~ *county superintendent* shall *order the trustees to* execute all necessary and appropriate deeds, bills of sale, or other instruments for the conveyance of title to all real and personal property of the elementary district to the high school district;

(b) the trustees of the elementary district shall entrust the minutes of the board of trustees, the elementary district documents, and other records to the high school district to which it is attached; and

(c) the county treasurer shall transfer all end-of-the-year warrants and fund balances of the attached elementary district to the similar funds established for the K-12 school district in the high school district.

(2) All taxes levied by and revenue due from a previous school fiscal year to an elementary district attached to a high school district must be payable to the appropriate fund of the high school district.

(3) The previous year's general fund budget amounts for the elementary district and the high school district that form a K-12 school district must be combined to determine the budget limitation for the ensuing school fiscal year pursuant to 20-9-308."

**Section 5. Boundary adjustments in high school districts.** The trustees of a high school district may, by resolution, request a change in the boundaries between their district and an adjacent district. The resolution must be addressed to the county superintendent of schools who, upon receiving a resolution, shall proceed as provided in 20-6-320.

**Section 6. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 20, chapter 6, part 3, and the provisions of Title 20, chapter 6, part 3, apply to [section 5].

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1997

# CHAPTER NO. 404

[HB 519]

AN ACT ALLOWING AN ADVANCED PRACTICE REGISTERED NURSE THAT IS A NURSE PRACTITIONER OR A CLINICAL NURSE SPECIALIST TO PROVIDE SERVICES AS A TREATING PROVIDER AND A PRIMARY CARE PROVIDER UNDER THE WORKERS' COMPENSATION ACT; AND AMENDING SECTION 39-71-116, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-116, MCA, is amended to read:

**"39-71-116. Definitions.** Unless the context otherwise requires, words and phrases used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

HeinOnline -- 1997 vol. II 1883 1997

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means any public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(8) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(9) "Days" means calendar days, unless otherwise specified.

(10) "Department" means the department of labor and industry.

HeinOnline -- 1997 vol. II 1884 1997

(11) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(12) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(13) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(14) "Invalid" means one who is physically or mentally incapacitated.

(15) "Limited liability company" is as defined in 35-8-102.

(16) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(17) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(18) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(19) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(20) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(21) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(22) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

HeinOnline -- 1997 vol. II 1885 1997

(23) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(24) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(25) "Primary medical services" means treatment prescribed by a treating ~~physician~~ *physician*, for conditions resulting from the injury, necessary for achieving medical stability.

(26) "Public corporation" means the state or any county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(27) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(28) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(29) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (29), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(30) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(31) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

HeinOnline -- 1997 vol. II 1886 1997

(32) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(33) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(34) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(35) "Treating ~~physician"~~ *physician"* means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection (35)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; ~~or~~

(e) a dentist licensed by the state of Montana under Title 37, chapter 4*; or*

*(f) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as defined in subsection (35)(a), in the area in which the advanced practice registered nurse is located.*

(36) "Year", unless otherwise specified, means calendar year."

Approved April 28, 1997

# CHAPTER NO. 405

[HB 576]

AN ACT CREATING AN ENDOWMENT FOR CHILDREN FUND WITHIN THE NONEXPENDABLE TRUST FUND TYPE; PROVIDING FOR THE USE OF THE FUND; REVISING THE USES OF THE CHILDREN'S TRUST FUND

HeinOnline -- 1997 vol. II 1887 1997

ACCOUNT; AMENDING SECTIONS 41-3-701 AND 41-3-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-3-701, MCA, is amended to read:

**"41-3-701. Child abuse and neglect prevention program.** (1) The Montana children's trust fund board, provided for in 2-15-2214, shall use the money in the children's trust fund account established by 41-3-702 *and the interest from the endowment established by [section 3]* to fund services and activities ~~operated by nonprofit private or public community-based educational and service organizations, which services and activities relate solely to the prevention of child abuse and neglect~~ *related to a broad range of child abuse and neglect prevention activities and family resource programs operated by nonprofit or public community-based educational and service organizations.*

(2) In administering the child abuse and neglect prevention program, the board shall:

(a) develop a state plan, priorities for funded services and activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities funded under this section; and

(d) adopt rules necessary to implement ~~this section and~~ 41-3-703, ~~and~~ 41-3-704, *and this section.*"

**Section 2.** Section 41-3-703, MCA, is amended to read:

**"41-3-703. Gifts and grants to program.** The Montana children's trust fund board may accept contributions, gifts, and grants, in money or otherwise, to the child abuse and neglect prevention program. Monetary gifts, contributions, and grants ~~must, upon receipt, be paid into the children's trust fund account~~ *earmarked for the endowment for children must be paid into the endowment* established by ~~41-3-702~~ *[section 3].*"

**Section 3. Endowment for children.** (1) There is within the nonexpendable trust fund type an endowment for children. The endowment is not subject to appropriation. The purpose of the endowment is to provide a permanent source of funding to support the programs and services referred to in 41-3-701.

(2) The endowment may receive funds from:

(a) appropriations;

(b) gifts, grants, and donations, from public or private sources; and

(c) other money credited or transferred to the endowment from any other fund or source.

HeinOnline -- 1997 vol. II 1888 1997

(3) The state treasurer must receive and shall deposit money in the endowment. The hoard of investments shall invest the money in the endowment. When the endowment reaches $5 million, further deposits may not he made to the endowment. Only the interest generated by the endowment is available for expenditure hy the board.

**Section 4. Codification instruction.** [Section 3] is intended to he codified as an integral part of Title 41, chapter 3, part 7, and the provisions of Title 41, chapter 3, part 7, apply to [section 3].

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved April 28, 1997

# CHAPTER NO. 406

[SB 87]

AN ACT ELIMINATING THE REQUIREMENT THAT THE SECRETARY OF STATE TRANSFER PROPRIETARY FUNDS TO THE GENERAL FUND AT THE END OF A FISCAL YEAR; REQUIRING THAT FEES FOR FILING AND COPYING SERVICES BE COMMENSURATE WITH COSTS; PROVIDING THAT THE FEES BE DEPOSITED INTO A PROPRIETARY FUND; AMENDING SECTION 2-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-6-103, MCA, is amended to read:

**"2-6-103. Filing and copying fees.** (1) The secretary of stato, for services performed in the office, shall charge and collect ~~the following~~ fees: *commensurate with costs for filing and copying services*

~~(a) for each copy of any law, resolution, record, or other document or paper on file in his office, except corporate papers, 40 cents per folio or, if the copy is made by any process of reproduction by photographic, photostatic, or similar process, the fee shall be 50 cents per page or fraction of a page;~~

~~(b) for affixing certificate and seal, $2;~~

~~(c) for receiving and recording each official bond, $10;~~

~~(d) for each commission or other document signed by the governor and attested by the secretary of state (pardon, military commissions, and extraditions excepted), $5;~~

~~(e) for issuing each certificate of record, $5;~~

~~(f) for filing and recording miscellaneous papers, records, or other documents, $5;~~

~~(g) for filing and recording any other paper not otherwise provided for, $5;~~

~~(h) for filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, $5;~~

~~(i) when a copy of any law, resolution, record, or other document or paper on file in the office of the secretary of state is presented for comparison and certification, 10 cents per folio must be charged and collected for proofreading the same.~~

(2) A member of the legislature or state or county officer may not be charged for any search relative to matters appertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

(3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information.

(4) Fees must be collected in advance and when collected by the secretary of state are not refundable and must be deposited ~~pursuant to 17-6-105~~ *into a proprietary fund.*

~~(5) Within 120 days following the end of each fiscal year, the secretary of state shall deposit into the general fund from the proprietary fund any revenue collected in the proprietary fund during the prior fiscal year that is in excess of the amount appropriated from the proprietary fund for the current year.~~"

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1997

# CHAPTER NO. 407

[SB 130]

AN ACT CLARIFYING THE NOTICE REQUIREMENTS IN TAX SALE PROCEEDINGS; REQUIRING ACTUAL NOTICE TO TAXPAYERS WHOSE NAMES AND ADDRESSES ARE REASONABLY ASCERTAINARLE IN TAX SALE PROCEEDINGS; AMENDING SECTION 15-18-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Supreme Court held in Tax Lien Services v. Hall, 53 St. Rep. 614 (1996), that actual notice of a tax sale is required for taxpayers whose names and addresses are reasonably ascertainable.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-18-413, MCA, is amended to read:

"**15-18-413. Title conveyed by deed — defects.** (1) All deeds executed more than 3 years after the applicable tax sale convey to the grantee absolute title to the property described in the deed as of 3 years following the date of sale of the property interest at the tax sale.

(2) The conveyance includes:

(a) all right, title, interest, estate, lien, claim, and demand of the state of Montana and of the county in and to the property; and

(b) the right, if the tax deed, tax sale, or any of the tax proceedings upon which the deed may be based are attacked and held irregular or void, to recover the unpaid taxes, interest, penalties, and costs that would accrue if the tax proceedings had been regular and it was desired to redeem the property.

(3) The tax deed is free of all encumbrances except as provided in 15-18-214(1)(a) through (1)(c).

(4) A tax deed is prima facie evidence of the right of possession accruing as of the date of the expiration of the redemption period described in 15-18-111.

(5) *(a)* ~~If~~ *Subject to subsection (5)(b), if* any tax deed or deed purporting to be a tax deed is issued more than 3 years and 30 days after the date of the sale of the property interest at the applicable tax sale, the grantee may publish in the official newspaper of the county, once a week for 2 consecutive weeks, a notice entitled "Notice of Claim of a Tax Title". The notice must:

~~(a)~~*(i)* describe all property claimed to have been acquired by a tax deed;

~~(b)~~*(ii)* contain an estimate of the amount due on the property for delinquent taxes, interest, penalties, and costs;

~~(c)~~*(iii)* contain a statement that for further specific information, reference must be made to the records in the office of the county treasurer;

~~(d)~~*(iv)* list the name and address of record of the person in whose name the property was assessed or taxed; and

~~(e)~~*(v)* contain a statement that demand is made that the ~~person assessed or taxed~~ *true owner* ~~must~~ *shall*, within 30 days after *the later of service or* the first publication of the notice, pay to ~~the claimant or to~~ the county treasurer for use by the claimant the amount of taxes, interest, penalties, and costs as the same appear in the records of the county treasurer *to redeem the property* or *the true owner may* bring a suit te quiet the true owner's title or to set aside the tax deed.

*(b) The notice described in subsection (5)(a) must be served on a taxpayer whose name and address are reasonably ascertainable.*

~~(6) A mistake in the amount or in any name specified in the notice does not invalidate the notice.~~

~~(7)~~*(6)* (a) ~~If~~ *Provided that the statutory requirements for a notice of intended issuance of a tax deed required by 15-18-212 have* been complied with and if within the 30-day period the taxes, interest, penalties, and costs are not paid or a quiet title action is not brought, all defects in the tax proceedings and any right of redemption ~~is~~ *are* considered waived. Except as provided in subsection ~~(7)(b)~~ *(6)(b)*, after the 30-day period, the title to the property described in the notice and in the tax deed is valid and binding, irrespective of any irregularities, defects, *or* omissions~~, or total failure to observe~~ *in* any of the provisions of the laws of Montana regarding the assessment, levying of taxes, or sale of property for taxes ~~and the giving of notices~~, whether or not ~~such~~ *the* irregularities, defects, *or* omissions~~, or failures~~ could void the proceedings.

(b) The proceedings in subsection ~~(7)(a)~~ *(6)(a)* are void if the taxes were not delinquent or have been paid."

HeinOnline -- 1997 vol. II 1891 1997

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1997

# CHAPTER NO. 408

[SB 296]

AN ACT ALLOWING MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM TO QUALIFY MONTANA UNIVERSITY SYSTEM EXTENSION SERVICE BY PAYING THE FULL ACTUARIAL COST OF THE SERVICE; CLARIFYING THAT MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM MAY NOT RECEIVE DUPLICATE CREDIT FOR THE SAME PERIOD OF SERVICE; AMENDING SECTIONS 19-20-405, 19-20-407, AND 19-20-410, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-20-405, MCA, is amended to read:

**"19-20-405. Limit on creditable service that may be awarded.** The total creditable service for service purchased under 19-20-402~~, 19-20-403,~~ *through* 19-20-404, 19-20-408, 19-20-410*(1)*, and 19-20-412 may not exceed 5 years."

**Section 2.** Section 19-20-407, MCA, is amended to read:

**"19-20-407. No duplication of ~~benefits when there is more than one~~ *credit for same* period of service.** ~~There~~ *A member* may not ~~be any duplication of benefits to a member or beneficiary due to there being more than one~~ *receive duplicate credit for the same* period of service ~~of the member~~."

**Section 3.** Section 19-20-410, MCA, is amended to read:

**"19-20-410. Creditable service for extension service employment.** (1) *(a)* At any time before retirement, a member with 5 years or more of creditable service in the retirement system may make a written election with the retirement board to qualify up to 5 years of ~~his~~ employment service with the Montana cooperative extension service, subject to the limitation contained in 19-20-405, if:

~~(a)~~*(i)* the member became a member of the retirement system before July 1, 1989;

~~(b)~~*(ii)* the service involved instructional service at a unit of the Montana university system; and

~~(c)~~*(iii)* the member received a refund of ~~his~~ membership contributions under the civil service retirement system or the federal employees' retirement system for the service te be qualified.

~~(2)~~*(b)* To qualify service under ~~this section~~ *subsection (1)(a)*, the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution for ~~his~~ *the member's* first full year's teaching salary earned after becoming a member of the retirement system for each year of

creditable service plus interest at the rate *that* the contribution would have earned bad the contribution been in ~~his~~ *the member's* account upon the completion of 5 years of membership service. The contribution rate must be that rate in effect at the time *that* ~~he~~ *the member* is eligible for the service.

*(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member with 5 years or more of qualified service in the retirement system may qualify any cooperative extension service by contributing to the system the full actuarial cost of the service.*

(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

**Section 4. Effective date.** [This act] is effective July 1, 1997.

Approved April 28, 1997

# CHAPTER NO. 409

[SB 300]

AN ACT REVISING THE TAXATION OF CLASS SIX PERSONAL PROPERTY INTENDED FOR RENTAL OR LEASE; BASING THE VALUE OF RENTAL OR LEASE PROPERTY ON ACQUIRED COST; INCREASING THE VALUE OF RENTAL OR LEASE PROPERTY ELIGIBLE FOR TAXATION AS CLASS SIX PROPERTY FROM $5,000 TO $15,000; AND AMENDING SECTION 15-6-136, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-136, MCA, is amended to read:

**"15-6-136. Class six property — description — taxable percentage.** (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for rent or lease in the ordinary course of business~~, provided~~ *if* each item of personal property satisfies all of the following:

(i) the ~~full and true value~~ *acquired cost* of the personal property is less than ~~$5,000~~ *$15,000*;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; and

HeinOnline -- 1997 vol. II 1893 1997

(c) machinery and equipment used in canola seed oil processing facilities if:

(i) the operators of ~~such~~ *those* facilities employ a minimum of 15 full-time employees; and

(ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989.

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) Class six property is taxed at 4% of its market value."

Approved April 28, 1997

# CHAPTER NO. 410

[SB 324]

AN ACT PROVIDING FOR COVERAGE OF POSTMASTECTOMY CARE AS DETERMINED BY AN ATTENDING PHYSICIAN AND PATIENT OR, FOR AN HMO, BY A PRIMARY CARE PHYSICIAN, ATTENDING PHYSICIAN, AND PATIENT; PROVIDING FOR COVERAGE OF RECONSTRUCTIVE SURGERY FOLLOWING A MASTECTOMY; REQUIRING WRITTEN INFORMED CONSENT FOR PATIENTS RECEIVING TREATMENT FOR BREAST CANCER; CLARIFYING THAT THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT MUST OFFER COVERAGE FOR MAMMOGRAPHY EXAMINATIONS; AMENDING SECTIONS 33-22-101, 33-22-1827, 33-31-111, AND 33-35-306, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Postmastectomy care.** Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, also the primary care physician, in consultation with the patient, to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer. This section also applies to the state employee group insurance program, the university system employee group insurance program, any employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974.

**Section 2. Coverage for reconstructive breast surgery after mastectomy.** (1) Each group and individual disability policy, certificate of

insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for reconstructive breast surgery resulting from a mastectomy that resulted from breast cancer.

(2) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for all stages of one reconstructive breast surgery on the nondiseased breast to establish symmetry with the diseased breast after definitive reconstructive breast surgery on the diseased breast has been performed.

(3) For the purposes of this section:

(a) "mastectomy" means the surgical removal of all or part of a breast as a result of breast cancer;

(b) "reconstructive breast surgery" means surgery performed as a result of a mastectomy to reestablish symmetry between the breasts. The term includes augmentation mammoplasty, reduction mammoplasty, and mastopexy.

(4) Benefits for reconstructive breast surgery include but are not limited to the costs of prostheses and, under any contract providing outpatient x-ray or radiation therapy, benefits for outpatient chemotherapy following surgical procedures in connection with the treatment of breast cancer that must be included as a part of the outpatient x-ray or radiation therapy benefit.

**Section 3. Written informed consent for breast cancer treatment.** (1) For the purpose of this section, "written informed consent" means an agreement in writing that is freely executed by the patient that certifies that full disclosure has been made to the patient about:

(a) the full range of efficacious medical treatment alternatives that may be viable, including surgical procedures relating to the removal of breast tissue, radiological or chemotherapeutic treatments or any other generally accepted medical treatment, or combinations of procedures and treatments;

(b) the advantages, disadvantages, risks, and descriptions of the procedures and treatments listed in subsection (1)(a); and

(c) aspects of recovery, including the options that are available for reconstructive surgery.

(2) Failure of a physician or surgeon to provide written informed consent as provided in subsection (1) constitutes unprofessional conduct.

**Section 4.** Section 33-22-101, MCA, is amended to read:

**"33-22-101. Exceptions to scope.** Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-130 through 33-22-132, *[sections 1 and 2],* 33-22-243, and 33-22-304, do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

HeinOnline -- 1997 vol. II 1895 1997

(3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

**Section 5.** Section 33-22-1827, MCA, is amended to read:

**"33-22-1827. Benefits required in basic health benefit plan.** (1) The basic health benefit plan must provide at least the following benefits:

(a) coverage for the services and articles required by 33-22-1521(2);

(b) coverage for mental health and chemical dependency required by Title 33, chapter 22, part 7; ~~and~~

(c) coverage for conversion of benefits required by 33-22-508 and 33-22-510 or by 33-30-1007; *and*

*(d) coverage for mammography examinations required by 33-22-132.*

(2) The small employer carrier may determine varying levels of deductibles, copayments, maximum annual out-of-pocket expenses, maximum lifetime benefits, and other financial cost-sharing arrangements with the insured that give the basic health benefit plan a lower benefit value than the standard health benefit plan.

(3) A basic health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparable level of benefits to those required by subsections (1) and (2), as determined by the benefit equivalency and benefit value."

**Section 6.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

HeinOnline -- 1997 vol. II 1896 1997

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) The provisions of this section do not exempt a health maintenance organization from material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-701 through 33-3-704.

*(6) The provisions of this section do not exempt a health maintenance organization from the requirements of [sections 1 and 2].*"

**Section 7.** Section 33-35-306, MCA, is amended to read:

"**33-35-306. Application of insuranee code to arrangemcnts.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions of Title 33:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308; ~~and~~

(d) Title 33, chapter 18, except 33-18-242*; and*

*(e) [sections 1 and 2].*

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

**Section 8. Codification instruetion.** (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified in Title 37, chapter 3, and the provisions of Title 37, chapter 3, apply to [section 3].

**Section 9. Applicability.** [This act] is applicable to all contracts issued or renewed on or after January 1, 1998.

Approved April 28, 1997

HeinOnline -- 1997 vol. II 1897 1997

# CHAPTER NO. 411

[SB 336]

AN ACT EXTENDING THE TERMINATION DATE FOR THE INCOME AND CORPORATE TAX CREDIT FOR RECYCLING OF MATERIAL; AMENDING SECTION 5, CHAPTER 542, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 5, Chapter 542, Laws of 1995, is amended to read:

"Section 5. **Termination — exception.** (1) [Sections 1 through 3] terminate December 31, ~~1997~~ *2001*.

(2) Notwithstanding subsection (1), 15-32-603(3), as numbered by [this act], which reads: "A credit under this section may be claimed by a taxpayer for a business only if the qualifying property is purchased before January 1, ~~1998~~ *2002*.", is deleted in its entirety on December 31, ~~1997~~ *2001*."

**Seetion 2. Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1997

# CHAPTER NO. 412

[SB 338]

AN ACT REQUIRING LICENSURE OF CERTAIN GUEST RANCHES AND OUTFITTING AND GUIDE FACILITIES BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; DEREGULATING FOOD SERVICE IN CERTAIN ESTABLISHMENTS THAT SERVE FOOD ONLY TO REGISTERED GUESTS; PROVIDING DEFINITIONS; REQUIRING THE DEPARTMENT TO ADOPT RULES; REQUIRING NEGOTIATED RULEMAKING; PROVIDING FOR STAGGERED LICENSE DATES; REQUIRING AN OPPORTUNITY FOR CORRECTION OF CERTAIN LICENSING VIOLATIONS; AMENDING SECTIONS 50-50-102, 50-51-101, 50-51-102, 50-51-103, 50-51-201, 50-51-207, AND 50-51-401, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-50-102, MCA, is amended to read:

**"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following defmitions apply:

(1) "Baked geods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods.

(2) (a) "Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market.

HeinOnline -- 1997 vol. II 1898 1997

(3) "Department" means tbe department of public health and human services provided for in 2-15-2201.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

(5) "Farmer's market" means a farm premises, a roadside stand owned and operated by a farmer, or an organized market authorized by the appropriate municipal or county authority.

(6) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(7) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not includo milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(8) (a) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge.

(b) The term does not include establishments, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers or a private organization serving food only to its members.

*(c) The term does not include an establishment, as defined in 50-51-102, that serves food only to its registered guests.*

(9) (a) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

(b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

(10) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(11) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(12) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(13) "Perishable food dealer" means a person or commercial establishment that is in the business of purchasing and selling perishahle food to the public.

HeinOnline -- 1997 vol. II 1899 1997

(14) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(15) (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24°C (75°F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur.

(16) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24°C (75°F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (16)(a).

(17) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

(a) cooked;

(b) canned;

(c) preserved, except for drying;

(d) combined with other food products; or

(e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures."

**Section 2.** Section 50-51-101, MCA, is amended to read:

**"50-51-101. ~~Purpose~~ *Findings and purpose* of regulation.** *(1)* It is ~~hereby~~ found ~~and declared~~ that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations~~, as defined in 50-51-102 hereof,~~ and the control, inspection, and regulation of persons ~~engaged therein~~ *providing accommodations* in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found ~~and declared~~ that the regulation of establishments providing lodging space accommodations ~~as above outlined~~ is in the interest of social well-heing and the health and safety of the state and all of its people.

*(2) The legislature recognizes that there is a wide disparity in the type of establishments, especially in the size, the time of year at which the establishments operate, and the ability of small establishments with few employees and a limited operating season to conform to the same standards to which larger establishments are required to conform. These factors must be considsred, especially in the operation of small or seasonal businesses that are such an important part of Montana's tourism business. For these reasons, the legislature believes that department rules must be tailored to properly and reasonably address differences in the size, location, purpose, and time of year of operation of certain small or seasonal establishments. The legislature believes that rules governing certain small or seasonal establishments must be limited to requirements meant to ensure basic health standards and should not detract from the rustic, out-of-doors experience offered by many guest ranches and outfitter and guide facilities and desired by many tourists."*

**Section 3.** Section 50-51-102, MCA, is amended to read:

**"50-51-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Establishment" means a hotel, motel, roominghouse, *guest ranch, outfitting and guide facility,* boardinghouse, or tourist home.

*(3) "Guest ranch" means a facility that:*

*(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;*

*(b) furnishes sleeping accommodations on advance reservations for a minimum stay;*

*(c) provides hunting, horseback riding, fishing, or a working cattle raneh experience to its guests; and*

*(d) is a small establishment or a seasonal establishment.*

HeinOnline -- 1997 vol. II 1901 1997

~~(3)~~*(4)* "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

*(5) "Outfitting and guide facility" means a facility that:*

*(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;*

*(b) furnishes sleeping accommodations to guests;*

*(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101; and*

*(d) is a small establishment or a seasonal establishment.*

~~(4)~~*(6)* "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engeged in the business of operating, owning, or offering the services of a hotel, motel, boardinghouse, tourist home, *guest ranch, outfitting and guide facility,* or roominghouse.

~~(5)~~*(7)* "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

*(8) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to at least 9 but no more than 40 people at one time.*

*(9) "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to at least 9 but no more than 24 people at one time.*

~~(5)~~*(10)* "Tourist home" means an establishment or premises where sleeping accommedations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

~~(7)~~*(11)* "Transient guest" means a guest for only a brief stay, such as the traveling puhlic."

**Seetion 4.** Section 50-51-103, MCA, is amended to read:

**"50-51-103. Department authorized to adopt rules.** *(1)* The department may adopt and enforce rules to preserve the public health and safety.

~~These rules shall~~ *(2) Rules applicable to a hotel, motel, roominghouse, boardinghouse, or tourist home must* relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage dispesal system, refuse collection and disposal, registration and supervision, and fire and life safety code.

HeinOnline -- 1997 vol. II 1902 1997

*(3) The department shall adopt rules governing guest ranches and outfitting and guide facilities. The rules must take into consideration the size, type, location, and seasonal operations of an establishment and may include only rules to:*

*(a) ensure that the establishment has safe drinking water and an adequate water supply;*

*(b) ensure an adequate and sanitary sewage system and refuse disposal system;*

*(c) address food safety concerns, such as adequate storage, refrigeration, and food handling; and*

*(d) establish staggered license expiration dates by implementing an initial licensing period determined by the department.*

*(4) Rules adopted to implement subsection (3) must be adopted through negotiated rulemaking pursuant to the Montana Negotiated Rulemaking Act.*

*(5) The department shall develop guidelines for county sanitarians to ensure the uniform application of rules statewide. The guidelines must be relative to each type of establishment.*

*(6) Upon receiving an application for licensure, the department shall timely provide the applicant with a copy of the rules appropriate for the applicant's type of establishment."*

**Section 5.** Section 50-51-201, MCA, is amended to read:

**"50-51-201. License required.** (1) ~~Each year, every~~ *Except as provided in subsection (2), a* person engaged in the business of conducting or operating ~~a hotel, motel, tourist home, boardinghouse, or roominghouse~~ *an establishment* shall *annually* procure a license issued by the department.

*(2) A guest ranch or an outfitting and guide facility that does not meet the definitions in 50-51-102 and that provides accommodations to fewer than nine people during each day of operation is not required to obtain a license under subsection (1).*

*(3) Guest ranches and outfitting and guide facilities need not apply for a license pursuant to this chapter for the first time until the later of:*

*(a) the completion of negotiated rulemaking and public notification by the department of the necessity for those guest ranches or outfitting and guide facilities to obtain a license pursuant to this chapter; or*

*(b) July 1, 1998.*

~~(2)~~*(4)* A separate license is required for each establishment~~; however~~. *However*, when more than one ~~of each~~ type of establishment is operated on the same premises and under the same management, only one license is required that must enumerate on the certificate the types of establishments licensed.

~~(3)~~*(5)* Before a license may be issued by the department, it must be validated by the local health officer or, if there is no local health officer, the sanitarian, in the county where the establishment is located."

HeinOnline -- 1997 vol. II 1903 1997

**Section 6.** Section 50-51-207, MCA, is amended to read:

**"50-51-207. Expiration date of license.** ~~Each license shall expire on December 31 following its date of issue unless canceled for cause.~~ *(1) Except as provided in subsection (2), each license expires on December 31 following its date of issue unless canceled for cause.*

*(2) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terme of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. A license fee for the term of a license during implementation of staggered licenses may be prorated by the department."*

**Section 7.** Section 50-51-401, MCA, is amended to read:

**"50-51-401. Civil penalties — injunctions not barred.** (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

*(2) Penalties may not be assessed against a guest ranch or outfitter and guide facility unless the guest ranch or outfitting and guide facility receives a written notice of a violation and fails to correct the violation within 30 days.*

~~(2)~~*(3)* Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter."

**Section 8. Coordination instruction.** If Senate Bill No. 118 is not passed and approved:

(1) Section 50-50-102(8)(c) of these amendments must include the words "bed and breakfast or a" following "*include a*";

(2) Section 50-51-102 must include the following definition: "(1) "Bed and breakfast" means a private, owner-or manager-occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18."

(3) 50-51-102(2) and (6) of the first reading copy of this bill must include "bed and breakfast," following "motel,".

(4) 50-51-401(2) of the first reading copy of this bill must include the words "a bed and breakfast or" following "*against*".

**Section 9. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1998.

(2) [Section 3 and this section] are effective on passage and approval.

Approved April 28, 1997

HeinOnline -- 1997 vol. II 1904 1997

# CHAPTER NO. 413

[SB 365]

AN ACT PROVIDING FOR THE REGULATION OF HEALTH INSURANCE CARRIERS WHO OFFER MANAGED CARE PLANS; PROVIDING FOR STATE NETWORK ADEQUACY AND QUALITY ASSURANCE STANDARDS AND A MEANS FOR ENFORCING THE STANDARDS; REGULATING CONTRACTS RELATING TO MANAGED CARE PLANS; PROVIDING REPORTING AND DISCLOSURE REQUIREMENTS; PROVIDING FOR CONFIDENTIALITY OF HEALTH CARE INFORMATION; PROVIDING DEFINITIONS; APPLYING PREMIUM INCREASE RESTRICTIONS TO HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING HEALTH MAINTENANCE ORGANIZATIONS TO FILE FINANCIAL STATEMENTS; REQUIRING PROTECTION AGAINST INSOLVENCY BY HEALTH MAINTENANCE ORGANIZATIONS; AMENDING SECTIONS 33-22-1703, 33-22-1707, 33-31-102, 33-31-111, 33-31-211, AND 33-31-216, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 12, 13, and 22] require rules to be adopted by the department of public health and human services.

The rules adopted by the department must establish state network adequacy and quality assurance standards for managed care plans that amplify [sections 8 through 29] and must provide greater detail regarding specific means by which a health carrier meets the requirements of [sections 8 through 29].

A managed care plan accredited by a nationally recognized organization is not required to meet some of the provisions of [sections 8 through 29], hut the legislature acknowledges that small managed care plans may not be capable of meeting all of the accreditation requirements of national accrediting organizations.

In order to promote uniformity of standards applicable to all managed care plans, state quality assurance standards for small managed care plans must consist of standards that are appropriate for quality assurance in Montana.

The department may refer reports of noncompliance by a health carrier to the commissioner for corrective action. Under the department's rulemaking authority, the department shall specify network adequacy and quality assurance review processes.

[Section 19] designates the department of public health and human services as the place for insurance carriers to file documents related to managed care provider network adequacy and quality assurance. The department shall adopt rules establishing procedures for filing these documents and shall adopt rules specifying processes for amending or withdrawing documents already filed that relate to network adequacy and quality assurance.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-22-1703, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1905 1997

**"33-22-1703. Definitions.** As used in this part, the following definitions apply:

(1) *"Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in any of the following:*

*(a) the covered person's health would be in serious jeopardy;*

*(b) the covered person's bodily functions would be seriously impaired; or*

*(c) a bodily organ or part would be seriously damaged.*

*(2)* "Emergency services" means ~~services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:~~

~~(a) the subscriber's or insured's health would be in serious jeopardy;~~

~~(b) the subscriber's or insured's bodily functions would be seriously impaired; or~~

~~(c) a bodily organ or part would be seriously damaged.~~ *health care items or services furnished or required to evaluate and treat an emergency medical condition.*

~~(2)~~*(3)* "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

~~(3)~~*(4)* "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) ~~a health maintenance organization as defined in 33-31-102;~~

~~(d)~~ a fraternal benefit society as described in 33-7-105; or

~~(e)~~*(d)* any other entity regulated by the commissioner that provides health coverage *except a health maintenance organization.*

~~(4)~~*(5)* "Health care services" means health care services or products rendered or sold by a provider within the scope of the provider's license or legal authorization or services provided under Title 33, chapter 22, part 7.

~~(5)~~*(6)* "Insured" means an individual entitled to reimbursement for expenses of health care services under a policy or subscriber contract issued or administered by an insurer.

~~(6)~~*(7)* "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

HeinOnline -- 1997 vol. II 1906 1997

~~(7)~~*(8)* "Preferred provider agreement" means a contract between or on behalf of a health care insurer and a preferred provider.

~~(8)~~*(9)* "Provider" means an individual or entity licensed or legally authorized to provide health care services or services covered within Title 33, chapter 22, part 7.

~~(8)~~*(10)* "Subscriber" means a certificate holder or other person on whose behalf the health care insurer is providing or paying for health care coverage."

**Section 2.** Section 33-22-1707, MCA, is amended to read:

**"33-22-1707. Rules.** The commissioner ~~shall promulgate~~ *may adopt* rules necessary to implement the provisions of this part."

**Section 3.** Section 33-31-102, MCA, is amended to read:

**"33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132; and

(j) treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

HeinOnline -- 1997 vol. II 1907 1997

(2) "Commissioner" means the commissioner of insurance of the state of Montana.

(3) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(4) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(5) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(6) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(7) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid ~~or other financial~~ basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. *This subsection does not limit methods of provider payments made by health maintenance organizations.*

(8) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(9) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

HeinOnline -- 1997 vol. II 1908 1997

(10) "Plan" means a health maintenance organization operated hy an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(11) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or ~~nurse specialist~~ *advanced practice registered nurse* as specifically listed in 37-8-202 who treats any illness or injury within the scope and limitations of ~~his~~ *the provider's* practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

~~(12)~~*(12)* "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization hecomes insolvent."

**Seetion 4.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees hy a health maintenance organization granted a certificate of authority or its representatives ~~may not be construed as~~ *is not* a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter ~~may not be considered to be~~ *is not* practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) ~~The provisions of this~~ *This* chapter ~~do~~ *does* not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) ~~The provisions of this~~ *This* section ~~do~~ *does* not exempt a health maintenance organization from material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must he considered an insurer for the purposes of 33-3-701 through 33-3-704.

*(6) This section does not exempt a health maintenance organization from network adequacy and quality assurance requirements provided under [sections 8 through 29]."*

**Section 5.** Section 33-31-211, MCA, is amended to read:

**"33-31-211. Annual ~~statement~~ *statements* — revoeation for failure to file — penalty for false swearing.** (1) Unless it is operated hy an insurer or a health service corporation as a plan, each authorized health maintenance organization shall annually on or hefore March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of

HeinOnline -- 1997 vol. II 1909 1997

the preceding December 31. The statement must be in the general form and content required by the commissioner. The statement must be verified by the oath of at least two principal officers of the health maintenance organization. The commissioner may ~~in his discretion~~ waive any verification under oath. *In addition, a health maintenance organization shall, unless it is operated by an insurer or a health service corporation as a plan, annually file on or before June 1 an audited financial statement.*

(2) At the time of filing ~~its~~ *the* annual statement *required by March 1*, the health maintenance organization shall pay the commissioner the fee for filing ~~its~~ *the* statement as prescribed in 33-31-212. The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-31-212, or may in his discretion suspend or revoke the certificate of authority of a health maintenance organization that fails to file an annual statement when due.

(3) The commissioner may, after notice and hearing, impose a fine not to exceed $5,000 ~~per~~ *for each* violation upon a director, officer, partner, member, insurance producer, or employee of a health maintenance organization who knowingly subscribes to or concurs in making or publishing an annual statement required by law that contains a material statement ~~which~~ *that* is false.

(4) The commissioner may require ~~such~~ reports ~~as he considers~~ *considered* reasonably necessary and appropriate to enable ~~him~~ *the commissioner* to carry out ~~his~~ duties *required of the commissioner* under this chapter, including but not limited to a statement of operations, transactions, and affairs of a health maintenance organization operated by an insurer or a health service corporation as a plan."

**Section 6.** Section 33-31-216, MCA, is amended to read:

**"33-31-216. Protection against insolvency.** (1) Except as provided in subsections (4) through (7), each authorized health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable te the commissioner in the amount set forth in this section.

(2) The amount of the deposit for a health maintenance organization during the first year of its operation ~~must be the greater of:~~

~~(a) 5% of its estimated expenditures for health care services for its first year of operation;~~

~~(b) twice its estimated average monthly uncovered expenditures for its first year of operation; or~~

~~(c) $100,000~~ *is $200,000.*

(3) At the beginning of each succeeding year, unless not applicable, the health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable to the commissioner, in an amount equal to 4% of its estimated annual uncovered expenditures for that year.

(4) Unless not applicable, a health maintenance organization that is in operation on October 1, 1987, shall make a deposit equal to the greater of:

HeinOnline -- 1997 vol. II 1910 1997

(a) 1% of the preceding 12 months' uncovered expenditures; or

(b) ~~$100,000 on the first day of the fiscal year beginning 6 months or more after October 1, 1987. In the second fiscal year, if applicable, the amount of the additional deposit must be equal to 2% of its estimated annual uncovered expenditures. In the third fiscal year, if applicable, the additional deposit must be equal to 3% of its estimated annual uncovered expenditures for that year. In the fourth fiscal year and subsequent years, if applicable, the additional deposit must be equal to~~ 4% of its estimated annual uncovered expenditures for each year. ~~Each year's estimate after the first year of operation must reasonably reflect the preceding year's operating experience and delivery arrangements.~~

(5) The commissioner may ~~in his discretion~~ waive any of the deposit requirements set forth in subsections (1) through (4) whenever ~~he~~ *the commissioner* is satisfied that:

(a) the health maintenance organization has sufficient net worth and an adequate history of generating net income to ~~assure~~ *ensure* its financial viability for the next year;

(b) the health maintenance organization's performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income; or

(c) the health maintenance organization's assets or its contracts with insurers, health service corporations, governments, or other organizations are reasonably sufficient to assure the performance of its obligations.

(6) When a health maintenance organization achieves a net worth not including land, buildings, and equipment of at least $1 million or achieves a net worth including organization-related land, buildings, and equipment of at least $5 million the annual deposit requirement under subsection (3) does not apply. The annual deposit requirement under subsection (3) does not apply to a health maintenance organization if the total amount of the accumulated deposit is greater than the capital requirement for the formation or admittance of a disability insurer in this state. If the health maintenance organization has a guaranteeing organization that has been in operation for at least 5 years and has a net worth not including land, buildings, and equipment of at least $1 million or that has been in operation for at least 10 years and has a net worth including organization-related land, buildings, and equipment of at least $5 million, the annual deposit requirement under subsection (3) does not apply. If the guaranteeing organization is sponsoring more than one health maintenance organization, however, the net worth requirement is increased by a multiple equal to the number of ~~such~~ *those* health maintenance organizations. This requirement to maintain a deposit in excess of the deposit required of a disability insurer does not apply during any time that the guaranteeing organization maintains for each health maintenance organization it sponsors a net worth at least equal to the capital and surplus requirements for a disability insurer.

(7) All income from deposits belongs to the depositing health maintenance organization and must be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw the deposit or any part of it after making a substitute deposit of cash, securities, or any combination of cash or securities of equal amount and value. A health maintenance

HeinOnline -- 1997 vol. II 1911 1997

organization may not substitute securities witbout prior approval by the commissioner.

(8) In any year in which an annual deposit is not required of a health maintenance organization, at the health maintenance organization's request, the commissioner shall reduce the previously accumulated deposit by $100,000 for each $250,000 of net worth in excess of the amount that allows the health maintenance organization to be exempt from the annual deposit requirement. If the amount of net worth no longer supports a reduction of its required deposit, the health maintenance organization shall immediately redeposit $100,000 for each $250,000 of reduction in net worth~~, except that its~~. *However, the health maintenance organization's* total deposit may not be required to exceed the maximum required under this section.

(9) Unless it is operated by an insurer or a health service corporation as a plan, each health maintenance organization ~~shall~~ *must* have a minimum capital of at least $200,000 in addition to any deposit requirements under this section. The capital account must be in excess of any accrued liabilities and be in the form of cash, securities, or any combination of cash or securities acceptable to the commissioner.

(10) Each health maintenance organization shall demonstrate that if it becomes insolvent:

(a) enrollees hospitalized on the date of insolvency will be covered until discharged; and

(b) enrollees will be entitled to similar alternate insurance coverage that does not contain any medical underwriting or preexisting limitation requirements."

**Section 7. Premium increase restriction — exception.** (1) A health maintenance organization may not increase a premium for an individual's or an individual's group health care services agreement more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

(a) place the health maintenance organization in violation of the laws of this state; or

(b) cause the financial impairment of the health maintenance organization to the extent tbat further transaction of insurance by the health maintenance organization would injure or be hazardous to its enrollees or to the public.

(2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, by a court decision, by a state rule, or by a federal regulation.

**Section 8. Short title.** [Sections 8 through 29] may be cited as the "Managed Care Plan Network Adequacy and Quality Assurance Act".

**Section 9. Purpose.** The purpose and intent of [sections 8 through 29] are to:

(1) establish standards for the creation and maintenance of networks by health carriers offering managed care plans and to ensure the adequacy, accessibility, and quality of health care services offered under a managed care plan by establishing requirements for written agreements between health

HeinOnline -- 1997 vol. II 1912 1997

carriers offering managed care plans and participating providers regarding the standards, terms, and provisions under which the participating provider will provide services to covered persons;

(2) provide for the implementation of state network adequacy and quality assurance standards in administrative rules, provide for monitoring compliance with those standards, and provide a mechanism for detecting and reporting violations of those standards to the commissioner;

(3) establish minimum criteria for the quality assessment activities of a health carrier issuing a closed plan or a combination plan and to require that minimum state quality assessment criteria he adopted by rule;

(4) enable health carriers to evaluate, maintain, and improve the quality of health care services provided to covered persons; and

(5) provide a streamlined and simplified process by which managed care network adequacy and quality assurance programs may he monitored for compliance through coordinated efforts of the commissioner and the department. It is not the purpose or intent of [sections 8 through 29] to apply quality assurance standards applicable to medicaid or medicare to managed care plans regulated pursuant to [sections 8 through 29] or to create or require the creation of quality assurance programs that are as comprehensive as quality assurance programs applicable to medicaid or medicare.

**Section 10. Definitions.** As used in [sections 8 through 29], the following definitions apply:

(1) "Closed plan" means a managed care plan that requires covered persons to use only participating providers under the terms of the managed care plan.

(2) "Combination plan" means an open plan with a closed component.

(3) "Covered benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

(4) "Covered person" means a policyholder, subscriber, or enrollee or other individual participating in a health benefit plan.

(5) "Department" means the department of public health and human services established in 2-15-2201.

(6) "Emergency medical condition" means a condition manifesting itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably he expected to result in any of the following:

(a) the covered person's health would be in serious jeopardy;

(b) the covered person's hodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(7) "Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

HeinOnline -- 1997 vol. II 1913 1997

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to a hospital, medical assistance facility, as defined in 50-5-101, or other licensed inpatient center, an ambulatory surgical or treatment center, a skilled nursing center, a residential treatment center, a diagnostic, laboratory, or imaging center, or a rehabilitation or other therapeutic health setting.

(9) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(10) "Health care professional" means a physician or other health care practitioner licensed, accredited, or certified pursuant to the laws of this state to perform specified health care services consistent with state law.

(11) "Health care provider" or "provider" means a health care professional or a facility.

(12) "Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(13) "Health carrier" means an entity subject to the insurance laws and rules of this state that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a disability insurer, health maintenance organization, or health service corporation or another entity providing a health benefit plan.

(14) "Intermediary" means a person authorized to negotiate, execute, and be a party to a contract between a health carrier and a provider or between a health carrier and a network.

(15) "Managed care plan" means a health benefit plan that either requires or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by a health carrier, but not preferred provider organizations or other provider networks operated in a fee-for-service indemnity environment.

(16) "Medically necessary" means services, medicines, or supplies that are necessary and appropriate for the diagnosis or treatment of a covered person's illness, injury, or medical condition according to accepted standards of medical practice and that are not provided only as a convenience.

(17) "Network" means the group of participating providers that provides health care services to a managed care plan.

(18) "Open plan" means a managed care plan other than a closed plan that provides incentives, including financial incentives, for covered persons to use participating providers under the terms of the managed care plan.

(19) "Participating provider" means a provider who, under a contract with a health carrier or with the health carrier's contractor, subcontractor, or intermediary, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

HeinOnline -- 1997 vol. II 1914 1997

(20) "Primary care professional" means a participating health care professional designated by the health carrier te supervise, coordinate, or provide initial care or continuing care to a covered person and who may be required by the health carrier to initiate a referral for specialty care and to maintain supervision of health care services rendered to the covered person.

(21) "Quality assessment" means the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations.

(22) "Quality assurance" means quality assessment and quality improvement.

(23) "Quality improvement" means an effort to improve the processes and outcomes related to the provision of health care services within a health plan.

**Section 11. Applicability and scope.** [Sections 8 through 29] apply to all health carriers that offer managed care plans. [Sections 8 through 29] do not exempt a health carrier from the applicable requirements of federal law when providing a managed care plan to medicare recipients or from the applicable requirements of federal law or Title 53, chapter 6, when providing a managed care plan to medicaid recipients.

**Section 12. Department — general powers and duties — rulemaking.** (1) The department shall:

(a) adopt rules pursuant to the Montana Administrative Procedure Act establishing minimum state standards for network adequacy and quality assurance and procedures for ensuring compliance with those standards; and

(b) recommend action to the commissioner against a health carrier whose managed care plan does not comply with standards for network adequacy and quality assurance adopted by the department.

(2) Quality assurance standards adopted by the department must consist of some but not all of the health plan employer data and information standards. The department shall select and adopt only standards appropriate for quality assurance in Montana.

(3) The state may contract, through a competitive bidding process, for the development of network adequacy and quality assurance standards.

**Section 13. Network adequacy — standards — access plan required.** (1) A health carrier offering a managed care plan in this state shall maintain a network that is sufficient in numbers and types of providers to ensure that all services to covered persons are accessible without unreasonable delay. Sufficiency in number and type of provider is determined in accordance with the requirements of this section. Covered persons must have access to emergency care 24 hours a day, 7 days a week. A health carrier providing a managed care plan shall use reasonable criteria to determine sufficiency. The criteria may include but are not limited to:

(a) a ratio of specialty care providers to covered persons;

(b) a ratio of primary care providers te covered persons;

HeinOnline -- 1997 vol. II 1915 1997

(c) geographic accessibility;

(d) waiting times for appointments with participating providers;

(e) hours of operation; or

(f) the volume of technological and specialty services available to serve the needs of covered persons requiring technologically advanced or specialty care.

(2) Whenever a health carrier has an insufficient number or type of participating providers to provide a covered benefit, the health carrier shall ensure that the covered person obtains the covered benefit at no greater cost to the covered person than if the covered benefit were obtained from participating providers or shall make other arrangements acceptable to the department.

(3) The health carrier shall establish and maintain adequate provider networks to ensure reasonable proximity of participating providers to the businesses or personal residences of covered persons. In determining whether a health carrier has complied with this requirement, consideration must be given to the relative availability of health care providers in the service area under consideration.

(4) A health carrier offering a managed care plan in this state on October 1, 1999, shall file with the department on October 1, 1999, an access plan complying with subsection (6) and the rules of the department. A health carrier offering a managed care plan in this state for the first time after October 1, 1999, shall file with the department an access plan meeting the requirements of subsection (6) and the rules of the department before offering the managed care plan. A plan must be filed with the department in a manner and form complying with the rules of the department. A health carrier shall file any subsequent material changes in its access plan with the department within 30 days of implementation of the change.

(5) A health carrier may request the department to designate parts of its access plan as proprietary or competitive information, and when designated, that part may not be made public. For the purposes of this section, information is proprietary or competitive if revealing the information would cause the health carrier's competitors to obtain valuable business information. A health carrier shall make the access plans, absent proprietary information, available on its business premises and shall provide a copy of the plan upon request.

(6) An access plan for each managed care plan offered in this state must describe or contain at least the following:

(a) a listing of the names and specialties of the health carrier's participating providers;

(b) the health carrier's procedures for making referrals within and outside its network;

(c) the health carrier's process for monitoring and ensuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in the managed care plan;

HeinOnline -- 1997 vol. II 1916 1997

(d) the health carrier's efforts to address the needs of covered persons with limited English proficiency and illiteracy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(e) the health carrier's methods for assessing the health care needs of covered persons and their satisfaction with services;

(f) the health carrier's method of informing covered persons of the plan's services and features, including but not limited to the plan's grievance procedures, its process for choosing and changing providers, and its procedures for providing and approving emergency and specialty care;

(g) the health carrier's system for ensuring the coordination and continuity of care for covered persons referred to specialty physicians and for covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;

(h) the health carrier's process for enabling covered persons to change primary care professionals;

(i) the health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and a participating provider or in the event of the health carrier's insolvency or other inability to continue operations. The description must explain how covered persons will be notified of the contract termination or the health carrier's insolvency or other cessation of operations and be transferred to other providers in a timely manner.

(j) any other information required by the department to determine compliance with [sections 13 through 21] and the rules implementing [sections 13 through 21].

(7) The department shall ensure timely and expedited review and approval of the access plan and other requirements in this section.

**Section 14. Provider responsibility for care — contracts — prohibited collection practices.** (1) A contract between a health carrier and a participating provider must set forth a hold harmless provision specifying protection for covered persons. This requirement is met by including in a contract a provision substantially the same as the following:

"The provider agrees that the provider may not for any reason, including but not limited to nonpayment by the health carrier or intermediary, insolvency of the health carrier or intermediary, or breach of this agreement, bill, charge, collect a deposit, seek compensation, remuneration, or reimbursement, or have any recourse from or against a covered person or a person other than the health carrier or intermediary acting on behalf of the covered person for services provided pursuant to this agreement. This agreement does not prohibit the provider from collecting coinsurance, copayments, or deductibles, as specifically provided in the evidence of coverage, or fees for uncovered services delivered on a fee-for-service basis to a covered person. This agreement does not prohibit a provider, except a health care professional who is employed full-time on the staff of a health carrier and who has agreed to provide services exclusively to that health carrier's covered persons and no others, and a covered person from agreeing to continue services solely at the expense of the covered person if the provider has clearly informed the covered person that the health carrier may not

HeinOnline -- 1997 vol. II 1917 1997

cover or continue to cover a specific service or services. Except as provided in this agreement, this agreement does not prohibit the provider from pursuing any legal remedy available for obtaining payment for services from tho health carrier."

(2) A contract between a health carrier and a participating provider must state that if a healtb carrier or intermediary becomes insolvent or otherwise ceases operations, covered benefits to covered persons will continue through the end of the period for which a premium has been paid to the health carrier on behalf of tbe covered person, but not to exceed 30 days, or until the covered person's discharge from an acute care inpatient facility, whichever occurs last. Covered benefits to a covered person confined in an acute care inpatient facility on the date of insolvency or other cessation of operations must be continued by a provider until tbe confinement in an inpatient facility is no longer medically necessary.

(3) The contract provisions that satisfy the requirements of subsections (1) and (2) must be construed in favor of tlie covered person, survive the termination of tbe contract regardless of the reason for termination, including the insolvency of the health carrier, and supersede an oral or written contrary agreement between a participating provider and a covered person or the representative of a covered person if tbe contrary agreement is inconsistent with the hold harmless and continuation of covered benefits provisions required by subsections (1) and (2).

(4) A participating provider may not collect or attempt to collect from a covered person money owed to the provider by tlie health carrier.

**Seetion 15. Selection of providers — professional credcntials standards.** (1) A health carrier shall adopt standards for selecting participating providers who are primary care professionals and for each health care professional specialty within the health carrier's network. The healtli carrier sball use the standards to selecl health care professionals, the health carrier's intermediaries, and any prov!der network with which the healtb carrier contracts. A health carrier may not adopt selection criteria tliat allow the health carrier to:

(a) avoid high-risk populations by excluding a provider because tho provider is located in a geographic area tbat contains populations or providers presenting a risk of higher than average claims, losses, or use of health care services; or

(b) exclude a provider because tbe provider treats or specializes in treating populations presenting a risk of higher than average claims, losses, or use of healtli care services.

(2) Subsection (1) does not probibit a health carrier from declining to select a provider who fails to meet the other legitimate selection criteria of the health carrier adopted in compliance with [sections 13 through 21] and the rules implementing [sections 13 through 21].

(3) [Sections 13 tbrough 21] do not require a health carrier, its intermediary, or a provider network with which the health carrier or its intermediary contract to employ specific providers or types of providers who may meet their selection criteria or to contract with or retain more providers or types of previders than are necessary to maintain an adequato network.

HeinOnline -- 1997 vol. II 1918 1997

(4) A health carrier may use criteria established in accordance with the provisions of this section to select health care professionals allowed to participate in the health carrier's managed care plan. A health carrier shall make its selection standards for participating providers available for review by the department and by each health care professional who is subject to the selection standards.

**Section 16. Health carriers — general responsibilities.** (1) A health carrier offering a managed care plan shall notify, in writing, prospective participating providers of the participating providers' responsibilities concerning the health carrier's administrative policies and programs, including but not limited to payment terms, utilization reviews, the quality assurance program, credentialing, grievance procedures, data reporting requirements, confidentiality requirements, and applicable federal or state requirements.

(2) A health carrier may not offer an inducement under a managed care plan to a participating provider to provide less than medically necessary services to a covered person.

(3) A health carrier may not prohibit a participating provider from discussing a treatment option with a covered person or from advocating on behalf of a covered person within the utilization review or grievance processes established by the health carrier or a person contracting with the health carrier.

(4) A health carrier shall require a participating provider to make health records available to appropriate state and federal authorities, in accordance with the applicable state and federal laws related to the confidentiality of medical or health records, when the authorities are involved in assessing the quality of care or investigating a grievance or complaint of a covered person.

(5) A health carrier and participating provider shall provide at least 60 days' written notice to each other before terminating the contract between them without cause. The health carrier shall make a good faith effort to provide written notice of a termination, within 15 working days of receipt or issuance of a notice of termination from or to a participating provider, to all covered persons who are patients seen on a regular basis by the participating provider whose contract is terminating, irrespective of whether the termination is for cause or without cause. If a contract termination involves a primary care professional, all covered persons who are patients of that primary care professional must be notified.

(6) A health carrier shall ensure that a participating provider furnishes covered benefits to all covered persons without regard to the covered person's enrollment in the plan as a private purchaser or as a participant in a publicly financed program of health care services. This requirement does not apply to circumstances in which the participating provider should not render services because of the participating provider's lack of training, experience, or skill or because of a restriction on the participating provider's license.

(7) A health carrier shall notify the participating providers of their obligation, if any, to collect applicable coinsurance, copayments, or deductibles from covered persons pursuant to the evidence of coverage or of the participating providers' obligations, if any, to notify covered persons of the covered persons' personal financial obligations for noncovered benefits.

HeinOnline -- 1997 vol. II 1919 1997

(8) A health carrier may not penalize a participating provider because the participating provider, in good faith, reports to state or federal authorities an act or practice by the health carrier that may adversely affect patient health or welfare.

(9) A health carrier shall establish a mechanism by which a participating provider may determine in a timely manner whether or not a person is covered by the health carrier.

(10) A health carrier shall establish procedures for resolution of administrative, payment, or other disputes between the health carrier and participating providers.

(11) A contract between a health carrier and a participating provider may not contain definitions or other provisions that conflict with the definitions or provisions contained in the managed care plan or [sections 8 through 29].

(12) A contract between a health carrier and a participating provider shall set forth all of the responsibilities and obligations of the provider either in the contract or documents referenced in the contract. A health carrier shall make its best effort to furnish copies of any reference documents, if requested by a participating provider, prior to execution of the contract.

**Section 17. Emergency services.** (1) A health carrier offering a managed care plan shall provide or pay for emergency services screening and emergency services and may not require prior authorization for either of those services. If an emergency services screening determines that emergency services or emergency services of a particular type are unnecessary for a covered person, emergency services or emergency services of the type determined unnecessary by the screening need not be covered by the health carrier unless otherwise covered under the health benefit plan. However, if screening determines that emergency services or emergency services of a particular type are necessary, those services must be covered by the health carrier. A health carrier shall cover emergency services if the health carrier, acting through a participating provider or other authorized representative, has authorized the provision of emergency services.

(2) A health carrier shall provide or pay for emergency services obtained from a nonnetwork provider within the service area of a managed care plan and may not require prior authorization of those services if use of a participating provider would result in a delay that would worsen the medical condition of the covered person or if a provision of federal, state, or local law requires the use of a specific provider.

(3) If a participating provider or other authorized representative of a health carrier authorizes emergency services, the health carrier may not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item or health care services furnished in reliance on approval unless the approval was based on a material misrepresentation about the covered person's medical condition made by the provider of emergency services.

(4) Coverago of emergency services is subject to applicable coinsurance, copayments, and deductibles.

HeinOnline -- 1997 vol. II 1920 1997

(5) For postevaluation or poststahilization services required immediately after receipt of emergency services, a health carrier shall provide access to an authorized representative 24 hours a day, 7 days a week, to facilitate review.

**Section 18. Use of intermediaries — responsibilities of health carriers, intermediaries, and providers.** (1) A health carrier is responsible for complying with applicable provisions of [sections 8 through 29], and contracting with an intermediary for all or some of the services for which a health carrier is responsible does not relieve the health carrier of responsibility for compliance.

(2) A health carrier may determine whether a subcontracted provider participates in the provider's own network or a contracted network for the purpose of providing covered benefits to the health carrier's covered persons.

(3) A health carrier shall maintain copies of all intermediary health care subcontracts at the health carrier's principal place of business in this state or ensure that the health carrier has access to all intermediary subcontracts, including the right to make copies of the contracts, upon 20 days' prior written notice from the health carrier.

(4) If required in a contract or otherwise by a health carrier, an intermediary shall transmit utilization documentation and claims-paid documentation to the health carrier. The health carrier shall monitor the timeliness and appropriateness of payments made to providers and health care services received by covered persons. This duty may not be delegated to an intermediary by a health carrier.

(5) If required in a contract or otherwise by a health carrier, an intermediary shall maintain the books, records, financial information, and documentation of services provided to covered persons at its principal place of business in the state and preserve them for 5 years in a manner that facilitates regulatory review.

(6) An intermediary shall allow the commissioner and the department access to the intermediary's books, records, claim information, billing information, and other documentation of services provided to covered persons that are required by any of those entities to determine compliance with [sections 13 through 21] and the rules implementing [sections 13 through 21].

(7) A health carrier may, in the event of the intermediary's insolvency, require the assignment to the health carrier of the provisions of a participating provider's contract addressing the participating provider's obligation to furnish covered benefits.

**Section 19. Contract filing requirements — material changes — state access to contracts.** (1) On October 1, 1999, a health carrier offering a managed care plan shall file with the department sample contract forms proposed for use with its participating providers and intermediaries.

(2) A health carrier shall file with the department a material change to a contract. The change must be filed with the department at least 60 days before use of the proposed change. A change in a participating provider payment rate, coinsurance, copayment, or deductible or other plan benefit is not considered a material change for the purpose of this subsection.

HeinOnline -- 1997 vol. II 1921 1997

(3) A health carrier shall maintain participating provider and intermediary contracts at its principal place of business in this state, or the health carrier must have access to all contracts and provide copies to the department upon 20 days' prior written notice from the department.

**Section 20. General contracting requirements.** (1) The execution of a contract for health care services with an intermediary hy a health carrier does not relieve the health carrier of its duty to provide health care services to a person with whom the health carrier has contracted and does not relieve the health carrier of its responsibility for compliance with [sections 8 through 29] or the rules implementing [sections 8 through 29].

(2) All contracts by a health carrier for the provision of health care services by a managed care plan must be in writing and are subject to review by the department and the commissioner.

**Section 21. Contract compliance dates.** (1) A contract between a health carrier and a participating provider or intermediary in effect on October 1, 1999, must comply with [sections 13 through 21] and the rules implementing [sections 13 through 21] by October 1, 1999. The department may extend the October 1 date for an additional period of up to 6 months if the health carrier demonstrates good cause for an extension.

(2) A contract between a health carrier and a participating provider or intermediary issued or put into effect on or after October 1, 1999, must comply with [sections 13 through 21] and the rules implementing [sections 13 through 21] on tbe day that it is issued or put into effect.

(3) A contract between a health carrier and a participating provider or intermediary not described in subsection (1) or (2) must comply with [sections 13 through 21] and the rules implementing [sections 13 through 21] by October 1, 1999.

**Section 22. Department rules.** The department may adopt rules to implement [sections 13 through 21].

**Section 23. Quality assurance — national accreditation.** (1) A health carrier whose managed care plan has been accredited by a nationally recognized accrediting organization shall annually provide a copy of the accreditation and the accrediting standards used by the accrediting organization to the department.

(2) If the department finds that the standards of a nationally recognized accrediting organization meet or exceed state standards and that the health carrier has been accredited by the nationally recognized accrediting organization, the department shall approve the quality assurance standards of the health carrier.

(3) The department shall maintain a list of accrediting organizations whose standards have been determined by the department to meet or exceed state quality assurance standards.

(4) [Section 24] does not apply to a health carrier's managed care plan if the health carrier maintains current accreditation by a nationally recognized accrediting organization whose standards meet or exceed state quality assurance standards adopted pursuant to [sections 23 through 27].

HeinOnline -- 1997 vol. II 1922 1997

(5) This section does not prevent the department from monitoring a health carrier's compliance with [sections 23 through 27].

**Section 24. Standards for health carrier quality assessment programs.** A health carrier that issues a closed plan or a combination plan shall adopt and use infrastructure and disclosure systems sufficient to accurately measure the quality of health care services provided to covered persons on a regular basis and appropriate to the types of plans offered by the health carrier. To comply with this requirement, a health carrier shall:

(1) establish and use a system designed to assess the quality of health care provided to covered persons and appropriate to the types of plans offered by the health carrier. The system must include systematic collection, analysis, and reporting of relevant data.

(2) communicate in a timely fashion its findings concerning the quality of health care to regulatory agencies, providers, and consumers as provided in [section 26];

(3) report to the appropriate professional or occupational licensing board provided in Title 37 any persistent pattern of problematic care provided by a participating provider that is sufficient to cause the health carrier to terminate or suspend a contractual arrangement with the participating provider; and

(4) file a written description of the quality assessment program and any subsequent material changes with the department in a format that must be prescribed by rules of the department. The description must include a signed certification by a corporate officer of the health carrier that the health carrier's quality assessment program meets the requirements of [sections 23 through 27].

**Section 25. Standards for health carrier quality improvement programs.** A health carrier that issues a closed plan or a combination plan shall, in addition to complying with [section 24], adopt and use systems and methods necessary to improve the quality of health care provided in the health carrier's managed care plan as indicated by the health carrier's quality assessment program and as required by this section. To comply with this requirement, a health carrier subject to this section shall:

(1) establish an internal system capable of identifying opportunities to improve care;

(2) use the findings generated by the system required by subsection (1) to work on a continuing basis with participating providers and other staff within the closed plan or closed component to improve the health care delivered to covered persons;

(3) adopt and use a program for measuring, assessing and improving the outcomes of health care as identified in the health carrier's quality improvement program plan. This quality improvement program plan must be filed with the department by October 1, 2000, and must be consistent with [sections 23 through 27]. A health carrier shall file any subsequent material changes to its quality improvement program plan within 30 days of implementation of the change. The quality improvement program plan must:

HeinOnline -- 1997 vol. II 1923 1997

(a) implement improvement strategies in response to quality assessment findings that indicate improvement is needed; and

(h) evaluate, not less than annually, the effectiveness of the strategies implemented pursuant to suhsection (3)(a).

**Section 26. Reporting and disclosure requirements.** (1) A health carrier offering a closed plan or a comhination plan shall document and communicate information, as required in this section, about its quality assurance program. The health carrier shall:

(a) include a summary of its quality assurance program in marketing materials;

(b) include a description of its quality assurance program and a statement of patient rights and responsibilities with respect to that program in the certificate of coverage or handbook provided to newly enrolled covered persons; and

(c) make available annually to providers and covered persons a report containing findings from its quality assurance program and information about its progress in meeting internal goals and external standards, when available.

(2) A health carrier shall certify to the department annually that its quality assurance program and the materials provided to providers and consumers in accordance with subsection (1) meet the requirements of [sections 23 through 27].

(3) A health carrier shall make available, upon request and payment of a reasonable fee, the materials certified pursuant to subsection (2), except for the materials subject to the confidentiality requirements of [section 27] and materials that are proprietary to the managed care plan. A health carrier shall retain all certified materials for at least 3 years from the date that the material was certified or until the material has been examined as part of a market conduct examination, whichever is later.

**Section 27. Confidentiality of health care and quality assurance records — disclosure.** (1) Except as provided in subsection (2), the following information held by a health carrier offering a closed plan or a combination plan is confidential and may not be disclosed by the carrier to a person:

(a) information pertaining to the diagnosis, treatment, or health of a covered person, regardless of whether the information is in the form of paper, is preserved on microfilm, or is stored in computer-retrievable form;

(b) information considered by a quality assurance program and the records of its actions, including testimony of a member of a quality committee, of an officer, director, or other member of a health carrier or its staff engaged in assisting the quality committee or engaged in the health carrier's quality assessment, quality improvement, or quality assurance activities, or of any person assisting or furnishing information to the quality committee.

(2) The information specified in subsection (1) may be disclosed:

(a) as allowed by Title 33, chapter 19;

HeinOnline -- 1997 vol. II 1924 1997

(b) as required in proceedings before the commissioner, a professional or occupational licensing board provided in Title 37, or the department pursuant to Title 50, chapter 5, part 2;

(c) in an appeal, if an appeal is permitted, from a quality committee's findings or recommendations; or

(d) as otherwise required by law or court order, including a judicial or administrative subpoena.

(3) Information specified in subsection (1) identifying:

(a) the provider may also be disclosed upon a written, dated, and signed approval of the provider if the information does not identify the covered person;

(b) the covered person may also be disclosed upon a written, dated, and signed approval of the covered person or of the parent or guardian of a covered person if the covered person is a minor and if the information does not identify the provider;

(c) neither the provider nor the covered person may also be disclosed upon request for use for statistical purposes only.

**Section 28. Enforcement.** (1) If the department determines that a health carrier has not complied with [sections 8 through 29] or the rules implementing [sections 8 through 29], the department may recommend corrective action to the health carrier.

(2) At the recommendation of the department the commissioner may take an enforcement action provided in subsection (3) if:

(a) a health carrier fails to implement corrective action recommended by the department;

(b) corrective action taken by a health carrier does not result in bringing a health carrier into compliance with [sections 8 through 29] and the rules implementing [sections 8 through 29] within a reasonable period of time;

(c) the department demonstrates to the commissioner that a health carrier does not comply with [sections 8 through 29] or the rules implementing [sections 8 through 29]; or

(d) the commissioner determines that a health carrier has violated or is violating [sections 8 through 29] or the rules implementing [sections 8 through 29].

(3) The commissioner may take any of the following enforcement actions to require a health carrier to comply with [sections 8 through 29] or the rules implementing [sections 8 through 29]:

(a) suspend or revoke the health carrier's certificate of authority or deny the health carrier's application for a certificate of authority; or

(b) use any of the commissioner's other enforcement powers provided in Title 33, chapter 1, part 3.

HeinOnline -- 1997 vol. II 1925 1997

**Section 29. Jurisdiction over contract actions.** The district courts have jurisdiction over actions for the enforcement of contracts authorized or regulated by [sections 8 through 29].

**Section 30. Codification instruction.** (1) [Section 7] is intended to be codified as an integral part of Title 33, chapter 31, and the provisions of Title 33, chapter 31, apply to [section 7].

(2) [Sections 8 through 29] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 8 through 29].

**Section 31. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 32. Applicability.** [This act] applies to a health carrier as defined in [section 10] who offers a managed care plan as defined in [section 10] on or after [the effective date of this section].

**Section 33. Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective January 1, 1998.

(2) [Sections 12, 22, and 30 through 32 and this section] are effective on passage and approval.

(3) [Sections 13, 15, 18 through 21, and 23 through 29] are effective October 1, 1999.

Approved April 28, 1997

# CHAPTER NO. 414

[SB 372]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE, UPON A TIMELY SHOWING OF A CHANGE IN OWNERSHIP OR OF A LAND CONVEYANCE RESULTING IN A CHANGE OF OWNERSHIP, EXCEPT IN THE CASE OF LAND SPLITS, TO CHANGE THE CURRENT OWNERSHIP RECORDS; AMENDING SECTIONS 15-7-102, 15-8-201, AND 15-10-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Land split.** For the purposes of this title, a land split is the conveyance or transfer of a portion of a parcel of land that will require the department to change its ownerships records for the original parcel to show the creation of one or more new parcels under a new ownership.

**Section 2.** Section 15-7-102, MCA, is amended to read:

**"15-7-102. Notice of classification and appraisal to owners — appeals.** (1) (a) The department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being

purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) The notice must include the following for the taxpayer's informational purposes:

(i) the total amount of mills levied against the property in the prior year;

(ii) the amount of the prior year's taxes resulting from levied mills;

(iii) an estimate of the current year's taxes based on the prior year's mills; and

(iv) a statement that the notice is not a tax bill.

(c) Any misinformation provided in the information required by subsection (1)(b) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) ~~The~~ *Except as provided in subsection (2)(c), the* department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

*(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The date of mailing is the date reported to the county tax appeal board pursuant to 15-15-101.*

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information

HeinOnline -- 1997 vol. II 1927 1997

presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal beard, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must he filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

**Section 3.** Section 15-8-201, MCA, is amended to read:

"**15-8-201. General assessment day.** (1) The department shall, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county.

*(2)* The department shall assess property to:

*(a)* the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1; *or*

*(b) except in the case of land splits, the new owner if the provisions of 15-7-304 have been met and the transfer certificate has been received and processed prior to determining the taxes that are due as provided in 15-10-305(2).*

*(3)* The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1.

*(4)* A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

~~(2)~~*(5)* The procedure provided by this section does not apply to:

(a) motor vehicles that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(f) mobile homes held by a distributor or dealer of mobile homes as stock in trade; and

(g) property subject to the provisions of 15-16-203.

~~(3)~~*(6)* Credits must be assessed as provided in 15-1-101(1)(f)."

**Section 4.** Section 15-10-305, MCA, is amended to read:

**"15-10-305. Clerk and recorder to report mill levy — department to compute and enter taxes.** (1) *(a)* ~~The~~ *The* county clerk and recorder shall by the third Monday in August notify the department of the number of mills needed to be levied for each taxing jurisdiction in the county. ~~The~~ *Except as provided in subsection (1)(b), the* department shall compute the taxes by multiplying the number of mills times the taxable value of the property to be taxed and shall add any fees or assessments required to be levied against a person owning property. All taxes, fees, and assessments must be itemized for the property listed in the property tax record.

*(b) In conveyances that result in a land split, the taxes must be based on the property as assessed on January 1 preceding the conveyance. The department is not required to include the name of the new owner in the computation of the amount of taxes, fees, and assessments to be levied against property that is part of a land conveyance if including the new owner's name would cause the department to violate the deadline provided in subsection (2).*

(2) The department shall complete the computation of the amount of taxes, fees, and assessments to be levied against the property and shall notify the county clerk and recorder and the county treasurer by the second Monday in October."

**Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 7, part 1, and the provisions of Title 15, chapter 7, part 1, apply to [section 1].

**Section 6. Applicability.** [This act] applies to all conveyances and transfers of property resulting in a change of ownership effective after December 31, 1997.

**Section 7. Effective date — rulemaking.** (1) Except as provided in subsection (2), [this act] is effective January 1, 1998.

HeinOnline -- 1997 vol. II 1929 1997

(2) The department may commence rulemaking to implement the provisions of [this act] prior to January 1, 1998, but the date rules are adopted implementing [this act] may not be earlier than January 1, 1998.

Approved April 28, 1997

# CHAPTER NO. 415

[SB 377]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE STATE COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; PROVIDING AN OPTIONAL PROCEDURE FOR ALLOCATING LIABILITY FOR SITE REMEDIATION; CREATING AN ORPHAN SHARE FUND ACCOUNT AND ALLOCATING CERTAIN RESOURCE INDEMNITY TRUST INTEREST AND TAX PROCEEDS, METALLIFEROUS MINE TAX PROCEEDS, AND OTHER MONEY TO THE ACCOUNT; PROVIDING FOR CITIZEN SUITS; PROVIDING EXCLUSIONS FROM LIABILITY; PROVIDING ADDITIONAL AND SPECIFIC RULEMAKING AUTHORITY; AMENDING PROVISIONS AND EXTENDING THE TERMINATION DATE OF THE MIXED FUNDING PILOT PROGRAM; AMENDING SECTIONS 15-37-117, 15-38-106, 15-38-202, 75-10-701, 75-10-702, 75-10-704, 75-10-715, 75-10-719, 75-10-720, AND 75-10-724, MCA, AND SECTIONS 16, 18, AND 27, CHAPTER 584, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, the 1995 Legislature, in Chapter 584, Laws of 1995, directed the Department of Environmental Quality to institute a collaborative process involving all affected and interested persons to analyze tbe elimination of joint and several liability with respect to the cleanup of state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facilities and to submit any legislative proposals that collaboratively resulted from that process to the 55th Legislature; and

WHEREAS, the Department instituted this collaborative process with industry and business representatives; state, federal, and local government representatives; and public interest and environmental interest group representatives; and

WHEREAS, through a contract with the Department, the Montana Consensus Council designed the study process, facilitated the organization of the collaborative process, and conducted the numerous meetings of the study committees and interest group caucuses through which the parties to the collaborative process reached consensus on legislative proposals that are contained in this bill.

STATEMENT OF INTENT

It is the intent of this bill to provide an option to the concept of joint and several liability for potentially liable persons to have their proportionate share of liability for a state Comprehensive Environmental Cleanup and Responsibility Act (CECRA) facility determined through an expedited process while ensuring that the concurrent cleanup of the facility occurs. The bill clarifies defenses to liability and creates exclusions from liability. The bill also provides rulemaking

HeinOnline -- 1997 vol. II 1930 1997

authority to the department for developing guidance and criteria and involving the public and tbe liable parties in the decisionmaking process for listing and delisting sites on a CECRA priority list. The department will he required to provide written justification for its decisions to list, delist, and prioritize sites needing remediation. The written criteria for listing and delisting represent tbe legislature's intent for this rulemaking.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-37-117, MCA, is amended to read:

"**15-37-117. (Temporary) Disposition of metalliferous mines lieense taxes.** (1) Metalliferous mines license taxes collected under tlie provisions of this part must, in accordance witli tlie provisions of 15-1-501, be allocated as follows:

(a) to tlie credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to tlie credit of a hard-rock mining impact trust account, 1.5% of tetal collections each year;

(c) to the abandoned mines state special revenue account provided for in section 19, Chapter 584, Laws of 1995, 8.5% of total collections each year;

(d) to tlie ground water assessment account establislied in 85-2-905, 2.2% of total collections eacli year;

(e) to tlie reclamation and development grants program state special revenue account, 4.8% of total collections each year; and

(f) te the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in tlie plan, or, if an impact plan has not been prepared, to tlie county in whicli the mine is located, 25% of total collections each year, to he allocated by tlie county commissioners as follows:

(i) not less than 40% to the county liard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to suhsection (1)(f)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to tlie county for planning or economic development activities;

(B) 33 1/3% is allocated to tlie elementary school districts within tlie county tliat have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the liigh school districts within the county tliat have been affected by the development or operation of the metal nine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distrihute tbe proceeds allocated under subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

HeinOnline -- 1997 vol. II 1931 1997

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory appropriation pursuant to 17-7-502. (Terminates June 30, ~~1997—sec. 27, Ch. 584, L. 1995~~ *1997—sec. 27, Ch. 584, L. 1995.*)

**15-37-117. (Effective July 1, ~~1997~~ *1997*) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the ~~state resource indemnity trust fund, 15.5% of total collections each year~~ *orphan share state special revenue account established in [section 13], 8.5% of total collections each year*;

(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;

(e) to the reclamation and development grants program state special revenue account, 4.8% of total collections each year; and

(f) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory appropriation pursuant to 17-7-502."

HeinOnline -- 1997 vol. II 1932 1997

**Section 2.** Section 15-38-106, MCA, is amended to read:

**"15-38-106. Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501(6), deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905;

(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104*; and*

*(d) at the beginning of each fiscal year, there is allocated from the proceeds of the tax up to $200,000 to be deposited in the orphan share account established in [section 13].*

(3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

**Section 3.** Section 15-38-202, MCA, is amended to read:

**"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and

HeinOnline -- 1997 vol. II 1933 1997

loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) ~~beginning in fiscal year 1996,~~ $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iv) ~~beginning in fiscal year 1996,~~ $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(v) ~~beginning in fiscal year 1996,~~ $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

*(c) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund up to $200,000 to be deposited in the orphan share account established in [section 13].*

~~(c)~~*(d)* The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

HeinOnline -- 1997 vol. II 1934 1997

**Section 4.** Section 75-10-701, MCA, is amended to read:

**"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Director" means the director of the department.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or amhient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any huilding, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or puhlicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has heen deposited, stored, disposed of, placed, or otherwise come to he located.

(b) The term does not include any consumer product in consumer use.

(5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian, conservator, guardian, or receiver acting or holding property for the exclusive henefit of another person. The term does not include:

(a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

(b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part. For the purposes of 75-10-715~~(7)~~*(9)*, the term does not include the state, a state agency, or a political suhdivision of the state acting as trustee of natural resources within the state of Montana.

(6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan obligation.

(7) "Fund" means the environmental quality protection fund established in 75-10-704.

(8) "Hazardous or deleterious substance" means a substance that hecause of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to puhlic health, safety, or welfare or the environment and is:

(a) a suhstance that is defmed as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601(14), as amended;

HeinOnline -- 1997 vol. II 1935 1997

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

*(9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or areas.*

*(10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived from a household.*

~~(9)~~*(11)* "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other resources within the state of Montana owned, managed, held in trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

*(12) "Orphan share" means the percentage share of remedial action costs for a facility that is attributable, under the procedures in [sections 12 through 22], to identified but bankrupt or defunct persons who are not affiliated with any viable person.*

*(13) "Orphan share fund" means the fund for the orphan share account established in [section 13].*

~~(10)~~*(14)* (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the gevernment acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or threatened release under 75-10-715(1).

~~(11)~~*(15)* "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

~~(12)~~*(16)* "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or

fuel, lubricating oil, oil sludge or refuse, and any other ~~petroleum-related~~ *petroleum related* product or waste or fraction of the product or waste that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

~~(13)~~*(17)* "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of the facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(14)~~*(18)* "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers, as defined in 80-10-101(2), when applied as part of accepted agricultural practice.

~~(15)~~*(19)* "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

~~(16)~~*(20)* "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

~~(17)~~*(21)* "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(b) any person who is retained or hired by a person described in subsection ~~(17)(a)~~ *(21)(a)* to provide services relating to a remedial action.

~~(16)~~*(22)* "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."

**Section 5.** Section 75-10-702, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1937 1997

"**75-10-702. Rulemaking authority.** *(1)* The department is authorized to adopt rules for the implementation of this part, *including but not limited to:*

*(a) rules for listing and delisting facilities on a priority list, required by 75-10-704, based on the following criteria:*

*(i) a facility eligible for listing must have a confirmed release or substantial threat of a release of a hazardous or deleterious substance that may pose an imminent and substantial threat to public health, safety, or welfare or the environment and the department shall provide a written description of the nature and severity of the threat;*

*(ii) if remedial actions to address the hazardous or deleterious substances are required at the facility by another state program, the department shall explain, in writing, its rationale for listing the facility;*

*(iii) listing and delisting must be done through a formal process that provides for public participation, including participation of the affected or potentially liable persons in the decisionmaking process, by giving public notice and providing opportunity for at least one public meeting in the community most likely to be threatened by the facility that is proposed for listing or delisting; and*

*(iv) a facility must be delisted when another state program assumes jurisdiction or when further remedial actions are not necessary;*

*(b) rules for establishing and implementing a system for prioritizing facilities, including categories for maximum and high-priority facilities, as required by 75-10-704, for remedial action based on potential effects on human health and the environment.*

*(2) The rulemaking authority granted in subsection (1) may not invalidate the existing priorities list. Rules promulgated pursuant to subsection (1) must provide for the reevaluation of facilities on the existing priorities list. A decision by the department to list, delist, or establish a priority for a facility must be made in writing."*

**Section 6.** Section 75-10-704, MCA, is amended to read:

"**75-10-704. Environmental quality protection fund.** (1) There is in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) except as provided in subsection (7), establish and implement a system, *including the preparation of a priority list,* for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable

HeinOnline -- 1997 vol. II 1938 1997

persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund hy the legislature; ~~and~~

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

*(e) funds received from the interest income of the fund; and*

*(f) funds received from settlements pursuant to 75-10-719(7).*

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through tlie budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingoncy account established pursuant to 75-1-1101.

(7) (a) There is establislied a state special revenue account for all funds donated or granted from private parties to remediate a specific release at a specific facility. There must be deposited into the account tlie interest income earned on the account. A person is not liable under 75-10-715 solely as a result of contributing to tliis account.

(b) Funds donated or granted for a specific project pursuant to this subsection (7) must be accumulated in the fund until tlie balance of the donated or granted funds is sufficient, as determined by the department, to remediate tlie facility pursuant to the requirements of 75-10-721 for which tbe funds are donated.

(c) If the balance of the fund created in this subsection (7), as determined by the department pursuant to the requirements of 75-10-721, is not sufficient to remediate the facility within 1 year from the date of the initial contribution, all donated or granted funds, including any interest on those donated or granted funds, must be returned to the grantor.

(d) If the halance for a specific project is determined by the department to be sufficient to remediate the facility pursuant to the requirements of 75-10-721, the department shall give that site high priority for remedial action, using the funds donated under this subsection (7).

(e) This subsection (7) is not intended to interfere with or to diminish the authority or actions of tlie department to investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liahle persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

HeinOnline -- 1997 vol. II 1939 1997

Subsections (7) and (8) do not pertain to facilities where the department has initiated actions under this part.

(f) The department shall expend the funds in a manner that maximizes the application of the funds to physically remediating the specific release.

(8) (a) A person may donate in-kind services to remediate a specific release at a specific facility pursuant to subsection (7). A person that donates in-kind services is not liable under 75-10-715 solely as a result of the contribution of in-kind services.

(b) A person who donates in-kind services with respect to remediating a specific release at a specific facility is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss of or damage to property, or economic loss.

(c) Immunity from liability, pursuant to subsection (8)(b), does not apply in the case of a release that is caused by conduct of the entity providing in-kind services that is negligent or grossly negligent or that constitutes intentional misconduct.

(d) This subsection does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

(e) Any donated in-kind services that are employed as part of a remedial action pursuant to this subsection (8) must be approved by the department as appropriate remedial action."

**Section 7.** Section 75-10-715, MCA, is amended to read:

**"75-10-715. Liability — reimbursement and penalties — proceedings — defenses *and exclusions*.** (1) *Except as provided in [sections 12 through 22], notwithstanding* ~~Notwithstanding~~ any other provision of law, and subject only to the defenses set forth in subsection (5) *and the exclusions set forth in subsection (7)*, the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:

(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

HeinOnline -- 1997 vol. II 1940 1997

(2) A person identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the person liable under subsection (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) The department may initiate civil proceedinga in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties must be conducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the person liable under subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

(5) A person *has a defense and* is not liable under subsections (1), (2), and (3) if the person can establish by a preponderance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required;

(b) the release did not emanate from any vessel, vehicle, or facility to which the person contributed any hazardous or deleterious substance or over which the person had any ownership, authority, or control and was not caused by any action or omission of the person;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the person; or

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that the person:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

HeinOnline -- 1997 vol. II 1941 1997

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person ~~accepted~~ *transported* only household refuse ~~(garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to a solid waste disposal facility~~, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

HeinOnline -- 1997 vol. II 1942 1997

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) ~~Nothing in subsections~~ *Subsections* (5)(b) and (5)(c) or ~~in~~ this subsection (6) may *not* diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and ~~no~~ *a* defense under subsection (5)(b) or (5)(c) is *not* available to that person.

(e) ~~Nothing in this subsection~~ *Subsection* (6) ~~affects~~ *does not affect* the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

*(7) A person has an exclusion and is not liable under this section if:*

*(a) the person generated or disposed of only household refuse, unless the person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse;*

*(b) the person owns or operates real property where hazardous or deleterious substances have come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the person's property, provided that the following conditions are met:*

*(i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's or operator's property does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.*

*(ii) the person who caused, contributed to, or exacerbated the release or threatened release of any hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department provides a written determination that an existing or proposed contractual relationship is an insufficient basis to establish liability under this section;*

*(iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or threatened release of a hazardous or deleterious substance; and*

*(iv) the owner or operator cooperates with the department and all persons conducting department-approved remedial actions on the property, including*

HeinOnline -- 1997 vol. II 1943 1997

*granting access and complying with and implementing all required institutional controls;*

*(c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that the following conditions are met:*

*(i) the person did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substance through any act or omission;*

*(ii) the person uses or allows the use of the real property for residential purposes. This exclusion does not apply to any person who acquires or develops real property for commercial use or any use other than residential use.*

*(iii) at the time the person purchased or occupied the real property, there were no visible indications of contamination on the surface of the real property;*

*(iv) the person cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls; and*

*(v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or threatened release of a hazardous or deleterious substance.*

*(8) A person is liable under this section if the department provides substantial credible evidence that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).*

~~(7)~~*(9)* The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

~~(8)~~*(10)* A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of 75-10-701~~(10)(b)~~*(14)(b)* because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

HeinOnline -- 1997 vol. II 1944 1997

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning the hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the holder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a bid for fair consideration for the property or outbid or refuse a bid that would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection ~~(9)~~ *(11)*.

~~(9)~~*(11)* The protection from liability provided in subsections ~~(7)~~ *(9)* and ~~(8)~~ *(10)* is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

HeinOnline -- 1997 vol. II 1945 1997

(c) in the case of a person holding indicia of ownership primarily to protect a security interest, actually participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of the enterprise with responsibility for day-to-day decisionmaking either with respect to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

**Section 8.** Section 75-10-719, MCA, is amended to read:

**"75-10-719. Settlement — bar to contribution liability.** (1) A person who has resolved ~~his~~ *that person's* liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA, 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

(2) If the state has obtained less than complete relief from a person who has resolved ~~his~~ *that person's* liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other person who has not resolved ~~his~~ *that person's* liability.

(3) A person who has resolved, in whole or in part, ~~his~~ *that person's* liability to the state for the release or for remedial action costs in an administrative or judicially approved settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

(4) Whenever practicable and in the public interest, as determined by the director of the department, the department may, as promptly as possible, reach a final settlement with a *potentially liable or liable* person ~~liable~~ under 75-10-715 in an administrative or civil action under 75-10-711 if the settlement involves only a minor portion of the ~~response~~ *remedial action* costs at the facility concerned and, in the judgment of the department, *taking into account the toxicity of the hazardous or deleterious substances involved and the person's contribution of hazardous or deleterious substances in relation to the total volume of hazardous or deleterious substances at the facility,* the conditions in ~~either~~ *any* of the following ~~subsection~~ *subsections* (4)(a) ~~or (4)(b)~~ *through (4)(d)* are met:

(a) ~~Both of the following are minimal in comparison to other hazardous or deleterious substances at the facility:~~

~~(i) the amount of the hazardous or deleterious substances contributed by that person to the facility;~~

~~(ii) the toxic or other hazardous effects of the substances contributed by that person to the facility.~~ *the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial credible evidence that the person contributed less than 0.002% of the total volume or less than 100 gallons or 200 pounds of materials containing hazardous or deleterious substances at a facility that received hazardous or deleterious substances from multiple*

*contributors. The department may not require the payment of remedial action costs from this person.*

*(b) (i) the person is one whose liability is based solely on 75-10-715(1)(c) or (1)(d) and who presents substantial credible evidence that the person arranged for disposal or treatment of less than 5% of the total quantity of solid waste or hazardous or deleterious substances disposed of at a facility that received solid waste or hazardous or deleterious substances from multiple contributors.*

*(ii) For the purposes of subsection (5)(a) and this subsection (4)(b) only, the term "solid waste" means:*

*(A) all putrescible and nonputrescible wastes, including garbage, rubbish, refuse, or ashes;*

*(B) sludge from sewage treatment plants, water supply plants, or air pollution control facilities;*

*(C) construction and demolition wastes;*

*(D) dead animals, including offal;*

*(E) discarded home and industrial appliances; and*

*(F) wood products or wood byproducts and inert materials.*

~~(b)~~*(c)* (i) ~~The~~ *the* person:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance at the facility; and

(C) did not contribute to the release or threat of release of a hazardous or deleterious substance at the facility through any action or omission.

(ii) This subsection ~~(4)(b)~~ *(4)(c)* does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

*(d) the person presents substantial credible evidence that the person has a defense under 75-10-715(5).*

*(5) When reaching a settlement under subsection (4)(b), (4)(c), or (4)(d), the department may require the payment of remedial action costs not to exceed two times the person's reasonably projected liability for remedial action costs as determined by the department. Except as provided in subsection (6), the settlement must contain a reservation of rights clause in the event that the department obtains new information showing that the settling person no longer qualifies for a settlement because:*

*(a) the solid waste or hazardous or deleterious substances contributed by the person was of a greater volume or toxicity than originally estimated; or*

*(b) the settlement was reached under subsection (4)(c) and, after settlement, the department finds that the person had actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.*

*(6) A person who agrees to a liability settlement may avoid the reservation of rights clause under subsection (5) by paying remedial action costs in the amount of four times the person's reasonably projected liability for remedial action costs as determined by the department.*

*(7) All funds received as a result of settlements under this section must be paid in the following order of priority:*

*(a) to the department as reimbursement for its remedial action costs at the facility;*

*(b) to liable persons as reimbursement for remedial action costs at the facility. In the event of an allocation under [sections 12 through 22], the reimbursement must be in proportion to each liable person's share of liability as determined under the provisions of [section 20 or 21];*

*(c) the remainder, if any:*

*(i) to the orphan share fund provided in [section 13] if the facility went through the allocation process provided in [sections 12 through 22]; or*

*(ii) to the fund provided in 75-10-704 if the facility did not undergo the allocation process provided in [sections 12 through 22].*

*(8) Any person who enters into a settlement under this section may not be subject to or assigned a share in the allocation process provided in [sections 12 through 22].*

~~(5)~~*(9)* As part of an administrative or judicially approved settlement agreement, the department may require the liable person to provide financial assurance, in an amount determined by the department, to ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."

**Section 9.** Section 75-10-720, MCA, is amended to read:

**"75-10-720. Condemnation — creation of state lien.** (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts 1 through 3.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the property that belong to the person.

HeinOnline -- 1997 vol. II 1948 1997

(3) The lien imposed by this section arises at the time notice incorporating a description of the property subject to the remedial action and an identification of the amount of costs, penalties, and natural resource damages is ~~duly~~ filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the liable person.

(4) The costs, penalties, and natural resource damages constituting the lien may be recovered in an action in the district court for the district in which the property is located or in which the remedial action is occurring or has occurred. This section does not affect the right of the state to bring an action against a person to recover all costs, penalties, and natural resource damages for which that person is liable under this part or any other provision of state or federal law.

(5) The lien must continue until the liability for the costs and damages incurred as a result of the release of a hazardous or deleterious substance is satisfied.

*(6) If the department expends money from the fund for orphan share remedial action costs at a facility or for a facility at which a reimbursed orphan share exists, the state has a lien upon the facility for the unrecovered costs. The lien:*

*(a) may not exceed the increase in fair market value of the property attributable to the unfunded portion of the remedial action at the time of a subsequent sale or other disposition of the property;*

*(b) arises at the time costs are first incurred by the department with respect to a remedial action at the facility;*

*(c) must be filed according to subsection (3); and*

*(d) continues until the earlier of satisfaction of the lien or recovery of all remedial action costs incurred at the facility.*

*(7) Payment of any liens under this section must be deposited in one of the two accounts from which the remedial action costs originated, including the fund established in 75-10-704 or the orphan share fund established in [section 13].*"

**Section 10.** Section 75-10-724, MCA, is amended to read:

"**75-10-724. ~~Liability apportionment and contribution~~ *Private right of action.*** ~~(1)~~ Any person *who receives notice under 75-10-711, who is* held jointly and severally liable under 75-10-715, *or who initiates a voluntary cleanup under the provisions of 75-10-730 through 75-10-738 may bring a private right of action, including a claim for contribution or declaratory relief, against any other person who is liable or potentially liable under 75-10-715 for the recovery of remedial action costs. In resolving contribution claims, the court shall allocate remedial action costs among the liable persons based on the factors set out in [section 20].* ~~has the right at trial to have the trier of fact apportion liability among the parties as provided in this section. The burden is on each liable person to show how his liability should be apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider the following:~~

~~(a) the extent to which the person's contribution to the release of a hazardous or deleterious substance can be distinguished;~~

~~(b) the amount of hazardous or deleterious substance involved;~~

HeinOnline -- 1997 vol. II 1949 1997

~~(c) the degree of toxicity of the hazardous or deleterious substance involved;~~

~~(d) the degree of involvement of and care exercised by the person in manufacturing, treating, transporting, or disposing of the hazardous or deleterious substance;~~

~~(e) the degree of cooperation by the person with federal, state, or local officials to prevent any harm to the public health, safety, or welfare or the environment; and~~

~~(f) knowledge by the person of the hazardous nature of the substance.~~

~~(2) If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate share of the aggregate liability, the person has the right of contribution from any other liable person. If for any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing person.~~"

**Section 11. Citizens suit.** (1) Any person may commence a civil action to compel compliance by any liable or potentially liable person under 75-10-715 alleged to be in violation of a rule, notice letter, order, or department-approved remedial action required pursuant to a notice letter or order under this chapter.

(2) At least 60 days before commencing the action, the person shall give notice of intent to sue to all liable or potentially liable persons under 75-10-715 who are contemplated to be defendants in the proposed action.

(3) An action may not be commenced under subsection (1) if the liable or potentially liable person is diligently coming into compliance with the rule, notice letter, order, or department-approved remedial action plan or if the department has commenced and is diligently prosecuting an action to require compliance with the rule, notice letter, order, or department-approved remedial action plan.

**Section 12. Short title.** [Sections 12 through 22] may be cited as the "Controlled Allocation of Liability Act".

**Section 13. Orphan share state special revenue account — reimbursement of claims — payment of department costs.** (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to [sections 12 through 22] and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) money allocated from the metalliferous mines license tax pursuant to 15-37-117;

(b) all penalties assessed pursuant to [section 20(12)];

(c) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

HeinOnline -- 1997 vol. II 1950 1997

(d) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(e) unencumbered funds remaining in the abandoned mines state special revenue account provided in section 19, Chapter 584, Laws of 1995, as of [the termination date of section 19, Chapter 584, Laws of 1995, as may be amended];

(f) interest income on the account;

(g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in [section 15]. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under [sections 12 through 22] in proportion to their allocated shares. The orphan share fund is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under [sections 12 through 22] shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) If any money remains in the orphan share fund after [the termination date of this section] and after outstanding claims are paid, the money must be deposited in the general fund.

HeinOnline -- 1997 vol. II 1951 1997

(8) If the lead liable person under [section 16] presents evidence to the department that the person cannot complete the remedial actions without partial reimhursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

**Seetion 14. Eligibility — statute of limitations.** (1) Except for a facility that is listed on the national prioritics list pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., a facility listed on the priority list established pursuant to 75-10-702 is eligible for the allocation process under [sections 12 through 22].

(2) Only liability for remedial action costs is eligible for allocation and reimbursement from the orphan share fund. Allocation of liability and reimbursement of costs for natural resource damages is not permitted under [sections 12 through 22].

(3) Remedial action costs incurred prior to the date of the potentially liable person's written petition to the department as provided in [section 15] are not eligible for reimbursement from the orphan share fund.

(4) Only one allocation will be allowed for each facility unless:

(a) the department determines that an additional allocation is appropriate due to:

(i) the existence of more than one discrete unit of contamination at the facility;

(ii) the discovery of new releases after remedial actions at the facility are complete; or

(iii) other factors the department determines appropriate.

(b) all the liable or potentially liable persons under 75-10-715 agree in writing that an orphan share does not exist for the proposed allocation and either of the conditions in subsection (4)(a)(i) or (4)(a)(ii) is met.

(5) A liable or potentially liable person under 75-10-715 may not file a cost recovery or contribution action against any person participating in the allocation process provided for in [sections 12 through 22] until the allocation process is complete. The statute of limitations on the filing of cost recovery or contribution actions is tolled from the first date of a petition for allocation on a facility until 30 days after the submittal of the allocation report provided for in [section 20], or until 30 days following the expiration of the time period for appeal or the final decision on appeal.

HeinOnline -- 1997 vol. II 1952 1997

**Section 15. Allocation of liability — process initiation.** (1) For a facility at which the department has initiated a remedial action under 75-10-711 through the issuance of a notice letter prior to [the effective date of this section], any person determined to be potentially liable under 75-10-715 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(2) For a facility at which the department has not initiated a remedial action through the issuance of a notice letter under 75-10-711, any person potentially liable under 75-10-715 who has received approval of a voluntary cleanup plan under 75-10-730 through 75-10-738 may petition the department in writing to initiate the allocation process. The right to participate in the allocation process is waived if the written petition is not provided to the department prior to the completion of remedial actions, except for operation and maintenance, at the facility.

(3) For a facility at which the department initiates a remedial action through the issuance of a notice letter under 75-10-711 after [the effective date of this section], any person potentially liable under 75-10-715 may petition the department in writing within 60 days of the date of the notice letter to initiate the allocation process. Any potentially liable person under 75-10-715 who does not provide a written petition to the department within this timeframe waives the right to participate in the allocation process and remains liable as provided in 75-10-715. The notice letter sent by the department must advise that a failure to petition the department for allocation as provided in this subsection will result in a waiver of the right to participate in the allocation process.

(4) The allocation process may be initiated and may proceed upon written petition of one or more potentially liable persons.

(5) Prior to the initiation of discovery as provided in [section 17], all persons who participate in the allocation process shall agree in writing that the allocator's decision is binding, subject only to the provisions of [section 20(9)] and the appeal provisions of [section 21].

(6) All liable or potentially liable persons under 75-10-715 who do not participate in the allocation process under [sections 12 through 22] remain liable as provided in 75-10-715.

(7) Upon receipt of a written petition under subsections (1) or (2) or when initiating actions at a facility without a prior notice letter under subsection (3), the department shall:

(a) conduct a good faith investigation and may use its authority in 75-10-707 to identify persons who may be liable under 75-10-715; and

(b) issue notice letters to the persons it identifies as potentially liable under 75-10-715.

(8) A person who receives a notice letter may, within 60 days from the date of the notice letter, petition the department in writing to participate in an allocation process and provide the department with the identity of other potentially liable persons under 75-10-715 who were not noticed by the

HeinOnline -- 1997 vol. II 1953 1997

department. When identifying additional potentially liable persons, the noticed person shall provide to the department a statement and credible evidence showing that there is a basis in law and fact to determine that the identified person is potentially liable under 75-10-715.

(9) Within 30 days of receipt of the information provided for in subsection (8), the department may issue a notice letter to an identified person whom the department determines is a potentially liable person under 75-10-715. If the department does not issue a notice letter to an identified person, the department shall issue the person a nomination letter indicating that the person has been identified as potentially liable under 75-10-715. The nomination letter must state that the person has the right to participate in the allocation process and that if the person does not participate and is found liable, the person remains subject to liability as provided in 75-10-715. If the newly noticed or nominated person chooses to participate in the allocation process, the person shall provide a written petition of the person's intent to participate in the allocation process to the department within 30 days of the date of the notice or nomination letter. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(10) If a person nominated under subsection (9) cannot he readily located, the department shall, within 30 days of receipt of the information provided for in subsection (8), publish one notice of the person's nomination, along with the information contained in a nomination letter under suhsection (9), in a newspaper of general circulation in the county where all or a portion of the facility is located. The notice must state that the person has 30 days from the date of the notice to petition the department, in writing, to participate in the allocation process. A failure to petition the department for allocation as provided in this subsection results in a waiver of the right to participate in the allocation process.

(11) If one or more potentially liable persons petition in writing for an allocation process under subsection (1), (2), or (3) and the department determines that the facility has a potential orphan share, the department shall:

(a) publish a notice and brief description of the facility in a newspaper of general circulation in the area affected and provide at least 30 days for submission of public comment on the identification of potentially liable persons under 75-10-715; and

(b) notify interested persons and the county commissioners of each county in which all or a portion of the facility is located and provide at least 30 days for submission of comments on the identification of potentially liable persons under 75-10-715.

(12) If a nominated person participates in the allocation and the person is assigned a zero share of liability by the allocator, that person's reasonable costs of participating in the allocation, including attorney fees, must be borne by the person who proposed the addition of the nominated person to the allocation.

(13) If the department anticipates that a facility may have an orphan share, the department shall represent the orphan share in the allocation process. If the state is a potentially liable person under 75-10-715, an agency or entity other than the department shall represent the state in the allocation process.

HeinOnline -- 1997 vol. II 1954 1997

(14) Except as provided in subsection (15), whenever the department is involved in allocation processes on five facilities, other allocation processes may be stayed before the discovery stage provided in [section 17]. Upon completion of an allocation provided in [section 20 or 21], execution of a stipulated agreement under [section 20], or a default to liability as provided in 75-10-715 for one of the five facilities, the department shall notify the potentially liable persons for the facility on the waiting list that has the earliest date of written petition. Discovery under [section 17] must begin within 10 days of department notification.

(15) A stay on the allocation process may not occur under subsection (14) if all persons participating in the allocation process agree in writing that there is no orphan share and that the state is not a potentially liable person under 75-10-715. The agreement is binding upon all noticed or nominated persons.

(16) If, after initiating the process, a potentially liable person elects to discontinue participation in the process, the person remains subject to liability as provided in 75-10-715.

**Section 16. Emergency actions — remedial action requirements — designation of lead person — enforcement.** (1) If the department determines that immediate response to an imminent threat to public health, safety, or welfare or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, the department may require any potentially liable person to take remedial actions without the prior written notice required by 75-10-711(3). The department has 30 days to comply with the notification requirements provided in 75-10-711(3) and [section 15] when requiring emergency remedial actions.

(2) Within 30 days of the issuance of the notice letters, the noticed persons shall designate a lead person who shall conduct remedial actions at the facility. Upon request of the noticed persons and for good cause shown, the department may grant a 30-day extension of time to identify the lead person.

(3) If the department determines that the identified lead person is financially or otherwise incapable of completing remedial actions required by the department, the department shall notify all noticed persons of this determination in writing and request that another lead person be designated within 15 days.

(4) The designated lead person shall undertake all remedial actions required by the department.

(5) If the noticed persons do not designate an approved lead person within the timeframes provided under subsection (2) or (3), the department shall designate a lead person to undertake required remedial actions.

(6) If the department finds that the lead person has not complied with the requirements of a notice letter, order, stipulated agreement, or any department-approved remedial action plan, the department shall notify all potentially liable persons of the noncompliance.

(7) If the noncompliance continues for 30 days after the date of the notice provided in subsection (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and the facility is a maximum or high-priority facility on the department's priority list established pursuant to 75-10-702, the department shall take one or more of the following actions:

HeinOnline -- 1997 vol. II 1955 1997

(a) issue a unilateral order requiring the potentially liable persons to comply with the requirements of the notice letter, order, stipulated agreement, or department-approved remedial action plan;

(b) file a civil action as provided in 75-10-711;

(c) conduct the required remedial actions and seek cost recovery and penalties as provided in 75-10-711;

(d) file a cost recovery action as provided in 75-10-722; or

(e) void approval of the voluntary cleanup plan as provided in 75-10-736.

(8) If the noncompliance continues for 30 days after the date of the notice provided in subsection (6), the potentially liable persons have not demonstrated that the noncompliance is due to good cause, and the facility is not a maximum or high-priority facility on the department's priority list, the department may take one or more of the actions provided for in subsection (7).

(9) For purposes of subsections (7), (8), and (10), "good cause" means factors beyond a person's control that include severe weather conditions, third-party interference, an act of God, or an act of war. Before a person may claim good cause due to third-party interference, the person shall show that the person used reasonable efforts to obtain cooperation or compliance from the third party.

(10) If the lead person fails to comply with the requirements of a notice letter, order, stipulated agreement, or other department-approved remedial action plan, the facility and all noticed persons remain subject to liability as provided in 75-10-715 unless another person assumes the lead role in implementing the required remedial actions or the lead person can establish that the noncompliance is due to good cause.

**Section 17. Discovery.** (1) Each person participating in the allocation process for a facility may conduct discovery for a period of not more than 90 days from the date of the last notice or nomination letter. Discovery requests by each person participating in the allocation process, including the orphan share representative, are limited to the following unless otherwise agreed to by all persons participating in the allocation, including the orphan share representative:

(a) 5 1-day oral depositions not to exceed 8 hours each;

(b) 25 written interrogatories, including subparts;

(c) 50 requests for admission; and

(d) 50 requests for production of documents.

(2) The persons participating in the allocation process may extend the discovery period for up to 30 days if all persons agree to the extension in writing.

(3) Any participating person who is not responsive to discovery requests or who does not participate in the subsequent allocation proceeding and is allocated a share of liability remains subject to liability as provided in 75-10-715.

HeinOnline -- 1997 vol. II 1956 1997

**Section 18. Preallocation negotiations.** (1) After discovery pursuant to [section 17] closes, all persons participating in the allocation process shall conduct good faith settlement negotiations for a period of 30 days.

(2) The participating potentially liable persons may use an impartial mediator when conducting settlement negotiations.

(3) If a settlement is reached under subsection (1), the persons shall execute a stipulated agreement as provided in [section 20].

(4) If a stipulated agreement is not executed as provided in [section 20], the persons shall select an allocator as provided in [section 19].

**Section 19. Allocator selection — payment of fees.** (1) If the preallocation negotiations pursuant to [section 18] fail to produce a stipulated agreement within the timeframe provided in [section 18], the participating persons shall select an allocator within 30 days after the preallocation negotiations end. All participating persons shall agree on the selected allocator.

(2) Before selection or appointment as an allocator, a person shall disclose all conflicts of interest, including whether the allocator is or has been a relative, attorney, agent, employee, creditor, or contractor of, or in any manner is or has been interested financially or personally with, any person involved in the allocation.

(3) If the participating persons are unable to agree on an allocator within the required 30 days, one or more of the participating persons shall apply for judicial resolution, within 10 days, to the district court in the county where the release occurred or where any potentially liable person under 75-10-715 resides or has a principal place of business or in the district court of the first judicial district. If an application to the district court is not made within 10 days, all persons remain subject to liability as provided in 75-10-715 and the allocation process ends.

(4) Upon selection or appointment of the allocator, the lead person shall advance, if required by the allocator, up to $5,000 toward the allocator's expenses. Any expenses accrued by the allocator for legal or technical expertise must be approved in advance by all the participating persons. The allocator's fees and reasonable expenses must be divided among the participating liable persons, except the orphan share, in proportion to their allocated shares. The orphan share fund established in [section 13] is not responsible for any portion of the allocator's fees and expenses.

**Section 20. Allocating liability.** (1) Upon selection or appointment, the allocator shall establish the process and schedule for determining the allocation, including the length and scope of any documents to be presented.

(2) The participating persons shall submit to the allocator and to each other a statement of position and exhibits of a factual nature. Each person's statement must identify the factors listed in subsection (5) that the person believes are relevant to allocation of liability for the facility.

(3) The allocator may convene the participating persons as the allocator believes necessary to clarify the facts and may pose additional questions, interview any person or the person's representative, and impose presumptions

HeinOnline -- 1997 vol. II 1957 1997

concerning missing information. The allocator may seek department assistance with information gathering pursuant to 75-10-707.

(4) The allocator may not engage in ex parte communications with any person or the person's representative.

(5) The allocator shall allocate each participating and nonparticipating person's share of liability based only on information presented or collected during the allocation process and, taking into account facility characteristics, shall apportion liability on a percentage basis according to the following factors:

(a) the extent to which the person caused the release of the hazardous or deleterious substance;

(b) the extent to which the person's contribution to the release of a hazardous or deleterious substance can be distinguished;

(c) the amount or volume of hazardous or deleterious substance and the amount contributed by the person;

(d) the relative hazard of the hazardous or deleterious substance contributed by the person, including volatility, carcinogenicity, mobility, persistence, reactivity, and toxicity;

(e) the degree of past and present cooperation by the person with the government to prevent harm to the public health, safety, or welfare and the environment, including participation in remedial actions occurring concurrently with the allocation process and compliance and cooperation with discovery pursuant to [section 17];

(f) what the person knew or should have known of the hazardous nature of the substance, the risk associated with that substance, and proper waste disposal practices;

(g) the circumstances of the property acquisition, including the documented price paid and discounts granted;

(h) the person's knowledge of or acquiescence to waste generation, storage, handling, treatment, or disposal;

(i) the length of time of ownership, operation, generation, or transportation;

(j) any violations of or noncompliance with health and environmental regulations, including permit violations or violations relating to public notification;

(k) the degree to which a person providing publicly owned landfill or sewer and water systems had or has a reasonable ability to control disposed materials and the person's degree of care in maintaining those services;

(l) the person's financial or economic benefit from:

(i) ownership or operation of the facility;

(ii) the generation, transportation, or disposal of the hazardous or deleterious substance; and

(iii) cleanup of the facility;

(m) whether the person exercised due diligence in generating, transporting, or disposing of hazardous or deleterious substances and the person's control over those activities; and

(n) other equitable factors that are appropriate.

(6) Within 60 days of selection or appointment, the allocator shall submit to the department and all noticed and nominated persons a written allocation report that allocates each person's share of liability and that documents the rationale for the percentage of liability allocated to each person.

(7) The allocator or the participating persons may extend the allocation proceeding by up to 30 days if agreed to by the allocator and all the participating persons.

(8) Within 30 days of the date of the allocation report, the persons who participated in the allocation and who were allocated a share of liability, except for the orphan share, shall prepare and sign a stipulated agreement that contains:

(a) the percentage share of liability for each person as determined by the allocator;

(b) procedures for paying for the orphan share prior to reimbursement from the orphan share fund;

(c) a waiver of contribution rights against all persons who are potentially liable for the remedial action as well as a waiver of any rights to challenge any settlement that the department enters into with any other potentially liable person;

(d) covenants not to sue and provisions regarding performance or adequate assurance of performance of remedial actions;

(e) how remedial actions will be conducted;

(f) a penalty provision in accordance with subsection (12);

(g) acknowledgment of contribution protection, consistent with 75-10-719(1), regarding matters addressed in the settlement; and

(h) provisions detailing how the persons signing the stipulated agreement should receive reimbursement from the orphan share fund for any remedial action costs incurred by the persons in excess of their allocated share.

(9) If the department determines that the stipulated agreement does not satisfy the requirements of subsection (8), the liable persons who participated in the allocation remain subject to liability as provided in 75-10-715.

(10) A person who did not participate in the allocation but who was assigned a share of liability may sign the stipulated agreement prepared according to subsection (8).

(11) Any liable person allocated a share of liability who does not sign the stipulated agreement remains subject to liability as provided in 75-10-715.

HeinOnline -- 1997 vol. II 1959 1997

(12) Any liable person who signs the stipulated agreement and fails to comply with the terms of the stipulated agreement shall pay, in addition to the person's share of remedial action costs, a penalty of two times the amount of the person's allocated share of liability. Any funds received must be applied to the facility's orphan share and any funds in excess of the facility's orphan share amount must be deposited in the orphan share fund established under [section 13].

(13) If a liable person becomes bankrupt or defunct after the stipulated agreement is signed and before remedial actions are complete at the facility, that person's share of liability becomes an orphan share.

**Section 21. Appeal of allocator's decision.** (1) A person may appeal the allocator's decision to district court within 30 days of the date of the allocation report. Venue lies in the county where the release occurred or where the liable person resides or has a principal place of business or in the first judicial district.

(2) The allocator's decision must be upheld unless the person appealing the decision demonstrates that the decision was:

(a) made upon unlawful procedure;

(b) affected by other error of law;

(c) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(d) arbitrary and capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion or was fraudulent.

(3) If the appeal is successful, the district court shall allocate the liability of the potentialiy liable persons using the factors outlined in [section 20].

(4) After decision on the appeal, all liable persons shall submit a stipulated agreement as provided in [section 20] to the department based on the court order.

**Section 22. Effect of termination on allocations.** (1) Persons participating in the allocation process may complete the allocation process for the facility at issue and claim reimbursement from the orphan share fund provided that the discovery process under [section 17] had been initiated by [the termination date of sections 12 through 22].

(2) If discovery, as provided in [section 17], has not commenced by [the termination date of sections 12 through 22], the facility and its potentially liable persons under 75-10-715 are not eligible to participate in the allocation process under [sections 12 through 22] and remain subject to liability as provided in 75-10-715.

**Section 23.** Section 16, Chapter 584, Laws of 1995, is amended to read:

"Section 16. **Criteria.** (1) The pilot program ~~must consist~~ *consists* of remediation of *the Joslyn street tailings facility, the Corbin flats facility, and the block P mill facility* ~~three sites from the department of state lands' abandoned hard rock mine priority list. The three sites must be selected from the top ten priority sites on that list as of April 1, 1995~~.

HeinOnline -- 1997 vol. II 1960 1997

(2) Any site remediated under this pilot program must meet the following criteria:

(a) The owner of the property has, prior to May 22, 1989, purchased or entered into a lease purchase agreement or an option to purchase property where the facility is located.

(b) The applicant has submitted a voluntary cleanup plan in accordance with the provisions of [sections 7 and 8].

(c) The department has accepted and approved the application for a voluntary cleanup plan in accordance with the provisions of [sections 6 through 10] *by June 30, 1997.*

(3) The department and the applicant shall negotiate an apportionment of the applicant's liability pursuant to [section 17]. The department, as a trier of fact, shall make the final determination of the applicant's apportioned liability. If the applicant disagrees with the department's determination of the applicant's proportionate share of liability, the applicant may appeal the department's decision in accordance with the requirements of [section 6(4)].

~~(4) If more than three applicants submit voluntary cleanup plans for the highest priority sites on the department of state lands' abandoned hard rock mine priority list and the department approves more than three plans, the department shall select three plans to incorporate into the pilot program on a priority basis as determined by the date of submittal of a complete application.~~"

**Section 24.** Section 18, Chapter 584, Laws of 1995, is amended to read:

"Section 18. **Claims for and limitations on reimbursement.** (1) After completion of the voluntary cleanup plan approved by the department, the applicant may apply to and must, in accordance with this section, receive reimbursement from the abandoned mines state special revenue account. Reimbursement must be subject to the following requirements and limitations:

(a) The applicant shall complete remediation prior to making a claim for reimbursement.

(b) The reimbursement may not exceed 90% of eligible costs up to a maximum of $300,000 per facility.

(c) The claim for reimbursement may not include legal fees or department costs incurred in the oversight of the voluntary cleanup plan.

(2) For purposes of this section, "eligible costs" means costs in excess of an applicant's proportionate share of total costs incurred in the remediation of the site during the 1996-97 biennium *and the 1998-99 biennium.*

(3) If costs are reimbursed out of the abandoned mines state special revenue account, nothing in [sections 14 through 20] prohibits the department from pursuing an action against other potentially liable parties to recover those costs.

(4) If the abandoned mines state special revenue account does not contain sufficient money to pay received claims for reimbursement, the abandoned mines state special revenue account and the department are not liable for making any

HeinOnline -- 1997 vol. II 1961 1997

reimbursement at that time. All claims are subject to appropriations to the abandoned mines state special revenue account."

**Section 25.** Section 27, Chapter 584, Laws of 1995, is amended to read:

"Section 27. **Termination.** (1) [Sections 4 through 12] terminate January 1, 2001.

(2) [Sections 14 through ~~21~~ *20*] terminate June 30, ~~1997~~ *1999*.

*(3) [Section 21] terminates June 30, 1997.*"

**Section 26. Codification instruction.** [Sections 11 through 22] are intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 11 through 22].

**Section 27. Coordination instructions.** (1) If Senate Bill No. 7 and [this act] are both passed and approved, then Senate Bill No. 7 is void.

(2) If House Bill No. 284 and [this act] are both passed and approved, then [sections 2 and 22(1) and (2) of House Bill No. 284] are void.

**Section 28. Severability.** If a part of [sections 11 through 22] are invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [sections 11 through 22] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 29. Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997.

(2) [Section 5 and this section] are effective on passage and approval.

(3) [Section 3] is effective July 1, 1999.

**Section 30. Termination.** [Sections 12 through 22] terminate June 30, 2005.

Approved April 28, 1997

# CHAPTER NO. 416

[SB 378]

AN ACT GENERALLY REVISING INSURANCE LAWS; REVISING INSURANCE LAWS TO COMPLY WITH PUBLIC LAW 104-191; PROHIBITING THE USE OF PREEXISTING CONDITION EXCLUSIONS AS THOSE EXCLUSIONS APPLY TO CERTAIN ELIGIBLE INDIVIDUALS; REGULATING LONG-TERM CARE INSURANCE CONTRACTS; REVISING THE MONTANA COMPREHENSIVE HEALTH CARE ASSOCIATION PLAN TO PROVIDE FOR AN ASSOCIATION PORTABILITY PLAN TO COMPLY WITH PUBLIC LAW 104-191; REVISING THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT; PROVIDING FOR GUARANTEED RENEWARILITY OF INDIVIDUAL AND GROUP HEALTH INSURANCE COVERAGE; AUTHORIZING THE COMMISSIONER OF INSURANCE TO

HeinOnline -- 1997 vol. II 1962 1997

ADOPT RULES; AMENDING SECTIONS 33-15-403, 33-20-128, 33-22-101, 33-22-109, 33-22-110, 33-22-130, 33-22-242, 33-22-504, 33-22-703, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1121, 33-22-1501, 33-22-1512, 33-22-1513, 33-22-1516, 33-22-1803, 33-22-1804, 33-22-1809, 33-22-1811, 33-22-1819, 33-22-1827, 33-22-1828, 33-30-1001, 33-31-102, 33-31-111, 33-31-322, AND 33-35-306, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 45] authorizes or requires rules to be adopted by the commissioner of insurance to implement various sections of [this act].

It is the intent of the legislature that rules adopted pursuant to [section 45] not extend the existing control and regulatory authority of the state auditor beyond that necessary to implement Public Law 104-191.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-15-403, MCA, is amended to read:

**"33-15-403. Representations in applications — recovery precluded if fraudulent or material.** (1) All statements and descriptions in any application for an insurance policy or annuity contract or in negotiations ~~therefor~~ *for an insurance policy or annuity contract* by or ~~in~~ *on* behalf of the insured or annuitant ~~shall be deemed to be~~ *are considered* representations and not warranties.

(2) Misrepresentations, omissions, concealment of facts, and incorrect statements ~~shall~~ *do* not prevent a recovery under the policy or contract unless ~~either~~:

(a) fraudulent;

(b) material either to the acceptance of the risk or to the hazard assumed by the insurer; or

(c) the insurer in good faith would either not have issued the policy or contract or would not have issued a policy or contract in as large an amount or at the same premium or rate or would not have provided coverage with respect to the hazard resulting in the loss if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

*(3) Subsection (2)(c) does not apply to nonrenewal or discontinuation of group health insurance offered in connection with a group health plan in the small group market or large group market, as those terms are defined in [section 33].*"

**Section 2.** Section 33-20-128, MCA, is amended to read:

**"33-20-128. Life insurance policy paying long-term benefits — ~~quarterly~~ *monthly* report.** When a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a ~~quarterly~~ *monthly* report must be provided to the policyholder.

HeinOnline -- 1997 vol. II 1963 1997

The report must include *the following information for the month for which the report is issued*:

(1) the amount of long-term care benefits paid out during ~~each~~ *the* month ~~of the quarter~~;

(2) an explanation of any changes in the policy, including without limitation death benefits or cash values, resulting from long-term care benefits having been paid out; and

(3) the amount of long-term care benefits existing or remaining."

**Section 3.** Section 33-22-101, MCA, is amended to read:

"**33-22-101. Exceptions to scope.** Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-130 through 33-22-132, *[section 34], [section 36],* 33-22-243, and 33-22-304, do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

**Section 4.** Section 33-22-109, MCA, is amended to read:

"**33-22-109. Riders.** (1) Except for ~~a policy issued under chapter 22, part 18~~ *group health insurance coverage provided by a group health plan or a health insurance issuer*, a policy of disability insurance may contain a provision that excludes coverage for specific conditions through the use of elimination riders for conditions for which medical advice, diaguosis, care, or treatment was recommended by or received from a provider of health care services within ~~4~~ *3* years preceding the effective date of coverage of an insured person. The provisions of 33-22-110 do not apply to elimination riders. An insured person may apply to the insurer for removal or modification of a rider, and the insurer shall respond to the application within 60 days of receipt.

(2) An insurer may not, except upon agreement by the insured, retroactively impose an elimination rider on an existing policy, certificate, or contract.

~~(3) "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.~~"

HeinOnline -- 1997 vol. II 1964 1997

**Section 5.** Section 33-22-110, MCA, is amended to read:

**"33-22-110. Preexisting conditions.** (1) Except as provided in ~~subsection (2)~~ *[sections 37 and 39]*, a policy or certificate of disability insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. The condition may only be excluded for a maximum of 12 months.

~~(2) A health benefit plan may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 3 years preceding the effective date of coverage of an insured person. The condition may be excluded for a maximum of 12 months.~~

~~(3) For purposes of subsection (2), a "health benefit plan" means a hospital expense incurred or medical expense incurred policy, contract, or certificate provided by a health insurer, health service corporation, or health maintenance organization.~~

~~(4)~~*(2)* An insurer may use an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, perform underwriting in accordance with the insurer's established underwriting standards.

~~(5)~~*(3)* A policy of disability income insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. An exclusion may not apply to a disability commencing more than 12 months from the effective date of coverage of an insured person."

**Section 6.** Section 33-22-130, MCA, is amended to read:

**"33-22-130. Coverage for adopted children from time of placement — preexisting conditions.** (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement *and may not impose a preexisting condition exclusion.*

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103."

**Section 7.** Section 33-22-242, MCA, is amended to read:

**"33-22-242. Waiver of precxisting condition exclusion — *exclusion prohibited.*** *(1)* A health care insurer shall waive any time period applicable to

HeinOnline -- 1997 vol. II 1965 1997

a preexisting condition exclusion or limitation period with respect to particular services in an individual health benefit plan for the period of time that an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services, if the qualifying previous coverage was continuous to a date not more than 30 days prior to the date of application for new coverage.

*(2) A health care insurer that offers individual health insurance coverage to a federally defined eligible individual may not impose a preexisting condition exclusion with respect to that coverage."*

**Section 8.** Section 33-22-504, MCA, is amended to read:

**"33-22-504. Newborn infant coverage.** (1) A group disability policy or certificate of insurance delivered or issued for delivery in this state may not be issued or amended in this state if it contains any disclaimer, waiver, *preexisting condition exclusion,* or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of persons covered under the policy from and after the moment of birth.

(2) A policy or certificate subject to this section, must contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any person covered under the policy.

(3) The coverage for newborn infants must be the same as provided by the policy for other covered persons. However, for newborn infants there may not be waiting or elimination periods. A deductible or reduction in benefits applicable to the coverage for newborn infants is not permissible unless it conforms and is consistent with the deductible or reduction in benefits applicable to all other covered persons.

(4) This section does not apply to medicare supplement policies issued by reason of age.

(5) When a group disability policy or certificate issued under the policy provides for coverage or benefits for a resident of this state, the policy or certificate is considered delivered in this state within the meaning of this section regardless of whether the insurer issuing the policy or certificate is located in this state.

(6) The policy or certificate may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days."

**Section 9.** Section 33-22-703, MCA, is amended to read:

**"33-22-703. Coverage for mental illness, alcoholism, and drug addiction.** ~~Insurers, health service corporations, or any employees' health and welfare fund that provides accident and health insurance benefits to residents of this state under group health insurance or group health plans shall provide, for Montana residents covered under hospital and medical expenses incurred insurance group policies and under hospital and medical service plan group contracts, the~~ *(1) A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by*

HeinOnline -- 1997 vol. II 1966 1997

*the plan at least the following* level of benefits ~~specified in this section~~ for the necessary care and treatment of mental illness, alcoholism, and drug addiction~~, subject to the right of the applicant to select any alternative level of benefits above the minimum level of benefits described in subsections (1)(c), (2)(a), (2)(c), (2)(d), and (2)(e) as may be offered by the insurer or health service corporation~~:

~~(1)~~*(a)* under basic inpatient expense policies or contracts, inpatient hospital benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

~~(a)~~*(i)* inpatient treatment for mental illness, alcoholism, and drug addiction is subject to a maximum yearly benefit of 21 days;

~~(b)~~*(ii)* inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital; and

~~(c)~~*(iii)* inpatient treatment for alcoholism and drug addiction is subject to a maximum benefit of $4,000 in any 24-month period and a maximum lifetime benefit of $8,000;

~~(2)~~*(b)* under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

~~(a)~~*(i)* inpatient treatment for mental illness, alcoholism, and drug addiction is subject to a maximum yearly benefit of 21 days;

~~(b)~~*(ii)* inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

~~(c)~~*(iii)* inpatient treatment for alcoholism and drug addiction may be subject to a maximum benefit of $4,000 in any 24-month period and a maximum lifetime benefit of $8,000;

~~(d)~~*(iv)* outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000, *but this subsection (1)(b)(iv) does not apply to benefits for services furnished before September 30, 2001, unless the group health plan or group health insurance coverage is exempt from the requirements of subsection (2) pursuant to subsection (3) or (4)*; and

~~(e)~~*(v)* outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of $1,000.

*(2) A group health plan or group health insurance coverage offered in connection with a group health plan may not impose an aggregate dollar limit on an annual or lifetime basis more restrictively for mental health benefits than for medical and surgical benefits covered by the plans. In the case of a plan that has*

HeinOnline -- 1997 vol. II 1967 1997

*different aggregate lifetime limits and different annual limits on various categories of medical and surgical benefits, the commissioner shall establish rules for determining a weighted average aggregate lifetime limit and weighted average annual limit to apply to mental health benefits. This subsection does not apply to benefits for services furnished on or after September 30, 2001.*

*(3) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan in the small group market.*

*(4) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan if the application of subsection (2) results in an increase in the cost under the group health plan or for coverage of at least 1%. This subsection applies separately to each benefit package option in the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the group health plan."*

**Section 10.** Section 33-22-1107, MCA, is amended to read:

**"33-22-1107. Definitions.** As used in this part, the following definitions apply:

*(1) "Activities of daily living" means:*

*(a) eating;*

*(b) toileting;*

*(c) transferring;*

*(d) bathing;*

*(e) dressing; and*

*(f) continence.*

~~(1)~~*(2)* "Applicant" means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for ~~the insurance~~ *benefits*; and

(b) in the case of a group long-term care insurance policy, the proposed certificate holder.

~~(2)~~*(3)* "Appropriate sale criteria" means the set of conditions that an insurance company is required to address with an applicant that help to determine whether or not a particular insurance policy or contract offered for sale is appropriate to the applicant. These conditions must include but are not limited to any insurance premium involved in the policy, the income of the applicant, and the savings and investments of the applicant.

~~(3)~~*(4)* "Certificate" means a ~~document~~ *certificate* issued ~~to a member of the~~ *under a* group ~~covered under a group~~ *long-term care* insurance policy that has been delivered or issued for delivery in this state ~~as evidence that the individual named in the certificate is covered under the policy~~.

~~(4)~~*(5)* "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state and issued to:

HeinOnline -- 1997 vol. II 1968 1997

(a) (i) an employer;

(ii) a labor organization;

(iii) a trust established by an employer or labor organization; or

(iv) a trustee of a fund established by an employer or labor organization or a combination of employers and labor organizations for:

(A) employees or former employees or a combination of employees and former employees; or

(B) members or former members of the labor organization or a combination of members and former members;

(b) a professional, trade, or occupational association for its current, former, or retired members or a combination of current, former, and retired members, if the association:

(i) is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) bas been maintained in good faith for purposes other than obtaining insurance; or

(c) an association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations

(i) Prior to advertising, marketing, or offering the policy within this state, the association or the insurer of the association shall file evidence with the commissioner tbat the association has:

(A) a minimum of 100 persons at the outset;

(B) been organized and maintained in good faith for purposes other than obtaining insurance;

(C) been in active existence for at least 1 year; and

(D) a constitution and bylaws requiring that the association hold regular meetings at least annually to further purposes of the membership; except for credit unions, the association collects dues or solicits contributions from members; and the members have voting privileges and representation on the governing board and committees.

(ii) Thirty days after filing, the association is considered as having satisfied the organizational requirements unless the commissioner finds after hearing that the association does not satisfy the organizational requirements.

(d) a group other than as described in subsections ~~(4)(a)~~ *(5)(a)* through ~~(4)(c)~~ *(5)(c)* if the commissioner determines that the:

(i) issuance of the group policy is not contrary to the best interests of the public;

(ii) issuance of the group policy would result in economies of acquisition or administration; and

(iii) benefits are reasonable in relation to the premiums charged.

~~(5)~~*(6)* (a) "Long-term care insurance":

(i) means a policy ~~as defined in subsection (6)~~ *or certificate* that is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for a covered person, on an expense-incurred, indemnity, prepaid, or other basis, for a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, *or* maintenance~~,~~ or personal care service provided in a setting other than an acute care unit of a hospital;

(ii) ~~includes group and individual insurance policies or riders, whether~~ *may be* issued by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization *to the extent that it is otherwise authorized to issue life or health insurance*;

(iii) includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance; ~~and~~

(iv) includes any product advertised, marketed, or offered as long-term care insurance regardless of any exceptions to the definition included in this section;

*(v) includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity; and*

*(vi) includes qualified long-term care insurance contracts.*

(b) Long-term care insurance does not include:

*(i)* an insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage~~.~~; *or*

~~(c)~~*(ii)* ~~Long-term care insurance does not include~~ life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement and that provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

~~(d)~~*(c)* An insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage and that also contains long-term care insurance benefits of a duration of at least 6 months is not required to meet the requirements of this part unless the premium allocable to the long-term care insurance benefits contained in the policy is greater than 25% of the total policy premium.

~~(6)~~*(7)* "Policy" means a policy ~~as defined in 33-15-102, a membership contract as defined in 33-30-101, a health care services agreement as defined in 33-31-102~~, *contract, membership contract, health care services agreement, rider, or*

HeinOnline -- 1997 vol. II 1970 1997

*endorsement* delivered or issued for delivery in this state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization.

~~(7)~~*(8)* "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person.

*(9) "Qualified long-term care insurance contract" means:*

*(a) an individual or group insurance contract that meets the requirement of section 7702B of the Internal Revenue Code, 26 U.S.C. 7702B, if:*

*(i) the only insurance protection provided under the contract is coverage of qualified long-term care services;*

*(ii) the contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under 42 U.S.C. 1395 or would be reimbursable but for the application of a deductible or coinsurance amount;*

*(iii) the contract is guaranteed renewable;*

*(iv) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums and all policyholder dividends or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits. However, a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract.*

*(v) the contract contains the consumer protection provisions set forth in section 7702B(g) of the Internal Revenue Code, 26 U.S.C. 7702B(g); or*

*(b) a life insurance contract that provides long-term care coverage by rider or as a part of the contract as long as the contract complies with section 7702B of the Internal Revenue Code, 26 U.S.C. 7702B.*

*(10) (a) "Qualified long-term care services" means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services and maintenance for personal care services for which an insured is eligible under a qualified long-term care insurance contract and that are provided pursuant to a plan of care prescribed by a licensed health care practitioner.*

*(b) For the purposes of this subsection (10), "licensed health care practitioner" means any of the following individuals when licensed in this state:*

*(i) a physician, as defined in 42 U.S.C. 1395x(r)(1);*

*(ii) a registered professional nurse;*

*(iii) a licensed social worker; or*

HeinOnline -- 1997 vol. II 1971 1997

*(iv) another individual as determined by rules of the commissioner adopted for purposes of compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.*

*(11) "Transferring" means moving into or out of a bed, chair, or wheelchair."*

**Section 11.** Section 33-22-1108, MCA, is amended to read:

**"33-22-1108. Preexisting condition — definition.** (1) A long-term care insurance policy or certificate other than a policy or certificate issued to a group, as ~~defined~~ *specified* in ~~33-22-1107(3)(a)~~ *33-22-1107(5)(a)(ii), (5)(a)(iii), or (5)(a)(iv),* may not use a definition of preexisting condition ~~which~~ *that* is more restrictive than the definition in 33-22-1107.

(2) A long-term care insurance policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within 6 months following the effective date of coverage of an insured person.

*(3) If a long-term care insurance policy or certificate replaces, with similar benefits, another long-term care insurance policy or certificate, the insurer issuing the replacing long-term care insurance policy or certificate shall waive any time periods applicable to preexisting conditions or probationary periods in the replacing long-term care insurance policy or certificate to the extent that similar time periods have been satisfied under the original policy.*

~~(3)~~*(4)* The commissioner may extend the limitation periods in subsections (1) and (2) as to specific age group categories in specific policy forms if extending the limitation periods is in the best interests of the public.

~~(4)~~*(5)* An insurer may use an application form designed to elicit the complete health history of an applicant and on the basis of the answers on that application perform underwriting in accordance with the insurer's established underwriting standards. Unless otherwise provided in the long-term care insurance policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection (2) expires. A long-term care insurance policy or certificate may not exclude or use a waiver or rider of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (2)."

**Section 12.** Section 33-22-1111, MCA, is amended to read:

**"33-22-1111. Outline of coverage.** (1) *(a)* An insurer shall deliver an outline of coverage *as approved by the commissioner* to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

~~(a)~~*(b)* The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of the outline of coverage.

~~(b)~~*(c)* In the case of insurance producer solicitations, an insurance producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

HeinOnline -- 1997 vol. II 1972 1997

~~(c)~~*(d)* In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the earlier of the applicant's request or the delivery of the policy.

(2) The outline of coverage must include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of a group policy must be specifically described.

(d) a statement that the outline of coverage is *only* a summary ~~only~~ of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(e) a description of the terms under which the policy or certificate may be returned and *the* premium refunded; and

(f) a brief description of the relationship of cost of care and benefits.

*(3) The outline of coverage:*

*(a) must prominently display the name of the insurer;*

*(b) must be a freestanding document not dependent for purposes of reader comprehension upon any other document;*

*(c) must use no smaller than 12-point type; and*

*(d) may not contain material of an advertising nature."*

**Section 13.** Section 33-22-1113, MCA, is amended to read:

**"33-22-1113. Disclosure and performance standards for long-term care insurance.** (1) The commissioner may by rule adopt standards for full and fair disclosure, setting forth the manner, content, and disclosures required to be made in a long-term care insurance policy, including but not limited to:

(a) terms of renewability;

(b) initial and subsequent conditions of eligibility;

(c) nonduplication of coverage provisions;

(d) coverage of dependents;

HeinOnline -- 1997 vol. II 1973 1997

(e) preexisting conditions;

(f) termination of insurance;

(g) continuation or conversion;

(h) prohationary periods;

(i) limitations;

(j) exceptions;

(k) reductions;

(l) elimination periods;

(m) requirements for replacement;

(n) recurrent conditions; ~~and~~

(o) definition of terms*;*

*(p) prohibitions on limitations and exclusions;*

(q) extension of benefits;

(r) discontinuance and replacement of policies;

(s) unintentional lapse;

(t) prohibitions against postclaim underwriting;

(u) minimum standards for home health and community care benefits;

(v) inflation protection;

(w) incontestability period; and

*(x) tax consequences.*

(2) A group long-term care insurance policy must include a provision relating to conversion on termination of eligibility as described in 33-22-508 or include a provision for continuation of coverage that maintains coverage under the existing group policy if the coverage would otherwise terminate."

HeinOnline -- 1997 vol. II 1974 1997

**Section 14.** Section 33-22-1114, MCA, is amended to read:

**"33-22-1114. Prohibited practices and policy provisions.** (1) An insurance company may not issue a refund to a person other than the owner of the policy or certificate.

(2) A long-term care insurance policy may not:

(a) be canceled, nonrenewed, or otherwise terminated on ~~the~~ *any* grounds ~~of the age or the deterioration of the mental or physical health of an insured or a certificate holder~~ *other than the insured's or certificate holder's failure to pay the premium*;

(b) contain a provision establishing a new waiting period if existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(c) provide coverage for only skilled nursing care or provide substantially more coverage for skilled nursing care in a facility than coverage for lower levels of care."

**Section 15.** Section 33-22-1115, MCA, is amended to read:

**"33-22-1115. Prior hospitalization or institutionalization.** (1) A long-term care insurance policy may not be delivered or issued for delivery in Montana if the policy conditions eligibility for a benefit:

(a) on a prior hospitalization requirement; ~~or~~

(b) provided in an institutional care setting on the receipt of a higher level of institutional care; *or*

*(c) other than waiver of premium, postconfinement benefits, postacute care benefits, or recuperative benefits, on a prior institutionalization requirement.*

(2) A long-term care insurance policy containing a limitation or condition for eligibility other than those prohibited in subsection (1) must clearly label, in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits", the limitations or conditions, including the required number of days of confinement.

(3) A long-term care insurance policy that contains a benefit advertised, marketed, or offered as a home health care benefit may not condition receipt of a benefit on a prior institutionalization requirement.

(4) A long-term care insurance policy that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than 30 days for which benefits are paid.

(5) A long-term care insurance policy that provides a benefit only following institutionalization may not condition the benefit upon admission to a facility for the same or a related condition within a period of less than 30 days after discharge from the institution."

HeinOnline -- 1997 vol. II 1975 1997

**Section 16.** Section 33-22-1121, MCA, is amended to read:

**"33-22-1121. Rules.** The commissioner may adopt rules necessary to implement this part, including but not limited to rules that:

(1) establish loss ratio standards for long-term care insurance policies; ~~and~~

(2) specify the requirements for offering the sale of a policy with nonforfeiture benefits and the types of appropriate sale criteria to be communicated at the time of application;

*(3) establish a requirement for the mandatory triggering of policy benefits based upon the number of activities of daily living that an individual is capable or incapable of performing; and*

*(4) are necessary to implement a determination made by the secretary of health and human services pursuant to Public Law 104-191 as to who is a licensed health care practitioner."*

**Section 17.** Section 33-22-1501, MCA, is amended to read:

**"33-22-1501. Definitions.** As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

*(4) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.*

*(5) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.*

*(6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.*

~~(4)~~*(7)* "Eligible person" means an individual who:

(a) is a resident of this state and applies for coverage under the association plan;

(b) unless the individual's eligibility is waived by the association, has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations or has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, which has the effect of substantially reducing coverage from that received by a person considered a standard risk; and

HeinOnline -- 1997 vol. II 1976 1997

(c) is not eligible for any other form of disability insurance or health service benefits.

*(8) "Federally defined eligible individual" means a person who is an individual enrolling in the association portability plan:*

*(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;*

*(b) who does not have other health insurance coverage;*

*(c) who is not eligible for coverage under:*

*(i) a group health plan;*

*(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or*

*(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;*

*(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;*

*(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and*

*(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(e) if the individual elected the continuation coverage described in subsection (8)(e).*

~~(5)~~*(9)* "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

~~(6)~~*(10)* "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

~~(7)~~*(11)* "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

~~(8)~~*(12)* "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

~~(9)~~*(13)* "Medicare" means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

HeinOnline -- 1997 vol. II 1977 1997

~~(10)~~*(14)* "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the 5 years immediately preceding the filing of an application.

~~(11)~~*(15)* "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance."

**Section 18.** Section 33-22-1512, MCA, is amended to read:

**"33-22-1512. Association plan *and association portability plan* premium.** The association shall establish the schedule of premiums to be charged eligible persons for membership in the association plan. The schedule of *association plan* premiums *for eligible persons* may not exceed 200% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state. *The schedule of association portability plan premiums for federally defined eligible individuals may not, for the period of 1 year from [the effective date of this section], be less than 135% and may not at any time exceed 150% of the average premium rates charged by the five insurers or health service corporations with the largest premium amount of individual plans of major medical insurance in force in this state.* The premium rates of the five insurers or health service corporations used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided annually at the request of the commissioner. The association shall use generally acceptable actuarial principles and structurally compatible rates."

**Section 19.** Section 33-22-1513, MCA, is amended to read:

**"33-22-1513. Operation of association plan *and association portability plans*.** (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

*(2) Upon application by a federally defined eligible individual to the lead carrier for an association portability plan, the association may not:*

*(a) decline to offer an association portability plan; or*

*(b) impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.*

~~(2)~~*(3)* Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

~~(3)~~*(4)* Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan *and the association portability plan* or be allocated to reduce association plan premiums.

HeinOnline -- 1997 vol. II 1978 1997

~~(4)~~*(5)* (a) Each participating member of the association shall share the losses due to claims expenses of the association plan *and the association portability plan* for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to he incurred by the association incident to the conduct of its affairs. Claims expenses of the association plan *and the association portability plan* that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan *and the association portability plan* and operating and administrative expenses of the association in an amount equal to the ratio of the association member's total disability insurance premium received from or on behalf of Montana residents divided by the total disability insurance premium received by all association members from or on behalf of Montana residents as determined by the commissioner.

(b) For purposes of this subsection ~~(4)~~ *(5)*, "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, or life insurance.

~~(5)~~*(6)* The association shall make an annual determination of each association member's liability, if any, and may make an annual fiscal yearend assessment if necessary. *Assessments related to the operation and expenses of the association plan must be determined and levied separately from assessments related to the operation and expenses of the association portability plan.* The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may he necessary to ~~assure~~ *ensure* the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan *and the association portability plan* and operating and administrative expenses of the association until the association's next annual fiscal yearend assessment. Payment of an assessment is due within 30 days of receipt by an association member of a written notice of a fiscal yearend or interim assessment. Failure hy a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance husiness within the state remains liable for assessments through the calendar year during which disability insurance husiness ceased. The association may decline to levy an assessment against an association memher if the assessment, as determined pursuant to this section, would not exceed $10.

~~(6)~~*(7)* Any annual fiscal yearend or interim assessment *relating to the operation and expenses of the association plan* levied against an association member may be offset, in an amount equal to the assessment paid to the association, against the premium tax payahle by that association member pursuant to 33-2-705 for the year in which the annual fiscal yearend or interim assessment is levied. The insurance commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. *Assessments relating to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member."*

**Seetion 20.** Section 33-22-1516, MCA, is amended to read:

HeinOnline -- 1997 vol. II 1979 1997

"**33-22-1516. Enrollment by eligible person.** (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that the person fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage ~~pursuant to this section~~ *under the association plan* may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that condition during the 5 years immediately preceding the filing of an application. *The association may not apply a preexisting condition exclusion to coverage under the association portability plan if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.* The association shall waive any time period applicable to a preexisting condition exclusion for the period of time that ~~an~~ *any other eligible* individual was covered under the following types of coverage if the coverage was continuous to a date not more than 30 days prior to submission of an application for coverage under the association plan:

(a) an individual health insurance policy that includes coverage by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided by the association plan; or

(b) an employer-based health insurance benefit arrangement that provides benefits similar to or exceeding the benefits provided by the association plan."

**Section 21.** Section 33-22-1803, MCA, is amended to read:

"**33-22-1803. Definitions.** As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the

HeinOnline -- 1997 vol. II 1980 1997

small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier's standard benefit plan and that provides the benefits required by 33-22-1827.

~~(6) "Benefit equivalency" means a method developed by the small employer carrier for comparing the types of health care services and articles covered under a health benefit plan with the types of health care services required to be covered under a uniform, basic, or standard health benefit plan.~~

~~(7)~~*(6)* "Benefit value" means ~~an actuarially based method developed by the small employer carrier for comparing the value of determinable contingencies covered under a health benefit plan with the value of determinable contingencies required under a uniform, basic, or standard health benefit plan.~~ *a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based method and must take into account all health care expenses covered by the health benefit plan and all cost-sharing features of the health benefit plan, including deductibles, coinsurance, copayments, and the insured individual's maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.*

~~(8)~~*(7)* "Board" means the board of directors of the program established pursuant to 33-22-1818.

*(8) "Bona fide association" means an association that:*

*(a) has been actively in existence for at least 5 years;*

*(b) was formed and has been maintaincd in good faith for purposes other than obtaining insurance;*

*(c) docs not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;*

*(d) makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member;*

HeinOnline -- 1997 vol. II 1981 1997

*(c) does not make health insurance coverage offered through the association available other than in connection with a member of the association; and*

*(f) meets any additional requirements required by law.*

(9) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(10) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(11) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(12) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(13) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.

HeinOnline -- 1997 vol. II 1982 1997

(14) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(15) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued hy an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include:

~~(a) accident only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance;~~

~~(b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or~~

~~(c) automobile medical payment insurance~~ *coverage of excepted benefits if coverage is provided under a separate policy, certificate, or contract of insurance.*

(16) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

~~(17) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual was entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent may not be considered a late enrollee if:~~

~~(a) the individual requests enrollment within 30 days after termination of the qualifying previous coverage and:~~

~~(i) the individual was covered under qualifying previous coverage at the time of the initial enrollment; or~~

~~(ii) the individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a spouse, or divorce;~~

~~(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or~~

~~(c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.~~

~~(18)~~*(17)* "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

HeinOnline -- 1997 vol. II 1983 1997

~~(19)~~*(18)* "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

~~(20)~~*(19)* "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

~~(21)~~*(20)* "Program" means the Montana small employer health reinsurance program created by 33-22-1818.

~~(22) "Qualifying previous coverage" means benefits or coverage provided under:~~

~~(a) medicare or medicaid;~~

~~(b) an employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the minimum basic health benefit plan; or~~

~~(c) an individual health insurance policy, including coverage issued by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided under the minimum basic health benefit plan, provided that the policy has been in effect for a period of at least 1 year.~~

~~(20)~~*(21)* "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

~~(24)~~*(22)* "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819.

~~(25)~~*(23)* "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that bave entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

~~(20)~~*(24)* "Small employer" means a person, firm, corporation, partnership, or *bona fide* association that is actively engaged in business and that, ~~on at least 50% of its working days during the preceding calendar quarter~~ *with respect to a calendar year and a plan year*, employed at least ~~3~~ *2* but not more tban ~~25~~ *50* eligible employees~~, the majority of whom were employed within this state or were residents of this state~~ *during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year*. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of ~~an~~ *a bona fide* association ~~that:~~

~~(i) has been in existence for 1 year prior to January 1, 1994;~~

~~(ii) provides a health benefit plan to employees of its members as a group; and~~

~~(iii) does not deny coverage to any small employer member of its association or any employee of its small employer members who applies for coverage as part of a group.~~

~~(27)~~*(25)* "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

~~(28)~~*(26)* "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828."

**Section 22.** Section 33-22-1804, MCA, is amended to read:

**"33-22-1804. Applicability and scope.** (1) This part applies to a health benefit plan marketed through a small employer that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(a) a portion of the premium or benefits is paid by or on behalf of the small employer;

(b) an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium; ~~or~~

(c) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code, except a plan or program that is funded entirely by contributions from the employees*; or*

*(d) all of the premium is paid by the employee who obtains coverage through the employer's group health benefit plan.*

(2) ~~A payroll deduction or a list-billed premium is not a reimbursement for the purposes of subsection (1)(b)~~ *This part does not apply to an individual health benefit plan for which the entire premium is paid by an employee through payroll deduction or other means.*

*(3) This part applies to an individual health benefit plan if the eligible employee or dependent is directly or indirectly reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium.*"

**Section 23.** Section 33-22-1809, MCA, is amended to read:

**"33-22-1809. Restrictions relating to premium rates.** (1) Premium rates for health benefit plans under this part are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

HeinOnline -- 1997 vol. II 1985 1997

(b) For each class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and

(iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% of that coverage.

(f) In the case of health benefit plans delivered or issued for delivery prior to January 1, 1994, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (1)(b) until January 1, 1997. In that case, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and

HeinOnline -- 1997 vol. II 1986 1997

(ii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(g) A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups. Differences among base premium rates may not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(h) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that

HeinOnline -- 1997 vol. II 1987 1997

demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with this part and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.

(c) The filing required in subsection (5)(b) must contain the small employer carrier's ~~benefit equivalency and~~ benefit value.

(d) A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of this part and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.

(6) The commissioner may not require prior approval of the rating methods used by small employer carriers or the premium rates of the health benefit plans offered to small employers."

**Section 24.** Section 33-22-1811, MCA, is amended to read:

**"33-22-1811. Availability of coverage — required plans.** (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier ~~shall offer to small employers~~ *must have approved for issuance to small employer groups* at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for ~~either~~ *either* plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part. *If, pursuant to Public Law 104-191, an agency of the United States or a court does not prohibit a small employer carrier from doing so, a small employer carrier may offer and issue a group health benefit plan other than a basic or standard plan on an underwritten basis.*

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a ~~basic or standard~~ health benefit plan;

HeinOnline -- 1997 vol. II 1988 1997

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) A small employer carrier that elects not to comply with the requirements of subsections (1)(a) and (1)(b) may continue to provide coverage under health benefit plans previously issued to small employers in this state for a period of no more than 7 years from October 1, 1995, if the carrier:

(i) complies with all other applicable provisions of this part, except 33-22-1810, 33-22-1813, and subsections (2) through (4) of this section; and

(ii) does not amend or alter the benefits and coverages of the previously issued health benefit plans unless required to do so by law or rule.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not~~:~~

*(i)* because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition *exclusion* more restrictively than ~~33-22-110(2)~~ *[section 33]*.

*(ii) use a preexisting condition exclusion more restrictive than exclusions allowed under [section 39].*

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time *that* an individual was previously covered by ~~qualifying previous~~ *creditable* coverage that provided benefits with respect to those services if the ~~qualifying previous~~ *creditable* coverage was continuous to a date not more than ~~30~~ *63* days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

HeinOnline -- 1997 vol. II 1989 1997

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(iii) A small employer carrier shall secure a waiver of coverage from each eligible employee who declines, at the sole discretion of the eligible employee, an offer of coverage under a health benefit plan provided by the small employer. The waiver must be signed by the eligible employee and must certify that the employee was informed of the availability of coverage under the health benefit plan and of the penalties for late enrollment. The waiver may not require the eligible employee to disclose the reasons for declining coverage.

(iv) A small employer carrier may not issue coverage to a small employer if the carrier or a producer for the carrier has evidence that the small employer induced or pressured an eligible employee to decline coverage due to the health status or risk characteristics of the eligible employee or of the dependents of the eligible employee.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) ~~to a small employer when the small employer is not physically located in the carrier's established geographic service area;~~

~~(ii)~~ to an ~~employee when the employee does~~ *employer whose employees do* not work or reside within the *small employer* carrier's established geographic service area *for a network plan, as defined in [section 33]*; or

~~(iii)~~*(ii)* within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will

not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees. *The small employer carrier may not deny coverage under this subsection unless the small employer carrier acts uniformly without regard to claims experience or health status-related factors of employers, employees, or dependents.*

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) ~~for any period of time~~ for which the commissioner determines that ~~requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition~~ *the small employer carrier does not have the financial reserves necessary to underwrite additional coverage and that the small employer carrier has denied coverage of small employers uniformly throughout the state and without regard to the claims experience and health status-related factors of the applicant small employer groups. The small employer carrier exempted from providing coverage under this subsection may not offer coverage to small employer groups in this state for 180 days after the date on which coverage is denied or until the small employer carrier has demonstrated to the commissioner that the small employer carrier has sufficient financial reserves to underwrite additional coverage, whichever is later.*"

**Section 25.** Section 33-22-1819, MCA, is amended to read:

"**33-22-1819. Program plan of operation — treatment of losses — exemption from taxation.** (1) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program. The commissioner may, after notice and hearing, approve the plan of operation if the commissioner determines it to be suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation is effective upon written approval by the commissioner.

(2) If the board fails to submit a suitable plan of operation within 180 days after its appointment, the commissioner shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The commissioner shall amend or rescind any temporary plan adopted under this subsection at the time a plan of operation is submitted by the board and approved by the commissioner.

(3) The plan of operation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from assessable carriers to fund claims incurred by the program;

HeinOnline -- 1997 vol. II 1991 1997

(e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to fund administrative expenses incurred or to be incurred by the program; and

(f) provide for any additional matters necessary for the implementation and administration of the program.

(4) The program has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program may:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of this part;

(e) establish conditions and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program;

(h) to the extent permitted by federal law and in accordance with subsection (8)(c), make annual assessments against assessable carriers and make interim assessments to fund claims incurred by the program; and

(i) borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

(5) A reinsuring carrier may reinsure with the program as provided for in this subsection (5):

(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.

HeinOnline -- 1997 vol. II 1992 1997

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

(d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

(ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(e) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

(f) A small employer group health benefit plan in effect before January 1, 1994, may not be reinsured by the program until January 1, 1997, and then only if the board determines that sufficient funding sources are available.

(g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(6) (a) As part of the plan of operation, the board shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology must provide for the development of base reinsurance premium rates that must be multiplied by the factors set forth in subsection (6)(b) to determine the premium rates for the program. The base reinsurance premium rates must be established by the board, subject to the approval of the commissioner, and must be set at levels that reasonably approximate the premiums necessary to recover one-half of the expenses for the calendar year. For purposes of this section, expenses include administrative expenses~~, one-half of the program net loss for the previous calendar year,~~ and the actuarially anticipated claims to be incurred, adjusted to reflect retention levels required under this part.

(b) Premiums for the program are as follows:

HeinOnline -- 1997 vol. II 1993 1997

(i) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection (6).

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection (6).

(c) The board shall annually review the methodology established under subsection (6)(a), including the system of classification and any rating factors, to ensure that it is actuarially sound and that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(7) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in 33-22-1809.

(8) (a) Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses, and the actuarially anticipated losses for the calendar year. The sum of ~~one-half of~~ the program net loss for the previous calendar year plus *one-half of* the *actuarially* anticipated ~~net loss for the calendar year~~ *claims to be incurred during the current calendar year and one-half of anticipated administrative expenses during the current calendar year* must equal the total assessment amount. ~~If the program net loss for the previous calendar year is zero or less, the total assessment amount must equal the actuarially anticipated losses for the calendar year.~~

(b) (i) Each assessable carrier shall share in the program in an amount determined by multiplying the total assessment amount by a fraction, the numerator of which is the number of individuals in this state covered under disability insurance by the assessable carrier and the denominator of which is the number of all individuals in this state covered under disability insurance by all assessable carriers.

(ii) The board shall make a reasonable effort to ensure that each insured individual is counted only once for the purpose of assessment. The board shall require each assessable carrier that provides excess of loss or stop loss insurance to include in its count of insured individuals all individuals whose coverage is reinsured in whole or in part, including coverage under excess of loss or stop loss insurance. The board shall allow an assessable carrier who is an excess of loss or stop loss insurer to exclude from its count of insured individuals those who have been counted by a primary disability insurer or by a primary reinsurer.

(iii) The board shall base each assessable carrier's assessment on reports filed with the commissioner as required by ~~33-22-1820~~ *33-2-704*. The board may use

HeinOnline -- 1997 vol. II 1994 1997

any reasonable method of estimating the number of individuals insured by an assessable carrier if the specific number is unknown.

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liability for its share of the contribution to the program and, except as otherwise provided by this section, make an annual assessment against each assessable carrier to the extent of that liability. Payment of an assessment is due within 30 days of receipt by the assessable carrier of written notice of the assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing business. The board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed $10.

(d) The board may establish and maintain program reserves not to exceed five times the actuarially anticipated losses for the calendar year.

(e) If the sum of the reinsurance premiums and assessments in any calendar year exceeds the sum of the administrative expenses and incurred claims for that year, the board may proportionately credit the excess to assessable carriers or it may place the excess in program reserves, subject to the limits in subsection (8)(d).

(9) The participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by this part may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

(10) The board, as part of the plan of operation, shall develop standards setting forth the minimum levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board shall take into consideration the need to ensure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to small employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

(11) The program is exempt from taxation.

(12) On or before March 1 of each year, the commissioner shall evaluate the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimate of future costs of the program, assessments necessary to pay those costs, the appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverage of small employers, and any recommendations for change to the plan of operation.

(13) All premiums and other money paid to the small employer carrier reinsurance program and all property and securities acquired through the use of money and interest and dividends earned on money belonging to the small employer carrier reinsurance program are solely the property of the program and must be used exclusively for the operations and obligations of the program. Money collected by the program is not subject to legislative appropriation."

HeinOnline -- 1997 vol. II 1995 1997

**Section 26.** Section 33-22-1827, MCA, is amended to read:

**"33-22-1827. Benefits required in basic health benefit plan.** (1) The basic health benefit plan must provide at least the following benefits:

(a) coverage for the services and articles required by 33-22-1521(2);

(b) coverage for mental health and chemical dependency required hy Title 33, chapter 22, part 7; and

(c) coverage for conversion of henefits required by 33-22-508 and 33-22-510 or by 33-30-1007.

(2) The smali employer carrier may determine varying levels of deductibles, copayments, maximum annual out-of-pocket expenses, maximum lifetime benefits, and other financial cost-sharing arrangements with the insured that give the basic health benefit plan a lower benefit value than the standard health benefit plan.

(3) A hasic health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparahle level of benefits to those required by subsections (1) and (2), as determined by the ~~benefit equivalency and~~ benefit value."

**Section 27.** Section 33-22-1828, MCA, is amended to read:

**"33-22-1828. Benefits required in standard benefit plan.** (1) The minimum benefits must be equal to at least 75% of the covered expenses in excess of an annual deductible that does not exceed $500 per person or $1,000 per family. The coverage must include a limitation of $2,000 per person or $4,000 per family on the total annual out-of-pecket expenses for services covered. The coverage may be subject to a maximum lifetime benefit, but a maximum, if any, may not be less than $1 million.

(2) The commissioner may not require coverage in a standard health benefit plan for any benefit unless other provisions of Title 33, chapter 22, 30, or 31, specifically require coverage for the benefit. A small employer carrier may offer coverage for additional services and articles.

(3) A standard health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparahle level of henefits to those required by subsection (1), as determined hy the ~~benefit equivalency and~~ henefit value."

**Section 28.** Section 33-30-1001, MCA, is amended to read:

**"33-30-1001. Newborn infants covered by insurance by health service corporation.** A disability insurance plan or group disahility insurance plan issued by a health service corporation may not be issued or amended in this state if it contains any disclaimer, waiver, *preexisting condition exclusion,* or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of the persons insured from and after the moment of birth. Each policy must contain a provision granting immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any insured person. The policy or contract may require notification of the birth of a child and payment of a required premium or subscription fee to be furnished

HeinOnline -- 1997 vol. II 1996 1997

to the insurer or nonprofit or indemnity corporation within 31 days of the birth in order to have the coverage extend beyond 31 days."

**Section 29.** Section 33-31-102, MCA, is amended to read:

**"33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) *"Affiliation period" means a period that, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective.*

*(2)* "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132; and

(j) treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

~~(2)~~*(3)* "Commissioner" means the commissioner of insurance of the state of Montana.

~~(3)~~*(4)* "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

HeinOnline -- 1997 vol. II 1997 1997

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

~~(4)~~*(5)* "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

~~(5)~~*(6)* "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(h) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

~~(6)~~*(7)* "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

~~(7)~~*(8)* "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.

~~(8)~~*(9)* "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

~~(9)~~*(10)* "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

~~(10)~~*(11)* "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

~~(11)~~*(12)* "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist,

HeinOnline -- 1997 vol. II 1998 1997

psychologist, licensed social worker, registered pharmacist, or nurse specialist, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of ~~his~~ practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

~~(12)~~*(13)* "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

**Section 30.** Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) The provisions of this section do not exempt a health maintenance organization from material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-701 through 33-3-704.

*(6) [Sections 34 through 40 and 44] apply to health maintenance organizations.*"

**Section 31.** Section 33-31-322, MCA, is amended to read:

"**33-31-322. Uniform health benefit plan — health maintenance organization.** Each health maintenance organization delivering or issuing for delivery in this state an enrollment form or evidence of coverage shall make available a uniform health benefit plan providing ~~benefit equivalency and~~ benefit value, as defined in 33-22-1803, comparable to the uniform health benefit plan required in 33-22-245(2)."

**Section 32.** Section 33-35-306, MCA, is amended to read:

"**33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions of Title 33:

HeinOnline -- 1997 vol. II 1999 1997

(a) Title 33, chapter 1, part 4, hut the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308; ~~and~~

(d) Title 33, chapter 18, except 33-18-242~~.~~; *and*

*(e) [sections 42 and 44].*

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

**Section 33. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" has the meaning given the term by 29 U.S.C. 1002(33).

(2) "Church plan" has the meaning given the term by 29 U.S.C. 1002(33).

(3) "COBRA continuation provision" means:

(a) section 4980B of the Internal Revenue Code, 26 U.S.C. 4980B, other than subsection (f)(1) of that section as it relates to pediatric vaccines;

(b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, Public Law 93-406; or

(c) Title XXII of the Public Health Service Act, 42 U.S.C. 300dd, et seq.

(4) (a) "Creditable coverage" means coverage of the individual under any of the following:

(i) a group health plan;

(ii) health insurance coverage;

(iii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4;

(iv) Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, other than coverage consisting solely of a benefit under section 1928, 42 U.S.C. 1396s;

(v) Title 10, chapter 55, United States Code;

(vi) a medical care program of the Indian health service or of a tribal organization;

(vii) the Montana comprehensive health association provided for in 33-22-1503;

(viii) a health plan offered under Title 5, chapter 89, of the United States Code;

(ix) a public health plan;

HeinOnline -- 1997 vol. II 2000 1997

(x) a health benefit plan under section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e).

(h) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

(6) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment.

(7) "Excepted benefits" means:

(a) coverage only for accident, disability income insurance, or both;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for onsite medical clinics;

(h) other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits, as approved by the commissioner;

(i) if offered separately, any of the following:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these types of care; or

(iii) other similar, limited benefits as approved by the commissioner;

(j) if offered as independent, noncoordinated benefits, any of the following:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance;

(k) if offered as a separate insurance policy:

(i) medicare supplement coverage;

(ii) coverage supplemental to the coverage provided under Title 10, chapter 55, of the United States Code; and

(iii) similar supplemental coverage provided under a group health plan.

HeinOnline -- 1997 vol. II 2001 1997

(8) "Federally defined eligible individual" means an individual:

(a) for whom, as of the date on which the individual seeks coverage in the group market or individual market or under an association portability plan, as defined in 33-22-1501, the aggregate of the periods of creditable coverage is 18 months or more;

(b) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any of those plans;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) who does not have other health insurance coverage;

(e) for whom the most recent coverage within the period of aggregate creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(f) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(g) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(f) if the individual elected the continuation coverage described in subsection (8)(f).

(9) "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

(10) "Group health plan" means an employee welfare benefit plan, as defined in, 29 U.S.C. 1002(1), to the extent that the plan provides medical care and items and services paid for as medical care to employees or their dependents, directly or through insurance, reimbursement, or otherwise.

(11) "Health insurance coverage" means benefits consisting of medical care, including items and services paid for as medical care, that are provided directly, through insurance, reimbursement, or otherwise, under a policy, certificate, membership contract, or health care services agreement offered by a health insurance issuer.

(12) "Health insurance issuer" means an insurer, a health service corporation, or a health maintenance organization.

(13) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

HeinOnline -- 1997 vol. II 2002 1997

(14) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(15) "Large employer" means, in connection with a group health plan, with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(16) "Large group market" means the health insurance market under which individuals obtain health insurance coverage directly or through any arrangement on behalf of themselves and their dependents through a group health plan maintained by a large employer.

(17) "Late enrollee" means an eligible employee or dependent who requests enrollment in a group health plan following the initial enrollment period during which the individual was entitled to enroll under the terms of the group health plan if the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent is not considered a late enrollee if:

(a) the individual requests enrollment within 63 days after termination of the creditable coverage and:

(i) the individual was covered under creditable coverage at the time of the initial enrollment; or

(ii) the individual lost coverage under creditable coverage as a result of termination of employment or eligibility, reduction in the number of hours of employment, involuntary termination of the creditable coverage, the death of a spouse, divorce, or legal separation;

(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(18) "Medical care" means:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in subsection (18)(a); or

(c) insurance covering medical care referred to in subsections (18)(a) and (18)(b).

(19) "Network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(20) "Plan sponsor" has the meaning provided under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(16)(B).

HeinOnline -- 1997 vol. II 2003 1997

(21) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on presence of a condition before the enrollment date coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the enrollment date.

(22) "Small group market" means the health insurance market under which individuals obtain health insurance coverage directly or through an arrangement, on behalf of themselves and their dependents, through a group health plan maintained by a small employer, as defined in 33-22-1803.

(23) "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the group health plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the group health plan.

**Section 34. Crediting previous coverage.** (1) A period of creditable coverage may not be counted, with respect to enrollment of an individual under a group health plan, if there was a 63-day break in coverage, during which the individual was not covered under any creditable coverage.

(2) The time that an individual is in a waiting period for coverage under a group health plan or for group health insurance coverage or is in an affiliation period, as defined in 33-31-102, may not be considered in determining the continuous period under subsection (1).

(3) Except as provided in subsection (4), for the purposes of applying [section 39], a group health plan or a health insurance issuer offering group health insurance coverage shall count a period of creditable coverage without regard to the specific benefits coverage during the period.

(4) (a) A group health plan or a health insurance issuer offering group health insurance may elect to apply the provisions of [section 39] based on coverage of benefits within each of several classes or categories of benefits specified in regulations implementing Public Law 104-191, rather than as provided under subsection (3). If electing to apply the provisions of [section 39] pursuant to this subsection (4), a group health plan or a health insurance issuer shall:

(i) make the election on a uniform basis for all participants and beneficiaries; and

(ii) count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

(b) In the case of an election under this subsection (4), a group health plan shall:

(i) prominently state in a disclosure statement concerning the group health plan to each enrollee at the time of enrollment that the group health plan has made an election; and

(ii) include a description of the effect of the election in the statement.

(c) In the case of an election under this subsection (4), a health insurance issuer shall:

HeinOnline -- 1997 vol. II 2004 1997

(i) prominently state in a disclosure statement concerning the health insurance coverage to each employer at the time of the offor or sale of the health insurance coverage that the health insurance issuer has made an election; and

(ii) include a description of the effect of the election in the statemont.

(5) Periods of creditable coverage with respect to an individual must be established through presentation of certifications described in [section 36] or in such other manner as may be specified in regulations implementing Public Law 104-191.

**Section 35. Special enrollment periods.** (1) A group health plan and a health insurance issuer offering group health insurance coverage in connection with a group health plan shall permit an employee or a dependent of an employee who is eligible, but not enrolled, for coverage under tho terms of the group health plan to enroll for coverage under tho terms of the group health plan if:

(a) the employee or dependent was covered under a group health plan or had health insurance coverage at the time that coverage was previously offered to the employee or dependent;

(b) the employee stated in writing at the time that coverage under a group health plan or health insurance coverage was tho reason for declining enrollment, but only if the plan sponsor or health insurance issuer required the statoment at the time and provided the employee with notice of the requirement and the consequences of the requirement at the time;

(c) the employee's or dependent's coverage described in subsection (1)(a) was:

(i) under a COBRA continuation provision and was exhausted; or

(ii) not under a COBRA continuation provision and was terminated as a result of loss of eligibility for the coverage or because employer contributions toward the coverage were terminated; and

(d) under the terms of the group health plan, the employee requests the enrollment not later than 30 days after the date of exhaustion of coverage described in subsection (1)(c)(i) or termination of coverage or employer contribution described in subsection (1)(c)(ii).

(2) (a) A group health plan shall provide for a dependent special enrollment period described in subsection (2)(b) during which a dependent may be enrolled under the group health plan as a dependent of tbe individual and, in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage.

(b) A dependent special enrollment period under this subsection (2) is a period of not less than 30 days that begins on the later of:

(i) the date dependent coverage is made available; or

(ii) the date of the marriage, birth, or adoption or placement for adoption.

(3) If an individual seeks to enroll a dependent during the first 30 days of tho dependent special enrollment period, the coverage of the dependent becomes effective:

HeinOnline -- 1997 vol. II 2005 1997

(a) in the case of marriage, not later than the first day of the first month beginning after the date on which the completed request for enrollment is received;

(b) in the case of a dependent's birth, as of the date of birth; or

(c) in the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.

**Section 36. Certification of creditable coverage.** (1) A group health plan and a health insurance issuer offering group health insurance coverage shall provide the certification described in subsection (3):

(a) at the time that an individual ceases to be covered under the group health plan or otherwise becomes covered under a COBRA continuation provision;

(b) in the case of an individual becoming covered under a COBRA continuation provision, at the time that the individual ceases to be covered under a COBRA continuation provision; and

(c) at the request on behalf of an individual made not later than 24 months after the date of termination of the coverage described in subsection (1)(a) or (1)(b), whichever is later.

(2) The certification pursuant to subsection (1)(a) may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(3) Certification is the written:

(a) certification of the period of creditable coverage of the individual under a group health plan and the coverage under the COBRA continuation provision;

(b) certification of the waiting period, if any, and affiliation period, as defined in 33-31-102, if applicable, imposed with respect to the individual for any coverage under a group health plan; and

(c) notification to the individual of:

(i) the individual's option to apply to the Montana comprehensive health association, provided for in 33-22-1503, for an association portability plan, as defined in 33-22-1501, within 63 days of termination of creditable coverage;

(ii) the individual's conversion rights;

(iii) the availability of COBRA continuation coverage;

(iv) the telephone number and address of the Montana comprehensive health association; and

(v) other notification as determined necessary and in the form prescribed by rule by the commissioner.

(4) To the extent that medical care under a group health plan consists of group health insurance coverage, a group health plan satisfies the certification requirement of this section if the health insurance issuer offering the coverage provides the certification in accordance with this section.

HeinOnline -- 1997 vol. II 2006 1997

(5) In the case of an election described in [section 34] by a group health plan or health insurance issuer, if the group health plan or health insurance issuer enrolls an individual for coverage under the group health plan and the individual provides a certification of coverage of the individual, the entity that issued the certification shall upon request of the group health plan or health insurance issuer promptly disclose information on coverage of classes and categories of health benefits available under the certified coverage. The entity may charge the requesting group health plan or health insurance issuer the reasonable cost of disclosing the information.

(6) This section applies to health insurance coverago offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the group market.

**Scction 37. Preexisting conditions relating to individual market.** (1) Except as provided in subsection (2), a health insurance issuer offering individual health insurance coverage may not exclude coverage for a preexisting condition unless:

(a) medical advice, diagnosis, care, or treatment was recommended to or received by the participant or beneficiary within the 3 years preceding the effective date of coverage; and

(b) coverage for the condition is excluded for not more than 12 months.

(2) A health insurance issuer offering health insurance coverage may not impose a preexisting condition exclusion on a federally defined eligible individual because of a preexisting condition.

**Section 38. Guaranteed renewability of individual health insurance coverage.** (1) Except as provided in this section, a health insurance issuer that provides individual health insurance coverage to an individual shall renew or continue the coverage in force at the option of the individual.

(2) A health insurance issuer may nonrenew or discontinue health insurance coverage of an individual in the individual market only if:

(a) the individual has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or if the health insurance issuer has not received timely premium payments;

(b) the individual has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage;

(c) the health insurance issuer is ceasing to offer coverage in the individual market in accordance with this section and applicable state law;

(d) in the case of a health insurance issuer that offers health insurance coverage in the individual market through a network plan, the individual no longer lives, resides, or works in the service area of the health insurance issuer or in an area for which the health insurance issuer is authorized to do business, but only if the coverage is terminated under this subsection (2)(d) uniformly without regard to any health status-related factor of covered individuals; or

HeinOnline -- 1997 vol. II 2007 1997

(e) in the case of health insurance coverage that is made available in the individual market only through one or more bona fide associations, as defined in 33-22-1803, the membership of the individual in tbe bona fide association ceases, but only if the coverage is terminated under this subsection (2)(e) uniformly without regard to any health status-related factor of a covered individual.

(3) A health insurance issuer may not discontinue offering a particular type of individual health insurance coverage offered in the individual market unless in accordance with applicable state law and unless:

(a) the health insurance issuer gives notice to each covered individual provided coverage of this type in tbe individual market of the discontinuation at least 90 days prior to the date of the discontinuation of the coverage;

(b) the health insurance issuer offers to each individual in the individual market provided coverage of this type the option to purchase any other individual health coverage currently being offered by the health insurance issuer to individuals in the individual market; and

(c) in exercising the option to discontinue coverage of this type and in offering the option of coverage under subsection (3)(b), tbe health insurance issuer acts uniformly, without regard to the claims experience of individuals or any health status-related factor of individuals who may become eligible for the coverage.

(4) (a) A healtb insurance issuer may not discontinue offering all health insurance coverage in the individual market unless in accordance with applicable state law and unless:

(i) the health insurance issuer provides notice of discontinuation to the commissioner and each covered individual at least 180 days prior to tbe date of the discontinuation of coverage; and

(ii) all healtb insurance issued or delivered for issuance in Montana in the individual market is discontinued and coverage under the health insurance coverage in the individual market is not renewed.

(b) In the case of a discontinuation under subsection (4)(a) in the individual market, the health insurance issuer may not provide for tbe issuance of any health insurance coverage in the individual market during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not renewed.

(5) A health insurance issuer may modify upon renewal health insurance coverage for a policy form offered to individuals in the individual market if the modification is consistent witb applicable state law and effective on a uniform basis among all individuals with that policy form.

(6) In the case of health insurance coverage that is made available by a health insurance issuer in the individual market to individuals only through one or more bona fide associations, references to "individual" under this section include a reference to the hona fide association of which the individual is a member.

**Section 39. Preexisting conditions relating to group market.** (1) A group health plan or a health insurance issuer offering group health insurance coverage may not exclude coverage for a preexisting condition unless:

HeinOnline -- 1997 vol. II 2008 1997

(a) medical advice, diagnosis, care, or treatment was recommended or received by the participant or beneficiary within the 6-month period ending on tbe enrollment date;

(b) exclusion of coverage extends for a period of not more than 12 months; and

(c) the period of the preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or heneficiary as of the enrollment date.

(2) Genetic information may not be excluded as a preexisting condition in the absence of a diagnosis of tbe condition related to the genetic information.

(3) Pregnancy may not be excluded as a preexisting condition.

**Section 40. Guaranteed renewability of coverage for employers in group market.** (1) Except as provided in this section, if a health insurance issuer offers health insurance coverage in tbe small group market or large group market in connection with a group health plan, the health insurance issuer shall renew or continue the coverage in force at the option of the plan sponsor.

(2) A health insurance issuer may nonrenew or discontinue health insurance coverage offered in connection with a group health plan in the small group market or large group market if:

(a) the plan sponsor has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or if the health insurance issuer has not received timely premium payments;

(b) the plan sponsor has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of material fact under the terms of the coverage;

(c) the plan sponsor has failed to comply with a material plan provision relating to employer contribution or group health plan participation rules in the case of the small group market or pursuant to applicable state law in the case of the large group market;

(d) the health insurance issuer is ceasing to offer coverage in that group market in accordance with this section and applicable state law;

(e) in the case of a health insurance issuer that offers health insurance coverage in the group market through a network plan, there is no longer any enrollee in connection with the group health plan who lives, resides, or works in the service area of the health insurance issuer and, in the case of the small group market, if the health insurance issuer would deny enrollment with respect to tbe plan under 33-22-1811(4)(a)(i); or

(f) in the case of health insurance coverage that is made available in the small group market or large group market only through one or more bona fide associations, the membership of an employer in the bona fide association ceases, but only if the coverage is terminated under this subsection (2)(f) uniformly without regard to any health status-related factor of a covered individual.

HeinOnline -- 1997 vol. II 2009 1997

(3) A health insurance issuer may not discontinue offering a particular type of group health insurance coverage offered in the small group market or large group market unless in accordance with applicable state law and unless:

(a) the issuer provides notice to each plan sponsor, participant, and beneficiary provided coverage of this type in that group market of the discontinuation at least 90 days prior to the date of the discontinuation of the coverage;

(b) the issuer offers to each plan sponsor provided coverage of this type in the market the option to purchase any other health insurance coverage currently being offered by the health insurance issuer to a group health plan in the market; and

(c) the health insurance issuer acts uniformly without regard to the claims experience of those sponsors or any health status-related factor of any participants or beneficiaries covered or new participants or beneficiaries who may become eligible for the coverage.

(4) (a) A health insurance issuer may not discontinue offering all health insurance coverage in the small group market, the large group market, or both the small group market and the large group market, unless in accordance with applicable state law and unless:

(i) the issuer provides notice of discontinuation to the commissioner and to each plan sponsor, participant, and beneficiary covered at least 180 days prior to the date of the discontinuation of coverage; and

(ii) all health insurance issued or delivered for issuance in Montana in the group market or markets is discontinued and coverage under the health insurance coverage in the group market or markets is not renewed.

(b) In the case of a discontinuation under this section in a group market, the health insurance issuer may not provide for the issuance of any health insurance coverage in the group market for a period of 5 years beginning on the date of the discontinuation of the last health insurance coverage not renewed.

(5) A health insurance issuer may modify upon renewal health insurance coverage for a product offered to a group health plan in the large group market or in the small group market if, for coverage that is available in the small group market other than only through one or more bona fide associations, modification is consistent with applicable state law and effective on a uniform basis among group health plans with that product.

(6) In the case of health insurance coverage that is made available by a health insurance issuer in the small group market or large group market to employers only through one or more bona fide associations, references to "plan sponsor" under this section include those employers.

**Section 41. Association portability plans.** (1) The association shall offer at least two comprehensive health benefit plans designed by the association. The association portability plans may not be delivered or issued for delivery in this state until the policy forms and rates are approved by the commissioner, in accordance with rules adopted by the commissioner. The commissioner may by

order extend the date hy which the association shall offer the association portahility plan until a date not later than January 1, 1998.

(2) The association shall administer the association portability plans as a distinctly separate hlock of business from the association plan. The claims experience or the expense experience of the association plan may not be combined with the claims experience or expense experience of any association portability plan in the determination of association portability plan premium rates or reserves of any association portability plan.

**Section 42. Guarantced renewability in multiple employer welfare arrangements.** A group health plan that is a multiple employer welfare arrangement, as defined by 29 U.S.C. 1002, may not deny an employer whose employees are covered under the group health plan continued access to the same or different coverage under the terms of the group health plan other than:

(1) for nonpayment of contributions;

(2) for fraud or other intentional misrepresentation of material fact by the employer;

(3) for noncompliance with material plan provisions;

(4) because the group health plan is ceasing to offer any coverage in a geographic area;

(5) in the case of a group health plan that offers benefits through a network plan, because there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the group health plan applies to this section uniformly without regard to the claims experience of employers or any health status-related factor of those individuals or their dependents; or

(6) for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the group health plan, or to employ employees covered by the agreement.

**Section 43. Affiliation periods.** (1) A health maintenance organization that offers health insurance coverage in connection with a group health plan and that does not impose a preexisting condition exclusion allowed by [section 37] or [section 39] with respect to any particular coverage option may impose an affiliation period for that coverage option if:

(a) the affiliation period is applied uniformly without regard to any health status-related factors; and

(b) the affiliation period does not exceed 2 months, or 3 months in the case of a late enrollee, as defined in [section 33].

(2) A health maintenance organization is not required to provide health care services or benefits during the affiliation period, and a premium may not be charged to the participant or beneficiary for any coverage during the affiliation period. An affiliation period begins on the enrollment date and runs concurrently with any waiting period under the plan.

HeinOnline -- 1997 vol. II 2011 1997

(3) A health maintenance organization may use a method other than an affiliation period to address adverse selection if the method is approved by the commissioner.

(4) The definitions in [section 33] apply to this section.

**Section 44. Group health discrimination prohibited.** (1) (a) A group health plan or a health insurance issuer offering group health insurance coverage may not establish rules for eligibility, including continued eligibility, of any individual to enroll under the terms of the group health plan based on any of the following health status-related factors of the individual or a dependent of the individual:

(i) health status;

(ii) medical condition, including both physical and mental illnesses;

(iii) claims experience;

(iv) receipt of health care;

(v) medical history;

(vi) genetic information;

(vii) evidence of insurability, including conditions arising out of acts of domestic violence; or

(viii) disability.

(b) This subsection does not:

(i) require a group health plan or group health insurance coverage to provide particular benefits other than those provided under the terms of the group health plan or group health insurance coverage; or

(ii) prevent the group health plan or group health insurance coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the group health plan or group health insurance coverage.

(c) For purposes of subsection (1)(a), rules for eligibility to enroll under a group health plan include rules defining an applicable waiting period for the enrollment.

(2) (a) A group health plan and a health insurance issuer offering health insurance coverage in connection with a group health plan may not require an individual, as a condition of enrollment or continued enrollment under the group health plan, to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the group health plan on the basis of any health status-related factor of the individual or of an individual enrolled under the plan as a dependent of the individual.

(b) This subsection (2) does not:

(i) restrict the amount that an employer may be charged for coverage under a group health plan; or

HeinOnline -- 1997 vol. II 2012 1997

(ii) prevent a group health plan and a health insurance issuer offering group health insurance coverage from establishing premium discounts or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

**Section 45. Rules.** The commissioner may adopt rules to implement [sections 33 through 42 and 44].

**Section 46. Policy waiting periods not cumulative.** A waiting or elimination period contained in a long-term care insurance policy under which an insured is required to wait a specified period of time before receiving policy benefits must be concurrent with any 90-day period used to determine whether an individual is a chronically ill individual.

**Section 47. Delivery of policy or certificate.** If an application for a long-term care insurance policy or a certificate meeting the requirements of Public Law 104-191 is approved, tbe healtb insurance issuer of the policy or certificate shall deliver the policy or certificate to the applicant, policyholder, or certificate holder not later than 30 days after the date of issue.

**Section 48. Denial of claims.** If a claim under a long-term care insurance policy or certificate meeting the requirements of Public Law 104-191 is denied, tbe health insurance issuer shall, not later than 60 days after the receipt of a written request by the policy holder, certificate holder, or the representative of either of them:

(1) provide a written explanation of the reasons for the denial; and

(2) provide all information possessed by the health insurance issuer relating to the denial.

**Section 49. Benefit triggers.** (1) A long-term care insurance policy or certificate may not be delivered or issued for delivery in this state unless it complies with the requirements, as established by rules of the commissioner, for the triggering of mandatory provision of benefits.

(2) A qualified long-term care insurance contract must condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expectation of at least 90 days because of a loss of level of disability described under regulations adopted by the U.S. secretary of the treasury and because of:

(a) a loss of functional capacity requiring the substantial assistance of another person to perform the prescribed activities of daily living; or

(b) a severe cognitive impairment requiring substantial supervision, including verbal cueing, by another person to protect the insured from harming the insured or others for from threats to the insured's healtli or safety.

(3) An insured meets a condition of payment if, within the preceding 12-month period, a licensed healtb care practitioner has certified that the insured has met tbe requirements and the practitioner has prescribed the qualified long-term care insurance services pursuant to a plan of care. Eligibility for tlie payment of benefits may not be more restrictive than requiring a deficiency in the ahility to perform not more than three of tho activities of daily living.

HeinOnline -- 1997 vol. II 2013 1997

**Section 50. Codification instruction.** (1) [Sections 33, 34, 36, and 45] are intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [sections 33, 34, 36, and 45].

(2) [Sections 35, 39, 40, 42, and 44] are intended to be codified as an integral part of Title 33, chapter 22, part 5, and the provisions of Title 33, chapter 22, part 5, apply to [sections 35, 39, 40, 42, and 44].

(3) [Sections 37 and 38] are intended to be codified as an integral part of Title 33, chapter 22, part 2, and the provisions of Title 33, chapter 22, part 2, apply to [sections 37 and 38].

(4) [Section 41] is intended to be codified as an integral part of Title 33, chapter 22, part 15, and the provisions of Title 33, chapter 22, part 15, apply to [section 41].

(5) [Section 43] is intended to be codified as an integral part of Title 33, chapter 31, and the provisions of Title 33, chapter 31, apply to [section 43].

(6) [Sections 46 through 49] are intended to be codified as an integral part of Title 33, chapter 22, part 11, and the provisions of Title 33, chapter 22, part 11, apply to [sections 46 through 49].

**Section 51. Coordination instruction.** If House Bill No. 131 is passed and approved and if it amends 33-22-1803(15), then 33-22-1803(15), amending the definition of "health benefit plan", must read as provided in [section 21 of this act].

**Section 52. Applicability.** (1) Except as provided in subsection (2), [sections 1, 5 through 8, 17 through 40, and 42 through 45] apply to group health plans and health insurance coverage offered in connection with group health plans for group health plan and health insurance coverage contracts issued or renewed after June 30, 1997.

(2) [Section 36] applies to events occurring after June 30, 1996.

**Section 53. Effective dates.** (1) Except as provided in subsections (2) through (5), [this act] is effective October 1, 1997.

(2) [Sections 1, 5 through 8, 17 through 40, and 42 through 44] are effective July 1, 1997.

(3) [Section 9] is effective January 1, 1998.

(4) [Section 41] is effective September 1, 1997.

(5) [Section 45 and this section] are effective on passage and approval.

**Section 54. Termination.** [Section 9(2) through (4)] terminates September 30, 2001.

Approved April 28, 1997

HeinOnline -- 1997 vol. II 2014 1997

# CHAPTER NO. 417

[HB 13]

AN ACT DIRECTING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP AN ALTERNATIVE COMPENSATION SYSTEM FOR STATE EMPLOYEES TO BE PRESENTED TO THE 56TH LEGISLATURE; CLARIFYING STATUTES GOVERNING CERTAIN SALARY AND EXPENSE PAYMENTS FOR ELECTED OFFICIALS; PROVIDING FOR IMPLEMENTATION OF THE LEGISLATIVE BRANCH PAY PLAN; PROVIDING PAY ADJUSTMENTS FOR STATE EMPLOYEES IN THE STATEWIDE, TEACHERS, AND BLUE-COLLAR PAY PLANS; INCREASING THE STATE CONTRIBUTION TO THE EMPLOYEE GROUP BENEFIT PROGRAM; EXTENDING AND REVISING THE STATE EMPLOYEE INCENTIVE AWARDS PROGRAM; INCREASING THE SALARY OF THE COMMISSIONER OF POLITICAL PRACTICES; CLARIFYING THE BENEFITS TO WHICH THE COMMISSIONER OF POLITICAL PRACTICES IS ENTITLED; PROHIBITING THE REDUCTION OF THE SALARY OF THE COMMISSIONER OF POLITICAL PRACTICES DURING THE TERM TO WHICH THE COMMISSIONER IS APPOINTED; PROVIDING AN APPROPRIATION TO FUND PAY AND BENEFIT ADJUSTMENTS; AMENDING SECTIONS 2-16-405, 2-18-103, 2-18-301, 2-18-303, 2-18-304, 2-18-312, 2-18-313, 2-18-315, 2-18-703, 2-18-1102, 2-18-1103, 2-18-1105, 2-18-1106, 5-2-301, AND 13-37-106, MCA, AND SECTION 13, CHAPTER 23, SPECIAL LAWS OF NOVEMBER 1993; REPEALING SECTION 2-18-314, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Competency-based personnel systems.** The department shall develop an alternative classification and pay system that is consistent with the market-based approach to pay administration but that empbasizes individual skills, competencies, and contributions in addition to the criteria provided in 2-18-202. The compensation system must provide for the means of identifying the requisite skills and competencies necessary for the state and its separate departments and agencies to provide service excellence to Montana's citizens. Each agency, when possible, shall implement the compensation plan in a manner that results in a flatter management structure. Employee recruitment, selection, evaluation, and compensation must be based, at least in part, on the demonstration of these necessary skills and competencies. The department shall develop the alternative system in consultation with employee representatives. The department shall test the effectiveness of tbe program through the implementation of pilot projects. Insofar as a pilot project applies to employees of a collective bargaining unit, its implementation is a negotiable subject under 39-31-305. The department shall present a proposal for an alternative system to the 56th legislature.

**Section 2.** Section 2-16-405, MCA, is amended to read:

"**2-16-405. Salaries of certain elected state officials.** (1) Subject to subsection (2), the salaries paid to certain elected officials of the state of Montana are:

(a) Governor;

HeinOnline -- 1997 vol. II 2015 1997

~~(i) $55,502;~~

~~(ii) $57,084 beginning July 1, 1995;~~

~~(iii)~~ $59,310 ~~beginning January 1, 1996~~.

(b) Lieutenant governor~~:~~,

~~(i) $40,466;~~

~~(ii) $41,619 beginning July 1, 1995;~~

~~(iii)~~ $43,242 ~~beginning January 1, 1996~~.

(c) Attorney general~~:~~,

~~(i) $50,841;~~

~~(ii) $52,290 beginning July 1, 1995;~~

~~(iii)~~ $54,329 ~~beginning January 1, 1996~~.

(d) State auditor~~:~~,

~~(i) $37,526;~~

~~(ii) $52,290 beginning July 1, 1995;~~

~~(iii)~~ $40,101 ~~beginning January 1, 1996~~.

(e) Superintendent of public instruction~~:~~,

~~(i) $44,177;~~

~~(ii) $45,436 beginning July 1, 1995;~~

~~(iii)~~ $47,208 ~~beginning January 1, 1996~~.

(f) Public service commission presiding officer~~:~~,

~~(i) $41,750;~~

~~(ii) $42,940 beginning July 1, 1995;~~

~~(iii)~~ $44,615 ~~beginning January 1, 1996~~.

(g) Public service commissioners, other than presiding officer~~:~~,

~~(i) $40,466;~~

~~(ii) $41,619 beginning July 1, 1995;~~

~~(iii)~~ $43,242 ~~beginning January 1, 1996~~.

(h) Secretary of state~~:~~,

~~(i) $37,526;~~

~~(ii) $38,595 beginning July 1, 1995;~~

~~(iii)~~ $40,101 ~~beginning January 1, 1996~~.

(i) Clerk of the supreme court~~:~~,

~~(i) $36,537;~~

~~(ii) $37,578 beginning July 1, 1995;~~

~~(iii)~~ $39,044 ~~beginning January 1, 1996~~.

(2) ~~Prior to June 30, 1996, and prior to~~ *Before* June 30 of each even-numbered year ~~thereafter~~, the department of administration shall conduct a salary survey of executive branch officials *with* similar *titles* to the Montana officials listed in subsection (1) for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the salary for the Montana official in determining the average salary for the ~~similar position~~ *officials with similar titles*. If the average salary is greater than the salary for the ~~similar position~~ *official* in Montana, then beginning July 1, ~~1997, the average is the new salary for that position. In~~ *in* each year following the year in which a survey is conducted, the average salary is the new salary for the ~~position~~ *official*."

**Section 3.** Section 2-18-103, MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** ~~(1)~~ Parts 1 ~~and 2~~ *through 3 and 10* do not apply to the following ~~positions~~ *officers and employees* in state government:

~~(a)~~*(1)* elected officials;

~~(b)~~*(2)* county assessors and their chief deputy;

~~(c)~~*(3)* employees of the office of consumer counsel;

~~(d)~~*(4)* judges and employees of the judicial branch;

~~(e)~~*(5)* members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

~~(f)~~*(6)* officers or members of the militia;

~~(g)~~*(7)* agency heads appointed by the governor;

~~(h)~~*(8)* academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

~~(i)~~*(9)* academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

~~(j)~~*(10)* teachers under the authority of the department of corrections or the department of public health and human services;

~~(k)~~*(11)* investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

~~(l)~~*(12)* four professional staff positions under the board of oil and gas conservation;

HeinOnline -- 1997 vol. II 2017 1997

~~(m)~~*(13)* assistant director for security of the Montana state lottery;

~~(n)~~*(14)* executive director and senior investment officer of the Montana board of science and technology development;

~~(o)~~*(15)* executive director and employees of the state compensation insurance fund;

~~(p)~~*(16)* state racing stewards employed by the executive secretary of the Montana board of horseracing;

~~(q)~~*(17)* executive director of the Montana wheat and barley committee;

~~(r)~~*(18)* commissioner of banking and financial institutions; ~~and~~

~~(s)~~*(19)* training coordinator for county attorneys~~.~~*; and*

*(20) employees of an entity of the legislative branch consolidated, as provided in 5-2-504.*

~~(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative branch, other than the office of consumer counsel:~~

~~(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;~~

~~(b) as used in 2-18-102, the term "governor" applies to the legislature; and~~

~~(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102.~~"

**Section 4.** Section 2-18-301, MCA, is amended to read:

"**2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313 ~~through~~ *and* 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments and pay schedules provided for in 2-18-303 and in 2-18-312, *2-18-313,* ~~through~~ *and* 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the ~~54th~~ *55th* legislature.

(4) Pay levels provided for in 2-18-312, *2-18-313,* ~~through~~ *and* 2-18-315 may not be increased through collective bargaining after adjournment of the ~~54th~~ *55th* legislature.

HeinOnline -- 1997 vol. II 2018 1997

(5) Total funds required to implement the pay schedules provided for in 2-18-312, *2-18-313,* ~~through~~ *and* 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~54th~~ *55th* legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

**Section 5.** Section 2-18-303, MCA, is amended to read:

**"2-18-303. Proeedures for using pay schedules.** (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections (7) and (8).

(c) On the first day of the first complete pay period in fiscal year ~~1996~~ *1998*, each employee ~~hired before July 1, 1995,~~ is entitled to the amount of the employee's base salary as it was on June 30, ~~1995~~ *1997*~~, plus, on the employee's anniversary date that occurs on or after September 30, 1995, the increases provided in subsection (1)(d), if applicable~~.

(d) (i) Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, ~~1996~~ *1998*, and June 30, ~~1997~~ *1999*, an employee's market ratio must be compared to the target market ratio in the matrix ~~in subsection (1)(d)(ii)~~ that corresponds to the employee's grade level and completed years of uninterrupted state service. For employees hired on or before September 30, 1994, the anniversary date is October 1.

(ii) ~~As provided in subsection (1)(d)(i), the following matrix must be used to compare an employee's market ratio to the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service:~~ *The matrix for the target market ratios is as follows:*

TARGET MARKET RATIOS

| Grade | Years | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 4 | 0.844 | 0.874 | 0.904 | 0.935 | 0.967 | 0.999 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 5 | 0.842 | 0.871 | 0.900 | 0.930 | 0.961 | 0.992 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 6 | 0.840 | 0.868 | 0.896 | 0.925 | 0.955 | 0.985 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 7 | 0.838 | 0.865 | 0.892 | 0.920 | 0.949 | 0.978 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 8 | 0.836 | 0.862 | 0.889 | 0.916 | 0.944 | 0.972 | 1.000 | 1.000 | 1.000 | 1.000 | 1.000 |
| 9 | 0.834 | 0.859 | 0.885 | 0.911 | 0.938 | 0.965 | 0.993 | 1.000 | 1.000 | 1.000 | 1.000 |

HeinOnline -- 1997 vol. II 2019 1997

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 10 | 0.832 | 0.857 | 0.882 | 0.908 | 0.934 | 0.961 | 0.988 | 1.000 | 1.000 | 1.000 | 1.000 |
| 11 | 0.830 | 0.854 | 0.878 | 0.903 | 0.928 | 0.954 | 0.980 | 1.000 | 1.000 | 1.000 | 1.000 |
| 12 | 0.828 | 0.851 | 0.875 | 0.899 | 0.924 | 0.949 | 0.975 | 1.000 | 1.000 | 1.000 | 1.000 |
| 13 | 0.826 | 0.849 | 0.872 | 0.896 | 0.920 | 0.945 | 0.970 | 0.996 | 1.000 | 1.000 | 1.000 |
| 14 | 0.824 | 0.846 | 0.869 | 0.892 | 0.915 | 0.939 | 0.963 | 0.988 | 1.000 | 1.000 | 1.000 |
| 15 | 0.822 | 0.844 | 0.866 | 0.888 | 0.911 | 0.934 | 0.958 | 0.982 | 1.000 | 1.000 | 1.000 |
| 16 | 0.820 | 0.841 | 0.866 | 0.888 | 0.907 | 0.930 | 0.953 | 0.977 | 1.000 | 1.000 | 1.000 |
| 17 | 0.818 | 0.839 | 0.860 | 0.882 | 0.904 | 0.926 | 0.949 | 0.972 | 0.996 | 1.000 | 1.000 |
| 18 | 0.816 | 0.836 | 0.857 | 0.878 | 0.899 | 0.921 | 0.943 | 0.966 | 0.989 | 1.000 | 1.000 |
| 19 | 0.814 | 0.834 | 0.854 | 0.875 | 0.896 | 0.917 | 0.939 | 0.961 | 0.984 | 1.000 | 1.000 |
| 20 | 0.812 | 0.831 | 0.851 | 0.871 | 0.892 | 0.913 | 0.935 | 0.957 | 0.979 | 1.000 | 1.000 |
| 21 | 0.810 | 0.829 | 0.849 | 0.869 | 0.889 | 0.910 | 0.931 | 0.953 | 0.975 | 0.997 | 1.000 |
| 22 | 0.808 | 0.827 | 0.846 | 0.866 | 0.886 | 0.906 | 0.927 | 0.948 | 0.970 | 0.992 | 1.000 |
| 23 | 0.806 | 0.825 | 0.844 | 0.863 | 0.883 | 0.903 | 0.923 | 0.944 | 0.965 | 0.987 | 1.000 |
| 24 | 0.804 | 0.822 | 0.841 | 0.860 | 0.879 | 0.899 | 0.919 | 0.940 | 0.961 | 0.982 | 1.000 |
| 25 | 0.802 | 0.820 | 0.838 | 0.857 | 0.876 | 0.895 | 0.915 | 0.935 | 0.956 | 0.977 | 0.999 |

~~(iii) If, on~~ *(iii) On* the first day of the pay period that includes an employee's anniversary date during the fiscal ~~year~~ *years* ending June 30, ~~1996~~ *1998, and June 30, 1999,* ~~the employee's market ratio is less than the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service,~~ the employee's base salary must be increased to the ~~lesser~~ *greater* of:

(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service *not to exceed 4%*; ~~or~~

*(B) if under subsection (1)(d)(iii)(A), progression from one target market ratio to the next exceeds 3%, then the employee's base salary increased by the amount of that progression plus 1%; or*

~~(B)~~*(C)* the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes ~~October 1, 1995~~ *the employee's anniversary date*, plus ~~5%~~ *1%*.

~~(iv) If, on the first day of the pay period that includes an employee's anniversary date during the fiscal year ending June 30, 1997, the employee's market ratio is less than the target market ratio that corresponds to the employee's grade level and completed years of uninterrupted state service, the employee's base salary must be increased to the lesser of:~~

~~(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service; or~~

~~(B) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1996, plus 6%.~~

(e) An employee's base salary may be no less than the entry salary for the employee's assigned grade.

~~(f) An employee's base salary may not exceed the maximum salary for the employee's grade. The salary of an employee may not be reduced because of this provision.~~

~~(g)~~*(f)* The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

~~(h) An employee's market ratio, as it was on the last day of the pay period immediately preceding the pay period that includes October 1, 1996, may not be reduced as a result of the adjustment of the pay ranges provided in 2-18-312(2).~~

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers~~, liquor store occupations,~~ or blue-collar occupations compensated under the pay schedules provided in 2-18-313 ~~through~~ *and* 2-18-315.

(3) The pay schedules provided in 2-18-313 ~~through~~ *and* 2-18-315 must be implemented as follows:

(a) (i) The pay schedules previded for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of corrections or the department of public health and human services for fiscal years ~~1996 and 1997~~ *1998 and 1999*.

(ii) The compensation of each teacher on July 1, ~~1995~~ *1997*, is the same as it was on June 30, ~~1995~~ *1997*.

(iii) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of public health and human services *or the department of corrections* ~~prior to~~ *before* October 1, 1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.

~~(iv) On the first day of the first full pay period during the month that includes the teacher's anniversary date, a teacher employed under the authority of the department of corrections shall advance one step on the appropriate pay schedule adopted in 2-18-313.~~

~~(v) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed by the Montana school for the deaf and blind shall advance one step on the teacher pay matrix used by the school.~~

~~(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, 1996, and June 30, 1997, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.~~

~~(ii) The compensation of each employee on the first day of the first pay period in fiscal year 1996 or 1997 is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.~~

HeinOnline -- 1997 vol. II 2021 1997

~~(c)~~*(b)* (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, ~~1996~~ *1998*, and June 30, ~~1997~~ *1999*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in *each* fiscal year ~~1996 or 1997~~ is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) A member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement covering the biennium ending June 30, ~~1997~~ *1999*.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, ~~1995~~ *1997*, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, ~~1995~~ *1997*, members of the bargaining unit must continue to receive the compensation that they were receiving as of June 30, ~~1995~~ *1997*, until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, ~~through~~ *2-18-313*, 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not he reduced by the implementation of the pay schedules provided for in 2-18-312, *2-18-313*, ~~through~~ *and* 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

(7) The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

(8) The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. Insofar as these adjustments may apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

**Section 6.** Section 2-18-304, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2022 1997

**"2-18-304. Longevity allowance.** (1) (a) ~~(i) Effective July 1, 1995, through the last day of the pay period immediately preceding the pay period that includes October 1, 1995, in addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, 2-18-314, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 9/10 of 1% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.~~

~~(ii) Effective on the first day of the pay period that includes October 1, 1995, in~~ *In* addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, ~~2-18-314,~~ or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a state institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section."

**Section 7.** Section 2-18-312, MCA, is amended to read:

**"2-18-312. Statewide pay schedules for fiscal years ~~1996~~ *1998* and ~~1997~~ *1999*.** (1) The statewide classification pay schedule for the period ~~from July 1, 1995, until~~ *beginning on* the first day of the *first full* pay period ~~that includes October 1, 1996~~ *in fiscal year 1998*, is as follows:

HeinOnline -- 1997 vol. II 2023 1997

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — State Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

| GRADE | ENTRY SALARY | MARKET SALARY |
|---|---|---|
| ~~1~~ | ~~8,679~~ | ~~10,210~~ |
| ~~2~~ | ~~9,340~~ | ~~11,025~~ |
| ~~3~~ | ~~10,070~~ | ~~11,903~~ |
| ~~4~~ | ~~10,852~~ | ~~12,858~~ |
| ~~5~~ | ~~11,727~~ | ~~13,927~~ |
| ~~6~~ | ~~12,672~~ | ~~15,086~~ |
| ~~7~~ | ~~13,688~~ | ~~16,334~~ |
| ~~8~~ | ~~14,836~~ | ~~17,747~~ |
| ~~9~~ | ~~16,064~~ | ~~19,262~~ |
| ~~10~~ | ~~17,424~~ | ~~20,942~~ |
| ~~11~~ | ~~18,904~~ | ~~22,775~~ |
| ~~12~~ | ~~20,545~~ | ~~24,812~~ |
| ~~13~~ | ~~22,325~~ | ~~27,027~~ |
| ~~14~~ | ~~24,295~~ | ~~29,485~~ |
| ~~15~~ | ~~26,465~~ | ~~32,196~~ |
| ~~16~~ | ~~28,885~~ | ~~35,226~~ |
| ~~17~~ | ~~31,585~~ | ~~38,613~~ |
| ~~18~~ | ~~34,562~~ | ~~42,355~~ |
| ~~19~~ | ~~37,897~~ | ~~46,557~~ |
| ~~20~~ | ~~41,618~~ | ~~51,254~~ |
| ~~21~~ | ~~45,754~~ | ~~56,487~~ |
| ~~22~~ | ~~50,373~~ | ~~62,343~~ |
| ~~23~~ | ~~55,584~~ | ~~68,963~~ |
| ~~24~~ | ~~61,434~~ | ~~76,410~~ |
| ~~25~~ | ~~67,907~~ | ~~84,673~~ |
| *1* | *8,986* | *10,571* |
| *2* | *9,679* | *11,413* |
| *3* | *10,424* | *12,323* |
| *4* | *11,234* | *13,312* |
| *5* | *12,140* | *14,419* |
| *6* | *13,118* | *15,618* |
| *7* | *14,171* | *16,910* |
| *8* | *15,360* | *18,372* |
| *9* | *16,630* | *19,941* |
| *10* | *18,039* | *21,680* |
| *11* | *19,570* | *23,578* |
| *12* | *21,269* | *25,687* |
| *13* | *23,112* | *27,980* |
| *14* | *25,151* | *30,523* |
| *15* | *27,399* | *33,331* |
| *16* | *29,903* | *36,469* |
| *17* | *32,698* | *39,974* |
| *18* | *35,779* | *43,848* |
| *19* | *39,233* | *48,198* |

| | | |
|---|---|---|
| *20* | *43,086* | *53,060* |
| *21* | *47,367* | *58,478* |
| *22* | *52,149* | *64,541* |
| *23* | *57,543* | *71,393* |
| *24* | *63,601* | *79,104* |
| *25* | *70,302* | *87,657* |

(2) Effective on the first day of the *first full* pay period ~~that includes October 1, 1996~~ *in fiscal year 1999*, the statewide classification pay schedule is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — State Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

| GRADE | ENTRY SALARY | MARKET SALARY |
|---|---|---|
| ~~1~~ | ~~8,897~~ | ~~10,466~~ |
| ~~2~~ | ~~9,583~~ | ~~11,300~~ |
| ~~3~~ | ~~10,321~~ | ~~12,201~~ |
| ~~4~~ | ~~11,123~~ | ~~13,180~~ |
| ~~5~~ | ~~12,020~~ | ~~14,276~~ |
| ~~6~~ | ~~12,988~~ | ~~15,463~~ |
| ~~7~~ | ~~14,031~~ | ~~16,743~~ |
| ~~8~~ | ~~15,208~~ | ~~18,190~~ |
| ~~9~~ | ~~16,465~~ | ~~19,744~~ |
| ~~10~~ | ~~17,860~~ | ~~21,465~~ |
| ~~11~~ | ~~19,376~~ | ~~23,345~~ |
| ~~12~~ | ~~21,058~~ | ~~25,433~~ |
| ~~13~~ | ~~22,883~~ | ~~27,703~~ |
| ~~14~~ | ~~24,902~~ | ~~30,221~~ |
| ~~15~~ | ~~27,128~~ | ~~33,001~~ |
| ~~16~~ | ~~29,607~~ | ~~36,108~~ |
| ~~17~~ | ~~32,374~~ | ~~39,578~~ |
| ~~18~~ | ~~35,425~~ | ~~43,414~~ |
| ~~19~~ | ~~38,845~~ | ~~47,721~~ |
| ~~20~~ | ~~42,659~~ | ~~52,535~~ |
| ~~21~~ | ~~46,898~~ | ~~57,899~~ |
| ~~22~~ | ~~51,633~~ | ~~63,902~~ |
| ~~23~~ | ~~56,973~~ | ~~70,686~~ |
| ~~24~~ | ~~62,971~~ | ~~78,321~~ |
| ~~25~~ | ~~69,606~~ | ~~86,789~~ |
| *1* | *9,076* | *10,677* |
| *2* | *9,776* | *11,527* |
| *3* | *10,528* | *12,446* |
| *4* | *11,346* | *13,445* |
| *5* | *12,261* | *14,563* |
| *6* | *13,249* | *15,774* |
| *7* | *14,313* | *17,079* |
| *8* | *15,514* | *18,556* |
| *9* | *16,796* | *20,140* |
| *10* | *18,219* | *21,897* |

| | | |
|---|---|---|
| *11* | *19,766* | *23,814* |
| *12* | *21,482* | *25,944* |
| *13* | *23,343* | *28,260* |
| *14* | *25,403* | *30,828* |
| *15* | *27,673* | *33,664* |
| *16* | *30,202* | *36,834* |
| *17* | *33,025* | *40,374* |
| *18* | *36,137* | *44,286* |
| *19* | *39,625* | *48,680* |
| *20* | *43,517* | *53,591* |
| *21* | *47,841* | *59,063* |
| *22* | *52,670* | *65,186* |
| *23* | *58,118* | *72,107* |
| *24* | *64,237* | *79,895* |
| *25* | *71,005* | *88,534*" |

**Section 8.** Section 2-18-313, MCA, is amended to read:

"**2-18-313. Teachers' pay schedules.** (1) The pay schedule for teachers for the period that includes October 1, ~~1995~~ *1997*, until the first day of the pay period that includes October 1, ~~1996~~ *1998*, is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Term — Twelve Months Matrix Type — Annual

| | Education Level | | | | | |
|---|---|---|---|---|---|---|
| STEP | BA | BA+1 | BA+2 | BA+3 | MA | MA+1 |
| ~~1~~ | ~~23,150~~ | ~~23,763~~ | ~~24,393~~ | ~~25,040~~ | ~~25,703~~ | ~~26,384~~ |
| ~~2~~ | ~~23,752~~ | ~~24,381~~ | ~~25,027~~ | ~~25,691~~ | ~~26,371~~ | ~~27,070~~ |
| ~~3~~ | ~~24,369~~ | ~~25,015~~ | ~~25,678~~ | ~~26,359~~ | ~~27,057~~ | ~~27,774~~ |
| ~~4~~ | ~~25,003~~ | ~~25,666~~ | ~~26,346~~ | ~~27,044~~ | ~~27,761~~ | ~~28,496~~ |
| ~~5~~ | ~~25,653~~ | ~~26,333~~ | ~~27,031~~ | ~~27,747~~ | ~~28,482~~ | ~~29,237~~ |
| ~~6~~ | ~~26,320~~ | ~~27,018~~ | ~~27,734~~ | ~~28,469~~ | ~~29,223~~ | ~~29,997~~ |
| ~~7~~ | ~~27,004~~ | ~~27,720~~ | ~~28,455~~ | ~~29,209~~ | ~~29,983~~ | ~~30,777~~ |
| ~~8~~ | ~~27,707~~ | ~~28,441~~ | ~~29,194~~ | ~~29,968~~ | ~~30,762~~ | ~~31,577~~ |
| ~~9~~ | ~~28,427~~ | ~~29,180~~ | ~~29,954~~ | ~~30,747~~ | ~~31,562~~ | ~~32,398~~ |
| ~~10~~ | ~~29,166~~ | ~~29,939~~ | ~~30,732~~ | ~~31,547~~ | ~~32,383~~ | ~~33,241~~ |
| ~~11~~ | ~~29,924~~ | ~~30,717~~ | ~~31,531~~ | ~~32,367~~ | ~~33,225~~ | ~~34,105~~ |
| ~~12~~ | ~~30,702~~ | ~~31,516~~ | ~~32,351~~ | ~~33,208~~ | ~~34,088~~ | ~~34,992~~ |
| *1* | *23,642* | *24,351* | *25,082* | *25,834* | *26,609* | *27,407* |
| *2* | *24,351* | *25,082* | *25,834* | *26,609* | *27,407* | *28,230* |
| *3* | *25,082* | *25,834* | *26,609* | *27,407* | *28,230* | *29,077* |
| *4* | *25,834* | *26,609* | *27,407* | *28,230* | *29,077* | *29,949* |
| *5* | *26,609* | *27,407* | *28,230* | *29,077* | *29,949* | *30,847* |
| *6* | *27,407* | *28,230* | *29,077* | *29,949* | *30,847* | *31,773* |
| *7* | *28,230* | *29,077* | *29,949* | *30,847* | *31,773* | *32,726* |
| *8* | *29,077* | *29,949* | *30,847* | *31,773* | *32,726* | *33,708* |
| *9* | *29,949* | *30,847* | *31,773* | *32,726* | *33,708* | *34,719* |
| *10* | *30,847* | *31,773* | *32,726* | *33,708* | *34,719* | *35,761* |
| *11* | *31,773* | *32,726* | *33,708* | *34,719* | *35,761* | *36,833* |
| *12* | *32,726* | *33,708* | *34,719* | *35,761* | *36,833* | *37,938* |

HeinOnline -- 1997 vol. II 2026 1997

(2) Effective on the first day of the pay period that includes October 1, ~~1996~~ *1998*, the pay schedule for teachers is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Term — Twelve Months Matrix Type — Annual

| | Education Level | | | | | |
|---|---|---|---|---|---|---|
| STEP | BA | BA+1 | BA+2 | BA+3 | MA | MA+1 |
| 1 | 23,642 | 24,351 | 25,082 | 25,834 | 26,609 | 27,407 |
| 2 | 24,351 | 25,082 | 25,834 | 26,609 | 27,407 | 28,230 |
| 3 | 25,082 | 25,834 | 26,609 | 27,407 | 28,230 | 29,077 |
| 4 | 25,834 | 26,609 | 27,407 | 28,230 | 29,077 | 29,949 |
| 5 | 26,609 | 27,407 | 28,230 | 29,077 | 29,949 | 30,847 |
| 6 | 27,407 | 28,230 | 29,077 | 29,949 | 30,847 | 31,773 |
| 7 | 28,230 | 29,077 | 29,949 | 30,847 | 31,773 | 32,726 |
| 8 | 29,077 | 29,949 | 30,847 | 31,773 | 32,726 | 33,708 |
| 9 | 29,949 | 30,847 | 31,773 | 32,726 | 33,708 | 34,719 |
| 10 | 30,847 | 31,773 | 32,726 | 33,708 | 34,719 | 35,761 |
| 11 | 31,773 | 32,726 | 33,708 | 34,719 | 35,761 | 36,833 |
| 12 | 32,726 | 33,708 | 34,719 | 35,761 | 36,833 | 37,938 |
| *13* | *33,708* | *34,719* | *35,761* | *36,833* | *37,938* | *39,077*" |

**Section 9.** Section 2-18-315, MCA, is amended to read:

"**2-18-315. Blue-collar pay schedules.** (1) The pay schedule for blue-collar workers for the period from July 1, ~~1995~~ *1997*, ~~through September 20, 1995~~ *until the first day of the pay period that includes October 1997*, is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — Blue-Collar Matrix Type — Hourly

| Grade | $/Hour |
|---|---|
| ~~B1~~ | ~~9.266~~ |
| ~~B2~~ | ~~9.666~~ |
| ~~B3~~ | ~~10.066~~ |
| ~~B4~~ | ~~10.466~~ |
| ~~B4~~ | ~~10.466~~ |
| ~~B6~~ | ~~11.266~~ |
| ~~B7~~ | ~~11.666~~ |
| ~~B1~~ | ~~9.266~~ |
| ~~B9~~ | ~~12.466~~ |
| ~~B10~~ | ~~12.866~~ |
| ~~B11~~ | ~~13.266~~ |
| ~~B12~~ | ~~13.666~~ |
| ~~B00~~ | ~~14.066~~ |
| *B1* | *9.995* |
| *B2* | *10.395* |
| *B3* | *10.795* |
| *B4* | *11.195* |
| *B5* | *11.595* |

HeinOnline -- 1997 vol. II 2027 1997

| | |
|---|---|
| *B6* | *11.995* |
| *B7* | *12.395* |
| *B8* | *12.795* |
| *B9* | *13.195* |
| *B10* | *13.595* |
| *B11* | *13.995* |
| *B12* | *14.395* |
| *B00* | *14.795* |

(2) Effective ~~September 30, 1995,~~ *on the first day of the pay period that includes October 1, 1997,* until the first day of the pay period that includes Octoher ~~1996~~ *1998*, the pay schedule for blue-collar workers is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

| Pay Matrix — Blue-Collar Grade | Matrix Type — Hourly $/Hour |
|---|---|
| ~~B1~~ | ~~9.561~~ |
| ~~B2~~ | ~~9.961~~ |
| ~~B3~~ | ~~10.361~~ |
| ~~B4~~ | ~~10.761~~ |
| ~~B5~~ | ~~11.161~~ |
| ~~B6~~ | ~~11.561~~ |
| ~~B3~~ | ~~10.361~~ |
| ~~B8~~ | ~~12.361~~ |
| ~~B4~~ | ~~10.761~~ |
| ~~B10~~ | ~~13.161~~ |
| ~~B11~~ | ~~13.561~~ |
| ~~B12~~ | ~~13.961~~ |
| ~~B00~~ | ~~14.361~~ |
| *B1* | *10.245* |
| *B2* | *10.645* |
| *B3* | *11.045* |
| *B4* | *11.445* |
| *B5* | *11.845* |
| *B6* | *12.245* |
| *B7* | *12.645* |
| *B8* | *13.045* |
| *B9* | *13.445* |
| *B10* | *13.845* |
| *B11* | *14.245* |
| *B12* | *14.645* |
| *B00* | *15.045* |

(3) Effective on the first day of the pay period that includes Octoher 1, ~~1996~~ *1998*, the pay schedule for blue-collar workers is as follows:

HeinOnline -- 1997 vol. II 2028 1997

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — Blue-Collar Matrix Type — Hourly

| Grade | $/Hour |
|---|---|
| B1 | ~~9.095~~ *10.515* |
| B2 | ~~10.395~~ *10.915* |
| B3 | ~~10.795~~ *11.315* |
| B4 | ~~11.195~~ *11.715* |
| B5 | ~~11.595~~ *12.115* |
| B6 | ~~11.995~~ *12.515* |
| B7 | ~~10.395~~ *12.915* |
| B8 | ~~10.795~~ *13.315* |
| B9 | ~~13.195~~ *13.715* |
| B10 | ~~13.595~~ *14.115* |
| B11 | ~~13.995~~ *14.515* |
| B12 | ~~14.395~~ *14.915* |
| B00 | ~~14.795~~ *15.315*" |

**Section 10.** Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~$220~~ *$245* per month for the fiscal year ending June 30, ~~1996~~ *1998*, and ~~$225~~ *$270* a month for the fiscal year ending June 30, ~~1997~~ *1999*, and for each *succeeding* fiscal year ~~thereafter~~. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to he a member or to increase the reserves of the group.

HeinOnline -- 1997 vol. II 2029 1997

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

**Section 11.** Section 2-18-1102, MCA, is amended to read:

**"2-18-1102. (Temporary) Creation of program.** The department shall develop ~~and administer~~ a statewide employee incentive award program to appropriately recognize and monetarily reward individual state employees and groups or teams of employees for documented ~~achievements and outcomes~~ *innovations* that contribute to the efficiency, economy, or other improvement of state government by reducing the costs or improving the effectiveness of governmental operations. (Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)

**2-18-1102. (Effective July 1, 1997) Creation of program.** The department shall develop and administer a statewide employee incentive award program to appropriately recognize and monetarily reward state employees in a timely manner for suggestions or inventions that contribute to the efficiency, economy, or other improvement of state government by reducing the costs of governmental operations."

**Section 12.** Section 2-18-1103, MCA, is amended to read:

**"2-18-1103. (Temporary) Powers and duties of department.** The department shall:

(1) adopt rules to implement this part;

(2) ~~provide an opportunity for all employees to participate in the program~~ *develop model guidelines and promotional materials to assist agencies in implementing this part; and*

~~(3) assist agencies in making incentive awards under this part; and~~

~~(4)~~*(3)* prepare and submit, in the manner provided in 5-11-210, a list of ~~incentive~~ awards *granted under 2-18-1106* and the corresponding savings to the state and improvements in the effectiveness of state government ~~and shall provide a general review of and recommendations for improving the operation of this part~~. (Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)

**2-18-1103. (Effective July 1, 1997) Powers and duties of the department.** The department shall:

(1) adopt rules to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;

(5) hear appeals from employees on the operation of the program;

HeinOnline -- 1997 vol. II 2030 1997

(6) prepare and submit, as a part of the information required by 17-7-111, a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of and recommendations for improving the program; and

(7) send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst."

**Section 13.** Section 2-18-1105, MCA, is amended to read:

**"2-18-1105. (Temporary) Eligibility for award.** (1) Except as provided in subsection ~~(2)~~ *(3)*, an employee, a group or team of employees, or a nonemployee is eligible for an incentive award *for innovations that*:

(a) ~~for efforts that~~ significantly contribute to ~~documented~~ achievements or outcomes eliminating or reducing an agency's expenditures; or

(b) ~~for improving~~ *improve* the effectiveness of state government or ~~improving~~ *improve* services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) ~~(a) An~~ *To be eligible for an incentive award, an* employee, *a group or team of employees,* or *a* nonemployee ~~is not eligible for an individual incentive award unless the employee's or nonemployee's documented achievement or outcome was accomplished without significant contributions from others.~~ *must receive approval from agency management for immediate implementation, for a short-term test of an idea or innovation, or for the development and testing of a prototype that could make significant improvement in the way an agency conducts business by addressing fiscal, customer service, efficiency, or safety issues.*

~~(b)~~*(3)* A director, as defined in 2-15-102, or a legislator is not eligible for the incentive award provided for under this part.

~~(3)~~*(4)* Suggestions relating to an agency are eligible for an award from that agency's agency head even if the employee or group or team of employees, or one or more members of the group or team, do not work for that agency. (Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)

**2-18-1105. (Effective July 1, 1997) Eligibility for award.** (1) Except as provided in subsection (2), an employee may be eligible for an incentive award if ~~his~~ *the employee's* suggestion or invention results in:

(a) eliminating or reducing an agency's expenditures; or

(b) improving services to the public by permitting more work to be accomplished within an agency without increasing the cost of governmental operations.

(2) (a) An employee may not be eligible for an incentive award if ~~his~~ *the employee's* suggestion or invention directly relates to ~~his~~ *the employee's* assigned duties and responsibilities unless the proposal is so superior or meritorious as to warrant special recognition as determined by the department.

(b) Suggestions or inventions relating to the following matters may not be considered for awards:

(i) personnel grievances;

HeinOnline -- 1997 vol. II 2031 1997

(ii) classification and pay of positions;

(iii) matters recommended for study or review; and

(iv) proposals resulting from assigned or contracted audits, studies, surveys, reviews, or research."

**Section 14.** Section 2-18-1106, MCA, is amended to read:

**"2-18-1106. (Temporary) Agency head to grant award — amount and source of award.** (1) An agency head may grant an incentive award to an employee, a group or team of employees, or a nonemployee who has made a significant contribution to achievements or outcomes in the agency, as enumerated in 2-18-1105. An employee or a member of a group or team of employees need not be employed by the agency that benefits from the achievement or outcome and whose agency head grants the award in order to be granted an award.

(2) ~~The incentive award for an achievement or outcome that does not result in cost savings that can be specifically determined a year after the achievement or outcome is implemented and the cost savings are actually incurred is the agency head's estimated dollar value of the achievement or outcome, up to a maximum of $500 per employee or nonemployee or, in the discretion of the agency head, not more than 40 hours of paid leave time for an employee. Larger awards may be proposed and submitted to the legislature for consideration.~~ *If agency management determines that an idea, innovation, or prototype that has been implemented will result in cost savings or improvements to agency operations, the agency head, at the agency head's discretion, may grant an incentive award of up to $500, up to 40 hours paid leave time, or other nonmonetary recognition.*

(3) ~~The amount of an award for~~ *If* an achievement or outcome ~~producing~~ *produces* cost savings that can be measured after the savings are actually ~~incurred~~ *realized or that can be accurately projected for a period of 12 months following implementation, a larger award may be granted by the agency head. The amount of the award* must be determined by the agency head but may not exceed:

(a) 10% of the first $100,000 of cost savings actually ~~incurred~~ *realized or accurately projected* ~~during the 12 months following implementation of the suggestion~~; plus

(b) 5% of the next $100,000 of cost savings actually ~~incurred~~ *realized or accurately projected* ~~during that 12 month period~~; plus

(c) 2% of the next $100,000 of cost savings actually ~~incurred~~ *realized or accurately projected* ~~during that 12 month period~~.

(4) (a) If the award is to be divided between two or more persons, the agency head shall determine the amount each person is to receive.

(b) Each person must be paid in one lump sum no later than 90 days after the end of the 12-month period following implementation of the suggestion. However, an agency head may pay an award at any time that savings can be determined. The agency head shall pay the award from the agency's budget. This award is in addition to the recipient's regular compensation or leave time.

~~(5) The number of awards granted by an agency in a state government fiscal year may not exceed the number equal to 20% of the average number of full-time~~

~~equivalent employees in that agency during that fiscal year. The office of budget and program planning may grant an agency with less that 50 full-time equivalent employees an exemption from this limitation, but the exemption may not allow more awards than the number equal to 50% of the average number of full-time equivalent employees in the agency during the fiscal year.~~

~~(6)~~*(5)* Within 30 days after the end of each fiscal year, each agency shall submit to the department a list of the number of incentive awards granted, to whom each award was granted, the estimated value of each achievement or outcome, and the amount of each award. (Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)

**2-18-1106. (Effective July 1, 1997) Agency head to grant award — amount and source of award.** (1) After an agency implements an employee's suggestion or invention and the monetary savings to the state is estimated, an agency head, upon written application to and approval from the department and the incentive awards advisory council, may grant an incentive award to an employee whose proposal meets the requirements enumerated in 2-18-1105.

(2) The incentive award ~~shall~~ *must* be 10% of the savings resulting from implementing the employee's proposal for 1 year up to a maximum of $3,000. Larger awards may be proposed and submitted to the legislature for consideration.

(3) The agency head shall pay the employee from the agency's budget in a single, lump-sum award. This award is in addition to the recipient's regular compensation."

**Section 15.** Section 5-2-301, MCA, is amended to read:

**"5-2-301. Compensation and expenses for members while in session.** (1) Except as provided in subsection (8), legislators are entitled to a salary commensurate to that of the daily rate of an entry grade 8 classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to ~~$50 a day~~ *a daily allowance*, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15~~, 1996, and prior to December 15, 1996~~, and prior to December 15 of each even-numbered year ~~thereafter~~, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. *The department shall include only states with specific daily allowances in the calculation of the average.* If the average daily rate is greater than the daily rate for legislators in

HeinOnline -- 1997 vol. II 2033 1997

Montana, the average is the new daily rate for legislators for those days during which the legislature is in session. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session.

(8) In lieu of the salary provided for in subsection (1) and the expense allowance provided for in subsection (4), a legislator may receive remuneration for services performed during a legislative session. A legislator choosing to receive remuneration for services performed shall file a request to receive payment under this subsection with the legislative services division. A legislator exercising the option to receive remuneration for services performed may not receive more remuneration than legislators paid pursuant to subsections (1) and (4). Remuneration for services performed must be reduced ~~$50~~ *by an amount* a day *equal to the daily expense allowance for a legislator established under this section* when the legislature recesses for more than 3 days."

**Section 16.** Section 13-37-106, MCA, is amended to read:

"**13-37-106. Salary.** *(1)* The commissioner of political practices is entitled to receive a salary ~~of $30,303 in fiscal year 1992 and $31,551 in fiscal year 1993 and thereafter~~ *of $31,551 and beginning October 1, 1997, is entitled to receive a salary equal to the market salary of a grade 18 classified employee as provided in 2-18-312.*

*(2) The commissioner is also entitled to longevity, expense reimbursement, leave, insurance, and other benefits provided to classified state employees under Title 2, chapter 18.*

*(3) The salary of the commissioner may not be reduced during the term for which the commissioner is appointed.*"

**Section 17.** Section 13, Chapter 23, Special Laws of November 1993, is amended to read:

"Section 13. **Termination.** ~~[This act]~~ *[Section 8]* terminates July 1, 1997."

**Section 18. Repealer.** Section 2-18-314, MCA, is repealed.

HeinOnline -- 1997 vol. II 2034 1997

**Seetion 19. Appropriation.** The following money is appropriated for the fiscal years indicated to implement the adjustments provided for in [sections 2 through 14]:

| | Fiscal Year 1998 | | Fiscal Year 1999 | |
|---|---|---|---|---|
| | General Fund | Other Funds | General Fund | Other Funds |
| Legislative Branch | 71,771 | 33,124 | 165,275 | 56,429 |
| Consumer Counsel | 0 | 5,780 | 0 | 11,950 |
| Judiciary | 98,361 | 13,348 | 205,426 | 27,843 |
| University System | 1,874,008 | 1,338,057 | 3,901,345 | 2,790,164 |
| Office of Budget and Program Planning for distribution to all other agencies | 2,652,778 | 5,149,180 | 5,718,261 | 10,836,498 |

**Seetion 20. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [section 1].

**Section 21. Effective date.** [This act] is effective July 1, 1997.

Approved April 29, 1997

# CHAPTER NO. 418

[HB 17]

AN ACT AUTHORIZING THE BOARD OF REGENTS TO PROVIDE TUITION WAIVERS PURSUANT TO THE MONTANA NATIONAL GUARD EDUCATION BENEFIT PROGRAM; AMENDING SECTION 20-25-421, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the Montana National Guard is recognized by the highest command levels as an outstanding military organization; and

WHEREAS, the Montana National Guard has been assigned a force structure that provides exceptional opportunity as it moves into the 21st century; and

WHEREAS, the Montana National Guard cannot and should not depend solely upon federal programs to entice Montana citizenry to join or stay in the Guard; and

WHEREAS, the state's investment in the Montana National Guard education benefit program could provide to Montana communities an economic benefit that is currently not being realized in wages and tax revenue.

HeinOnline -- 1997 vol. II 2035 1997

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 1] authorizes the department of military affairs to adopt rules necessary to implement and administer a national guard education benefit program and provides the department with specific guidelines for the proposed rules.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Montana national guard education benefit program — rulemaking.** (1) There is a Montana national guard education benefit program from which the department may recommend tuition waivers for qualified Montana national guard members.

(2) A national guard education benefit:

(a) must be used within 10 years of the first award;

(b) is available only during fall and spring semesters unless approved by an army or air education officer;

(c) must be based on a 6-year enlistment in or a qualifying reenlistment commitment to the Montana national guard;

(d) may be awarded only to members who, at the time of the award, hold the military grade of:

(i) officer, grade 1 or 2;

(ii) warrant officer, grade 1 or 2; or

(iii) enlisted, grades 1 through 7;

(e) may not be used for second or subsequent undergraduate degrees or for graduate degrees; and

(f) is exclusive of the Montgomery GI Bill Act of 1984 (10 U.S.C. 16131 through 16135), enlistment bonuses, or any other federal incentive or entitlement.

(3) An enhanced education benefit is an education benefit that is awarded in addition to a national guard education benefit and that is available only to members assigned to perform identified critical skills.

(4) Pursuant to Title 2, chapter 4, the adjutant general shall adopt rules necessary to implement and administer the provisions of this section, including rules that:

(a) outline the selection and qualification criteria for scholarship applicants;

(b) define the terms used in the scholarship program; and

(c) establish procedures and forms to be used by scholarship applicants.

**Section 2.** Section 20-25-421, MCA, is amended to read:

**"20-25-421. Charges for tuition — waivers.** *(1)* The regents may:

~~(1)~~ prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction~~;~~.

(2) *The regents may:*

*(a)* waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary, tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements ~~which~~ *that* provide for the payment, ~~where~~ *when* required, of the student support fee by the reciprocal state;

~~(3)~~*(b)* waive resident tuition for students at least 62 years of age;

~~(4)~~*(c)* waive tuition and fees for:

~~(a)~~*(i)* persons of one-fourth Indian blood or more who have heen bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

~~(b)~~*(ii)* persons designated by the department of corrections pursuant to 52-5-112;

~~(c)~~*(iii)* residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

~~(d)~~*(iv)* children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States; or

~~(e)~~*(v)* the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action;

~~(5)~~*(d)* waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

~~(a)~~*(i)* a paid or volunteer member of a municipal or rural fire department;

~~(b)~~*(ii)* a law enforcement officer as defined in 7-32-201; or

~~(c)~~*(iii)* a full-time highway patrol officer.

*(3) If funds are available after the waivers provided for in subsection (2), the regents may waive tuition for up to 5,000 credits each academic year in accordance with the national guard education benefit program provided for in [section 1].* "

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 1, part 1, and the provisions of Title 10, chapter 1, part 1, apply to [section 1].

HeinOnline -- 1997 vol. II 2037 1997

**Section 4. Effeetive dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1997.

(2) [Section 1(4) and this section] are effective on passage and approval.

Approved April 29, 1997

# CHAPTER NO. 419

[HB 121]

AN ACT ADJUSTING THE MONTANA UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM SUPPLEMENTAL EMPLOYER CONTRIBUTION RATE TO AMORTIZE, BY JULY 1, 2033, THE PAST SERVICE LIABILITIES OF THE UNIVERSITY SYSTEM MEMBERS PARTICIPATING IN THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTION 19-21-203, MCA; REPEALING SECTION 19-21-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Montana university system optional retirement program supplemental contributions.** (1) Each employer within the university system with employees participating in the optional retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize, by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The optional retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program must increase to:

(a) 2.81% beginning July 1, 1997;

(b) 3.12% beginning July 1, 1998;

(c) 3.42% beginning July 1, 1999;

(d) 3.73% beginning July 1, 2000; and

(e) 4.04% beginning July 1, 2001.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to tbe legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033.

**Section 2.** Section 19-21-203, MCA, is amended to read:

**"19-21-203. Contributions.** (1) Each optional retirement program participant shall contribute an amount equal to the member's contribution required under 19-20-602. The board of regents shall contribute an amount that, when added to tbe participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) On or after July 1, 1997, the board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pick-up under section 414(h)(2) of that code.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the regents' contribution to the designated company or companies for the benefit of the participant.

(5) ~~(a)~~ The board of regents shall ~~contribute the amounts specified in subsection (5)(b)~~ *make the supplemental contributions* to the teachers' retirement system *as provided in [section 1]* to discharge the obligetion incurred by ~~the employees of~~ tbe Montana university system ~~who elect or who are required to become members of the optional retirement plan. The contributions paid by the board are~~ for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system ~~and must be consistent with the requirements of 19-21-111~~.

~~(b) (i) Beginning July 1, 1993, through June 30, 1997, the contributions to be made by the board of regents must equal 2.503% of earned compensation attributable to optional retirement participants.~~

~~(ii) Beginning July 1, 1997, the contribution rate must be adjusted, pursuant to 19-20-201, based on the actual experience of the members of the Montana university system who are members of the teachers' retirement system, and must be set at a rate sufficient to amortize the past service liability of the university system members by July 1, 2033.~~"

**Section 3. Repealer.** Section 19-21-111, MCA, is repealed.

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 6, and the provisions of Title 19, chapter 20, part 6, apply to [section 1].

**Section 5. Effective date.** [This act] is effective July 1, 1997.

Approved April 28, 1997

HeinOnline -- 1997 vol. II 2039 1997

# CHAPTER NO. 420

[HB 135]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE BOARD OF PARDONS AND PAROLE; REVISING THE STRUCTURE OF THE BOARD BY ADDING A SECOND AUXILIARY MEMBER TO THE BOARD AND BY PROVIDING FOR STAGGERED TERMS FOR BOARD MEMBERS; REVISING THE LAW RELATING TO MEDICAL PAROLE FOR PRISONERS; REVISING THE BOARD'S AUTHORITY TO GRANT MEDICAL PAROLE TO PRISONERS WHO ARE PHYSICALLY INCAPACITATED; AMENDING SECTIONS 2-15-2302 AND 46-23-210, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-2302, MCA, is amended to read:

**"2-15-2302. Board of pardons and parole — composition — allocation — quasi-judicial.** (1) There is a board of pardons and parole.

(2) The board consists of three members and ~~an~~ *two* auxiliary ~~member~~ *members*, at least one of whom ~~shall~~ *must* have particular knowledge of Indian culture and problems. Members of the board, including the auxiliary ~~member~~ *members*, ~~shall~~ *must* possess academic training ~~which~~ *that* has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) ~~The~~ *An* auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.

(4) ~~One member and the auxiliary member shall serve terms concurrent with the governor. The remaining members shall serve staggered 4-year terms.~~ *(a) In January 1997, or as soon thereafter as possible, the governor shall appoint:*

*(i) one member and one auxiliary member to terms that expire in January 2001;*

*(ii) one member to a term that expires in January 2002; and*

*(iii) one auxiliary member to a term that expires in January 2003.*

*(b) In January 1999, the governor shall appoint one member to a term that expires in January 2003.*

*(5) The terms of board members and auxiliary members run with the position, and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.*

~~(5)~~*(6)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

HeinOnline -- 1997 vol. II 2040 1997

~~(6)~~*(7)* The board, including the auxiliary ~~member~~ *members*, is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

*(8) The provisions of 2-15-124(2) do not apply to the board."*

**Section 2.** Section 2-15-2302, MCA, is amended to read:

**"2-15-2302. Board of pardons and paroie — composition — allocation — quasi-judicial.** (1) There is a board of pardons and parole.

(2) The board consists of three members and ~~an~~ *two* auxiliary ~~member~~ *members*, at least one of whom ~~shall~~ *must* have particular knowledge of Indian culture and problems. Members of the board, including the auxiliary ~~member~~ *members*, ~~shall~~ *must* possess academic training ~~which~~ *that* has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) ~~The~~ *An* auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time, the auxiliary member has all the rights and responsibilities of a regular board member.

(4) ~~One member and the auxiliary member shall serve terms concurrent with the governor. The remaining members shall serve staggered 4-year terms.~~ *Board members and auxiliary members shall serve staggered 4-year terms. The governor shall appoint one member and one auxiliary member in January of the first year of the governor's term, one member in January of the second year of the governor's term, and one member and one auxiliary member in January of the third year of the governor's term.*

*(5) The terms of board members and auxiliary members run with the position and if a vacancy occurs, the governor shall appoint a person to fill the unexpired portion of the term.*

~~(5)~~*(6)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

~~(6)~~*(7)* The board, including the auxiliary ~~member~~ *members*, is designated as a quasi-judicial board for purposes of 2-15-124, except board members must be compensated as provided by legislative appropriation and the terms of board members must be staggered as provided in subsection (4).

*(8) The provisions of 2-15-124(2) do not apply to the board."*

**Section 3.** Section 46-23-210, MCA, is amended to read:

**"46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order a person placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

HeinOnline -- 1997 vol. II 2041 1997

(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome ~~that renders the person highly unlikely to present a clear and present danger to public safety~~;

(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome and the extent of any potential recovery.

(2) The diagnosis must be reviewed and accepted by the department before the board may consider granting a medical parole. *The board may not grant a medical parole unless the incapacitating physical condition, disease, or syndrome renders the person highly unlikely to present a clear and present danger to public safety.*

(3) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person is likely to pose a possible detriment to society, the board may revoke the parole and return the person to the custody of the department.

(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to nonmedical parole."

**Section 4. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective January 1, 2001.

**Section 5. Retroactive applicability.** The terms of members and auxiliary members appointed pursuant to [section 1] apply retroactively, within the meaning of 1-2-109, to January 1, 1997.

**Section 6. Termination.** [Section 1] terminates December 31, 2000.

Approved April 29, 1997

HeinOnline -- 1997 vol. II 2042 1997

# CHAPTER NO. 421

[HB 140]

AN ACT CHANGING THE DATE ON WHICH ELECTED COUNTY OFFICERS TAKE OFFICE; REQUIRING ELECTED OFFICERS TO TAKE THE OATH OF OFFICE ON THE LAST BUSINESS DAY OF DECEMBER FOLLOWING THE ELECTION; REQUIRING ELECTED OFFICERS TO TAKE OFFICE AT 12:01 A.M. ON JANUARY 1 FOLLOWING THE ELECTION; AND AMENDING SECTIONS 7-4-2105 AND 7-4-2205, MCA.

WHEREAS, current law requires an elected official to take the oath of office on the first Monday of January succeeding the election; and

WHEREAS, the first Monday in January can be as late as the 7th day of January; and

WHEREAS, employing two elected officials in the same month can cause confusion and disagreement regarding compensation and benefits to each official; and

WHEREAS, employing the newly elected official on January 1 would simplify the payroll process, save local governments and taxpayers money, and make it easier for all concerned to remember the official transition date.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-4-2105, MCA, is amended to read:

"**7-4-2105. Term of office.** *(1)* The term of office of county commissioners is 6 years. A county commissioner takes office ~~on the first Monday of~~ *at 12:01 a.m. on* January *1* succeeding the date of the election at which the county commissioner was elected.

*(2) A county commissioner elected to take office shall take the oath of office on the last business day of December following the commissioner's election, except as provided for in 7-4-2106.*"

**Section 2.** Section 7-4-2205, MCA, is amended to read:

"**7-4-2205. Term of office — *oath*.** (1) ~~Persons~~ *Each person* elected to ~~the different offices~~ *an office* named in 7-4-2203 ~~shall hold~~ *holds* ~~their respective offices~~ *the office* for the term of 4 years and until ~~their successors are~~ *a successor is* elected and qualified.

(2) ~~Persons~~ *A person* appointed to *any of* the different offices ~~serve~~ *serves* at the pleasure of the commissioners.

(3) ~~The officers~~ *Each officer who is* mentioned in this part *and who is elected to office* ~~must~~ *shall:*

*(a) take the oath of office on the last business day of December following the officer's election; and*

*(b)* take office ~~on the first Monday of January succeeding their election~~ *at 12:01 a.m. on January 1 following the officer's election.*"

Approved April 28, 1997

HeinOnline -- 1997 vol. II 2043 1997

# CHAPTER NO. 422

[HB 166]

AN ACT GENERALLY REVISING AND CLARIFYING STATUTES CONTAINING STATUTORY APPROPRIATIONS AND DEDICATIONS OF REVENUE; REMOVING THE STATUTORY APPROPRIATION OF CERTAIN FUNDS; PROVIDING FOR THE DEPOSIT OF CERTAIN FUNDS IN THE STATE GENERAL FUND RATHER THAN THE SPECIAL REVENUE FUND; AMENDING SECTIONS 2-17-105, 7-15-4286, 7-15-4292, 10-3-312, 10-4-301, 10-4-302, 15-1-501, 15-30-153, 15-35-108, 15-36-324, 15-38-106, 15-70-125, 16-1-306, 16-1-404, 16-1-406, 16-1-409, 16-11-119, 16-11-206, 17-1-508, 17-5-403, 17-5-404, 17-5-405, 17-5-408, 17-5-804, 17-6-201, 17-7-502, 19-19-205, 20-3-108, 20-8-111, 20-9-360, 20-9-361, 32-1-537, 37-43-204, 39-71-503, 39-71-531, 39-71-533, 39-71-2354, 39-71-2503, 39-71-2504, 49-2-510, 50-5-112, 50-5-113, 50-5-232, 50-40-206, 53-6-150, 53-24-108, 60-2-220, 60-11-120, 60-11-123, 61-3-509, 61-5-121, 75-5-1108, 75-6-214, 75-10-954, 76-12-123, 77-1-505, 77-2-323, 77-2-328, 77-5-305, 82-11-136, 85-1-220, 90-3-301, 90-7-220, AND 90-7-221, MCA; REPEALING SECTIONS 15-1-111, 15-31-408, 16-1-408, 16-1-410, 39-71-534, 60-11-122, AND 77-5-306, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-17-105, MCA, is amended to read:

**"2-17-105. Insurance on state buildings — use of proceeds — building replacement.** (1) ~~Moneys~~ *Money* received by the state as indemnification for damage to state buildings, except buildings procured by the department of transportation by purchase or condemnation for right-of-way purposes, ~~shall~~ *must* be deposited in the state special revenue fund. *The money is statutorily appropriated, as provided in 17-7-502, for the purposes of subsections (2) and (3).*

(2) ~~These moneys are statutorily appropriated as provided in 17-7-502 and~~ *The money* may only be:

(a) used to repair the damaged property;

(b) used to replace the damaged property, subject to the limitations in subsection (3) ~~of this section~~; or

(c) transferred to the fund and account from which the premiums were paid on the policy covering the building. ~~Moneys~~ *Money* transferred in this manner may not be spent by the institution or agency having custody of the damaged property but ~~shall~~ *must* be available for future legislative appropriation. If the ~~moneys are~~ *money is* not spent or committed within 2 years from the time ~~they are~~ *that it is* received, ~~they shall~~ *the money* automatically ~~revert~~ *reverts* to the fund and account from which tbe premiums were paid.

(3) If an insured building is totally destroyed or so badly damaged that repair is impractical, the governing board or officer responsible for the building may ~~authorize~~ *request that* any ~~moneys~~ *money* received by the state as indemnification for property damage ~~to~~ be used to replace the building only if the proposed replacement is designed to be used for the same goneral purposes as the damaged

or destroyed building~~, and for this purpose the amounts available therefor are statutorily appropriated as provided in 17-7-502~~. If the governing board or officer determines that the building should not be replaced, any ~~moneys~~ *money* received by the state as indemnification for property damage over and above any outstanding debt on the building ~~shall~~ *must* be transferred as provided in subsection (2)(c) ~~of this section~~."

**Section 2.** Section 7-15-4286, MCA, is amended to read:

**"7-15-4286. Procedure to determine and disburse tax increment.** (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision ~~shall~~ *must* be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area or industrial district and the base taxable value of all taxable property located within the urban renewal area or industrial district. The mill rate ~~so~~ determined ~~shall~~ *must* be levied against the sum of the actual taxable value of all taxable property located within as well as outside the urban renewal area or industrial district.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the urban renewal area or industrial district, except for the university system mills levied and assessed against property ~~as defined in 7-15-4292(6)(a)~~, ~~shall~~ *must* be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through 7-15-4292.

(b) The balance of the taxes collected in each year ~~shall~~ *must* be paid to each of the taxing bodies as otherwise provided by law."

**Section 3.** Section 7-15-4292, MCA, is amended to read:

**"7-15-4292. Termination of tax increment financing — exception — ~~reduction in tax increment distribution~~.** (1) The tax increment provision ~~shall terminate~~ *terminates* upon the later of:

(a) the 15th year following its adoption or, if the tax increment provision was adopted prior to January 1, 1980, upon the 17th year following adoption; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest ~~thereon~~ *on the bonds*.

(2) Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision ~~shall~~ *must* be distributed among the various taxing bodies in proportion to their property tax ~~revenues~~ *revenue* from the district.

(3) After termination of the tax increment provision, all taxes ~~shall~~ *must* be levied upon the actual taxable value of the taxable property in the urban renewal area or the industrial district and ~~shall~~ *must* be paid into the funds of the respective taxing bodies.

(4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions adopted after January 1, 1980, and the 17th anniversary of tax increment provisions adopted prior to January 1, 1980. However, if bonds secured by a tax increment provision

HeinOnline -- 1997 vol. II 2045 1997

are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision.

~~(5) (a) If a municipality issues bonds secured in whole or in part by a tax increment provision after the 10th year following a tax increment provision adopted after January 1, 1980, or after the 12th year following a tax increment provision adopted before January 1, 1980, it is not entitled to the full distribution provided in 20-9-360(2).~~

~~(b) The state treasurer shall reduce the distribution to the municipality in each fiscal year after the fiscal year in which the bonds referred to in subsection (5)(a) are issued by an amount equal to the increased taxable value of the project property multiplied by the total number of mills levied and assessed for school district purposes against the property in the previous calendar year. The department of revenue shall certify to the state treasurer by September 1 of each year the increased taxable value of the project property.~~

~~(c) If the municipality issues more than one bond series after January 1, 1991, the distribution to the municipality as provided in 20-9-360(2) is reduced, as determined in subsection (5)(b), by the sum of the amounts of each bond issue.~~

~~(6) For the purposes of subsection (5):~~

~~(a) "project property" is the value of property within an urban renewal area affected by an urban renewal project to be financed in whole or in part from the proceeds of the bonds issued pursuant to subsection (5)(a), certified by the municipality to the department of revenue at the time the bonds are issued and identified by a tax identification number. Property is affected by an urban renewal project if the property:~~

~~(i) is to be acquired or improved as part of the urban renewal project;~~

~~(ii) is located on property that is to be acquired or improved as part of the urban renewal project;~~

~~(iii) is contiguous to, or located on property contiguous to, property referred to in subsection (6)(a)(i) or (6)(a)(ii), including adjacent property separated by a road, stream, street, or railroad; or~~

~~(iv) is included in an agreement between a person and the municipality in connection with the urban renewal project for the issuance of the bonds and if under the agreement, the person undertakes to develop or redevelop the property.~~

~~(b) "increased taxable value" means the difference between the taxable value of the project property for the current fiscal year and the taxable value of the project property for the fiscal year in which the bonds were issued.~~"

**Section 4.** Section 10-3-312, MCA, is amended to read:

**"10-3-312. Maximum expenditure by governor — appropriation.** (1) (a) Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not

to exceed ~~$2~~ *$4* million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same biennium.

(b) Whenever an emergency or disaster due to fire *or flood* is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $10 million in any biennium. The amount appropriated in this subsection (b) may be combined with the amount appropriated in subsection (1)(a) for an emergency or disaster due to fire *or flood*.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178."

**Section 5.** Section 10-4-301, MCA, is amended to read:

**"10-4-301. Establishment of emergeney telecommunieations account.** A 9-1-1 emergency telecommunications account is established in the state special revenue fund in the state treasury. *An amount equal to 7.48% of the money received pursuant to 10-4-201 must be deposited in the state general fund.* All *remaining* money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the account. After payment of refunds pursuant to 10-4-205, the balance of the account must be used for the purposes described in part 1 of this chapter. ~~The distribution of the 9-1-1 emergency telecommunications account, according to the requirements of 10-4-302, is statutorily appropriated.~~ *The distribution of money in the 9-1-1 emergency telecommunications account, as required by 10-4-302, is statutorily appropriated, as provided in 17-7-502, to the department of administration.* Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from ~~temporary~~ appropriations~~, as described in 17-7-501(1) or (2),~~ made for that purpose."

**Section 6.** Section 10-4-302, MCA, is amended to read:

**"10-4-302. Distribution of aecount by department.** (1) The department shall make quarterly distributions of the entire account ~~beginning on April 1, 1987~~. The distributions must be made for the ~~following:~~

~~(a) administrative costs incurred during the preceding calendar quarter by the department of revenue in carrying out this chapter. The amount paid may not exceed 1% of the account on the date of distribution or actual expenses incurred, whichever is less.~~

~~(b) administrative costs incurred during the preceding calendar quarter by the department in carrying out its duties under this chapter. The department's annual recovery of costs may not exceed 7% of the amount collected by the account during the fiscal year or actual expenses incurred, whichever is less.~~

~~(c)~~ costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

HeinOnline -- 1997 vol. II 2047 1997

~~(i)~~*(a)* collection of the fee imposed by 10-4-201;

~~(ii)~~*(b)* modification of central office switching and trunking equipment for emergency telephone service only; and

~~(iii)~~*(c)* conversion of pay station telephones required by 10-4-121.

(2) Payments under subsection (1)~~(c)~~ may be made only after application by the provider to the department for costs incurred in subsection (1)~~(c)~~. The department shall review all applications relevant to subsection (1)~~(c)~~ for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of tho balance of the counties' share of tbe account. A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan the proportional amount for each city or county served by the 9-1-1 jurisdiction. The department shall provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan or is not using funds in the manner prescribed in 10-4-303, the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds until such time as the department determines that the jurisdiction is complying with the approved plan and fund usage limitations."

**Section 7.** Section 15-1-501, MCA, is amended to read:

**"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection ~~(6)~~ *(3)* all money received from the collection of:

*(a) income taxes, interest, and penalties collected under chapter 30;*

*(b) except as provided in 15-31-702, all taxes, interest, and penalties collected under chapter 31;*

*(c) oil and natural gas production taxes allocated under 15-36-324(7)(a);*

~~(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;~~

~~(b)~~*(d)* electrical energy producer's license taxes under chapter 51;

*(e) telephone company license taxes under chapter 53;*

~~(c)~~*(f)* liquor license taxes under Title 16;

~~(d) telephone company license taxes under chapter 53; and~~

*(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121; and*

~~(e)~~*(h)* inheritance and estate taxes under Title 72, chapter 16.

~~(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection (6), be deposited as follows:~~

~~(a) 91.3% of the taxes to the credit of the state general fund;~~

~~(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and~~

~~(c) all interest and penalties to the credit of the state general fund.~~

~~(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection (6), be deposited as follows:~~

~~(a) 89.5% of the taxes to the credit of the state general fund;~~

~~(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and~~

~~(c) all interest and penalties to the credit of the state general fund.~~

~~(4)~~*(2)* The department of revenue shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

~~(5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the general fund.~~

~~(6)~~*(3)* Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

~~(7)~~*(4)* All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attrihuted to the funds in which the interest and penalties are currently being recorded."

**Section 8.** Section 15-30-153, MCA, is amended to read:

**"15-30-153. Funding for administration of special revenue accounts ~~—special revenue account for tax checkoff administration~~.** (1) The department shall charge any special revenue account ~~created after January 1, 1993,~~ that is funded by means of an income tax checkoff the actual and necessary cost to create the special revenue account and to place the checkoff on the income tax return.

HeinOnline -- 1997 vol. II 2049 1997

(2) In addition to the charges in subsection (1), the department shall charge each special revenue account funded by means of an income tax checkoff the actual expenses necessary to administer the account. The department's charges may not exceed $3,000 for a tax year.

~~(3) There are special revenue accounts in the state treasury for the administration of income tax checkoffs.~~

~~(4)~~ All charges collected pursuant to subsections (1) and (2) must he deposited in ~~a tax checkoff administration account~~ *the state general fund.*

~~(5) The money in a tax checkoff administration account, subject to appropriation, must be expended to administer the income tax checkoff for which the account was created.~~"

**Section 9.** Section 15-35-108, MCA, is amended to read:

"**15-35-108. Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. *Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund.* Any ~~cash balance that is unspent~~ *unreserved fund balance* at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a nonexpendable trust fund for tbe purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(7) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

HeinOnline -- 1997 vol. II 2050 1997

**Section 10.** Section 15-36-324, MCA, is amended to read:

**"15-36-324. Distribution of taxes.** (1) For each calendar quarter, the department of revenue shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally drilled wells located in the taxing unit.

(2) Except as provided in subsections (3) and (4), oil production taxes must be distributed as follows:

(a) The amount equal to 41.6% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (7).

(b) The remaining 58.4% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the ~~agency~~ *state special revenue* fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (7).

(4) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from horizontally drilled wells and on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (7).

(5) Except as provided in subsection (6), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14.6% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (7).

(b) The remaining 85.4% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the ~~agency~~ *state special revenue* fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(6) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (7).

(7) The department shall, in accordance with the provisions of 15-1-501~~(6)~~, distribute the state portion of oil and natural gas production taxes, including late payment interest and penalty collected, as follows:

(a) 85% to the state general fund;

HeinOnline -- 1997 vol. II 2051 1997

(b) 4.3% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 10.7% to be distributed as provided by 15-38-106(2).

(8) (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection (9), the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection (8)(a), by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (8)(a) must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as provided in subsection (8)(c), the county treasurer shall distribute the money received under subsection (9) from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (8)(b), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

HeinOnline -- 1997 vol. II 2052 1997

(ii) If the allocation in subsection (8)(c)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (8)(d)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b) and (5)(b) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection (8)(e) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection (8)(e) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection (8)(b) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributed under subsection (8)(e) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (8)(h) and (8)(i) is for the exclusive use and benefit of the county and school taxing units.

(9) The department shall remit the amounts to be distributed in subsection (8) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

HeinOnline -- 1997 vol. II 2053 1997

(b) On or before Novemher 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(10) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes."

**Section 11.** Section 15-38-106, MCA, is amended to read:

**"15-38-106. Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time *that* the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501~~(6)~~, deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905;

(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104.

(3) ~~Every~~ *Each* person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

**Section 12.** Section 15-70-125, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2054 1997

"**15-70-125. Highway nonrestricted account.** There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501~~(6)~~, be placed in the highway nonrestricted account."

**Section 13.** Section 16-1-306, MCA, is amended to read:

"**16-1-306. Revenue to be paid to state treasurer.** Except as provided in 16-1-404, 16-1-405, ~~16-1-408, 16-1-410,~~ *16-1-406,* and 16-1-411, all fees, charges, taxes, and revenue collected by or under authority of the department must, in accordance with the provisions of 15-1-501, be deposited to the credit of the state general fund."

**Section 14.** Section 16-1-404, MCA, is amended to read:

"**16-1-404. License tax on liquor — amount — distribution of proceeds.** (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed~~,~~ and *that* sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed~~,~~ and *that* sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. ~~Thirty percent of this~~ *The* revenue is statutorily appropriated, as provided in 17-7-502, to the department and must, in accordance with the provisions of 15-1-501, be *disbursed as follows:*

*(a) Thirty percent is* allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (3).

*(b)* Four and one-half percent ~~of this revenue~~ is ~~statutorily appropriated, as provided in 17-7-502, and must, in accordance with the provisions of 15-1-501, be~~ allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes.

*(c)* ~~The remaining revenue~~ *Sixty-five and one-half percent* must~~, in accordance with the provisions of 15-1-501,~~ be deposited in the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism. In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations necessary to apportion that proportion of

HeinOnline -- 1997 vol. II 2055 1997

license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405. ~~That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to the~~ *The* department~~, which~~ shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501, to be allocated to the incorporated cities and towns of the county.

(3) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(4) The license tax proceeds that are allocated to the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism must be credited quarterly to the department of public health and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder must he distributed as provided in 53-24-206."

**Section 15.** Section 16-1-406, MCA, is amended to read:

**"16-1-406. ~~Tax~~ *Taxes* on beer.** *(1)* A tax of ~~$3~~ *$4.30* per harrel of 31 gallons is ~~hereby levied and~~ imposed on eacb ~~and every~~ barrel of beer sold in Montana by ~~any~~ *a* wholesaler.~~, which said~~ *The* tax ~~shall be~~ *is* due at the end of each month from ~~said~~ *the* wholesaler upon ~~any such~~ beer ~~so~~ sold by ~~him~~ *the wholesaler* during that month. ~~As to any~~ *The department shall compute the tax due on* beer sold in containers other than barrels or in barrels of more or less capacity than 31 gallons~~, the quantity content shall be ascertained and computed by the department in determining the amount of tax due~~.

*(2) Each quarter, in accordance with the provisions of 15-1-501, of the tax collected pursuant to subsection (1), an amount equal to:*

*(a) $1 must be deposited in the state treasury to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism;*

*(b) 50 cents must be deposited in the state general fund; and*

*(c) $2.80 must be deposited with the statc treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund.*

*(3) (a) Thc money in the incorporated cities and towns beer tax account is statutorily appropriated, as provided in 17-7-502, to the department, which shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census. For cities and towns incorporated after the latest official federal census, the census must be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town must be*

HeinOnline -- 1997 vol. II 2056 1997

*distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section must be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.*

*(b) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year."*

**Section 16.** Section 16-1-409, MCA, is amended to read:

**"16-1-409. Failure to make beer tax returns — penalties.** (1) If ~~any~~ *a* brewer or wholesaler subject to the payment of the tax provided for in 16-1-406 ~~and 16-1-408~~ fails, neglects, or refuses to make any return required by this code or fails to make payment of the tax within the time ~~herein~~ provided *in this part*, the department shall, after ~~such~~ *the* time has expired, ~~proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and, from such information as it may be able to obtain, to make a statement showing such matters and things and~~ determine and fix the amount of tax due the state from the delinquent brewer or wholesaler.

(2) The department shall add to the amount of tax due a penalty of:

*(a)* 5% for the first failure~~, willful neglect, or refusal~~;

*(b)* 10% for the second *failure*;

*(c)* 15% for the third *failure*; and

*(d)* 25% for the fourth and each subsequent failure~~, neglect, or refusal~~.

(3) The penalty provided for in subsection (2) is in addition to the 5% penalty provided for nonpayment of the tax within the time provided.

(4) The tax and penalties bear interest at the rate of 1% per month from the date returns should have been made and the tax paid.

(5) The department shall then proceed to collect the tax with penalties and interest. Upon request of the department, it is the duty of the attorney general to commence and prosecute ~~to final determination~~ in any court of competent jurisdiction an action to collect the tax.

(6) If all or part of the tax imposed upon a brewer or wholesaler hy this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand ~~thereafter~~ filed or recorded *after the warrant is issued*.

(7) ~~No~~ *An* action ~~shall~~ *may not* be maintained to enjoin the collection of the tax or any part ~~thereof~~ *of the tax*.

(8) Any tax owed by a brewer or wholesaler under this code not paid within the time provided ~~shall be~~ *is* delinquent, and a penalty of 5% ~~shall~~ *must* be added ~~thereto~~ *to the tax*. The tax and penalty bear interest at the rate of 1% per month from the date of delinquency until paid. ~~Any~~ *A* brewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow the examination as provided for in 16-3-211 or

HeinOnline -- 1997 vol. II 2057 1997

16-3-231 or fails to make an accurate return according to the manner prescribed is guilty of a misdemeanor and upon conviction shall be fined in an amount not exceeding $1,000."

**Section 17.** Section 16-11-119, MCA, is amended to read:

**"16-11-119. Disposition of taxes ~~— retirement of bonds.~~** ~~(1) The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes.~~ *Cigarette taxes collected under the provisions of 16-11-111 must be allocated as follows:*

*(1) The amount of 11.11% of the cigarette tax collected on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes.*

~~(2)~~*(2)* ~~All remaining revenue collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, in accordance with the provisions of 15-1-501, be deposited as follows:~~

~~(a) 79.75%~~ *The amount of 73.04% must, in accordance with the provisions of 15-1-501, be deposited* in the ~~long-range building program~~ *state general* fund ~~in the debt service fund type; and~~.

~~(b)~~*(3)* ~~20.25%~~ *The amount of 15.85% must, in accordance with the provisions of 15-1-501, be deposited* in the long-range building program account provided for in 17-7-205."

**Section 18.** Section 16-11-206, MCA, is amended to read:

**"16-11-206. Wholesaler's discount — disposition of taxes.** The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a 5% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501, be deposited hy the department in the ~~long-range building program debt service~~ *state general* fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

**Section 19.** Section 17-1-508, MCA, is amended to read:

**"17-1-508. Review of statutory appropriations.** (1) Each interim, the legislative finance committee shall review *each statutory appropriation that is contained in a section listed in 17-7-502 and that is not excmpted under subsection (6) of this section and shall review* the ~~criteria~~ *guidelines* set forth in subsection (4) to *eliminate statutory appropriations that no longer fulfill a legislative need and to* ensure that legislative policy is clearly stated concerning the use of statutory appropriations.

(2) Each biennium, the office of budget and program planning ~~and the legislative fiscal analyst~~ shall, in development ~~and analysis~~ of the executive budget, identify instances in which statutory appropriations in current law do not appear consistent with the ~~criteria~~ *guidelines* set forth in subsection (4).

HeinOnline -- 1997 vol. II 2058 1997

(3) As part of each agency audit, the legislative auditor shall review statutory appropriations to the agency and report instances in which they do not appear consistent with the ~~criteria~~ *guidelines* set forth in subsection (4).

(4) The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of ~~17-1-505~~ *17-7-501*. A statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. *In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. A statutory appropriation may be considered appropriate if:*

*(a) the fund or use requires an appropriation;*

*(b) the money is not from a continuing, reliable, and estimable source;*

*(c) the use of the appropriation or the expenditure occurrence is not predictable and reliable;*

*(d) the authority does not exist elsewhere;*

*(e) an alternative appropriation method is not available, practical, or effective;*

*(f) other than for emergency purposes, it does not appropriate money from the state general fund;*

*(g) the money is dedicated for a specific use;*

*(h) the legislature wishes the activity to be funded on a continual basis; and*

*(i) when feasible, an expenditure cap and sunset date are included.*

(5) The office of budget and program planning *shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It* shall, consistent with the ~~review provisions~~ *guidelines* in this section, review each ~~piece~~ of *these pieces of* legislation ~~that proposes to create or amend a statutory appropriation~~. Its findings concerning the statutory appropriation must be contained in the fiscal note accompanying that legislation.

*(6) The legislative finance committee shall establish procedures to facilitate a biennial review and evaluation of statutory appropriations. If the review determines that continual review of a statutory appropriation is not necessary, the statutory appropriation may be exempt from future review."*

**Section 20.** Section 17-5-403, MCA, is amended to read:

**"17-5-403. Form, prineipal and interest, fiscal agent, and deposit of proceeds.** (1) Each series of ~~such~~ *long-range building program* bonds ~~shall~~ *must* be issued by the board upon request of the department, in ~~such~~ denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with ~~such~~ provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at ~~such~~ *the* rate or rates, maturing at ~~such~~ times not exceeding 30 years from date of issue, subject to redemption at ~~such~~ earlier times and prices and upon ~~such~~ notice, and payable at the office of ~~such~~ *the* fiscal agency of the state as the board shall determine, subject to the limitations contained in ~~this section and~~ 17-5-402 *and this section*.

HeinOnline -- 1997 vol. II 2059 1997

(2) In the issuance of each series of ~~such~~ bonds, the amount, maturities, and interest rates ~~thereof shall~~ *must* be fixed in ~~such~~ *a* manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on all ~~such~~ *outstanding* bonds ~~then outstanding~~ and on the series ~~so~~ to be issued will not exceed 50% of the average annual amount collected during the 3 ~~then next~~ preceding fiscal years from the ~~special~~ taxes pledged hy law to the debt service account at the time of ~~such~~ issuance~~,~~. ~~except that this~~ *This* provision ~~shall~~ *may* not constitute a covenant of the state for the security of the bonds issued pursuant to this part after January 1, 1973, and the state reserves the right to amend this subsection in any manner after all bonds issued prior to tbat date and the interest ~~thereon have~~ *on the bonds have* been fully paid or the state's liability ~~thereon~~ has been otherwise fully discharged.

(3) In all other respects, the board is authorized to prescribe the form and terms of tbe bonds and shall do whatever is lawful and necessary for their issuance and payment. ~~Such~~ *The* bonds and any interest coupons appurtenant ~~thereto shall~~ *to the bonds must* be signed by the members of the board, and the bonds ~~shall~~ *must* be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all ~~such~~ *long-range building* bonds issued and sold.

(4) The board ~~is hereby authorized to~~ *may* employ a fiscal agent to assist in the performance of its duties ~~hereunder~~ *under this part*.

(5) All proceeds of bonds issued ~~hereunder shall~~ *under this part must* be deposited in the capital projects fund, except that any premiums and accrued interest received ~~shall~~ *must* be deposited in tbe debt service account."

**Section 21.** Section 17-5-404, MCA, is amended to read:

**"17-5-404. Use of capital projects fund.** The capital projects fund ~~shall~~ *must* be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program. The department may transfer ~~all money authorized by the legislature for its administrative expenditures~~ from the capital projects fund to a special revenue fund~~, and for such purposes the money is statutorily appropriated as provided in 17-7-502~~ *the amount appropriated by the legislature from the special revenue fund for administrative expenses.*"

**Scetion 22.** Section 17-5-405, MCA, is amended to read:

**"17-5-405. Dcbt service account.** ~~(1) From and after the pledge and appropriation of any special tax to the debt service account, as provided and contemplated in this section, 17-5-407, and 17-5-408, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the debt service account.~~

~~(2) No special taxes pledged to the debt service account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this part prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to the extent, if any,~~

HeinOnline -- 1997 vol. II 2060 1997

~~that the right so to do has been reserved in the resolutions authorizing the issuance of such bonds.~~

~~(3) Subject to the provisions of subsections (1) and (2), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the debt service account.~~

~~(4)~~*(1)* Money in the debt service account ~~shall~~ *must* be used:

*(a)* first, to pay interest and principal when due on long-range building program bonds;

*(b)* second, to accumulate a reserve in the amount required ~~below~~ *in subsection (1)(c)*, for the further security of ~~such~~ *the* payments; and

*(c)* third, to maintain ~~this~~ *the* reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal ~~which~~ *that* will become due on all ~~such~~ bonds ~~which~~ *that* are ~~then~~ outstanding in any subsequent fiscal year.

~~(5)~~*(2)* Money at any time received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection ~~(4)~~ *(1)* ~~shall~~ *must* be transferred by the treasurer to the general fund. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection ~~(4)~~ *(1)*, the treasurer shall credit to ~~said~~ *the debt service* account an amount sufficient to restore ~~said~~ *the* balance from the ~~next collections of the special taxes appropriated to said account and from any other collections of taxes appropriated to the~~ general fund~~, not exceeding the aggregate amount theretofore transferred from the debt service account to the general fund~~."

**Section 23.** Section 17-5-408, MCA, is amended to read:

**"17-5-408. ~~Percentage of income, corporation license, and cigarette tax pledged~~ *Pledge of money to comply with principal, interest, and reserve requirements.*** (1) ~~(a)~~ The state pledges and appropriates and directs to be credited as received to the debt service account money ~~received from the collection of the individual income tax and, except as provided in 15-31-702, money received from the collection of the corporation license and income tax, as provided in 15-1-501, as may at any time be~~ needed to comply with the principal and interest and reserve requirements stated in 17-5-405~~(4)~~*(1)*.

~~(b)~~*(2)* The pledge ~~and appropriation~~ made by this section ~~are~~ *is* a first and prior charge upon all money received from the collection of ~~the enumerated~~ taxes.

~~(2) Except for the amount credited to the veterans' home maintenance and improvement account under 16-11-119, the state pledges and appropriates and directs to be credited to the debt service account 70.75% of all remaining money received from the collection of the excise tax on cigarettes that is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products that are or may be imposed for that purpose, including the tax imposed by 16-11-202. This section does not impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and~~

~~appropriation made by this section are a first and prior charge upon all money received from the collection of all taxes referred to in this subsection.~~"

**Section 24.** Section 17-5-804, MCA, is amended to read:

"**17-5-804. Use of capital projects account.** The capital projects account must be segregated by the treasurer from all other money in that or any other account in the state treasury and used only to pay costs of the projects for which bonds were issued, in accordance with the respective bond accounts. The department may transfer all money authorized by the legislature for its administrative expenditures from the capital projects account to a special revenue fund~~, and for such purposes the money is statutorily appropriated as provided in 17-7-502~~."

**Section 25.** Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or *that* would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

HeinOnline -- 1997 vol. II 2062 1997

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. ~~The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502.~~ Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305."

**Section 26.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent

HeinOnline -- 1997 vol. II 2063 1997

law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; ~~10-4-301;~~ *10-4-301;* 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; ~~15-65-121;~~ *15-65-121;* 15-70-101; 16-1-404; *16-1-406;* ~~16-1-410;~~ 16-1-411; 16-11-308; 17-3-106; 17-3-212; ~~17-5-404;~~ ~~17-5-424;~~ ~~17-5-804;~~ 17-6-101; ~~17-6-201;~~ 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; ~~19-19-205;~~ 19-19-305; 19-19-506; 20-8-107; 20-8-111; ~~20-9-361;~~ 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; ~~32-1-537;~~ 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; ~~50-5-232;~~ ~~50-40-206;~~ ~~53-6-150;~~ 53-6-703; 53-24-206; ~~60-2-220;~~ 67-3-205; 75-1-1101; ~~75-5-1108;~~ ~~75-6-214;~~ *75-5-1108; 75-6-214;* 75-11-313; ~~76-12-123;~~ 80-2-103; 80-2-222; 80-4-416; 81-5-111; ~~82-11-136;~~ 82-11-161; ~~85-1-220;~~ 85-20-402; ~~90-3-301;~~ 90-4-215; 90-6-331; ~~90-7-220;~~ ~~90-7-221;~~ and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 27.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; ~~15-1-111;~~ 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; ~~15-65-121;~~ *15-65-121;* 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; ~~20-8-111;~~ 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; *75-5-1108; 75-6-214;* 75-11-313; ~~76-12-123;~~ *77-1-505;* 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 28.** Section 19-19-205, MCA, is amended to read:

**"19-19-205. Actuarial valuation of police retirement fund.** (1) The city treasurer shall submit to the department of administration before October 1 of each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the city's police retirement fund. The valuation ~~shall~~ *must* consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation ~~is to~~ *must* be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state ~~auditor~~ *treasurer* a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state ~~auditor~~ *treasurer* shall make payment to the actuary designated in the request. ~~The payment is statutorily appropriated as provided in 17-7-502.~~"

**Section 29.** Section 20-3-108, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2065 1997

**"20-3-108. Division of resources and assessment ~~account~~ *funds*.** ~~There is a resources and assessment account in the state special revenue fund.~~ Funds derived from the sale of educational materials or services provided by the division of resources and assessment ~~shall~~ *must* be deposited in the ~~resources and assessment account~~ *state general fund*. ~~In addition to other available funds, the superintendent of public instruction shall use these funds for the operation and maintenance of the division of resources and assessment as authorized by 20-3-106.~~"

**Section 30.** Section 20-8-111, MCA, is amended to read:

**"20-8-111. Duty of board of public education as to property of school.** The board of public education ~~has a statutory appropriation, as provided in 17-7-502, and~~ shall, either directly or through a contract with a nonprofit corporation, receive, hold, manage, use, and dispose of real and personal property ~~made over~~ *transferred* to ~~such~~ *the* board or to the state of Montana by purchase, gift, devise, *or* bequest~~,~~ or otherwise acquired and the proceeds, interest, and income ~~thereof~~ *of the property* for the use and benefit of ~~said~~ *the* school *for the deaf and blind*. All donations, gifts, devises, or grants ~~made before, on, or after October 1, 1983, to the school shall~~ vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students."

**Section 31.** Section 20-9-360, MCA, is amended to read:

**"20-9-360. State equalization aid levy.** ~~(1)~~ There is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-527, 61-3-537, and 67-3-204. ~~Except as provided in subsection (2), proceeds~~ *Proceeds* of the levy must be remitted to the state treasurer and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana.

~~(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, the state treasurer shall distribute each fiscal year from the state equalization aid levy to the municipality the amount, if any, equal to the product of the incremental taxable value of the urban renewal area times the reduced school levy for the area, each calculated for the fiscal year. The reduced school levy for a fiscal year is the difference between the aggregate amount of all property tax levies for school purposes in the urban renewal area, expressed in mills, in the fiscal year ended June 30, 1989, and the aggregate amount of all property tax levies for school purposes in the area or the district, expressed in mills, in the fiscal year, including the state equalization aid levy. The state treasurer shall distribute the amounts to municipalities in two equal installments on December 31 and June 30 of the fiscal year.~~"

**Section 32.** Section 20-9-361, MCA, is amended to read:

**"20-9-361. ~~State and county~~ *County* equalization revenue — ~~statutory appropriation~~.** ~~(1)~~ Revenue received in support of county equalization under the provisions of 20-9-331 and 20-9-333 is to be used for county equalization aid for the public schools, as provided by law, and must be accounted for in accordance with generally accepted accounting principles.

HeinOnline -- 1997 vol. II 2066 1997

~~(2) Revenue received from the state equalization aid levy for a municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, is statutorily appropriated, as provided in 17-7-502, to be distributed as provided in 20-9-360(2).~~"

**Section 33.** Section 32-1-537, MCA, is amended to read:

"**32-1-537. Disposition of unclaimed funds.** (1) The department shall certify to the state treasurer a complete list of funds remaining with it that are uncalled for and that have been left with it in its official capacity in trust for depositors in and creditors of a liquidated bank after they have been held by it for 6 months from the date of the final liquidation of the institution. Along with this certificate, the department shall transmit to the state treasurer the funds, with accumulated interest on them, that it has held in trust for 6 months. A copy of the certificate must also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to the person's credit as certified to the state treasurer may apply to the department for the amount due. The depositor or creditor shall make an affidavit and offer proof of identity and of the amount due. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the state treasurer who shall audit the claim and, if found correct, certify the claim to the department. If the department approves the claim, it shall pay the claim to the depositor or creditor. ~~The money deposited in the general fund pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of paying approved claims.~~"

**Section 34.** Section 37-43-204, MCA, is amended to read:

"**37-43-204. Earmarked money for board expenses — expenditure of funds from bonds.** (1) All money collected under this chapter must be deposited in the state special revenue fund and may be used only for the purpose of paying expenses of the board. Except for funds received from bonds in subsection (2), the money must be appropriated by the legislature before it may be expended by the board. Income and interest from investment of the money in the state special revenue fund that are collected under this chapter must be credited to the board.

(2) The board may accept and expend all funds received from bonds required by 37-43-306. The funds must be used to remedy defects in water wells, to compensate for damages caused by violations of this chapter or the rules of the board, or to pay any administrative costs incurred by the board under 37-43-309, 37-43-310, and 37-43-313. These funds, *other than those to pay any administrative costs,* are statutorily appropriated as provided in 17-7-502."

**Section 35.** Section 39-71-503, MCA, is amended to read:

"**39-71-503. Administration of fund — appropriation.** (1) The department shall administer the fund and shall pay all proper benefits to injured employees of *underinsured and* uninsured employers.

HeinOnline -- 1997 vol. II 2067 1997

(2) Surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. The cost of administration of the fund must be paid out of the money in the fund.

(3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

**Section 36.** Section 39-71-531, MCA, is amended to read:

**"39-71-531. Definition of underinsured employer.** For purposes of 39-71-531 through ~~39-71-534~~ *39-71-533*, the term "underinsured employer" means an employer who knowingly misrepresents the duties of an employee in order to pay lower workers' compensation rates than the employer would have been required to pay if the character of the employee's work had been properly classified. The term "knowingly" has the meaning as defined in 45-2-101."

**Section 37.** Section 39-71-533, MCA, is amended to read:

**"39-71-533. Collection of payments from underinsured employer.** If, upon demand of the department, an underinsured employer refuses to make the payments due under 39-71-532, the amount due may be collected by the department through suit. The department may settle through compromise with the underinsured employer the amount to be collected. *Amounts collected under 39-71-532 and this section must be deposited in the account created in 39-71-502.*"

**Section 38.** Section 39-71-2354, MCA, is amended to read:

**"39-71-2354. Use of old fund liability tax proceeds — loans — bonds.** (1) ~~Taxes~~ *Subject to 39-71-2503(2), taxes* collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under 39-71-2355 and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts *that* it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most

HeinOnline -- 1997 vol. II 2068 1997

cost-effective for the state fund. A loan must bear interest at the rate that the board of investments determines the money would earn if invested on behalf of the state fund. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds for the state fund must be workers' compensation bonds issued under 39-71-2355.

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under 39-71-2355, except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020."

**Section 39.** Section 39-71-2503, MCA, is amended to read:

**"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer, except an employer whose employees are covered by federal workers' compensation legislation, a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

(i) for the preceding payroll period for employers subject to the payment schedule contained in 15-30-204(1);

(ii) for the preceding month for employers subject to the payment schedule contained in 15-30-204(2); and

(iii) for the preceding year for employers subject to the payment schedule contained in 15-30-204(3)(a).

(b) There is imposed on each employee, except an employee who is covered by federal workers' compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages. An employer paying wages for services performed in Montana shall deduct and withhold the tax from the wages.

(c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager derived from ongoing activities.

(ii) The tax imposed in this subsection *(1)*(c) applies only to the ordinary income of a shareholder, partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

(iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this subsection *(1)*(c).

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

HeinOnline -- 1997 vol. II 2069 1997

(e) A corporate officer of a closely held corporation who owns stock in a closely held corporation that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) ~~This~~ *The* old fund liability tax *deposited in the account established in 39-71-2504* must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records that the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) ~~All~~ *After depositing the amount appropriated to the department of revenue for the collection of the old fund liability tax in the state general fund, all remaining* collections of the tax must be deposited as received in the account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant to 15-30-204. ~~The~~ *After depositing the portion of the tax in the state general fund, the* department shall first credit a payment to the liability under 15-30-202 and *shall then* credit any remainder to the account provided for in 39-71-2504.

(b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. ~~The~~ *After depositing the portion of the tax in the state general fund, the* department shall first credit a payment to the

liahility under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided for in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under suhsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. The department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data hases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to suhchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

**Seetion 40.** Section 39-71-2504, MCA, is amended to read:

**"39-71-2504. Workers' compensation bond repayment account.** (1) There is a workers' compensation bond repayment account in the enterprise fund.

(2) ~~All~~ *After depositing the amount appropriated to the department of revenue for the collection of the old fund liability tax* in the state general fund, all remaining collections of the tax imposed under 39-71-2503 and the interest and penalties on the tax must, in accordance with the provisions of 15-1-501, be deposited in the workers' compensation hond repayment account. All money deposited in the workers' compensation bond repayment account must be retained in the account to the extent necessary to pay the principal of and the redemption premium and interest due on workers' compensation bonds issued under 39-71-2354 and 39-71-2355 and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The halance in the workers' compensation bond repayment account is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

HeinOnline -- 1997 vol. II 2071 1997

**Section 41.** Section 49-2-510, MCA, is amended to read:

**"49-2-510. Procedures and remedies for enforcement of housing discrimination laws.** (1) A complaint may be filed with the commission by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed with the commission within 1 year after the alleged unlawful discriminatory practice occurred or was discovered.

(2) (a) Except as provided in subsection (2)(b), if the commission, in a hearing under 49-2-505, finds that a person, institution, entity, or agency against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(i) in an amount not exceeding $10,000 if the respondent has not been found to have committed any prior discriminatory housing practice in violation of 49-2-305;

(ii) in an amount not exceeding $25,000 if the respondent has been found to have committed one other discriminatory housing practice in violation of 49-2-305 during the 5-year period ending on the date of the filing of the complaint; and

(iii) in an amount not exceeding $50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the date of the filing of the complaint.

(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and (2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.

(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a gevernmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the order is judicially reviewed, no later than 30 days after the order is in substance affirmed:

(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or regulatory agency; and

(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, ~~where~~ *when* appropriate, the suspension or revocation of the license of the respondent.

(4) (a) When a complaint is filed under 49-2-305, a complainant, respondent, or aggrieved person on whose behalf the complaint was filed may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The person making the election shall give notice to the commission and to all other complainants and

respondents to whom the complaint relates. Within 30 days after the election is made, the commission shall commence a civil action in an appropriate district court on behalf of the aggrieved person if the commission staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the commission staff has made a finding that the allegations of the complaint are not supported by substantial evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved person with respect to the issues to be determined in a civil action brought by the commission staff may intervene in the action.

(b) The commission may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a).

(5) (a) An aggrieved person may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the commission, except as provided in subsection (5)(d). If the commission has obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed under this subsection by the aggrieved person regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission may not continue administrative proceedings on a complaint after the beginning of a trial of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved person may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

(f) Upon timely application, the commission may intervene in a civil action brought under this subsection (5) if the commission certifies that the case is of

HeinOnline -- 1997 vol. II 2073 1997

general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under subsection (7).

(6) If the court finds that a person, institution, entity, or agency against whom a complaint was filed under this section has engaged in a discriminatory practice in violation of 49-2-305, the court may, in addition to the other remedies and injunctive and other equitable relief provided under 49-2-506, award punitive damages. The court may also award attorney fees to the prevailing party.

(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance, the commission may commence a civil action in an appropriate district court. The commission may also commence a civil action in any appropriate district court for relief regarding breach of a conciliation agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the agreement.

(b) The commission may file a civil action under this subsection (7) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.

(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:

(i) in an amount not exceeding $50,000 for a first violation; and

(ii) in an amount not exceeding $100,000 for any subsequent violation.

(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.

(8) Civil penalties under this section must be paid to the state treasurer to be deposited in ~~an account in~~ the state ~~special revenue~~ *general* fund ~~to be used by the commission for housing discrimination enforcement~~."

**Section 42.** Section 50-5-112, MCA, is amended to read:

**"50-5-112. Civil penalties.** (1) A person who commits an act prohibited by 50-5-111 is subject to a civil penalty not to exceed $1,000 for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2. The department or, upon request of the department, the county attorney of the county in which the health care facility in question is located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

(2) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient;

HeinOnline -- 1997 vol. II 2074 1997

*(b)* the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; ~~and~~

*(c)* the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; *and*

~~(b)~~*(d)* other matters as justice may require.

(3) A penalty collected under this section must be deposited in the ~~patient protection account provided for in 50-5-232~~ *state general fund*.

(4) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue remedies available for a violation, as provided for in 50-5-108, or any other remedies available to it."

**Section 43.** Section 50-5-113, MCA, is amended to read:

**"50-5-113. Criminal penalties.** (1) A person is guilty of a criminal offense under this section if the person knowingly conceals material information about the operation of the facility or does any of the following and by doing so threatens the health or safety of one or more individuals entrusted to the care of the person:

(a) commits an act prohibited by 50-5-111;

(b) omits material information or makes a false statement or representation in an application, record, report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or

(c) destroys, alters, conceals, or fails to file or maintain any record, information, or application required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) A person convicted under subsection (1) is subject to a fine of not more than $1,000 for the first offense and not more than $2,000 for each subsequent offense for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient;

*(b)* the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; ~~and~~

*(c)* the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; *and*

~~(b)~~*(d)* other matters as justice may require.

HeinOnline -- 1997 vol. II 2075 1997

(4) Prosecution under this section does not bar enforcement under any other section of this chapter or pursuit of any other appropriate remedy by the department.

(5) Venue for prosecution pursuant to this section is in the county in which the facility is located or in the first judicial district.

(6) A penalty collected under this section must be deposited in the ~~patient protection account provided for in 50-5-232~~ *state general fund.*"

**Section 44.** Section 50-5-232, MCA, is amended to read:

"**50-5-232. Patient protection account — *deposit of funds.*** (1) There is a patient protection account in the state special revenue fund. ~~The money in the account is statutorily appropriated to the department as provided in 17-7-502.~~

(2) There is deposited in the patient protection account:

~~(a) penalties collected pursuant to part 1 or 2 of this chapter;~~

~~(b)~~ money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source that are intended to be used for the purposes of the account~~; and~~

~~(c) interest earned on money in the account~~.

(3) The funds deposited in the patient protection account may be used only:

(a) to pay for the costs of a receivership; and

(b) to pay for the cost of department-initiated relocation of residents.

*(4) Penalties collected pursuant to part 1 or 2 of this chapter must be deposited in the state general fund.*"

**Section 45.** Section 50-40-206, MCA, is amended to read:

"**50-40-206. Special revenue account — donations for smoking areas ~~— statutory appropriation~~.** (1) There is an account in the state special revenue fund for the establishment of designated smoking areas pursuant to 50-40-204.

(2) The department of administration is authorized to accept donations to pay for the establishment of or improvements to designated smoking areas in state buildings and shall deposit any donations into the special revenue account established in subsection (1).

(3) The money in the special revenue account ~~established in subsection (1) is statutorily appropriated, as provided in 17-7-502, to~~ *must be used by* the department of administration to pay for the establishment of or improvements to designated smoking areas pursuant to 50-40-204."

**Section 46.** Section 53-6-150, MCA, is amended to read:

"**53-6-150. ~~Statutory appropriation of donated~~ *Donated* funds.** ~~(1)~~ The department of public health and human services may receive private funds and nonfederal and nonstate public funds for its medical assistance programs. Donated funds must be matched with federal funds whenever possible.

HeinOnline -- 1997 vol. II 2076 1997

~~(2) Funds donated to the department for its medical assistance programs are statutorily appropriated to the department as provided in 17-7-502.~~"

**Section 47.** Section 53-24-108, MCA, is amended to read:

"**53-24-108. ~~Utilization~~ *Use* of funds generated by taxation on alcoholic beverages.** (1) Revenue generated by 16-1-404, 16-1-406, ~~16-1-408,~~ and 16-1-411 to state-approved private, nonprofit or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved private, nonprofit or public alcoholism programs and licensed hospitals for detoxification services; or

(b) as grants to state-approved private, nonprofit or public alcoholism programs.

(2) State-approved private chemical programs organized for profit are not eligible for revenue generated by 16-1-404, 16-1-406, ~~16-1-408,~~ and 16-1-411.

(3) ~~No~~ *A* person operating a state-approved alcoholism program may *not* be required to provide matching funds as a condition of receiving a grant under subsection (1) ~~of this section~~.

(4) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(5) ~~No~~ *A* person receiving funding under this section to support operation of a state-approved alcoholism program may *not* refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(6) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess ~~shall~~ *must* be reported to the grantor.

(c) The excess ~~shall~~ *must* be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(7) Revenue generated by 16-1-404, 16-1-406, ~~16-1-408,~~ and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism ~~which~~ *that* has not been

HeinOnline -- 1997 vol. II 2077 1997

encumbered for those purposes by the counties of Montana or the department ~~shall~~ *must* be returned to the state special revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and ~~will~~ *must* be distributed by the department the following year as provided in 53-24-206(3)(b)."

**Section 48.** Section 60-2-220, MCA, is amended to read:

**"60-2-220. Butte-Anaconda cultural heritage area — signs — location and design — funding.** (1) There is established a cultural heritage area encompassing Silver Bow County and Deer Lodge County.

(2) Subject to the provisions of federal law, the department shall, as funds are available under subsection (4), erect and maintain at specified locations on the primary and interstate highways in Silver Bow County and Deer Lodge County signs identifying those counties as a cultural heritage area.

(3) The consolidated governments of Butte-Silver Bow and Anaconda-Deer Lodge shall design the signs and designate the general locations for the signs. The department shall determine the exact location of each sign.

(4) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsections (2) and (3) and may expend~~, as a statutory appropriation under 17-7-502,~~ the money received for those purposes.

(5) As used in this section, "department" means the department of transportation provided for in 2-15-2501."

**Section 49.** Section 60-11-120, MCA, is amended to read:

**"60-11-120. Railroad and intermodal transportation facility loans and grants — authorization — eligibility.** (1) Money ~~deposited in the special railroad facilities and intermodal transportation facilities account created in 60-11-122~~ *appropriated by the legislature* may be used by the department of transportation, after deducting the necessary costs and expenses for administering this section, to provide loans and grants for the preservation and continued operation of railroad branch lines identified in 60-11-111 and for the development and improvement of intermodal transportation facilities. Proceeds of all repayments of loans, including interest, made under this section must be deposited in the ~~special railroad facilities and intermodal transportation facilities account~~ *state general fund*.

(2) An owner or operator of a railroad identified in 60-11-111(2) is eligible for a loan or grant under this section ~~provided that~~ *if* the owner or operator:

(a) undertakes to repair, improve, or replace rail facilities to allow the continued operation of the railroad for local rail transportation service; and

(b) derives revenue from the continued operation of the railroad.

(3) A port authority created under Title 7, chapter 14, part 11, is eligible for a loan or grant under this section for the development or improvement of an intermodal transportation facility under this section ~~provided that~~ *if*:

HeinOnline -- 1997 vol. II 2078 1997

(a) the port authority is included in the state transportation planning process as described in 23 U.S.C. 135; and

(b) the intermodal transportation facility for which a loan or grant is sought is integrally related to the railroad transportation system of the state."

**Section 50.** Section 60-11-123, MCA, is amended to read:

**"60-11-123. Disposition of revenue from state-owned railroads — use of money.** (1) Unless otherwise required hy law, revenue from the lease or sale of assets of or revenue paid to the state of Montana by an operator of a railroad owned by the state of Montana must be deposited in the ~~special railroad facilities and intermodal transportation facilities account created in 60-11-122~~ *state general fund.*

(2) The department of transportation is authorized to administer, as provided in 60-11-120 through 60-11-123, ~~the special railroad facilities and intermodal transportation facilities account created in 60-11-122~~ *funding available* to provide for improvement of railroad tracks and associated facilities of any state-owned railroad in Montana and to provide loans and grants to railroad lines and intermodal transportation facilities as provided in 60-11-120."

**Section 51.** Section 61-3-509, MCA, is amended to read:

**"61-3-509. Disposition of taxes.** (1) Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motorcycles, motor homes, travel trailers, and campers collected under 61-3-504, 61-3-521, 61-3-527, and 61-3-537 to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of 1 ton or less. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the ~~general~~ *state special revenue* fund to be used for purposes of state funding of the district court expenses as provided in 3-5-901."

**Section 52.** Section 61-5-121, MCA, is amended to read:

**"61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses ~~provided for in 61-5-111(7)(a)~~, motorcycle endorsements ~~provided for in 61-5-111(7)(b)~~, commercial driver's licenses ~~provided for in 61-5-111(7)(c)~~, and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of ~~25%~~ *16.7%* of each driver's license fee and *25%* of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404.

HeinOnline -- 1997 vol. II 2079 1997

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of ~~3.75%~~ *2.5%* of each driver's license fee and *3.75%* of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the *state* general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of ~~5%~~ *3.34%* of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the *state* general fund.

(d) The amount of 26.25% of each driver's license fee and *8.75%* of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.55% of each driver's license fee and *62.5%* of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of ~~3.75%~~ *2.5%* of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of ~~95%~~ *63.46%* of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund, *and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.*

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

**Section 53.** Section 75-5-1108, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2080 1997

"75-5-1108. ~~Statutory appropriation~~ *Use of funds — statutory appropriation.* Money in the revolving fund ~~is statutorily appropriated, as provided in 17-7-502,~~ *is statutorily appropriated, as provided in 17-7-502,* for the purposes of making loans to municipalities and private concerns and paying debt service on obligations. ~~Money in the special administrative costs account authorized by 75-5-1113 is subject to legislative appropriation constraints, and expenditures from this account must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.~~"

**Section 54.** Section 75-6-214, MCA, is amended to read:

"75-6-214. ~~Statutory appropriation~~ *Use of funds — statutory appropriation.* Money in the revolving fund ~~is statutorily appropriated, as provided in 17-7-502,~~ *is statutorily appropriated, as provided in 17-7-502,* for the purposes of providing financial assistance to public water systems. ~~Money in the administration account authorized by 75-6-211 is subject to legislative appropriation, and expenditures from this account must be made from temporary appropriations, as described in 17-7-501(1) or (2), that are made for that purpose.~~"

**Section 55.** Section 75-10-954, MCA, is amended to read:

"75-10-954. **Megalandfill reclamation account — *deposit of funds.*** (1) There is a megalandfill reclamation account in the state special revenue fund provided for in 17-2-102.

(2) All ~~fees, fines, penalties,~~ forfeited bonds~~, and other money~~ that have been or will be paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the account.

(3) Money in the account is available to the department for the reclamation, restoration, and replacement of natural resources damaged or impaired by the megalandfill. Unencumbered and unexpended money remaining in the account at the end of a fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

*(4) All fees, fines, penalties, and other money paid to the department under the provisions of 75-10-950 through 75-10-954 must be deposited in the state general fund.*"

**Section 56.** Section 76-12-123, MCA, is amended to read:

"76-12-123. **Natural areas account.** (1) There is a natural areas special revenue account within the state special revenue fund established in 17-2-102.

(2) The natural areas account may receive funds from any source as gifts.

(3) The department may spend funds accepted as gifts in accordance with the purposes of this part, including administration of a natural areas program. ~~These funds, except funds used for administration of a program, are statutorily appropriated, as provided in 17-7-502.~~"

**Section 57.** Section 77-1-505, MCA, is amended to read:

"77-1-505. **Warrant for payments to counties.** The department of administration shall, before December 1, approve and authorize the issuance of

HeinOnline -- 1997 vol. II 2081 1997

a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment. *The payments are statutorily appropriated as provided in 17-7-502.*"

**Section 58.** Section 77-2-323, MCA, is amended to read:

"**77-2-323. Sale proeedure and limitation.** (1) At the time fixed for the sale, the lands ~~shall~~ *must* be offered for sale at auction in the order *that* they appear in the notice of sale. Under the direction of the department, the lands ~~shall~~ *must* be sold to the highest qualified bidder under the following restrictions:

(a) ~~No lands~~ *Lands* may *not* be sold for less than the value determined by the board after appraisal by a qualified land appraiser.

(b) Tillable lands capable of producing agricultural crops may not be sold for less than $10 ~~per~~ *an* acre.

(c) Lands principally valuable for grazing purposes may not be sold for less than $5 ~~per~~ *an* acre.

(2) The lands ~~shall~~ *must* be sold as nearly as practicable according to the subdivisions in which they are advertised, and care ~~shall~~ *must* be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways.

(3) The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(4) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased ~~by him~~, ~~he~~ *the successful bidder* shall forfeit to the state not less than $50 or more than $1,000, to be determined by the board according to the circumstances of the case. If ~~such~~ *the* forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery ~~thereof~~ *of the amount* in the name of the state. *The forfeiture amount must be deposited in the state general fund.*"

**Section 59.** Section 77-2-328, MCA, is amended to read:

"**77-2-328. Additional rules — *deposit of fees.*** The board may prescribe ~~such~~ *any* additional rules for the conduct of these sales as in its judgment the interests of the state may demand. *Any fees collected by a rule adopted pursuant to this section must be deposited in the state general fund.*"

**Section 60.** Section 77-5-305, MCA, is amended to read:

"**77-5-305. Responsibility for compliance — penalties — administrative orders.** (1) (a) Except as provided in subsection (1)(b), it is the responsibility of the owner to ensure compliance with the provisions of this part and rules adopted pursuant to this part.

(b) If a written contract between an owner and an operator specifies that the operator is responsible for compliance with laws relating to forest practices, the operator is considered the responsible party for all enforcement actions taken by the department under this section.

HeinOnline -- 1997 vol. II 2082 1997

(2) A person who violates a provision of this part, a rule adopted pursuant to this part, or an order issued under this section shall be subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(3) (a) When the department determines that an owner or operator has violated a provision of this part or a rule adopted pursuant to this part and has caused damage to watershed or wildlife resources, the department may serve an order requiring the person responsible for the conduct of forest practices to undertake necessary site rehabilitation within a reasonable period of time stated in the order. The order must specify the nature of the violation and the damage or unsatisfactory condition resulting from the violation.

(b) The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Service by mail is complete on the date of mailing.

(c) If, after a hearing, the department finds that a violation has occurred and the watershed or wildlife habitat damage warrants site rehabilitation, it shall affirm or modify the order previously issued. If the department finds that a violation has not occurred or that site rehabilitation is not warranted, it shall rescind the order.

(d) The department may include in an order a provision that the owner or operator immediately cease causing further damage and take immediate action to alleviate the damage or to prevent future damage. The department may institute an action for injunctive relief under Title 27, chapter 19, if the recipient of the order does not comply with it.

(4) Subsection (3) does not prevent the department from seeking voluntary compliance and site rehabilitation through warning, conference, or any other appropriate means.

*(5) All fines and penalties levied under this section must be deposited in the state general fund.*"

**Section 61.** Section 82-11-136, MCA, is amended to read:

"**82-11-136. Expenditure of funds from bonds for plugging wells.** The board may accept and expend all funds received by it from bonds for properly plugging dry or abandoned wells as authorized in 82-11-123(5). ~~These funds are statutorily appropriated as provided in 17-7-502.~~"

**Section 62.** Section 85-1-220, MCA, is amended to read:

"**85-1-220. State water project hydroelectric power generation special revenue account created — ~~revenues~~ *revenue* allocated.** (1) There is a state water project hydroelectric power generation special revenue account within the state special revenue fund established in 17-2-102.

(2) Except as provided in the applicable bond resolution, all ~~revenues~~ *revenue* derived from hydroelectric power generation at state water conservation projects under Title 85, chapter 1, must be paid into this account as received.

HeinOnline -- 1997 vol. II 2083 1997

(3) The ~~revenues~~ *revenue* received under this section must be used to repair and rehabilitate state-owned water projects and works and to pay the cost of financing those activities.

(4) The funds deposited in the state water project hydroelectric power generation special revenue account under this section but not appropriated during the biennium and money appropriated from the account but not expended during the biennium for which it is appropriated must remain in the account for future appropriation under this section and may not be appropriated from the account except as authorized under this section.

~~(5) There is a statutory appropriation pursuant to 17-7-502 to allow the department to transfer available funds from the state water project hydroelectric power generation special revenue account when needed to pay debt service on state water project bonds, including but not limited to broadwater power project bonds.~~

~~(6) There is a statutory appropriation pursuant to 17-7-502 for the department to transfer available funds from the broadwater replacement and renewal account when needed to pay debt service on the broadwater power project bonds.~~"

**Section 63.** Section 90-3-301, MCA, is amended to read:

"**90-3-301. ~~Appropriation~~ *Spending* authority and funding — matching funds.** (1) The board has authority to accept and expend all funds received by it as grants, donations, or other private or public income. ~~These funds are statutorily appropriated as provided in 17-7-502.~~

(2) The appropriations and loans made to and by the board are in addition to and separate from general fund appropriations to the university system and other state agencies.

(3) A loan may not be made for a seed capital project for which matching funds have not been received. Matching funds are required prior to any expenditure of board funds for all seed capital projects. The board may accept as matching funds those received by the loan recipient within 1 year prior to the execution of the loan agreement. The board may require additional matching funds, depending on the capital need and the degree of risk encountered in the seed capital project.

(4) A loan may not be made for a research and development project for which matching funds have not been received unless the matching fund requirements are waived by the board pursuant to this section. Matching funds, when required, must be received before expenditure of board funds for a research and development project loan may be made. The board may waive the required match for up to 25% of the funding for research and development project loans if the board determines that the capital need and potential commercialization of the research and development project, in addition to its potential to strengthen the partnership between the public sector and private sector, warrant the waiver. The board may accept as matching funds those received by the loan recipient within 1 year prior to the execution of the loan agreement. The board may require additional matching funds depending on the capital need in the research and development project."

HeinOnline -- 1997 vol. II 2084 1997

**Section 64.** Section 90-7-220, MCA, is amended to read:

**"90-7-220. Montana developmental center loan.** (1) The department of public health and human services may enter into a loan agreement with the Montana health facility authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for persons with developmental disabilities at the Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $10.5 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term of not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable solely from the facility revenues obtained by the department from the ownership and operation of and the provision of services at the Montana developmental center, including payments or reimbursements from private users, insurers, and the federal government. All facility revenues obtained from services provided by the Montana developmental center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments as due under the loan agreement. ~~Principal and interest payments constitute a statutory appropriation within the meaning of 17-7-502.~~ Whenever the foregoing facility revenues exceed the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited to the general fund. As long as the loan remains outstanding and the department provides services for persons with developmental disabilities, the department shall use the Montana developmental center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgago. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgago given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgago and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenues and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or revenues of the state, except the facility revenues as provided in this section."

**Section 65.** Section 90-7-221, MCA, is amended to read:

**"90-7-221. Montana state hospital loan.** (1) The department of public health and human services may enter into a loan agreement with the authority for the purpose of financing the costs of acquiring, constructing, and equipping

HeinOnline -- 1997 vol. II 2085 1997

facilities for the mentally ill at the Montana state hospital in Warm Springs, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed $21 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs. The loan must be payable over a term not to exceed 25 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise that are not inconsistent with this section and that the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana state hospital facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable from the facility revenue obtained by the department from the ownership and operation of and the provision of services at the Montana state hospital and the Montana mental health nursing care center, including payments or reimbursements from private users, insurers, and the state or federal government. All facility revenue obtained from services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments due under the loan agreement. ~~Principal and interest payments constitute a statutory appropriation within the meaning of 17-7-502.~~ Whenever the foregoing facility revenue exceeds the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited as provided in 53-1-413. As long as the loan remains outstanding and the state provides services for the mentally ill, the department shall use the Montana state hospital and the Montana mental health nursing care center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding the provisions of 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenue of the Montana state hospital and the Montana mental health nursing care center and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or revenue of the state, except the facility revenue as provided in this section."

**Section 66. Repealer.** (1) Sections 15-31-408, 16-1-408, 16-1-410, 39-71-534, 60-11-122, and 77-5-306, MCA, are repealed.

(2) Section 15-1-111, MCA, is repealed.

**Section 67. Coordination.** If [this act] is passed and approved in a form de-earmarking a percentage of the 9-1-1 emergency telecommunications tax to the general fund and if House Bill No. 210 is passed and approved increasing the

HeinOnline -- 1997 vol. II 2086 1997

9-1-1 emergency telecommunication tax to 55 cents, then the percentage de-earmarked to the general fund in [this act] is 3.76%.

**Section 68. Effective dates — termination.** (1) [Sections 1 through 3, 5 through 26, 28 through 65, 66(1), and 67 and this section] are effective July 1, 1997.

(2) [Sections 27 and 66(2)] are effective July 1, 2008.

(3) [Section 4] is effective on passage and approval and terminates July 1, 1997.

Approved April 29, 1997

# CHAPTER NO. 423

[HB 183]

AN ACT GENERALLY REVISING THE LAWS RELATING TO SCHOOL FIRE DRILLS; CHANGING "FIRE DRILLS" TO "DISASTER DRILLS"; REQUIRING SCHOOL DISTRICTS TO IDENTIFY LOCAL HAZARDS AND TO DESIGN APPROPRIATE DRILLS; ELIMINATING THE REQUIREMENT THAT SCHOOL DISTRICTS IN CERTAIN SEISMIC ZONES ESTABLISH EARTHQUAKE EMERGENCY PLANS; AMENDING SECTIONS 20-1-401, 20-1-402, 20-1-404, AND 20-1-407, MCA; AND REPEALING SECTIONS 20-1-403, 20-1-406, AND 20-7-1101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-1-401, MCA, is amended to read:

**"20-1-401. ~~Fire~~ *Disaster* drills to be conducted regularly — *districts to identify disaster risks.*** *(1) As used in this part, "disaster" has the same meaning as in 10-3-103.* ~~Fire exit~~ *Disaster* drills ~~shall~~ *must* be conducted regularly in accordance with ~~the applicable provisions of the following sections~~ *this part.*

*(2) A board of trustees shall identify the local hazards that exist within the boundaries of its school district and design drills to address those hazards."*

**Section 2.** Section 20-1-402, MCA, is amended to read:

**"20-1-402. Number of ~~fire~~ *disaster* drills required — ~~avoiding severe cold weather~~ *time of drills to vary*.** There ~~shall~~ *must* be at least eight ~~fire exit~~ *disaster* drills a year in ~~schools~~ *a school. At least four of the drills must be fire exit drills.* ~~In climates where the weather is severe during the winter months, weekly drills should be held at the beginning of the school term to complete the required number of drills before cold weather so as not to endanger the health of the pupils.~~ *Drills must be held at different hours of the day or evening to avoid distinction between drills and actual disasters."*

**Section 3.** Section 20-1-404, MCA, is amended to read:

**"20-1-404. Drill to sound on ~~fire~~ *disaster* ~~alarm~~ *evacuation* system — *recall signal to be distinct — control of signal.*** ~~All fire exit~~ *(1) If a disaster*

drill *is signaled, the* ~~alarms shall~~ *signal must* be sounded on the ~~fire~~ *disaster* alarm system and not on the signal system used to dismiss classes.

*(2) The recall signal must be separate and distinct from any other signal. The recall signal may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls must be kept under lock and the key kept in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a disaster. Regardless of the method of recall, the means of giving the signal must be kept under lock."*

**Section 4.** Section 20-1-407, MCA, is amended to read:

**"20-1-407. Inspection of exits — cooperation with ~~fire department~~ *local authorities having jurisdiction* in drills.** It ~~shall be~~ *is* the duty of the school authorities to inspect all exit facilities periodically~~,~~ in order to make sure that all stairways, doors, and other exits are in proper condition~~, and~~. *School authorities shall* cooperate with *the* local ~~fire department authorities~~ *authorities having jurisdiction* in conducting ~~fire~~ *disaster* drills."

**Section 5. Repealer.** Sections 20-1-403, 20-1-406, and 20-7-1101, MCA, are repealed.

Approved April 29, 1997

# CHAPTER NO. 424

[HB 323]

AN ACT PROHIBITING MARRIAGE BETWEEN PERSONS OF THE SAME SEX; PROVIDING THAT CERTAIN CONTRACTS ARE AGAINST PUBLIC POLICY; AND AMENDING SECTION 40-1-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-1-401, MCA, is amended to read:

**"40-1-401. Prohibited marriages — *contracts*.** (1) The following marriages are prohibited:

(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood;

*(d) a marriage between persons of the same sex.*

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

HeinOnline -- 1997 vol. II 2088 1997

(3) Children born of a prohibited marriage are legitimate.

*(4) A contractual relationship entered into for the purpose of achieving a civil relationship that is prohibited under subsection (1) is void as against public policy."*

Approved April 29, 1997

# CHAPTER NO. 425

[HB 344]

AN ACT REVISING THE PROCEDURES FOR UNIVERSITY SYSTEM LAND TRANSACTIONS; CLARIFYING THAT PROPOSED LAND TRANSACTIONS MUST COMPLY WITH THE REQUIREMENTS OF THE MONTANA ENVIRONMENT POLICY ACT AND WITH MONTANA ANTIQUITIES LAWS; AND AMENDING SECTION 20-25-307, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-25-307, MCA, is amended to read:

**"20-25-307. Disposition of land.** (1) The board of regents may sell, exchange, and lease land and grant easements and licenses on land that:

~~(a)~~ is held or administered by the board of regents or the system and that is held by the state for the use and benefit of the board of regents or the system; ~~and~~

~~(b) was not granted to the state, the board of regents, or the system in trust.~~

(2) The board of regents may not grant an estate or interest in land that was granted to the state in trust for the support and benefit of the system.

(3) In disposing of any estate or interest in land pursuant to subsection (1), the board of regents shall obtain consideration that equals or exceeds the full market value of the land. For sales and exchanges, full market value must be determined by the board of regents after an appraisal by a certified or licensed appraiser. If the appraiser determines that the valuation is not complicated and estimates, based on available data, that the full market value of the property is $10,000 or less, the board of regents may use a restricted or limited appraisal.

(4) Before approving an exchange of land, the board of regents shall give the public notice of the proposed exchange and an opportunity to comment. The board of regents shall, upon request of any person, hold a public hearing in the area where the state land to be conveyed is located. Subject to subsection (6), the board of regents may, after review of the comments, approve the exchange if it determines that the exchange is in the best interests of the system.

(5) Prior to the sale of land, the board of regents shall ~~prepare a request for proposals to purchase the land and~~ *prepare a request for proposals to purchase the land and* publish public notice of the ~~sale~~ *sale* once a week for 4 consecutive weeks in a newspaper of general circulation published in the county where the land is situated. If a newspaper is not published in that county, notice must be published in any newspaper of general circulation in that county. The notice must

HeinOnline -- 1997 vol. II 2089 1997

describe the land to be sold, the appraised value of the land, the procedure by which persons may obtain the request for ~~proposals,~~ *proposals,* the terms and conditions of sale~~, and the criteria upon which each proposal will be evaluated~~, *and the criteria upon which each proposal will be evaluated.* The sale procedure must provide reasonable opportunity for members of the public to submit ~~proposals~~ *proposals* to purchase the land. The board of regents may sell the land only if it determines that the sale is in the best interests of the system. ~~If the board of regents sells the land, the sale must be to the offeror whose proposal the board determines to be the most advantageous to the system, taking into consideration the price and the other evaluation criteria listed in the request for proposals.~~ *If the board of regents sells the land, the sale must be to the offeror whose proposal the board determines to be the most advantageous to the system, taking into consideration the price and the other evaluation criteria listed in the request for proposals.*

(6) *(a)* The board of regents may sell or exchange the land only if ~~it~~ *the board of regents* first:

*(i)* requests and obtains the written concurrence of the board of land commissioners;

*(ii) provides proof that no use restrictions, encumbrances, or other conditions have been placed by the board of regents on the land proposed for sale or exchange that prevent the state from obtaining full market value for the land, taking into consideration the price and the other evaluation criteria listed in the request for proposals:*

*(iii) complies with the requirements of the Montana Environmental Policy Act provided in Title 75, chapter 1, parts 1 through 3; and*

*(iv) complies with the requirements of Montana antiquities laws provided in Title 22, chapter 3, part 4.*

*(b)* The board of land commissioners may refuse to concur if it determines that:

*(i)* the sale or exchange does not return to the state full market value~~,~~;

*(ii)* ~~that~~ the ~~sale procedure~~ *evaluation criteria in the request for proposals or the sale procedure and proposal selection process* did not provide the public *with* a reasonable opportunity to submit proposals to purchase the land~~, or~~ *or to have reasonable proposals selected;*

*(iii)* ~~that~~ the sale or exchange is not in the best interests of the state ~~or system~~; *or*

*(iv) the system has not complied with the requirements of subsections (6)(a)(ii) through (6)(a)(iv).*

(7) After obtaining written concurrence of the board of land commissioners required in subsection (6), the board of regents shall convey the land by deed, executed by the presiding officer of the board or other person designated by the board, without covenants of warranty."

Approved April 29, 1997

HeinOnline -- 1997 vol. II 2090 1997

# CHAPTER NO. 426

[HB 435]

AN ACT REQUIRING THAT, ABSENT A CONFLICTING LOCAL ORDINANCE, CERTAIN INFORMATION BE PROVIDED BY PET SHOPS, HUMANE SOCIETIES, AND PUBLICLY OPERATED ANIMAL SHELTERS AND POUNDS WHEN MAKING A CAT OR DOG AVAILABLE FOR SALE OR ADOPTION; PROVIDING FOR THE RETENTION AND CONFIDENTIALITY OF CERTAIN INFORMATION; REQUIRING THE SPAYING OR NEUTERING OF CERTAIN CATS AND DOGS THAT ARE ADOPTED FROM OR SOLD BY A HUMANE SOCIETY OR PUBLICLY OPERATED ANIMAL SHELTER OR POUND; PROVIDING A PENALTY FOR FAILURE TO SPAY OR NEUTER; ALLOWING COOPERATIVE AGREEMENTS TO PROVIDE SPAYING OR NEUTERING SERVICES; AND PROVIDING AN APPLICABILITY PROVISION.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Sale or adoption of cat or dog — information required.** (1) The following information must be provided by any pet shop operator, humane society, or publicly operated animal shelter or pound that makes a cat or dog available for sale or adoption:

(a) age, sex, and weight of the animal;

(b) breed of the animal;

(c) a record of vaccinations and veterinary care and treatment the animal has received, including, if available, the manufacturer's name and the serial number of the vaccination used; and

(d) a record of surgical sterilization of the animal or notice of the lack of surgical sterilization, as applicable.

(2) The following information must be retained for a period of 2 years and remains confidential unless requested pursuant to an enforcement action or legal proceeding:

(a) if known, the name and address of the breeder of the animal;

(b) if known, the name and address of any person who owned or harbored the animal between its birth and the time of sale or adoption; and

(c) a copy of the import permit and health certificate pertaining to an animal imported from outside Montana.

**Section 2. Adoption of cat or dog from humane society, animal shelter, or pound — spay or neuter required — deposit — penalty — exceptions.** (1) Except as provided in subsections (6) and (7), a humane society or publicly oporated animal shelter or pound may not offer for adoption, sale, or trade any cat or dog that has not been redeemed by the owner unless:

(a) the animal has been spayed or neutered; or

HeinOnline -- 1997 vol. II 2091 1997

(b) the person to whom the animal is released agrees in writing to have the animal spayed or neutered and a deposit for spaying or neutering the animal has been paid. The deposit must be in an amount determined by the humane society or publicly operated animal shelter or pound to be comparable to the lowest fee for spaying or neutering that is charged by veterinarians in the locale.

(2) Upon payment of the deposit required in subsection (1), the person who is adopting the animal must receive a certificate for spaying or neutering, to be presented to a licensed veterinarian, who shall complete the certificate when the spaying or neutering is done. Upon receipt of the completed certificate verifying that the animal has been spayed or neutered, the humane society or publicly operated animal shelter or pound shall forward the deposit to the veterinarian who performed the procedure.

(3) The deposit must be forfeited if the spaying or neutering is not done:

(a) within 30 days if the cat or dog is more than 6 months old at the time of adoption; or

(b) by the time the animal reaches the age of 6 months if the animal is less than 6 months old at the time of adoption, or within 30 days of the adoption, whichever is longer.

(4) A deposit forfeited pursuant to subsection (3) may be used only for the following purposes:

(a) a public education program designed to prevent the overpopulation of cats and dogs;

(b) a program to spay or neuter cats and dogs; and

(c) costs incurred in the enforcement of this section, including a follow-up program to ensure that animals adopted from or sold or traded by the humane society or publicly operated animal shelter or pound are spayed or neutered.

(5) Failure to fulfill the terms of an agreement entered into pursuant to subsection (1)(b) may, at the discretion of the county attorney, result in the filing of a misdemeanor charge punisbable by a fine of not more than $500.

(6) The provisions of this section do not apply to an animal for which a licensed veterinarian verifies in writing that spaying or neutering would be injurious to the animal's health.

(7) The provisions of this section do not apply when a humane society or publicly operated animal shelter or pound, at its discretion, chooses to accept an adoption fee of not less than $50 from a person who wishes to adopt an animal for breeding purposes.

**Section 3. Additional spaying or neutering requirements not precluded — cooperative agreements.** (1) Humane societies and publicly operated animal shelters and pounds may enter into cooperative agreements with each other and with licensed veterinarians in carrying out the provisions of [section 2].

HeinOnline -- 1997 vol. II 2092 1997

(2) [Section 2] does not preclude humane societies and publicly operated animal shelters and pounds from engaging in activities set forth in their charters as long as the activities are not inconsistent with [section 2].

(3) Humane societies and publicly operated animal shelters and pounds may establish spaying and neutering requirements in addition to the requirements set out in [section 2], such as:

(a) shorter timeframes for compliance with spaying and neutering requirements;

(b) arranging an appointment for spaying or neutering with a licensed veterinarian; and

(c) delivering the animal to a licensed veterinarian for surgery prior to releasing the animal to the adopting person.

**Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 7, chapter 23, and the provisions of Title 7, chapter 23, apply to [sections 1 through 3].

**Section 5. Applicability.** [This act] applies only if a local government has not enacted an ordinance that conflicts with the provisions of [this act].

Approved April 29, 1997

# CHAPTER NO. 427

[HB 523]

AN ACT CLARIFYING THE PENALTIES FOR A VIOLATION OF SCHOOL TRANSPORTATION LAW OR BOARD OF PUBLIC EDUCATION TRANSPORTATION POLICY; AUTHORIZING THE TRUSTEES OF A DISTRICT TO INFORM THE COUNTY TRANSPORTATION COMMITTEE OF A DISTRICT BELIEVED TO BE OPERATING AN UNAPPROVED ROUTE OUTSIDE ITS DISTRICT BOUNDARIES; AND AMENDING SECTIONS 20-10-104 AND 20-10-126, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-10-104, MCA, is amended to read:

**"20-10-104. Penalty for violating law or rules.** (1) Every district, its trustees and employees, and every person under a transportation contract with a district ~~shall be~~ *is* subject to the policies prescribed by the board of public education and the rules prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, ~~such~~ *the* district shall forfeit any reimbursement otherwise payable under 20-10-145 and 20-10-146 for *any* bus miles actually traveled during that fiscal year in violation of ~~such~~ *the* law or policies.

*(2) A district knowingly violates a transportation law or board of public education policy when it operates a bus route in a manner that does not comply with state law or board policy related to student safety. As provided in 20-10-141(1), a district that operates a bus route not approved by its county*

HeinOnline -- 1997 vol. II 2093 1997

*transportation committee may not receive transportation reimbursement on that route, but if the route is operated in compliance with transportation law, the operation of the routes is not a violation that will result in the forfeiture of all transportation aid to the district.*

*(3)* The county superintendent shall suspend all ~~such~~ reimbursements payable to the district *under 20-10-145 and 20-10-146 for all miles being traveled, including both miles being traveled in compliance with the transportation laws or policies and miles being traveled in violation of the transportation laws or policies,* until the district corrects the violation. When the district corrects the violation, the county superintendent shall ~~resume paying reimbursements to the district~~ *pay all reimbursements otherwise payable under 20-10-145 and 20-10-146, including amounts suspended during the violation*, but the amount forfeited *under subsection (1)* may not be paid to the district.

~~(2)~~*(4)* When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay ~~him~~ *the person* for any bus miles traveled during the contract year in violation of ~~such~~ law or policies. Upon discovering ~~such~~ a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within 10 days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that ~~such~~ *the* violation jeopardizes the safety of pupils."

**Section 2.** Section 20-10-126, MCA, is amended to read:

**"20-10-126. Establishment of transportation service areas.** (1) The territory of a transportation service area is the territory of a school district unless the county transportation committee approves alternative boundaries after determining that the adjustments will improve pupil safety, transportation efficiency, or the cost-effectiveness of the pupil transportation system of the county.

(2) A district may not extend a bus route to transport pupils from outside its transportation service area unless the district has a written agreement with the district that the county transportation committee has assigned to transport the pupils.

(3) When the trustees of two or more districts enter into a written agreement to authorize transportation services among transportation service areas, a copy of the agreement must be submitted to the county superintendent and approved by the county transportation committee. Upon approval by the committee, the transportation agreements are valid for the current school year.

(4) The trustees of any district who object to a particular bus route or transportation service area to which the district has been assigned may request a transfer to another bus route or transportation service area. The county transportation committee may transfer the territory of the district to an adjacent transportation service area or approved bus route with the consent of the district providing transportation in the adjacent transportation service area.

HeinOnline -- 1997 vol. II 2094 1997

*(5) The trustees of any district who object to a bus route operated by another district may bring that route to the attention of the county transportation committee. If the committee agrees that the district is operating a portion of its route as an unapproved route outside of its district boundaries, the committee shall file with the district a written warning concerning the unapproved route, and if the district, in spite of the warning, continues to operate the route, the committee may withdraw its approval of the entire route.*

~~(5)~~*(6)* If the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of the district be transferred for pupil transportation purposes to the adjacent transportation service area. If a satisfactory petition is presented to the trustees, the trustees shall call an election on the proposition in accordance with 20-20-201 for the next ensuing regular school election day. The election must be conducted in accordance with the school election laws. If a majority of those voting at the election approve the transfer, the transfer is effective on July 1 of the ensuing school fiscal year.

~~(6)~~*(7)* Unless a transfer of territory from one transportation service area or approved hus route to another area or hus route is approved hy the superintendent of puhlic instruction and the county transportation committee, the state transportation reimhursement is limited to the reimbursement amount for pupil transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils."

Approved April 29, 1997

# CHAPTER NO. 428

[HB 568]

AN ACT ESTABLISHING A LEWIS AND CLARK BICENTENNIAL COMMISSION; SPECIFYING ITS MEMBERSHIP AND DUTIES; ESTABLISHING AN ACCOUNT; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Lewis and Clark bicentennial commission — membership — purpose — account.** (1) There is a Lewis and Clark bicentennial commission.

(2) The commission consists of 12 members, as follows:

(a) nine members who must be appointed hy the governor, at least three of whom must be enrolled memhers of a Montana Indian tribe and live on a Montana Indian reservation, who shall serve 3-year staggored terms, who shall represent Montana's different geographical areas, and who must have an interest in the history of the Lewis and Clark expedition;

(h) the director of the Montana historical society, estahlished in 22-3-101;

(c) the administrator of the parks division within the department of fish, wildlife, and parks, established in 2-15-3401; and

(d) the director of travel Montana.

(3) The commission is responsible for coordinating and promoting observance of Montana's bicentennial commemoration of the Lewis and Clark expedition and the importance of the roles played by Montana's Indian people to the Lewis and Clark expedition. The commission may:

(a) cooperate with national, regional, statewide, and local events promoting the bicentennial;

(b) plan and coordinate or assist in planning and coordinating bicentennial events;

(c) engage in fundraising activities, including revenue-earning enterprises and the solicitation of grants, gifts, and donations;

(d) promote public education concerning the Lewis and Clark expedition and the history and culture of Montana's Indian people at the time of the Lewis and Clark expedition; and

(e) perform other related duties.

(4) There is a Montana Lewis and Clark bicentennial account. Money in the account may include money from revenue-earning enterprises, grants, gifts, or donations, money appropriated by the legislature, and interest earned on the account. Account funds must be used for the purposes described in this section.

(5) The commission is attached to the Montana historical society for administrative purposes only as provided in 2-15-121.

**Section 2. Termination.** [This act] terminates December 31, 2007.

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 1].

Approved April 29, 1997

# CHAPTER NO. 429

[HB 572]

AN ACT PROVIDING FOR SEVERAL LIABILITY FOR MOST TORT ACTIONS; LIMITING JOINT AND SEVERAL LIABILITY TO CERTAIN SPECIFIED TORT ACTIONS; PROVIDING FOR THE EFFECT OF A RELEASE OR OF A COVENANT NOT TO SUE; AMENDING SECTIONS 25-9-411, 27-1-702, 27-1-703, 27-1-719, 28-1-301, AND 28-11-311, MCA; AND PROVIDING CONTINGENT EFFECTIVE DATES AND AN APPLICABILITY DATE.

HeinOnline -- 1997 vol. II 2096 1997

WHEREAS, efforts of the Legislature to amend the comparative negligence statute, which is premised on a modified joint and several liability scheme, have repeatedly been struck down by the Montana Supreme Court; and

WHEREAS, the Montana Supreme Court rulings prohibiting the consideration of fault attributable to nonparties impair the effectiveness of the current modified joint and several liability system in Montana; and

WHEREAS, the Legislature intends that the policy of the state should be a system of comparative fault in which persons are held responsible only to the extent to which they cause or contribute to the harm; and

WHEREAS, the current system of joint and several liability, which apportions all liability only among parties to the action, fails to apportion liability among all tortfeasors according to their equitable share of fault; and

WHEREAS, the Legislature recognizes that public policy favors fair settlements that accurately reflect the liability of settled or released parties; and

WHEREAS, the Legislature is concerned with the present inequitable results of solvent defendants having to pay for the liability of insolvent, immune, or settled parties; and

WHEREAS, the present system of joint and several liability for all tort actions does not reflect the state's policy of liability in proportion to fault; and

WHEREAS, the Legislature recognizes that joint and several liability should be retained for certain situations; and

WHEREAS, at least ten other states have abrogated the doctrine of joint and several liability, except for specific situations; and

WHEREAS, the Legislature has the power to alter tort causes of action to promote legitimate state interests.

THEREFORE, the Legislature declares that the doctrine of joint and several liability is abolished, except for specific causes of action, and is replaced with a comparative fault system utilizing the principles of several liability.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Several liability — purpose — pleading — determination — nonparties.** (1) The purpose of 27-1-703 and this section is to substitute several liability for the former law providing for joint and several liability, except for certain actions. The purpose of several liability is to allocate responsibility based on fault to all parties to an occurrence, rather than only to the parties to the litigation, and to ensure that the liability of each party to an occurrence is allocated in direct proportion to that party's fault.

(2) In an action brought as a result of the death of a person or injury to a person or property, the liability of a defendant is several only and is not joint, except as provided in subsection (7). A defendant is liable only for that percentage of damages that is equal to the ratio of defendant's fault to the total fault attributed to all persons involved in the occurrence from which the action arose, including claimants, defendants, and persons not party to the action. A separate judgment must be entered against the defendant for that amount.

HeinOnline -- 1997 vol. II 2097 1997

(3) In determining the percentage of fault of persons who are parties to the action, the trier of fact shall consider the fault of persons not a party to the action, based upon evidence of those persons' fault, that is admissible in evidence. Assessment of fault against a nonparty does not subject the nonparty to liability in the action or any other action and may not be introduced as evidence of liability in any other action.

(4) The percentage of fault attributable to parties to the action may total less than 100% if the trier of fact finds that fault contributing to cause the claimant's loss is attributable to other persons.

(5) The jury shall return a special verdict, or the judge shall make special findings in the absence of a jury, determining the percentage of fault attributable to each party and determining the total amount of damages sustained by the claimant.

(6) A defendant shall affirmatively plead comparative fault and identify in the answer or within a reasonable amount of time after filing the answer as determined by the court, each person who the defendant alleges is at fault with respect to the occurrence that is the basis for the action. A defendant who pleads the comparative fault of another has the burden of proving the fault.

(7) Section 27-1-703 applies and this section does not apply to an action arising from an act or omission that violates a state environmental law relating to hazardous or deleterious substances.

(8) Parties whose liability arises from acts or omissions in concert or from acts or omissions arising from an agency or employment relationship must be apportioned a single percentage of fault and must be treated as a single party for purposes of this section.

(9) For purposes of this section, "fault" means an act or omission that proximately caused or contributed to injury or damages sustained by a person seeking recovery and includes negligence in any of its degrees, contributory negligence, strict liability, and products liability.

**Section 2. Effect of a release or covenant not to sue.** A release or covenant not to sue given to one of two or more persons potentially liable in tort for the same injury, death, damage, or loss:

(1) does not discharge any of the other persons from liability for the person's several pro rata share of liability unless the terms of the release or covenant provide for a discharge of liability;

(2) reduces the aggregate claim against the other persons to the extent of any percentage of fault found by the trier of fact under [section 1] to be attributable to the person to whom the release or covenant was given; and

(3) discharges the person to whom it was given from all liability for contribution.

**Section 3.** Section 25-9-411, MCA, is amended to read:

**"25-9-411. Medical malpractice noneconomic damages limitation.** (1) (a) In a malpractice claim or claims against one or more health care providers based on a single incident of malpractice, an award for past and future damages

for noneconomic loss may not exceed $250,000. All claims for noneconomic loss deriving from injuries to a patient are subject to an award not to exceed $250,000. This limitation applies whether:

(i) based on the same act or a series of acts that allegedly caused the injury, injuries, death, or deaths on which the action or actions are based; or

(ii) the act or series of acts were hy one or more health care providers.

(b) If a single incident of malpractice injures multiple, unrelated patients, the limitation on awards contained in subsection (1)(a) applies to each patient and all claims deriving from injuries to that patient.

(2) (a) For purposes of the limitation on awards contained in subsection (1), a claimant has the burden of proving separate injuries, each arising from a different act or series of acts. An award or combination of awards in excess of $250,000 must he reduced to $250,000, after which the court shall make other reductions that are required by law. If a combination of awards for past and future noneconomic loss is reduced in the same action, future noneconomic loss must be reduced first and, if necessary to reach the $250,000 limit, past noneconomic loss must then he reduced. If a combination of awards is reduced to $250,000, a claimant's share of the $250,000 must be the same percentage as the claimant's share of the combined awards hefore reduction.

(b) For each claimant, further reductions must he made in the following order:

(i) first, reductions under 27-1-702; *and*

(ii) ~~second, reductions under 27-1-703; and~~

~~(iii) third~~ *second*, setoffs and credits to which a defendant is entitled.

(3) An award of future damages for noneconomic loss may not be discounted to present value.

(4) The $250,000 limit provided for in subsection (1) may not be disclosed to a jury.

(5) As used in this section, the following definitions apply:

(a) "Claimant" includes but is not limited to:

(i) a person suffering hodily injury;

(ii) a person making a claim as a result of bodily injury to or the death of another;

(iii) a person making a claim on behalf of someone who suffered bodily injury or death;

(iv) the representative of the estate of a person who suffered hodily injury or death; or

(v) a person bringing a wrongful death action.

(b) "Health care provider" means a physician, dentist, podiatrist, optometrist, chiropractor, physical therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50, chapter 5.

(c) "Malpractice claim" means a claim based on a negligent act or omission by a health care provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful death.

(d) "Noneconomic loss" means subjective, nonmonetary loss, including but not limited to:

(i) physical and mental pain or suffering;

(ii) emotional distress;

(iii) inconvenience;

(iv) subjective, nonmonetary loss arising from physical impairment or disfigurement;

(v) loss of society, companionship, and consortium, other than household services;

(vi) injury to reputation; and

(vii) humiliation.

(e) "Patient" means a person who receives services from a health care provider."

**Section 4.** Section 27-1-702, MCA, is amended to read:

"**27-1-702. Comparative ~~negligence~~ *fault* — extent to which contributory ~~negligence~~ *fault* hars recovery in action for damages.** Contributory ~~negligence shall~~ *fault does* not bar recovery in an action by ~~any~~ *a* person or ~~his~~ *a person's* legal representative to recover *tort* damages for ~~negligence resulting in~~ death *of a person* or injury to *a* person or property ~~if such negligence was not greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought~~ *if the contributory fault was not greater than the fault of the defendant or the combined fault of all defendants and nonparties*, but ~~any~~ damages allowed ~~shall~~ *must* be diminished in ~~the~~ proportion to the ~~amount of negligence~~ *percentage of fault* attributable to the person recovering."

**Section 5.** Section 27-1-703, MCA, is amended to read:

"**27-1-703. Multiple defendants — determination of liability.** ~~(1) Except as provided in subsections (2) and (3), whenever the negligence of a party in any action is an issue, each~~ *Each* party against whom recovery may he allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

~~(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and~~

~~is responsible only for the amount of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the amount attributable to the claimant.~~

~~(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.~~

~~(4) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third party defendants. The liability of nonparties, including persons released from liability by the claimant and persons immune from liability to the claimant, must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. Contribution must be proportional to the liability of the parties against whom recovery is allowed. Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.~~

~~(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.~~

~~(6) (a) In an action based on negligence, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a nonparty, which may be referred to as a nonparty defense.~~

~~(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of nonparties, including persons released from liability by the claimant and persons immune from liability to the claimant, if a nonparty defense is properly asserted in accordance with this subsection (6). A finding of negligence of a nonparty is not a presumptive or conclusive finding as to that nonparty for purposes of a prior or subsequent action involving that nonparty.~~

~~(c) The burden of proof as to a nonparty's liability is on the defendant or defendants who affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to the injury of the claimant or alter other proof requirements.~~

~~(d) A nonparty defense must be affirmatively pleaded as a part of the answer. A defendant who gains actual knowledge of a nonparty defense after the filing of that defendant's answer may plead the defense with reasonable promptness, as determined by the trial court, in a manner that is consistent with:~~

~~(i) giving the defendant a reasonable opportunity to discover the existence of a nonparty defense;~~

~~(ii) giving the claimant a reasonable opportunity to defend against a nonparty defense; and~~

~~(iii) giving the claimant a reasonable opportunity, if appropriate, to add the nonparty as an additional defendant to the action before the expiration of the period of limitation applicable to the claim. However, this subsection (iii) does not extend the period of limitation or revive the action if the period of limitation has expired.~~

~~(c) If a defendant asserts a nonparty defense, the defendant shall notify each nonparty who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each nonparty at the nonparty's last known address by certified mail, return receipt requested.~~"

**Section 6.** Section 27-1-719, MCA, is amended to read:

**"27-1-719. Liability of seller of product for physical harm to user or consumer.** (1) As used in this section, "seller" means a manufacturer, wholesaler, or retailer.

(2) A person who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to ~~his~~ *the user's or consumer's* property if:

(a) the seller is engaged in the business of selling such a product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(3) The provisions of subsection (2) apply even if:

(a) the seller exercised all possible care in the preparation and sale of ~~his~~ *the* product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(4) Subsection (2)(b) does not apply to a claim for relief based upon improper product design.

(5) ~~Except as provided in this subsection, contributory negligence is not~~ *Contributory fault is* a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as a defendant in an action based on strict liability in tort for damages to *a* person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it.

(b) The product was unreasonably misused by the user or consumer and ~~such~~ *the* misuse caused or contributed to the injury.

(6) The affirmative defenses referred to in subsection (5) mitigate or bar recovery and must be applied in accordance with the principles of comparative ~~negligence~~ *fault* set forth in 27-1-702 *and [section 1].*"

**Section 7.** Section 28-1-301, MCA, is amended to read:

"**28-1-301. Types of obligations involving several persons.** Except as provided in 27-1-703 *and [section 1]*, an obligation imposed upon several persons or a right created in favor of several persons may be:

(1) joint;

(2) several; or

(3) joint and several."

**Section 8.** Section 28-11-311, MCA, is amended to read:

"**28-11-311. Person indemnifying liable jointly and severally.** Except as *may be otherwise* provided in 27-1-703 *and [section 1]*, ~~one~~ *a person* who indemnifies another *person* against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by ~~such~~ *the* act."

**Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 10. Applicability.** [This act] applies to causes of action that arise after [the effective date of this act].

**Section 11. Contingent effective dates.** (1) [This act] is effective on May 11, 1997, if ___Bill No.___ [LC1155] is not passed and approved.

(2) If ___Bill No.___ [LC1155] is passed and approved and is invalidated or is found to be unconstitutional by the Montana supreme court, [this act] is effective on the day after the effective date of the invalidation or of the finding of unconstitutionality.

Approved April 29, 1997

HeinOnline -- 1997 vol. II 2103 1997

# CHAPTER NO. 430

[SB 71]

AN ACT GENERALLY REVISING THE DUTIES OF ELECTED SCHOOL OFFICIALS; PROVIDING SCHOOL DISTRICT TRUSTEES WITH GREATER FLEXIBILITY IN DETERMINING PUPIL-INSTRUCTION TIME; ELIMINATING THE NEED FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO APPROVE KINDERGARTEN VARIANCES FOR REQUIRED HOURS OF INSTRUCTION, PUPIL-INSTRUCTION-RELATED DAYS, AND ADULT EDUCATION PROGRAMS OPERATED BY A SCHOOL DISTRICT; AUTHORIZING A BOARD OF TRUSTEES TO DECLARE AN EMERGENCY IN A DISTRICT; CLARIFYING THE REQUIREMENTS FOR RESCHEDULING INSTRUCTION TIME CANCELED BECAUSE OF AN UNFORESEEN EMERGENCY; REMOVING THE REQUIREMENT FOR A COUNTY SUPERINTENDENT OR THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO DETERMINE THAT A REASONABLE EFFORT HAS BEEN MADE TO MAKE UP SCHOOL DAYS LOST BECAUSE OF AN EMERGENCY; AMENDING SECTIONS 20-1-301, 20-1-302, 20-1-304, 20-3-106, 20-6-209, 20-7-705, 20-9-311, 20-9-801, 20-9-802, AND 20-9-806, MCA; REPEALING SECTIONS 20-9-803 AND 20-9-804, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-1-301, MCA, is amended to read:

"**20-1-301. School fiscal year.** *(1)* The school fiscal year ~~shall~~ *must* begin on July 1 and end on June 30. At least 180 school days of pupil instruction ~~shall~~ *and the minimum aggregate hours defined in subsection (2) must* be conducted during each school fiscal year, except that 175 days *and 1,050 aggregate hours* of pupil instruction for graduating seniors may be sufficient, as provided in 20-9-313~~, or unless a variance for kindergarten has been granted under 20-1-302 or a district is granted a variance under the provisions of chapter 9, part 8, of this title~~, *or a minimum of 90 days and 360 aggregate hours of pupil instruction must be conducted for a kindergarten program, as provided in 20-7-117.*

*(2) The minimum aggregate hours required by grade are:*

*(a) 720 hours for grades 1 through 3; and*

*(b) 1,080 hours for grades 4 through 12.*

*(3) To calculate the number of school days of pupil instruction, a school district shall:*

*(a) determine the aggregate hours of pupil instruction by grade level;*

*(b) divide the aggregate hours of pupil instruction for each grade level by the minimum hours a day for that grade level provided in 20-1-302; and*

*(c) round the result down to the nearest whole number.*

*(4)* For any elementary or high school district that fails to provide for at least 180 school days of pupil instruction *and the minimum aggregate hours, as defined*

HeinOnline -- 1997 vol. II 2104 1997

*in subsection (2)*, the superintendent of public instruction shall reduce the county equalization as defined in 20-9-334 and the state equalization as defined in 20-9-343 for the district for that school year by 1/90th for each school day less than 180 school days *as calculated in subsection (3)*."

**Section 2.** Section 20-1-302, MCA, is amended to read:

"**20-1-302. School day and week.** Subject to 20-1-308, a school day of pupil instruction ~~shall~~ *must* be at least 2 hours for kindergartens ~~and all other preschool programs, unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education~~, at least 4 hours for grades 1 through 3, and at least 6 hours for grades 4 through 12. The number of hours in ~~any one~~ *1* school day ~~for grades 4 through 12 may be reduced by 1 hour if the total number of hours in the school week is not less than 30 hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education~~ *may be reduced at the discretion of the trustees if the total number of pupil-instruction hours in the school year is not less than the minimum aggregate hours required in 20-1-301*."

**Section 3.** Section 20-1-304, MCA, is amended to read:

"**20-1-304. Pupil-instruction-related day.** A pupil-instruction-related day is a day of teacher activities devoted to improving the quality of instruction. The activities may include but are not limited to inservice training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of 7 pupil-instruction-related days may be conducted during a school year, with a minimum of 3 of the days for instructional and professional development meetings or other appropriate inservice training, ~~provided that~~ *if* the days are ~~approved by the superintendent of public instruction~~ *planned* in accordance with the policy adopted by the board of public education. The days may not be included as a part of the required minimum of 180 days *or the required minimum aggregate hours* of pupil instruction."

**Section 4.** Section 20-3-106, MCA, is amended to read:

"**20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs hy a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

HeinOnline -- 1997 vol. II 2105 1997

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district ~~revenues~~ *revenue* in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute BASE aid and special education allowable cost payments in support of the BASE funding program, in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(15) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

~~(16) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;~~

~~(17)~~*(16)* request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

~~(18)~~*(17)* authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

~~(18)~~*(18)* prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

~~(20)~~*(19)* approve or disapprove the conduct of school on a Saturday ~~or on pupil-instruction-related days~~ in accordance with the provisions of 20-1-303 ~~and 20-1-304~~;

~~(21)~~*(20)* recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend

accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

~~(22)~~*(21)* collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

~~(23)~~*(22)* establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

~~(24)~~*(23)* license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

~~(23)~~*(24)* as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

~~(23)~~*(25)* supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

~~(27)~~*(26)* administer the traffic education program in accordance with the provisions of 20-7-502;

~~(23)~~*(27)* administer the school food services program in accordance with the provisions of 20-10-201~~, 20-10-202, and~~ *through* 20-10-203;

~~(29)~~*(28)* review school huilding plans and specifications in accordance with the provisions of 20-6-622;

~~(30)~~*(29)* prescribe the method of identification and signals to be used hy school safety patrols in accordance with the provisions of 20-1-408;

~~(31)~~*(30)* provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

~~(32)~~*(31)* administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

~~(33)~~*(32)* perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

**Section 5.** Section 20-6-209, MCA, is amended to read:

**"20-6-209. Elementary district abandonment.** (1) The county superintendent shall declare an elementary district te be abandoned and order tbe attachment of tbe territory of ~~such~~ *the* district to a contiguous district of the county when:

(a) a school has not been operated by a district for at least 180 days under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of days as approved by tlie ~~county superintendent or the superintendent of public instruction~~ *board of trustees* under the provisions of ~~20-9-804~~ *20-9-806*; or

(b) there is an insufficient number of residents who are qualified electors of the district that can ~~and will~~ serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failuro to operate a school for 180 days or a lesser number of days than approved by the ~~county superintendent or the superintendent of public instruction as provided~~ *board of trustees* under the provisions of ~~20-9-804~~ *20-9-806* during the ensuing school fiscal year ~~shall constitute~~ *constitutes* grounds for abandonment of ~~such~~ *the* district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide ~~such~~ *the* notification ~~shall~~ *does* not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a) ~~above~~.

(3) Any abandonment under subsection (1)(a) ~~shall become~~ *becomes* effective on July 1. Any abandonment of an elementary district under subsection (1)(b) ~~shall become~~ *becomes* effective immediately on the date of the abandonment order."

**Seetion 6.** Section 20-7-705, MCA, is amended to read:

**"20-7-705. Adult education fund.** (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district may, whether or not the county high school district is unified with an elementary district under the provisions of 20-6-312, authorize a levy of not more than 2 mills on the district and a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than 3 mills on the district, for the operation of an adult education program ~~when the superintendent of public instruction has approved the educational program to be supported by the levy. The trustees shall obtain the approval of the superintendent of public instruction before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for the approval~~.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

HeinOnline -- 1997 vol. II 2108 1997

(5) When a tax levy for an adult education program ~~that has been approved by the superintendent of public instruction~~ is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and a levy on the district must be made by the county commissioners in accordance with 20-9-142."

**Section 7.** Section 20-9-311, MCA, is amended to read:

**"20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging (ANB) must be computed as follows:

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the nearest school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under ~~20-9-804~~ *20-9-806*, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must be counted as one-half pupil for ANB purposes. ~~If a variance has been granted as provided in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction, but the~~ *The* ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When ~~any~~ *a* pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time

HeinOnline -- 1997 vol. II 2109 1997

pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and ~~no~~ incorporated territory is *not* involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must he considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

(10) For average daily attendance reporting purposes, districts shall provide the superintendent of public instruction with annual reports of school attendance for regularly enrolled students and special education students, using a format determined by the superintendent."

**Section 8.** Section 20-9-801, MCA, is amended to read:

"**20-9-801. Purpose.** This part governs a school district's entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum number of school days *and the minimum aggregate hours by grade* required by ~~law~~ *20-1-301* by reason of one or more unforeseen emergencies. The provisions of this part must be narrowly interpreted."

HeinOnline -- 1997 vol. II 2110 1997

**Section 9.** Section 20-9-802, MCA, is amended to read:

**"20-9-802. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Declaration of emergency" means a declaration ~~of a state of emergency by the governor as authorized by 10-3-302~~ *by a board of trustees that an unforeseen emergency has occurred in the district.*

(2) "Reasonable effort" means the rescheduling or extension of the school district's instructional calendar in an effort to attain the minimum number of school days required by law by:

(a) extending the school year ~~1 week~~ *3 days and the equivalent aggregate hours of pupil instruction* beyond the last scheduled day; or

(b) the use of scheduled vacation days.

(3) "School day" means the school day defined in 20-1-302.

(4) "Unforeseen emergency" means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or ~~any~~ *a* combination of the foregoing that acts as a principal cause for a school district's inability to conduct ~~one~~ *1* or more scheduled school days."

**Section 10.** Section 20-9-806, MCA, is amended to read:

**"20-9-806. School closure by declaration of emergency.** *(1)* If a school is closed by reason of ~~a declaration of~~ *an unforeseen* emergency ~~by the governor,~~ *that results in a declaration of emergency by the board of trustees, the trustees may later adopt a resolution that a reasonable effort has been made to reschedule the pupil-instruction time lost because of the unforeseen emergency. If the trustees adopt the resolution,* the pupil-instruction ~~days~~ *time* lost during the closure need not be rescheduled to meet the minimum requirement for pupil-instruction days that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

*(2) At least 3 school days or the equivalent aggregate hours must have been made up before the trustees can declare that a reasonable effort has been made."*

**Section 11. Repealer.** Sections 20-9-803 and 20-9-804, MCA, are repealed.

**Section 12. Effective date.** [This act] is effective July 1, 1997.

Approved April 29, 1997

# CHAPTER NO. 431

[SB 85]

AN ACT GENERALLY REVISING THE LAWS PERTAINING TO MOTOR VEHICLE EQUIPMENT; REVISING THE DEFINITION OF "QUADRICYCLE"; DEFINING "PUBLIC SAFETY WORKER" FOR PURPOSES OF TRAFFIC CONTROL AT AN INCIDENT; REQUIRING EQUIPMENT TO BE MAINTAINED IN PROPER WORKING ORDER;

HeinOnline -- 1997 vol. II 2111 1997

PROHIBITING CERTAIN TYPES OF LIGHTING ON MOTOR VEHICLES; SPECIFYING REQUIREMENTS FOR HEADLAMPS, TAILLAMPS, AND OTHER LIGHTING DEVICES; REVISING VISIBILITY DISTANCE REQUIREMENTS FOR LIGHTING ON CERTAIN VEHICLES; REVISING REQUIREMENTS FOR PROJECTING LOADS; CLARIFYING THE DEFINITIONS OF "SPOT LAMPS", "FOG LAMPS", AND "AUXILIARY LAMPS"; REVISING REQUIREMENTS FOR BRAKING SYSTEMS; REVISING PERFORMANCE STANDARDS FOR BRAKING SYSTEMS; CLARIFYING USE OF LIGHTING ON EMERGENCY VEHICLES; REQUIRING SAFETY GEAR FOR AN OPERATOR OF A VEHICLE WITH NO WINDSHIELD; REVISING REQUIREMENTS FOR SEATBELTS; REVISING CERTAIN REQUIREMENTS FOR LOGGING TRUCKS; REQUIRING TOW TRUCKS TO PROVIDE REAR LIGHTS FOR TOWED VEHICLES DURING ALL HOURS OF THE DAY; PROVIDING PENALTIES FOR A MOTORCYCLE OPERATOR WHO CARRIES A CHILD WHO IS NOT WEARING A HELMET; REVISING THE LAWS PERTAINING TO CHILD SAFETY RESTRAINT SYSTEMS; INCREASING THE PENALTY FOR FAILING TO HAVE A REQUIRED CHILD SAFETY RESTRAINT IN A VEHICLE; REQUIRING BUMPERS ON CERTAIN MOTOR VEHICLES; ELIMINATING THE USE OF ALTERNATE ROAD-LIGHTING EQUIPMENT; ELIMINATING DEPARTMENT SPECIFICATIONS FOR SEATBELTS; DEFINING "STREET ROD" AND EXEMPTING STREET RODS FROM CERTAIN EQUIPMENT RESTRICTIONS; AMENDING SECTIONS 61-1-133, 61-8-105, 61-9-101, 61-9-105, 61-9-109, 61-9-203, 61-9-204, 61-9-206, 61-9-207, 61-9-208, 61-9-209, 61-9-213, 61-9-215, 61-9-216, 61-9-217, 61-9-218, 61-9-220, 61-9-221, 61-9-226, 61-9-227, 61-9-308, 61-9-309, 61-9-310, 61-9-311, 61-9-312, 61-9-401, 61-9-402, 61-9-404, 61-9-405, 61-9-407, 61-9-408, 61-9-409, 61-9-414, 61-9-415, 61-9-416, 61-9-417, 61-9-419, 61-9-420, 61-9-423, AND 61-9-516, MCA; AND REPEALING SECTIONS 61-9-224 AND 61-9-410, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-1-133, MCA, is amended to read:

"**61-1-133. Quadricycle.** *(1)* "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor ~~of less than 300 cubic centimeters~~ capable of producing not more than ~~35~~ *50* horsepower.

*(2)* The term does not include golf carts."

**Section 2.** Section 61-8-105, MCA, is amended to read:

"**61-8-105. Obedience to ~~police~~ *peace* officers, ~~and~~ highway patrol officers, *and public safety workers*.** ~~No~~ *A* person ~~shall~~ *may not* willfully fail or refuse to comply with ~~any~~ *a* lawful order or direction of ~~any police~~ *a peace* officer, ~~or~~ highway patrol officer, *or public safety worker* pertaining to the use of the highways by traffic. *For purposes of this section, "public safety worker" means a person who is authorized to provide assistance at the scene of an incident that requires traffic control and who is either a member of a paid or volunteer fire department, an emergency medical service provider, a member of a search and rescue team, or a civilian accident investigator appointed by a law enforcement agency.*"

HeinOnline -- 1997 vol. II 2112 1997

**Section 3.** Section 61-9-101, MCA, is amended to read:

**"61-9-101. Application — exceptions.** (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except where a different place is specifically referred to in a given section.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, ~~shall~~ *may* not be considered to be the operation of ~~such~~ *the* vehicles on the public roads and highways of this state~~, provided that such~~. *The* crossings ~~are~~ *must be* adequately marked with ~~such~~ warning signs or devices ~~and are subject to~~ relating to stopping before entry~~,~~ and to restoration of any damage, as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.

*(3) If a provision of this chapter conflicts with federal laws or regulations governing motor vehicle equipment standards, the applicable federal law or regulation supersedes."*

**Section 4.** Section 61-9-105, MCA, is amended to read:

**"61-9-105. Obedience to ~~police~~ *peace* officers, ~~and~~ highway patrol officers, *and public safety workers*.** ~~No~~ *A* person ~~shall~~ *may not* willfully fail or refuse to comply with ~~any~~ *a* lawful order or direction of ~~any police~~ *a peace* officer, ~~or~~ highway patrol officer, *or public safety worker* pertaining to the use of the highways by traffic. *For purposes of this section, "public safety worker" means a person who is authorized to provide assistance at the scene of an incident that requires traffic control and who is either a member of a paid or volunteer fire department, an emergency medical service provider, a member of a search and rescue team, or a civilian accident investigator appointed by a law enforcement agency."*

**Section 5.** Section 61-9-109, MCA, is amended to read:

**"61-9-109. Driving vehicle in unsafe condition prohibited — applicability of chapter.** (1) It is a misdemeanor for ~~any~~ *a* person to drive or ~~move or for the owner to cause or knowingly~~ permit to be driven ~~or moved~~ on ~~any~~ *a* highway ~~any~~ *a* vehicle or combination of vehicles ~~which~~ *that:*

*(a)* is in such unsafe condition as to endanger ~~any~~ *a* person~~, or which does not contain those parts or~~*;*

*(b)* is not ~~at all times~~ equipped with ~~such~~ lamps and other equipment ~~in proper condition and adjustment~~ as required in this chapter*;* or

*(c)* ~~which~~ is equipped in ~~any~~ *a* manner in violation of this chapter.~~, or for any~~

*(2) It is a misdemeanor for a* person to ~~do any~~ *perform an* act forbidden or fail to perform ~~any~~ *an* act required under this chapter.

~~(2) Nothing contained in this chapter shall be construed to prohibit the~~ *(3) The* use of additional parts and accessories on ~~any~~ *a* vehicle not inconsistent with the provisions of this chapter *is not prohibited.*

HeinOnline -- 1997 vol. II 2113 1997

~~(3)~~*(4)* The provisions of this chapter ~~with respect to equipment on vehicles shall~~ *do* not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as ~~herein~~ made applicable *in this chapter.*

*(5) All lamps and equipment required by this chapter must be maintained in proper working order and adjustment at all times."*

**Section 6.** Section 61-9-203, MCA, is amended to read:

**"61-9-203. Headlamps on motor vehicles.** (1) ~~Every~~ *A* motor vehicle other than a motorcycle, quadricycle, or motor-driven cycle ~~shall~~ *must* be equipped with at least two headlamps, with at least one on each side of the front of the motor vehicle, ~~which headlamps shall~~ *that* comply with the requirements and limitations set forth in this chapter.

(2) ~~Every~~ *A* motorcycle, quadricycle, ~~and~~ *or* motor-driven cycle ~~shall~~ *must* be equipped with at least one and not more than two headlamps ~~which shall~~ *that* comply with the requirements and limitations of this cbapter. If a motorcycle is registered under 61-3-411 as a collector's item, it need not be equipped with headlamps~~,~~; ~~but~~ *however,* if it is not ~~so~~ equipped *with headlamps,* it may not be operated upon a highway or street from one-half hour after sunset to one-half hour before sunrise or if persons and vehicles are not clearly discernible at a distance of ~~500~~ *500* feet. *A motorcycle may be equipped with a means of modulating the high beam of its headlamps between high and low beam at a rate of 200 to 280 flashes a minute; however, an operator may not modulate the headlamps at that rate during periods when headlamps are required to be lighted by 61-9-201.*

(3) ~~Every~~ *A* headlamp upon ~~every~~ *a* motor vehicle, including ~~every~~ *a* motorcycle, quadricycle, and motor-driven cycle, ~~shall~~ *must* be located at a height, measured from the center of the headlamp, of not more than 54 inches or less than ~~24~~ *22* inches, to be measured as ~~set forth~~ *provided* in 61-9-202(2).

*(4) When headlamps are required to be lighted by 61-9-201, a person may not operate a motor vehicle on a highway with headlamps that are composed of, covered by, or treated with a tinted or colored matcrial, substance, system, or component that obscures the headlamps or diminishes the distance of visibility required by this section.*

*(5) This section does not prohibit the operation or sale of a motor vehicle the headlamps of which are composed of, covered by, or treatcd with a tinted or colored material, substance, system, or component with which the vehicle was sold or could have been equipped for sale when new as standard or optional equipment in compliance with federal statute or regulation governing the sale at the time of manufacture."*

**Scction 7.** Section 61-9-204, MCA, is amended to read:

**"61-9-204. Taillamps.** (1) ~~Every~~ *A* motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle ~~which~~ *that* is being drawn at the end of a ~~train~~ *combination* of vehicles ~~shall~~ *must* be equipped with at least one *properly functioning* taillamp mounted on the rear~~, which~~ *that*~~, when lighted as hereinbefore required, shall emit~~ *emits* a red light plainly visible from a distance of 500 feet to the rear, ~~provided~~ *except* that in the case of a ~~train~~ *combination* of vehicles, only the taillamp on the rearmost vehicle need actually be seen from the

HeinOnline -- 1997 vol. II 2114 1997

distance specified. ~~Further, every such above-mentioned vehicle~~ *The vehicles mentioned in this subsection*, other than a motorcycle, *quadricycle,* motor-driven cycle, ~~quadricycle,~~ or truck tractor, registered in this state and manufactured or assembled after January 1, 1956, ~~shall~~ *must* be equipped with at least two *properly functioning* taillamps mounted on the rear *that*~~, which when lighted as herein required, shall comply with the provisions of this section~~ *emit a red light plainly visible from a distance of 1,000 feet to the rear of the vehicle.*

(2) ~~Every~~ *A* taillamp upon ~~every~~ *a* vehicle ~~shall~~ *must* be located at a height of not more than 72 inches or less than 15 inches.

(3) Either *a* taillamp or a separate lamp ~~shall be so constructed and placed as to~~ *must* illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. ~~Any~~ *A* taillamp or taillamps, together with ~~any~~ *a* separate lamp for illuminating the rear registration plate, ~~shall be so wired as to~~ *must* be lighted whenever the headlamps ~~or auxiliary driving lamps~~ are lighted.

(4) Taillamps are not required on a motorcycle that is registered under 61-3-411 as a collector's item, but ~~such~~ *the* motorcycle may not be operated on a highway or street from one-half hour after sunset to one-half hour before sunrise or when persons and vehicles are not clearly discernible at a distance of 500 feet unless it is equipped with the required taillamps.

*(5) A person may not operate a motor vehicle on a highway with taillamps that are covered by a lens or a plastic cover or with a tinted or colored material, substance, system, or component placed on or in front of rear lamps, taillamps, license plate lamps, or rear lamp combinations that obscures the taillamps or diminishes the distance of visibility required by this section.*

*(6) This section does not prohibit a vehicle manufactured prior to 1960 from being equipped with a taillamp that includes within the red cover a center lens that is blue in color."*

**Section 8.** Section 61-9-206, MCA, is amended to read:

**"61-9-206. Stop lamps — when required.** ~~From and after January 1, 1956, it shall be unlawful for any~~ *(1) A* person ~~to~~ *may not* sell ~~any~~ *a* new motor vehicle~~, including any motorcycle, quadricycle, or motor-driven cycle,~~ in this state or ~~for any person to~~ drive ~~such~~ *a* vehicle on the highways unless it is equipped with at least ~~one~~ *two properly functioning* stop ~~lamp~~ *lamps* ~~meeting the requirements of 61-9-218~~. *A vehicle manufactured before January 1, 1956, and all motorcycles, quadricycles, and motor-driven cycles must be equipped with at least one properly functioning stop lamp.*

*(2) The stop lamp or lamps on the rear of a vehicle must display a red light that is actuated upon application of the service (foot) brake and, in a vehicle manufactured or assembled on or after January 1, 1964, must be visible from a distance of not less than 300 feet to the rear in normal sunlight. In a vehicle manufactured or assembled before January 1, 1964, the stop lamp or lamps must be visible from a distance of not less than 100 feet. The stop lamp may be incorporated with one or more other rear lamps.*

*(3) A stop lamp may not project a glaring light."*

HeinOnline -- 1997 vol. II 2115 1997

**Section 9.** Section 61-9-207, MCA, is amended to read:

**"61-9-207. Application of succeeding sections.** ~~Those sections of this chapter which follow immediately, including 61-9-208 through 61-9-211 and 61-9-213 relating to clearance and marker lamps, reflectors, and stoplights shall~~ *Sections 61-9-208 through 61-9-229* apply as stated in ~~said~~ *those* sections to vehicles of the type ~~therein~~ enumerated *in those sections, namely passenger buses, trucks, truck tractors, and certain trailers, semitrailers, and pole trailers, respectively,* when operated upon ~~any~~ *a* highway. ~~Said~~ *The* vehicles ~~shall~~ *must* be equipped as required and all lamp equipment required ~~shall~~ *must* be lighted at all times mentioned in 61-9-201 except that clearance and side marker lamps need not be lighted on ~~any said~~ *a* vehicle when operated within ~~any~~ *a* municipality ~~where~~ *when* there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of ~~500~~ *1,000* feet."

**Section 10.** Section 61-9-208, MCA, is amended to read:

**"61-9-208. Additional equipment required on certain vehicles.** In addition to other equipment required in this chapter, the following vehicles ~~shall~~ *must* be equipped as ~~herein~~ stated *in this section* under the conditions stated in 61-9-207:

(1) On ~~every~~ *a* bus or truck~~, whatever its size,~~ there ~~shall~~ *must* be on the rear, two reflectors, one at each side~~, and one stoplight~~.

(2) On ~~every~~ *a* bus or truck 80 inches or more in overall width, in addition to the requirements in subsection (1):

(a) on the front, two clearance lamps, one at each side;

(b) on the rear, two clearance lamps, one at each side;

(c) on each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) on each side, two reflectors, one at or near the front and one at or near the rear.

(3) On ~~every~~ *a* truck tractor~~:~~

~~(a)~~, on the front, two clearance lamps, one at each side~~;~~

~~(b) on the rear, one stoplight~~.

(4) On ~~every~~ *a* trailer or semitrailer having a gross weight in excess of 3,000 pounds:

(a) on the front, two clearance lamps, one at each side;

(b) on each side, two side marker lamps, one at or near the front and one at or near the rear;

(c) on each side, two reflectors, one at or near the front and one at or near the rear;

(d) on the rear, two clearance lamps, one at each side, also two reflectors, one at each side~~, and one stoplight~~.

HeinOnline -- 1997 vol. II 2116 1997

(5) On ~~every~~ *a* pole trailer in excess of 3,000 pounds gross weight:

(a) on each side, one side marker lamp and one clearance lamp ~~which~~ *that* may be in combination, to show to the front, side, and rear; *and*

(b) on the rear of the pole trailer or load, two reflectors, one at each side.

(6) On ~~every~~ *a* trailer, semitrailer, or pole trailer ~~weighing~~ *weighing* 3,000 pounds ~~gross~~ or less:

(a) on the front, a steel *safety* chain or cable ~~which shall~~ *that must* be securely fastened to the towing unit with the minimum diameter of any portion of ~~such~~ *the* chains or cables being one-fourth *of an* inch. *A safety chain or cable may not be connected to the ball but must be connected to the hitch or other frame member of the towing vehicle to prevent the drawbar from dropping to the ground if the ball, socket, or coupler fails*;

(b) on the rear, two reflectors *and two stoplights*, one on each side. ~~If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.~~"

**Section 11.** Section 61-9-209, MCA, is amended to read:

**"61-9-209. Color of clearance lamps, side marker lamps, reflectors, and backup lamps.** (1) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle ~~shall~~ *must* display or reflect an amber color.

(2) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle ~~shall~~ *must* display or reflect a red color.

(3) All ligbting devices, ~~and~~ reflectors, *and stoplights* mounted on the rear of ~~any~~ *a* vehicle ~~shall~~ *must* display or reflect a red color, except:

*(a)* the ~~stoplight or other~~ signal ~~device~~ *devices, as defined in 61-9-218, which may be red, amber, or yellow, and except that,*

*(b)* the light illuminating the license plate ~~shall~~ *that must* be *a* white *lamp;* and

*(c)* the light emitted by a backup lamp ~~may~~ *that must* be white~~, amber, or red~~."

**Section 12.** Section 61-9-213, MCA, is amended to read:

**"61-9-213. Lamp or flag on projecting load.** *(1)* Whenever the load upon ~~any~~ *a* vehicle extends to the rear 4 feet or more beyond the ~~bed or body~~ *rear* of ~~such~~ *the* vehicle, ~~there shall~~ *the following lamps and reflectors must* be displayed at the extreme rear end of the load, at the times specified in 61-9-201~~,~~:

*(a)* a red ~~light or lantern~~ *lamp* plainly visible from a distance of at least 500 feet to the sides and *1,000 feet to the* rear *and located to indicate maximum overhang; and*

*(b) a red reflector visible at night at all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of headlamps.*

HeinOnline -- 1997 vol. II 2117 1997

*(2)* The red ~~light or lantern~~ *lights and reflectors* required under this section ~~shall~~ *must* be in addition to the red ~~light~~ *lights* required upon ~~every~~ *a* vehicle. At any other time there ~~shall~~ *must* be displayed at the extreme rear end of ~~such~~ *the* load a red flag or cloth not less than 12 inches square, *marking the extremities of the load, at each point where a lamp or reflector would otherwise be required by this section* ~~and so hung that the entire area is visible to the driver of a vehicle approaching from the rear~~."

**Section 13.** Section 61-9-215, MCA, is amended to read:

**"61-9-215. Lamps on farm tractors, farm equipment, and implements of husbandry.** (1) ~~Every~~ *A* farm tractor and ~~every~~ *a* self-propelled farm equipment unit or implement of husbandry not equipped with an electric lighting system ~~shall~~ *must* at all times mentioned in 61-9-201 be equipped with at least one lamp displaying a white light visible from a distance of not less than 500 feet to the front of ~~such~~ *the* vehicle, ~~and shall also be equipped with~~ at least one lamp displaying a red light visible from a distance of not less than 500 feet to the rear of ~~such~~ *the* vehicle, and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps. The lights required ~~herein shall~~ *in this section must* be positioned so that one lamp showing to the front and one lamp or reflector showing to the rear ~~will indicate~~ *indicates* the ~~furthest~~ *farthest* projection of ~~said~~ *the* tractor, unit, or implement on the side of the road used in passing ~~such~~ *the* vehicle.

(2) ~~Every~~ *A* combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric lighting system ~~shall~~ *or an implement of husbandry being towed by a motor vehicle must* at all times mentioned in 61-9-201 be equipped with the following lamps:

(a) at least one lamp mounted to indicate ~~as nearly as practicable~~ the extreme left projection of ~~said~~ *the* combination and displaying a white light visible from a distance of not less than 500 feet to the front of ~~said~~ *the* combination; and

(b) two lamps each displaying a red light visible from a distance of not less than 500 feet to the rear of ~~said~~ *the* combination, or ~~as an alternative,~~ at least one lamp displaying a red light visible from a distance of not less than 500 feet to the rear ~~thereof~~ *of the combination* and two red reflectors visible from a distance of 100 to 600 feet to the rear ~~thereof~~ *of the combination* when illuminated by the upper beams of headlamps.~~, which said~~ *The* lamps or reflectors ~~shall~~ *must* be mounted ~~in such manner as~~ to indicate ~~as nearly as practicable~~ the extreme left and right rear projections of ~~said~~ *the* towed unit or implement on the highway.

(3) ~~Every~~ *A* farm tractor and ~~every~~ *a* self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system ~~shall~~ *must* at all times mentioned in 61-9-201 be equipped with two ~~single-beam or~~ multiple-beam *or single-beam* headlamps meeting the requirements of ~~61-9-222 or 61-9-220 respectively, or as an alternative, 61-9-224,~~ *61-9-220 or 61-9-222* and two red lamps visible from a distance of not less than 500 feet to the rear, or ~~in the alternative,~~ one red lamp visible from a distance of not less than 500 feet to the rear and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps. ~~Such~~ *The* red lamps or reflectors ~~shall~~ *must* be mounted in the rear of ~~said~~ *the* farm tractor or self-propelled implement of husbandry ~~so as~~ to indicate ~~as nearly as practicable~~ the extreme left and right projections of ~~said~~ *the* vehicle on the highway.

HeinOnline -- 1997 vol. II 2118 1997

(4) ~~Every~~ *A* combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system ~~shall~~ *must* at all times mentioned in 61-9-201 be equipped with the following lamps:

(a) The farm tractor element of ~~every such~~ *the* combination ~~shall~~ *must* be equipped with two single-beam or multiple-beam headlamps meeting the requirements of 61-9-220~~,~~ *or* 61-9-222~~, or 61-9-224~~.

(b) The towed unit of farm equipment or implement of husbandry element of ~~such~~ *the* combination ~~shall~~ *must* be equipped with two red lamps visible from a distance of not less than 500 feet to the rear~~,~~ or ~~as an alternative,~~ one red lamp visible from a distance of not less than 500 feet to the rear and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps.~~, and such~~ *The* red lamps or reflectors ~~shall~~ *must* be located ~~so as~~ to indicate ~~as nearly as practicable~~ the extreme left and right projections of ~~said~~ *the* towed unit or implement on the highway.

(c) ~~Said~~ *The* combination ~~shall~~ *must* also be equipped with a lamp displaying a white or amber light, or ~~any~~ *a* shade of color between white and amber, visible from a distance of not less than 500 feet to the front and a lamp displaying a red light visible from a distance of not less than 500 feet to the rear~~, which said~~. *The* lamp or lamps ~~shall~~ *must* ~~be installed or capable of being positioned so as to~~ indicate to the front and rear the ~~furthest~~ *farthest* projection of ~~said~~ *the* combination on the side of the road used by other vehicles in passing ~~such~~ *the* combination."

**Section 14.** Section 61-9-216, MCA, is amended to read:

**"61-9-216. Lamps on other vehicles and equipment.** ~~Every~~ *A* vehicle, including animal-drawn vehicles and vehicles referred to in 61-9-109~~(3)~~*(4)*, not specifically required by the provisions of this chapter to be equipped with lamps or other lighting devices, ~~shall~~ *must* at all times specified in 61-9-201 be equipped with at least one lamp displaying a white light visible from a distance of not less than ~~500~~ *1,000* feet to the front of ~~said~~ *the* vehicle, and ~~shall also be equipped~~ with two lamps displaying red light visible from a distance of not less than ~~500~~ *1,000* feet to the rear of ~~said~~ *the* vehicle~~, or as an alternative,~~. *The vehicle may have* one lamp displaying a red light visible from a distance of not less than ~~500~~ *1,000* feet to the rear and two red reflectors visible for distances of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps."

**Section 15.** Section 61-9-217, MCA, is amended to read:

**"61-9-217. Spot lamps, *fog lamps,* and auxiliary lamps.** (1) ~~Any~~ *A* motor vehicle may *not* be equipped with ~~not to exceed~~ *more than* two spot lamps and ~~every~~ *a* lighted spot lamp ~~shall~~ *must* be turned off upon approaching another moving vehicle from either direction.

(2) ~~Any~~ *A* motor vehicle may *not* be equipped with ~~not to exceed~~ *more than* two fog lamps *that provide a low, wide-angle light pattern to increase short-range visibility. Fog lamps must be* mounted on the front at a height not ~~less than 12 inches or~~ more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle ~~shall~~ at a distance of 25 feet ahead ~~project~~ *projects* higher than a level of 4 inches below the level of the

HeinOnline -- 1997 vol. II 2119 1997

center of the lamp from which it comes. Lighted fog lamps meeting the ~~above~~ requirements *of this subsection* may be used with lower headlamp beams as specified in 61-9-220(2). *A fog lamp may not be used as a substitute for headlamps.*

~~(3) Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than 24 inches or more than 42 inches above the level surface upon which the vehicle stands. The provisions of 61-9-220 shall apply to any combination of headlamps and auxiliary passing lamps.~~

~~(4)~~*(3)* ~~Any~~ *A* motor vehicle may *not* be equipped with ~~not to exceed~~ *more than* two auxiliary driving lamps *that produce a long-range, pencil-shaped light pattern and that are used to supplement the upper beams of headlamps. Auxiliary driving lamps must be* mounted on the front at a height not less than 16 inches or more than 42 inches above the level surface upon which the vehicle stands. The provisions of 61-9-220 ~~shall~~ apply to ~~any~~ *a* combination of headlamps and auxiliary driving lamps. *An auxiliary driving lamp may not be used as a substitute for headlamps or lighted at any time the headlamps are required to be on in the low-beam position.*

*(4) An auxiliary off-road lamp mounted more than 42 inches above the level surface upon which the vehicle stands may not be lighted while the vehicle is operated or parked on a highway."*

**Section 16.** Section 61-9-218, MCA, is amended to read:

**"61-9-218. Signal lamps and signal devices — *when required.*** ~~(1) Any motor vehicle may be equipped and when required under this chapter shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one or more other rear lamps.~~

~~(2)~~*(1)* ~~Any~~ *A* motor vehicle *or combination of vehicles* may be equipped and when required under this chapter ~~shall~~ *must* be equipped with *signal* lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. ~~When lamps are used for such purposes, the~~ *The* lamps showing to the front ~~shall~~ *must* be located on the same level and as widely spaced laterally as practicable. ~~and~~ *Except as provided in subsection (3),* when in use, *the lamps* ~~shall~~ *must* display a white or amber light, or ~~any~~ *a* shade of color between white and amber, visible from a distance of not less than ~~100~~ *300* feet to the front in normal sunlight~~,~~. ~~and the~~ *The* lamps showing to the rear ~~shall~~ *must* be located at the same level and as widely spaced laterally as practicable. ~~and~~ *Except as provided in subsection (3),* when in use, *the lamps* ~~shall~~ *must* display a red or amber light, or ~~any~~ *a* shade of color between red and amber, visible from a distance of not less than ~~100~~ *300* feet to the rear in normal sunlight. When actuated ~~such~~ *the* lamps ~~shall~~ *must* indicate tbe intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

*(2) Except as provided in subsection (3), a motor vehicle, trailer, semitrailer, or pole trailer must be equipped with signal lamps meeting the requirements of this section.*

HeinOnline -- 1997 vol. II 2120 1997

*(3) On a motor vehicle manufactured or assembled before January 1, 1964, the signal lamps required by this section must be visible from a distance of not less than 100 feet. Signal lamps are not required on any vehicle manufactured or assembled before January 1, 1953.*

~~(3)~~*(4)* ~~No~~ *A* stop lamp or signal lamp or device ~~shall~~ *may not* project a glaring light."

**Section 17.** Section 61-9-220, MCA, is amended to read:

"**61-9-220. Multiple-beam road-lighting equipment.** Except as ~~hereinafter~~ provided *in this part*, the headlamps or the auxiliary driving ~~lamp or the auxiliary passing lamp~~ *lamps* or combination ~~thereof~~ *of both* on *a* motor ~~vehicles~~ *vehicle* other than *a* ~~motorcycles~~ *motorcycle*, ~~quadricycles~~ *quadricycle*, or motor-driven ~~cycles shall~~ *cycle must* be so arranged that the driver may select ~~at will~~ between distributions of light projected to different elevations. ~~and such lamps may, in addition, be so arranged that such~~ *The* selection can be made automatically, subject to the following limitations:

(1) There ~~shall~~ *must* be an uppermost distribution of light, or composite beam, ~~so aimed and of such intensity as to reveal~~ *capable of revealing* persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(2) There ~~shall~~ *must* be a lowermost distribution of light, or composite beam, ~~so aimed and of sufficient intensity to reveal~~ *capable of revealing* persons and vehicles at a distance of at least 100 feet ahead~~; and on~~. *On* a straight level road under any condition of loading ~~none of~~ the high-intensity portion of the beam ~~shall~~ *may not* be directed to strike the eyes of an approaching driver.

(3) ~~Every new~~ *A* motor vehicle, other than a motorcycle, quadricycle, or motor-driven cycle, ~~registered in this state~~ *manufactured* after January 1, 1956, ~~which~~ *that* has multiple-beam road-lighting equipment ~~shall~~ *must* be equipped with a beam indicator~~, which shall~~ *that must* be lighted whenever the uppermost distribution of light from the headlamps is in use, and ~~shall~~ *may* not otherwise be lighted. ~~Said~~ *The* indicator ~~shall be so designed and located that when lighted it will~~ *must* be readily visible without glare to the driver of the vehicle ~~so equipped~~."

**Section 18.** Section 61-9-221, MCA, is amended to read:

"**61-9-221. Use of multiple-beam road-lighting equipment.** Whenever a motor vehicle is being operated on a roadway or shoulder adjacent ~~thereto~~ *to a roadway* during the times specified in 61-9-201, the driver shall use a distribution of light, or composite beam, ~~directed high enough and of sufficient intensity to reveal~~ *capable of revealing* persons and vehicles at a safe distance in advance of the vehicle, subject to tho following requirements and limitations:

(1) Whenever the driver of a vehicle approaches an oncoming vehicle within 1,000 feet, ~~such~~ *the* driver shall use a distribution of light or composite beam ~~so aimed~~ that *does not project* ~~the glaring rays are not projected~~ into the eyes of the oncoming driver. The lowermost distribution of light specified in 61-9-220(2) ~~shall be deemed to~~ *must* avoid glare at all times, rogardless of road contour and loading.

HeinOnline -- 1997 vol. II 2121 1997

(2) Whenever the driver of a vehicle follows another vehicle within ~~300~~ *500* feet to the rear, ~~such~~ *the* driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in ~~subsection (1) of~~ 61-9-220*(1)*."

**Section 19.** Section 61-9-226, MCA, is amended to read:

"**61-9-226. Special restrictions on lamps.** (1) ~~Any~~ *A* lighted lamp or illuminating device upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps~~, which~~ *that* projects a beam of light of an intensity greater than 300 candlepower ~~shall~~ *must* be so directed that ~~no part of~~ the high intensity portion of the beam ~~will~~ *may not* strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(2) ~~No~~ *A* person ~~shall~~ *may not* drive or move ~~any~~ *a* vehicle or equipment upon a highway with ~~any~~ *a* lamp or device ~~thereon~~ displaying a red light visible from ~~directly~~ in front of the center ~~thereof~~ *of the vehicle*. This section ~~shall~~ *does* not apply to ~~any~~ *a* vehicle upon which a red light visible from the front is expressly authorized or required by this code.

(3) Flashing, *blinking, sequential, rotating, or pulsating* lights are prohibited except on ~~an authorized emergency vehicle, school bus, snow removal equipment,~~ *vehicles that are authorized by this chapter to contain the lights* or on ~~any~~ *a* vehicle as a means for indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

*(4) license plate decorative lighting that is not original manufacturer's equipment or undercarriage decorative lighting that rotates, flashes, or oscillates or that displays a color authorized by this chapter for use by police vehicles and authorized emergency vehicles may not be illuminated on a vehicle that is operated upon a highway or street.*"

**Section 20.** Section 61-9-227, MCA, is amended to read:

"**61-9-227. Blinker-type or revolving red light on certain private vehicles — use — identification card.** (1) Firefighters, when authorized by the ~~chief~~ *chiefs* of their respective ~~department~~ *departments*, and search and rescue and volunteer emergency medical personnel, when authorized by the county sheriff, may use a blinker-type or revolving red light *or both* on the front or the top of their privately owned motor vehicles. This light ~~shall~~ *must* be used on emergency duty only *while responding to but not upon returning from a fire or other emergency*.

(2) ~~Any~~ *A* firefighter or search and rescue or volunteer emergency medical personnel displaying the emergency red light on a privately owned motor vehicle shall also carry ~~attached to a convenient location~~ on the vehicle ~~to which the red light is attached~~ an identification card showing the name of the owner of ~~said~~ *the* vehicle, *and* the organization to which ~~he~~ *the firefighter or search and rescue or volunteer emergency medical personnel* belongs, and bearing the signature of the person authorizing the emergency use of ~~said~~ *the* light."

**Section 21.** Section 61-9-308, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2122 1997

**"61-9-308. Two means of emergency brake operation.** (1) ~~After January 1, 1966, every~~ *A* towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, ~~shall~~ *must* be equipped with two means for emergency application of the trailer brakes. One of these means ~~shall~~ *must* apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure ~~which shall~~ *that may not* be ~~not~~ lower than 20 pounds per square inch or higher than 45 pounds per square inch. The other means ~~shall~~ *must* be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation ~~shall~~ *must* be clearly indicated. ~~In no instance may the~~ *The* manual means *may not* be ~~so~~ arranged ~~as to permit its use~~ to prevent operation of the automatic means. The automatic and the manual means required by this section may be~~, but are not required to be,~~ separate.

(2) ~~After January 1, 1966, every~~ *A* towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, ~~shall~~ *must* have, in addition to the single control device required by 61-9-309, a second control device ~~which~~ *that* can be used to operate the brakes on towed vehicles in emergencies. The second control ~~shall~~ *must* be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system ~~be~~ *is* so arranged that failure of the pressure upon which the second control depends ~~will cause~~ *causes* the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking."

**Section 22.** Section 61-9-309, MCA, is amended to read:

**"61-9-309. Single control to operate all brakes.** ~~After January 1, 1966, every~~ *A* motor vehicle, trailer, semitrailer, ~~and~~ *or* pole trailer, and ~~every~~ *a* combination of ~~such~~ *these* vehicles, except motorcycles, quadricycles, and motor-driven cycles, equipped with brakes ~~shall~~ *must* have ~~the braking system so arranged that~~ one control device *that* can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device ~~to be used~~ to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles ~~are designed to~~ *can* be operated by a single control on the towing vehicle."

**Section 23.** Section 61-9-310, MCA, is amended to read:

**"61-9-310. Reservoir capacity and check valve.** (1) ~~Every~~ *A* bus, truck, or truck tractor with air operated brakes ~~shall~~ *must* be equipped with at least one reservoir sufficient to ~~insure~~ *ensure* that, when fully charged to the maximum pressure as regulated by the air compressor governor cutout setting, a full service brake application ~~may be~~ *is* made without lowering ~~such~~ *the* reservoir pressure by more than 20%. Each reservoir ~~shall~~ *must* be provided with means for readily draining accumulated oil or water.

(2) ~~After January 1, 1966, every~~ *A* truck with three or more axles equipped with vacuum assistor type brakes ~~and every~~ *or a* truck tractor and truck used for towing a vehicle equipped with vacuum brakes ~~shall~~ *must* be equipped with a reserve capacity or a vacuum reservoir sufficient to ~~insure~~ *ensure* that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full

HeinOnline -- 1997 vol. II 2123 1997

service brake application ~~may be~~ *is* made without depleting the vacuum supply by more than 40%.

(3) ~~All~~ *A* motor ~~vehicles~~ *vehicle*, ~~trailers~~ *trailer*, ~~semitrailers~~ *semitrailer*, ~~and~~ *or* pole ~~trailers~~ *trailer*, when equipped with air or vacuum reservoirs or reserve capacity as required hy this section, ~~shall~~ *must* have ~~such~~ reservoirs or reserve capacity ~~so~~ safeguarded hy a check valve or equivalent device that, in the event of failure or leakage in its connection to the source of compressed air or vacuum, *prevents* the stored air or vacuum ~~shall not be~~ *from being* depleted by the leak or failure."

**Section 24.** Section 61-9-311, MCA, is amended to read:

**"61-9-311. Warning devices.** (1) ~~Every~~ *A* bus, truck, or truck tractor using compressed air for the operation of its own brakes or the brakes on ~~any~~ *a* towed vehicle ~~shall be provided with~~ *must have* a warning signal, other than a pressure gauge, readily audible or visible to the driver~~, which~~ *that* will operate at any time the air reservoir pressure of the vehicle is below ~~50% of the air compressor governor cutout pressure~~ *60 pounds per square inch*. In addition, each ~~such~~ vehicle ~~shall~~ *must* be equipped with a pressure gauge visible to the driver~~, which~~ *that* indicates in pounds per square inch the pressure available for braking.

(2) ~~After January 1, 1966, every~~ *A* truck tracter, ~~and~~ truck used for towing a vehicle equipped with vacuum operated brakes, ~~and every~~ *or a* truck with three or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, ~~shall~~ *must* be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver~~, which~~ *that* will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than 8 inches of mercury.

(3) When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be~~, but are not required to be,~~ combined into a single device ~~which~~ *that* will serve both purposes. A gauge or gauges indicating pressure or vacuum ~~shall~~ *is* not ~~be deemed to be~~ an adequate means of satisfying this requirement."

**Section 25.** Section 61-9-312, MCA, is amended to read:

**"61-9-312. Performance ability of brakes.** ~~(1) Every~~ *On a dry, hard, approximately level stretch of highway free from loose material, a* motor vehicle ~~and~~ *or* combination of vehicles, ~~at all times and under all conditions of loading,~~ upon application of the service brake, ~~shall~~ *must* be capable of~~:~~

~~(a) developing a braking force that is not less than the percentage of its gross weight tabulated in subsection (3) for its classification;~~

~~(b) decelerating to a stop from not more than 20 miles per hour at not less than the feet per second per second tabulated in subsection (3) for its classification; and~~

~~(c) stopping from a speed of 20 miles per hour in not more than the distance tabulated in subsection (3) for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.~~

HeinOnline -- 1997 vol. II 2124 1997

~~(2) Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus 1% grade), dry, smooth, hard surface that is free from loose material.~~

~~(3)~~

| ~~Classification of Vehicles~~ | ~~Braking force as a percentage of gross vehicle or combination weight~~ | ~~Deceleration in feet per second per second~~ | ~~Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour~~ |
|---|---|---|---|
| ~~A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating~~ | ~~52.8%~~ | ~~17~~ | ~~25~~ |
| ~~B-1 All motorcycles, quadricycles, and motor-driven cycles~~ | ~~43.5%~~ | ~~14~~ | ~~30~~ |
| ~~B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of than ten thousand (10,000) pounds or less~~ | ~~43.5%~~ | ~~14~~ | ~~30~~ |
| ~~C-1 Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds~~ | ~~43.5%~~ | ~~14~~ | ~~40~~ |
| ~~C-2 Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less~~ | ~~43.5%~~ | ~~14~~ | ~~40~~ |
| ~~C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating~~ | ~~43.5%~~ | ~~14~~ | ~~40~~ |
| ~~C-4 All combinations of vehicles in driveaway-towaway operations~~ | ~~43.5%~~ | ~~14~~ | ~~40~~ |
| ~~D All other vehicles and combinations of vehicles~~ | ~~43.5%~~ | ~~14~~ | ~~50~~ |

*stopping at a speed of 20 miles an hour within the following distances:*

*(1) 25 feet for passenger motor vehicles, except buses and pioneer vehicles;*

*(2) 40 feet for buses, trucks, and tractor trucks;*

*(3) 45 feet for motor vehicles registered or qualified to be registered as pioneer vehicles under 61-3-411(3)(a) when equipped with two-wheel brakes or 25 feet when equipped with four-wheel brakes;*

*(4) 40 feet for all combinations of vehicles; and*

*(5) 30 feet for motorcycles, quadricycles, and motor-driven cycles."*

**Section 26.** Section 61-9-401, MCA, is amended to read:

**"61-9-401. Horns, *security alarms*, and warning devices.** (1) ~~Every~~ *A* motor vehicle when operated upon a highway ~~shall~~ *must* be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet.~~, but no~~ *A* horn or other warning device ~~shall~~ *may not* emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to ~~insure~~ *ensure* safe operation give audible warning with ~~his~~ *the* horn but ~~shall~~ *may* not otherwise use ~~such~~ *the* horn when upon a highway.

(2) ~~No~~ *A* vehicle ~~shall~~ *may not* be equipped with ~~nor shall any~~ *and a* person *may not* use upon a vehicle ~~any~~ *a* siren, whistle, or bell, except as otherwise permitted in this section.

(3) ~~It is permissible but not required that any~~ *A* ~~commercial~~ vehicle *may* be equipped with a ~~theft~~ *security* alarm signal device ~~which is so arranged~~ that ~~it~~ cannot be used by the driver as an ordinary warning signal *while the vehicle is in motion.*

(4) ~~Any~~ *An* authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the department.~~, but such~~ *The* siren ~~shall~~ *may* not be used except when ~~such~~ *the* vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which ~~said latter events~~ *event* the driver of ~~such~~ *the* vehicle shall sound ~~said~~ *the* siren when reasonably necessary to warn pedestrians and other drivers of the *vehicle's* approach ~~thereof~~."

**Section 27.** Section 61-9-402, MCA, is amended to read:

**"61-9-402. Audible and visual signals on police and emergency vehicles and on-scene command vehicles.** (1) A police vehicle ~~shall~~ *must* be equipped with a siren capable of giving an audible signal and may~~, but need not,~~ be equipped with alternately flashing or rotating red or blue lights as specified ~~herein~~ *in this section*. The use of signal equipment *as* described ~~herein shall impose~~ *in this section imposes* upon the drivers of other vehicles the obligation to yield right-of-way ~~and/or~~ *or* to stop and to proceed past ~~such~~ *the* signal or light only with caution and at a speed ~~which~~ *that* is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) ~~Every~~ *An* authorized emergency vehicle ~~shall, in addition to any other equipment and distinctive markings required by this chapter,~~ *must* be equipped:

*(a)* with a siren and an alternately flashing or rotating red light as specified ~~herein.~~ *in this section; and*

HeinOnline -- 1997 vol. II 2126 1997

~~(3) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped~~

*(b)* with signal lamps mounted as high and as widely spaced laterally as practicable~~, which shall be~~ *that are* capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level.~~, and these~~ *These* lights ~~shall~~ *must* have sufficient intensity to be visible at 500 feet in normal sunlight.

~~(4)~~*(3)* ~~Every~~ *A* bus used for the transportation of school children ~~shall, in addition to any other equipment and distinctive markings required by this chapter,~~ *must* be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights ~~shall~~ *must* have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights ~~shall~~ *must* be ~~of a type and located on each bus~~ as prescribed by the ~~state~~ board of *public* education and approved by the department.

~~(5)~~*(4)* ~~Police vehicles~~ *A police vehicle* and *an* authorized emergency ~~vehicles~~ *vehicle* may, and *an* emergency service ~~vehicles shall, in addition to any other equipment and distinctive markings required by this chapter~~ *vehicle must*, be equipped with alternately flashing or rotating amber lights as specified ~~herein~~ *in this section*. The use of signal equipment *as* described ~~herein shall impose~~ *in this section imposes* upon the drivers of other vehicles the obligation to yield right-of-way ~~and/or~~ *or* to stop and to proceed past ~~such~~ *the* signal or light only with caution and at a speed ~~which~~ *that* is no greater than is reasonable and proper under the conditions existing at the point of operation.

~~(5)~~*(5)* Blue, red, and amber lights required in this section ~~shall~~ *must* be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or ~~as an alternative,~~ one rotating light of the specified color, mounted as high as is practicable ~~which shall be~~ *and* ~~both~~ visible *from both the* front and *the* rear. These lights ~~shall~~ *must* have sufficient intensity to be visible at 500 feet in normal sunlight. ~~The use of blue lights as required in subsection (1) of this section shall be restricted to~~ *Except as provided in 61-9-204(6), only* police vehicles as defined in 61-1-118 *may display blue lights, lenses, or globes.*

~~(7)~~*(6)* ~~Every~~ *A* police car and authorized emergency vehicle may be equipped with a ~~portable~~ *flashing* signal lamp that is green in color, *visible from 360 degrees,* and ~~capable of magnetic attachment~~ *attached* to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light ~~shall~~ *must* have sufficient intensity to be visible at 500 feet in normal sunlight. *Only the on-scene command and control vehicle may display green lights, lenses, or globes.*

*(7) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights."*

**Section 28.** Section 61-9-404, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2127 1997

**"61-9-404. Mirrors.** ~~On and after January 1, 1960, every~~ *A* motor vehicle ~~shall~~ *must* be equipped with a mirror ~~so located as to reflect~~ *that reflects* to the driver a view of the highway for a distance of at least 200 feet to the rear of ~~such~~ *the* motor vehicle."

**Section 29.** Section 61-9-405, MCA, is amended to read:

**"61-9-405. Windshields *required, exception* — ~~to be~~ unobstructed and equipped with wipers — window tinting and sunscreening — restrictions — exemptions.** (1) *A motor vehicle, except a motorcycle, quadricycle, motor-driven cycle, or farm tractor, must be equipped with a front windshield meeting the requirements of 61-9-408, unless the driver wears safety glasses, goggles, or face shields at all times during the operation of the motor vehicle.*

*(2)* A person may not drive a motor vehicle with: ~~any~~

*(a) a* sign, poster, *substance,* or other nontransparent material upon the front windshield, side wings, or side or rear windows of the vehicle that *materially* obstructs, *obscures, or impairs* the driver's clear view of the highway or ~~any~~ *an* intersecting highway; *or*

*(b) a windshield that is shattered or in such a defective condition that it materially impairs or obstructs the driver's clear view.*

~~(2)~~*(3)* The windshield on ~~each~~ *a* motor vehicle must be equipped with a device for clearing rain, snow, or other moisture from the windshield.

~~(3) Each windshield wiper upon a motor vehicle~~ *The device* must be maintained in good working order.

(4) A person may not operate a motor vehicle that is required to be registered in this state upon a highway if:

(a) the windshield has ~~any~~ sunscreening material that is not clear and transparent below the AS-1 line or if it has a sunscreening material that is red, yellow, or amber in color above the AS-1 line;

(b) the front side windows have ~~any~~ sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 24%;

(c) the rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 14%, except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(d) the windows of a camper, motor home, pickup cover, slide-in camper, or other motor vehicle do not meet the standards for safety glazing material specified by federal law in 49 CFR 571.205.

(5) As used in 61-9-428, 61-9-429, and this section, the following definitions apply:

HeinOnline -- 1997 vol. II 2128 1997

(a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons.

(b) "Glass-plastic glazing material" means a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.

(c) "Light transmission" means the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(d) "Luminous reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(e) "Motor home" means a multipurpose passenger vehicle that provides living accommodations.

(f) "Multipurpose vehicle" means a motor vehicle designed to carry 10 or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use.

(g) "Pickup cover" means a camper having a roof and sides but without a floor designed to be mounted on and removable from the cargo area of a pickup truck by the user.

(h) "Slide-in camper" means a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user.

(i) "Sunscreening material" means a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

(6) Except as provided in subsection (7), subsection (4) applies to all vehicles that are equipped with tinted windows, including windows with less than 100% light transmission to which additional sunscreening material has been applied.

(7) Subsection (4) does not apply to a multipurpose vehicle that is equipped with tinted windows ~~of the type and specifications~~ that were installed by the manufacturer of the vehicle or to ~~any~~ *a* hearse, ambulance, government vehicle, or any other vehicle to which a currently valid certificate of waiver is affixed as specified under 61-9-428. A certificate of waiver must be issued by the department for a vehicle that was registered in this state on October 1, 1991, and was equipped with a sunscreening device or other material prohibited under subsection (4) on October 1, 1991."

**Section 30.** Section 61-9-407, MCA, is amended to read:

**"61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location.** (1) A person may not move, or permit to be moved, ~~any recreational~~ *a* vehicle, ~~van, truck, bus, truck tractor, trailer, pole trailer, or semitrailer~~ *except a motorcycle, quadricycle, motor-driven cycle, or farm tractor*, as defined in this title, upon the public highways without having first equipped the rearmost wheels or set of wheels of the vehicle with fenders, splash

HeinOnline -- 1997 vol. II 2129 1997

aprons, or flaps. The fenders, splash aprons, or flaps must be designed, constructed, and attached to the vehicle in a manner that arrests and deflects dirt, mud, water, rocks, and other substances that may be picked up by the rear wheels of the vehicle and thrown into the air, as follows:

(a) If the vehicle is equipped with fenders, the fenders must extend in full width from a point above and forward of the center of the tire or tires over and to the rear of the tires.

(b) If the vehicle is equipped with splash aprons or flaps, the splash aprons or flaps must extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of the tire or tires and to the rear of the tires.

(c) If the vehicle is in excess of 8,000 pounds gross vehicle weight *or rating*, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 10 inches above the surface of the highway when the vehicle is empty.

(d) If the vehicle is 8,000 pounds or less gross vehicle weight *or rating*, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 20 inches above the surface of the highway when the vehicle is empty.

(2) Fenders, splash aprons, or flaps, as used in subsection (1), ~~are considered to be of sufficient size and construction as to comply with the requirements of this section, if~~ *must be* constructed as follows:

(a) when measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, the fender, splash apron, or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires~~, as the case may be~~; and

(b) the fender, splash apron, or flap is ~~so constructed that it is~~ capable at all times of arresting and deflecting dirt, mud, water, or other substance that may be picked up and carried by the wheel or wheels.

*(3) This section does not apply to street rod vehicles; motor vehicles not originally equippcd with fenders, splash aprons, or flaps; or motor vehicles for which fenders, splash aprons, or flaps were not required by federal law or regulation at the time of manufacture.*

*(4) For purposes of this section and [section 40], "street rod" means a vehicle manufactured before 1949 that has been modifled in body style or design."*

**Section 31.** Section 61-9-408, MCA, is amended to read:

**"61-9-408. Safety glazing material in motor vehicles.** (1) ~~On and after January 1, 1956, no~~ *A* person ~~shall~~ *may not* sell ~~any~~ *a* new motor vehicle as ~~specified herein, nor shall any~~ *and a* new motor vehicle ~~as specified herein~~ *may not* be registered ~~thereafter~~ unless ~~such~~ *the* vehicle is equipped with safety glazing material wherever glazing material is used in doors, windows, and windshields. ~~The foregoing~~ *These* provisions ~~shall~~ apply to all passenger-type motor vehicles, including passenger buses and school buses.~~, but in~~ *With* respect to trucks, including truck tractors, the requirements as to safety glazing material ~~shall~~ apply to all glazing material used in doors, windows, and windshields in the driver's compartments of ~~such~~ *the* vehicles.

HeinOnline -- 1997 vol. II 2130 1997

(2) The term "safety glazing materials" means glazing materials ~~so~~ constructed, treated, or combined with other materials ~~as~~ to reduce substantially in comparison with ordinary sheet glass or plate glass the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken."

**Section 32.** Section 61-9-409, MCA, is amended to read:

**"61-9-409. Seatbelts required in ~~new~~ vehicles *manufactured after 1964.*** *(1)* ~~It is unlawful for any person to buy, sell, lease, trade, or transfer from or to Montana residents at retail an~~ *An* automobile ~~which~~ *that was* ~~is~~ manufactured or assembled ~~commencing with the 1966 models unless such vehicle is~~ *after January 1, 1965, and on or before January 1, 1968, must be* equipped with safety belts installed for use in the left front and right front seats ~~thereof, and no such vehicle shall be operated in this state unless such belts remain installed~~.

*(2) A motor vehicle manufactured after January 1, 1968, must be equipped at each designated seating position with a safety belt system required for that seating position by the standards of the United States department of transportation at the time that the vehicle was manufactured.*

*(3) The safety belts required by this section must remain installed and in good working condition."*

**Section 33.** Section 61-9-414, MCA, is amended to read:

**"61-9-414. Logging trucks.** *(1)* ~~Every~~ *A* truck or truck trailer combination, *except pole trailers,* actively engaged in transporting logs ~~shall~~ *must* be equipped *with chains, cables, steel straps, or fiber webbing with working load limits that meet or exceed the manufacturer's marked value. The number of tie-down assemblies must be determined by the working load limits and the total weight of the load. The working load limits must equal or exceed 1 1/2 times the total weight of the load.*

*(2) A pole trailer actively engaged in transporting logs upon the highways of the state must be equipped* as follows:

~~(1)~~ (a) At least three binders ~~shall be~~ *are* required as standard equipment ~~on any truck or truck trailer combination actively engaged in transporting logs upon the public highways of the state~~. *The binders must:*

~~(b)~~*(i)* ~~Such binders shall~~ be *made* of steel chain or steel cable~~.~~*;*

~~(c)~~*(ii)* ~~The~~ *have a* minimum diameter of ~~any portion of such binders shall be~~ three-eighths *of an* inch~~.~~*; and*

~~(d)~~*(iii)* ~~Such binders shall~~ be ~~of sufficient length~~ *long enough* to encompass any load when secured by a fastener.

~~(2) (a)~~*(b)* Binders used to secure loads of logs together ~~shall~~ *must* be fastened by means of a fastener.

~~(b)~~*(i)* The minimum diameter of the portions of the fastener under direct stress from the binder ~~shall~~ *must* be three-eighths *of an* inch.

HeinOnline -- 1997 vol. II 2131 1997

~~(c)~~*(ii)* The handle, or leverage portion of the fastener, when in use in tightening and holding the binder ~~shall~~ *must* be securely fastened to the binder or to the fastener ~~in such a way~~ *so* that it cannot be accidentally loosened.

~~(3)~~*(c)* At least two binders ~~shall~~ *must* be in use on all loads. ~~Such~~ *The* binders ~~shall~~ *must* be placed as close as reasonably possible to the front and rear bunks.

~~(4)~~*(d)* ~~In the event~~ *If* short logs are loaded on top of longer logs, sufficient binders ~~shall~~ *must* be used to secure both ends of ~~such~~ *the* short logs to the main body of the load. ~~No logs~~ *A log* may *not* extend laterally beyond the stakes ~~which~~ *that* form the outer boundary of the load at the top of ~~such~~ *the* stakes. Logs or poles loaded above the tops of the stakes ~~shall~~ *must* be loaded in a pyramidal fashion."

**Section 34.** Section 61-9-415, MCA, is amended to read:

**"61-9-415. Slow-moving vehicles.** (1) It ~~shall be~~ *is* unlawful ~~after January 1, 1970,~~ for ~~any~~ *a* porson to operate on ~~the roadway of any~~ *a* state highway, *a* farm, rural, or county ~~roads and~~ *road or a* city ~~streets~~ *street* of this state ~~any~~ *a* slow-moving vehicle or equipment, ~~any~~ *an* animal-drawn vehicle, or any other machinery ~~designed for use at speeds less than 25 miles per hour~~, including all road construction or maintenance macbinery, except when engaged in actual construction or maintenance work either guarded hy a ~~flagman~~ *flag person* or clearly visible warning signs, ~~which~~ *that* normally travels or is normally used at a speed of less than 25 miles ~~per~~ *an* hour, unless there is displayed on the rear ~~thereof~~ *of the vehicle* an emblem as ~~described in and displayed as~~ provided in subsection (2) of this section. The requirement of ~~such~~ *the* emblem ~~shall be~~ *is* in addition to any lighting devices required by law.

(2) The emblem required by subsection (1) ~~of this section shall~~ *must* be of substantial construction, and ~~shall~~ *must* be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of 14 inches and ~~an altitude~~ *a height* of 12 inches. ~~Such~~ *The* triangle ~~shall~~ *must* be bordered with reflective red strips having a minimum width of 1 3/4 inches, with the vertices of the overall triangle truncated ~~such~~ *so* that the remaining ~~altitude~~ *height* ~~shall be~~ *is* a minimum of 14 inches. ~~Such~~ *The* emblem ~~shall~~ *must* be mounted on the rear of ~~such~~ *the* vehicle near the horizontal geometric center of the vehicle at a height of 3 to 5 feet above the roadway, and ~~shall~~ *must* be maintained in a clean, reflective condition.

(3) In addition to the ~~foregoing~~ requirements *in subsection (2)*, on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle being operated in conformity with 61-8-303 does not have a clear lane for passing as required hy 61-8-325, the driver of a slower-moving, overtaken vehicle sball, at the first opportunity~~, whenever sufficient area for~~ *and when* a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle."

**Section 35.** Section 61-9-416, MCA, is amended to read:

**"61-9-416. Commereial tow truck definition — requirements.** (1) "Commercial tow truck" means a motor vehicle operating for compensation that is equippod with specialized equipment designed and intended for towing or the

HeinOnline -- 1997 vol. II 2132 1997

recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public roadways. A commercial tow truck must be equipped with:

(a) ~~and carry~~ not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must be of a type approved by the department.

(b) at least two highway warning signs of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department. ~~When a motor vehicle is disabled on the highway, the tow truck operator called to render assistance during the hours of darkness shall immediately upon arrival place warning signs upon the highway as prescribed in this section and shall also place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.~~

(c) ~~and carry~~ a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department;

(d) a lamp emitting a flashing ~~or steady~~ red or amber light *meeting the requirements of 61-9-402(5)*, or both a red and amber light, mounted on top of the cab of the tow truck or on the top of the crane or hoist if the light can be seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions and must be mounted ~~in such a manner~~ *so* that it can be securely fastened with the lens of the lamp facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in ~~any~~ *a* position considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must be turned to the rear of the tow truck upon which it is mounted and securely locked in this position. Additional red or amber lights of an approved type may be displayed at either side or both sides of the tow truck ~~as the case may warrant~~ during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle that is to be towed;

(f) ~~and carry~~ a shovel, and whenever practical, the tow truck operator engaged to remove ~~any~~ *a* disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle; *and*

(g) ~~and carry~~ a portable electrical extension cord or other device for use in displaying stop, turn, and ~~tail lights~~ *taillamps* on the rear of the disabled vehicle. The length of the extension cord may not be less than the length of the combined vehicles~~, and whenever~~. *When* a disabled vehicle is towed ~~during the hours of darkness and the rear lamp or lamps on the disabled vehicle cannot be lighted~~, the tow truck operator shall provide for the rear light that is capable of ~~emitting~~ *displaying* a stop *signal, turn signal,* and ~~a directional signal~~ *taillamps* by means of the extension cord or other device referred to in this subsection.

HeinOnline -- 1997 vol. II 2133 1997

(2) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of ~~any~~ *a* portion of the roadway ~~outside a business or residence district~~, place a highway warning sign as required in subsection (1)(b):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 450 feet in advance of the disabled vehicle and an equal distance to the rear of the disabled vehicle; and

(b) in an area in which the posted speed limit is more than 45 miles an hour *or no speed limit is posted*, 600 feet in advance of the disabled vehicle, except on a divided highway where the disabled vehicle does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the disabled vehicle.

*(3) A local government unit may adopt an ordinance exempting a commercial tow truck operator from the requirements of subsection (2) within the limits of an incorporated city or town.*

~~(3)~~*(4) When a motor vehicle is disabled on the highway during the hours of darkness, the tow truck operator called to render assistance shall immediately upon arrival place warning signs upon the highway as prescribed in this section and shall also place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.*

*(5)* The owner or operator of a commercial tow truck who complies with the requirements of 61-8-906 and 61-8-907 and this section may stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code."

**Section 36.** Section 61-9-417, MCA, is amended to read:

"**61-9-417. Headgear required for minor motorcycle riders.** *(1)* An operator and passenger under 18 years of age of ~~any~~ *a* motorcycle or quadricycle operated upon the streets or highways of this state shall wear protective headgear upon the head. The headgear ~~shall~~ *must* meet standards established by the department of justice.

*(2) A person may not operate a motorcycle upon a highway in the state unless all passengers under 18 years of age are in compliance with subsection (1).*"

**Section 37.** Section 61-9-419, MCA, is amended to read:

"**61-9-419. "Properly restrained" defined.** As used in 61-9-420 through 61-9-423, "properly restrained" means fastened in a manner prescribed by the manufacturer of the system ~~which~~ *that* permits the system to act as a body restraint, but does not mean a system in which the only body restraint is a safety belt of the type ~~specified in 61-9-410~~ *required by 61-9-409.*"

**Section 38.** Section 61-9-420, MCA, is amended to read:

"**61-9-420. Child safety restraint systems — standards — exemptions.** (1) ~~No resident of Montana who is the parent or legal guardian of~~ *If* a child under ~~the age of~~ 2 *years of age* ~~may transport the child in~~ *is a passenger in* a motor vehicle ~~owned by the resident or his spouse unless the child is properly~~

~~restrained~~, *that motor vehicle must be equipped with one child safety restraint for each child in the vehicle and each child must be properly restrained.*

(2) ~~No resident of Montana who is the parent or legal guardian of a~~ *A* child between 2 and 4 years ~~old~~ *of age* or weighing less than 40 pounds ~~may transport the child~~ *who is a passenger* in a motor vehicle ~~owned by the resident or his spouse unless the child is~~ *must be* properly restrained or ~~is~~ restrained in a safety belt ~~of the type specified in 61-9-410~~ *that meets applicable federal motor vehicle safety standards.*

(3) The department shall by rule establish standards in compliance with 61-9-419 through 61-9-423 and applicable federal standards for approved types of child safety restraint systems purchased after January 1, 1984.

(4) ~~No resident or his spouse~~ *A person* is *not* required to have more than three child safety restraint systems in a vehicle.

(5) The department may by rule exempt from the requirements of subsection (1) ~~any~~ *a* child who because of a physical or medical condition or body size cannot be placed in a child safety restraint system or safety belt."

**Section 39.** Section 61-9-423, MCA, is amended to read:

**"61-9-423. Penalty.** Violation of 61-9-420 is punishable ~~as follows:~~

~~(1) On initial violation a citation shall be issued. No penalty may be assessed if the violation of 61-9-420 is corrected within 30 days by providing the proper court with proof that a child safety restraint system meeting the requirements of 61-9-420 was purchased or leased and properly installed in the vehicle. If not corrected, the violation shall be punishable~~ by a fine of not ~~less than $10 or~~ more than ~~$25~~ *$100*.

~~(2) Subsequent violation within 3 years is punishable by a fine of not less than $25 or more than $100.~~"

**Section 40. Bumpers.** (1) A motor vehicle of less than 10,000 pounds gross vehicle weight or rating registered in Montana, except a motorcycle, a quadricycle, a motor-driven cycle, or a farm tractor, must be equipped with a front bumper and, unless the vehicle is equipped with work-performing features that make installation impractical or unnecessary, with a rear bumper.

(2) This section does not apply to street rod vehicles, as defined in 61-9-407(4), vehicles not originally equipped with front or rear bumpers, or vehicles for which bumpers were not required by federal law or regulation at the time of manufacture.

**Section 41.** Section 61-9-516, MCA, is amended to read:

**"61-9-516. Penalty for seatbelt violations.** Any person who ~~shall violate any of~~ *violates* the provisions of 61-9-409 ~~and 61-9-410 shall be~~ *is* guilty of a misdemeanor and upon conviction shall be fined not to exceed $100."

**Section 42. Repealer.** Sections 61-9-224 and 61-9-410, MCA, are repealed.

HeinOnline -- 1997 vol. II 2135 1997

**Section 43. Codification instruction.** [Section 40] is intended to be codified as an integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [section 40].

Approved April 29, 1997

# CHAPTER NO. 432

[SB 173]

AN ACT PROVIDING THAT A BUYER FOR VALUE OF A CHILD SUPPORT OBLIGOR'S MOTOR VEHICLE OR OTHER ITEM FOR WHICH A CERTIFICATE OF OWNERSHIP IS ISSUED BY THE DEPARTMENT OF JUSTICE WHO BUYS IN GOOD FAITH AND WITHOUT KNOWLEDGE OF THE SUPPORT LIEN TAKES THE PROPERTY FREE OF THE SUPPORT LIEN; AMENDING SECTION 40-5-248, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-5-248, MCA, is amended to read:

**"40-5-248. Lien against real and personal property —effect of lien — interest — warrant for distraint.** (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as defined in 30-9-107.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

HeinOnline -- 1997 vol. II 2136 1997

(5) The lien applies to all real and personal property owned by the obligor, if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer ~~for value of~~, *in the ordinary course of business, who buys* an obligor's personal property *for value and*~~, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice,~~ who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

HeinOnline -- 1997 vol. II 2137 1997

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247."

**Section 2. Applicability.** [This act] applies to purchases occurring after October 1, 1997.

Approved April 29, 1997

# CHAPTER NO. 433

[SB 256]

AN ACT CREATING THE OFFENSE OF ASSAULT ON A PEACE OFFICER OR JUDICIAL OFFICER; PROVIDING PENALTIES FOR ASSAULT ON A PEACE OFFICER OR JUDICIAL OFFICER; REMOVING ASSAULT ON A PEACE OFFICER OR JUDICIAL OFFICER FROM THE OFFENSE OF FELONY ASSAULT; AMENDING SECTION 45-5-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Assault on peace officer or judicial officer.** (1) A person commits the offense of assault on a peace officer or judicial officer if the person purposely or knowingly causes:

(a) bodily injury to a peace officer or judicial officer;

(b) reasonable apprehension of serious bodily injury in a peace officer or judicial officer by use of a weapon;

(c) bodily injury to a peace officer or judicial officer with a weapon; or

(d) serious bodily injury to a peace officer or judicial officer.

(2) (a) A person convicted of assault on a peace officer or judicial officer under subsection (1)(a), (1)(b), or (1)(c) shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined an amount not to exceed $50,000.

(b) Except as provided in 46-18-222, a person convicted of assault on a peace officer or judicial officer under subsection (1)(d) shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term of not less than 5 years or more than 20 years, or both.

(3) As used in this section, the following definitions apply:

(a) "Judicial officer" has the meaning provided in 1-1-202 and includes the workers' compensation judge, water court judges, and judges pro tempore.

(b) "Peace officer" has the meaning provided in 45-2-101 and includes a person, sworn or unsworn, who is responsible for the care or custody of an adult or youth offender.

HeinOnline -- 1997 vol. II 2138 1997

(4) Criminal endangerment, negligent endangerment, and assault, as defined in 45-5-201, are not included as offenses of assault on a peace officer or judicial officer.

**Section 2.** Section 45-5-202, MCA, is amended to read:

**"45-5-202. (Temporary) Aggravated assault — felony assault.** (1) A person commits the offense of aggravated assault if ~~he~~ *the person* purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if ~~he~~ *the person* purposely or knowingly causes:

(a) bodily injury to another with a weapon; *or*

(b) reasonable apprehension of serious bodily injury in another by use of a weapon~~; or~~.

~~(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.~~

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.

**45-5-202. (Effective July 1, 1997) Aggravated assault — felony assault.** (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if the person purposely or knowingly causes:

(a) bodily injury to another with a weapon; *or*

(b) reasonable apprehension of serious bodily injury in another by use of a weapon~~; or~~.

~~(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.~~

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both."

**Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [section 1].

**Section 4. Applicability.** [This act] applies to offenses committed on or after [the effective date of this act].

HeinOnline -- 1997 vol. II 2139 1997

**Seetion 5. Effective date.** [This act] is effective on passage and approval.

Approved April 29, 1997

# CHAPTER NO. 434

[HB 6]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AMENDING SECTION 1, CHAPTER 613, LAWS OF 1993, AND SECTION 1, CHAPTER 512, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriations from renewable resource grant and loan state special revenue account.** (1) There is appropriated to the department of natural resources and conservation up to $125,000 to be used for emergency projects from the money available in the renewable resource account administered by the department.

(2) There is appropriated to the department of natural resources and conservation $2 million that is available in the renewable resource grant and loan state special revenue account for grants to political subdivisions and local government entities during the 1999 biennium. The funds appropriated in this section must be awarded by the department of natural resources and conservation to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewable resource grant and loan program January 1997 report to the 55th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), witb grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higber-ranked projects must be provided for projects further down the priority list that would not otberwise receive funding. Any grants that are funded by tbe reclamation and development grants programs may not be funded under [sections 1 through 4].

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM — Recommended Funding

| Applicant/Project | Grant Amount |
|---|---|
| MT Reserved Water Rights Compact Commission (Chippewa-Cree Water Rights Settlement Implementation) | $150,000 |
| Sheridan County Conservation District (Sheridan County Ground Water Management Program) | 95,412 |

| | |
|---|---|
| Cascade County Conservation District * (Agrimet Irrigation Water Management Project) | 80,000 |
| East Missoula Sewer District * (Wastewater Treatment and Collection System) | 100,000 |
| Cascade, Town of (Wastewater System Improvements) | 100,000 |
| Greenfields Irrigation District * ("J" Lake - Reregulation Reservoir) | 100,000 |
| Valier, Town of (Wastewater Treatment Facility Upgrade) | 100,000 |
| Beaverhead County Board of Commissioners * (Big Hole River Return Flow and Water Budget Study) | 100,000 |
| MT Bureau of Mines and Geology * (Ground Water Protection and Education for Rural Schools) | 50,000 |
| Lake County Land Services (Evaluation of Level II Treatment for Individual Septic) | 100,000 |
| Gallatin County Local Water Quality District * (Ground Water Evaluation and Monitoring Project) | 100,000 |
| Choteau, City of (Rehabilitation of Sewer System) | 100,000 |
| Glasgow Irrigation District (Vandalia Diversion Dam - Rehabilitation Plan Study) | 98,221 |
| Roosevelt County Conservation District (Fort Peck Assiniboine & Sioux Off-Reservation Water Project) | 64,561 |
| Pondera County Conservation District * (Lake Frances Shoreline Rehabilitation Project) | 20,000 |
| Neihart, Town of (Water Distribution System) | 100,000 |
| Ruby Valley Conservation District * (Ruby River Water Management and Conservation Project) | 99,741 |
| MT Dept of Environmental Quality (Direct Planning Grants to Small, Needy Communities) | 100,000 |
| Missoula, City of (Reserve Street South Sewer Project) | 100,000 |
| Twin Bridges, Town of (Water System Improvements) | 100,000 |
| Hill and Liberty County Conservation Districts (Water Resource Evaluation of the Sage Creek Watershed) | 40,622 |

HeinOnline -- 1997 vol. II 2141 1997

| | |
|---|---|
| Glasgow, City of<br>(Sanitary Sewer Separation Project) | 41,443 |
| Eastern Agricultural Research Center<br>(Alternative Irrigation Systems and Alternative Crops) | 60,000 |
| Thompson Falls, City of - Application No. 2<br>(Waterline Replacement) | 100,000 |
| Park County<br>(Hydrological Reconnaissance of the Paradise Valley) | 100,000 |

(4) For grant projects for which the department of natural resources and conservation has also recommended a loan, the authorization for the loan is contained in House Bill No. 8.

(5) The funding provided to the projects approved in this section and identified with an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality.

(6) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1999 biennium pursuant to 17-7-302.

**Section 2. Condition of grants.** Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report submitted to the 55th legislature for the 1999 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

**Section 3. Conditions for grants.** Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

HeinOnline -- 1997 vol. II 2142 1997

**Section 4. Appropriations established.** (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from prior bienniums are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan state special revenue account.

**Section 5.** Section 1, Chapter 613, Laws of 1993, is amended to read:

(1) The appropriations for water development and renewable resource development programs, on page 2528, Laws of 1993, is amended to read:

"CHINOOK DIVISION IRRIGATION ASSOCIATION
Irrigation Water Measuring Devices ~~34,217~~ *6,704* 65,783

CHINOOK DIVISION IRRIGATION ASSOCIATION
Repair of Lohman Dam ~~36,173~~ *26,020* 63,827"

(2) The appropriations for water development and renewable resource development programs, on page 2529, Laws of 1993, is amended to read:

~~"FLATHEAD JOINT BOARD OF CONTROL~~
~~Fish Friendly Irrigation 44,500 54,500~~"

**Section 6.** Section 1, Chapter 512, Laws of 1995, is amended to read:

(1) The appropriations for renewable resource programs, on page 2577, Laws of 1995, is amended to read:

~~"Greenfields Irrigation District * 50,000~~
~~(Main Canal Flow Control System)~~

Thompson Falls, City of ~~51,820~~ *45,260*
(Water Engineering Study)"

(2) The appropriations for renewable resource programs, on page 2578, is amended to read:

"Manhattan, Town of ~~50,000~~ *33,000*
(Manhattan Water System)"

**Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 8. Effective dates.** (1) [Sections 2 through 7 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 1997.

Approved April 30, 1997

HeinOnline -- 1997 vol. II 2143 1997

# CHAPTER NO. 435

[HB 29]

AN ACT MAKING IT A CRIMINAL OFFENSE FOR A PERSON TO POSSESS, CARRY, OR STORE A WEAPON IN A SCHOOL BUILDING AND FOR A PARENT OR GUARDIAN TO PERMIT A MINOR TO POSSESS, CARRY, OR STORE A WEAPON IN A SCHOOL BUILDING; PROVIDING FOR A PENALTY; PROVIDING AN EXCEPTION FOR LAW ENFORCEMENT PERSONNEL; PERMITTING TRUSTEES AUTHORITY TO GRANT PERMISSION TO POSSESS, CARRY, OR STORE A WEAPON; AUTHORIZING SEIZURE AND FORFEITURE OR RETURN OF THE WEAPON TO THE LAWFUL OWNER; DEFINING "WEAPON" AND "SCHOOL BUILDING"; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Possession or allowing possession of weapon in school building — exceptions — penalties — seizure and forfeiture or return authorized — definitions.** (1) A person commits the offense of possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores a weapon in a school building.

(2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon in a school building.

(3) (a) Subsection (1) does not apply to law enforcement personnel.

(b) The trustees of a district may grant persons and entities advance permission to possess, carry, or store a weapon in a school building.

(4) (a) A person convicted under this section shall be fined an amount not to exceed $500, imprisoned in the county jail for a term not to exceed 6 months, or both. The court shall consider alternatives to incarceration that are available in the community.

(b) (i) A weapon in violation of this section may be seized and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

(ii) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(5) As used in this section:

(a) "school building" means all buildings owned or leased by a local school district that are used for instruction or for student activities. The term does not include a home school provided for in 20-5-109.

HeinOnline -- 1997 vol. II 2144 1997

(b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a straight razor, a throwing star, nun-chucks, or brass or other metal knuckles.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [section 1].

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 1997

# CHAPTER NO. 436

[HB 31]

AN ACT ALLOWING A FEDERALLY RECOGNIZED TRIBAL GOVERNMENT TO PARTICIPATE IN THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; DEFINING "TRIBAL GOVERNMENT"; PROVIDING ADDITIONAL GRANT AND LOAN CONDITIONS; AMENDING SECTIONS 85-1-102, 85-1-601, 85-1-602, 85-1-605, 85-1-611, AND 85-1-613, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-1-102, MCA, is amended to read:

**"85-1-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(3) "Cost of works" means:

(a) the cost of construction, including any rehabilitation or alteration of the project;

(b) the cost of all lands, property, rights, easements, and franchises acquired that are considered necessary for the construction;

(c) the cost of all water rights acquired or exercised by the department in connection with the works;

(d) the cost of all machinery and equipment, financing charges, and interest prior to and during construction and for a period not exceeding 3 years after the completion of construction;

(e) the cost of engineering and legal services, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project;

(f) administrative expense; and

(g) other expenses that are necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations that have any title or interest in any properties, rights, easements, or franchises to be acquired.

(6) (a) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity that is not eligible for loans and grants under 85-1-605.

(b) The term does not include a governmental entity, such as an agency, local government, or political subdivision of the state, the United States, or any agency of the United States, or any other gevernmental entity.

(7) "Project" means any one of the works defined in this section or any combination of works that are physically connected or jointly managed and operated as a single unit.

(8) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(9) "Renewable resource grant and loan program state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the renewable resource grant and loan program as set forth in 85-1-604.

(10) "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury, to be used as provided in 85-1-619.

HeinOnline -- 1997 vol. II 2146 1997

(11) "Renewable resource loan proceeds account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to:

(a) finance loans under the provisions of the renewable resource grant and loan program to agencies, local governments, and political subdivisions of the state, to private persons, and to any other eligible recipients; and

(b) purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

*(12) "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized group or community that is located in Montana, that exercises self-government powers, and that is recognized as eligible for those services that are provided by the United States to Indians because of their status as Indians.*

~~(12)~~*(13)* "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including hut not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation in rivers and streams, and the provision of greater local and state control of Montana's water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

~~(13)~~*(14)* "Water development project" means a project as defined in subsection (7), except that water development projects:

(a) are not limited to projects owned or operated hy the department; and

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

~~(14)~~*(15)* (a) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works.

(b) The term includes:

(i) all means of conserving and distributing water, including but not limited to reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems; and

(ii) all works for the conservation, development, storage, distribution, and utilization of water, including but not limited to works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, and supplying water for public, domestic, industrial, or other uses and for fire protection."

**Section 2.** Section 85-1-601, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2147 1997

"**85-1-601. Purpose and policies.** (1) The legislature finds and declares that in order that the people of Montana may enjoy the benefits of the state's water and other renewable resources, the state ~~must~~ *shall* establish this long-term renewable resource grant and loan program providing financial and administrative assistance to private for-profit, private, nonprofit, local government, ~~and~~ state government, *and tribal government* entities for renewable resource grant and loan projects.

(2) The purpose of the renewable resource grant and loan program is to further the state's policies, set forth in 85-1-101, regarding the conservation, development, and beneficial use of water resources and to invest in renewable natural resource projects that will preserve for the citizens of Montana the economic and other benefits of the state's natural heritage.

(3) The legislature recognizes the value of Montana's renewable resources; therefore, it is appropriate that a portion of the taxes and other revenue from nonrenewable resources be invested in the replacement of nonrenewable resources with the development of renewable resource projects that will continue to provide tax and other revenue and will preserve for the citizens the economic and other benefits of the state's natural heritage.

(4) The conservation, development, management, and preservation of water and other renewable resources are high priorities because a large portion of Montana's present and future economy is based either directly or indirectly on the wise use of these resources.

(5) Developments supported by this part may not significantly diminish the quality of existing public resources, such as land, air, fish, wildlife, and recreation opportunities.

(6) This renewable resource grant and loan program supports, in part, the implementation and development of the comprehensive, coordinated, multiple-use water resources plan known as the "state water plan". In making funding recommendations for grants and loans, the department shall give preference to projects that will implement state water plan priorities if, in all other respects, the proposed projects are equal in public benefit and technical feasibility."

**Section 3.** Section 85-1-602, MCA, is amended to read:

"**85-1-602. Objectives.** (1) The department shall administer a renewable resource grant and loan program to enhance Montana's renewable resources through projects that measurably conserve, develop, manage, or preserve resources. Either grants or loans may be provided to fund the following:

(a) feasibility, design, research, and resource assessment studies;

(b) preparation of construction, rehabilitation, or production plans; and

(c) construction, rehabilitation, production, education, or other implementation efforts.

(2) Projects that may enhance renewable resources in Montana include but are not limited to:

(a) development of natural resource-based recreation;

(b) development of offstream and tributary storage;

(c) improvement of water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113; and development of ~~state-tribal, state-federal, and state-tribal-federal~~ *state, tribal, and federal* water projects; and

(d) advancement of farming practices that reduce agricultural chemical use.

(3) The renewable resource grant and loan program is tho key implementation portion of the state water plan and must be administered to encourage grant and loan applications for projects designed to accomplish the objectives of the plan."

**Seetion 4.** Section 85-1-605, MCA, is amended to read:

"**85-1-605. Grants, loans, and bonds for state, ~~and~~ local, *or tribal* government assistance.** (1) The department may recommend to the legislature that grants and loans be made from revenue deposited in the renewable resource grant and loan program state special revenue account, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account establisbed in 85-1-617(5), and tbat coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state gevernment, ~~or~~ to a city, county, or otber political subdivision or local gevernment body of tbe state, *or to a tribal government.* The legislature may approve by appropriation or other appropriate means those grants and loans *that* it finds consistent with tbe policies and purposes of tbe program.

(2) Nothing in this part creates or expands the state's or a local gevernment's authority to incur debt, and the legislaturo may autborize loans only to state and local gevernment entities otherwise structured to incur debt.

(3) Loans may not be authorized except to a state, ~~or~~ local, *or tribal* government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department may request up to 10% of tbe grant funds available and up to $1 million for loans from the renewable resource grant and loan program state special revenue account and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state, ~~or~~ local, *or tribal* gevernment applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding, or both, that, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative finance committee of the legislature.

(5) The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation; for assessing feasibility or planning; for implementing renewable resource projects; and for similar purposes approved by the legislature.

HeinOnline -- 1997 vol. II 2149 1997

*(6) Grant and loan agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:*

*(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;*

*(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and*

*(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government."*

**Section 5.** Section 85-1-611, MCA, is amended to read:

**"85-1-611. Department to solicit views.** The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies, commissions, and other subdivisions of the state, including local political subdivisions, *of a tribal government,* of the federal government, and of other interested and affected persons."

**Section 6.** Section 85-1-613, MCA, is amended to read:

**"85-1-613. Limits on loans.** (1) A loan to a private person for a renewable resource grant and loan program project may not be made from the renewable resource grant and loan program state special revenue account or the renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or 80% of the fair market value of the security given for the project. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors it considers important.

(2) A loan to the state, ~~or~~ a local government, *or a tribal government* for a renewable resource grant and loan program project may not be made by the department from the renewable resource grant and loan program state special revenue account or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

(3) The period for repayment of loans may not exceed 30 years.

(4) The interest rate at which loans may be made under this part must be sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs."

**Section 7. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

**Section 8. Effective date.** [This act] is effective July 1, 1997.

Approved April 30, 1997

HeinOnline -- 1997 vol. II 2150 1997

# CHAPTER NO. 437

[HB 47]

AN ACT INCREASING THE BASIC ENTITLEMENT AND THE PER-ANB ENTITLEMENT FOR PUBLIC SCHOOLS IN FISCAL YEAR 1998 AND FISCAL YEAR 1999; APPROPRIATING FUNDS FOR DIRECT STATE AID AND GUARANTEED TAX BASE AID; PROVIDING AID TO SCHOOLS FOR TECHNOLOGY ACQUISITION, TEXTBOOKS, LIBRARY MATERIALS, AND BUILDING MAINTENANCE; PROVIDING APPROPRIATIONS; AMENDING SECTION 20-9-306, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-9-306, MCA, is amended to read:

**"20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$191,000~~ *$200,000* for each high school district;

(b) ~~$17,190~~ *$18,000* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$17,190~~ *$18,000* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$191,000~~ *$200,000* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$4,680~~ *$4,726* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,343~~ *$3,376* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,343~~ *$3,376* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$4,680~~ *$4,726* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

**Section 2.** Section 20-9-306, MCA, is amended to read:

**"20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

HeinOnline -- 1997 vol. II 2152 1997

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district; and

(h) guaranteed tax base aid for an eligible district for any amount up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) ~~$191,000~~ *$200,000* for each high school district;

(b) ~~$17,190~~ *$18,000* for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) ~~$17,190~~ *$18,000* times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) ~~$191,000~~ *$200,000* times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

HeinOnline -- 1997 vol. II 2153 1997

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means tbe district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$4,680~~ *$4,773* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800tb ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,343~~ *$3,410* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program witb an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,343~~ *$3,410* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000tb ANB; and

(ii) a maximum rate of ~~$4,680~~ *$4,773* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

**Seetion 3. Aid for technology acquisition, textbooks, library materials, and huilding maintenance.** (1) The superintendent of public instruction shall allocate the amount appropriated for technology acquisition, textbooks, library materials, and building maintenance to each district based on the per-ANB of the district.

(2) In order to receive an allocation of funds, the district trustees shall certify in writing to the superintendent of public instruction that an equal amount of district general fund or district building reserve fund will be expended for the purposes listed in subsection (1).

(3) The district may deposit the funds received under this section in the miscellaneous programs fund authorized in 20-9-507 or the technology acquisition fund authorized in 20-9-533. Any portion of the funds deposited in the miscellaneous programs fund must be restricted for textbooks, library materials, and building maintenance. Any portion of the funds deposited in the technology acquisition fund must be used consistent with the requirements of 20-9-533.

**Section 4. Appropriations.** (1) There is appropriated from the general fund $29,143,000 for the biennium ending June 30, 1999, for direct state aid and guaranteed tax base aid.

HeinOnline -- 1997 vol. II 2154 1997

(2) There is appropriated to the office of public instruction from the general fund $12,500,000 for the fiscal year ending June 30, 1998, for aid to school districts for technology acquisition, textbooks, library materials, and building maintenance.

(3) There is appropriated to the office of public instruction from the general fund $2,500,000 for the fiscal year ending June 30, 1998, and $3,000,000 for the fiscal year ending June 30, 1999, to pay for state advances and reimbursements for school facilities in accordance with 20-9-371.

**Section 5. Effective dates — applicability.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1997, and applies to school budgets for the school fiscal year beginning July 1, 1997.

(2) [Section 2] is effective July 1, 1998, and applies to school budgets for school fiscal years beginning on or after July 1, 1998.

**Section 6. Termination.** [Sections 1 and 3(2)] terminate June 30, 1998.

Approved April 30, 1997

# CHAPTER NO. 438

[HB 49]

AN ACT GENERALLY REVISING MONTANA TEACHER TENURE LAWS AND CONTESTED CASE PROCEDURES; REMOVING JURISDICTION OF THE OFFICE OF PURLIC INSTRUCTION TO HEAR APPEALS AND TO DECIDE DISPUTES ARISING FROM TERMINATION DECISIONS OF A SCHOOL DISTRICT NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA; CLARIFYING THAT A DISTRICT MAY TERMINATE EMPLOYMENT OF A TENURE TEACHER FOR GOOD CAUSE; EXTENDING THE DEADLINE FOR NOTIFICATION OF REELECTION OF A TEACHER; LIMITING APPEAL OF EMPLOYMENT TERMINATION INVOLVING A TEACHER WHOSE EMPLOYMENT IS COVERED BY A COLLECTIVE BARGAINING AGREEMENT PURSUANT TO TITLE 39, CHAPTER 31, MCA, TO FINAL AND BINDING ARBITRATION; ESTARLISHING A PROCEDURE FOR ARBITRATION; LIMITING THE REMEDIES THAT MAY BE IMPOSED BY AN ARBITRATOR; REMOVING JURISDICTION OF A COUNTY SUPERINTENDENT TO DECIDE DISPUTES ARISING FROM A COLLECTIVE BARGAINING AGREEMENT; CLARIFYING THAT A DISTRICT MAY TERMINATE THE EMPLOYMENT OF A NONTENURE TEACHER AT THE CONCLUSION OF A SCHOOL FISCAL YEAR WITH OR WITHOUT CAUSE UPON PROPER NOTICE; CLARIFYING THAT A DISTRICT MAY DISMISS FOR GOOD CAUSE A TENURE OR NONTENURE TEACHER BEFORE THE EXPIRATION OF A CONTRACT; CLARIFYING THAT A DISTRICT MAY REDUCE THE SALARY OF A TEACHER SERVING IN AN ADMINISTRATIVE POSITION WHO IS ASSIGNED TO A TEACHING POSITION WHEN A DISTRICT REDUCES THE SIZE OF ITS ADMINISTRATIVE STAFF; AMENDING SECTIONS 20-3-107, 20-3-210, 20-4-203, 20-4-204, 20-4-205, 20-4-206, 20-4-207, AND 20-4-208, MCA; AND PROVIDING AN EFFECTIVE DATE.

HeinOnline -- 1997 vol. II 2155 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-3-107, MCA, is amended to read:

**"20-3-107. Controversy appeal.** (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210, *except for a decision of a county superintendent or an arbitrator in a teacher termination case*; or

(b) a decision of a county transportation committee rendered under tbe provisions of 20-10-132.

(2) The superintendent of public instruction shall make ~~his~~ *a* decision on the basis of the transcript of the fact-finding hearing conducted hy the county superintendent or county transportation committee and documents presented at tbe hearing. The superintendent of public instruction may require, if ~~he deems~~ *considered* necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction ~~shall be~~ *is* final, subject to the proper legal remedies in the state courts. ~~Such~~ *The* proceedings ~~shall~~ *must* be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniforn method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all scbool officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, ~~he~~ *the superintendent of public instruction* shall appoint a ~~hearing~~ *hearings* examiner as provided in 2-4-611 and the decision of the ~~hearing~~ *hearings* examiner constitutes the superintendent's final order except as provided in this subsection. ~~Such~~ *The* final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7."

**Section 2.** Section 20-4-203, MCA, is amended to read:

**"20-4-203. Teacher tenure.** (1) Except as provided in 20-4-208, ~~whenever~~ *whenever* a teacher ~~has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be~~ *has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be* reelected from year to year ~~thereafter~~ as a tenure teacher at tbe same salary and in the same or a comparable position of employment as that provided by the ~~last executed~~ *last-executed* contract with the teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

~~(2)~~*(2)* The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:

HeinOnline -- 1997 vol. II 2156 1997

(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district.

*(3) Upon receiving tenure, the employment of a teacher may be terminated for good cause."*

**Section 3.** Section 20-4-204, MCA, is amended to read:

**"20-4-204. Termination of tenure teacher services.** (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal;

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.

(2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall~~, before May 1 of the current school fiscal year,~~ notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:

(a) the statement of the reason or reasons that led to the recommendation for termination; and

(b) a printed copy of this section for the teacher's information.

(3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.

(4) The trustees sball:

(a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and

(b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.

(5) The tenure teacher may appeal a decision to terminate *an employment contract* to ~~the county superintendent who may appoint a qualified attorney at law as legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law~~ *the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, who may appoint a qualified attorney as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. If the*

HeinOnline -- 1997 vol. II 2157 1997

*employment of the teacher is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a tenure teacher shall appeal a decision to terminate an employment contract to an arbitrator agreed upon by the district and the teacher's exclusive representative. If the exclusive representative has declined to represent the teacher, the teacher or the district may request that the board of personnel appeals provide a list of arbitrators from which the teacher and the district shall, after the toss of a coin to determine the order of striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.*

*(6) In a termination involving a teacher whose employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, either the teacher or the trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced no later than 60 days after the date of the decision of the county superintendent.*

~~(6) Subsequently, either the teacher or the trustees may appeal to the superintendent of public instruction under the provision for the appeal of controversies in this title.~~

*(7) In a termination involving a teacher whose employment is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a request for arbitration must be made within 20 days from the date of termination unless an alternative time period is provided by the terms of a collective bargaining agreement.*

*(8) The decision of the arbitrator is final and binding. Each party shall pay one-half of an arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.*

*(9) An arbitrator may order a school district to reinstate a teacher who has been terminated without good cause and to provide compensation, with interest, to a teacher for lost wages and fringe benefits from the date of termination to the date that the teacher is offered reinstatement to the same or a comparable position. Interim earnings, including the amount that the teacher could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent by a teacher in searching for, obtaining, or relocating to new employment must be deducted from interim earnings.*

*(10) Except as provided in this section, an arbitrator may not order a school district to provide compensation for punitive damages, pain and suffering, emotional distress, compensatory damages, attorney fees, or any other form of damages.*

*(11) Upon submission of the termination decision to an arbitrator, the teacher or the teacher's exelusive representative may not file an action against the district for reinstatement or compensation of lost wages and fringe benefits.*

*(12) As used in this section, the following definitions apply:*

*(a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.*

HeinOnline -- 1997 vol. II 2158 1997

*(b) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service on Form W-2 and includes any compensation deferred at the option of the employee."*

**Section 4.** Section 20-4-205, MCA, is amended to read:

**"20-4-205. Notification of ~~tenure~~ teacher reelection — acceptance.** (1) The trustees shall provide written notice by ~~May 1~~ *June 1* to all ~~tenure~~ teachers who have been reelected. Any ~~tenure~~ teacher who does not receive notice of reelection or termination ~~shall be~~ *is* automatically reelected for the ensuing school fiscal year.

(2) Any ~~tenure~~ teacher who receives notification of ~~his~~ reelection for the ensuing school fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of ~~such~~ *the* reelection within 20 days after the receipt of the notice of reelection, and failure to ~~so~~ notify the trustees within 20 days ~~shall constitute~~ *constitutes* conclusive evidence of ~~his~~ *the teacher's* nonacceptance of the tendered position."

**Section 5.** Section 20-4-206, MCA, is amended to read:

**"20-4-206. Notification of nontenure teacher reelection — acceptance — termination ~~and statement of reason~~.** (1) The trustees shall provide written notice by ~~May~~ *June* 1 to ~~all nontenure teachers who have~~ *each nontenure teacher employed by the district regarding whether the nontenure teacher has* been reelected *for the ensuing school fiscal year*. A ~~nontenure~~ teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) A ~~nontenure~~ *nontenure* teacher who receives notification of ~~his~~ reelection for the ensuing school fiscal year shall provide the trustees with ~~his~~ written acceptance of the conditions of reelection within 20 days after the receipt of the notice of reelection. Failure to ~~so~~ notify the trustees within 20 days ~~may be considered~~ *constitutes conclusive evidence of the nontenure teacher's* nonacceptance of the tendered position.

(3) *Subject to the June 1 notice requirements in this section, the trustees may nonrenew the employment of a nontenure teacher at the conclusion of the school fiscal year with or without cause.* ~~When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of the notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the teacher a true statement of reasons for termination.~~

~~(4) If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher may request in writing within 10 days of receipt of the statement of reasons that the county superintendent hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. A hearing must be scheduled within 10 days and held within 45 days after receipt of the request, except that the period may be extended upon agreement between the trustees and the teacher. The burden of proof that the reasons are not true rests with the teacher, and the showing must be demonstrated by clear and convincing evidence.~~

HeinOnline -- 1997 vol. II 2159 1997

~~(5) If, after a hearing, the county superintendent determines that the reasons are not true, the county superintendent shall order the trustees to offer the teacher a contract for the ensuing school fiscal year.~~

~~(6) The provisions of this section do not apply to cases in which a nontenure teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed and the reason for the termination is to reduce the number of teachers employed.~~"

**Section 6.** Section 20-4-207, MCA, is amended to read:

"**20-4-207. Dismissal of teacher under contract.** (1) The trustees of any district may dismiss a teacher before the expiration of ~~his~~ *the teacher's* employment contract for ~~immorality, unfitness, incompetence, or violation of the adopted policies of such trustees~~ *good cause*.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state the specific instances of behavior or acts that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of ~~his~~ *the* right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 10 days appeal ~~such~~ *the* dismissal ~~to the county superintendent. Following such appeal, a hearing must be scheduled within 10 days and held within 30 days after the appeal, except that the period may be extended upon agreement between the teacher and the trustees. If the county superintendent, after a hearing, determines that the~~

~~dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal~~ *under the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31. If the employment of the teacher is covered by a collective bargaining agreement, a teacher shall appeal a decision to terminate an employment contract to an arbitrator.*"

**Section 7.** Section 20-4-208, MCA, is amended to read:

"**20-4-208. Transfer from administrative position.** (1) A tenure teacher serving in an administrative position may be assigned to a teaching position with a reduction in salary when the ~~economic conditions of the~~ district ~~require a reduction~~ *reduces the size* of *its* administrative staff. The salary for the new position must be the same as the salary that the teacher would have received if the teacher had been continuously employed in the new position rather than in the administrative position.

(2) If a board policy or a collective bargaining agreement provides seniority rights for teachers, a district that assigns a tenure teacher serving in an administrative position to a teaching position shall recognize for ~~teacher~~ seniority purposes the tenure teacher's time of service in the administrative position.

(3) As used in this section, the term~~:~~

~~(a)~~ "administrative position" means a position that the trustees of a district designate as administrative or supervisory in nature, not including the position of district superintendent~~; and~~

~~(b) "reduction of administrative staff" is limited to reductions necessary because of declining enrollment or financial exigency.~~

~~(4) When a tenure teacher serving in an administrative position is to be transferred under this section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which a signed receipt must be obtained. The notification must include:~~

~~(a) a statement of the reason or reasons for the reduction of administrative staff; and~~

~~(b) a printed copy of this section for the teacher's information.~~

~~(5) A tenure teacher who receives notice under subsection (4) may request in writing, within 10 days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not less than 10 days or more than 20 days from receipt of the request unless both parties agree to an extension. If a hearing is requested, the trustees shall:~~

~~(a) conduct the hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1); and~~

~~(b) resolve at the end of the hearing to uphold the transfer or to reject the transfer and return the teacher to the administrative position.~~

HeinOnline -- 1997 vol. II 2161 1997

~~(6) A tenure teacher may appeal a decision under this section to the county superintendent as provided in 20-3-210. The county superintendent shall conduct a hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1).~~

~~(7) The teacher or the trustees may appeal the determination of the county superintendent to the superintendent of public instruction as provided in 20-3-107.~~

~~(8)~~*(4)* A tenure teacher ~~who is transferred to a teaching position under this section must be offered the next comparable administrative position for which he is endorsed that becomes available in the district~~ *who is transferred to a teaching position under this section must be offered the next comparable administrative position for which the tenure teacher is endorsed that becomes available in the district.*"

**Section 8.** Section 20-3-210, MCA, is amended to read:

"**20-3-210. Controversy appeals and hearings.** (1) Except *for disputes arising under the terms of a collective bargaining agreement or* as provided under 20-3-211~~,~~ *or 20-4-208,* the county superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county. *Only a county superintendent who possesses the qualifications of 20-3-201(2) may hear controversies related to teacher termination.* Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required prior to filing an action in district court concerning a decision of the trustees. ~~When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title.~~ *When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced not later than 60 days after the date of the decision of the county superintendent.* The county superintendent shall hear and decide all controversies arising under:

(a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; *or*

~~(b) 20-4-206(4); or~~

~~(c)~~*(b)* any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court concerning a decision of the trustees of a district in the following instances:

HeinOnline -- 1997 vol. II 2162 1997

(a) a state agency has been granted primary jurisdiction over the matter;

(b) the matter is governed by a specific statute; or

(c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

(3) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The county superintendent shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy that is made by the county superintendent must be based upon the facts established at the hearing.

(4) ~~The~~ *Except for teacher termination cases, the* decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction. *In teacher termination cases, an appeal may be filed with the district court of the county in which the teacher was employed no later than 60 days after the date of the decision of the county superintendent. If an appeal is filed, the county superintendent shall provide a transcript of the hearing and any other documents entered as testimony at the hearing to the district court.*

(5) Cost incurred by the office of the county superintendent must be paid from the general fund budget of the county in which the controversy is initiated."

**Section 9. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 10. Effective date.** [This act] is effective July 1, 1997.

Approved April 30, 1997

# CHAPTER NO. 439

[HB 74]

AN ACT REVISING STATE TRAVEL REIMBURSEMENT PROVISIONS AFFECTING LODGING, MEALS, AND MILEAGE; ESTABLISHING A MAXIMUM FOR LODGING AND MEALS; PROVIDING FOR EXCEPTIONS; ALLOWING THE DEPARTMENT OF ADMINISTRATION TO PRESCRIBE POLICIES INSTEAD OF RULES; AMENDING SECTIONS 2-18-501, 2-18-502, AND 2-18-503, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-18-501, MCA, is amended to read:

**"2-18-501. Meals, lodging, and transportation of persons in state service.** ~~Every~~ *All* elected ~~official~~ *state officials*, appointed members of boards, commissions, or councils, department directors, and all other state employees ~~shall~~ *must* be reimbursed for meals and lodging while away from the porson's

designated headquarters and engaged in official state business in accordance with the following provisions:

(1) ~~For~~ *Except as provided under subsection (3), for* travel within the ~~state of Montana,~~ *state of Montana,* ~~the following provisions apply:~~

~~(a) The governor shall be authorized actual and necessary expenses not to exceed $55 per day.~~

~~(b) All other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees shall be authorized the actual cost of lodging, not exceeding $30 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus $3.50 for the morning meal, $4 for the midday meal, and $8 for the evening meal.~~ *lodging must be authorized at the actual cost of lodging, not exceeding $35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus $5 for the morning meal, $6 for the midday meal, and $12 for the evening meal.* All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) ~~For travel out of the state of Montana, the following provisions apply:~~

~~(a) The governor shall be authorized the actual cost of lodging in addition to a meal allowance not to exceed $30 per day.~~ *Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:*

*(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day* for the location involved plus taxes on the allowable cost.

*(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.*

~~(b) All~~ *(3) The department shall designate the locations and circumstances under which the governor,* other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees ~~shall~~ *may* be authorized the actual cost of lodging *when the actual cost exceeds the maximum established in subsection (1) or (2)(a),* ~~not exceeding $50 per day, except as provided in subsection (3), plus $5 for the morning meal, $6.50 for the midday meal, and $12 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.~~

~~(3) All other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas where the actual cost of lodging shall be reimbursed.~~

~~(4)~~*(4)* For travel to a foreign country, the following provisions apply:

(a) All elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees must be reimbursed for the cost of meals and lodging within the rates established by the department

HeinOnline -- 1997 vol. II 2164 1997

of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for foreign areas in estahlishing the rates.

(b) All claims for ~~meals and~~ lodging reimbursement allowed under this subsection ~~(4)~~ *(4)* must be documented by an appropriate receipt.

~~(5)~~*(5)* When other than commercial, nonreceiptable lodging facilities are ~~utilized~~ *used* by a state *official or* employee while conducting official state business in a travel status, the amount of $12 ~~will be~~ *is* authorized for lodging expenses for eacb day in which travel involves an overnight stay in lieu of the amount authorized in subsection ~~(1)(b) or (2)(b)~~ *(1)(a) or (2)(a)* ~~above~~. However, when overnight accommodations are provided at the expense of ~~any~~ *a* government entity, ~~no~~ reimbursement may *not* be claimed for lodging.

~~(6)~~*(6)* Tbe actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status ~~shall be~~ *is* subject to reimbursement.

~~(7)~~*(7)* The provisions of this section ~~shall~~ *may* not be construed as affecting the validity of 5-2-301.

~~(8)~~*(8)* The department of administration shall ~~prescribe rules~~ *establish policies* necessary to effectively administer this section for state government.

~~(9)~~*(9)* All commercial air travel ~~shall~~ *must* be by the least expensive class service available."

**Section 2.** Section 2-18-502, MCA, is amended to read:

**"2-18-502. Computation of meal allowance.** (1) Except as provided in ~~subsection (3)~~ *subsections (2) and (4)*, ~~to be~~ *an employee is* eligible for the meal allowance provided in 2-18-501, ~~an~~ *only if the* employee ~~must have been~~ *is* in a travel status for more than 3 continuous hours~~. If eligible, an employee receives~~ *during the following hours*:

(a) *for* the morning meal allowance, ~~if in a travel status~~ between the hours of 12:01 a.m. and 10 a.m.;

(b) *for* the midday meal allowance, ~~if in a travel status~~ between the hours of 10:01 a.m. and 3 p.m.; and

(c) *for* tbe evening meal allowance, ~~if in a travel status~~ between the hours of 3:01 p.m. and 12 midnight~~;~~.

~~(d)~~*(2) An eligible employee may receive:*

*(a)* only one of the three meal allowances provided, if the travel was performed within tbe employee's assigned travel shift; *or*

~~(e)~~*(b)* a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

~~(2)~~*(3)* "Travel shift" is that period of time beginning 1 hour before and terminating 1 bour after the employee's normally assigned work shift.

HeinOnline -- 1997 vol. II 2165 1997

~~(3)~~*(4)* An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day ~~he~~ *the individual* is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to ~~his~~ *the individual's* residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.

~~(4)~~*(5)* The department of administration shall prescribe ~~rules~~ *policies* necessary to effectively administer this section for state government."

**Section 3.** Section 2-18-503, MCA, is amended to read:

**"2-18-503. Mileage — allowance.** (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds~~,~~ when using their own automobiles in the performance of official duties~~,~~ are entitled to collect mileage for the distance actually traveled by automobile and no more unless otherwise specifically provided by law.

(2) When the individual is authorized to operate a privately owned vehicle even though a government-owned or leased vehicle is available, a rate of 3 cents less per mile than the mileage rate allowed by the United States internal revenue service for the preceding year ~~shall~~ *must* be paid.

(3) When a privately owned vehicle is used because a government-owned or leased vehicle is not available or because ~~such~~ *the* use is in the best interest of the governmental entity, a rate equal to the mileage allotment allowed by the United States internal revenue service for the preceding year ~~shall~~ *must* be paid for the first 1,000 miles and 3 cents *less* per mile ~~less~~ for all *additional* miles ~~thereafter~~ traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own airplanes in the performance of official duties, are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for automobile travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe ~~rules~~*policies* necessary for the effective administration of this section for state government. *The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.*"

**Section 4. Effective date.** [This act] is effective July 1, 1997.

Approved April 30, 1997

HeinOnline -- 1997 vol. II 2166 1997

# CHAPTER NO. 440

[HB 75]

AN ACT EXPANDING THE MEANS OF PROVIDING ELECTRONIC INFORMATION TO THE PUBLIC; AND AMENDING SECTIONS 2-17-321, 2-17-322, 2-17-323, 75-10-805, AND 87-1-272, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-17-321, MCA, is amended to read:

**"2-17-321. Definition of electronic ~~bulletin board~~ *access system*.** As used in 2-17-322 and 2-17-323, "electronic ~~bulletin board~~ *access system*" means a ~~remote data base~~ system ~~containing~~ *capable of making* various types of information accessible by means of a computer~~, a modem, and a telephone line~~ *and a telecommunications facility. Electronic access systems include but are not limited to:*

*(1) bulletin board systems;*

*(2) internet world wide web servers; or*

*(3) other computer or telecommunications systems."*

**Section 2.** Section 2-17-322, MCA, is amended to read:

**"2-17-322. Establishment.** (1) The department of administration shall establish and maintain ~~a centralized electronic bulletin board system~~ *appropriate electronic access systems* for state agencies te use as a means of conveying information to the citizens of Montana. *State agencies may establish electronic access systems that meet minimum tcchnical standards established by the department.* Agencies involved in communicating information to the public shall ~~maintain~~ *use these systems to provide* appropriate information ~~on the bulletin board system~~ *to the public*, including but not limited to:

(a) environmental assessments;

(b) rulemaking notices;

(c) board vacancy notices as required by 2-15-201;

(d) agency reports mandated by statute;

(e) parks reports required by 23-1-110;

(f) requests for bids or proposals; and

(g) public meeting notices and agendas.

(2) The purpose of ~~the centralized~~ electronic ~~bulletin board system~~ *access systems* is to encourage the practice of providing for direct citizen access to state computerized information."

HeinOnline -- 1997 vol. II 2167 1997

**Section 3.** Section 2-17-323, MCA, is amended to read:

**"2-17-323. Responsibilities.** (1) The department of administration shall:

(a) *in collaboration with other state agencies,* set standards for the selection of software for the electronic ~~bulletin boards~~ *access systems*;

(b) establish appropriate services ~~on the centralized electronic bulletin board system~~ to support ~~file transfer by all~~ state ~~agencies~~ *agencies' use of the electronic access systems*;

(c) develop user-friendly file transfer and message systems for entities regularly interacting with state government, such as professional associations and citizen groups, and promote the systems' use to reduce copying and mailing costs for state government; and

(d) determine procedures for ~~bulletin board~~ use *of the electronic access systems.*

(2) The department shall provide security to protect the integrity of its electronic ~~bulletin board system~~ *access systems.* Each department is responsible for ensuring the integrity and appropriateness of the information that it places in the ~~system~~ *electronic access systems.*

(3) The department shall provide for an equitable method for recovering the cost of operating the electronic ~~bulletin board system~~ *access systems that the department provides.*"

**Section 4.** Section 75-10-805, MCA, is amended to read:

**"75-10-805. State government source reduction and recycling program.** (1) In order to progress toward achieving the waste reduction target identified in 75-10-803, each state agency, the legislature, and the university system shall:

(a) prepare a source reduction and recycling plan by January 1, 1992, to reduce the solid waste generated by state government. This plan must be submitted to the department and must include, at a minimum, provisions for the composting of yard wastes and the recycling of office and computer paper, cardboard, used motor oil, and other materials produced by the state for which recycling markets exist or may be developed.

(b) establish and implement a source reduction and recycling program by July 1, 1992; and

(c) apply computer technology to reduce the generation of waste paper through:

(i) the use of electronic ~~bulletin boards~~ *access systems*;

(ii) the transfer of information in electronic rather than paper form; and

(iii) other applications of computer technology.

(2) The plan must be evaluated every 5 years and updated as necessary."

HeinOnline -- 1997 vol. II 2168 1997

**Section 5.** Section 87-1-272, MCA, is amended to read:

**"87-1-272. (Temporary) Future fisheries improvement program — funding priority — reports required.** (1) In order to enhance future fisheries through natural reproduction, the department shall establish and implement a statewide voluntary program that promotes fishery habitats and spawning areas for the rivers, streams, and lakes of Montana's fisheries.

(2) The department shall by April 1, 1996, and thereafter when projects are suggested by the future fisheries review panel, through a public hearing process and with the approval of the commission, prioritize projects that have been recommended by the review panel to be funded. Emphasis must be given to projects that enhance the historic habitat of native fish species. The department shall fund and implement the program regarding the long-term enhancement of streams and streambanks, instream flows, water leasing, lease or purchase of stored water, and other voluntary programs that deal with wild fish and aquatic habitats. A project conducted under the future fisheries improvement program may not restrict or interfere with the exercise of any water rights or property rights of the owners of streambeds and property adjacent to streambeds, streambanks, and lakes. The fact that a program project has been completed on private property does not create any right of public access to the private property unless that right is granted voluntarily by the property owner.

(3) The department shall work in cooperation with private landowners, conservation districts, irrigation districts, local officials, anglers, and other citizens to implement the future fisheries improvement program. Any department employee who is employed under this section to facilitate contact with landowners must have experience in commercial or irrigated agriculture. The department shall encourage the use of volunteer labor and grants, matching grants, and private donations to accomplish program purposes. The department may use contracted services:

(a) for negotiations with landowners, local officials, citizens, and others;

(b) for coordination with other agencies that may be involved in projects conducted under this section; and

(c) to perform and supervise project work.

(4) Funds expended under this section may be used only for projects for the protection of the fisheries resource that have been identified by the review panel established in 87-1-273 and approved by the commission and may not be used for the acquisition of any interest in land.

(5) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 12 months and post a copy of the report on ~~the~~ *a* state electronic ~~bulletin board~~ *access system* to ensure public access to the report.

(b) The department shall also present a detailed report to each regular session of the legislature on the progress of the future fisheries improvement program. The legislative report must include the department's program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the future fisheries improvement program.

HeinOnline -- 1997 vol. II 2169 1997

(c) In order to implement 87-1-273 and this section, the department may expend revenue from the future fisheries improvement program for up to two additional full-time employees. (Terminates July 1, 2005—sec. 5, Ch. 463, L. 1995.)"

Approved April 30, 1997

# CHAPTER NO. 441

[HB 120]

AN ACT PROVIDING FOR AN ADDITIONAL EXCEPTION TO THE UPPER MISSOURI RIVER BASIN CLOSURE; AND AMENDING SECTION 85-2-343, MCA.

STATEMENT OF INTENT

This bill is intended to allow an applicant to apply for a water permit on the Muddy Creek drainage to use excess water to prevent significant impacts on adjoining lands. This conservation measure will be allowed only if the permit will help control erosion on the Muddy Creek drainage.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-343, MCA, is amended to read:

"**85-2-343. Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin ~~during the period from April 16, 1993,~~ until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; ~~or~~

*(e) an application for a permit to use water from the Muddy Creek drainage, which drains to the Sun River, if the proposed use of water will help control erosion in the Muddy Creek drainage; or*

~~(e)~~*(f)* temporary emergency appropriations as provided for in 85-2-113(3)."

Approved April 30, 1997

# CHAPTER NO. 442

[HB 134]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM; DEFINING "TERMINATION", "TERMINATION PAY", AND "VESTED"; PROVIDING TERMINATION PAY OPTIONS; CLARIFYING THAT TEACHERS' RETIREMENT SYSTEM PROVISIONS MUST COMPLY WITH FEDERAL TAX LAWS REGARDING QUALIFIED PLAN STATUS; CLARIFYING THE DISTRIBUTION OF BENEFITS TO BENEFICIARIES; CLARIFYING CERTAIN DEFINITIONS; CLARIFYING DEFINITIONS RELATED TO COMPENSATION USED TO DETERMINE BENEFITS; CLARIFYING THAT FAMILY LAW ORDERS AFFECTING DISTRIBUTION OF BENEFITS MUST CONTAIN A STATEMENT THAT THE ORDER IS SUBJECT TO REVIEW AND APPROVAL BY THE TEACHERS' RETIREMENT BOARD; GENERALLY REVISING LANGUAGE REFERRING TO ANNUITIES; REVISING PROVISIONS RELATED TO THE TRANSFER OF SERVICE FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; CLARIFYING CERTAIN SERVICE PROVISIONS; CLARIFYING DISPOSITION OF UNCLAIMED ACCOUNTS; REVISING CERTAIN WITHDRAWAL AND OPTIONAL ALLOWANCE PROVISIONS; REVISING PAYMENT COMMENCEMENT PROVISIONS; REVISING CERTAIN DISABILITY RETIREMENT AND REINSTATEMENT FROM DISABILITY PROVISIONS; CLARIFYING POSTRETIREMENT PROVISIONS; AMENDING SECTIONS 19-20-101, 19-20-104, 19-20-208, 19-20-305, 19-20-409, 19-20-412, 19-20-503, 19-20-602, 19-20-603, 19-20-605, 19-20-702, 19-20-703, 19-20-706, 19-20-711, 19-20-712, 19-20-713, 19-20-715, 19-20-801, 19-20-804, 19-20-902, 19-20-903, 19-20-904, 19-20-905, 19-20-1001, AND 19-20-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] gives the teachers' retirement board authority to adopt administrative rules.

The legislature finds that it is beneficial to maintain the teachers' retirement system as a qualified plan under Internal Revenue Code regulations. Therefore, it is the intent of the legislature that statutory provisions governing the teachers' retirement system be subject to federal tax law applicable to public retirement plans. The legislature intends that the board make rules useful and necessary to ensure compliance with federal law and necessary to maintain a federal tax qualified plan status.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Earned compensation — part-time service.** The earned compensation of a member who retired under 19-20-802 or 19-20-804 and had less than 3 consecutive years of full-time service during the 5 years preceding the member's retirement is the compensation that the member would have earned in the final 3 years had the member's part-time service been full-time service. To determine the compensation that the member would have earned, the compensation reported must be divided by the part-time service credited to the member's account.

HeinOnline -- 1997 vol. II 2171 1997

**Section 2. Termination pay.** If a member receives termination pay at the time of termination and elects to retire at that time, the member shall select one of the following options:

(1) The member may use termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(2) The member may use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1).

(3) The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer, and any contributions made under 19-20-602 and 19-20-605 must be refunded.

**Section 3. Retaining qualified plan status — board rulemaking authority.** If a provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue Code applicable to public retirement systems and consequent federal administrative regulations, the provision is either ineffective or must be interpreted to conform to the federal qualification requirements and allow the system to retain tax-deferred status. The board may adopt rules to implement this section.

**Section 4. Effect of no designation or no surviving beneficiary.** (1) If a beneficiary is not designated or if no designated beneficiary survives the payment recipient, the estate of the payment recipient is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior to the death of the payment recipient. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or to the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must he made upon receipt from the person of an affidavit, upon a form supplied by the system, that there are no living individuals in the groups preceding the group of which the person is a memher and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the hoard and system on account of the member's or payment recipient's death.

**Section 5.** Section 19-20-101, MCA, is amended to read:

**"19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a memher or paid by a memher and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a henefit of equal value when computed, with regular interest, on the basis of the 1971 Group Annuity Mortality Tahle, with ages set back 4 years and an interest rate of 8% compounded annually.

~~(3) "Annuity" means the payments made to a beneficiary for life that are derived from a member's accumulated contributions.~~

~~(4) "Annuity reserve" n~~eans the present value of all payments to be made ~~on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.~~

~~(5) (a)~~ "Average final compensation" means the average of ~~the~~ *a member's* earned compensation ~~of a member~~ during the 3 consecutive years of full-time service *or as provided under [section 1]* that yield the highest average and on which contributions have been made as required by 19-20-602 *or 19-20-413. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under [section 2(2)].*

~~(b) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation for each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.~~

HeinOnline -- 1997 vol. II 2173 1997

~~(c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered termination pay as provided in subsection (5)(d).~~

~~(d) If the earned compensation includes any termination pay, the member shall select one of the following options:~~

~~(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.~~

~~(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation if the member has 4 or more years of service with the employer from which the termination pay was received. The amount of compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602(1) and 19-20-605(1).~~

~~(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member, and contributions made under 19-20-602 and 19-20-605 must be refunded.~~

~~(e) For purposes of this subsection (5), termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.~~

~~(6)~~*(4)* "Beneficiary" means a person ~~in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system~~ *formally designated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.*

~~(7)~~*(5)* "Creditable service" is that service defined by 19-20-401.

~~(8)~~*(6) (a)* "Earned compensation" means, except as limited by 19-20-715, remuneration, *exclusive of maintenance, allowance, and expenses,* paid for services by a member out of funds controlled by an employer~~, as defined under this chapter,~~ before any ~~tax-deferred~~ *pretax* deductions allowed under the Internal Revenue Code *are deducted from the member's compensation*~~, exclusive of maintenance, allowances, and expenses. The earned compensation is remuneration that would have been paid to a member for full-time service but was not paid to the member because of a reduction in compensation, pay, or salary due to a temporary absence, provided that the retirement system receives the contribution required by 19-20-413. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding the member's retirement is the compensation, pay, or salary that the member would have earned had the member's part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received had the member completed the full year,~~

~~except that any termination pay, as defined in subsection (5)(c), received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year.~~

*(b) Earned compensation does not mean:*

*(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;*

*(ii) any direct employer payment or reimbursement for professional membership dues; maintenance; housing; day care; or automobile, travel, lodging, or entertaining expenses; or any similar payment for any form of maintenance, allowance, or expenses;*

*(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or*

*(iv) any noncash benefit provided by an employer to or on behalf of an employee.*

*(c) Earned compensation does not include lump-sum payments in respect to unused, accumulated sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive or severance payment contingent upon the employee terminating employment.*

*(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.*

~~(9)~~*(7)* "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

~~(10)~~*(8)* "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

~~(11)~~*(9)* "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

~~(12)~~*(10)* "Part-time service" means service that is less than full-time or that totals less than 9 months in ~~any~~ *a normal academic* year. Part-time service must be credited in the proportion that the actual time worked ~~bears~~ *compares* to full-time service.

~~(13) "Pension" means the payments made to a beneficiary for life that are paid out of the pension accumulation fund.~~

~~(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.~~

~~(15)~~*(11)* "Prior service" means employment of the same nature as service ~~defined in subsection (20)~~ but rendered before September 1, 1937.

~~(15)~~*(12)* "Regular interest" means interest at 4% ~~per annum~~ *a year* compounded annually or at ~~such other~~ *a* rate as may be set by the retirement board in accordance with 19-20-501(2).

~~(17)~~*(13)* "Retirement allowance" means ~~the annuity plus the pension~~ *a payment due monthly to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.*

~~(18)~~*(14)* "Retirement board" *or "board"* means the retirement system's governing board provided for in 2-15-1010.

~~(19)~~*(15)* "Retirement system" *or "system"* means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(20)~~*(16)* "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

*(17) "Termination" means that the member has severed the employment relationship with the member's employer and all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.*

*(18) "Termination pay" means any form of termination pay made at the time of retirement or death; payments contingent on the employee terminating employment; any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit; or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.*

*(19) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit."*

**Section 6.** Section 19-20-104, MCA, is amended to read:

**"19-20-104. Guarantee by state.** Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund, and the maintenance of ~~annuity reserves~~ *accumulated contributions* in the annuity ~~reserve~~ *savings* fund, as provided for in this chapter, and the payment of all ~~annuities, pensions~~ *retirement allowances*, refunds, and other benefits grantod under the retirement system are obligations of the state of Montana."

**Section 7.** Section 19-20-208, MCA, is amended to read:

**"19-20-208. Duties of employer.** Each employer shall:

(1) pick up the contribution of each *employed* member ~~employed by him~~ at the rate prescribed by 19-20-602 and transmit the contribution each month to the ~~secretary~~ *executive director* of the retirement board;

(2) ~~pay~~ *transmit* to the ~~secretary~~ *executive director* of the retirement board the employer's contribution prescribed hy 19-20-605, at the time that the employee contributions are transmitted ~~to the secretary~~;

HeinOnline -- 1997 vol. II 2176 1997

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of a person who is required to become a member of the retirement system, inform ~~him~~ *the person* of ~~his~~ *the* rights and obligations relating to the retirement system;

(5) whenever applicable, inform an employee of ~~his~~ *the* right to elect to participate in the optional retirement program under Title 19, chapter 21;

(6) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system; ~~and~~

(7) notify the retirement board of the employment of a person eligible for membership and forward ~~his~~ *the person's* membership application te the board.~~;~~

*(8) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.*"

**Section 8.** Section 19-20-305, MCA, is amended to read:

"**19-20-305. Alternate payees — family law orders.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "participant" means a member, *retiree,* or an actual or potential beneficiary, survivor, or contingent annuitant of the retirement system designated pursuant to this chapter; and

(b) "family law order" means a *certified copy of a* judgment, decree, or order of a court ~~of~~ *with* competent jurisdiction ~~under Title 40~~ concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

HeinOnline -- 1997 vol. II 2177 1997

(5) A family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.

(6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

*(7) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board."*

**Section 9.** Section 19-20-409, MCA, is amended to read:

**"19-20-409. Transfer of service credits and contributions from public employees' retirement system.** (1) An active member may at any time before retirement make a written election with the retirement board to qualify in the teachers' retirement system all of the member's previous creditable service in the public employees' retirement system. The amount that must be paid to the retirement system to qualify this service under this section is the sum of subsections (2) and (3).

(2) ~~In addition to the amounts directly paid or transferred by the member under subsection (3), the~~ *The* public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount payable by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the

member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who qualifies service from the public employees' retirement system in the teachers' retirement system must complete 5 years of membership service in the teachers' retirement system to qualify or purchase military service, out-of-state teaching service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has creditable service in the public employees' retirement system *before becoming a member of the teachers' retirement system* dies before qualifying this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to qualify this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) If the retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the member's accumulated contributions and service, *together with employer contributions plus interest,* must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in 19-20-602 and 19-20-605, *respectively,* are the liability of the employee and the employing entity where the error occurred~~, respectively~~. *For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.*"

**Section 10.** Section 19-20-412, MCA, is amended to read:

"**19-20-412. Election to purchase additional service.** (1) (a) Except as provided in subsection (3), a member with 5 years or more of creditable service may make a written election with the retirement board to purchase, for the purpose of calculating the member's retirement allowance, 1 year of additional service for:

(i) each 5 years of service on which contributions have been made as required under the provisions of 19-20-602; and

(ii) each 5 years of membership service as defined in Title 19, chapter 3, for which contributions have been made as required under the provisions of 19-20-409.

(b) A maximum of 5 years of additional service may be purchased under this section. A part-time member may purchase additional service on a prorated basis.

HeinOnline -- 1997 vol. II 2179 1997

(2) (a) To purchase additional service under this section, a member shall contribute, in a lump-sum payment or in installments as agreed upon by the member and the retirement board, an amount equal to:

(i) the combined employer and employee rate on July 1, 1989, or the combined rate in effect at the time the member is eligible to purchase the service, whichever date is later, multiplied by the member's earned compensation *for full-time service* as provided in subsection (2)(b); and

(ii) interest at a rate of 8% compounded annually from July 1, 1989, or from the date at which the member is eligible to purchase the service, whichever date is later.

(b) The earned compensation used in calculating the cost of purchasing additional service under this section is:

(i) for the first year of service purchased, the member's earned compensation *for full-time service* for the 1988-89 school year or for the member's fifth year of service, whichever year is later;

(ii) for the second year of service purchased, the member's earned compensation *for full-time service* for the 1988-89 school year or for the member's 10th year of service, whichever year is later;

(iii) for the third year of service purchased, the member's earned compensation *for full-time service* for the 1988-89 school year or for the member's 15th year of service, whichever year is later;

(iv) for the fourth year of service purchased, the member's earned compensation *for full-time service* for the 1988-89 school year or for the member's 20th year of service, whichever year is later; and

(v) for the fifth year of service purchased, the member's earned compensation *for full-time service* for the 1988-89 school year or for the member's 25th year of service, whichever year is later.

(3) A member who became a member prior to July 1, 1989, and who is eligible to purchase creditable service under 19-3-504, 19-3-510, 19-3-512, 19-3-513, 19-20-402, 19-20-403, 19-20-408, 19-20-410, or 19-20-411 may not purchase additional service under this section unless the member elects in writing to:

(a) waive eligibility to purchase creditable service under sections referred to in subsection (3); and

(b) apply the accumulated contributions made under sections referred to in subsection (3) to the cost of additional service purchased under this section.

(4) Additional service purchased under this section may not be used to qualify a member for service retirement."

**Section 11.** Section 19-20-503, MCA, is amended to read:

**"19-20-503. Transfer of dormant ~~savings account~~ *or unclaimed accounts.*** *(1)* The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of 7 years. ~~No~~ *A*

right of the member may *not* be jeopardized by ~~such~~ *the* transfer, and the amount ~~shall~~ *must* be transferred back to the member's annuity savings account upon ~~his~~ *the member's* request.

*(2) Retirement benefits must be claimed within 5 years of the date of the member's death. If the named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member's account balance reverts to the pension trust fund.*"

**Section 12.** Section 19-20-602, MCA, is amended to read:

"**19-20-602. Annuity savings fund — member's contribution.** The annuity savings fund is a fund in which the contributions for the members to provide for their ~~annuities~~ *retirement allowance or benefits* must be accumulated in individual accounts for each member. The normal contribution of each member is 7.044% of the member's earned compensation. Contributions to and payments from the annuity savings fund must be made in the following manner:

(1) (a) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under this section for service rendered after June 30, 1985.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(2) In addition to the normal contributions and subject to the approval of the retirement board, a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

(3) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings fund. Upon the

HeinOnline -- 1997 vol. II 2181 1997

retirement of a member, the member's accumulated contributions must be transferred from the annuity savings fund to the pension accumulation fund."

**Section 13.** Section 19-20-603, MCA, is amended to read:

**"19-20-603. Withdrawal of accumulated contributions — options.** ~~Any~~ *An* inactive member electing to do so or ~~any~~ *a* person whose membership terminates *without a prospect or anticipation that the member will return to work for an employer within 60 days of termination* may withdraw the member's ~~or person's~~ accumulated contributions from the annuity ~~account~~ *savings fund* in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of ~~subsection (1) or (3) of~~ 19-20-303*(1) or (3)* may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, ~~any~~ *a* person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) ~~Any~~ *A* person whose membership terminates under the provisions of 19-20-304(4) may withdraw the person's accumulated contributions.

(4) Upen written request, a terminating member may have the payment of ~~the~~ *all or any portion of the member's* accumulated contributions ~~split. The tax-deferred portion of the contributions may be paid directly to an individual retirement account or other~~ *rolled over or transferred into another* qualified plan designated by the member~~, and the other~~. *The* portion *not rolled over or transferred* must be paid directly to the terminating member. The board shall provide forms for making the written request. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the *tax-deferred* status of the amount."

**Section 14.** Section 19-20-605, MCA, is amended to read:

**"19-20-605. Pension accumulation fund — employer's contribution.** The pension accumulation fund is the fund in which the reserves for payment of ~~pensions and annuities~~ *retirement allowances and benefits* must be accumulated and from which ~~pensions, annuities,~~ *retirement allowances* and benefits must be paid to ~~or on account of beneficiaries credited with prior service~~ *retirees or their beneficiaries*. Contributions to and payments from the pension accumulation fund must be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to 7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

HeinOnline -- 1997 vol. II 2182 1997

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the money of the retirement system ~~shall~~ *must* be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund ~~shall~~ *must* be transferred to that fund from the pension accumulation fund.

(6) ~~All pensions, annuities, and benefits must be paid from the pension accumulation fund.~~

~~(7)~~ The retirement board may, in its discretion, transfer from the pension accumulation fund an amount necessary to cover expenses of administration."

**Section 15.** Section 19-20-702, MCA, is amended to read:

"**19-20-702. Optional allowances.** (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in ~~part 8 of this chapter and~~ 19-20-902 *and part 8 of this chapter*. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's *service* retirement or disability *retirement* allowance at the time of the member's retirement *effective date* and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(d) ~~Option D—some other benefit will be paid either to the member or the member's surviving designated beneficiary in accordance with provisions~~

~~approved by the retirement board~~ *Period certain and life—a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever is greater.*

*(i) The member shall elect one of the following certain time periods:*

*(A) 10 years if the member is 75 years of age or younger at the time of retirement; or*

*(B) 20 years if the member is 65 years of age or younger at the time of retirement.*

*(ii) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.*

(3) (a) Upon written request to the retirement board, a retired member *whose effective date of retirement is before October 1, 1993, and* who is receiving an optional retirement allowance may designate a different beneficiary, select a different option, or convert the member's optional retirement allowance to a regular retirement or disability allowance if:

(i) the original beneficiary has died; or

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(4) Effective on the first of the month following ~~receipt of notification of~~ the death of a person nominated as the designated beneficiary under subsection ~~(2)~~ *(2)(a), (2)(b), or (2)(c)*, any optional retirement allowance that is effective after October 1, 1993, will revert to the full normal form of retirement allowance available at the time of retirement. The normal form of retirement allowance available must be increased by the value of any pestretirement adjustments received by the member since the effective date of retirement. *The retired member may, within 18 months of the death of the designated beneficiary, file a written application with the board to designate a different beneficiary and to select an actuarially equivalent optional allowance. The optional allowance is effective on the first day of the month following receipt of the retiree's application."*

**Section 16.** Section 19-20-703, MCA, is amended to read:

**"19-20-703. Payments to be monthly.** *(1)* All ~~pensions and annuities shall~~ *retirement allowances must* be paid in equal monthly installments.

*(2) The retirement allowance may commence:*

*(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or*

*(b) if requested by the inactive member in writing:*

*(i) on the first day of a later month; or*

*(ii) on the first day of the month following the member's 60th birthday."*

**Section 17.** Section 19-20-706, MCA, is amended to read:

**"19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305, the ~~pensions, annuities,~~ *retirement allowances* or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of $3,600 or adjusted hy an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a withdrawal paid under 19-20-603 of a member's contributions picked up hy an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment hy trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

**Section 18.** Section 19-20-711, MCA, is amended to read:

**"19-20-711. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a ~~member~~ *retiree* or beneficiary is eligible to receive a postretirement adjustment as provided in 19-20-713 if ~~he~~ *the retiree* is receiving a:

(a) service retirement allowance ~~and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made~~; or

(b) disability or survivorship allowance.

(2) A ~~member~~ *retiree* or beneficiary is ineligible to receive a postretirement adjustment under subsection (1) unless ~~he~~ *the retiree or beneficiary* has been receiving a monthly service, disability, or survivorship allowance for at least 24 consecutive months on or before June 30 in the year *that* the adjustment is made."

**Section 19.** Section 19-20-712, MCA, is amended to read:

**"19-20-712. Funding for postretirement adjustment — reserve fund.** (1) At the end of each fiscal year, the board shall detormine the total investment income ~~earned~~ *minus unrealized gains or losses* on the retirement fund for that fiscal year. From this amount, the board shall subtract tbe:

(a) ~~actuarial amount required to fund the retirement system for the fiscal year~~ *amount equivalent to the actuarially required investment yield*; and

(b) retirement systom's administrative and investment expenses for the fiscal year.

HeinOnline -- 1997 vol. II 2185 1997

(2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of investment income earned on that portion of the retirement fund balance representing retired members.

(b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

(3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment to eligible ~~members~~ *retirees* or beneficiaries under 19-20-713.

(4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement adjustment of at least $1 under 19-20-713, an adjustment may not be made in that calendar year.

(5) The amount available for payment of the postretirement allowance is limited to an amount that would provide a percentage increase in the average service, disability, or survivorship allowance of all eligible ~~members~~ *retirees*, when combined with the postretirement adjustment, that is equal to or less than the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers compiled by the bureau of labor statistics, United States department of labor, or its successor agency."

**Section 20.** Section 19-20-713, MCA, is amended to read:

**"19-20-713. Payment and amount of postretirement adjustment.** (1) Effective January 1 of each year that funds are available under 19-20-712, a ~~member~~ *retiree* or beneficiary eligible under 19-20-711 shall receive a postretirement adjustment in the form of a monthly benefit payable for life.

(2) The board shall calculate the amount of the postretirement allowance payable to an eligible ~~member~~ *retiree* or beneficiary by:

(a) dividing the amount available under 19-20-712(3) for payment of the postretirement allowance by the total accumulated years of service for all eligible ~~members~~ *retirees* and beneficiaries;

(b) multiplying the quotient obtained in subsection (2)(a) by the ~~member's~~ *retiree's* total years of service;

(c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly ~~annuity~~ *retirement allowance* from actuarial tables adopted by the board; and

(d) applying the provisions contained in subsections (3) and (4).

(3) If a ~~member~~ *retiree* had elected to receive an optional retirement allowance, the amount of ~~his~~ *the retiree's* postretirement allowance must be adjusted by the appropriate optional factor.

(4) If more than one beneficiary is receiving a ~~member's~~ *retiree's* retirement allowance, the postretirement adjustment must be divided in the same manner as the ~~member's~~ *retiree's* retirement allowance."

HeinOnline -- 1997 vol. II 2186 1997

**Section 21.** Section 19-20-715, MCA, is amended to read:

**"19-20-715. Compensation limit.** *(1)* Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996.

*(2) In determining a member's retirement allowance under 19-20-802 or 19-20-804, the compensation reported in each year of the 3 years that make up the average final compensation may not be greater than 110% of the previous year's compensation included in the calculation of average final compensation or the earned compensation reported to the retirement system, whichever is less, except as provided by rule by the retirement board.*

*(3) Earned compensation in excess of the amount specified in subsection (2) is considered termination pay and must be included in the calculation of average final compensation as provided in [section 2].*"

**Section 22.** Section 19-20-801, MCA, is amended to read:

**"19-20-801. Eligibility for ~~superannuation~~ *service* retirement.** A member who has at least 5 full years of creditable service, whose last 5 years of creditable service were in this state, and who has attained the age of 60 or has been credited with full-time or part-time service in 25 or more years may retire from service if ~~he~~ *the member has terminated employment in all positions from which the member is eligible to retire and* files with the retirement board ~~his~~ *a* written application setting forth the fact of ~~his~~ *the member's* retirement."

**Section 23.** Section 19-20-804, MCA, is amended to read:

**"19-20-804. Allowance for ~~superannuation~~ *service* retirement.** (1) Upon ~~superannuation retirement, a~~ *termination, an eligible* member ~~shall~~ *must* receive a retirement allowance ~~consisting of a pension which, together with an annuity, provides a retirement allowance~~ equal to one-sixtieth of ~~his~~ *the member's* average final compensation, *as limited by 19-20-715,* multiplied by the sum of the number of years of creditable service, service transferred under 19-20-409, and additional service purchased under 19-20-412.

(2) ~~Any~~ *Except as provided in subsection (3), a* retired member may be employed as a part-time or substitute teacher in Montana and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of ~~his~~ *the member's* average final compensation plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

*(3) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective date of retirement or if the*

HeinOnline -- 1997 vol. II 2187 1997

*early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."*

**Section 24.** Section 19-20-902, MCA, is amended to read:

**"19-20-902. Allowance for disability retiremcnt.** *(1)* Upon retirement for disability, a member must receive a disability retirement allowance equal to *the greater of*:

~~(1)~~*(a)* one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, service transferred under 19-20-409, and additional service purchased under 19-20-412~~, if the retirement allowance exceeds one-fourth of the member's average final compensation~~; or

~~(2)~~*(b)* ~~a pension that, together with the member's annuity, provides a total retirement allowance equal to~~ one-fourth of the member's average final compensation.

*(2) The earned compensation in the year of termination that is included in the calculation of average final compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received under the member's contract had the member completed the full year. Any termination pay received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year."*

**Section 25.** Section 19-20-903, MCA, is amended to read:

**"19-20-903. Medical examination of disability retiree.** (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period thereafter, the retirement board may require ~~and, upon the beneficiary's application, shall permit~~ a disability ~~beneficiary~~ *benefit recipient* who has not yet attained the age of 60 to undergo a medical examination by a physician or physicians designated by the retirement board. The examination ~~shall~~ *must* be made at the place of residence of the ~~beneficiary~~ *benefit recipient* or other place mutually agreed upon. *Based on the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of the position held by the member when the member retired. If the board determines that the member is not incapacitated, the member's retirement benefit must be canceled. If the member disagrees with the board's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after the receipt of the notice of the status change.*

*(2) A member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be given preference by the member's former employer for the position held at the time of retirement or for a comparable position that becomes available within 1 year of cancellation of the disability retirement. The member may agree to accept an offer of employment by an employer. Employment in any capacity by an employer*

*terminates any right granted by this section. The fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have. This section does not affect any requirement for the former employee to meet or to be able to meet professional certification and licensing standards unrelated to the previous disability, otherwise necessary for reinstatement to duty.*

~~(2)~~*(3)* ~~Should~~ *If* a disability ~~beneficiary~~ *benefit recipient* who has not yet attained the age of 60 ~~refuse~~ *refuses* to submit to a medical examination as required in subsection (1), ~~his~~ *the recipient's* allowance may be discontinued until ~~his~~ withdrawal of ~~such~~ *the* refusal~~, and should his~~. *If a* refusal ~~continue~~ *continues* for 1 year, all ~~his~~ rights in and to ~~his~~ *a* disability pension may be revoked by the retirement board."

**Section 26.** Section 19-20-904, MCA, is amended to read:

**"19-20-904. Adjustment of allowance.** ~~(1) If~~ *(1) (a) Except as provided by subsection (1)(b), if a retiree receiving a* disability ~~beneficiary~~ *retirement allowance* is engaged in or is able to engage in a gainful occupation paying more than the difference between tbe ~~beneficiary's~~ *retiree's* retirement allowance and the ~~beneficiary's~~ *retiree's* average final compensation or the difference between the median salary of those members retired during the preceding fiscal year and the ~~beneficiary's~~ *retiree's* retirement allowance, whichever is greater, the retirement allowance must be reduced to an amount that, together with the amount earnable by the ~~beneficiary~~ *retiree*, is equal to the ~~beneficiary's~~ *retiree's* average final compensation or the median salary of those members retired during the preceding fiscal year, whichever is greater.

*(b) If a disabled retiree is reemployed with the same employer within 30 days from the member's effective date of retirement or if the retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be terminated.*

(2) If tbe ~~beneficiary's~~ *disabled retiree's* earning capacity is changed later, the ~~beneficiary's~~ retirement allowance may be further modified, but tbe new allowance may not exceed the retirement allowance originally granted or an amount that, when added to the amount earnable by the ~~beneficiary~~ *retiree*, equals tbe ~~beneficiary's~~ *retiree's* average final compensation.

(3) The board may, in its discretion, require a recipient of a disability retirement allowance to annually submit an earning statement and any documentation necessary to support the earnings of the recipient.

~~(4) A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which the beneficiary was retired may not become a member of the retirement system while receiving a reduced benefit.~~"

**Section 27.** Section 19-20-905, MCA, is amended to read:

**"19-20-905. Cancellation of allowance and restoration of membership.** (1) If a ~~disability beneficiary under age 60 is restored to active service at a compensation not less than his average final compensation, his~~

HeinOnline -- 1997 vol. II 2189 1997

*disabled retiree is employed full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302, the retiree's* retirement allowance ~~shall~~ *must* cease ~~and he~~. *If the retiree is employed by an employer covered under this chapter, the retiree* shall again become an active member of the retirement system. Any prior service certificate on the basis of which ~~his~~ *the member's* service was computed at the time of ~~his~~ *the member's* disability retirement ~~shall~~ *must* be restored to full force, and upon ~~his~~ *the member's* subsequent retirement, ~~he shall~~ *the member must* be credited with ~~such~~ *the* prior service and all ~~his~~ subsequent service as a member.

(2) If ~~he~~ *the member* is restored to active ~~service~~ *membership* on or after the attainment of the age of 55 years, ~~his pension~~ *the member's retirement allowance* upon subsequent retirement may not exceed the ~~pension~~ *retirement allowance* that ~~he~~ *the member* would have received had ~~he~~ *the member* remained in service during the period of ~~his~~ *the member's* previous retirement or the sum of the ~~pension which he~~ *retirement allowance that the member* was receiving immediately prior to ~~his~~ *the member's* last restoratien to service and the ~~pension~~ *retirement allowance* that ~~he~~ *the member* would have received on account of ~~his~~ *the member's* service since ~~his~~ *the member's* last restoration had ~~he~~ *the member* entered service at that time as a new member."

**Section 28.** Section 19-20-1001, MCA, is amended to read:

**"19-20-1001. Allowances for death of member.** (1) If a member dies before retirement, ~~his~~ *the member's* accumulated contributions ~~shall~~ *must* be paid to ~~his~~ *the member's* estate or ~~such~~ *to a* person ~~as he~~ *the member* may have nominated by a written designation *in a manner prescribed by the board and* filed with the retirement board prior to ~~his~~ *the member's* death ~~in the manner prescribed by the board~~.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the *nominated* beneficiary ~~nominated by the deceased member~~ may elect to receive a ~~monthly life annuity~~ *retirement allowance*. The ~~monthly life annuity shall~~ *retirement allowance must* be determined as prescribed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) In the event *that* payments made to ~~an annuitant~~ *a recipient* do not equal the amount of the member's accumulated contributions ~~prior to~~ *before* the ~~annuitant's~~ *member's* death, the difference between the total ~~annuity~~ *retirement allowance* payments made and the amount of the accumulated contributions ~~shall~~ *at the time of the member's death must* be paid to the beneficiary.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year ~~prior to his~~ *before the member's* death, a lump-sum death benefit of $500 is payable to ~~his~~ *the member's* designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to ~~his~~ *the member's* death, the sum of $200 ~~per~~ *a* month ~~shall~~ *must* be paid to each minor child of the deceased member until ~~such~~ *the* child reaches ~~his 18th birthday~~ *18 years of age*."

HeinOnline -- 1997 vol. II 2190 1997

**Section 29.** Section 19-20-1002, MCA, is amended to read:

**"19-20-1002. Payments upon death of retiree.** (1) In the event of the death of a member after retirement, a death benefit of $500 is payable to ~~his~~ *the* designated beneficiary.

(2) In the event *that* payments made to ~~an annuitant~~ *a benefit recipient* do not equal the amount of the member's accumulated contributions ~~prior to~~ *before* the ~~annuitant's death~~ *member's retirement*, the difference between the total retirement allowance paid and the amount of the accumulated contributions ~~shall~~ *must* be paid to the beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of ~~his~~ death, the sum of $200 ~~per~~ *a* month ~~shall~~ *must* be paid to each minor child of the deceased ~~member~~ *retiree* until ~~such~~ *the* child reaches ~~his 18th birthday~~ *18 years of age*."

**Section 30. Codifieation instruetion.** (1) [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 8, and the provisions of Title 19, chapter 20, part 8, apply to [section 1].

(2) [Sections 2 and 4] are intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [sections 2 and 4].

(3) [Section 3] is intended to be codified as an integral part of Title 19, chapter 20, part 1, and the provisions of Title 19, chapter 20, part 1, apply to [section 3].

**Section 31. Coordination instruction.** If ___Bill No. ____ [LC 0553] is passed and approved and if it includes sections that amend 19-20-711 through 19-20-713, then [sections 18 through 20 of this act], amending 19-20-711 through 19-20-713, are void.

**Section 32. Retroactive applicability.** [Section 9] applies retroactively, within the meaning of 1-2-109, to all occurrences on or after January 1, 1995.

**Section 33. Effeetive date.** [This act] is effective on passage and approval.

Approved April 30, 1997

# CHAPTER NO. 443

[HB 139]

AN ACT GENERALLY REVISING THE LAW RELATING TO PUBLIC CONTRACTS; AMENDING MONTANA PROCUREMENT LAWS; MODERNIZING STATE PROCUREMENT PROCEDURE BY PROVIDING OPTIONS FOR SOURCE SELECTION, CLARIFYING TERMS AND PROCEDURES, AND STREAMLINING THE STATE PROCUREMENT PROCESS; PROVIDING EXCLUSIVE REMEDIES FOR UNLAWFUL SOLICITATIONS OR AWARDS; PROVIDING FOR THE PROCUREMENT OF CONSULTING SERVICES IN THE SAME MANNER AS OTHER SERVICES ARE PROCURED; AMENDING SECTIONS 18-1-101, 18-4-122, 18-4-123, 18-4-126, 18-4-132, 18-4-133, 18-4-141, 18-4-224, 18-4-241, 18-4-242, 18-4-302,

HeinOnline -- 1997 vol. II 2191 1997

18-4-303, 18-4-304, 18-4-305, 18-4-309, 18-4-310, 18-4-312, 18-4-402, 18-8-211, AND 60-2-112, MCA; REPEALING SECTIONS 18-4-131, 18-4-225, 18-8-101, 18-8-102, 18-8-103, 18-8-104, 18-8-105, 18-8-106, 18-8-111, AND 18-8-112, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the Montana Supreme Court held in ISC Distributors, Inc. v. Trevor, 273 M 185, 903 P2d 170 (1995), that an unsuccessful bidder on a state contract may sue the state for money damages under Title 18, chapter 4, MCA, commonly known as the Montana Procurement Act; and

WHEREAS, a judgment for damages in a state contract suit brought pursuant to the Montana Procurement Act makes Montana taxpayers pay twice for the same product; and

WHEREAS, in enacting the Montana Procurement Act, the Legislature did not intend to allow disappointed bidders on state contracts to be awarded damages under the Montana Procurement Act, but rather intended that the exclusive remedies of a disappointed bidder be the remedies provided in section 18-4-242, MCA, which do not include the award of money damages to an unsuccessful bidder; and

WHEREAS, the Montana Supreme Court held in Meech v. Hillhaven West, Inc., 238 M 21, 776 P2d 488 (1989), that no fundamental right to a particular cause of action or remedy exists under Montana law and that Article II, section 16, of the Montana Constitution requires only that some remedy be provided for every wrong, and the Supreme Court held in Continental Oil Co. v. Montana Concrete Co., 63 M 223, 207 P 116 (1922), and General Agriculture Corp. v. Moore, 166 M 510, 534 P2d 859 (1975), that the Legislature may repeal a statutory cause of action or remedy during the pendency of a civil action invoking the remedy; and

WHEREAS, according to section 1-2-110, MCA, a statute may he repealed at any time by the Legislature, and porsons acting under any statute are considered to he acting in contemplation of the Legislature's power to repeal the statute; and

WHEREAS, it is the intent of the Legislature by enacting [sections 2, 10, and 23] and repealing section 18-4-131, MCA, to reverse the holding of the Supreme Court in the ISC case as to the availability of the remedy of money damages; and

WHEREAS, it is the intent of the Legislature by enacting [section 23] to make the reversal of the ISC case apply retroactively, unless a complaint was filed in district court prior to January 1, 1992, as provided in [section 23].

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-1-101, MCA, is amended to read:

**"18-1-101. Definitions.** ~~(1)~~*(1)* Unless the context requires otherwise, in this title ~~"department"~~ *"department"* means the department of administration provided for in Title 2, chapter 15, part 10.

~~(2) Unless the context requires otherwise, in this part the following definitions apply:~~

~~(a) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.~~

~~(b) "Montana-made" means manufactured or produced in this state and made with the:~~

~~(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or~~

~~(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.~~

~~(c) "Nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.~~

~~(d)~~*(2) Unless the context requires otherwise, in this part, the following definitions apply:*

*(A) "Goods" means supplies, equipment, materials, commodities, and specially manufactured products.*

*(b) "Montana-made" means manufactured or produced in this state and made with the:*

*(i) use of parts, materials, or supplies of which 50% or more were manufactured or produced in this state; or*

*(ii) employment of persons of whom 50% or more are bona fide residents of Montana as defined in 18-2-401.*

*(c) "nonresident bidder" means a bidder whose residence is not in this state as determined under 18-1-103.*

*(d)* "Public agency" means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of tbe legislative, executive, or judicial branch of this state and its political suhdivisions, including the board of regents and the Montana university system.

~~(e) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.~~

*(e) "Resident bidder" means a bidder whose residence is in this state as determined under 18-1-103.*

*(f) "Written" means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency."*

**Section 2.** Section 18-4-122, MCA, is amended to read:

**"18-4-122. Purpose.** The underlying purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ~~ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;~~ *ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;*

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system~~; and~~

~~(8) provide safeguards for the maintenance of a procurement system of quality and integrity~~

*(8) provide safeguards for the maintenance of a procurement system of quality and integrity; and*

*(9) provide the exclusive remedies for unlawful bid solicitations or contract awards."*

**Section 3.** Section 18-4-123, MCA, is amended to read:

**"18-4-123. Definitions.** In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-steck company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes which the changes clause of tbe contract authorizes the department to order without the consent of the contracter.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for tbe procurement or dispesal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery peint, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.

(5) "Contractor" means a person having a contract with a gevernmental body.

(6) "Data" means recorded information, regardless of form or characteristic.

HeinOnline -- 1997 vol. II 2194 1997

(7) "Department" means the department of administration.

(8) "Designee" means ~~a duly~~ *an* authorized representative of a person holding a superior position.

(9) "Director" means the director of the department of administration.

(10) "Employee" means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) "Governmental hody" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or otber entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including tbe board of regents and the Montana university system.

(12) "Grant" means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whetber in the form of supplies or services. A contract resulting from ~~such~~ an award is not a grant but a procurement contract.

(13) "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

(14) "Printing" means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product. Printing does not include rebinding or repair by a library or an office, department, board, or commission ~~thereof~~ of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It also includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(16) "Procurement officer" means any person ~~duly~~ authorized to enter into and administer contracts and make written determinations with respect ~~thereto~~ *to contracts*. The term also includes an authorized representative acting within the limits of ~~his~~ *the representative's* authority.

(17) "Purchasing agency" means any governmental body, other than the department, ~~which~~ *that* is autborized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) "Services" means the furnishing of labor, time, or effort by a contractor~~, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance~~. The term does not include ~~consulting services as defined in 18-8-102, those services listed in 18-8-103,~~ employment agreements or collective bargaining agreements, the provision ~~by providers~~ of human services ~~regulated by a state agency~~ *administered by the*

*department of public health and human services*, or services related to construction contracts.

(19) "Supplies" means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) "Using agency" means any governmental body of the state ~~which~~ *that* ~~utilizes~~ *uses* any supplies or services procured under this chapter.

*(21) "Vendor" means a person who offers or may offer supplies or services to a public agency."*

**Section 4.** Section 18-4-126, MCA, is amended to read:

**"18-4-126. Public access to procurement information —records — retention.** (1) Procurement information is a public writing and must be available to the public as provided in 2-6-102 *and 18-4-304*.

(2) All procurement records must be retained, managed, and disposed of in accordance with the state records management program, Title 2, chapter 6.

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with the state records management program."

**Section 5.** Section 18-4-132, MCA, is amended to read:

**"18-4-132. Application.** (1) ~~Except as provided in 18-4-313, which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.~~

~~(2)~~ This chapter applies to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any contract~~.~~ ~~but this~~ *This* chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. ~~Nothing in this~~ *This* chapter or ~~in~~ rules adopted ~~thereunder~~ *pursuant to this chapter* ~~prevents~~ *do not prevent* any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

~~(3)~~*(2)* This chapter does not apply to construction contracts.

~~(4)~~*(3)* This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

~~(5)~~*(4)* This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

*(5) This chapter does not apply to employment of:*

*(a) a registered professional engineer, surveyor, real estate appraiser, or registered arehitect;*

*(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;*

*(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by exeeutive order of the governor;*

*(d) consulting actuaries;*

*(e) a private consultant employed by the student associations of the university system with money raiscd from student activity fees designated for use by those student associations;*

*(f) a private consultant employed by the Montana state lottery;*

*(g) a private investigator licensed by any jurisdiction; or*

*(h) a claims adjuster."*

**Seetion 6.** Section 18-4-133, MCA, is amended to read:

**"18-4-133. Purchases exempt from general requirements.** (1) ~~Fresh fruits and vege'ables, other than potatoes, may not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account must be kept of these purchases, and the account must be furnished to the department.~~

~~(2)~~ When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured hy open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

~~(3)~~*(2)* The department ~~of administration~~ may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and commumity-based programs.

~~(4)~~*(3)* As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

**Section 7.** Section 18-4-141, MCA, is amended to read:

**"18-4-141. Contract transfers and collnsion prohibited — violations and penalty.** (1) ~~No~~ *A* contract or order or any interest ~~therein~~ *in a contract or order* may *not* be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract. ~~No approval of a transfer, assignment, or~~

HeinOnline -- 1997 vol. II 2197 1997

~~subcontract may release the original obligor or his sureties from their obligations to the state under the contract or order.~~

(2) Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state in the awarding of contracts is prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and sball be fined not less than $500 or more than $5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio."

**Section 8.** Section 18-4-224, MCA, is amended to read:

**"18-4-224. Contract clauses — rules.** (1) The department may ~~adopt rules permitting or requiring~~, *in its discretion, permit or require* the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

(i) changes in the work within the scope of the contract; and

(ii) temporary work stoppage or delay of performance; and

(b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon ~~thereafter~~ *after commencement of performanee* as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the events or situations under ~~such~~ clauses *established under subsection (1)* with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon; *or*

(d) in ~~such~~ *any* other manner as the contracting parties may mutually agree~~; or~~

~~(e) in the absence of agreement by the parties, by a unilateral determination by the state of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the state in accordance with applicable sections of the rules adopted under 18-4-225~~.

(3) The department may ~~adopt rules permitting or requiring~~, *in its discretion, permit or require* the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

(a) liquidated damages, as appropriate;

(b) specified excuses for delay or nonperformance;

(c) termination of the contract for default; and

(d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying ~~such~~ *the* variation. Notice of any material variation must he stated in the invitation for bids or request for proposals.

*(5) Regardless of a provision in a contract, the department may accept a lower price or better value offered by a contractor."*

**Section 9.** Section 18-4-241, MCA, is amended to read:

**"18-4-241. Authority to remove or suspend ~~from vendors' list~~ *vendor.*** (1) The department may remove a ~~person~~ *vendor* for cause from consideration for award of contracts *by the state.* ~~The removal may not be for a period of more than 3 years.~~

(2) The department may *temporarily* suspend a ~~person~~ *vendor* from consideration for award of contracts if there is probable cause to believe that the ~~person~~ *vendor* has engaged in activities that may lead to removal. ~~The suspension may not be for a period exceeding 3 months unless~~ *If* an indictment has been issued for an offense that would be a cause for removal under subsection (3), ~~in which case~~ the suspension must, at the request of the attorney general, remain in effect *at a minimum* until after the trial of the suspended ~~person~~ *vendor*. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) violation of contract provisions, as set forth in subsections (3)(a)(i) and (3)(a)(ii), of a character ~~which~~ *that* is regarded by the department to he so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal;

(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules~~, and after adequate~~

HeinOnline -- 1997 vol. II 2199 1997

~~written notice to the affected person of the intent to remove or suspend~~ *or failure to provide the department with a correct address*;

(c) any other cause *that* the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity ~~for any cause listed in the department's rules~~; and

(d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

(4) The department shall issue a written decision to remove or suspend *a vendor*, stating the reasons for the action taken, *for reasons other than those reasons provided in subsection (3)(b)*. A copy of the decision must be mailed or otherwise furnished immediately to the ~~person~~ *vendor* involved."

**Section 10.** Section 18-4-242, MCA, is amended to read:

"**18-4-242. ~~Remedies prior to and after award~~ *Exclusive remedies for unlawful solicitation or award.*** (1) ~~If~~ *This section establishes the exclusive remedies for* a solicitation or award of a contract ~~is~~ *determined to be* in violation of *the* law~~, the~~.

*(2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror, or contractor aggrieved in connection with the solicitation or award of a contract may protest to the department. The protest must be submitted to the department in writing no later than 14 days after execution of the contract.*

*(3) If the protest is not resolved by mutual agreement, the department shall issue in writing a decision on the protest within 30 days after receipt of the protest. The decision must:*

*(a) state the reason for the action taken by the department with regard to the contract; and*

*(b) inform the aggrieved party of the party's right to request, within 14 days after the date of the department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure Act.*

*(4) In a protest or contested case proceeding, the* department may ~~apply the remedies~~, *in an appropriate case, order a remedy* provided in ~~subsections (2) and (3)~~ *subsection (5) or (6).*

~~(2)~~*(5)* If ~~prior to~~ *before an* award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award ~~must~~ *may* be:

(a) canceled; or

(b) revised to comply with the law.

~~(3)~~*(6)* (a) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:

HeinOnline -- 1997 vol. II 2200 1997

(i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or

(ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, ~~prior to~~ *before* the termination.

(b) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

(i) declared void; or

(ii) ratified and affirmed if ~~such~~ *that* action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

~~(4) In the event the matter is reviewed by a court, the court may apply the same remedies provided in subsections (2) and (3).~~

*(7) The exclusive method of judicial review of a solicitation or award by the department pursuant to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this section. Except as provided in subsections (6)(a)(ii) and (6)(b)(ii), there is no right under any legal theory to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any other claim, cause of action, or request for relief for solicitations of awards allegedly made in violation of law may not be heard or granted by a district court other than as provided in this section.*

*(8) The state is not required to delay, halt, or modify the procurement process pending the result of a protest, contested case proceeding, or judicial review.*

*(9) The department may adopt rules governing the protest of solicitations and awards."*

**Section 11.** Section 18-4-302, MCA, is amended to read:

**"18-4-302. Methods of source selection.** (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by ~~competitive sealed bidding, pursuant to 18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of~~ *a source selection method provided for in* this title~~, and subsections (2) and (3) of this section~~. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) At the time that the department or ~~a purchasing~~ *another* agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or ~~purchasing~~ agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

HeinOnline -- 1997 vol. II 2201 1997

(3) An office supply procured by the department's central stores program ~~through bulk purchase or procured under a term contract~~ may be purchased by ~~a purchasing~~ *an* agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the ~~purchasing~~ agency is less than the price offered by the central stores program ~~or under the term contract~~ if the office supply conforms in all material respects to the terms, conditions, and quality offered by the central stores program ~~or under the term contract~~. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection."

**Section 12.** Section 18-4-303, MCA, is amended to read:

**"18-4-303. Competitive sealed bidding.** (1) An invitation for bids must be issued and must include a purchase description and conditions applicable to the procurement.

(2) Adequate public notice of the invitation for bids must be given a reasonable time ~~prior to~~ *before* the date set forth ~~therein~~ *in the invitation* for the opening of bids, in accordance with rules adopted by the department. Notice may include publication in a newspaper of general circulation at a reasonable time ~~prior to~~ *before the* bid opening.

(3) Bids must be opened publicly ~~in the presence of one or more witnesses~~ at the time and place designated in the invitation for bids. Each bidder has the right to be present, either in person or hy agent, when the bids are opened and has the right tc examine and inspect all bids. The amount of each bid and ~~such~~ other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection. After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 2-6-102 and are subject to the requirements of subsection (4).

(4) Bids must be available for public inspection when the bids are opened if:

(a) the invitation for bids is issued by a state agency to contract with the private sector to provide services currently conducted by state employees; and

(b) acceptance of bids would result in the displacement of five or more state employees.

(5) Bids must be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life-cycle costs. The invitation for bids ~~shall~~ *must* set forth the evaluation criteria to be used. Only criteria set forth in the invitation for bids may be used in bid evaluation.

(6) Correction or withdrawal of inadvertently erroneous hids, before or after award, or cancellation of awards or contracts based on ~~such~~ bid mistakes may be permitted in accordance with rules adopted by tbe department. After bid opening, ~~no~~ cbanges in bid prices or other provisions of bids prejudicial to the interest of

HeinOnline -- 1997 vol. II 2202 1997

the state or fair competition may *not* be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the department.

(7) The contract must be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids~~, including the preferences established by Title 18, chapter 1, part 1~~, *including the preferences established by Title 18, chapter 1, part 1.* If all bids exceed available funds as certified by the appropriate fiscal officer and the low ~~responsive and~~ responsible *and responsive* bid does not exceed ~~such~~ *the* funds by more than 5%, the director or the head of a purchasing agency ~~is authorized~~ *may*, in situations ~~where~~ *in which* time or economic considerations preclude resolicitation of a reduced scope, ~~to~~ negotiate an adjustment of the bid price, including changes in the bid requirements, with the low ~~responsive and~~ responsible *and responsive* bidder in order to bring the bid within the amount of available funds.

(8) When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers, to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation."

**Section 13.** Section 18-4-304, MCA, is amended to read:

**"18-4-304. Competitive sealed proposals.** (1) ~~When, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines that the use of competitive sealed bidding is either not practicable or not advantageous to the state, a contract may be entered into by competitive sealed proposals. The department may provide by rule that it is either not practicable or not advantageous to the state to procure specified types of supplies and services by competitive sealed bidding.~~ *The department may procure supplies and services through competitive sealed proposals.*

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

(4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negetiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award. *After the contract is executed, proposal documents may be inspected by the public, subject to the limitations of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4.*

(5) The request for proposals must state the *evaluation factors and their* relative importance ~~of price and other evaluation factors~~. *The award must be made to the responsible and responsive offeror whose proposal best meets the evaluation criteria. Other factors or criteria may not be used in the evaluation. The contract file must demonstrate the basis on which the award is made.*

HeinOnline -- 1997 vol. II 2203 1997

(6) ~~As provided in the request for proposals and under rules adopted by the department, discussions with responsible offerors who submit apparently responsive proposals may be conducted for the purpose of clarification in order to assure full understanding of and responsiveness to the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted, after submissions and prior to award, for the purpose of obtaining best and final offers.~~ *The department may discuss a proposal with an offeror for the purpose of clarification or revision of the proposal.* In conducting discussions, there may not be disclosure of any information derived from proposals submitted by competing offerors. ~~The department may require the submission of cost or pricing data in connection with an award under this section.~~

~~(7) The award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, including the preference in 18-1-102, and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file must contain the basis on which the award is made.~~"

**Section 14.** Section 18-4-305, MCA, is amended to read:

"**18-4-305. Small purchases *and limited solicitations*.** Any procurement not exceeding the amount estahlished by rule may be made in accordance with small purchase *or limited solicitation* procedures established by the department. Procurement requirements may not be artificially divided so as to constitute a small purchase *or limited solicitation* under this section."

**Section 15.** Section 18-4-309, MCA, is amended to read:

"**18-4-309. Prequalification of suppliers.** Prospective suppliers may he prequalified *in accordance with department rules* for particular types of supplies and services. ~~Solicitation mailing lists of potential contractors must include but not be limited to such prequalified suppliers.~~"

**Section 16.** Section 18-4-310, MCA, is amended to read:

"**18-4-310. Types of contracts.** ~~Subject to the limitations of this section, any~~ *Any* type of contract that will promote the hest interests of the state may be used~~, except that the use of a cost-plus-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies or services required except under such a contract.~~"

**Section 17.** Section 18-4-312, MCA, is amended to read:

"**18-4-312. Bid and contract performance security.** (1) For state contracts for the procurement of services or of supplies, the department may in its discretion require:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, ~~materialmen,~~ mechanics, and subcontractors; or

(c) both bid and contract performance security.

(2) If security is required under subsection (1), the following types of security may be required to be deposited with the state:

(a) a sufficient bond with a licensed surety company as surety;

(b) an irrevocable letter of credit not to exceed $100,000 in accordance with the provisions of Title 30, chapter 5, part 1;

(c) money of the United States;

(d) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(3) The amount and type of the security must be determined by the department to be sufficient to cover the risk involved to the state. The security must be payable to the state of Montana ~~and~~. *Contract performance security* must remain in effect for the entire contract period. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract. The considerations must include but are not limited to the type of supply or service being procured, the dollar amount of the proposed contract, and delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract er provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, tbe department may, in its discretion, require the bidder to forfeit the bid security to the state and become immediately liable on the bid security, but not in excess of the sum stated in the security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond or other security may not exceed the amount specified in the invitation for hid or request for proposal.

(5) Negotiable instruments provided as hid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter."

**Section 18.** Section 18-4-402, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2205 1997

"**18-4-402. Cooperative purchasing authorized.** The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more puhlic procurement units in accordance with an agreement entered into between the participants *independent of the requirements of part 3.* ~~Such cooperative~~ *Cooperative* purchasing may include *purchasing through federal supply schedules of the United States general services administration,* joint or ~~multi-party~~ *multiparty* contracts between public procurement units and open-ended state public procurement unit contracts tbat are made available to local public procurement units."

**Section 19.** Section 18-8-211, MCA, is amended to read:

"**18-8-211. Coordination with other statutes.** (1) This part need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of tbe work involved. ~~Nothing in this~~ *This* part ~~relieves~~ *does not relieve* the contracting authority from complying with applicable law limiting emergency expenditures.

(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this part.

(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112 applies to this part, except that the agency shall select its proposed list of three architects or consulting engineers in accordance with this part prior to submission to the department of administration.

~~(4) The exception for services estimated to cost less than $5,000 in 18-8-105 applies to this part.~~"

**Section 20.** Section 60-2-112, MCA, is amended to read:

"**60-2-112. Competitive bidding.** (1) Except as provided in subsections (2) through (4), when the estimated cost of any work exceeds $50,000, the commission shall let the contract by competitive bidding *to the lowest responsible and responsive bidder.* Award must be made upon the notice and terms that the commission prescribes by its rules. ~~However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.~~ *However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.*

(2) The commission may let a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usago, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to tlie project.

HeinOnline -- 1997 vol. II 2206 1997

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less."

**Section 21. Repealer.** Sections 18-4-131, 18-4-225, 18-8-101, 18-8-102, 18-8-103, 18-8-104, 18-8-105, 18-8-106, 18-8-111, and 18-8-112, MCA, are repealed.

**Section 22. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 23. Retroactive applicability.** [Sections 2 and 10] and the repeal of 18-4-131 apply retroactively, within the meaning of 1-2-109, in the case of an unlawful solicitation for bid or unlawful award of a contract, to a claim, to a cause of action, or to a request for relief other than those authorized by [section 10], unless a complaint was filed in district court prior to January 1, 1992.

**Section 24. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 1997.

(2) [Sections 2, 10, 22, and 23 and this section] and the repeal of 18-4-131 are effective on passage and approval.

Approved April 30, 1997

# CHAPTER NO. 444

[HB 171]

AN ACT GENERALLY REVISING AND CLARIFYING THE ALLOCATION OF RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAXES; REVISING THE TIME FOR ALLOCATING CERTAIN PORTIONS OF THE RESOURCE INDEMNITY TRUST FUND EARNINGS; AMENDING SECTIONS 15-38-201, 15-38-202, 15-38-203, 75-1-1101, 85-1-604, 85-2-905, AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-38-201, MCA, is amended to read:

**"15-38-201. Creation of resource indemnity trust fund.** For the purpose of carrying out this chapter, there is a resource indemnity trust fund ~~in the nonexpendable trust fund type~~. The resource indemnity *trust* fund ~~shall~~ *must* be credited with all ~~moneys~~ *money* received as ~~herein~~ provided *in this chapter*."

**Section 2.** Section 15-38-202, MCA, is amended to read:

**"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10

HeinOnline -- 1997 vol. II 2207 1997

million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

*(i)* $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs~~.~~;

*(ii) $1 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants; and*

*(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants.*

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161~~;~~; *and*

*(iii) beginning in fiscal year 1996, $500,000 to be deposited into the water storage state special revenue account created by 85-1-631*

~~(iii) beginning in fiscal year 1996, $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;~~

~~(iv) beginning in fiscal year 1996, $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and~~

~~(v) beginning in fiscal year 1996, $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.~~

(c) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

HeinOnline -- 1997 vol. II 2208 1997

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds ~~from the resource indemnity trust interest account~~ other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

**Section 3.** Section 15-38-203, MCA, is amended to read:

**"15-38-203. Purpose of fund usage — limitation on future use.** (1) Any funds made available under this chapter ~~shall~~ *must* be used and expended to improve the total environment and rectify damage ~~thereto~~ *to the environment*.

(2) It is the intent of the legislature that future appropriations from the resource indemnity trust interest ~~account~~ not be made to fund general operating expenses of state agencies."

**Section 4.** Section 75-1-1101, MCA, is amended to read:

**"75-1-1101. Environmental contingency account objectives.** (1) There is ~~created~~ an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, allocation ~~will~~ *may* not be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

HeinOnline -- 1997 vol. II 2209 1997

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development;

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused hy a hazardous material; and

(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the ~~resource indemnity trust interest account~~ *general fund*.

(5) The governor shall submit, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report."

**Section 5.** Section 85-1-604, MCA, is amended to read:

**"85-1-604. Renewable resource grant and loan program state special revenue account created — revenue allocated — limitations on appropriations from account.** (1) There is ~~created~~ a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) all revenue of the works and other money as provided in 85-1-332;

(b) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619;

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; and

(e) the resource indemnity *and ground water assessment* tax proceeds as provided in 15-38-106(2)(b).

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for the following purposes and subject to the following conditions:

(a) The amount of resource indemnity trust fund interest earnings allocated ~~under 15-38-202(2)(b)(iii)~~ *to the special revenue account under 15-38-202(2)(a)(ii)* must be used for renewable resource grants.

(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection *(3)*(b) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).

(c) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(b) and only that amount may be appropriated from the account for expenditures that meet the policies and objectives of the renewable resource grant and loan program. If the amount of money available for appropriation under this subsection *(3)*(c) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(d).

(d) An amount less than or equal to that paid into the account from the sources provided for in subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be appropriated from the account for loans and grants for renewable resource projects; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants."

**Section 6.** Section 85-2-905, MCA, is amended to read:

**"85-2-905. Ground water assessment account.** (1) There is a ground water assessment account within the state special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, 14.1% of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and 2.2% of the proceeds from the metalliferous mines license taxes, as authorized by 15-37-117, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds $666,000, in which case ~~no~~ *an* allocation ~~will~~ *may not* be made and the ~~funds~~ *proceeds* must be deposited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than $666,000, in which case an amount equal to the difference between the unobligated cash balance and $666,000 must he allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;

(b) funds provided by ~~federal or~~ state government agencies and hy local governments to carry out the purposes of this part; ~~and~~

*(c) proceeds allocated to the account as provided in 15-36-324 and 15-38-106; and*

~~(c)~~*(d)* funds provided by any other puhlic or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

**Seetion 7.** Section 90-2-1104, MCA, is amended to read:

**"90-2-1104. Reclamation and dcvelopment grants account.** (1) There is a reclamation and developinent grants special revenue account within the state special revenue fund estahlished in 17-2-102.

(2) There inust be paid into the reclamation and development grants account money allocated from:

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity ~~trust~~ *and ground watcr assessment* tax under the provisions of 15-38-106; ~~and~~

(c) the ~~metal mines license tax proceeds as provided in 15-37-117(1)(c)~~ *the metal mines license tax proceeds as provided in 15-37-117(1)(e); and*

*(d) the oil and gas production tax as provided in 15-36-324 and 15-38-106.*

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may he funded ~~prior to~~ *before* funding of projects."

**Section 8. Effective date.** [This act] is effective July 1, 1997.

Approved April 30, 1997

# CHAPTER NO. 445

[HB 173]

AN ACT PROVIDING ACTUARIAL FUNDING MECHANISMS FOR MINIMUM BENEFIT ADJUSTMENTS UNDER THE MUNICIPAL POLICE OFFICERS' AND THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS;

HeinOnline -- 1997 vol. II 2212 1997

ELIMINATING DIRECT REIMBURSEMENT OF SUPPLEMENTAL BENEFIT PAYMENTS; INCREASING CONTRIBUTIONS; AMENDING SECTIONS 17-7-502, 19-9-702, 19-9-1007, 19-13-604, 19-13-1007, AND 19-18-606, MCA; REPEALING SECTIONS 19-13-615, 19-13-1006, AND 19-13-1009, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; ~~19-9-1007;~~ 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 2.** Section 19-9-702, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2213 1997

**"19-9-702. State contribution.** The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. The payments must be made annually after the end of each fiscal year but no later than November 1 from the gross premium tax after deduction for cancellations and returned premiums. The division shall notify the auditor by September 1 of each fiscal year of the annual compensation paid to all active members during the preceding fiscal year. The state's contribution is ~~15.66%~~ *29.02%* of compensation paid to members."

**Section 3.** Section 19-9-1007, MCA, is amended to read:

**"19-9-1007. ~~Supplement to certain benefits~~ *Minimum benefit adjustment.*** (1) The benefits paid in each fiscal year to a retired member or the member's survivors may not be less than one-half of the compensation that will be paid *to newly confirmed police officers* in the current fiscal year in the ~~appropriate~~ city or town ~~to newly confirmed police officers~~ *from which the member retired.*

(2) ~~On or before October 1 of each year, the division shall make a report including the following information:~~

~~(a) the names of all retired members who are receiving benefits from the retirement system as of the date of the report;~~

~~(b) the names of all surviving spouses or dependent children who are receiving benefits from the retirement system because of the death of an active or retired member of this or a prior plan;~~

~~(c) for the purpose of determining the base retirement, disability, or survivorship benefits for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:~~

~~(i) the amount of the benefits paid in the base fiscal year to each retired member described in subsection (2)(a);~~

~~(ii) the amount of the benefits paid in the base fiscal year to each surviving spouse or dependent child described in subsection (2)(b);~~

~~(iii) upon the death after the base fiscal year of any retired member who was receiving benefits, the amount of benefits that would have been paid to an eligible surviving spouse of the retired member if the surviving spouse had been receiving benefits in the base fiscal year;~~

~~(d) the original amount of retirement, disability, or survivorship benefits paid to retired members or their eligible survivors as of the original retirement dates after July 1, 1975;~~

~~(e) the compensation that will be paid during the current fiscal year to a newly confirmed police officer of each city or town participating in the retirement system.~~

~~(3) The division shall compute the difference between each amount reported under subsections (2)(c) through (2)(e) and one-half the compensation to be paid during the current fiscal year to a newly confirmed police officer of the appropriate city or town. The difference must be reported to the state auditor who shall pay the difference to the pension trust fund out of the premium tax~~

HeinOnline -- 1997 vol. II 2214 1997

~~collected on insurance sold in this state to insure against the risks enumerated in 19-18-512(3) no later than November 1.~~ If the compensation of a newly confirmed police officer has not been set for the current fiscal year in time to ~~be included in the October 1 report to the state auditor~~ *make minimum benefit adjustments effective July 1*, the division shall make any retroactive adjustments necessary to individual ~~supplemental~~ *minimum* benefits after the current compensation has been determined and shall include these amounts in the next year's report for reimbursement at that time.

~~(4) The premium tax amount paid by the state auditor is statutorily appropriated, as provided in 17-7-502, for the payment of supplemental retirement benefits to eligible retired members and their survivors. This payment is in addition to the payment to be made by the state auditor under 19-9-702.~~

~~(5)~~*(3)* If more than one dependent child is entitled to ~~supplementary~~ benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the ~~supplementary~~ benefits must be paid to the dependent children collectively."

**Section 4.** Section 19-13-604, MCA, is amended to read:

**"19-13-604. State contribution.** The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-18-512. These payments must be made annually to the pension trust fund after the end of each fiscal year but no later than November 1 from the gross premium taxes after deduction for cancellations and returned premiums. The division shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatery time payments, and payments in lieu of sick leave, paid to all active members during the preceding *fiscal* year. The state's contribution is ~~24.21%~~ *31.02%* of this total compensation. As soon as practicable after receipt of the state contribution, the division shall deposit it in the pension trust fund."

**Section 5.** Section 19-13-1007, MCA, is amended to read:

**"19-13-1007. Benefit adjustment.** (1) ~~For a member retiring on or after July 1, 1973, who was hired before July 1, 1981, or the member's surviving spouse or dependent children, the~~ *The* service retirement benefit ~~provided in 19-13-704(1)(a)~~, the disability retirement benefit ~~provided in 19-13-803(1), and~~, *or* the survivorship benefit ~~provided in 19-13-902(1)~~ *paid to a retired member or the member's surviving spouse or dependent children* may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(2) ~~For a member hired on or after July 1, 1981, or the member's surviving spouse or dependent children, the disability retirement benefit provided in 19-13-803(2) and the survivorship benefit provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.~~

HeinOnline -- 1997 vol. II 2215 1997

~~(3)~~ If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under ~~subsections~~ *subsection* (1) ~~and (2)~~ must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

~~(4)~~*(3)* If the employment of a vested member ~~hired before July 1, 1981,~~ is involuntarily discontinued because of the termination of employment of all full-paid firefighters in the city that employed the member, the member's service retirement benefit ~~provided in 19-13-704(1)(b) and~~ *or* the member's spouse's or dependent child's survivorship benefit ~~provided in 19-13-902(1)~~ may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 10 but less than 20 years of membership service, 2% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

**Section 6.** Section 19-18-606, MCA, is amended to read:

**"19-18-606. Supplement to certain pensions.** (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 19-18-512, there is a tax of 1 1/2% on the fire portion of the direct premiums received during ~~the calendar year of 1989 and~~ each ~~succeeding~~ *calendar* year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the ~~moneys~~ *money* in the state special revenue fund. The proceeds of ~~such~~ *the* tax are statutorily appropriated, as provided in 17-7-502, to the auditor, who shall pay claims as provided in subsection (2) of this section ~~and 19-13-1006~~. If sufficient cash remains in the fund each year after the payment of claims as provided in subsection (2) ~~of this section and 19-13-1006~~, the state auditor shall deposit any excess amount in the ~~account provided for in 19-13-615~~ *general fund*.

(2) ~~Effective January 1, 1976, each~~ *Each* association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed $75 per month. Distribution of the funds provided for this purpose under subsection (1) ~~shall~~ *must* be made as follows:

(a) At the beginning of each fiscal year the treasurer of each association shall request and the state auditor shall issue from the stato spocial revenue fund and deliver to the treasurer of the respective city or town an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary

HeinOnline -- 1997 vol. II 2216 1997

paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding. The state auditor shall, at the same time, report to the treasurer of the appropriate association the amount of any payment delivered to the board of investments.

(b) The treasurer of a city or town receiving funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall ~~utilize~~ *use* these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year."

**Section 7. Repealer.** Sections 19-13-615, 19-13-1006, and 19-13-1009, MCA, are repealed.

**Section 8. Coordination instruction.** (1) If ___ Bill No. ___ [LC 0063] is passed and approved and if it amends 19-9-1007, then [section 22] of ___ Bill No. ___ [LC 0063], amending 19-9-1007, is void.

(2) If House Bill No. 430 is passed and approved, then the following sections of [this act] are void:

(a) [section 4], amending 19-13-604;

(b) [section 5], amending 19-13-1007;

(c) [section 6], amending 19-18-606; and

(d) [section 7], repealing 19-13-615, 19-13-1006, and 19-13-1009.

(3) (a) If House Bill No. 505 is passed and approved and if it amends 19-9-702, and if [this act] is passed and approved and if it amends 19-9-702, then the percentage of the state's contribution contained in the last sentence of [section 2 of this act], amending 19-9-702, must be 29.07% and [section 3 of House Bill No. 505], amending 19-9-702, is void.

(b) If House Bill No. 170 is passed and approved and if it amends 19-9-702, and if [this act] is passed and approved and if it amends 19-9-702, then the percentage of the state's contribution contained in the last sentence of [section 2 of this act], amending 19-9-702, must be 29.32% and [section 26 of House Bill No. 170], amending 19-9-702, is void.

(c) If both House Bill No. 505 and House Bill No. 170 are passed and approved and if both amend 19-9-702, and if [this act] is passed and approved and if it amends 19-9-702, then the percentage of the state's contribution contained in the last sentence of [section 2 of this act], amending 19-9-702, must be 29.37% and [section 3 of House Bill No. 505], amending 19-9-702, and [section 26 of House Bill No. 170], amending 19-9-702, are void.

(4) (a) If House Bill No. 170 is passed and approved and if it amends 19-13-604, and if [this act] is passed and approved and if it amends 19-13-604, then the percentage of the state's contribution contained in [section 4 of this act], amending 19-13-604, must be 31.31% and [section 30 of House Bill No. 170], amending 19-13-604, is void.

HeinOnline -- 1997 vol. II 2217 1997

(b) If both House Bill No. 430 and House Bill No. 170 are passed and approved and if both amend 19-13-604, and if [this act] is passed and approved and if it amends 19-13-604, then the percentage of the state's contribution contained in [section 4 of this act], amending 19-13-604, must be 32.61% and [section 4 of House Bill No. 430] and [section 30 of House Bill No. 170], amending 19-13-604, are void.

(5) If House Bill No. 170 is passed and approved and if it amends 19-13-1006, and if [this act] is passed and approved and if it repeals 19-13-1006, then [section 34 of House Bill No. 170], amending 19-13-1006, is void.

(6) If both House Bill No. 430 and House Bill No. 170 are passed and approved and if both amend 19-13-1007, and if [this act] is passed and approved and if it amends 19-13-1007, then [section 9 of House Bill No. 430] and [section 35 of House Bill No. 170] are void and [section 5 of this act], amending 19-13-1007, must read:

**"Section 5.** Section 19-13-1007, MCA, is amended to read:

**"19-13-1007. ~~Benefit~~ *Minimum benefit* adjustment.** (1) ~~For a member retiring on or after July 1, 1973, who was hired before July 1, 1981,~~ *The following applies to a member who has not elected to be covered under [section 3 of House Bill No. 170]:*

*(a) For the member* or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704~~(1)(a)~~, the disability retirement benefit provided in 19-13-803~~(1)~~, and the survivorship benefit provided in 19-13-902~~(1)~~ may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

~~(2) For a member hired on or after July 1, 1981, or the member's surviving spouse or dependent children, the disability retirement benefit provided in 19-13-803(2) and the survivorship benefit provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.~~

~~(3)~~*(b)* If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under ~~subsections (1) and (2)~~ *subsection (1)(a)* must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

~~(4)~~*(2)* If the employment of a vested member hired before July 1, 1981, *who has not elected to be covered under [section 3 of House Bill No. 170]* is involuntarily discontinued because of the termination of employment of all full-paid firefighters in the city that employed the member, the member's service retirement benefit provided in 19-13-704~~(1)(b)~~ and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid

HeinOnline -- 1997 vol. II 2218 1997

firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than ~~10~~ *5* but less than 20 years of membership service, ~~2%~~ *2.5%* of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service.""

(7) If House Bill No. 170 is passed and approved and if it amends 19-13-1009, and if [this act] is passed and approved and if it repeals 19-13-1009, then [section 36 of House Bill No. 170], amending 19-13-1009, is void.

**Section 9. Effective date.** [This act] is effective July 1, 1997.

Approved April 30, 1997

# CHAPTER NO. 446

[HB 180]

AN ACT PROVIDING FOR THE SUSPENSION OF STATE-ISSUED LICENSES OF DEBTORS WHO HAVE DEFAULTED ON A GUARANTEED STUDENT LOAN AND WHO HAVE REFUSED TO ENTER INTO A REPAYMENT AGREEMENT WITH THE MONTANA STUDENT LOAN PROGRAM; AMENDING SECTION 20-26-1101, MCA; AND PROVIDING FOR VOIDING THE TWO-THIRDS VOTE REQUIREMENT.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Notice of intent to suspend license.** (1) An agency may issue a notice of intent to suspend a license when a delinquency in repayment of a guaranteed student loan occurs.

(2) The notice must:

(a) be served upon the debtor personally or by certified mail with return receipt requested; and

(b) state that the debtor's license will be suspended 90 days after service unless within that time the debtor:

(i) pays the entire debt stated in the notice; or

(ii) enters into a payment plan approved by the agency.

**Section 2. Hearing — order suspending license.** (1) To show cause why suspension of a license under [section 1] is inappropriate, the debtor may, within 30 days of the date of service of the notice, request a hearing from the agency.

(2) The agency, upon receipt of a request for hearing from a debtor, shall schedule a hearing to determine whether suspension of the debtor's license is appropriate. The debtor's license may not be suspended until a determination is reached following the hearing.

HeinOnline -- 1997 vol. II 2219 1997

(3) The only issues that may be determined in a hearing under this section are:

(a) the amount of the debt, if any;

(b) whether the debtor is delinquent; and

(c) whether the debtor has entered into a payment plan.

(4) If a debtor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the debtor's defenses, objections, or request for a payment plan may be determined to be without merit and the agency shall enter a final decision and order accordingly.

(5) If the agency determines that the debtor is delinquent or has not entered into a payment plan, the agency shall issue an order requesting suspension of the debtor's license and order the debtor to refrain from engaging in the licensed activity. The agency shall send a copy of the order requesting suspension of a license to the licensing authority and the debtor.

(6) The debtor may appeal any finding of the agency to the commissioner of higher education and to the board, and any appeal is governed by the appeals procedures of the board. An action to suspend the license must be stayed during the time of appeal.

(7) A determination made by the agency under this section is independent of any proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license.

**Section 3. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of an order suspending a license, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the debtor whose name appears on the order;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; and

(d) if required by law, demanding surrender of the suspended license.

(2) An order issued by the agency suspending a license must be processed by the licensing authority without any additional review or hearing concerning suspension of the license.

(3) Notwithstanding the provisions of any other law establishing terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by the agency suspending a license must be implemented by the licensing authority and continues until the agency advises the licensing authority that the suspension has been stayed or terminated.

(4) If a license is suspended, any funds paid by the debtor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the debtor.

HeinOnline -- 1997 vol. II 2220 1997

(5) Unless an order staying suspension of a license is in effect, a debtor who continues to engage in the business, occupation, profession, or other licensed activity while the debtor's license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished hy a fine of not less than $250 or more than $500 or by imprisonment in the county jail for a torm not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the debtor shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The agency or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with [sections 1 through 7].

(7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the agency suspending a license.

(8) To the extent that inconsistencies exist hetween [sections 1 through 7] and the procedural requirements for suspension of a license issued by the licensing authority, [sections 1 through 7] supersede those requirements.

**Section 4. Nondiseiplinary suspension for failure to pay on defaulted student loan.** Notwithstanding any other provision of this title, the agency has tbe authority to suspend a license under [sections 1 through 7] without any action by the licensing authority. The licensing authority shall, upon receipt of an order issued by the agency, suspend the license of the named individual. The suspension must be nondisciplinary for professional or occupational licenses, and the provisions of 2-4-631 do not apply.

**Section 5. Stay of suspension of license — payment plan — hardship.** (1) A debtor may, at the time of the hearing conducted under [section 2] or at any time after the hearing, petition the agency for an order staying suspension of tbe license.

(2) The agency shall consider the debtor's petition for a stay separately from any determination on whether suspension of a license is appropriate.

(3) The agency may stay suspension of a license upon a showing that suspension or continued suspension of a license would create a significant hardship to the debtor, to the debtor's employees, to legal dependents residing in the debtor's household, or to persons, businesses, or other entities served by the debtor.

(4) A stay terminates upon:

(a) termination of the circumstances upon which a significant hardship is based;

(b) failure by the debtor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

HeinOnline -- 1997 vol. II 2221 1997

(5) If the licensing authority has been notified of an order suspending a license, the agency shall send a copy of any order staying or reinstating suspension of the license to the licensing authority and the debtor.

(6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing authority shall:

(i) enter the information on appropriate records;

(ii) report the action as appropriate; and

(iii) as appropriate, demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license.

**Section 6. Termination of order to suspend license.** (1) When the agency determines that the debt is paid in full or the debtor has entered into a payment plan approved by the agency, the agency shall terminate the order suspending the license. The agency shall send a copy of the order terminating the suspension of the license to the licensing authority and the debtor.

(2) Entry of an order terminating suspension of a license does not limit the ability of the agency to issue a new order suspending the license of the same debtor in the event of another delinquency.

**Section 7. Fees.** A licensing authority subject to this part may charge the debtor a fee to cover the administrative costs incurred by the licensing authority under this part. Fees collected pursuant to this section by a licensing authority with a state special revenue fund must be deposited in the state special revenue fund for the use of the licensing authority to pay the costs of administering [sections 1 through 7]. Fees collected pursuant to this section by a licensing authority without a state special revenue fund must be deposited in the general fund.

**Section 8.** Section 20-26-1101, MCA, is amended to read:

**"20-26-1101. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

*(1) "Agency" means the entity designated by the board to administer student loans.*

~~(1)~~*(2)* "Board" means the board of regents of higher education.

~~(2) "Corporation" means the corporation designated by the board to administer student loans.~~

(3) "Council" means the guaranteed student loan advisory council established in 2-15-1520.

*(4) "Delinquency" means the failure of a debtor to abide by the terms of payment on a promissory note or other obligation created in return for an educational student loan, which failure has existed for at least 6 months and has*

*resulted in an arrearage equal to or greater than six monthly payments called for by the note or obligation.*

~~(4)~~*(5)* "Eligible educational institution" means any institution approved by the United States commissioner of education as eligible to participate in the guaranteed student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

~~(5)~~*(6)* "Guaranteed student loan program" means the program established by the board pursuant to this part.

*(7) "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.*

*(8) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.*

*(9) "Order suspending a license" means an order issued by the agency to suspend a license. The order must contain the name of the debtor, the type of license, and the social security number of the debtor.*

*(10) "Payment plan" includes but is not limited to a plan approved by the agency that provides sufficient security to ensure compliance with Title IV of the Higher Education Act of 1965, as amended, and that incorporates voluntary or involuntary income withholding or a similar plan for periodic payment of the debt outstanding."*

**Section 9. Two-thirds vote required.** Because [section 3] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

**Section 10. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 20, chapter 26, part 11, and the provisions of Title 20, chapter 26, part 11, apply to [sections 1 through 7].

**Section 11. Required vote — voidness.** If the two-thirds vote required by [section 9] is not obtained, then [sections 3(6) and 9] of [this act] are void.

Approved April 30, 1997

## CHAPTER NO. 447

[HB 188]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR INFORMATION TECHNOLOGY PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1999; PROVIDING FOR DEBT SERVICE PAYMENTS FROM THE GENERAL FUND AND OTHER SOURCES; PROVIDING FOR MATTERS RELATING TO THE ISSUANCE OF

HeinOnline -- 1997 vol. II 2223 1997

THE BONDS AND THE APPROPRIATION OF THE BOND PROCEEDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Cost allocation plans" means the:

(a) state cost allocation plan by which state general fund costs are distributed in an equitable manner to nonfederal funding sources other than the general fund; and

(b) statewide cost allocation plan by which state general fund costs are allocated to federally funded, state-operated grants and programs.

(2) "Information technology project" means the planning, design, development, acquisition, installation, or integration of software and required hardware to provide for upgraded and integrated state management information systems.

(3) "Other funding sources" means money other than bond proceeds.

(4) "Responsible agency" means the lead agency for each information technology project as provided in [section 2].

**Section 2. Appropriation of bond proceeds and approval of information technology information projects.** Upon the sale of general obligation bonds by the board of examiners, the following bond proceeds are appropriated from the capital projects fund to each responsible agency for the following information technology projects:

| Agency/Project | Bond Proceeds |
|---|---|
| DEPARTMENT OF REVENUE | |
| Integrated Revenue and Tax Systems (Consolidation of Employer's Reporting for Income Tax Withholding, Old Fund Liability Tax, and Unemployment Insurance Contributions; Income Tax Modernization; and Property Tax Integration) | $14,000,000 |
| DEPARTMENT OF ADMINISTRATION | |
| Montana Project to Reengineer Revenue and the Information Management Environment (MT PRRIME) | 19,800,000 |
| OFFICE OF BUDGET AND PROGRAM PLANNING | |
| Montana Integrated Budget System (MIBS) | 500,000 |
| DEPARTMENT OF LABOR | |
| Unemployment Benefit Package | 3,600,000 |

HeinOnline -- 1997 vol. II 2224 1997

| | |
|---|---|
| MONTANA UNIVERSITY SYSTEM | |
| Technology Initiative | 3,200,000 |
| DEPARTMENT OF CORRECTIONS | |
| Information Technology Plan | 1,890,408 |

**Section 3. Authorization of bonds.** (1) The board of examiners may issue and sell general obligation information technology bonds in an amount not exceeding $42,990,408 for the projects described in [section 2] over and above the amount of general obligation bonds outstanding on January 1, 1997. The bonds must be issued in accordance with Title 17, chapter 5, part 8. The bonds authorized by this section must mature within 10 years from their date of issue. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation bonds.

(2) It is the intent of the 55th legislature that the annual debt service payments on the bonds authorized in subsection (1) be paid from the general fund and other funding sources in the respective principal amounts indicated in [sections 6 and 7].

(3) It is the intent of the 55th legislature that bonds sold to purchase equipment be issued for a term that reflects the life of the assets. Therefore, of the $33.8 million in bonding for the integrated revenue and tax systems and the MT PRRIME projects, $1.75 million in bonds must be sold for a term of 4 years and $4.45 million in bonds must be sold for a term of 5 years. The remaining $27.6 million in bonds for these projects must be sold for a term of 10 years.

(4) It is the intent of the 55th legislature that if money becomes available from the federal department of labor for year 2000 compliance, the money must be used to pay debt service or retire outstanding principal on the $3.6 million worth of bonds issued for the unemployment benefit package project. However, the Montana department of labor and industry shall maintain the flexibility to use some of the federal funds to replace base grant funds expended for year 2000 compliance purposes.

(5) It is the intent of the 55th legislature that bonds sold to purchase equipment be issued for a term that reflects the life of the assets. Therefore, of the $1,890,408 in bonding for the department of corrections information technology plan, $913,908 in bonds must be sold for a term of 5 years and $976,500 in bonds must be sold for a term of 10 years.

**Section 4. Planning and design.** The department of administration and the responsible agency may proceed with the planning and design of information technology projects before the receipt of bond proceeds. The department may use interaccount loans pursuant to 17-2-107 to pay planning and design costs incurred before receipt of the proceeds.

**Section 5. Financial plans to be approved.** If the debt service costs of an information technology project are financed in whole or in part from a source other than the general fund, the responsible agency may not proceed with planning and design and the board of examiners may not issue the bonds until the responsible agency has submitted a financial plan that has been approved by

HeinOnline -- 1997 vol. II 2225 1997

the director of the department of administration assuring the availability of funding.

**Section 6. Allocation of selected debt service costs.** (1) The department of administration shall allocate $11,000,000 of bond principal and the interest due on the bonds, for the MT PRRIME project to:

(a) appropriate funding sources using cost allocation plans; and

(b) appropriate proprietary programs for inclusion in their rates.

(2) The department of administration and the office of budget and program planning shall present to the 55th legislature increases in fiscal year 1999 budget authority in all nongeneral fund categories for the cost allocation plans to be included in the general appropriations act of 1997 based on the approved information technology projects.

(3) The proprietary programs identified pursuant to subsection (1)(b) shall transfer on a semi-annual basis, to the debt service fund administered by the department of administration, the amounts required to pay the debt service costs of the MT PRRIME project that are allocated to their programs.

**Section 7. Agreements for other funding sources.** In order to ensure payment from sources other than the general fund of certain of the general obligation bonds authorized for information technology projects under [section 3], the board of examiners shall enter into agreements with the department of revenue, the department of labor and industry, and the Montana university system. The agreements must provide that:

(1) income from the sale of the respective principal amount of bonds must be credited to the entity's repayment obligation;

(2) payment must be made from available funds; and

(3) the respective entity shall pay to the state treasurer for deposit, in accordance with 17-2-101 through 17-2-107, an amount sufficient to pay the following principal amount of bonds and interest due on the bonds:

(a) $1,250,000 from the department of revenue for revenue and integrated tax systems;

(b) $3,600,000 from the department of labor and industry for the unemployment insurance benefit package; and

(c) $1,600,000 from the Montana university system.

(4) The agreements made pursuant to this section are solely for the benefit of the state of Montana and are not enforceable by bondholders or other third-party beneficiaries.

**Section 8. Expenditures.** Expenditures of bond proceeds under [sections 1 through 8] may be used for information technology project administration and implementation, including software and required hardware, software licensing, and contracted services.

HeinOnline -- 1997 vol. II 2226 1997

**Seetion 9. Two-thirds vote required.** Because [section 3] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

**Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 11. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 1997

# CHAPTER NO. 448

[HB 210]

AN ACT ENABLING 9-1-1 EMERGENCY TELEPHONE SYSTEMS TO PROVIDE ENHANCED 9-1-1 SERVICES; DISTINGUISHING BASIC 9-1-1 SYSTEMS FROM ENHANCED 9-1-1 SYSTEMS; ESTABLISHING REQUIREMENTS FOR BASIC 9-1-1 AND ENHANCED 9-1-1 SYSTEMS; ESTABLISHING FEES FOR BASIC 9-1-1 AND ENHANCED 9-1-1 SYSTEMS; CLARIFYING THE SERVICES TO WHICH 9-1-1 FEES APPLY; PROVIDING FOR ACCOUNTING FOR BASIC 9-1-1 AND ENHANCED 9-1-1 FEES; CLARIFYING THE STATUTORY APPROPRIATION OF ENHANCED 9-1-1 FEES; PROVIDING LIMITS ON AND REQUIREMENTS FOR THE DISTRIBUTION OF AND THE EXPENDITURE OF BASIC 9-1-1 AND ENHANCED 9-1-1 FEES; AMENDING SECTIONS 10-4-101, 10-4-102, 10-4-103, 10-4-111, 10-4-112, 10-4-113, 10-4-201, 10-4-202, 10-4-301, 10-4-302, AND 10-4-303, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 10-4-101, MCA, is amended to read:

**"10-4-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) ~~"Account~~ *"Basic 9-1-1 account"* means the 9-1-1 emergency telecommunications account established in ~~10-4-301~~ *10-4-301(1)(a).*

*(2) "Basic 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point.*

*(3) "Basic 9-1-1 system" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, that is used for transferring the call to another point, when appropriate, and that is capable of providing basic 9-1-1 service.*

~~(2)~~*(4)* "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

HeinOnline -- 1997 vol. II 2227 1997

~~(3)~~*(5)* "Direct dispatch method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, provides for a decision as to the proper action to be taken and for dispatch of appropriate emergency service units.

~~(4)~~*(6)* "Emergency" means any event that requires dispatch of a public or private safety agency.

~~(5)~~*(7)* "Emergency services" means services provided by any public or private safety agency, including law enforcement, firefighting, ambulance or medical services, and civil defense services.

*(8) "Enhanced 9-1-1 account" means the 9-1-1 emergency telecommunications account established in 10-4-301(1)(b).*

*(9) "Enhanced 9-1-1 service" means telephone service that meets the requirements for basic 9-1-1 service and that consists of selective routing with the capability of automatic number identification and automatic location identification at a public safety answering point enabling users of the public telecommunications system to request emergency services by dialing the digits 9-1-1.*

*(10) "Enhanced 9-1-1 system" includes customer premises equipment that is directly related to the operation of an enhanced 9-1-1 system, including but not limited to automatic number identification or automatic location identification controllers and display units, printers, and software associated with call detail recording, and that is capable of providing enhanced 9-1-1 service.*

~~(6)~~*(11)* "Exchange access services" means:

(a) telephone exchange access lines or channels that provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) unless a separate tariff rate is charged ~~therefor~~ *for the exchange access lines or channels*, any facility or service provided in connection with the services described in subsection ~~(6) (a)~~ *(11)(a)*.

~~(7)~~*(12)* "Local government" means any city, county, or political subdivision of the state and its agencies.

~~(8) "Minimum 9-1-1 service" means a telephone service meeting the standards established in 10-4-102 that automatically connects a person dialing the digits 9-1-1 to an established public safety answering point. "Minimum 9-1-1 services" includes equipment for connecting and outswitching 9-1-1 calls within a telephone central office, trunking facilities from the central office to a public safety answering point, and equipment, as appropriate, for transferring the call to another point, when appropriate.~~

~~(9)~~*(13)* A "9-1-1 jurisdiction" means a group of public or private safety agencies who operate within or are affected by one or more common central office boundaries and who have agreed in writing to jointly plan a 9-1-1 emergency telephone system.

~~(10)~~*(14)* "Private safety agency" means any entity, except a public safety agency, providing emergency fire, ambulance, or medical services.

HeinOnline -- 1997 vol. II 2228 1997

~~(11)~~*(15)* "Provider" means a puhlic utility, cooperative telephone company, or any other entity that provides telephone exchange access services.

~~(12)~~*(16)* "Puhlic safety agency" means the state and any city, county, city-county consolidated government, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state that provides or has authority to provide emergency services.

~~(13)~~*(17)* "Puhlic safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and ~~which~~ *that* may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

~~(14)~~*(18)* "Relay method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, notes the pertinent information from the caller and relays ~~such~~ *the* information to the appropriate public safety agency, other agencies, or other providers of emergency services for dispatch of an emergency unit.

~~(15)~~*(19)* "Subscriber" means an end user who receives telephone exchange access services.

~~(15)~~*(20)* "Transfer method" means a 9-1-1 service in which a public safety answering point, upon receipt of a telephone request for emergency services, directly transfers ~~such a~~ *the* request to an appropriate public safety answering agency or other provider of emergency services."

**Section 2.** Section 10-4-102, MCA, is amendod te read:

**"10-4-102. Department of administration duties and powers.** (1) The department shall assist in the development of *basic and enhanced* 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from ~~minimum~~ *basic or enhanced* 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning ~~an emergency~~ *a basic or enhanced* 9-1-1 ~~telephone~~ system;

(c) establish criteria for evaluating *basic and enhanced 9-1-1 system* plans;

(d) monitor implementation of approved *basic and enhanced 9-1-1 system* plans for compliance with the plan and use of funding; and

(e) as it finds necessary, report to the legislature the progress made in implementing ~~a~~ statewide ~~emergency telephone system~~ *basic and enhanced 9-1-1 systems*.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in tlie state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's departments, local citizens, organizations,

HeinOnline -- 1997 vol. II 2229 1997

and other public safety organizations may submit recommendations for membership on the advisory council."

**Section 3.** Section 10-4-103, MCA, is amended to read:

**"10-4-103. Emergency telephone system requirements.** (1) Every public and private safety agency in this state may establish or participate in ~~an~~ *a basic or enhanced 9-1-1* ~~emergency telephone~~ system.

(2) ~~An~~ *A basic 9-1-1* ~~emergency telephone~~ system must include:

(a) a 24-hour communications facility automatically accessible anywhere in the 9-1-1 jurisdiction's service area by dialing 9-1-1;

(b) direct dispatch of public and private safety services in the 9-1-1 jurisdiction or relay or transfer of 9-1-1 calls to an appropriate public or private safety agency; and

(c) a 24-hour communications facility equipped with at least two trunk-hunting local access circuits provided by the local telephone company's central office.

(3) *An enhanced 9-1-1 system must include, in addition to the requirements for a basic 9-1-1 system:*

*(a) automatic number identification that automatically identifies and displays the calling telephone number at the public safety answering point; and*

*(b) automatic location identification that automatically identifies and displays the address of the calling telephone at the public safety answering point.*

*(4)* The primary emergency telephone number within the state is 9-1-1, but a public safety answering point shall maintain both a separate seven-digit secondary emergency number for use by the telephone company operator and a separate seven-digit nonemergency number."

**Section 4.** Section 10-4-111, MCA, is amended to read:

**"10-4-111. Submission of preliminary plans for 9-1-1 jurisdictions — review — cost estimates.** (1) A 9-1-1 jurisdiction may submit a preliminary plan for establishing ~~an~~ *a basic or enhanced 9-1-1* ~~emergency telephone~~ system in accordance with 10-4-103 to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) The department shall review the preliminary plan for compliance with 10-4-103 and rules adopted pursuant to 10-4-102 and report its approval or disapproval to the 9-1-1 jurisdiction within 90 days of receipt of the plan.

(3) A provider of telephone service in the 9-1-1 jurisdiction's service area shall, within 90 days of receipt of the plan, provide the 9-1-1 jurisdiction with a good faith estimate of the cost to the 9-1-1 jurisdiction for implementing the plan."

HeinOnline -- 1997 vol. II 2230 1997

**Section 5.** Section 10-4-112, MCA, is amended to read:

**"10-4-112. Submission and approval of final plans — exception.** (1) A 9-1-1 jurisdiction shall submit a proposed final plan for establishing ~~an~~ *a basic or enhanced 9-1-1* ~~emergency telephone~~ system pursuant to 10-4-103 within 1 year from receipt of the department's approval of its preliminary plan to:

(a) public and private safety agencies in the 9-1-1 jurisdiction;

(b) the department; and

(c) providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) In addition to other matters required by 10-4-103, the final plan must include a description of all capital and recurring costs for the proposed ~~emergency~~ *basic or enhanced* 9-1-1 ~~telephone~~ system.

(3) The department shall determine whether the final plan complies with 10-4-103 and rules adopted pursuant to 10-4-102. Subject to 10-4-113, if the department determines that the plan complies, it shall approve the plan, or if the department determines that the plan does not comply, it shall disapprove the plan. The department shall inform the 9-1-1 jurisdiction of its decision within 180 days of receipt of the plan. In any statement approving a final plan, the department shall indicate a timetable in which the provider shall undertake necessary telephone system conversions. The timetable must be such that conversions may not be required unless sufficient funds to compensate the provider for its conversion costs are available within 1 year of the initial installation of the 9-1-1 system."

**Section 6.** Section 10-4-113, MCA, is amended to read:

**"10-4-113. Requirement for approval of final plan — department to insure compliance.** The department may not approve the preliminary or final plan ~~of~~ *for basic or enhanced 9-1-1 service within* a 9-1-1 jurisdiction unless the plan is accompanied by a written approval from the governing bodies of all participating public and private safety agencies included in the 9-1-1 jurisdiction."

**Section 7. Submission of revised plan for conversion from basic 9-1-1 to enhaneed 9-1-1.** (1) A jurisdiction intending to implement an enhanced 9-1-1 system shall submit an amended plan for establishing an enhanced 9-1-1 system to:

(a) every public and private safety agency in the 9-1-1 jurisdiction;

(b) the department; and

(c) all providers of telephone service in the 9-1-1 jurisdiction's service area.

(2) The amended plan must include:

(a) a description of all capital and recurring costs for the proposed enhanced 9-1-1 system;

(b) the proposed schedule for implementation of the enhanced 9-1-1 system;

(c) the proposed expenditures for equipment and software upgrades;

HeinOnline -- 1997 vol. II 2231 1997

(d) a plan for maintaining all automatic number identification and all automatic location identification data bases; and

(e) a plan for 9-1-1 dispatcher training that must include, at a minimum:

(i) basic telecommunicator certification awarded upon successful completion of the basic telecommunicator class offered through the Montana law enforcement academy;

(ii) emergency medical dispatch certification awarded upon successful completion of one of the emergency medical dispatch programs that provide dispatch-specific medical training and training and practice in the use of written or automated medical dispatch protocols; or

(iii) training that includes handling 9-1-1 emergency telephone calls and relaying information to the appropriate responder or dispatch agency.

(3) (a) The department shall determine whether the enhanced 9-1-1 plan complies with the provisions of this part, including rules adopted pursuant to 10-4-102, and shall inform the 9-1-1 jurisdiction of its determination within 180 days of receipt of the plan.

(b) If the department approves an enhanced 9-1-1 plan, the department shall indicate a timetable within which the provider shall undertake necessary conversions to dedicated 9-1-1 circuits. The timetable must be such that conversions may not be required unless sufficient funds to compensate the provider for its conversion costs are available within 1 year of the initial installation of the 9-1-1 system.

(4) If enhanced 9-1-1 service has been included as part of an approved final plan for basic 9-1-1 service, the jurisdiction is not required to submit an amended plan for enhanced 9-1-1 service.

**Section 8. Dedicated 9-1-1 telephone facilities to be provided — capabilities.** Every provider of telephone service in an area served by an emergency telephone system established pursuant to 10-4-103 shall provide dedicated 9-1-1 telephone facilities capable of providing automatic number identification to the public safety answering point. The provision of facilities and services required under this section must be accomplished according to a plan, including a timetable, approved pursuant to 10-4-111.

**Section 9.** Section 10-4-201, MCA, is amended to read:

**"10-4-201. ~~Fee~~ *Fees* imposed for telephone exchange access services.** (1) Except as provided in 10-4-202~~,~~*:*

*(a) for basic 9-1-1 services,* a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access *services, wireless telephone service, or other 9-1-1 accessible* services*; and*

*(b) for enhanced 9-1-1 services, a fee of 25 cents a month per access line on each service subscriber in the state is imposed on the amount charged for telephone exchange access services, wireless telephone service, or other 9-1-1 accessible services.*

HeinOnline -- 1997 vol. II 2232 1997

(2) The subscriber paying for exchange access line services is liable for the ~~fee~~ *fees* imposed by this section.

(3) The provider shall collect the ~~fee~~ *fees*. The amount of the ~~fee~~ *fees* collected by the provider is considered payment by the subscriber for that amount of ~~fee~~ *fees*.

(4) Any return made by the provider collecting the ~~fee~~ *fees* is prima facie evidence of payments by the subscribers of the amount of fees indicated on the return."

**Section 10.** Section 10-4-202, MCA, is amended to read:

**"10-4-202. Exemptions from ~~fee~~ *fees* imposed.** The ~~fee~~ *fees* imposed by 10-4-201 ~~does~~ *do* not apply to:

(1) services that the state is prohibited from taxing under the constitution or laws of the United States or the constitution or laws of the state of Montana; or

(2) amounts paid by depositing coins in a public telephone."

**Section 11.** Section 10-4-301, MCA, is amended to read:

**"10-4-301. Establishment of emergency telecommunications ~~account~~ *accounts*.** ~~A 9-1-1 emergency telecommunications account is~~

*(1) There are* established in the state special revenue fund in the state treasury*:*

*(a) an account for all fees collected for basic 9-1-1 services pursuant to 10-4-201(1)(a); and*

*(b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b).*

*(2)* All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the *appropriate* account.

*(3)* After payment of refunds pursuant to 10-4-205, the balance of the ~~account~~ *respective accounts* must be used for the purposes described in part 1 of this chapter.

*(4)* The distribution of *funds in* the 9-1-1 emergency telecommunications ~~account~~ *accounts described in subsection (1)*, according to the requirements of 10-4-302 *and [section 14]*, is statutorily appropriated.

*(5)* Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose."

**Section 12.** Section 10-4-302, MCA, is amended to read:

**"10-4-302. Distribution of *basic 9-1-1* account by department.** (1) The department shall make quarterly distributions of the entire *basic 9-1-1* account ~~beginning on April 1, 1987~~. The distributions must be made for the following:

HeinOnline -- 1997 vol. II 2233 1997

(a) administrative costs incurred during the preceding calendar quarter by the department of revenue in carrying out this chapter. The amount paid may not exceed ~~1%~~ *0.5%* of the account on the date of distribution or actual expenses incurred, whichever is less.

(b) administrative costs incurred during the preceding calendar quarter by the department in carrying out its duties under this chapter. The department's annual recovery of costs may not exceed ~~7%~~ *3.5%* of the amount collected by the account during the fiscal year or actual expenses incurred, whichever is less.

(c) costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(i) collection of the ~~fee~~ *fees* imposed by 10-4-201;

(ii) medification of central office switching and trunking equipment for emergency telephone service only; and

(iii) conversion of pay station telephones required by 10-4-121.

(2) Payments under subsection (1)(c) may be made only after application by the provider to the department for costs incurred in subsection (1)(c). The department shall review all applications relevant to subsection (1)(c) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid, the halance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account. A 9-1-1 jurisdiction whose 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by a 9-1-1 jurisdiction with an approved final plan the proportional amount for each city or ceunty served by the 9-1-1 jurisdiction. The department shall provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(4) If the department through its monitoring process determines that a 9-1-1 jurisdiction is not adhering to an approved plan or is not using funds in the manner prescribed in 10-4-303, the department may, after notice and hearing, suspend payment to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds until ~~such time as~~ the department determines that the jurisdiction is complying with the approved plan and fund usage limitations.

*(5) The department shall distribute any balance in the basic 9-1-1 account on July 1, 1998, on a per capita basis to those 9-1-1 jurisdictions that have approved final plans filed with the department as required by 10-4-112."*

**Section 13.** Section 10-4-303, MCA, is amended to read:

**"10-4-303. Limitation on use of *basic 9-1-1* funds.** Money received under subsection (3) of 10-4-302 may be used only to pay for installing, operating, and improving ~~an~~ *a basic 9-1-1* emergency telephone system ~~using 9-1-1~~. Money

not necessary for immediate use may be invested by the city or county. The income from the investments ~~shall~~ *may* be used only for the purposes described in this section."

**Section 14. Distribution of enhanced 9-1-1 account by department.** (1) The department shall make quarterly distributions of the entire enhanced 9-1-1 account as follows:

(a) administrative costs incurred during the preceding calendar quarter by the department of revenue in carrying out this chapter. The amount paid may not exceed 0.5% of the account on the date of distribution or actual expenses incurred, whichever is less.

(b) administrative costs incurred during the preceding calendar quarter by the department in carrying out its duties under this chapter. The department's annual recovery of costs may not exceed 3.5% of the amount deposited in the account during the fiscal year or actual expenses incurred, whichever is less.

(c) costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

(i) collection of the fee imposed by 10-4-201(1)(b); and

(ii) modification of central office switching and trunking equipment necessary to provide service for an enhanced 9-1-1 system only.

(2) Payments under subsection (1)(c) may be made only after application by the provider to the department for costs described in subsection (1)(c). The department shall review all applications relevant to subsection (1)(c) for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid:

(a) for each fiscal year through the fiscal year ending June 30, 2007:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the remaining 16% of the balance of the account must be distributed evenly to the counties with 1% or less than 1% of the total population of the state; and

(b) for fiscal years beginning after June 30, 2007, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(4) An enhanced 9-1-1 jurisdiction whose enhanced 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by an enhanced 9-1-1 jurisdiction with an approved final plan for enhanced 9-1-1 service the proportional amount for each city or county served by the enhanced 9-1-1 jurisdiction. The department shall,

HeinOnline -- 1997 vol. II 2235 1997

upon request, provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(5) If the department determines that an enhanced 9-1-1 jurisdiction is not adhering to an approved plan for enhanced 9-1-1 service or is not using funds in the manner prescribed in [section 15], the department may, after giving notice to the jurisdiction and providing an opportunity for a representative of the jurisdiction to comment on the department's determination, suspend payment from the enhanced 9-1-1 account to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds from the enhanced 9-1-1 account until the department determines that the jurisdiction is complying with the approved plan for enhanced 9-1-1 and fund usage limitations.

**Section 15. Limitation on use of enhanced 9-1-1 funds.** (1) Money received under [section 14(3) or (4)] may be used only to pay for installing enhanced 9-1-1 features or for operating and improving an emergency telephone system using 9-1-1 service once the plan for converting to enhanced 9-1-1 has been approved.

(2) With department approval, money received under [section 14(3) or (4)] may be used to pay for basic 9-1-1 service. The 9-1-1 jurisdiction shall submit a request for an exception under this subsection to the department based on a demonstrated hardship, including geographical constraints, funding limitations, or absence of technical capability or capacity.

(3) Money not necessary for immediate use may be invested by the city or county. The income from the investments may be used only for the purposes described in this section.

**Section 16. Codification instruction.** (1) [Sections 7 and 8] are intended to be codified as an integral part of Title 10, chapter 4, part 1, and the provisions of Title 10, chapter 4, apply to [sections 7 and 8].

(2) [Sections 14 and 15] are intended to be codified as an integral part of Title 10, chapter 4, part 3, and the provisions of Title 10, chapter 4, apply to [sections 14 and 15].

**Section 17. Applicability.** (1) Except as provided in subsections (2) and (3), [this act] applies on July 1, 1997.

(2) [Sections 7, 18, and this section] apply on passage and approval.

(3) [Section 14] applies to calendar quarters beginning on or after October 1, 1997.

**Section 18. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1997.

(2) [Section 7 and this section] are effective on passage and approval.

Approved April 30, 1997

HeinOnline -- 1997 vol. II 2236 1997

# CHAPTER NO. 449

[HB 212]

AN ACT PROVIDING FOR RIVER AND LAKE ISLAND PARKS ON STATE-OWNED OR STATE-LEASED ISLAND PROPERTY IN NAVIGABLE RIVERS, STREAMS, AND LAKES; LIMITING DEVELOPMENT OF ISLAND PARKS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, publicly owned or leased islands in Montana's navigable rivers, streams, and lakes provide the public an opportunity for a unique recreational experience; and

WHEREAS, in order to preserve the integrity of the island experience, those public properties should remain in as natural and undeveloped state as possible.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Island parks established — development limited.** (1) In order to retain the integrity of the recreational experience associated with Montana's river and lake islands, development of undisputed state-owned or state-leased island property, which is hereby designated as island parks, including islands designated as state property under 70-18-203, lying within and surrounded by a navigable river, stream, or lake is limited, after [the effective date of this act], to:

(a) the installation of minimal signage indicating that the island is a designated island park in which development has been limited and encouraging the public to help in maintaining the island park's primitive character by packing out trash;

(b) necessary latrine facilities if approved by the fish, wildlife, and parks commission;

(c) footings or pilings necessary for the construction of a bridge; and

(d) oil and gas leasing.

(2) Improvements made to and agricultural operations on state-owned or state-leased island property prior to [the effective date of this act] may be maintained or continued, but further development is limited as provided in this section.

(3) Notwithstanding the provisions of 77-1-203 regarding multiple-use management, the legislature finds that the highest and best use of island property administered as school trust land, except islands designated as natural areas pursuant to Title 76, chapter 12, is for recreation and grazing and that those islands should be left in as primitive state as possible to protect from the loss of potential future revenue that could result from the failure to leave the islands in an undeveloped condition.

(4) For purposes of this section, state ownership or state lease of island property is disputed if the dispute arises before, on, or after [the effective date of this act].

HeinOnline -- 1997 vol. II 2237 1997

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 4, and the provisions of Title 77, chapter 1, part 4, apply to [section 1].

**Section 3. Effeetive date.** [This act] is effective on passage and approval.

Approved April 30, 1997

# CHAPTER NO. 450

[HB 264]

AN ACT REQUIRING THE YOUTH COURT TO NOTIFY A SCHOOL OF THE IDENTITY OF A STUDENT WHO FOR A SECOND OR SUBSEQUENT TIME ADMITS VIOLATING OR IS ADJUDICATED AS HAVING VIOLATED A STATUTE; AND AMENDING SECTION 41-5-603, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-5-603, MCA, is amended to read:

**"41-5-603. Youth eourt and department reeords — *notification of school.*** (1) Except as provided in ~~subsection (2)~~ *subsection (2)*, all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-604.

(2) Social, medical, and psychological records, predispositional studies, supervision records of probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitiinate interest in the case or in tbe work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party wlio had been a party to proceedings in the youth court when considering the sentence to be imposed upen the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203; and

(i) persons allowed access to the records under 45-5-624(7).

HeinOnline -- 1997 vol. II 2238 1997

*(3) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 46-24-207.*

*(4) The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student. The administrative officials may enforce any school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.*

~~(3)~~*(5)* Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

~~(4)~~*(6)* After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in ~~subsection (2)~~ *subsection (2)*; and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Approved April 30, 1997

# CHAPTER NO. 451

[HB 285]

AN ACT REVISING THE MEMBERSHIP OF THE FLATHEAD BASIN COMMISSION; ADDING TO THE COMMISSION ONE MEMBER APPOINTED BY THE FLATHEAD COUNTY CONSERVATION DISTRICT BOARD OF SUPERVISORS AND ONE MEMBER APPOINTED BY THE LAKE COUNTY CONSERVATION DISTRICT BOARD OF SUPERVISORS TO REPLACE OTHER MEMBERS; AND AMENDING SECTION 2-15-213, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 2-15-213, MCA, is amended to read:

**"2-15-213. Flathead basin commission — membership — compensation.** (1) There is a Flathead basin commission.

(2) The commission consists of ~~21~~ *21* members selected as follows:

(a) ~~seven~~ *seven* members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff and who also serves as the executive director;

(b) one member who is the director of the department of natural resources and conservation or the director's designee;

HeinOnline -- 1997 vol. II 2239 1997

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior, national park service regional director for the Rocky Mountain region;

(h) *one member appointed by the Flathead County conservation district board of supervisors;*

*(i) one member appointed by the Lake County conservation district board of supervisors;*

*(j)* ~~six~~ *four* ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; ~~the regional administrator of the United States department of interior, bureau of reclamation; the administrator of the Bonneville power administration; the chief of engineers of the United States army corps of engineers;~~ *the regional administrator of the United States department of the interior, bureau of reclamation;* and the holder of a license issued for the Flathead project under the Federal Power Act;

~~(i)~~*(k)* two ex officio members who are the director of the department of environmental quality and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. The commissioners listed in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the gevernor's office for administrative purposes only."

Approved April 30, 1997

# CHAPTER NO. 452

[HB 346]

AN ACT GENERALLY REVISING THE LAWS RELATING TO MANDATORY MOTOR VEHICLE INSURANCE; REQUIRING SUSPENSION OF THE DRIVER'S LICENSE OF A PERSON CONVICTED OF A FOURTH OR SUBSEQUENT VIOLATION OF MANDATORY MOTOR VEHICLE INSURANCE LAWS; REQUIRING A PERSON TO PROVIDE THE DEPARTMENT OF JUSTICE WITH PROOF OF COMPLIANCE WITH MANDATORY MOTOR VEHICLE INSURANCE LAWS BEFORE REINSTATEMENT OF LICENSE PLATES, REGISTRATION RECEIPTS, OR

HeinOnline -- 1997 vol. II 2240 1997

A SUSPENDED DRIVER'S LICENSE; AMENDING SECTION 61-6-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-6-304, MCA, is amended to read:

**"61-6-304. Penalties.** (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of $350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of $500 or by imprisonment in the county jail for not more than 6 months, or both.

(2) Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the receipt and plates for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction. The receipt and plates may not be reinstated until the expiration of that period *and until proof of compliance with 61-6-301 is furnished to the department*, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle.

*(3) Upon a fourth and subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.*

~~(3)~~*(4)* The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

~~(4)~~*(5)* A court may not defer impesition of penalties provided by this section.

*(6) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction."*

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved April 30, 1997

HeinOnline -- 1997 vol. II 2241 1997

# CHAPTER NO. 453

[HB 360]

AN ACT REVISING THE PROHIBITION AGAINST INTENTIONAL INTERFERENCE WITH THE TAKING OF A WILD ANIMAL BY INCLUDING HARASSMENT OF ANGLERS AND HARASSMENT OF GAME BIRD HUNTERS AS PROHIBITED ACTIVITIES; REVISING DEFINITIONS; AND AMENDING SECTIONS 87-3-141 AND 87-3-142, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 87-3-141, MCA, is amended to read:

"**87-3-141. Definitions.** As used in 87-3-141 through 87-3-144, the following definitions apply:

(1) *"Fishing" means the lawful means of angling or fishing as defined in 87-2-120.*

*(2)* "Taking" means the pursuit, hunting, trapping, shooting, or killing of a wild animal on land upon which the affected person has the right or privilege to pursue, hunt, trap, shoot, or kill the wild animal.

~~(2)~~*(3)* "Wild animal" means ~~any~~ *a* game animal, *migratory game bird, upland game bird,* fur-bearing animal, or predatory animal, as defined in 87-2-101, *or a fish.*"

**Section 2.** Section 87-3-142, MCA, is amended to read:

"**87-3-142. Harassment prohibited.** (1) ~~No~~ *A* person may *not* intentionally interfere with the lawful taking of a wild animal *or fishing* by another.

(2) ~~No~~ *A* person may *not*, with intent to prevent or hinder its lawful taking *or its capture*, disturb a wild animal or engage in an activity or place in its way any object or substance that will tend to disturb or otherwise affect the behavior of a wild animal.

(3) ~~No~~ *A* person may *not* disturb an individual engaged in the lawful taking of a wild animal *or fishing* with intent to ~~dissuade the individual or otherwise~~ prevent the taking of the animal *or the capture of the fish.*

(4) ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit* a landowner or lessee from taking reasonable measures to prevent imminent danger to domestic livestock and equipment. *This section does not prohibit or curtail normal landowner operations or lawful uses of water.*"

Approved April 30, 1997

# CHAPTER NO. 454

[HB 361]

AN ACT REQUIRING NOTICE OF THE APPLICATION OR USE OF INDOOR PESTICIDES TO BE POSTED FOR PUBLIC BUILDINGS; AND AMENDING SECTION 80-8-107, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 80-8-107, MCA, is amended to read:

**"80-8-107.** ***Notice*** **—** ~~**Public**~~ ***public*** **information.** *(1) As used in this section, the following definitions apply:*

*(a) "Building operator" means the owner, the owner's agent, or the building manager of any public building or, in the case of a public building that is leased to a tenant who is responsible for the operation of the building, the tenant or the tenant's building manager.*

*(b) "Public building" means a building that is owned or leased by a public agency, as defined in 18-1-101, and that is open to the public, including but not limited to:*

*(i) a building that is used for educational, office, or institutional purposes; or*

*(ii) a library, museum, school, hospital, auditorium, dormitory, or university building.*

*(2) The building operator who for indoor treatment personally applies or who contracts for or orders the application of a pesticide, excluding an antimicrobial, a disinfectant, a sanitizer, a pest bait, paste, or gel, or other pesticide that is designated by the department pursuant to 80-8-212 for retail sale, shall post a notice at each access to the public building or, if only a room has been treated, at each access to the room in a manner that allows the notice to be read before entering the building or room. However, if a room from which a heating or air conditioning system draws air has been treated, the notice required by this section must be posted at each access to the public building. The notice must:*

*(a) be permanently displayed if the pesticide is applied on a regular basis;*

*(b) be posted at the time of the application if the pesticide is not applied on a regular basis;*

*(c) contain the name of the pesticide applied; and*

*(d) contain the phone number at which a person may obtain information, the label, and the material safety data sheet on the pesticide applied.*

*(3) The applicator or building operator may not remove a notice posted pursuant to this section until the pesticide is dry or the reentry interval stated on the pesticide label has expired, whichever is later.*

*(4) A building operator shall keep, for 2 years, records of the pesticide applications and the material safety data sheet for each pesticide.*

HeinOnline -- 1997 vol. II 2243 1997

*(5) A local government may not adopt standards that are more stringent than the standards established in subsections (2) through (4).*

*(6)* Except as provided in Title 80, chapter 15, the department ~~as it deems proper~~ may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person."

**Section 2. Local implementation.** An ordinance adopted by a local gevernment pursuant to 80-8-120 before Octeber 1, 1997, must comply with [this act] by January 1, 1998.

Approved April 30, 1997

# CHAPTER NO. 455

[HB 398]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE LEASE WITH OPTION TO PURCHASE FOR STATE BUILDINGS; PROVIDING FOR A REQUEST FOR PROPOSALS PROCESS; EXEMPTING LEASE-PURCHASE PROVISIONS FROM STATE CONSTRUCTION CONTRACT REQUIREMENTS; REVISING THE APPOINTMENT OF ARCHITECTS FOR BUILDING LEASE PROJECTS; ELIMINATING CERTAIN REQUIREMENTS CONCERNING LEASES FOR BUILDINGS; REMOVING THE STATUTORY PROVISIONS GOVERNING RENT; APPROVING THE LEASE WITH OPTION TO PURCHASE FOR SPECIFIC BUILDINGS; CONTINGENTLY AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION LONG-RANGE BUILDING PROGRAM BONDS; CREATING A STATE DEBT; AMENDING SECTIONS 18-3-101, 18-3-105, 53-1-203, AND 53-30-505, MCA; REPEALING SECTIONS 18-3-102, 18-3-103, 18-3-104, AND 18-3-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-3-101, MCA, is amended to read:

**"18-3-101. Authority to lease with option to purchase.** ~~When authorized by a vote of two-thirds of the members of each house of the legislature, the~~ *When authorized by a vote of two-thirds of the members of each house of the legislature, the* department of administration ~~shall have the authority, as part of the long-range building program, to~~ *may, as part of the long-range building program,* enter into a ~~rental~~ *lease* contract ~~which~~ *that* provides an option to purchase a building to be used by the state or any department of state government."

**Section 2.** Section 18-3-105, MCA, is amended to read:

**"18-3-105. Location of building.** ~~The~~ *A* building *authorized pursuant to 18-3-101* ~~shall~~ *must* be located as determined by the terms of the ~~call~~ *request* for ~~bids~~ *proposals.* If ~~any such~~ *a* contract *entered into pursuant to this chapter*

HeinOnline -- 1997 vol. II 2244 1997

requires the sale or lease of any interest in state lands, the contract must have prior approval of the hoard of land commissioners."

**Section 3. Requests for proposals.** (1) The department, with the cooperation of the departments that will occupy the rental property, shall develop a request for proposals defining the state's program and building specification requirements. A request for proposals must be administered in accordance with 18-4-304(3) through (7).

(2) For projects valued at less than $2 million, the departments may develop the request for proposals. For projects valued at $2 million or more, the departments shall contract with a licensed architect or engineer selected in accordance with 18-2-112 for the development of the request for proposals.

(3) A successful proposer, general contractor, or subcontractor engaged in construction under this part shall pay the standard prevailing rate of wages to employees engaged in the construction of the leased proporty.

**Section 4. Exemption from construction contract requirements.** Except as provided in [section 3], a contract provided for in this chapter is not suhject to the provisions of Title 18, chapter 2.

**Section 5.** Section 53-1-203, MCA, is amended to read:

**"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided hy law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole.

(b) subject to the functions of the department of administration, lease or purchase lands for use hy institutions and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(c) contract with private, nonprofit Montana corporations to establish and maintain community-based prerelease centers for purposes of preparing inmates of the Montana state prison who are approaching parole eligibility or discharge for release into the community. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs, including the supervised release program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's authority to operate and maintain community-based prerelease centers.

(d) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

HeinOnline -- 1997 vol. II 2245 1997

(e) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions;

(f) encourage the establishment of programs at the local and institutional level for the rehabilitation and education of adult felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of supervision and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of supervision and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of supervision and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need of supervision and who are referred or committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for children in need of temporary protection or correctional services; and

(ii) coordinate and apply the principles of modern institutional administration to the institutions in the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 years. The provisions of ~~18-3-104 and~~ 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c).

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of supervision and delinquent youth in youth care facilities."

**Section 6.** Section 53-30-505, MCA, is amended to read:

"**53-30-505. Contract time limit.** A contract entered into under 53-30-504 may not exceed a term of 30 years and must contain provisions for renegetiation after 30 years. The provisions of ~~18-3-104 and~~ 18-4-313 that limit the term of a contract do not apply to a contract authorized by 53-30-504."

**Section 7. Approval of projects — bonds.** The passage of [sections 1 through 4 and 8] constitutes legislative approval for the following facilities:

(1) a 16,064 square foot building for the office of public instruction, located at 1227 eleventh avenue, Helena, Montana. Three-fourths of the cost of this facility is intended to be recovered from the operating budget of the agency

HeinOnline -- 1997 vol. II 2246 1997

occupying the facility. One-fourth of the cost will be due as a lump-sum payment if the purchase option is exercised at the end of the leasing period. If the lease contract provides for a purchase option, the board of examiners may issue $900,000 of general obligation long-ranga building program bonds for purposes of funding the second floor addition to the building.

(2) a building of approximately 14,500 square feet for the department of justice, located at sixth avenue and south 27th street in Billings, Montana. Costs are intended to be recovered through the operating budget of the agencies occupying the leased space with a lump-sum payment if the purchase option is exercised.

**Section 8. Repealer.** Sections 18-3-102, 18-3-103, 18-3-104, and 18-3-107, MCA, are repealed.

**Section 9. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 18, chapter 3, part 1, and the provisions of Title 18, chapter 3, part 1, apply to [sections 3 and 4].

**Section 10. Two-thirds vote required.** Because [section 7] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passaga.

**Seetion 11. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 1997

# CHAPTER NO. 456

[HB 401]

AN ACT GENERALLY REVISING THE LAWS GOVERNING BAIL; EXEMPTING PERSONS WHO ONLY EXECUTE SURETY BAIL BONDS FROM INSURANCE PRODUCER CONTINUING EDUCATION REQUIREMENTS; EXTENDING THE TIME IN WHICH A SURETY MAY APPEAR TO EXCUSE THE DEFENDANT'S FAILURE TO APPEAR; REVISING THE CONDITIONS UNDER WHICH A BAIL BOND MUST BE EXONERATED; AND AMENDING SECTIONS 33-17-1203 AND 46-9-503, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-17-1203, MCA, is amended to read:

**"33-17-1203. Continuing education — basic requirements — exceptions.** (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

HeinOnline -- 1997 vol. II 2247 1997

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) a person licensed to act as an insurance producer only for credit life and disability insurance shall, during each calendar year, complete 5 credit hours of approved continuing education in the areas of insurance law, ethics, or credit life and disability insurance;

(e) a person licensed as an insurance producer or consultant shall, during each biennium, completo at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause shown, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may he completed.

(4) The minimum continuing education requirements do not apply to:

(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(7)(d) through (7)(g);

(b) a person holding a temporary license issued under 33-17-216;

(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state accords substantially similar privileges to and has similar requirements of residents of this state;

(d) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license; ~~or~~

*(e) a person who only executes surety bail bonds; or*

~~(e)~~*(f)* an insurance producer or consultant otherwise exempted by the commissioner."

**Section 2.** Section 46-9-503, MCA, is amended to read:

**"46-9-503. Violation of release condition — forfeiture.** (1) If a defendant violates a condition of release, including failure to appear, the prosecutor ~~may~~ *may* make a written motion to the court for revocation of the order of release. A judgo ~~may~~ *may* issue a warrant for the arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judgo in accordance with 46-7-101.

(2) If a defendant fails to appear before a court as required and bail has been posted, the judgo may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address within 10 working days or the bond becomes void and must he released and returned to the surety within 5 working days.

HeinOnline -- 1997 vol. II 2248 1997

(3) If at any time within ~~30~~ *90* days after the forfeiture the defendant's sureties appear and satisfactorily excuse the defendant's failure to appear, the judge ~~may~~ *may* direct the forfeiture to he discharged upon terms as may be just. If at any time within 90 days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture to be discharged upon terms as may be just.

*(4) The surety bail bond must be exonerated upon proof of the defendant's death or incarceration or subjection to court-ordered treatment in a foreign jurisdiction for a period exceeding the time limits under subsection (3).*"

Approved April 30, 1997

# CHAPTER NO. 457

[HB 430]

AN ACT INCREASING THE SERVICE RETIREMENT BENEFIT FOR CERTAIN MEMBERS OF THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM TO 2.5 PERCENT OF FINAL AVERAGE COMPENSATION FOR EACH YEAR OF SERVICE; USING FINAL AVERAGE COMPENSATION IN THE CALCULATION OF DISABILITY BENEFITS INSTEAD OF FINAL MONTHLY COMPENSATION; RAISING CONTRIBUTIONS; INCREASING GENERAL FUND REVENUES BY PROVIDING THAT EXCESS INSURANCE PREMIUM TAXES BE DEPOSITED TO THE STATE GENERAL FUND; PROVIDING AN ACTUARIAL FUNDING MECHANISM TO PAY MINIMUM BENEFIT INCREASES; REDUCING THE NUMBER OF YEARS REQUIRED FOR VESTING; CLARIFYING THE DATE ON WHICH RETIREMENT BENEFITS MAY COMMENCE; AMENDING SECTIONS 19-13-104, 19-13-301, 19-13-601, 19-13-604, 19-13-701, 19-13-704, 19-13-803, 19-13-902, 19-13-1007, AND 19-18-606, MCA; REPEALING SECTIONS 19-13-615, 19-13-1006, AND 19-13-1009, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 19-13-104, MCA, is amended to read:

"**19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions ~~which~~ *that*, ~~prior to~~ *before* the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid hy an employer for the firefighter's service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

HeinOnline -- 1997 vol. II 2249 1997

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211.

(5) "Final average compensation" means the monthly compensation of a member ~~hired on or after July 1, 1981,~~ averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefightor" means a person appointed as a firefighter under 7-33-4106.

~~(8) "Last monthly compensation" means the compensation paid to a member during the member's last full month of service. Lump-sum payments for annual leave paid to the member upon termination of service may not be included in the calculation of last monthly compensation.~~

~~(9)~~*(8)* "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of membership service.

~~(10)~~*(9)* "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter.

~~(11)~~*(10)* "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

~~(12)~~*(11)* "Retirement date" means the date on which the first payment of benefits is payable.

HeinOnline -- 1997 vol. II 2250 1997

~~(13)~~*(12)* "Surviving spouse" means the spouse married to a member at the time of the member's death."

**Section 2.** Section 19-13-301, MCA, is amended to read:

**"19-13-301. Active membership — inactive vested member — inactive nonvested member.** (1) A full-paid firefighter becomes an active member of the retirement system:

(a) on the first day of the firefighter's service with an employer;

(b) on July 1, 1981, if the firefighter is employed by an employer on that date; or

(c) in the case of an employer ~~that~~ *who,* elects to join the retirement system as provided in 19-13-211, on the effective date of the election if the firefighter is employed by the employer on that date.

(2) Upon becoming eligible for membership, the firefighter shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the retirement system by filing a membership application with the board.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) A member with at least ~~10~~ *5* years of membership service who terminates service and does not take a refund of accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than ~~10~~ *5* years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

**Section 3.** Section 19-13-601, MCA, is amended to read:

**"19-13-601. Deduction remitted to firemen's association — member's contribution.** (1) Each employer shall retain from the compensation of each active member a sum equal to 1% of the member's compensation for services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the retirement system.

HeinOnline -- 1997 vol. II 2251 1997

(2) The member's contribution to the retirement system is ~~7.8%~~ *9.5%* of the member's compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of the member's compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under 19-13-604, 19-13-605, and this section must be based on the total compensation received by the member from the employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions that would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

**Section 4.** Section 19-13-604, MCA, is amended to read:

**"19-13-604. State contribution.** The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-18-512. These payments must be made annually te the pension trust fund after the end of each fiscal year but no later than November 1 from the gross premium taxes after deduction for cancellations and returned premiums. The division shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year. The state's centribution is ~~24.21%~~ *32.24%* of this total compensation. As soon as practicable after receipt of the stato contribution, the division shall deposit it in the pension trust fund."

**Section 5.** Section 19-13-701, MCA, is amended to read:

**"19-13-701. Eligibility for service rctirement —commencement of benefit.** (1) A member who has completed 20 years or more of membership service is eligible for service retirement commencing on the first day of the month following the member's last day of service.

(2) A vested member who terminates service before the minimum retirement date and keeps the member's accumulated contributions on deposit is eligible for service retirement commencing on the memher's minimum retirement date.

HeinOnline -- 1997 vol. II 2252 1997

(3) A vested inactive member may file a written application with the board requesting that the member's retirement benefit commence on the first day of the month following receipt of the application. However, the retirement benefit for an inactive vested member must commence no ~~later~~ *earlier* than the first day of the month following the member's ~~55th~~ *50th* birthday."

**Section 6.** Section 19-13-704, MCA, is amended to read:

**"19-13-704. Amount of service retirement benefit.** (1) ~~(a) A member hired before July 1, 1981, who elects to retire after having reached 20 years of membership service must receive a service retirement benefit equal to the sum of:~~

~~(i) 50% of the member's last monthly compensation for years of service credit up to and including 20 years; and~~

~~(ii) 2% of the member's last monthly compensation for each year of service credit after 20 years.~~

~~(b) A member hired before July 1, 1981, who elects to retire after having reached at least 10 years but less than 20 years of membership service as an active member must receive a service retirement benefit equal to 2% of the member's last monthly compensation for each year of service credit. Upon the retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104.~~

~~(2) A~~ *Except as provided in subsection (2), a* member ~~hired on or after July 1, 1981,~~ who retires with at least ~~10~~ *5* years of membership service must receive a service retirement benefit equal to ~~2%~~ *2.5%* of the member's final average compensation for each year of service credit.

*(2) (a) A member initially hired before July 1, 1981, who retires with less than 20 years of service must receive a service retirement benefit equal to 2% of the member's final monthly compensation for each year of service or the benefit provided under subsection (1) whichever is greater.*

*(b) A member initially hired before July 1, 1981, who retires with 20 years of service or more must receive a service retirement benefit equal to 50% of the member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years or the benefit provided in subsection (1) whichever is greater."*

**Section 7.** Section 19-13-803, MCA, is amended to read:

**"19-13-803. Amount of disability retirement benefit.** (1) A member ~~hired before July 1, 1981,~~ who becomes disabled:

(a) before completing 20 years of membership service must receive a disability retirement benefit equal to one-half the member's ~~last monthly~~ *final average* compensation;

(b) after completing 20 years or more of membership service must receive ~~the~~ *a* disability retirement benefit ~~provided in subsection (1)(a) increased at a~~

HeinOnline -- 1997 vol. II 2253 1997

~~rate of 2%~~ *equal to 2.5%* of the member's ~~last monthly~~ *final average* compensation for each year of service credit ~~in excess of 20~~.

(2) ~~A member hired on or after July 1, 1981, who becomes disabled:~~

~~(a) before completing 25 years of membership service must receive a disability retirement benefit equal to one-half the member's last monthly compensation;~~

~~(b) after completing 25 years or more of membership service must receive the disability retirement benefit provided in subsection (2)(a) increased at a rate of 2% of the member's last monthly compensation for each year of service credit in excess of 25.~~

~~(3)~~ A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's death the member leaves no surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as they remain dependent children as defined in 19-13-104."

**Section 8.** Section 19-13-902, MCA, is amended to read:

**"19-13-902. Survivorship benefit.** (1) ~~(a)~~ Upon the death before retirement of an active member ~~hired before July 1, 1981,~~ the member's surviving spouse, if there is one, must receive a survivorship benefit equal to one-half the ~~last monthly~~ *final average* compensation received by the member. If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104.

~~(b)~~*(2)* If the deceased member completed over 20 years of membership service, the survivorship benefit ~~provided in subsection (1)(a) must be increased at a rate of 2%~~ *must be equal to 2.5%* of the ~~last monthly~~ *final average* compensation for each year ~~in excess of 20~~ *of service*.

~~(2) Upon the death before retirement of a member hired on or after July 1, 1981, the member's surviving spouse, if there is one, must receive a survivorship benefit equal to one-half of the member's final average compensation. If the member leaves one or more dependent children, then, upon the member's death if the member leaves no surviving spouse or upon the death of the surviving spouse, the member's dependent children must collectively receive the same benefit that a surviving spouse would have received, as long as the children remain dependent children as defined in 19-13-104.~~"

**Section 9.** Section 19-13-1007, MCA, is amended to read:

**"19-13-1007. Benefit adjustment.** (1) For a *retired* member ~~retiring on or after July 1, 1973, who was hired before July 1, 1981,~~ or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704~~(1)(a)~~, the disability retirement benefit provided in 19-13-803~~(1)~~, and the survivorship benefit provided in 19-13-902~~(1)~~ may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city

HeinOnline -- 1997 vol. II 2254 1997

that last employed the member as a firefighter, as provided each year in the budget of that city.

(2) ~~For a member hired on or after July 1, 1981, or the member's surviving spouse or dependent children, the disability retirement benefit provided in 19-13-803(2) and the survivorship benefit provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.~~

~~(3)~~ If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsections (1) and (2) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

~~(4)~~*(3)* If the employment of a vested member hired before July 1, 1981, is involuntarily discontinued because of the termination of employment of all full-paid firefighters in the city that employed the member, the member's service retirement benefit provided in 19-13-704~~(1)(b)~~ and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 10 but less than 20 years of membership service, ~~2%~~ *2.5%* of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

**Section 10.** Section 19-18-606, MCA, is amended to read:

**"19-18-606. Supplement to certain pensions.** (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 19-18-512, there is a tax of 1 1/2% on the fire portion of the direct premiums received during the calendar year of 1989 and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the moneys in the state special revenue fund. The proceeds of ~~such~~ *the* tax are statutorily appropriated, as provided in 17-7-502, to the auditor, who shall pay claims as provided in subsection (2) ~~of this section and 19-13-1006~~. If sufficient cash remains in the fund each year after the payment of claims as provided in subsection (2) of this section ~~and 19-13-1006~~, the state auditer shall deposit any excess amount in the ~~account provided for in 19-13-615~~ *general fund*.

(2) ~~Effective January 1, 1976, each~~ *Each* association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a

HeinOnline -- 1997 vol. II 2255 1997

confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed $75 per month. Distribution of the funds provided for this purpose under subsection (1) ~~shall~~ *must* be made as follows:

(a) At the heginning of each fiscal year the treasurer of each association shall request and the state auditer shall issue from the state special revenue fund and deliver to the treasurer of the respective city or town an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding. The state auditer shall, at the same time, report to the treasurer of tbe appropriate association the amount of any payment delivered to the board of investments.

(h) The treasurer of a city or town receiving funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall utilize these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year."

**Section 11. Repealer.** Sections 19-13-615, 19-13-1006, and 19-13-1009, MCA, are repealed.

**Section 12. Coordination instructions.** (1) If House Bill No. 170 is passed and approved and if it amends 19-13-601, and if [this act] is passed and approved and if it amends 19-13-601, then [section 29 of House Bill No. 170], amending 19-13-601, is void and [section 3 of this act], amending 19-13-601, shall read:

"**Section 3.** Section 19-13-601, MCA, is amended to read:

"**19-13-601. Deduction remitted to firemen's association — member's coutribution.** (1) Each employer shall retain from the compensation of each active member a sum equal to 1% of the member's compensation for services as a firefighter and shall remit this amount on a monthly hasis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by tbe association when representing members of the retirement system.

(2) ~~The~~ *Each* member's contribution to the retirement system ~~is 7.8%~~ *as a percentage* of the member's compensation *must be:*

*(a) 9.5% for a member not covered under [section 3 of House Bill No. 170]; or*

*(b) 10.7% for a member covered under [section 3 of House Bill No. 170].*

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of the member's compensation for purposes of determining contributions and service credits under the retirement system. Contrihutions made under 19-13-604, 19-13-605, and this section must be based on tbe total compensation

HeinOnline -- 1997 vol. II 2256 1997

received by the member from the employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions that would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must he designated for all purposes of the retirement system as the niember's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in tbe member's compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.""

(2) If House Bill No. 170 is passed and approved and if it amends 19-13-704, and if [this act] is passed and approved and if it amends 19-13-704, tben [section 31 of House Bill No. 170], amending 19-13-704, is void and [section 6 of this act], amending 19-13-704, shall read:

**"Section 6.** Section 19-13-704, MCA, is amended to read:

**"19-13-704. Amount of service retirement benefit.** (1) *Except as provided in subsection (2), a member*

~~(a) A member hired before July 1, 1981, who elects to retire after having reached 20 years of membership service must receive a service retirement benefit equal to the sum of:~~

~~(i) 50% of the member's last monthly compensation for years of service credit up to and including 20 years; and~~

~~(ii) 2% of the member's last monthly compensation for each year of service credit after 20 years.~~

~~(b) A member hired before July 1, 1981, who elects to retire after having reached at least 10 years but less than 20 years of membership service as an active member must receive a service retirement benefit equal to 2% of the member's last monthly compensation for each year of service credit. Upon the retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104.~~

~~(2) A member hired on or after July 1, 1981,~~ who retires with at least ~~10~~ *5* years of membership service must receive a service retirement benefit equal to ~~2%~~ *2.5%* of the member's final average compensation for each year of service credit.

HeinOnline -- 1997 vol. II 2257 1997

*(2) A member hired before July 1, 1981, who does not elect to be covered under [section 3 of House Bill No. 170] is entitled to the greater of:*

*(a) the benefit provided under subsection (1); or*

*(b) (i) if the member retires with less than 20 years of service, a benefit equal to 2% of the member's final monthly compensation for each year of service; or*

*(ii) if the member retires with 20 or more years of service, a benefit equal to 50% of the member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years.*

*(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent children as defined in 19-13-104.""*

(3) If House Bill No. 170 is passed and approved and if it amends 19-13-803, and if [this act] is passed and approved and if it amends 19-13-803, then [section 32 of House Bill No. 170], amending 19-13-803, is void.

(4) If House Bill No. 170 is passed and approved and if it amends 19-13-902, and if [this act] is passed and approved and if it amends 19-13-902, then [section 33 of House Bill No. 170], amending 19-13-902, is void.

**Section 13. Effective date.** [This act] is effective July 1, 1997.

Approved April 30, 1997

# CHAPTER NO. 458

[HB 508]

AN ACT GENERALLY REVISING MUNICIPAL BUDGET LAWS; AMENDING SECTIONS 2-7-503, 7-6-4104, 7-6-4121, 7-6-4123, 7-6-4124, 7-6-4134, 7-6-4135, 7-6-4202, 7-6-4205, 7-6-4234, 7-6-4237, AND 7-6-4240, MCA; REPEALING SECTIONS 7-3-4371, 7-3-4372, 7-3-4373, 7-6-4102, 7-6-4103, 7-6-4105, 7-6-4106, 7-6-4107, 7-6-4108, 7-6-4109, 7-6-4110, 7-6-4111, 7-6-4112, 7-6-4113, 7-6-4119, 7-6-4120, 7-6-4122, 7-6-4131, 7-6-4132, 7-6-4133, 7-6-4204, 7-6-4221, 7-6-4222, 7-6-4223, 7-6-4224, 7-6-4225, 7-6-4226, 7-6-4227, 7-6-4228, 7-6-4229, 7-6-4230, 7-6-4231, 7-6-4233, 7-6-4235, 7-6-4236, 7-6-4239, 7-6-4241, 7-6-4251, 7-6-4252, 7-6-4253, 7-6-4254, AND 7-6-4255, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-7-503, MCA, is amended to read:

**"2-7-503. Financial reports and audits of local government entities ~~—exception~~.** (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department,

and be completed within 4 *6* months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of $200,000 or federal financial assistance in excess of $25,000 shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local gevernment entity to the state treasurer and deposited in the enterprise fund to the credit of the department.

*(7) Subsections (1) through (3) do not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.*

~~(7) Subsections (1) through (3) do not apply to a local government entity that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~"

**Section 2.** Section 7-6-4104, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2259 1997

**"7-6-4104. Duties of ~~city~~ treasurer relating to finances —~~exception~~ — *exception*.** It is the duty of the ~~city~~ treasurer:

(1) to receive all money that comes to the ~~city~~ *municipality*, either from taxation or otherwise, and to pay the ~~same~~ *money* out on the warrant of the mayor, countersigned by the clerk *or finance officer*, drawn in accordance with law;

(2) to give every person paying money to the treasurer a receipt, specifying the date of payment, the amount, and for what paid;

(3) to pay out, in the order registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

*(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.*

~~(4) This section does not apply to a city that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~"

**Section 3. Role of department of commerce.** (1) The department of commerce shall prescribe for all municipalities:

(a) general methods and details of accounting as provided in 2-7-504;

(b) uniform internal and interim reporting systems as provided in 2-7-503;

(c) annual financial report forms as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Municipalities shall file with the department of commerce:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The audit report must be accepted in lieu of the annual financial report if it contains, at a minimum, the municipality's general purpose financial statements and combining and individual fund and account group statements.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 4. Additional records and reports.** (1) The chief executive or governing body of a municipality may require other elected or appointed officials to:

(a) maintain financial records;

(b) perform financial reconciliations; and

(c) submit financial reports.

(2) The treasurer shall:

(a) serve as the custodian of all public money;

HeinOnline -- 1997 vol. II 2260 1997

(b) install and have supervision over the financial accounts of all departments and offices of the municipality; and

(c) require daily departmental reports of money receipts and their disposition on forms that the treasurer prescribes.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 5.** Section 7-6-4121, MCA, is amended to read:

**"7-6-4121. Authorization to conduct municipal business on a cash basis.** (1) ~~In case~~ *If* the total indebtedness of a city or town has reached 17% of the total taxable value of the property of the city or town subject to taxation, as ascertained by the last assessment for state and county taxes, the city or town may conduct its affairs and business on a cash basis as provided by subsection (2).

(2) (a) Whenever a city or town is conducting its business affairs on a cash basis, the reasonable and necessary current expenses of the city or town may be paid out of the cash in the city or town treasury and derived from its current revenue, under any restrictions and regulations as the city or town ~~council~~ *governing body* may by ordinance prescribe.

(b) In the event that payment is made in advance, the city or town may require a cash deposit as collateral security and indemnity, equal in amount to the payment, and may hold the deposit as a special deposit with the city treasurer or town clerk, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which the advance is made.

(c) Before the payment of the current expenses ~~mentioned above~~ *described in subsection (2)(a)*, the city or town council shall first set apart sufficient money to pay the interest upon its legal, valid, and outstanding bonded indebtedness and any sinking funds provided for and is authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying the claims.

*(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.*

~~(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~"

**Section 6.** Section 7-6-4123, MCA, is amended to read:

**"7-6-4123. Procedure to transfer municipal funds.** ~~No money~~ *Money may not* ~~must~~ be transferred from one fund to another except by ~~ordinance or~~ resolution of the ~~council~~ *governing body unless previously authorized by budget resolution or as prescribed by 7-6-4124.*"

**Section 7.** Section 7-6-4124, MCA, is amended to read:

**"7-6-4124. Procedure to close inactive accounts.** ~~(1)~~*(1)* Whenever the ~~council~~ *governing body* of any city or town ~~having a corporate existence in this state~~ considers it necessary to remove inactive accounts from its records when the accounts do not have any further purpose, it is lawful for the ~~council~~

HeinOnline -- 1997 vol. II 2261 1997

*governing body* to direct the proper city or town officials to file claims against the respective inactive funds in favor of the general fund of the city or town, after which the ~~council~~ *governing body* shall allow the claims and cause the inactive funds to be closed and not continued in the record of active funds.

*(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.*

~~(2) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~"

**Section 8.** Section 7-6-4134, MCA, is amended to read:

**"7-6-4134. Capital improvement program fund.** An amount not to exceed ~~5%~~ *10%* of the money received from ~~and as a part of the aforesaid~~ *an* all-purpose levy *provided for in 7-6-4452* may be placed in a separate fund, known as the capital improvement program fund, ~~to be earmarked for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000, with a life expectancy of 5 years or more,~~ *to be earmarked for the replacement, improvement, and acquisition of property, facilities, or equipment,* provided that a capital improvement program has been formally adopted by *resolution of the* city or town ~~ordinance~~ *governing body*."

**Section 9.** Section 7-6-4135, MCA, is amended to read:

**"7-6-4135. Investment of money in capital improvement program fund.** The money held in the capital improvement program fund must, whenever possible, be invested ~~in savings or time deposits in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation or by the national credit union administration or invested in direct obligations of the United States government~~ *pursuant to Title 7, chapter 6, part 2,* and *all interest* must be credited to the fund ~~plus interest earned~~."

**Section 10.** Section 7-6-4202, MCA, is amended to read:

**"7-6-4202. Definitions.** As used in this part, the following definitions apply:

(1) ~~The term "clerk" means the clerk of the city~~ *"Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the presiding officer in a government adopting the commission-presiding officer form, the town presiding officer in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.*

(2) ~~The term "council" means the city council or city commission~~ *"Finance officer" means the elected or appointed finance director, clerk, treasurer, or clerk-treasurer who has been delegated budget and accounting responsibilities.*

(3) ~~The term "municipal corporation" or "municipality" means the city~~ *"Governing body" means the municipal council or commission.*

(4) ~~The term "treasurer" means the city treasurer~~ *"Municipality" means an incorporated city or town.*

*(5) "Working capital" means the current assets of a fund less the current liabilities and designated reserves of a fund."*

**Section 11.** Section 7-6-4205, MCA, is amended to read:

**"7-6-4205. *Budget and levies to be supplied to* ~~Role of~~ department of commerce.** *(1) The finance officer shall, not later than October 1, forward a complete copy of the final budget together with tax levies to the department of commerce.*

*(2) The finance officer shall use standard forms prescribed by the department of commerce or shall use an alternative budget format acceptable to the department of commerce.* ~~The department of commerce shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part. It shall define what expenditures are chargeable to each budget account and shall establish accounting and cost systems necessary to provide accurate budget information. This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~

*(3) This section does not apply to a city or town that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."*

**Section 12. Appropriation power.** A governing body may appropriate money and provide for the payment of the debts and expenses of the municipality.

**Section 13. Appropriation requirement.** (1) Money, other than payments from agency funds, may not be drawn from the treasury of a municipality, and an obligation for the expenditure of money may not be incurred, except pursuant to an appropriation. The governing body may delegate, in its annual appropriation resolution, appropriation authority to the chief executive officer for the expenditure of funds from any or all of the following:

(a) debt service funds;

(b) enterprise funds;

(c) internal service funds;

(d) trust funds;

(e) federal, state, and private grants accepted and approved by the governing body;

(f) special assessments; and

(g) donations.

(2) This section does not apply to a municipality that bas adopted tbe alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 14. Manner of making payment for judgments against municipalities.** (1) On receipt of the certificate of a justice of the peace or the clerk of the court in which any judgment is rendered, showing the amount of a judgment against a municipality and the date of its entry, the governing body shall direct that the amount of the judgment be paid from the general fund if

HeinOnline -- 1997 vol. II 2263 1997

there is sufficient money in the general fund to pay the judgement, exclusive of the appropriations for the current fiscal year.

(2) The governing body shall at the proper times levy and cause to be collected a tax on all the property of the municipality for the payment of the judgment within a period of 3 years from its presentation if there is not sufficient money, as provided in subsection (1), in the general fund to pay the judgment.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 15. Preliminary annual operating budget.** (1) The finance officer shall prepare, under the direction of the chief executive, a preliminary annual operating budget for the municipality. The finance officer shall use standard forms prescribed by the department of commerce or an alternative budget format acceptable to the department of commerce.

(2) The preliminary annual operating budget for each fund must include, at a minimum:

(a) a listing of all revenue and other resources for the prior year, current year budget, and proposed budget year. Revenue and other resources must be summarized into the following categories: taxes; special assessment principal; special assessment interest; licenses and permits; intergovernmental revenue; charges for services, fines, and forfeitures; interest on investments, other revenue, and operating transfers in.

(b) a listing of all expenditures for the prior year, current year budget, and proposed budget year. All expenditures must be classified under one of the following categories: salaries and wages, operation and maintenance, capital outlay, debt service, or transfers out.

(c) a projection of changes in fund balances or cash balances available for governmental fund types and a projection of changes in cash balances and working capital for proprietary fund types. This projection must be supported by a summary for each fund or group of funds listing the estimated beginning balance, plus estimated revenue, less proposed expenditures, cash reserves, and estimated ending balances.

(d) a detailed list of proposed capital expenditures and a list of proposed major capital projects for the budget year;

(e) financial data on current and future debt obligations;

(f) schedules or summary tables of personnel or position counts for the prior year, current year, and budget year. The budgeted amounts for personnel services must be supported by a listing of positions, salaries, and benefits for all positions of the municipality. The listing of positions, salaries, and benefits is not required to be part of the budget document.

(g) all other estimates that fall under the purview of the budget.

(3) The preliminary annual operating budget for each fund for which the municipality will levy an ad valorem tax must include the amount to be raised by taxation, the taxable value, and the number of mills to be levied.

HeinOnline -- 1997 vol. II 2264 1997

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 16. Determination of fund requirements to be met by tax levy.** (1) Following the determinations required by [section 15], the governing body shall determine the amount to be raised for each fund for which a tax levy is to be made by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the governing body in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year.

(2) The governing body may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to he made from the fund during the months of July to November of the next fiscal year. The undesignated amount held as a reserve may not exceed one-half of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, may not exceed the total amount that may be raised for the fund by a tax levy that does not exceed the maximum levy permitted by law to be made for the fund.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 17. Preliminary annual operating budget to be balanced.** The preliminary annual operating budget may not include appropriations in excess of the projected beginning balance of a fund plus the estimated revenue of the fund for the year. This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 18. Due date for preliminary annual operating budget — consideration of bndget.** (1) The preliminary annual operating budget must be presented by the finance officer to the governing body on or before the governing body's first meeting in August.

(2) Upon receipt of the preliminary annual operating budget, the governing hody shall immediately consider the budget and make any revisions, reductions, additions, or changes the governing body considers advisable.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 19. Receipt and expenditure of money prior to adoption of final budget.** A municipality may receive and expend money hetween July 1 of the fiscal year and the effective date of the resolution adopting a final municipal

HeinOnline -- 1997 vol. II 2265 1997

budget. This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 20. Notice of preliminary municipal budget.** (1) The governing body sball cause a notice to be published stating that:

(a) the governing body has completed its preliminary municipal budget for the ensuing fiscal year;

(b) the budget has been placed on file and is open to inspection in the office of the finance officer of the municipality;

(c) the governing body will meet for the purpose of approving a final budget and making appropriations, designating the date, time, and place of the meeting; and

(d) any taxpayer or resident may appear at the meeting and be heard for or against any part of the proposed budget.

(2) The publication requirements must conform to the provisions of 7-1-4127.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 21. Hearing on proposed municipal budget.** (1) Prior to the adoption of the final municipal budget, the governing body shall meet at the time and place designated in the notice provided in [section 20], at which time any taxpayer or resident may appear and be heard for or against any part of the budget. The governing body nay call in the official in charge of an office, department, service, or institution at the time the estimates for the official's office, department, service, or institution are under consideration for examination concerning the estimates. The official nust be called in by the governing body, upon the request of a taxpayer or resident, for questioning upon the estimates by the governing body, taxpayer, or resident.

(2) The hearing may be continued from day to day and nust be concluded and the budget finally approved and adopted by resolution on or before the second Monday in Augnst.

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 22. Final munieipal budget — approval and adoption — appropriations.** (1) Following the public hearing and after taking into consideration any public comment, the governing body may amend the preliminary municipal budget. The preliminary nunicipal budget must be updated by the finance officer, reflecting any changes nade by the governing body. The amended preliminary municipal budget, as approved by the governing body, constitutes the final budget of the nunicipality for the fiscal year that it is intended to cover. The governing body shall then pass a resolution for the fiscal year adopting the final municipal budget and authorizing appropriations.

(2) The resolution nust authorize appropriations of enough money to defray the expenses or liabilities of the municipality for the fiscal year. The level of detail in the resolution establishes the legal spending linits of the nunicipality. The effective date of the resolution is the first day of the fiscal year.

HeinOnline -- 1997 vol. II 2266 1997

(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 23. Limitation of expenditures.** Except as provided in [section 22], the governing body and each municipal official are limited to the amount of appropriations and by the classifications in the annual appropriation resolution provided for in [section 22] when making expenditures or incurring liabilities.

**Section 24.** Section 7-6-4234, MCA, is amended to read:

**"7-6-4234. Effect of exceeding budget appropriations — personal liability.** ~~(1)~~ Expenditures made~~,~~ *or* liabilities incurred~~, or warrants issued~~ in excess of any ~~of the detailed budget appropriations~~ *specific appropriation contained in the annual appropriation resolution provided for in [section 22]*, as originally determined or as ~~thereafter~~ revised ~~by transfer as provided in this part~~, ~~shall~~ *are* not ~~be~~ a liability of the municipality, but the official making or incurring ~~such expenditure or issuing such warrant shall be~~ *the obligation is* liable ~~therefor~~ *for the obligation* personally and upon ~~his official~~ *the official's* bond. *The subsequent claims approval process may not be considered making or incurring an obligation.*

~~(2) (a) The council shall not approve any claim and the clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations, as finally adopted or as revised under the provisions of this part, except upon an order of a court of competent jurisdiction or for an emergency as hereinafter provided. Any municipal officer or officers approving any claim or issuing any warrant in excess of any such budget appropriation except as above provided shall forfeit to the city fourfold the amount of such claim or warrant.~~

~~(b) The amount forfeited under subsection (2)(a) shall be recovered in an action against such officer or officers or all of them and their several sureties on their official bonds. It shall be the duty of the city attorney to bring an action therefor in the name of the municipal corporation.~~"

**Section 25. Budget amendment procedure.** (1) The governing body or the chief executive authorized in the annual appropriation resolution may transfer any part of an unencumbered balance of an appropriation to a purpose or object for which the appropriation for the current year is insufficient or may authorize a transfer to be made between items appropriated within the same fund.

(2) The governing body may delegate, in its annual appropriation resolution, budget amendment authority to the chief executive for the expenditure of funds from any or all of the following: debt service funds, enterprise funds, internal service funds, trust funds, federal and state grants accepted and approved by the governing body, special assessments, and donations.

(3) Any accruing revenue of the municipality not appropriated as provided in this part and any balance at any time remaining after the purpose of an appropriation has been satisfied or abandoned may from time to time be appropriated to other uses that do not conflict with any uses for which specifically the revenue accrued. A public hearing is required for an overall increase in appropriation authority, except in the case of an emergency under Title 10, chapter 3.

HeinOnline -- 1997 vol. II 2267 1997

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Seetion 26.** Section 7-6-4237, MCA, is amended to read:

**"7-6-4237. Use of bond proeeeds and borrowed money.** (1) Money received from horrowing ~~shall~~ *may not* he used for ~~no other~~ *a* purpose *other* than that for which horrowed, except that if any surplus remains after the accomplishment of the purpose for which borrowed, it ~~shall~~ *must* he used to redeem the municipal debt.

~~(2) Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available.~~

~~(3)~~*(2)* The authorization of a hond issue hy the electors or by the governing body of ~~the city~~ *a municipality* where an election is not required ~~shall constitute~~ *constitutes* an appropriation of the bond proceeds to the purpose for which the bonds are authorized, whether or not ~~such~~ *the* purpose is included in a budget previously adopted, but ~~no~~ warrants ~~shall~~ *may not* be drawn, expenditures made, or obligations incurred in excess of ~~such~~ *the* appropriation except pursuant to an additional appropriation included in a regularly adopted budget."

**Section 27.** Section 7-6-4240, MCA, is amended to read:

**"7-6-4240. Lapse of appropriation.** ~~(1) Subject to the provisions of subsection (2), all appropriations, other than the appropriations for uncompleted improvements in progress of construction, lapse at the end of the fiscal year.~~

~~(2) (a)~~*(1)* The appropriation accounts must remain open for a period of ~~30~~ *60* days after the end of the fiscal year for the payment of claims incurred against the appropriations prior to the close of the fiscal year and remaining unpaid. After the ~~30-day~~ *60-day* period has expired, all appropriations, except as otherwise provided ~~regarding uncompleted improvements~~, become null and void, and any lawful claim presented against any appropriation *after the expiration of the 60-day period* must be provided for in the ensuing hudget.

~~(b) Subsection (2)(a) does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.~~

*(2) At the close of each fiscal year, the unencumbered balance of each appropriation must revert to the respective fund from which it was appropriated and is subject to future appropriations unless the governing body authorizes the unencumbered balance of capital outlay appropriations to be reappropriated for the ensuing fiscal ycar.*

*(3) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."*

**Section 28. Emergeney expenditures.** (1) All emergency expenditures must be charged to the emergency budget appropriations adopted by a three-fourths majority of the members present at a meeting of a governing body.

(2) Emergency expenditures may he made by the issuance of checks or warrants drawn on the municipal treasury. The municipality is authorized and

HeinOnline -- 1997 vol. II 2268 1997

directed to pay the checks or warrants with any money available for that purpose. If at any time there is insufficient money available to pay the emergency expenditures, then emergency warrants must be issued and registered, must bear interest, and must be called for payment in the manner provided hy law for other municipal warrants.

(3) The finance officer shall include in the preliminary annual operating budget to be submitted to the governing body the total amount of emergency warrants issued during the preceding fiscal year that remain unpaid. Subject to the provisions of this section, the governing body shall, in the tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of any emergency warrants remaining unpaid at the close of the preceding fiscal year because of insufficient money in the fund to pay the warrants.

(4) (a) A levy may not be made for any fund in excess of the levy authorized by law to be made for the fund.

(b) The governing body may submit the question of funding the emergency warrants at an election as provided by law. If possible, the election must be held in conjunction with a regular or primary election. If at the election issuing of funding bonds is authorized, it is not necessary for any levy to be made for the purpose of paying the emergency warrants.

(5) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6.

**Section 29. Repealer.** Sections 7-3-4371, 7-3-4372, 7-3-4373, 7-6-4102, 7-6-4103, 7-6-4105, 7-6-4106, 7-6-4107, 7-6-4108, 7-6-4109, 7-6-4110, 7-6-4111, 7-6-4112, 7-6-4113, 7-6-4119, 7-6-4120, 7-6-4122, 7-6-4131, 7-6-4132, 7-6-4133, 7-6-4204, 7-6-4221, 7-6-4222, 7-6-4223, 7 6-4224, 7-6-4225, 7-6-4226, 7-6-4227, 7-6-4228, 7-6-4229, 7-6-\230, 7-6-4231, 7-6-4233, 7-6-4235, 7-6-4236, 7-6-4239, 7-6-4241, 7-6-4251, 7-6-4252, 7-6-4253, 7-6-4254, and 7-6-4255, MCA, are repealed.

**Section 30. Codification instruction.** (1) [Sections 3 and 4] are intended to be codified as an integral part of Title 7, chapter 6, part 41, and the provisions of Title 7, chapter 6, part 41, apply to [sections 3 and 4].

(2) [Sections 12 through 23, 25, and 28] are intended to be codified as an integral part of Title 7, chapter 6, part 42, and the provisions of Title 7, chapter 6, part 42, apply to [sections 12 through 23, 25, and 28].

**Section 31. Applicability.** [This act] applies to municipal budgeting procedures commencing on July 1, 1997.

**Section 32. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 1997

HeinOnline -- 1997 vol. II 2269 1997

# CHAPTER NO. 459

[HB 518]

AN ACT GENERALLY REVISING LOCAL GOVERNMENT LAWS; ALLOWING APPOINTED MUNICIPAL OFFICIALS TO RESIDE OUTSIDE CITY LIMITS; INCREASING THE PERIOD FOR MUNICIPAL INSTALLMENT CONTRACTS FROM 5 YEARS TO 10 YEARS; CLARIFYING THAT AMORTIZATION BONDS ARE NOT PREFERRED OVER SERIAL BONDS; ALLOWING REFUNDING BONDS TO BE SOLD AT LESS THAN PAR VALUE; ALLOWING MULTIJURISDICTIONAL SERVICE DISTRICTS TO PROVIDE PROGRAMS FOR THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT; ALLOWING MONEY IN A DISTRICT RESERVE ACCOUNT TO BE USED TO PAY THE FINAL PRINCIPAL AND INTEREST PAYMENT ON BONDS OR WARRANTS; ALLOWING A VOTE ON CHANGING COUNTY WATER OR SEWER DISTRICT BOUNDARIES TO BE HELD BY MAIL BALLOT; ALLOWING A FIRE SERVICE AREA TO INCUR INDEBTEDNESS IN AN AMOUNT NOT EXCEEDING 18 PERCENT OF THE AREA'S TAXABLE VALUE; ALLOWING A MUNICIPALITY TO INCUR INDEBTEDNESS FOR THE REPAIR AND REHABILITATION OF CERTAIN FACILITIES; REGULATING LOCAL GOVERNMENT REQUIREMENTS FOR RECORDKEEPING; AMENDING SECTIONS 7-4-4111, 7-5-4302, 7-5-4306, 7-7-2209, 7-7-4208, 7-7-4251, 7-7-4626, 7-11-1102, 7-12-2171, 7-12-4169, 7-12-4203, 7-13-2208, 7-14-2526, 7-16-4104, AND 7-33-2404, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-4-4111, MCA, is amended to read:

"**7-4-4111. Determination of vacancy in municipal office.** An office becomes vacant on the happening of any of the following events before the expiration of the term of the incumbent:

(1) the death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that ~~he~~ *the incumbent* is mentally ill;

(3) ~~his~~ *the incumbent's* resignation;

(4) ~~his~~ *the ineumbent's* removal from office;

(5) ~~his~~ *the incumbent's* absence from the city or town continuously for 10 days without the consent of the council;

(6) ~~his~~ *the incumbent's* open neglect or refusal to discharge ~~his~~ duties;

(7) ~~his~~ *the incumbent's* ceasing to be a resident of the city or town or, in the case of ~~an alderman~~ *a city council member*, ~~his~~ ceasing to be a resident of ~~his~~ *the city council member's* ward~~;~~. *This subsection does not apply to an appointed municipal officer who resides outside the city or town limits with the approval of the city or town governing body and within a distance of the city or town approved by the governing body.*

HeinOnline -- 1997 vol. II 2270 1997

(8) ~~his~~ *the incumbent's* ceasing to discharge the duty of ~~his~~ office for a period of 3 consecutive months, except when prevented by illness or when absent from the city or town by permission of the governing body;

(9) ~~his~~ *the incumbent's* conviction of a felony or of any offense involving moral turpitude or a violation of ~~his~~ official duties;

(10) ~~his~~ *the incumbent's* refusal or neglect to file ~~his~~ *an* official bond within the time prescribed;

(11) the decision of a competent tribunal declaring void ~~his~~ *the incumbent's* election or appointment."

**Section 2.** Section 7-5-4302, MCA, is amended to read:

**"7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.** (1) Except as provided in 7-5-4303 or 7-5-4310, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, ~~or~~ equipment~~;~~, ~~for any~~ *or* materials or supplies of any kind in excess of $20,000~~;~~ or for construction, repair, or maintenance in excess of $25,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) The advertisement must be made in the official newspaper of the city or town if there is an official newspaper, and if not, it must be made in a daily newspaper of general circulation published in the city or town if there is a newspaper. If there is no newspaper, the advertisement must be made by posting in three of the most public places in the city or town. The advertisement, if by publication in a newspaper, must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.

(3) The council may postpone action on any contract until the next regular meeting after bids are received in response to the advertisement and may reject any bids and readvertise as provided in this section."

**Section 3.** Section 7-5-4306, MCA, is amended to read:

**"7-5-4306. Use of installment purchase contract.** ~~(1) Subject to the requirements of subsection (2), when~~ *When* the amount to be paid under an installment purchase contract exceeds $4,000, the council may provide for the payment of the amount in installments extending over a period of not more than ~~5~~ *10* years~~, provided that~~ *if* at the time of entering into the contract, there is an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to ~~meet and take care of~~ *pay for* the portion of the contract price payable during the then-current fiscal year. The budget for each following year in which any portion of the purchase price is to be paid must contain an appropriation for the purpose of paying that portion.

~~(2) When the purchase price is extended over a term of 2 years, at least 40% of the amount must be paid the first year and the remainder the second year. When the amount is extended over a term of 3 years, at least one-third of the amount must be paid each year. If the amount is extended over a term of 4 years,~~

HeinOnline -- 1997 vol. II 2271 1997

~~at least one-fourth is to be paid each year. If the amount is extended over a term of 5 years, at least one-fifth is to be paid each year.~~"

**Section 4.** Section 7-7-2209, MCA, is amended to read:

"**7-7-2209. Types of bonds.** (1) Except as provided in subsection (2), bonds issued by any county must be either amortization bonds or serial bonds. ~~All things being equal, amortization bonds must be issued in preference to serial bonds; otherwise, serial bonds may be issued.~~

(2) Citizen bonds may be amortization bonds, serial bonds, term bonds, capital appreciation bonds, or zero-coupon bonds, ~~with no~~ *without* preference for amortization bonds."

**Section 5.** Section 7-7-4208, MCA, is amended to read:

"**7-7-4208. Types of general obligation bonds.** (1) Except as provided in subsection (2), ~~all~~ bonds issued by any city or town ~~shall~~ *must* be either amortization bonds or serial bonds. ~~All things being equal, amortization bonds shall be issued in preference to serial bonds; otherwise, serial bonds may be issued.~~

(2) Citizen bonds may be amortization bonds, serial bonds, term bonds, capital appreciation bonds, or zero-coupon bonds, ~~with no~~ *without* preference for amortization bonds."

**Section 6.** Section 7-7-4251, MCA, is amended to read:

"**7-7-4251. Form of notice of sale of bonds.** (1) The notice of sale ~~shall~~ *must* state tbe purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and ~~shall~~ *must* be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of...., Montana, that the council will, on the.... day of...., ~~19~~...., at the hour of.....m., at its council chamber in the (city or town) of...., Montana, sell to the highest and best bidder for cash ~~either amortization or serial~~ *general obligation* bonds of the ~~said~~ (city or town) in the total amount of.... dollars, ($....) for the purpose of.....

~~Amortization bonds will be the first choice and serial bonds will be the second choice of the council.~~

~~If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds as the council may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of.... years from the date of issue.~~

~~If serial~~ *The* bonds ~~are~~ *will be* issued and sold~~, they will be~~ in the *aggregate principal* amount of.... dollars ($....) each and will become due and payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the city or town council).

The bonds~~, whether amortization or serial bonds, will~~ *must* bear *an original issue* date of...., ~~19~~...., ~~will bear~~ *must pay* interest ~~at a rate not exceeding....% per annum~~ commencing on the.... day of.... (month), ~~19~~.., and *are* payable

HeinOnline -- 1997 vol. II 2272 1997

semiannually on the.... day of.... and on the.... day of.... in each year thereafter and will he redeemable (here insert the optional provisions, if any, recited in the bonds).

~~Said~~ *The* bonds will he sold for not less than ~~their par value~~ *$....*, with accrued interest *on the principal amount of the bonds* to date of delivery, and all bidders ~~must~~ *shall* state the lowest rate *or rates* of interest at which they will purchase the bonds at ~~par~~ *the purchase price specified for the bonds. (An interest rate may not exceed....% a year.)* The council reserves the right to reject any ~~and all~~ bids and to sell ~~said~~ *the* bonds at private sale.

All bids ~~other than by or on behalf of the board of investments of the state of Montana~~ must be accompanied by ~~a certified check~~ *(insert appropriate bid security as permitted by 18-1-203)* in the sum of.... dollars ($....), payahle to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event ~~he~~ *that the bidder* ~~shall fail~~ *fails* or ~~refuse~~ *refuses* to complete the purchase of ~~said~~ *the* bonds in accordance with the terms of ~~his~~ *the* bid.

All bids ~~shall~~ *must* be addressed to the council of the (city or town) of.... and delivered to the clerk of ~~said~~ *the* (city or town)

.....

Mayor of the (city or tewn) of

....., Montana

ATTEST:

.....

(City or Town) Clerk

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to 7-7-4211 througb 7-7-4213."

**Section 7.** Section 7-7-4626, MCA, is amended to read:

**"7-7-4626. Details relating to sales of refunding revenue bonds.** If the governing hody determines to sell any refunding bonds, ~~such~~ *the* refunding bonds ~~shall~~ *may not* be sold ~~at not less than par,~~ *at less than 97% of the face value and must be sold* at public or private sale~~,~~ and in ~~such~~ *a* manner and upon ~~such~~ terms ~~as~~ *that* the governing hody ~~shall deem~~ *considers* best for the interests of the municipality."

**Section 8.** Section 7-11-1102, MCA, is amended to read:

**"7-11-1102. Services that may be provided.** (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district estahlished under Title 7, chapter 16, part 24;

(b) road, street, and highway maintenance;

HeinOnline -- 1997 vol. II 2273 1997

(c) libraries;

(d) jails;

(e) dog control programs;

(f) ambulance service; ~~and~~

(g) dispatch service~~.~~; *and*

*(h) protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation."*

**Section 9.** Section 7-12-2171, MCA, is amended to read:

**"7-12-2171. Details relating to rural improvement district bonds and warrants — definitions of bond forms.** (1) The bonds and warrants ~~shall~~ *must* be drawn against either the construction or maintenance fund created for the special improvement district and ~~shall~~ *must* bear interest from the date of registration until called for redemption or paid in full. The interest ~~shall~~ *must* be payable annually or semiannually, at the discretion of the board of county commissioners, on the dates *that* the board prescribes. The warrants or bonds ~~shall~~ *must* bear the signatures of the ~~chairman~~ *presiding officer* of the board and the county clerk and ~~shall~~ *must* bear the corporate seal of the county. They ~~shall~~ *must* be registered in the office of the county clerk and the county treasurer, and if interest coupons are attached to the warrants or bonds, they ~~shall~~ *must* also be registered and shall bear the signatures of the chairman of the board and the county clerk. The coupons may bear the facsimile signatures of the officers in the discretion of the board.

(2) The bonds ~~shall~~ *must* be in denominations of $100 or fractions or multiples ~~thereof~~ *of $100*, may be issued in installments, and may extend over a period not to exceed 30 years~~;~~. ~~except that~~ *However,* if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies to pay principal and interest on the bonds.

~~(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the board, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest.~~

~~(4)~~*(3)* As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds on which:

(i) a part of the principal must be paid each time *that* interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.

(b) "Serial bonds" means a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment."

**Section 10.** Section 7-12-4169, MCA, is amended to read:

**"7-12-4169. Incidental expenses considered as cost of improvements — costs for bonds or warrants secured by revolving fund — district reserve account.** (1) Incidental expenses connected with the formation of a special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-4101(7) are considered a part of the cost of making the improvements within the special improvement district.

(2) If the bonds or warrants are secured by the revolving fund under 7-12-4225, the costs of any improvement must include an amount equal to 5% of the principal amount of any bonds or warrants to be issued, which must be deposited in the revolving fund created in 7-12-4221.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the city or town council may create a district reserve account.

(b) As part of the original costs of the improvements, the city or town council may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-4223.

(e) Money *in the district reserve account may be used to pay the final principal and interest payment on bonds or warrants* ~~remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund~~.

(4) The establishment of a district reserve account does not preclude the city or town council from requiring additional security from owners of real property in the district."

HeinOnline -- 1997 vol. II 2275 1997

**Section 11.** Section 7-12-4203, MCA, is amended to read:

**"7-12-4203. Details relating to special improvement district bonds and warrants — definitions of bond forms.** (1) The bonds and warrants ~~shall~~ *must* be drawn against the special improvement district fund created for the district and ~~shall~~ *must* bear interest from the date of registration until called for redemption or paid in full. The interest ~~shall~~ *must* be payable annually or semiannually, at the discretion of the governing body of the municipality, on the dates *that* the governing body prescribes. The warrants or bonds ~~shall~~ *must* bear the signatures of the mayor and clerk and ~~shall~~ *must* bear the corporate seal of the city. ~~They shall~~ *The warrants or bonds must* be registered in the office of the clerk and treasurer, and if interest coupons are attached to the warrants or bonds, they ~~shall~~ *must* also be registered and ~~shall~~ bear the signatures of the mayor and clerk.

(2) The bonds ~~shall~~ *must* be in denominations of $100 or fractions or multiples ~~thereof~~ *of $100*, may be issued in installments, and may extend over a period not to exceed 20 years or, if refunding bonds are issued pursuant to 7-12-4194, over a period ending not later than 30 years after the date *that* the bonds to be refunded were issued. For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies assessments to pay principal and interest on the bonds.

~~(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the city council, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest.~~

~~(4)~~*(3)* As used in part 41 and this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds on which:

(i) a part of the principal must be paid each time *that* interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if the increase represents interest accrued over an additional period not greater than 6 months.

(b) "Serial bonds" means a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding five times the principal amount of the bonds maturing in the immediately preceding installment."

HeinOnline -- 1997 vol. II 2276 1997

**Seetion 12.** Section 7-13-2208, MCA, is amended to read:

**"7-13-2208. Decision on pcıition — election required.** (1) On the final hearing *provided for in 7-13-2206*, the board of county commissioners shall make any changes in the proposed boundaries within tbe county that are considered advisable and shall define and establish the boundaries. Tlie board of county commissioners may not modify the boundaries in a manner that would exclude from the proposed district any territory that would be benefited by the formation of the district. Land that will not, in the judgment of the board of county commissioners, be benefited by the district may not be included within the proposed district.

(2) Upon the final determination of the boundaries of the district, the board of county commissioners of each county in which the district lies shall give notice of an election to be held in the proposed district for the purpose of determining whether or not the district is to be incorporated. The election ~~must~~ *may* be held in conjunction with a regular or primary election *or may be held by mail ballot election as provided in Title 13, chapter 19.*"

**Section 13.** Section 7-14-2526, MCA, is amended to read:

**"7-14-2526. Cboice of form of bonds.** All bonds issued by ~~any~~ *a* county ~~shall~~ *must* be either amortization bonds or serial bonds. ~~Amortization bonds shall be issued in preference to serial bonds.~~"

**Section 14.** Section 7-16-4104, MCA, is amended to read:

**"7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes.** (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit ~~thereof~~ *of the city or town*, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for puhlic parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming ~~pools~~ *pool facilities*, athletic fields, skating rinks, playgrounds, museums, a gelf course, a site and building for a civic center, a youth center, or combination ~~thereof~~ *of these facilities*; and

(c) for furnishing, ~~and~~ equipping, *repairing, or rehabilitating* ~~the same~~ *a swimming pool facility, athletic field, skating rink, playground, museum, golf course, civic center, or youth center.*

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 16.5% of tbe taxable value of the taxable property of the city or town as ascertained by the last assessment for state and county taxes previous to the incurring of ~~such~~ *the* indebtedness. ~~No money~~ *Money* may *not* be borrowed *for any purpose* on bonds issued for the purchase of lands and improving tbe ~~same~~ *land* ~~for any such purpose~~ until the proposition has been submitted to the vote of the qualified electors of tbe city or town and a majority vote is cast in favor ~~thereof~~ *of the proposition.*"

HeinOnline -- 1997 vol. II 2277 1997

**Section 15.** Section 7-33-2404, MCA, is amended to read:

**"7-33-2404. Financing of fire service area — fee on structures.** (1) In the resolution creating the fire service area and by resolution as necessary ~~thereafter~~ *after creation of the fire service area*, the board of county commissioners shall establish a schedule of rates to be charged owners of structures that are benefited by the services offered by the fire service area.

(2) The rates must be applied on a fair and equal basis to all classes of structures benefited by the fire service area.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on the owners of structures and *shall* collect the assessments with the general taxes of the county. The assessments are a lien on the *assessed* property ~~so assessed~~.

(4) The board of county commissioners or the trustees, if the fire service area is governed by trustees under 7-33-2403, may pledge the income of the fire service area to secure financing necessary to procure equipment and buildings to house the equipment. The outstanding amount of ~~such~~ *the* indebtedness may not exceed ~~7%~~ *18%* of the taxable valuation of the area."

**Section 16. Recordkeeping.** A city, town, or county that has the authority to require a private entity to keep records may prescribe the form and content of the records but may not prescribe the method of keeping the required records.

**Section 17. Codification instruction.** [Section 16] is intended to be codified as an integral part of Title 7, chapter 5, part 1, and the provisions of Title 7, chapter 5, part 1, apply to [section 16].

**Section 18. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 1997.

(2) [Sections 8 and 16 and this section] are effective on passage and approval.

Approved April 30, 1997

# CHAPTER NO. 460

[HB 551]

AN ACT PROVIDING A PENALTY FOR INSTALLATION OR CONSTRUCTION OF A FACILITY OR STRUCTURE ON STATE TRUST LAND BY A PERSON OTHER THAN A LESSEE WITHOUT PERMISSION OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ALLOWING THE DEPARTMENT TO REQUIRE THE REMOVAL OF THE FACILITY OR STRUCTURE, RECLAMATION OF DISTURBED STATE TRUST LAND, PAYMENT FOR REMOVAL AND RECLAMATION, OR PAYMENT FOR AN EASEMENT, LEASE, OR LICENSE IN LIEU OF REMOVAL; AND PROVIDING AN EFFECTIVE DATE.

HeinOnline -- 1997 vol. II 2278 1997

STATEMENT OF INTENT

It is the intent of the legislature to protect state trust land from resource damage by nonauthorized use of state trust land. The legislature intends that the department of natural resources and conservation and the board of land commissioners use this legislation to ensure that all use of state trust land is in the best interests of the state and returns full market value to the school trust. The legislature intends that the penalty amounts established in this bill be used as maximums and expects the board to set appropriate specific penalty amounts on a case-by-case basis, taking into account the facts of each situation. It is not the intent of the legislature that the board impose the maximum penalty without sufficient justification. Nothing in this bill should be construed as requiring the department or the board to change or increase current state trust land trespass enforcement efforts.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Liability for unauthorized installation or construction of facility or structure on state trust land — penalty.** (1) A person, other than the lessee of the affected state trust land, may not, after September 30, 1997:

(a) install or construct a road, pipeline, ditch, utility line, fence, building, or other facility or structure on state trust land without obtaining an easement, lease, license, or other written permission of the department; or

(b) disturb state trust land in anticipation of the installation or construction of the facility or structure.

(2) A person who violates subsection (1) is liable to the department for a civil penalty in an amount determined by the board. The penalty may be an amount up to three times the full market value of the land disturbed or affected or $500, whichever is greater.

(3) In addition to the penalty provided for in subsection (1), a person who installs or constructs a facility or structure on state trust land without permission is liable for any permanent damage to the state trust land and may be required to remove the facility or structure and to reclaim the disturbed land to the satisfaction of the department or to pay the department's cost of removal and reclamation.

(4) If the department allows the facility or structure to remain on state trust land, the department shall also require payment of full market value of any easement, lease, or license required for the facility or structure.

(5) The penalties provided in this section do not apply to the lessee of the affected state trust land. The remedies and penalties provided in a state trust easement, lease, or license and the statutes and regulations under which the easement, lease, or license was entered are the exclusive remedies and penalties that may be applied to a lessee.

(6) The penalties provided in this section do not apply to persons who have inadvertently installed or constructed pipelines or utility lines within 20 feet of the easement boundaries granted by the state.

(7) The penalties provided in this section do not apply to facilities or structures installed on lands acquired by the state through exchange or purchase

HeinOnline -- 1997 vol. II 2279 1997

that were authorized with the permission of the previous landowner or through authority granted hy an appropriate government agoncy.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section 1].

**Section 3. Effective date.** [This act] is effective July 1, 1997.

Approved April 30, 1997

# CHAPTER NO. 461

[HB 607]

AN ACT PROVIDING FOR THE ISSUANCE OF HISTORIC RIGHT-OF-WAY DEEDS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION GRANTING NONEXCLUSIVE EASEMENTS FOR HISTORIC USES OF STATE LANDS FOR RIGHTS-OF-WAY; PROVIDING FOR THE CRITERIA FOR ISSUANCE OF THE DEEDS AND THE TERMS OF THE DEEDS; REQUIRING PAYMENT OF A FEE AND THE VALUE OF THE HISTORIC RIGHT-OF-WAY; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A TERMINATION DATE.

WHEREAS, the Department of State Lands, as the predecessor of tbe Department of Natural Resources with respect to state land, encouragod the development of road rights-of-way across state land before 1972; and

WHEREAS, the Department of State Lands either did not charge for these rights-of-way or charged mimimal fees for the rights-of-way before 1972; and

WHEREAS, many of the road rights-of-way granted hy the Department of State Lands were granted without a written easement; and

WHEREAS, Article X, section 11(2), of the Montana Constitution requires that the fair market value, ascertained in the manner provided by law, must be charged for the disposition of an interest in state land; and

WHEREAS, the 55th Legislature intends that the Department of Natural Resources and Conservation honor the historical uses of state land for rights-of-way.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Reeognition of historic right-of-way — criteria for right-of-way deed — conditions — fees.** (1) A person or a county may apply to the department for a historic right-of-way deed to provide access to the applicant's private property or to provide continuation of a county road by filing an application with the department by October 1, 2001, on a form prescribed by the department. An application must be accompanied by:

(a) an application fee of $50;

(b) a notarized affidavit:

HeinOnline -- 1997 vol. II 2280 1997

(i) demonstrating that the applicant or the applicant's predecessor in interest used the right-of-way applied for before 1973 and that the use has continued to the present;

(ii) describing the purpose for which the right-of-way was used before 1973; and

(iii) demonstrating that the historic right-of-way applied for is the right-of-way demonstrated in the evidence provided in subsectlon (1)(c); and

(c) (i) aerial photographs taken by an agency of the United States demonstrating use of the right-of-way applied for; or

(ii) other evidence of the use of the right-of-way applied for.

(2) The department shall review an application and other evidence submitted pursuant to subsection (1) and sball issue a bistoric rigbt-of-way deed in the name of the applicant if:

(a) the applicant pays the application fee provided in subsection (1)(a) and the fair market value of the historic right-of-way as provided in subsection (4);

(b) the applicant bas shown by substantial evidence the matters required in subsections (1)(b) and (1)(c)(i) or (1)(c)(ii);

(c) the department has, if necessary, made a field inspection of the right-of-way applied for; and

(d) the deed is approved by the board.

(3) A historic right-of-way deed issued in the name of the applicant must contain the description of the property of the applicant to which it is appurtenant as provided in the application, and the riglit-of-way must thereafter be considered appurtenant to that dominant estate. A deed may be assigned by the applicant to the applicant's successor in interest with the approval of the department. The department may not require a fee for the approval of an assignment and may not withhold approval for any reason other tlian that the use of the historic right-of-way is contrary to subsection (5).

(4) (a) At the time of issuing the historic right-of-way deed, tbe department shall collect from the applicant the full market value of the acreage of tlie bistoric right-of-way based on tlie following classifications of land:

(i) $37.50 per acre for state land classified as grazing land;

(ii) $275 per acre for state land classified as timher land;

(iii) $100 per acre for state land classified as crop land; and

(iv) $100 per acre for other land.

(b) Amounts collected pursuant to subsection (4)(a) must be deposited in the appropriate trust fund establisbed for receipt of income from the land over which a historic right-of-way is granted.

HeinOnline -- 1997 vol. II 2281 1997

(5) If application is made in accordance with this section, a historic right-of-way deed must be issued by the department, subject to the approval of the board, on the following terms:

(a) the right-of-way is only for the minimum width necessary, as negotiated by the department and the applicant; and

(b) the right-of-way is only for the physical condition of the road existing on the date the historic right-of-way deed is issued by the department.

(6) Issuance of a historic right-of-way deed pursuant to this section is exempt from the requirements of Title 75, chapter 1, parts 1 and 2, and Title 22, chapter 3, part 4.

(7) The survey requirements of 77-2-102 may be waived by the department for the issuance of a historic right-of-way deed if the department determines there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement.

(8) The department may attach conditions to a historic right-of-way deed necessary to ensure compliance with this chapter. However, the department may not require reversion of the right-of-way to the state.

(9) For the purposes of this section, "historic right-of-way deed" means a document issued by the department granting to the applicant a nonexclusive easement over state land.

**Section 2. State lands historic right-of-way account — statutory appropriation.** There is a state lands historic right-of-way account in the state special revenue fund. The application fee collected by the department pursuant to [section 1(1)(a)] must be deposited in the account. Money in the account is statutorily appropriated to the department, as provided in 17-7-502, for the expenses of the department in administering [section 1]. Money in the account on the termination date of the account must be deposited in the general fund.

**Section 3.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308;

HeinOnline -- 1997 vol. II 2282 1997

17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; *[section 2];* 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or otber obligations, as due, that have been authorized and issued pursuant te the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the honds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [sections 1 and 2].

**Section 5. Termination.** [This act] terminates October 1, 2003.

Approved April 30, 1997

# CHAPTER NO. 462

[HB 616]

AN ACT AUTHORIZING THE CONTINUED USE AND DISPLAY OF A COLLEGIATE LICENSE PLATE THAT BEARS THE NAME OF AN INSTITUTION THAT HAS BEEN RENAMED; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Collegiate license plates — continued use with institution's former name authorized — replacement.** (1) A person who owns and displays on the person's vehicle, collegiate license plates that bear the name of an institution that has been renamed by its governing body or as part of the Montana university system reorganization may continue to display on the vehicle the license plate bearing the former name of the institution as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later.

HeinOnline -- 1997 vol. II 2283 1997

(2) The department may issue or replace a collegiate license plate bearing the former name of an institution, as defined in 61-3-462, as long as replacement stock owned by the department of corrections is available.

**Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 1].

**Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to collegiate license plates issued after December 31, 1989.

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 1997

# CHAPTER NO. 463

[SB 195]

AN ACT PHASING IN THE EFFECT OF THE CURRENT PROPERTY REAPPRAISAL CYCLE FOR CLASS THREE, FOUR, AND TEN PROPERTY; ALLOWING AN EXTENSION OF 1997 STATUTORY DEADLINES RELATING TO PROPERTY TAXES; PROVIDING FOR AN ADJUSTMENT OF TAX RATES FOR CLASS THREE AND FOUR PROPERTY TO COMPENSATE FOR INCREASED VALUATION OF TAXABLE PROPERTY; REVISING THE PROPERTY TAX LIMITATIONS IMPLEMENTING INITIATIVE MEASURE NO. 105 BY CHANGING THE EXCEPTIONS TO THE LIMITATIONS; PROVIDING A METHOD FOR THE VOTERS OF A TAXING UNIT TO AUTHORIZE AN INCREASE IN TAXES; PROVIDING FOR A PROPERTY TAX STUDY COMMITTEE; PROVIDING AN APPROPRIATION FOR THE OPERATION OF THE COMMITTEE; PROVIDING CARRYOVER APPROPRIATION AUTHORITY FOR THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 7-6-2514, 15-6-134, 15-7-102, 15-7-111, 15-10-401, 15-10-402, 15-10-412, 15-36-323, AND 77-1-208, MCA; REPEALING SECTION 15-10-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 15-7-111 gives rulemaking authority to the department of revenue for phasing in newly constructed, remodeled, and reclassified property consistent with the phasing in of reappraised property. The legislature contemplates that the rules adopted by the department should address, at a minimum, the manner in which the reappraised portion of new, remodeled, or reclassified property will be determined and phased in.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-2514, MCA, is amended to read:

**"7-6-2514. Tax limitation applicable.** The property tax limitation ~~to 1986 levels under~~ *contained in* Title 15, chapter 10, part 4, applies to the county public safety levy authorized in 7-6-2513. The limitation is determined by the

total tax levied for the county general fund. The first year *that* a county public safety tax is levied, the public safety levy and the general fund levy may not exceed the prior year's county general fund levy. In subsequent years, any increases in the public safety levy and the general fund levy are limited under Title 15, chapter 10, part 4."

**Section 2.** Section 15-6-134, MCA, is amended to read:

**"15-6-134. Class four property — description — taxable percentage.** (1) Class four property includes:

(a) all land, except that specifically included in another class;

(b) all improvements, including trailers or mobile homes used as a residence, except those specifically included in another class;

(c) the first $100,000 or less of the market value of any improvement on real property, including trailers or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection *(1)*(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 3,000 lineal yards; and

(e) all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(2) Class four property is taxed as follows:

(a) *(i)* Except as provided in 15-24-1402 or 15-24-1501 *and subsection (2)(a)(ii) of this section*, property described in subsections (1)(a), (1)(b), and (1)(e) *of this section* is taxed at 3.86% of its market value.

*(ii) The taxable percentage rate in subsection (2)(a)(i) must be adjusted downward by subtracting 0.022 percentage points each year until the tax rate is equal to or less than 2.78%.*

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at ~~3.86%~~ *the rate provided in subsection (2)(a)(ii)* of its market value multiplied by a percentage figure based on income and determined from the following table:

HeinOnline -- 1997 vol. II 2285 1997

| Income Single Person | Income Married Couple Head of Household | Percentage Multiplier |
|---|---|---|
| $ 0 - $ 6,000 | $ 0 -$ 8,000 | 20% |
| 6,001 - 9,200 | 8,001 - 14,000 | 50% |
| 9,201 - 15,000 | 14,001 - 20,000 | 70% |

(ii) The income levels contained in the tahle in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means tbe implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a)*(i)*.

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

**Section 3.** Section 15-7-102, MCA, is amended to read:

**"15-7-102. Notice of classification and appraisal to owners — appeals.** (1) (a) The department sball mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) *except as provided in subsection (1)(b),* change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

*(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an incremental change in valuation caused by the phasing in of a reappraisal.*

~~(b)~~*(c)* The notice must include the following for the taxpayer's informational purposes:

(i) the total amount of mills levied against the property in the prior year;

~~(ii) the amount of the prior year's taxes resulting from levied mills;~~

~~(iii) an estimate of the current year's taxes based on the prior year's mills;~~ and

~~(iv)~~*(ii)* a statement that the notice is not a tax bill.

~~(c)~~*(d)* Any misinformation provided in the information required by subsection ~~(1)(b)~~ *(1)(c)* does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) The department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer tbat in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification bave been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

HeinOnline -- 1997 vol. II 2287 1997

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

**Section 4.** Section 15-7-111, MCA, is amended to read:

"**15-7-111. Periodic revaluation of *certain* taxable property.** (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within ~~the state~~ *classes three, four, and ten. All other property must be revalued annually.* The ~~department shall complete this~~ revaluation ~~program by~~ *of class three, four, and ten property is complete on* December 31, 1996. ~~A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all property in each county be revalued by December 31, 1996. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county.~~ *The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of 2% of the total change in valuation.*

*(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.*

~~(2)~~*(3)* Beginning January 1, ~~1997~~ *2007*, the department of revenue shall administer and supervise a program for the revaluation of all taxable property within ~~the state at least every 3 years~~ *classes three, four, and ten.* A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all *class three, four, and ten* property in each county ~~be~~ *is* revalued ~~at least every~~ *by January 1, 2010, and each succeeding* 3 years. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county."

**Section 5.** Section 15-10-401, MCA, is amended to read:

"**15-10-401. Declaration of policy.** (1) The state of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of *all* classes ~~three, four, six, nine, twelve, and fourteen~~ *of* property~~, as those classes are defined~~ *described* in Title 15, chapter 6, part 1.

~~(2) The legislature's failure to give local governments and local school districts the flexibility to develop alternative sources of revenue will only lead to increases in the tax burden on the already overburdened property taxpayer.~~

HeinOnline -- 1997 vol. II 2288 1997

~~(3) The legislature is the appropriate forum to make the difficult and complex decisions to develop:~~

~~(a) a tax system that is fair to property taxpayers; and~~

~~(b) a method of providing adequate funding for local government and education.~~

~~(4) The legislature has failed in its responsibility to taxpayers, education, and local government to relieve the tax burden on property classes three, four, six, nine, twelve, and fourteen.~~

~~(5)~~*(2)* ~~The~~ *Except as provided in 15-10-412, the* people of the state of Montana declare *that* it is the policy of the state of Montana that no further property tax increases be imposed on property ~~classes three, four, six, nine, twelve, and fourteen~~. *In order to reduce volatility in property taxation and in order to reduce taxpayer uncertainty, it is the policy of the legislature to develop alternatives to market value for purposes of taxation.*"

**Section 6.** Section 15-10-402, MCA, is amended to read:

"**15-10-402. Property tax limited to ~~1986~~ *1996* levels.** ~~(1)~~ Except as provided in ~~subsections (2) and (3)~~ *15-10-412*, the amount of taxes levied on property described in ~~15-6-133, 15-6-134, and 15-6-136~~ *Title 15, chapter 6, part 1,* may not, for any taxing jurisdiction, exceed the amount levied for ~~taxable~~ *tax* year ~~1986~~ *1996*.

~~(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; elementary and high school districts, Title 20; juvenile detention programs authorized under 7-6-502; or bonded indebtedness.~~

~~(3) New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.~~

~~(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill.~~"

**Section 7.** Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax ~~limited to 1986 levels~~ *limit* — ~~clarification — extension to all property classes~~ *exception*.** Section 15-10-402 is ~~interpreted and clarified~~ *implemented* as follows:

(1) ~~The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.~~

~~(2)~~ The limitation on the amount of taxes levied ~~is interpreted to mean~~ *means* that, except as otherwise provided in this section, the ~~actual tax liability for an individual property~~ *total amount of taxes levied by each taxing unit* is capped at the dollar amount ~~due~~ *levied* in each taxing unit for the ~~1986~~ *1996* tax year~~. In~~

HeinOnline -- 1997 vol. II 2289 1997

~~tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit~~, except in a taxing unit that levied a tax in tax years ~~1983~~ *1993* through ~~1985~~ *1995* but did not levy a tax in ~~1986~~ *1996*, in which case the ~~actual tax liability for an individual property is~~ *taxes levied are* capped at the dollar amount due in that taxing unit for the ~~1985~~ *1995* tax year.

~~(3)~~*(2)* The limitation on the amount of taxes levied does not prohibit ~~a further~~ *an* increase in the total ~~taxable valuation of~~ *taxes levied by* a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by~~:~~

~~(i) cyclical reappraisal; or~~

~~(ii)~~ expansion, addition, replacement, or remodeling of improvements.

*(3) The limitation on the amount of taxes levied does not prohibit an increase in the total taxes levied by a taxing unit in order to compensate the taxing unit for any loss in the total amount of nonlevy revenue received in 1996 from taxes imposed under Title 15, chapter 23, part 7, and Title 15, chapter 36, part 3.*

~~(4) The limitation on the amount of taxes levied does not prohibit a further increase in the taxable valuation or in the actual tax liability on individual property in each class as a result of:~~

~~(a) a revaluation caused by:~~

~~(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or~~

~~(ii) cyclical reappraisal;~~

~~(b) transfer of property into a taxing unit;~~

~~(c) reclassification of property;~~

~~(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;~~

~~(e) annexation of the individual property into a new taxing unit; or~~

~~(f) conversion of the individual property from tax-exempt to taxable status.~~

~~(5) Property in class four is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:~~

~~(a) new construction;~~

~~(b) expanded, deleted, replaced, or remodeled improvements;~~

~~(c) annexed property; or~~

~~(d) property converted from tax exempt to taxable status.~~

~~(6) Property described in subsections (5)(a) through (5)(d) that is not class four property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.~~

~~(7)~~*(4)* The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation ~~methodology~~ *methodologies* of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxahle valuation is an integral component are not affected by 15-10-401 and 15-10-402 ~~except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:~~.

*(5)* (a) ~~except as provided in subsection (8)(a), the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If~~ *Except as provided in subsection (5)(d), if* a taxing unit's taxable valuation decreases ~~by 5% or more~~ from the ~~1986~~ *1996* tax year, it may levy additional mills to compensate for the decreased taxable valuation, but the mills levied may not exceed a number calculated to equal the revenue from property taxes for the ~~1986~~ *1996* tax year in that taxing unit.

(b) *If* a levy authorized under Title 20 raised less revenue in ~~1986~~ *1996* tban was raised in either ~~1984~~ *1994* or ~~1985~~ *1995*, ~~in which case~~ the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue tban the 3-year average of revenue raised for that purpose during ~~1984~~ *1994*, ~~1985~~ *1995*, and ~~1986~~ *1996*;.

(c) *If* a levy authorized in 50-2-111 that was made in ~~1986~~ *1996* was for less than the number of mills levied in either ~~1984~~ *1994* or ~~1985~~ *1995*, ~~in which case~~ the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more tban the 3-year average number of mills levied for tbat purpose during ~~1984~~ *1994*, ~~1985~~ *1995*, and ~~1986~~ *1996*.

*(d) If a taxing unit's taxable valuation decreases by more than 5% in any year, it may levy additional mills by following either procedure provided for in subsection (7)(a).*

HeinOnline -- 1997 vol. II 2291 1997

~~(8) (a) Except as provided in subsection (8)(b), if a taxing unit has levied additional mills under subsection (7)(a) to compensate for a decrease in taxable valuation, it may continue to levy additional mills to equal the revenue from property taxes for the 1986 tax year when the taxing unit's taxable valuation is greater than 95% but less than 100% of the taxing unit's taxable valuation in tax year 1986.~~

~~(b) When the taxable valuation of a taxing unit that levied additional mills under subsection (7)(a) or (8)(a) is equal to or greater than the taxing unit's taxable valuation in tax year 1986, it may not levy additional mills to compensate for a subsequent decrease in taxable valuation unless the conditions of subsection (7)(a) are satisfied.~~

~~(9)~~*(6)* The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledgod for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection ~~(9)~~ *(6)*;

(i) levies for economic development authorized pursuant to 90-5-112(4);

(j) levies authorized under 7-6-502 for juvenile detention programs;

(k) levies authorized under 76-15-531 and 76-15-532 for conservation district special administrative assessments;

(l) elementary and high school districts; and

(m) voted poor fund levies authorized under 53-2-322.

~~(10)~~*(7) (a)* The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability:

*(i)* following a resolution of the governing body of the taxing unit containing:

~~(a)~~*(A)* a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

~~(b)~~*(B)* an explanation of the nature of the financial emergency;

~~(c)~~*(C)* an estimate of the amount of funding shortfall expected by the taxing unit;

~~(d)~~*(D)* a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

~~(e)~~*(E)* a finding that there are no alternative sources of revenue;

~~(f)~~*(F)* a summary of the alternatives that the governing body of the taxing unit has considered; and

~~(g)~~*(G)* a statement of the need for the increased revenue and how it will be used~~.~~*; or*

*(ii) by a vote pursuant to this subsection (7)(a)(ii). The approval or rejection of a levy that does not follow the procedure in subsection (7)(a)(i) is decided in the following manner:*

*(A) determine the total number of qualified electors of the taxing unit from the list of electors supplied by the county registrar for the election;*

*(B) determine the total number of qualified electors who voted at the taxing unit election from the tally sheets for the election; and*

*(C) calculate the percentage of qualified electors voting at the election by dividing the number determined in subsection (7)(a)(ii)(A) by the number determined in subsection (7)(a)(ii)(B).*

*(b) When the calculated percentage in subsection (7)(a)(ii)(C) is 40% or more, the levy is considered to have been approved and adopted if a majority of the votes are cast in favor of the proposition, otherwise it is considered to have been rejected.*

*(c) The election provisions of this section do not apply to school levy elections.*

~~(11)~~*(8)* (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2); and

(iii) a rail authority, as provided in Title 7, chapter 14, part 16, authorized by a board of county commissioners. A levy for the support of a rail authority may not exceed the 6-mill limit established in 7-14-1632.

~~(12)~~*(9)* The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its ~~1986~~ *1996* revenue.

HeinOnline -- 1997 vol. II 2293 1997

~~(13)~~*(10)* The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402.

~~(14)~~*(11)* A taxing jurisdiction that included special improvement district revolving fund levies in the limitation on the amount of taxes levied prior to April 22, 1993, may continue to include the amount of tho levies within the dollar amount due in each taxing unit for the 1986 tax year even if the necessity for the revolving fund has diminished and the levy authority has been transferred."

**Section 8.** Section 15-36-323, MCA, is amended to read:

**"15-36-323. Calculation of unit value.** For the purposes of distribution of oil and natural gas production taxes to county and school taxing units for production from pre-1985 wells, the department shall determine the unit value of oil and natural gas for each taxing unit as follows:

(1) Subject to the conditions of subsection (3), the unit value for oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on oil produced and sold in that taxing unit in calendar year 1988 by the number of barrels of oil produced in that taxing unit during 1988, excluding post-1985 wells.

(2) Suhject to the conditions of subsection (3), the unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced and sold in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding post-1985 wells.

(3) The amount of net proceeds taxes calculated under subsections (1) and (2) may not include the amount of taxes that are attributable to a ~~financial emergency~~ *voted levy*, as described in 15-10-412~~(10)~~*(7)*, for which additional mills were levied in fiscal year 1990."

**Seetion 9.** Section 77-1-208, MCA, is amended to read:

**"77-1-208. Cabin site licenses and leases — metbod of establishing value.** (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 *without any adjustments as a result of phasing in values*. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, chapter 2.

(2) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(3) The board shall follow the procedures set forth in 77-6-302 through 77-6-306 for the disposal or valuation of any fixtures or improvements placed

HeinOnline -- 1997 vol. II 2294 1997

upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board."

**Section 10. Property tax committee.** (1) There is an interim property tax committee. The committee consists of 12 members. The speaker of the house shall appoint six house members, three from each party, and the senate committee on committees shall appoint six senate members, three from each party.

(2) The committee may study all aspects of the state property tax system and shall prepare a menu of alternatives to revise, reform, or replace the property tax system. The alternatives should include methods that remove volatility from the valuation of property. The alternative methods should include options designed to supplement or replace the current valuation system in order to prevent the exclusive reliance on market value.

(3) In order to provide a wide-ranging series of options for consideration, each individual member of the committee may pursue proposals independently and receive staff assistance on the proposals. The committee may discuss and make suggestions on all proposals. A vote of one-fourth of the members may include a proposal on the menu of alternatives. The menu of alternatives must he presented to the 56th legislature.

(4) The committee may solicit the advice of appropriate persons and entities as the committee considers necessary.

(5) The legislative branch shall provide staff support to the committee. The committee may contract for services as the committee considers necessary.

**Section 11. Extension of 1997 deadlines relating to property taxation.** As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 55th legislature, it is not possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The state appraisal and assessment process will be delayed, which in turn will cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1997, all deadlines are extended as necessary and reasonable, except the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes.

**Section 12. Appropriation.** There is appropriated from the general fund to the legislative branch $100,000 for the biennium for operating expenses and personnel services for operations of the property tax committee established in [section 10].

**Section 13. Appropriation carryover.** Notwithstanding the provisions of 17-7-304, the department of revenue may carry over into the fiscal year commencing July 1, 1997, up to $425,000 of the unexpended portion of the appropriation to the department for the biennium ending June 30, 1997.

**Section 14. Repealer.** Section 15-10-411, MCA, is repealed.

HeinOnline -- 1997 vol. II 2295 1997

**Section 15. Effective date — retroactive applicability.** [This act] is effective on passage and approval, and [sections 1 through 9] apply retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1996.

Approved April 30, 1997

# CHAPTER NO. 464

[SB 272]

AN ACT EXTENDING THE INHERITANCE TAX EXEMPTION FOR STEPCHILDREN; AMENDING SECTION 72-16-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 72-16-313, MCA, is amended to read:

**"72-16-313. Exemptions of sponse and other relatives.** (1) The clear value of all property distributed or passing to a decedent's surviving spouse is exempt.

(2) Tbe clear value of all property distrihuted or passing to the following is exempt:

(a) any child or lineal descendant of the decedent. A determination as to establisbment of tbe parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 1.

(b) any stepchild, as defined in 72-2-613, of the decedent~~, provided the relationship began on or before the stepchild's 18th birthday~~.

(3) The following amounts are exempt:

(a) property of the clear value of $7,000 transferred to each of the persons who have attained majority described in 72-16-321(1); and

(b) property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2)."

**Section 2. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to the estates of decedents occurring on or after January 1, 1995.

**Section 3. Termination — applicability.** (1) [Section 1] terminates July 1, 1999.

(2) Notwithstanding the provisions of subsection (1), [section 1] applies to all inheritance taxes arising from deaths occurring between January 1, 1995, and July 1, 1999.

HeinOnline -- 1997 vol. II 2296 1997

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved April 30, 1997

# CHAPTER NO. 465

[SB 354]

AN ACT ESTABLISHING A RESTAURANT BEER AND WINE LICENSE TO ALLOW RESTAURANTS TO SERVE BEER AND WINE TO PATRONS WHO PURCHASE FOOD; PROHIBITING A RESTAURANT BEER AND WINE LICENSEE FROM HOLDING ANY OTHER TYPE OF BEER, WINE, OR LIQUOR LICENSE; BASING THE ISSUANCE OF RESTAURANT BEER AND WINE LICENSES ON THE QUOTA SYSTEM; LIMITING THE NUMBER OF LICENSES THAT MAY BE ISSUED TO RESTAURANTS WITH A SEATING CAPACITY OF 101 PERSONS OR MORE; PROVIDING THAT CERTAIN LICENSES BE ISSUED BY LOTTERY; PROVIDING THAT RESTAURANT BEER AND WINE LICENSES ARE TRANSFERABLE UNDER CERTAIN CONDITIONS; PROHIBITING GAMING AND GAMBLING IN CONJUNCTION WITH A LICENSE, OTHER THAN AN ALL-BEVERAGES LICENSE OR A BEER AND WINE LICENSE ISSUED OUTSIDE OF A CITY OR TOWN, TO SELL ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES NOT ORIGINALLY LICENSED PRIOR TO THE EFFECTIVE DATE OF THIS ACT; AND AMENDING SECTIONS 16-4-105, 16-4-111, 23-5-306, 23-5-502, 23-5-603, AND 23-5-611, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

HeinOnline -- 1997 vol. II 2297 1997

(c) in the case of any other business entity, including but not limited to partnerships including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department:

(i) that the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least 75% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) that the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) that the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(3) (a) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall request that the department of justice make an investigation of all the items relating to the application as described in subsections (3)(a)(i) through (3)(a)(iv). Based on the results of the investigation or in exercising its sound discretion, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business;

(iii) the requirements of this code and the rules promulgated by the department are met and complied with; and

(iv) the seating capacity as stated on the application is correct.

(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises hased on reasonahle evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in suhsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least 75% of the restaurant's annual gross income from the operation must he from tbe sale of food and not from tlie sale of alcoholic heverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 75% of the gross income of the restaurant during the prior year resulted from the sale of food. Tbe restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner menu.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license niay be transferred, upon approval hy the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued hy the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, tlie license may not be transferred to any otlier person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon tho death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less

HeinOnline -- 1997 vol. II 2299 1997

than 60% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the nur.ber of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-4461(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.

(c) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of restaurant beer and wine license, or the lapse or revocation of the license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference.

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and the required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant increases the stated seating capacity of the licensed restaurant or if the department determines that an applicant has increased the stated seating capacity of the licensed restaurant, then the applicant shall pay to the department the difference between the application fee paid at the time of filing the original application and the applicable application fee for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

**Section 2. Denial of restaurant beer and wine license.** (1) A restaurant beer and wine license may not be issued by the department for a premises situated within a zone of a city, town, or county where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(2) A restaurant beer and wine license may not be issued or renewed if the department finds, subject to the opportunity for a hearing pursuant to Title 2, chapter 4, part 6, that the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria provided by law.

**Section 3. Sale of beer and wine prohibited during certain hours.** Except as provided in 16-3-305, restaurants licensed pursuant to [section 1] in which beer and wine are sold, offered for sale, or given away at retail may not serve beer and wine between the hours of 11 p.m. and 11 a.m. However, if an incorporated city or town has by ordinance further restricted the hours of sale of beer and wine, then the sale of beer and wine in restaurants licensed to sell beer and wine, pursuant to [section 1], is prohibited within the limits of the city or town during the time that the sale is prohibited by this section and in addition to the hours that the sale is prohibited by ordinance.

**Section 4. Restaurant beer and wine license — prohibited practices.** A restaurant licensed for the sale of beer and wine pursuant to [section 1] may not convey to any person by any means that a person may either purchase or consume beer or wine on the premises without being required to purchase food.

HeinOnline -- 1997 vol. II 2301 1997

**Section 5. Appropriate alcoholic beverage license for certain gambling activities.** (1) To be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant shall own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201;

(b) except as provided in subsection (1)(c), a license issued prior to [the effective date of this act] under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises; or

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to [the effective date of this act] may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

**Section 6.** Section 16-4-105, MCA, is amended to read:

**"16-4-105. Limit on retail beer licenses — wine license amendments — off-premises consumption — *limitation on use of license — exceptions.*** (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a fit and proper person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license, which may not be used in conjunction with a retail all-beverages license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants, which may not be used in conjunction with retail all-beverages licenses;

HeinOnline -- 1997 vol. II 2302 1997

(b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations;

(d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity. *Subsection (3) does not apply to licenses issued under this subsection (1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.*

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. ~~A~~ *Except for beer and wine licenses issued pursuant to [section 1], a* person holding a beer-and-wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

*(3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after [the effective date of this act] must have a conspicuous notice that the license may not be used for premises where gambling is conducted.*

HeinOnline -- 1997 vol. II 2303 1997

*(b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the application before [the effective date of this act]. For the purposes of this subsection (3)(b), the application is received by the department before [the effective date of this act] if the application's mail cover is postmarked by the United States postal service before [the effective date of this act] or if the application was consigned to a private courier service for delivery to the department before [the effective date of this act]. An applicant who consigns an application to a private courier shall provide to the department, upon demand, documentary evidence satisfactory to the department that the application was consigned to a private courier before [the effective date of this act]."*

**Section 7.** Section 16-4-111, MCA, is amended to read:

**"16-4-111. Catering endorsement for beer and wine licensces.** (1) *(a)* A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer ~~and~~ *or* wine must be consumed on the premises where the event is held.

*(b) A person who is licensed pursuant to [section 1] to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 75% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.*

(2) A written application for a catering endorsement and an annual fee of $200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be beld.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer

HeinOnline -- 1997 vol. II 2304 1997

or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises."

**Section 8.** Section 23-5-306, MCA, is amended to read:

**"23-5-306. Live card game table — permit — fees — disposition of fees.** (1) (a) A person who has been granted an operator's license under 23-5-177 and a *who holds an appropriate* license to sell alcoholic beverages for consumption on the premises *as provided in [section 5]* may be granted an annual permit for the placement of live card game tables.

(b) The department may issue an annual permit for the placement of live card game tables to a person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

(i) one or more live card game tables were legally operated on the premises on January 15, 1989;

(ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other consumable product;

(iii) the person has been granted an operator's license under 23-5-177; and

(iv) at the time of application for the permit:

(A) the person has continuously operated a live card game table on the premises since January 15, 1989; and

(B) the natural person or persons who own the business operated on the premises are the same as on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) $250 for the first table; and

(b) $500 for each additional table.

(3) The department shall retain for administrative purposes $100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury."

**Section 9.** Section 23-5-502, MCA, is amended to read:

**"23-5-502. Sports pools and sports tab games authorized — tax.** (1) Conducting or participating in sports pools and sports tab games as defined and governed in this part is lawful, except that:

HeinOnline -- 1997 vol. II 2305 1997

(a) sports tab games may ~~only~~ be conducted *only* on premises *appropriately* licensed to sell alcoholic beverages for consumption on the premises *as provided in [section 5]*; and

(b) only a licensee of premises that are located in an incorporated city or town with a population of less than 100 or located outside the boundaries of an incorporated city or town and that are *appropriately* licensed to sell alcoholic beverages for consumption on the premises *under [section 5]* may conduct a race between animals and conduct one or more sports pools on the race. The race may he conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment where food and beverages are usually stored, prepared, or served.

(2) A manufacturer licensed under 23-5-115 who sells sports tabs to a licensed operator for use in a sports tab game shall collect from the operator, at the time of sale, a tax of $1 for each 100 sports tabs sold and, within 15 days after tbe end of each calendar quarter, submit to the department any forms required hy the department and the proceeds of the collected tax. The manufacturer shall keep a record of taxes collected as required hy department rule. The records must be made available for inspection by the department upon request of the department. The department shall retain the proceeds of the tax to administer this part."

**Seetion 10.** Section 23-5-603, MCA, is amended to read:

**"23-5-603. Video gambling machines — posscssion — play — restriction.** (1) A licensed operator may make available for public play only the number of approved video gambling machines specifically autborized by this part.

(2) The video gambling machines specifically authorized by this part are bingo, keno, and draw poker machines. Only the number of approved machines for which permits bave been granted under 23-5-612 may be made available for play by the public on the premises of a licensed operator. The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gamhling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

(3) Machines on premises *appropriately* licensed to sell alcobolic beverages for on-premises consumption *as provided in [section 5]* must be placed:

(a) in a room, area, or other part of tbe premises in which alcoholic beverages are sold or consumed; and

(b) within control of the operator for the purpose of preventing access to the machines by persons under 18 years of age."

**Seetion 11.** Section 23-5-611, MCA, is amended to read:

**"23-5-611. Machine permit qualifieations — limitations.** (1) (a) A person who has been granted an operator's license under 23-5-177 and ~~a~~ *who holds an appropriate* license to sell alcobolic beverages for consumption on the premises *as provided in [section 5]* may be granted a permit for the placement of video gambling machines ~~in his~~ *on the person's* premises.

(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.

(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the placement of bingo and keno machines ~~in his~~ *on the person's* premises.

(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of 23-5-176.

(3) A licensee may not have on the premises or make available for play on the premises more than 20 machines of any combination."

**Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 13. Codification instruction.** (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16, chapter 4, part 4, apply to [sections 1 through 4].

(2) [Section 5] is intended to be codified as an integral part of Title 23, chapter 5, part 1, and the provisions of Title 23, chapter 5, part 1, apply to [section 5].

Approved April 30, 1997

# CHAPTER NO. 466

[SB 386]

AN ACT CLARIFYING THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES TO CONFORM WITH THE NEW OIL AND NATURAL GAS TAX LAWS ENACTED DURING THE 1995 LEGISLATIVE SESSION; ALLOWING THE DEPARTMENT TO REVISE, BY RULE, THE DISTRIBUTION OF OIL AND NATURAL GAS PRODUCTION TAXES UNDER CERTAIN CONDITIONS; CLARIFYING THE TAX RATE IMPOSED ON INCREMENTAL PRODUCTION FROM POST-1985 WELLS WHEN THE PRICE OF OIL IS EQUAL TO OR GREATER THAN $30 A BARREL; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-1-501, 15-36-304, 15-36-324, 15-36-325, 17-7-502, AND 82-11-135, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

HeinOnline -- 1997 vol. II 2307 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-1-2111, MCA, is amended to read:

**"7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upen which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

(a) first class—all counties having a taxable valuation of $50 million or ~~over~~ *more*;

(b) second class—all counties baving a taxable valuation of ~~more than~~ $30 million *or more* and less than $50 million;

(c) third class—all counties having a taxable valuation of ~~more than~~ $20 million *or more* and less than $30 million;

(d) fourth class—all counties having a taxable valuation of ~~more than~~ $15 million *or more* and less than $20 million;

(e) fifth class—all counties having a taxable valuation of ~~more than~~ $10 million *or more* and less than $15 million;

(f) sixth class—all counties having a taxable valuation of ~~more than~~ $5 million *or more* and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) the value provided by the department of revenue under 15-36-324~~(10)~~*(13)*; and

(d) 6% of the taxable value of the county on January 1 of each tax year."

**Section 2.** Section 7-7-2101, MCA, is amended to read:

**"7-7-2101. Limitation on amount of county indebtedness.** (1) A county may not become indebted in any manner or for any purpose ~~to~~ *in* an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue in 15-36-324~~(10)~~*(13)*, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, plus, for indebtedness to be incurred during fiscal

HeinOnline -- 1997 vol. II 2308 1997

year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied hy 23%.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

**Section 3.** Section 7-7-2203, MCA, is amended to read:

**"7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the value provided by the department of revenue under 15-36-324~~(10)~~*(13)*, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds, plus, for general obligation bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 11.25%.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue under 15-36-324~~(10)~~*(13)*, when necessary to do so, to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 27.75%, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings on the site and furnishing and equipping the buildings for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by 7-7-2101.

HeinOnline -- 1997 vol. II 2309 1997

(4) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

**Section 4.** Section 7-14-2524, MCA, is amended to read:

**"7-14-2524. Limitation on amount of bonds issued — excess void.** (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the value provided by the department of revenue under 15-36-324~~(10)~~*(13)*. The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(2) A county may issue bonds that, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of the property, plus the value provided by the department of revenue under 15-36-324~~(10)~~*(13)* when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, may not exceed 22.5% of the total of the taxable value of the property within the county, plus the value provided by the department of revenue under 15-36-324~~(10)~~*(13)*, as ascertained by the last preceding general assessment."

**Section 5.** Section 7-14-2525, MCA, is amended to read:

**"7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property ~~therein~~ *in the county*, plus the value provided by the department of revenue under 15-36-324~~(10)~~*(13)*, and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement ~~whereby~~ *under which* the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds."

**Section 6.** Section 7-16-2327, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2310 1997

"**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, may contract an indebtedness in behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, plus the value provided by the department of revenue under 15-36-324~~(10)~~*(13)*, ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds."

**Section 7.** Section 15-1-501, MCA, is amended to read:

"**15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (6) all money received from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) liquor license taxes under Title 16;

(d) telephone company license taxes under chapter 53; and

(e) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 91.3% of the taxes te the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 89.5% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) all interest and penalties to the credit of the state general fund.

HeinOnline -- 1997 vol. II 2311 1997

(4) The department of revenue shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) Oil and natural gas production taxes allocated under 15-36-324~~(7)(a)~~*(8)(a) and (10)(a)* must be deposited in the general fund.

(6) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must he recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

(7) All refunds of taxes must he attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

**Section 8.** Section 15-36-304, MCA, is amended to read:

**"15-36-304. Production tax rates imposed on oil and natural gas.** (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-324.

(2) Natural gas is taxed on the gross taxahle value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

| | Working Interest | Nonworking Interest |
|---|---|---|
| (a) pre-1985 wells | 18.55% | 14.8% |
| (b) post-1985 wells | | |
| (i) first 12 months of qualifying production | 0.5% | 14.8% |
| (ii) next 12 months of qualifying production | 12.5% | 14.8% |
| (iii) after 24 months | 15.15% | 14.8% |
| (c) stripper natural gas pre-1985 and post-1985 wells | 11% | 14.8% |

(3) The reduced tax rates under suhsections (2)(b)(i) and (2)(b)(ii) on production for the first 24 months of natural gas production from a post-1985 well begin following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has heen given to the department.

HeinOnline -- 1997 vol. II 2312 1997

(4) Oil is taxed on the gross taxable value of production based on tbe type of well and type of production according to the following schedule for working interest and nonworking interest owners:

| | Working Interest | Nonworking Interest |
|---|---|---|
| (a) primary recovery production | | |
| (i) pre-1985 wells | 13.9% | 16.9% |
| (ii) post-1985 wells | | |
| (A) first 12 months of qualifying production | 0.5% | 14.8% |
| (B) next 12 months of qualifying production | 7.5% | 14.8% |
| (C) after 24 months | 12.5% | 14.8% |
| (b) stripper oil production | | |
| (i) pre-1985 wells | 10.5% | 16.9% |
| (ii) post-1985 wells | 10.5% | 14.8% |
| (iii) stripper exemption production | | |
| (A) pre-1985 wells | 5.5% | 16.9% |
| (B) post-1985 wells | 5.5% | 14.8% |
| (c) horizontally completed well production | | |
| (i) first 18 months of qualifying production | 0.5% | 5.5% |
| (ii) next 6 months of qualifying production | 7.5% | 12.5% |
| (iii) after 24 months | 12.5% | 12.5% |
| (d) incremental production | | |
| (i) new or expanded secondary recovery production | | |
| (A) pre-1985 ~~well~~ *wells* | 8.5% | 16% |
| (B) post-1985 ~~well~~ *wells* | 8.5% | 10.5% |
| (ii) new or expanded tertiary preduction | | |

HeinOnline -- 1997 vol. II 2313 1997

| | | |
|---|---|---|
| (A) pre-1985 ~~well~~ *wells* | 5.8% | 15% |
| (B) post-1985 ~~well~~ *wells* | 5.8% | 9.5% |
| (e) horizontally recompleted well | | |
| (i) first 18 months | 5.5% | 5.5% |
| (ii) after 18 months | 12.5% | 12.5% |

(5) (a) The reduced tax rates under subsections (4)(a)(ii)(A) and (4)(a)(ii)(B) for the first 24 months of oil production from a post-1985 well begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under ~~subsection~~ *subsections* (4)(c)(i) and (4)(c)(ii) on oil production from a horizontally completed well for the first 24 months of production begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (4)(e)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (4)(d) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (5)(d), *then* incremental production *from pre-1985 wells and from post-1985 wells* is taxed at the rate imposed on primary recovery production under ~~subsection~~ *subsections* (4)(a)(i) *and (4)(a)(ii)(C), respectively,* for production occurring in that quarter.

(d) For the purposes of subsection (5)(c), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(6) The tax rates imposed under subsections (2) and (4) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."

**Section 9.** Section 15-36-324, MCA, is amended to read:

**"15-36-324. Distribution of taxes — *rules.*** (1) For each calendar quarter, the department of revenue shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the

HeinOnline -- 1997 vol. II 2314 1997

amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally drilled wells located in the taxing unit.

(2) Except as provided in subsections (3) ~~and (4),~~ *through (5),* oil production taxes must be distributed as follows:

(a) The amount equal to ~~41.6%~~ *39.3%* of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection ~~(7)~~ *(8).*

(b) The remaining ~~58.4%~~ *60.7%* of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(8)~~ *(11).*

(3) *(a)* The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection ~~(7)~~ *(9).*

*(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).*

*(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (3)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).*

(4) *(a)* The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from horizontally ~~drilled~~ *completed* wells ~~and on the incremental production from horizontally recompleted wells~~ occurring during the first 18 months of production must be distributed as provided in subsection ~~(7)~~ *(9).*

*(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the next 6 months of production must be distributed as provided in subsection (9).*

*(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (4)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).*

*(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (8).*

*(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper exemption production from pre-1985 wells and post-1985 wells must be distributed as provided in subsection (9).*

HeinOnline -- 1997 vol. II 2315 1997

*(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).*

~~(5)~~*(6)* Except as provided in subsection ~~(6)~~ *(7)*, natural gas production taxes must be allocated as follows:

(a) The amount equal to ~~14.6%~~ *14%* of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection ~~(7)~~ *(10)*.

(b) The remaining ~~85.4%~~ *86%* of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection ~~(5)(b)~~ *(6)(b)*, must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(8)~~ *(11)*.

~~(6)~~*(7) (a)* The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection ~~(7)~~ *(9)*.

*(b) (i) The amount equal to 6.25% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).*

*(ii) The remaining 93.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (7)(b), must be deposited in the agency fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).*

~~(7)~~*(8)* The department shall, in accordance with the provisions of 15-1-501~~(6)~~, distribute the state portion of oil ~~and natural gas~~ production taxes *specified in subsections (2)(a) and (4)(c)*, including late payment interest and penalty collected, as follows:

(a) ~~85%~~ *86.21%* to the state general fund;

(b) ~~4.3%~~ *5.17%* to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) ~~10.7%~~ *8.62%* to be distributed as provided by 15-38-106(2).

*(9) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3)(a), (3)(b)(i), (4)(a), (4)(b)(i), (5)(a), (7)(a), and (7)(b)(i), including late payment interest and penalty collected, as follows:*

*(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and*

*(b) 62.5% to be distributed as provided by 15-38-106(2).*

HeinOnline -- 1997 vol. II 2316 1997

*(10) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:*

*(a) 76.8% to the state general fund;*

*(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and*

*(c) 14.5% to be distributed as provided by 15-38-106(2).*

~~(8)~~*(11)* (a) For the purpose of distrihution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection ~~(9)~~ *(12)*, the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection ~~(8)(a)~~ *(11)(a)*, by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in *this* subsection ~~(8)(a)~~ *(11)(a)* must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as provided in subsection ~~(8)(c)~~ *(11)(c)*, the county treasurer shall distribute the money received under subsection ~~(9)~~ *(12)* from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 ageinst calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gene to a taxing unit, as provided in subsection ~~(8)(b)~~ *(11)(b)*, to another taxing unit or taxing units, other than an elementary school or bigh school, within the county under the following conditions:

HeinOnline -- 1997 vol. II 2317 1997

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection ~~(8)(c)(i)~~ *(11)(c)(i)* exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection ~~(8)(d)(i)~~ *(11)(d)(i)* exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b), *(3)(b)(ii), (4)(b)(ii),* ~~and~~ (5)(b), *(6)(b), and (7)(b)(ii)* between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection ~~(8)(e)~~ *(11)(e)* must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection ~~(8)(e)~~ *(11)(e)* that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection ~~(8)(b)~~ *(11)(b)* that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributed under subsection ~~(8)(c)~~ *(11)(e)* that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections ~~(8)(h)~~ *(11)(h)* and ~~(8)(i)~~ *(11)(i)* is for the exclusive use and benefit of the county and school taxing units.

HeinOnline -- 1997 vol. II 2318 1997

~~(9)~~*(12)* The department shall remit the amounts to be distributed in subsection ~~(8)~~ *(11)* to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

~~(10)~~*(13)* The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

*(14) (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.*

*(b) Before the department adopts a rule pursuant to subsection (14)(a), it shall present the proposed rule to the revenue oversight committee."*

**Section 10.** Section 15-36-324, MCA, is amended to read:

**"15-36-324. Distribution of taxes — *rules*.** (1) For each calendar quarter, the department of revenue shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally drilled wells located in the taxing unit.

(2) Except as provided in subsections (3) ~~and (4),~~ *through (5),* oil production taxes must be distributed as follows:

(a) The amount equal to ~~41.6%~~ *39.3%* of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection ~~(7)~~ *(8).*

(b) The remaining ~~58.4%~~ *60.7%* of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the ~~agency~~ *state special revenue* fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(8)~~ *(11).*

HeinOnline -- 1997 vol. II 2319 1997

(3) *(a)* The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection ~~(7)~~ *(9)*.

*(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).*

*(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (3)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).*

(4) *(a)* The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from horizontally ~~drilled~~ *completed* wells ~~and on the incremental production from horizontally recompleted wells~~ occurring during the first 18 months of production must be distributed as provided in subsection ~~(7)~~ *(9)*.

*(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the next 6 months of production must be distributed as provided in subsection (9).*

*(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (4)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).*

*(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (8).*

*(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper exemption production from pre-1985 wells and post-1985 wells must be distributed as provided in subsection (9).*

*(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).*

~~(5)~~*(6)* Except as provided in subsection ~~(6)~~ *(7)*, natural gas production taxes must be allocated as follows:

(a) The amount equal to ~~14.6%~~ *14%* of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection ~~(7)~~ *(10)*.

(b) The remaining ~~85.4%~~ *86%* of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection ~~(5)(b)~~

*(6)(b)*, must be deposited in the ~~agency~~ *state special revenue* fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(8)~~ *(11)*.

~~(6)~~*(7) (a)* The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection ~~(7)~~ *(9)*.

*(b) (i) The amount equal to 6.25% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).*

*(ii) The remaining 93.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (7)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).*

~~(7)~~*(8)* The department shall, in accordance with the provisions of 15-1-501~~(6)~~, distribute the state portion of oil ~~and natural gas~~ production taxes *specified in subsections (2)(a) and (4)(c)*, including late payment interest and penalty collected, as follows:

(a) ~~85%~~ *86.21%* to the state general fund;

(b) ~~4.3%~~ *5.17%* to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) ~~10.7%~~ *8.62%* to be distributed as provided by 15-38-106(2).

*(9) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3)(a), (3)(b)(i), (4)(a), (4)(b)(i), (5)(a), (7)(a), and (7)(b)(i), including late payment interest and penalty collected, as follows:*

*(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and*

*(b) 62.5% to be distributed as provided by 15-38-106(2).*

*(10) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:*

*(a) 76.8% to the state general fund;*

*(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and*

*(c) 14.5% to be distributed as provided by 15-38-106(2).*

~~(8)~~*(11)* (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the

HeinOnline -- 1997 vol. II 2321 1997

oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which tbe distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection ~~(9)~~ *(12)*, the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection ~~(8)(a)~~ *(11)(a)*, by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in *this* subsection ~~(8)(a)~~ *(11)(a)* must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by tbe total distribution determined for that period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as providod in subsection ~~(8)(c)~~ *(11)(c)*, the county treasurer shall distribute the money received under subsection ~~(9)~~ *(12)* from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gene to a taxing unit, as provided in subsection ~~(8)(b)~~ *(11)(b)*, to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same propertion that all other property tax proceeds were distrihuted in the county in fiscal year 1990.

(ii) If the allocation in subsection ~~(8)(c)(i)~~ *(11)(c)(i)* exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection ~~(8)(d)(i)~~ *(11)(d)(i)* exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b), *(3)(b)(ii), (4)(b)(ii),* ~~and~~ (5)(b), *(6)(b), and (7)(b)(ii)* between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection ~~(8)(e)~~ *(11)(e)* must be distributed hy the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection ~~(8)(e)~~ *(11)(e)* that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection ~~(8)(b)~~ *(11)(b)* that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural ges production taxes distributed under subsection ~~(8)(e)~~ *(11)(e)* that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections ~~(8)(h)~~ *(11)(h)* and ~~(8)(i)~~ *(11)(i)* is for the exclusive use and benefit of the county and school taxing units.

~~(9)~~*(12)* The department shall remit the amounts to be distributed in subsection ~~(8)~~ *(11)* to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

HeinOnline -- 1997 vol. II 2323 1997

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

~~(10)~~*(13)* The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

*(14) (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.*

*(b) Before the department adopts a rule pursuant to subsection (14)(a), it shall present the proposed rule to the revenue oversight committee.*

*(15) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."*

**Section 11.** Section 15-36-325, MCA, is amended to read:

**"15-36-325. Local government severance tax payments for calendar year 1995 production — distribution of payments — not subject to I-105 limitations.** (1) The local government severance tax imposed under 15-36-101, as that section read before January 1, 1996, for calendar year 1995 production is due as follows:

(a) for oil and natural gas production occurring in the first calendar quarter of 1995, the tax is due May 31, 1996;

(b) for oil and natural gas production occurring in the second calendar quarter of 1995, the tax is due May 31, 1997;

(c) for oil and natural gas production occurring in the third calendar quarter of 1995, the tax is due May 31, 1998; and

(d) for oil and natural gas production occurring in the fourth calendar quarter of 1995, the tax is due May 31, 1999.

(2) (a) If the taxpayer pays the entire local government severance tax liability for calendar year 1995 on or before June 30, 1996, the taxpayer must receive a 6% reduction in the total local government severance tax liability.

(b) Any payment of local government severance taxes for calendar year 1995 made on or before June 30, 1997, does not accrue interest. Any payment of local government severance taxes for calendar year 1995 made after June 30, 1997, must accrue interest at the rate of 1% a month or fraction of a month from July 1, 1997, to the date of payment. Any payment for the third quarter of 1995

HeinOnline -- 1997 vol. II 2324 1997

received after May 31, 1998, and any payment for the fourth quarter of 1995 received after May 31, 1999, is subject to the late payment penalty provisions in 15-36-311.

(c) In the case of the dissolution of the operator or a change in the operator of any lease or unit, any unpaid local government severance tax for calendar year 1995 becomes due on the date of dissolution or on the date of the change in operator. The operator is subject to the provisions of subsection (2)(a) regarding the 6% tax liability reduction or the provisions of subsection (2)(b) regarding interest and penalties.

(3) The department shall determine the amount of tax collected under subsections (1) and (2) from within each taxing unit.

(4) For purposes of the distribution of local government severance taxes collected under this section, the department shall use the unit value of oil and gas for each taxing unit as determined in 15-36-323.

(5) The local government severance tax must be deposited in the ~~agency~~ *state special revenue* fund in the state treasury and transferred to the county for distribution as provided in subsection (6).

(6) For the purpose of the distribution of the local government severance tax for calendar year 1995 production, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters for which the distribution occurs plus penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters for which the distribution occurs. The taxes must be calculated and distributed as follows:

(a) By July 31 of each of the years 1996, 1997, 1998, and 1999, the department shall calculate and distribute to each eligible county the amount of local government severance tax for calendar year 1995 production, determined by multiplying the unit value, as adjusted in this subsection (6), by the units of production on which the local government severance tax was owed during calendar year 1995 production.

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (6)(a) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(7) (a) The county treasurer shall distribute the money received under subsection (6) between the county and school taxing units. The distribution

HeinOnline -- 1997 vol. II 2325 1997

between county and school taxing units is the ratio of the number of mills levied for fiscal year 1990 against 1988 production in each taxing unit for the county and schools, including the county equalization levies that were in effect under 20-9-331 and 20-9-333 as those sections read on July 1, 1989, and the university 6-mill levy imposed under 20-25-423, except that a distribution may not be made to a municipal taxing unit or the state equalization aid levy imposed under 20-9-360. Distribution of money for the county equalization levies and the university levy must be remitted to the state by the county treasurer. The amounts distributed under subsections (7)(b) and (7)(c) are for the exclusive use of county and school taxing units.

(b) The county treasurer shall deposit the money from subsection (7)(a) allocated to county levies to the oil and gas tax accelerated fund.

(c) The trustees of a school district may allocate any payment received under subsection (7)(a) to any budget fund of the district or to the miscellaneous programs fund established in 20-9-507. The trustees shall direct the county treasurer to deposit the local government severance tax payments under this section to the funds of the district in accordance with the allocations determined by the trustees.

(8) Local government severance tax payments to a county pursuant to this section are not subject to the limitations of Title 15, chapter 10, part 4. Payments of local government severance tax pursuant to this section may not be used for county classification purposes under 7-1-2111 and may not be considered in the determination of bonding limits under 7-7-2101, 7-7-2203, 7-14-2524, and 7-16-2327.

*(9) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."*

**Section 12.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; *15-36-324; 15-36-325;* 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107;

HeinOnline -- 1997 vol. II 2326 1997

20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 13.** Section 82-11-135, MCA, is amended to read:

**"82-11-135. Money earmarked for board expenses.** The state treasurer shall deposit all money collected under 15-36-324~~(7)(b)~~*(8)(b), (9), (10)(b),* and under this chapter in the state special revenue fund. The money must be used for the purpose of paying all expenses of the board and for no other purpose. The board shall use the money subject to biennial appropriations by the legislature. Income and interest from investment of the board's moneys in the state special revenue fund must be credited to the board."

**Section 14. Effective dates — termination.** (1) [Sections 1 through 9, 13, and this section] are effective on passage and approval.

(2) [Sections 10, 11, and 12] are effective July 1, 1997.

(3) [Section 9] terminates June 30, 1997.

Approved April 30, 1997

# CHAPTER NO. 467

[SB 350]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE COMMISSION FOR HUMAN RIGHTS; PROVIDING THAT THE COMMISSION MAY NOT HIRE ITS OWN STAFF; TRANSFERRING THE STAFF OF THE COMMISSION TO THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING THAT THE STAFF OF THE COMMISSION IS NOT INDEPENDENT OF THE COMMISSIONER OF LABOR; PROVIDING THAT THE DEPARTMENT MAY NOT FILE A COMPLAINT ON BEHALF OF ANOTHER PERSON; REQUIRING THE ADOPTION OF THE MONTANA RULES OF CIVIL PROCEDURE, THE MONTANA RULES OF EVIDENCE, AND APPROPRIATE RULES OF THE MONTANA CODE OF CRIMINAL

HeinOnline -- 1997 vol. II 2327 1997

PROCEDURE AS PART OF PROCEDURAL RULES; PROVIDING THAT THE COMMISSIONER MAY APPLY TO A DISTRICT COURT FOR A PRELIMINARY INJUNCTION AGAINST A RESPONDENT; REQUIRING THE DEPARTMENT TO INFORM A POTENTIAL RESPONDENT WITHIN 10 BUSINESS DAYS AFTER RECEIPT OF A COMPLAINT; PREVENTING THE DEPARTMENT FROM REQUESTING A CHANGE OF VENUE IN A CONTESTED CASE HEARING; PROHIBITING THE DEPARTMENT FROM PETITIONING A DISTRICT COURT FOR ENFORCEMENT OF A COMMISSION ORDER; RESTRICTING THE DEPARTMENT FROM DENYING THE FILING OF A CASE IN DISTRICT COURT; ALLOWING A RESPONDENT TO REMOVE A CASE TO DISTRICT COURT; REVISING PENALTY PROVISIONS; AMENDING SECTIONS 2-15-1706, 39-1-102, 49-2-101, 49-2-203, 49-2-204, 49-2-501, 49-2-503, 49-2-504, 49-2-505, 49-2-506, 49-2-508, 49-2-509, AND 49-2-510, MCA; REPEALING SECTIONS 49-2-201, 49-2-502, 49-3-304, 49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, AND 49-3-312, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICARILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose.** It is the intent of the legislature that the commission sit in independent judgment of complaints of alleged discrimination in Montana and that the staff operate under the direction and control of the commissioner. The staff is not independent of the commissioner. It is the intent of the legislature that the commission and the department not favor, directly or indirectly, complainants or respondents with procedural or substantive matters of discrimination in Montana. The commission and the department shall maintain the highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in Montana. It is not the intent of the legislature that the department be prohibited from dismissing matters, from referring matters to other agencies following an initial inquiry and interview, or from reaching a decision in an investigation or contested case hearing.

**Section 2.** Section 2-15-1706, MCA, is amended to read:

**"2-15-1706. Commission for human rights — allocation — quasi-judicial.** (1) There is a commission for human rights.

(2) The commission consists of five members appointed by the governor with the consent of the senate.

(3) The commission is designated as a quasi-judicial board for the purposes of 2-15-124 and its members ~~shall~~ *must* be compensated and receive travel expenses as provided for in 2-15-124.

(4) The commission is allocated to the department of labor and industry for administrative purposes only as provided in 2-15-121~~, except that the commission may hire its own personnel, may seek and receive private and federal funds in its own name, and may determine all matters of policy concerning the use of its budget. Subsection (2)(d) of 2-15-121 shall not apply for purposes of this section~~."

**Section 3.** Section 39-1-102, MCA, is amended to read:

**"39-1-102. Duties of department.** The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of

HeinOnline -- 1997 vol. II 2328 1997

employers who default in payment of wages, protection of employees, and all laws relating to child labor ~~which~~ *that* regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws. *The department shall investigate and enforce the laws prohibiting discrimination contained in Title 49, chapters 2 and 3, and provide a means for conciliation between parties.*"

**Section 4.** Section 49-2-101, MCA, is amended te read:

"**49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

*(2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.*

~~(2)~~*(3)* "Commission" means the commission for human rights provided for in 2-15-1706.

*(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.*

~~(3)~~*(5)* "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

~~(4)~~*(6)* "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

~~(5)~~*(7)* "Creditor" means a person who, regularly or as a part of the person's business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

*(8) "Department" means the department of labor and industry provided for in 2-15-1701.*

~~(3)~~*(9)* "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

~~(7)~~*(10)* "Employee" means an individual employed by an employer.

~~(8)~~*(11)* "Employer" means an employer of one or more persons or an agent of the employer hut does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are availahle on a nonmembership basis.

HeinOnline -- 1997 vol. II 2329 1997

~~(9)~~*(12)* "Employment agency" means a person undertaking to procure employees or opportunities to work.

~~(10)~~*(13)* "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

~~(11)~~*(14)* "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

~~(12)~~*(15)* "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

~~(13)~~*(16)* "National origin" means ancestry.

*(17) (a) "Organization" means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.*

*(b) The term does not include a labor organization.*

~~(14)~~*(18)* "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, *organizations,* or labor organizations.

~~(15)~~*(19)* (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

~~(15)~~*(20)* (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

HeinOnline -- 1997 vol. II 2330 1997

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection ~~(16)~~ *(20)*, any lodge of a recognized national fraternal organization is considerod by its nature distinctly private.

~~(17) "Staff" or "commission staff" means the staff of the commission for human rights.~~"

**Scction 5.** Section 49-2-203, MCA, is amended to read:

"**49-2-203. Subpoena power.** (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter ~~either under investigation by the commission staff or~~ in question before the commission. ~~The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.~~

*(2) The department's staff may request that a subpoena relating to a matter under investigation be issued by the commissioner or the commissioner's authorized representative. The authorized representative may not be involved in enforcement of human rights. The commissioner may subpoena witnesses, take testimony under oath, administer oaths, and require the production, for examination, of books, papers, or other intangible evidence.*

*(3) A party may request subpoenas from the commissioner for the purposes provided in subsection (2).*

~~(2)~~*(4)* Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act."

**Section 6.** Section 49-2-204, MCA, is amended to read:

"**49-2-204. ~~Commission to adopt rules~~ *Rules.*** *(1)* The commission shall adopt procedural and suhstantive rules necessary to implement *the commission's responsibilities under* this chapter. Rulemaking procedures ~~shall~~ *must* comply with the requirements of the Montana Administrative Procedure Act. *At a minimum, the commission shall adopt as part of its procedural rules all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission may adopt the procedural provisions of Title 46 as it considers appropriate.*

*(2) The department shall adopt procedural and substantive rules necessary to implement the department's responsibilities under this chapter. Rules adopted under this chapter must comply with the Montana Administrative Procedure Act. For contested case hearings conducted pursuant to 49-2-505, the department shall adopt all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidenee.*"

**Section 7.** Section 49-2-501, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2331 1997

"**49-2-501. Filing complaints.** (1) A complaint may be filed *with the department* by ~~or on behalf of~~ any ~~person~~ *party* claiming to be aggrieved by any discriminatory practice prohibited by this chapter.

*(2) A complaint may be filed on behalf of a party claiming to be aggrieved by a discriminatory practice prohibited by this chapter if the person acting on behalf of the aggrieved party is the aggrieved party's guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative.*

*(3)* The complaint must be in the form of a written, verified complaint stating the name and address of the ~~person~~ *party*, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. ~~The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.~~

~~(2)~~*(4)* (a) Except as provided in 49-2-510 and subsection ~~(2)(b)~~ *(4)(b)* of this section, a complaint under this chapter must be filed with the ~~commission~~ *department* within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth ~~herein~~ *in this section* may not be considered by the commission *or the department*."

**Section 8.** Section 49-2-503, MCA, is amended to read:

"**49-2-503. Temporary relief by court order.** At any time after a complaint is filed under this chapter, a district court may, upon the application of *the commissioner or* ~~the commission or~~ the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions."

**Section 9.** Section 49-2-504, MCA, is amended to read:

"**49-2-504. Informal ~~settlement~~ *investigation and conciliation.*** *(1)(a)* The ~~commission staff~~ *department* shall informally investigate the matters set out in ~~a filed~~ *the* complaint promptly and impartially. If the ~~staff~~ *department* determines that the allegations are supported by ~~substantial~~ *a preponderance of the* evidence, it shall ~~immediately try to~~ *attempt to achieve a resolution of the complaint by conference, conciliation, and persuasion that, in addition to providing redress for the complaint, includes conditions that* eliminate the discriminatory practice ~~by conference, conciliation, and persuasion~~, *if any, identified in the investigation. The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is*

HeinOnline -- 1997 vol. II 2332 1997

*the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.*

*(b) If a complaint is filed relative to an employment-related complaint and if the commissioner decides that the inclusion of documents or information contained in the complaint would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information contained in the complaint. The written summary must include sufficient information to give maximum effect to the intent of this chapter.*

*(2) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.*

*(3) The department shall commence proceedings within 30 days after receipt of a complaint.*

*(4) The department shall make a finding regarding the merit or nonmerit of the complaint within 180 days after a complaint is filed, except that the department shall make the finding within 120 days after a complaint is filed under 49-2-305."*

**Section 10.** Section 49-2-505, MCA, is amended to read:

**"49-2-505. Contested case hearing.** (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the ~~staff~~ *department* shall ~~inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission~~ *hold a hearing on the complaint. The department shall serve notice of the hearing and a copy of the complaint on the parties.*

*(2) (a) If the parties mutually agree to permit the department to retain jurisdiction of the case under this chapter for a period of time that exceeds 12 months after the complaint was filed, then the parties shall stipulate to a schedule for proceedings to be established by the department.*

*(b) The department shall, not later than 395 days after the complaint was filed, set a date for an administrative hearing in the case.*

*(c) The case must be heard no later than 90 days after the date is set by the department. The department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good cause.*

~~(2)~~*(3) (a)* The hearing must he held hy the ~~commission~~ *department* in the county where the unlawful conduct is alleged to have occurred unless ~~the person,~~

~~institution, entity, or agency~~ *a party* charged in the complaint ~~or the commission~~ requests *and is granted* a change of venue for good cause shown. The case in support of the complaint may be presented before the ~~commission~~ *department* by ~~the staff,~~ the complainant~~,~~ or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the *applicable portions of the* Montana ~~Administrative Procedure Act except as provided in 49-2-508~~ *Rules of Civil Procedure as adopted by the department.*

*(b) Upon request of the hearings officer, the department may present evidence with regard to activity conducted. However, except in cases brought pursuant to 42 U.S.C. 3601, et seq., the department may not represent either party in a contested case hearing.*

*(3) A party may appeal a decision of the hearings officer to the commission. A party shall provide notice of its appeal to the commission, the department, and all parties within 10 business days of receipt of the notice of decision of the administrative hearing. The commission shall hear all appeals within 120 days of receipt of notice of appeal. The commission shall render a decision within 90 days of hearing the appeal.*

*(4) All hearings conducted under this section may, upon stipulation of the parties, be heard telephonically.*

~~(3)~~*(5)* The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

~~(4)~~*(6)* The prevailing party in a hearing under this section may bring an action in district court for ~~attorneys'~~ *attorney* fees. The court in its discretion may allow the prevailing party reasonable ~~attorneys'~~ *attorney* fees. An action under this section must comply with the Montana Rules of Civil Procedure."

**Section 11.** Section 49-2-506, MCA, is amended to read:

**"49-2-506. Procedure upon a finding of discrimination.** (1) If the commission *or the department, after a hearing,* finds that a ~~person, institution, entity, or agency~~ *party* against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission *or the department* shall order ~~him~~ *the* ~~or it~~ *party* to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) ~~Except as provided in 49-2-510, the~~ *Except as provided in 49-2-510, the* order may not require the payment of ~~any~~ punitive damages.

(3) Whenever a commission *or department* order or conciliation agreement requires inspection by the ~~commission staff~~ *department* for a period of time to

determine if the respondent is complying with that order or agreement, the period of time may not be more than ~~3 years~~ *1 year*."

**Section 12.** Section 49-2-508, MCA, is amended to read:

"**49-2-508. Enforcement of commission *or department* order *or conciliation agreement*.** If the ~~commission's~~ order *issued under 49-2-506* is not obeyed, ~~the commission staff or~~ *the commissioner or* a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's *or department's* order by any appropriate order. *The commissioner or a party may also commence a civil action in an appropriate district court for relief for a breach of a conciliation agreement.*"

**Section 13.** Section 49-2-509, MCA, is amended to read:

"**49-2-509. ~~Filing a~~ *Conclusion of* complaint ~~in~~ — *filing in* district court.** (1) Except as provided in subsection (2) ~~or with respect to complaints alleging a violation of 49-2-305~~, the ~~commission staff~~ *department* shall, at the request of either party, ~~issue a letter entitling the complainant to file a discrimination action in district court~~ *conclude the administrative proceedings* if:~~:~~

~~(a) the commission has not yet held a contested case hearing pursuant to 49-2-505~~

*(a) the department has completed its investigation in a complaint filed pursuant to 49-2-305; or*

*(b) 12 months have elapsed since the complaint was filed*~~; and~~

~~(b) 12 months have elapsed since the complaint was filed~~.

(2) The ~~commission~~ *department* ~~staff~~ may *not* refuse to ~~permit removal of a case to district court~~ *conclude the administrative proceedings* ~~if~~ *unless*:

~~(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;~~

~~(b)~~*(a)* the party requesting ~~removal~~ *the conclusion of the administrative proceedings* has waived the right to request ~~removal to~~ *filing in* the district court;

~~(c)~~*(b)* more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the ~~commission~~ *department* fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

~~(d)~~*(c)* the party requesting ~~removal~~ *conclusion of the administrative proceedings* has unsuccessfully attempted through court litigation to prevent the ~~commission staff~~ *department* from investigating the complaint.

(3) The ~~commission~~ *department* ~~staff may~~ *shall* dismiss a complaint filed under ~~49-2-501~~ *this chapter* and ~~allow~~ the complainant ~~to~~ *may* file a discrimination action in district court if:

(a) the commission *or the department* ~~staff determines that the commission~~ lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the ~~staff's~~ investigation of the complaint or fails to keep the ~~commission~~ *department* advised of changes of address; ~~or~~

(c) the ~~commission~~ *department* ~~staff~~ determines that the allegations of the complaint are not supported by ~~substantial~~ *a preponderance of the* evidence; *or*

*(d) the department determines that the commission or the department will not or cannot hold a hearing within 12 months after the filing of the complaint.*

(4) A decision of the ~~commission~~ *department* ~~staff~~ to dismiss a complaint *brought under this chapter* or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on ~~him~~ *the party*. The commission shall review the decision in informal proceedings under 2-4-604~~, except that 2-4-604(5) applies only to review of a refusal to permit removal~~. *A party may ask the district court to review a decision of the commission made under this section. The review must be de novo.*

(5) Within 90 days after receipt of a notice ~~of dismissal~~ under subsection *(1) or* (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may ~~petition~~ *commence a civil action in* the district court in the district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the ~~claimant~~ *complainant* fails to ~~petition~~ *commence a civil action in* the district court within 90 days after receipt of the letter, notice, or order issued by the commission ~~staff~~ *or the department*, the claim ~~shall be~~ *is* barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of *chapter 3 or* this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. ~~No other~~ *A* claim or request for relief based upon ~~such~~ *the* acts may *not* be entertained by a district court other than by the procedures specified in this chapter."

**Section 14.** Section 49-2-510, MCA, is amended to read:

**"49-2-510. Procedures and remedies for enforcement of housing discrimination laws.** (1) A complaint may be filed with the ~~commission~~ *department* by ~~or on behalf of~~ *or on behalf of* a ~~person~~ *party* claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form, *verified by the aggrieved party,* and must be filed with the ~~commission~~ *department* within ~~1 year~~ *180 days* after the alleged unlawful discriminatory practice occurred or was discovered.

(2) ~~(a) Except as provided in subsection (2)(b), if~~ *If* the *department, on appeal, or the* commission, in a hearing under 49-2-505, finds that a ~~person, institution, entity, or agency~~ *party* against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the *department or*

HeinOnline -- 1997 vol. II 2336 1997

*the* commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, ~~to vindicate the public interest,~~ *to vindicate the public interest,* assess a civil penalty:

~~(i)~~*(a)* in an amount not exceeding $10,000 if the respondent has not been ~~found~~ *adjudged in any prior judicial or formal administrative proceeding* to have committed any prior discriminatory housing practice in violation of 49-2-305; *and*

~~(ii)~~*(b)* in an amount not exceeding $25,000 if the respondent has been ~~found~~ *adjudged in any prior judicial or formal administrative proceedings* to have committed one ~~other~~ *or more similar* discriminatory housing ~~practice~~ *practices* in *repeated* violation of *a subsection of* 49-2-305 during the 5-year poriod ending on the date of the filing of the *written* complaint~~; and~~.

~~(iii) in an amount not exceeding $50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the date of the filing of the complaint.~~

~~(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and (2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.~~

(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the dato of the issuance of the order or, if the order is judicially reviewed, no later than 30 days after the order is ~~in substance~~ affirmed~~:~~

~~(a)~~ send copies of tbe findings of fact, the conclusions of law, and the order to the licensing or regulatory agency~~; and~~

~~(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent~~.

(4) (a) When a complaint is filed under 49-2-305, a complainant~~,~~ *or a* respondent~~, or aggrieved person on whose behalf the complaint was filed~~ may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The person making the election shall give notice to the ~~commission~~ *department* and to all ~~other~~ complainants and *other* respondents ~~to whom the complaint relates~~ *named in the complaint.* Witbin 30 days after the election is made, the ~~commission~~ *complainant, the commissioner, or the aggrieved party* ~~shall~~ *may* commence a civil action in an appropriate district court ~~on behalf of the aggrieved person if the commission staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the commission staff has made a finding that the allegations of the complaint are not supported by substantial evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved person with respect to the issues to be determined in a civil action brought by the commission staff may intervene~~

~~in the action~~ *on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence. If the department has made a finding that the allegations of the complaint are not supported by a preponderance of the evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to the issues to be determined in a civil action brought by the department may intervene in the action.*

(b) The ~~commission~~ *department* may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a).

(5) (a) An aggrieved ~~person~~ *party* may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved ~~person~~ *party* may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the ~~commission~~ *department* except as provided in subsection (5)(d). If the ~~commission~~ *department* has obtained a conciliation agreement with the consent of the aggrieved ~~person~~ *party*, an action may not be filed under this suhsection by the aggrieved ~~person~~ *party* regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission *or the department* may not continue administrative proceedings on a complaint after the ~~beginning of a trial~~ *filing* of a civil action commenced by the aggrieved party under this suhsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved ~~person~~ *party* may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission *or the department* has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant *and the respondent*; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the ~~applicant~~ *party* is financially unable to bear the costs of the civil action. *As in all actions brought in forma pauperis, the burden of showing lack of financial ability rests with the party claiming financial hardship.*

HeinOnline -- 1997 vol. II 2338 1997

~~(f) Upon timely application, the commission may intervene in a civil action brought under this subsection (5) if the commission certifies that the case is of general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under subsection (7).~~

(6) If the court finds that a ~~person, institution, entity, or agency~~ *party* against whom a complaint was filed under this section has *been adjudicated in a civil or formal administrative proceeding to have* engaged in a *similar* discriminatory practice in violation of *a subsection of* 49-2-305, the court may, ~~in addition to the other remedies and injunctive and other equitable relief provided under 49-2-506~~ *consistent with the provisions of subsection (2)*, award ~~punitive~~ *punitive* damages. The court may also award attorney fees to the *substantively* prevailing party.

~~(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance, the commission may commence a civil action in an appropriate district court. The commission may also commence a civil action in any appropriate district court for relief regarding breach of a conciliation agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the agreement.~~

~~(b) The commission may file a civil action under this subsection (7) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.~~

~~(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:~~

~~(i) in an amount not exceeding $50,000 for a first violation; and~~

~~(ii) in an amount not exceeding $100,000 for any subsequent violation.~~

~~(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.~~

~~(8)~~*(7) (a)* ~~Civil~~ *Except as provided in subsection (7)(b), all civil and administrative* penalties *and other revenue generated* under this ~~section must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement~~ *part must be deposited into the state's general fund.*

*(b) Damages or penalties, whether monetary or otherwise, may not inure to an organization unless the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved party."*

**Section 15. Enforcement.** (1) When a possible violation of this chapter comes to the attention of the department, the commissioner may initiate a complaint on behalf of the department. The complaint must be signed by the commissioner.

HeinOnline -- 1997 vol. II 2339 1997

(2) A person is not subject to penalties under this chapter if compliance with the provisions of this chapter would cause the person to violate the provisions of another state law.

**Section 16. Enforcement and remedies.** The procedures set forth in chapter 2, part 5, apply to complaints alleging a violation of this chapter.

**Section 17. Staff transfer.** The staff of the commission is transferred to the department. The staff is under the direction and control of the commissioner of labor and industry. The staff shall perform functions as directed and in accordance with the express and implied purposes of [this act]. The transfer of staff is subject to 2-15-131 through 2-15-137.

**Section 18. Repealer.** Sections 49-2-201, 49-2-502, 49-3-304, 49-3-305, 49-3-306, 49-3-307, 49-3-308, 49-3-309, 49-3-310, 49-3-311, and 49-3-312, MCA, are repealed.

**Section 19. Codification instructions.** (1) [Sections 1 and 15] are intended to he codified as an integral part of Title 49, chapter 2, part 2, and the provisions of Title 49, chapter 2, part 2, apply to [sections 1 and 15].

(2) [Section 16] is intended to be codified as an integral part of Title 49, chapter 3, part 3, and the provisions of Title 49, chapter 3, part 3, apply to [section 16].

**Section 20. Applicability — saving clanse.** [This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act]. [This act] applies to complaints or proceedings filed on or after [tbe effective date of this act].

**Section 21. Effective date.** [This act] is effective July 1, 1997.

Approved May 1, 1997

# CHAPTER NO. 468

[SB 382]

AN ACT GENERALLY REVISING PRIVATE SECURITIES LITIGATION LAWS; ESTABLISHING REQUIREMENTS FOR SECURITIES FRAUD ACTIONS; PROVIDING SANCTIONS FOR ABUSIVE LITIGATION; LIMITING DAMAGES; CREATING A SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Requirements for securities fraud actions — definition.** (1) In any private action arising under this part, if the plaintiff alleges that the defendant made an untrue statement or omitted a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, the complaint must specify each statement alleged to have been misleading and the reason or reasons why the statement is misleading. If an allegation regarding the statement or omission is made on

HeinOnline -- 1997 vol. II 2340 1997

information and belief, the complaint must state with particularity all facts on which that belief is based.

(2) In any private action arising under this part in which the plaintiff may recover money damages only on proof that the defendant acted with a particular state of mind, the complaint must, with respect to each act or omission alleged to violate this part, state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.

(3) In any private action arising under this part, the court shall on the motion of any defendant, dismiss the complaint if the requirements of subsections (1) and (2) are not met.

(4) (a) In any private action arising under this part, all discovery and other proceedings must be stayed during the pendency of any motion to dismiss unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(b) During the pendency of any stay of discovery pursuant to this subsection (4), unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of the party and that are relevant to the allegations as if they were the subject of a continuing request for production of documents from an opposing party under the Montana Rules of Civil Procedure.

(5) A party aggrieved by the willful failure of an opposing party to comply with subsection (4) may apply to the court for an order awarding appropriate sanctions.

(6) In any private action arising under this part, the plaintiff has the burden of proving that the act or omission of the defendant alleged to violate this title caused the loss for which the plaintiff seeks to recover damages.

(7) As used in [sections 1 through 9], "private action arising under this part" means an action against a person referred to in [section 5(2)].

**Section 2. Sanctions.** (1) In any private action arising under this part, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11 of the Montana Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

(2) If the court makes a finding under subsection (1) that a party or attorney violated any requirement of Rule 11 of the Montana Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions on the party or attorney in accordance with Rule 11. Prior to making a finding that any party or attorney has violated Rule 11, the court shall give the party or attorney notice and an opportunity to respond.

(3) (a) Subject to subsections (3)(b) and (3)(c), for the purposes of subsection (2), the court shall adopt a presumption that the appropriate sanction:

HeinOnline -- 1997 vol. II 2341 1997

(i) for failure of any responsive pleading or dispositive motion to comply with any requirement of Rule 11 is an award to the opposing party of the reasonable attorney fees and other expenses incurred as a direct result of the violation; and

(ii) for substantial failure of any complaint to comply with any requirement of Rule 11 is an award to the opposing party of the reasonable attorney fees and other expenses incurred in the action.

(b) The presumption described in subsection (3)(a) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that:

(i) the award of attorney fees and other expenses will impose an unreasonable burden on that party or attorney and would be unjust and the failure to make an award would not impose a greater burden on the party in whose favor sanctions are to be imposed; or

(ii) the violation of Rule 11 was de minimis.

(c) If the party or attorney against whom sanctions are to be imposed meets its burden under subsection (3)(b), the court shall award the sanctions that the court considers appropriate pursuant to Rule 11.

**Section 3. Defendant's right to written interrogatories.** In any private action arising under this part in which the plaintiff may recover money damages, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each defendant's state of mind at the time the alleged violation occurred.

**Section 4. Limitation on damages.** (1) The provisions of this section limit any damages otherwise available under this part.

(2) Except as provided in subsection (3), in any private action arising under this part in which the plaintiff seeks to establish damages by reference to the market price of a security that is traded in a national securities market, the award of damages to the plaintiff may not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated to the market.

(3) In any private action arising under this part in which the plaintiff seeks to establish damages by reference to the market price of a security that is traded on a national securities market, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in subsection (2), the plaintiff's damages may not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.

(4) For purposes of this section, the mean trading price of a security must be an average of the daily trading price of that security, determined as of the close of the market each day during the 90-day period referred to in subsection (2).

HeinOnline -- 1997 vol. II 2342 1997

**Section 5. Applicability of safe harbor for forward-looking statements.** (1) For the purposes of this section, the following definitions apply:

(a) "Forward-looking statement" means:

(i) a statement containing a projection of revenue; income per share, including income loss; earnings per share, including earnings loss; capital expenditures; dividends; capital structure; or other financial items;

(ii) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

(iii) a statement of future economic performance, including any statement contained in a discussion and analysis of financial condition by the management or in the results of operations;

(iv) any statement of the assumptions underlying or relating to any statement described in subsection (1)(a)(i), (1)(a)(ii), or (1)(a)(iii);

(v) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or

(vi) a statement containing a projection or estimate of other items as may be specified by rule or regulation of the commissioner.

(b) "Going private transaction" has the meaning given that term under the rules or regulations of the United States securities and exchange commission issued pursuant to section 13(e) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(e).

(c) "Investment company" has the same meaning as in section 3(a) of the federal Investment Company Act of 1940, 15 U.S.C. 80a-3(a).

(d) (i) "Issuer" has the meaning provided in 30-10-103.

(ii) The term does not include a broker-dealer as defined in 30-10-103.

(e) "Penny stock" has the same meaning as in section 3(a)(51) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(51), and the rules and regulations or orders issued pursuant to that section.

(f) "Person acting on behalf of an issuer" means an officer, director, or employee of the issuer.

(g) The terms "blank check company", "direct participation investment program", "executive officer of an entity", "limited liability company", "partnership", and "rollup transaction" have the meanings given those terms by rule or regulation of the commissioner.

(2) This section applies only to a forward-looking statement made by:

(a) an issuer that, at the time that the statement is made, is subject to the reporting requirements of section (13)(a) or (15)(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) or 15 U.S.C. 78o(d);

HeinOnline -- 1997 vol. II 2343 1997

(b) a person acting on behalf of an issuer subject to the provisions of subsection (2)(a);

(c) an outside reviewer retained by an issuer subject to the provisions of subsection (2)(a) making a statement on behalf of that issuer; or

(d) an underwriter, with respect to information provided by an issuer subject to the provisions of subsection (2)(a) or information derived from information provided by that issuer.

(3) Except to the extent otherwise specifically provided by rule, regulation, or order of the securities and exchange commission, this section does not apply to a forward-looking statement:

(a) that is made with respect to the business or operations of the issuer, if the issuer:

(i) during the 3-year period preceding the date on which the statement was first made:

(A) was convicted of any felony or misdemeanor described in section 15(b)(4)(B)(i) through (iv) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(B), or was convicted under 30-10-306;

(B) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that:

(I) prohibits future violations of the antifraud provisions of state or federal securities laws;

(II) requires that the issuer cease and desist from violating the antifraud provisions of state or federal securities laws; or

(III) determines that the issuer violated the antifraud provisions of stato or federal securities laws;

(ii) makes the forward-looking statement in connection with an offering of securities by a blank check company;

(iii) issues penny stock;

(iv) makes the forward-looking statement in connection with a rollup transaction; or

(v) makes the forward-looking statement in connection with a going private transaction; or

(b) that is:

(i) included in a financial statement prepared in accordance with gonerally accepted accounting principles;

(ii) contained in a registration statement of, or otherwise issued by, an investment company;

(iii) made in connection with a tender offer;

HeinOnline -- 1997 vol. II 2344 1997

(iv) made in connection with an initial public offering;

(v) made in connection with an offering by, or relating to the operations of, a partnership, a limited liability company, or a direct participation investment program; or

(vi) made in a disclosure of beneficial ownership in a report required to be filed with tbe United States securities and exchange commission pursuant to section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d).

(4) (a) Except as provided in subsection (3), in any private action arising under this part that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (2) is not liahle with respect to any forward-looking statement, whether written or oral, if and to the extent that:

(i) the forward-looking statement is identified as a forward-looking statement and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement or is immaterial; or

(ii) the plaintiff fails to prove that the forward-looking statement:

(A) if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or

(B) if made by a business entity, was made by or with the approval of an executive officer of that entity and made or approved by that officer with actual knowledge by that officer tbat the statement was false or misleading.

(b) In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 13(a) or section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) or 15 U.S.C. 78o(d) or by a person acting on behalf of the issuer, the requirement in subsection (4)(a) must be considered satisfied under the following circumstances:

(i) if the oral forward-looking statement is accompanied by a cautionary statement that the particular oral statement is a forward-looking statement and that the actual results could differ materially from those projected in the forward-looking statement; and

(ii) if the oral forward-looking statement is accompanied by an oral statement tbat additional information concerning factors that could cause actual results to differ materially from those in the forward-looking statement is contained in a readily available written document or portion of the written document;

(iii) if the accompanying oral statement referred to in subsection (4)(b)(ii) identifies the document or portion of the document that contains the additional information about those factors relating to the forward-looking statement; and

(iv) if the information contained in that written document is a cautionary statement that satisfies the standard established in subsection (4)(a).

(c) Any document filed with the commissioner or with the securities and exchange commission or generally disseminated must be considered to he readily available for purposes of this section.

HeinOnline -- 1997 vol. II 2345 1997

(5) This section does not impose upon any person a duty to update a forward-looking statement.

(6) On any motion to dismiss based on subsection (4)(a), the court shall consider:

(a) any statement cited in the complaint; and

(b) any cautionary statement accompanying the forward-looking statement that is not subject to material dispute and that is cited by the defendant.

(7) In any private action arising under this part, the court shall stay discovery, other than discovery that is specifically directed to the applicability of the exemption provided for in this section, during the pendency of any motion hy a defendant for summary judgment that is based on the grounds that:

(a) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

(b) the exemption provided for in this section precludes a claim for relief.

**Seetion 6. Prohibition of referral fees.** A broker, dealer, or person associated with a broker or dealer, may not solicit or accept, directly or indirectly, remuneration for assisting an attorney in obtaining tbe representation of any person in any private action under this part or under the Securities Act of 1933, 15 U.S.C. 77a, et seq.

**Section 7. Prosecution of persons aiding violations.** For purposes of any action brought by the commissioner under 30-10-304, 30-10-305, or 30-10-306, for violations of 30-10-301 through 30-10-303, any person that knowingly provides substantial assistance to another person in violation of a provision of this part or of any rule or regulation issued under this part must be considered to be in violation of that provision to the same extent as tlie person to wbom the assistance is provided.

**Section 8. Loss eansation.** In any private action arising under this part, if any portion or all of the amount recoverable represents other than the depreciation in value of the subject security resulting from a part of the prospectus or oral communication not being true or omitting to state a material fact required to be stated in the prospectus or oral communication or necessary to make the statement not misleading, then that portion or amount is not recoverable with respect to the liability of that person.

**Section 9. Construetion.** [Sections 1 through 8] may not be considered to create or ratify any implied private right of action or to prevent the commissioner, by rule or regulation, from restricting or otherwise regulating private actions under Montana securities laws.

**Seetion 10. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 30, chapter 10, part 3, and the provisions of Title 30, chapter 10, part 3, apply to [sections 1 through 9].

**Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [tbis act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from tbe invalid applications.

HeinOnline -- 1997 vol. II 2346 1997

**Section 12. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 1997

# CHAPTER NO. 469

[HB 5]

AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1999; APPROPRIATING A PORTION OF THE BALANCE IN THE CULTURAL TRUST FUND FOR THE ACQUISITION, RENOVATION, AND PRESERVATION OF HISTORIC PROPERTIES; REVISING THE ALLOCATION OF COAL SEVERANCE TAXES TO THE CULTURAL TRUST FUND; ALLOCATING COAL SEVERANCE TAX REVENUE FOR CULTURAL AND AESTHETIC PROJECTS AND TO PROVIDE DEBT SERVICE ON BONDS USED TO FINANCE THE PROJECTS; ESTABLISHING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; AUTHORIZING THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION TO ADMINISTER PROPERTIES AT VIRGINIA CITY AND NEVADA CITY AND OTHER CULTURALLY AND HISTORICALLY SIGNIFICANT PROPERTIES; CREATING A MONTANA HERITAGE PRESERVATION AND DEVELOPMENT ACCOUNT; ALLOCATING A PORTION OF THE LODGING FACILITY USE TAX TO THE ACCOUNT; STATUTORILY APPROPRIATING THE ACCOUNT; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AMENDING SECTIONS 15-35-108, 15-65-121, AND 17-7-502, MCA; AMENDING SECTION 6, CHAPTER 547, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** For the purposes of [sections 1 through 8], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 8].

(2) "LRBP" means the long-range building program account in the capital projects fund type.

(3) "Other funding sources" means money other than LRBP money, including special revenue fund money, that accrues to an agency under the provisions of law.

**Section 2. Capital projects appropriations.** (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

HeinOnline -- 1997 vol. II 2347 1997

| Agency/Project | LRBP | | Other Funding Sources |
|---|---|---|---|
| DEPARTMENT OF ADMINISTRATION | | | |
| Repair Limestone on Museum and Repair Masonry on Other Capitol Complex Buildings | $300,000 | | |
| Roof Repair and Replacement, Capitol Complex | 279,000 | | |
| Hazardous Materials Mitigation, Statewide | 720,000 | | |
| State Building Energy Retrofit, Statewide | | $1,000,000 | Nonstate State Special Revenue |
| Historic Restoration, Montana State Capitol | 100,000 | | |
| Health Safety/Code Compliance, Statewide | 408,000 | | |
| DEPARTMENT OF AGRICULTURE | | | |
| Modify State Grain Laboratory to Comply With ADA Standards | 40,000 | | |
| DEPARTMENT OF CORRECTIONS | | | |
| Secure Female Facility and Renovations, MYAP, Boulder | 1,846,580 | | |
| Xanthopoulos Building Renovations, MSP, Warm Springs | 600,000 | | |
| MCE Improvements/Expansion, MSP, Warm Springs | | 400,000 | Proprietary |
| One Regional Correctional Facility | | 3,251,547 | Federal Special Revenue |
| 192-Bed Expansion, MSP, Deer Lodge | | 6,560,000 | Federal Special Revenue |
| Spiritual Activity Center, WCC Authority Only | | 350,000 | Donations |
| DEPARTMENT OF FISH, WILDLIFE, AND PARKS | | | |
| Secure Water Supply, Giant Springs Trout Hatchery | | 553,847<br>200,000 | State Special Revenue<br>Federal Special Revenue |
| Bluewater Hatchery Renovation, Phase III | | 3,316,319 | State Special Revenue |
| Construct Parks Interpretive Center | | 950,000 | State Special Revenue |
| Secure Water Supply, Big Springs Trout Hatchery | | 1,620,451 | State Special Revenue |
| DEPARTMENT OF LABOR | | | |
| Install Elevator, Missoula Job Service | | 23,490<br>63,510 | State Special Revenue<br>Federal Special Revenue |
| DEPARTMENT OF MILITARY AFFAIRS | | | |
| Demolition of Poplar Armory | 150,000 | | |
| Furnace Replacement, Womack Armory | 275,000 | | |
| Replace Roof, OMS #3, Helena | 30,000 | 00,000 | Federal Special Revenue |
| Army Aviation Support Facility Maintenance | 39,578 | | |
| Bozeman Armory ADA Modifications | 50,000 | | |
| Armed Forces Reserve Center, Billings | | 3,000,000 | Federal Special Revenue |

| | | | |
|---|---|---|---|
| MONTANA UNIVERSITY SYSTEM | | | |
| Code Compliance/Disability Access, University System | 2,900,000 | | |
| Roof Replacements, University System | 971,500 | | |
| Replace Primary Electrical Distribution, MSU-Billings | | 356,400 | Auxiliary |
| Utility Tunnel Extension, MSU-Bozeman | | 2,510,219 | Auxiliary |
| Repair/Replace Primary Electrical Distribution, MSU-Northern | | 122,000 | Auxiliary |
| Rural Technological Center Planning, UM-Dillon | 75,000 | | |
| Chemistry Building Renovation, UM-Montana Tech | | 750,000 | Donations |
| DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION | | | |
| Maintenance and Improvement Projects, Statewide | 200,000 | | |
| Fire Cache/Garage, Plains Unit | 175,000 | | |
| DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES | | | |
| Miscellaneous Maintenance and Improvements, Montana Veterans' Home | | 406,000 | State Special Revenue |
| DEPARTMENT OF TRANSPORTATION | | | |
| Equipment Buildings, Statewide | | 1,910,000 | Highways State Special Revenue |
| DEPARTMENT OF COMMERCE | | | |
| Fort Peck Interpretive Center Grant | | 45,000 | State Special Revenue |

(2) If any bonded funding authorized in House Bill No. 14 for the critical project requirements portion of the capitol restoration project is not needed because of a reduction in costs for the approved project, funding may be used for historic restoration of the Montana state capitol.

(3) (a) The $600,000 appropriation and authority for the Xanthopoulos building renovation project at MSP, Warm Springs, is contingent on the construction of a new state hospital at Warm Springs.

(b) (i) The department of corrections may use prison staff for the purpose of making security enhancements and upgrades to the Xanthopoulos building on the Montana state hospital campus as authorized hy the legislature.

(ii) The department of administration may exempt the Xanthopoulos building project from the provisions of any applicable Montana law relating to public bidding and construction contracts.

(iii) Prison staff engaged in the Xanthopoulos building project are governed by the staff's existing employment agreements and are not eligible for additional compensation or benefits not currently provided by the existing employment agreements.

HeinOnline -- 1997 vol. II 2349 1997

(4) In regard to the construct parks interpretive center project at Ulm Pishkun, it is the intent of the 55th legislature that the sovereign nations be offered the opportunity for economic benefits, for example the option to sell souvenirs.

(5) The spiritual activity center project for the women's correctional system is exempt from the bidding requirements and the architectural and engineering review and approval requirements in Title 18.

**Seetion 3. Land acquisition appropriation.** The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreement:

| Agency/Project | LRBP | Other Funding Sources |
|---|---|---|
| Habitat Montana | $6,200,000 | State Special Revenue |
| Fishing Access Site Acquisition, Statewide | 466,000 | State Special Revenue |
| Bighorn Sheep Program | 330,000 | State Special Revenue |

**Section 4. Capital improvemcnts.** (1) (a) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities:

| Agency/Project | LRBP | Other Funding Sources |
|---|---|---|
| Cultural and Historic Parks Improvements | $ 535,000 | State Special Revenue |
| Future Fisheries Improvement Program | 1,470,000 | State Special Revenue |
| Miles City Hatchery Repairs | 815,000 | State Special Revenue |
| Capitol Complex Irrigation Improvements | 225,000 | Capitol Land Grant Revenue |
| Road Improvements, State Parks | 1,000,000 | State Special Revenue |
| Water-Based Recreation Parks Program | 392,500<br>350,000 | State Special Revenue<br>Federal Special Revenue |
| Administrative Facilities Repairs and Improvements | 687,000 | State Special Revenue |
| Wildlife Habitat Maintenance | 825,000<br>100,000 | State Special Revenue<br>Federal Special Revenue |
| Fishing Access Site Protection, Statewide | 650,000<br>50,000 | State Special Revenue<br>Federal Special Revenue |
| Waterfowl Stamp Protection | 165,000 | State Special Revenue |
| Fishing Access Site Maintenance, Statewide | 275,000 | State Special Revenue |

(b) The total amount authorized for cultural and historic parks improvements is $690,000. The reduced appropriation reflects $155,000 in lodging facilities tax revenue that is allocated to the department of fish, wildlife, and parks and that is statutorily appropriated under 15-65-121 for maintenance of facilities in state parks.

(c) Of the $1,470,000 appropriated to the department of fish, wildlife, and parks for the future fisheries improvement program, $75,000 is to be used for the PN bridge and campground - streambank erosion control project sponsored by

Chouteau and Fergus Counties, and $15,000 is granted to the city of Deer Lodge for its wastewater effluent land application project.

(d) The appropriation of $225,000 in capitol land grant revenue to the department of fish, wildlife, and parks is the last priority for use of these funds during the 1999 biennium. If necessary, the project may be phased in as capitol land grant revenue becomes available.

(e) The department of fish, wildlife, and parks shall submit to the legislature the report required by 23-1-110 regarding any money appropriated in [sections 1 through 8] and spent to improve or develop state parks or fishing access sites. Prior to the submission of the proposed 2001 biennium capital improvement budget for the department of fish, wildlife, and parks to the legislative fiscal analyst, as provided in 17-7-122, the agency shall conduct a public meeting or open house in the appropriate department of fish, wildlife, and parks' administrative region for any anticipated capital development project in that region or shall seek comment on the site of the project. The department of fish, wildlife, and parks shall report to the long-range building appropriations subcommittee on the outcome of the public involvement.

(2) The following money is appropriated to the department of military affairs in the indicated amounts for the purpose of making capital improvements to statewide facilities:

| Agency/Project | LRBP | | Other Funding Sources |
|---|---|---|---|
| Federal Spending Authority | | $ 800,000 | Federal Special Revenue |
| Eastern Montana State Veterans' Cemetery, Phase I | | 52,500 | State Special Revenue |
| | | 52,500 | Federal Special Revenue |
| Track Parking, Fort Harrison | | 500,000 | Federal Special Revenue |
| CSMS, Fort Harrison | | 75,000 | Federal Special Revenue |

(3) (a) The following money is appropriated to Montana state university in the indicated amount for the purpose of making capital improvements to campus facilities:

| Agency/Project | LRBP | Other Funding Sources |
|---|---|---|
| Authority Only Projects, Montana State University | $19,000,000 | Academic Building Fees, Indirect Cost Recovery, Federal, Private, Plant Funds |

(b) It is the intent of the 55th legislature that 100% of all future operations and maintenance costs for the classroom-laboratory building authorized in the amount of $19,000,000 at MSU-Bozeman be funded by Montana state university and that none be funded with general fund money.

(4) (a) The following money is appropriated to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities:

HeinOnline -- 1997 vol. II 2351 1997

| Agency/Project | LRBP | Other Funding Sources |
|---|---|---|
| Authority Only Projects, University of Montana | $4,050,000 | Federal, Trust, Auxiliary, Plant Funds, and Donations |
| Renovate Main Hall Auditorium, UM-Dillon | 1,250,000 | Donations |

(b) It is the intent of the 55th legislature that no student building fees be increased to fund the $4,050,000 in authority only projects approved for the university of Montana.

(5) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements to statewide facilities:

| Agency/Project | LRBP | Other Funding Sources |
|---|---|---|
| Repair, Maintenance, and Minor Construction Projects, Statewide | $1,415,000 | Highways State Special Revenue |

**Section 5. Transfer of funds.** The department of fish, wildlife, and parks is authorized to transfer money appropriated in [sections 1 through 4] among fund types.

**Section 6. Planning and design.** The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

**Section 7. Capital projects — contingent funds.** If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 1 through 4] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 1998-99 long-range building program presented to the 55th legislature.

**Section 8. Legislative consent.** The appropriations authorized in [sections 1 through 7] constitute legislative consent for the capital projects contained in [sections 1 through 7] within the meaning of 18-2-102.

**Section 9. Appropriation for purchase and maintenance of Virginia City and Nevada City assets.** (1) In addition to the general obligation bonds authorized in House Bill No. 14 for the purchase of Virginia City and Nevada City property, $3,912,500 from the balance in the cultural trust fund is appropriated to the Montana historical society for the acquisition, renovation, and preservation of real and personal property owned by Bovey restorations, incorporated, and the historic landmark society of Montana in the communities

HeinOnline -- 1997 vol. II 2352 1997

known as Virginia City and Nevada City. The Montana historical society may deliver the purchase price to an intermediary designated by the seller, in the seller's sole discretion. In addition, the Montana historical society shall comply with the terms of the option agreement entered into by the state of Montana and the owners of the property. The Montana historical society shall cooperate fully with the seller in executing any documents reasonably necessary to effectuate an exchange of the property and take other steps necessary to carry out the seller's intent to complete a tax-deferred exchange under section 1031 of the Internal Revenue Code, 26 U.S.C. 1031.

(2) Immediately upon acquisition, the Montana state capitol artifacts located in Virginia City and Nevada City must be transferred to the department of administration for use in historic restoration of the state capitol.

**Section 10.** Section 15-35-108, MCA, is amended to read:

**"15-35-108. Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must he deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided hy law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account estahlished in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to be allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Any cash balance that is unspent at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) ~~The~~ *Beginning July 1, 1997, and ending June 30, 1999, the* amount of ~~0.63%~~ *0.87%* must be allocated to ~~a nonexpendable trust~~ *an account in the state special revenue* fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. *Beginning July 1, 1999, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects.* ~~Income from this trust fund must be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.~~ *Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.*

HeinOnline -- 1997 vol. II 2353 1997

*(7) Beginning July 1, 1997, and ending June 30, 2007, the amount of 1.3% must be allocated to the long-range building program fund in the debt service fund type to fund the bonds issued for the purchase of the Virginia City and Nevada City property.*

~~(7)~~*(8)* All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

**Section 11.** Section 15-65-121, MCA, is amended to read:

**"15-65-121. Distribution of tax proceeds — general fund loan authority.** (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund. *The amount of $400,000 each year must be deposited in the Montana heritage preservation and development account provided for in [section 17]. On July 1, 1997, the amount of $45,000 is transferred to the department of commerce for purposes* of a grant to the Fort Peck interpretive center. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the *Montana heritage preservation and development account or the* general fund is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where

HeinOnline -- 1997 vol. II 2354 1997

the city or consolidated city-county is located, to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

**Section 12.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; *[section 17];* 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7,

HeinOnline -- 1997 vol. II 2355 1997

Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 13. Montana heritage preservation and development commission.** (1) There is a Montana heritage preservation and development commission. The commission is attached to the Montana historical society for administrative purposes. The commission consists of 11 members. The members shall broadly represent the state. Seven members must be appointed by the governor, one member must be appointed by the president of the senate, and one member must be appointed by the speaker of the house. The director of the Montana historical society and the director of the department of fish, wildlife, and parks shall serve as members.

(2) Of the members appointed by the governor:

(a) one member must have extensive experience in managing facilities that cater to the needs of tourists;

(b) one member must have experience in community planning;

(c) one member must have experience in historic preservation;

(d) two members must have broad experience in business;

(e) one member must be a member of the tourism advisory council established in 2-15-1816; and

(f) one member must be a Montana historian.

(3) Except for the initial appointments, members appointed by the governor shall serve 3-year terms. Legislative appointees shall serve 2-year terms. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

(4) The commission may employ an executive director who has general responsibility for the selection and management of commission staff, developing recommendations for the purchase of property, and overseeing the management of acquired property and a curator who is responsible for the display and preservation of the acquired property. The commission shall prescribe the duties and annual salary of the executive director and the curator.

**Section 14. Montana heritage preservation and development commission — initial appointments.** The initial appointments to the commission must be for the following terms:

(1) the member with experience managing facilities that cater to the needs of tourists, 3 years;

(2) the member with experience in community planning, 4 years;

(3) the member with experience in historic preservation, 5 years;

(4) one member with broad experience in business, 3 years, and one member, 4 years;

(5) the tourism advisory council member, 5 years;

HeinOnline -- 1997 vol. II 2356 1997

(6) the Montana historian, 5 years; and

(7) the legislative appointments, 2 years.

**Section 15. Purpose.** The purpose of [sections 13 and 15 through 17] is to acquire, on behalf of the state, properties that possess outstanding historical value, display exceptional qualities worth preserving, are genuinely representative of the state's culture and history, and demonstrate the ability to become economically self-supporting. The Montana heritage preservation and development commission shall achieve this purpose by purchasing fee title interests in real and personal property.

**Section 16. Powers of commission — contracts — rules.** (1) (a) The Montana heritage preservation and development commission may contract with private organizations to assist in carrying out the purpose of [section 15]. The term of a contract may not exceed 20 years.

(b) Notwithstanding the provisions of Title 18, the contracts may be let by direct negetiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

(f) Management activities must be undertaken to encourage the profitable operation of properties.

(g) Contracts may include the lease of property managed by the commission. Provisions for the renewal of a contract must be contained in the contract.

(2) The commission may not contract for the construction of a building, as defined in 18-2-101, in excess of $200,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks.

(3) (a) Subject to subsection (3)(b), the commission, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the commission.

(b) (i) Until the balance in the cultural and aesthetic trust reaches $7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the cultural and aesthetic trust.

(ii) Once the balance in the cultural and aesthetic trust reaches $7,750,000, the commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

HeinOnline -- 1997 vol. II 2357 1997

(c) It is the intent of the 55th legislature that no general fund money be provided for the operation and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature.

(4) The commission may solicit funds from other sources for the purchase, management, and operation of properties.

(5) The commission shall adopt rules establishing a policy for making acquisitions. With respect to each acquisition, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become self-supporting;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the acquisition will create significant social and economic impacts to affected local governments and the state; and

(f) other matters that the commission considers necessary or appropriate.

(6) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition before a final decision to acquire a property is made. The commission shall approve proposals for acquisition and recommend the approved proposal to the board of land commissioners.

(7) Prior to the convening of each regular session, the commission shall report to the governor and the legislature concerning financial activities during the prior biennium.

**Section 17. Montana heritage preservation and development account.** (1) There is a Montana heritage preservation and development account in the state special revenue fund.

(2) Money deposited in the account must be used for:

(a) the purchase of properties in Virginia City and Nevada City;

(b) restoration, maintenance, and operation of historic properties in Virginia City and Nevada City; and

(c) purchasing, restoring, and maintaining historically significant properties in Montana that are in need of preservation.

(3) The account is statutorily appropriated, as provided in 17-7-502, to the Montana heritage preservation and development commission to be used as provided in this section.

**Section 18. Codification instruction.** [Sections 13 and 15 through 17] are intended to be codified as an integral part of Title 22, chapter 3, and the provisions of Title 22, chapter 3, apply to [sections 13 and 15 through 17].

HeinOnline -- 1997 vol. II 2358 1997

**Section 19.** Section 6, Chapter 547, Laws of 1995, is amended to read:

The appropriations to the department of natural resources and conservation on page 3194, Laws of 1995, are amended to read:

"Tongue River Dam Rehabilitation ~~$3,500,000~~

*$2,868,473*"

~~**Section 20. Transfer of funds.** Any general fund reversions for fiscal year 1997 in excess of $15.9 million and any general fund reversions for fiscal year 1998 in excess of $5 million must be transferred to the long-range building program account to be used to fund capital projects.~~ (Governor's item veto.)

**Section 21. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 22. Coordination.** If House Bill No. 166 and [this act] are both passed and approved and if both bills amend 15-65-121, then the amendments to 15-65-121 in House Bill No. 166 are void.

**Section 23. Effective dates — termination.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 10] is effective July 1, 1997.

(3) [Section 11] terminates July 1, 2001.

Approved May 1, 1997

# CHAPTER NO. 470

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; AND APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement.** (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by this section. Money must be disbursed in priority order, first to projects covered under subsection (2), second to the project listed in subsection (4), and third to the projects listed in subsection (3). The Montana arts council shall disburse money to projects authorized by this section through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to contingencies, if any, listed with the appropriation in subsection (4).

(2) There is appropriated to the Montana historical society $15,000 for the biennium ending July 1, 1999, for care and conservation of capitol complex artwork. This appropriation is recommended to be repeated for two successive

HeinOnline -- 1997 vol. II 2359 1997

bienniums and to be reviewed in fiscal year 2001 to determine if it should continue.

(3) There is appropriated to the Montana historical society $95,000 for the biennium ending July 1, 1999, for capitol stained glass restoration. It is the legislature's intent that this $95,000 appropriation be used only to renovate and restore artifacts received by the state of Montana that were previously removed from the capitol building.

(4) The following projects are approved and amounts appropriated to the Montana arts council for the hiennium ending June 30, 1999, from the cultural and aesthetic projects account:

(a) Special Projects - $4,500 or Less:

| | |
|---|---|
| Yellowstone Ballet Company - Romeo and Juliet and Western Women Ballet Production | $4,436 |
| MT Preservation Alliance - Statewide Technical Assistance Program | 4,329 |
| Granite County Museum and Cultural Center -Staff Salaries and Historic Preservation | 4,000 |
| SunCreek Films - SunCreek Film Festival Series | 2,500 |
| Northern Showcase - Northern Showcase Performing Arts Series | 4,000 |
| MT Five Rivers Film Festival - Montana Five Rivers Film Festival | 2,000 |
| Northern Heights Tenants Assoc. - Artist Residency | 4,000 |
| MT Storytelling Conference - Storytelling Conference | 4,000 |
| Council for the Arts, Inc., Lincoln -Performing Arts Series Artist Fee Support | 2,500 |
| The Country Grain Elevator Historical Society - Newsletter to Promote Conservation of Grain Elevators | 2,000 |
| MT Chamber Music Festival - Montana Chamber Music Festival Outreach | 0 |
| MT State Theater Association - Operating Support | 0 |

(b) Special Projects:

| | |
|---|---|
| MT Committee for Humanities - Speakers' Bureau Program Support | $40,800 |
| Liberty Village Arts Center and Gallery -Phillip Aaberg Artist in Residency | 15,000 |
| MT Historical Society Press - MT Mainstreets-Guidebooks to Historic MT Communities | 25,000 |

| | |
|---|---|
| Carbon County Historical Society - Peaks to Plains Initiative | 20,000 |
| The Montana Repertory Theatre - Arts Education Coordinator/Program Development | 28,861 |
| Western Heritage Center - Explore the Yellowstone Exhibit and Education Activities | 28,000 |
| Yellowstone Art Center - Opening the Museum: The Montana Collection | 28,000 |
| Virginia City Preservation Alliance -Curriculum Guide Development and School Services | 5,400 |
| MT Performing Arts Consortium - Expansion of Rural Regrant Program | 40,000 |
| MT Arts Foundation - Operational Support and Rural Community Regrant | 40,000 |
| Alberta Bair Theater - Operating Support | 14,000 |
| Missoula Children's Theatre - Rural Montana Tour Project | 30,000 |
| Native Voices - Artistic/Technical Media Training for Native Americans | 25,000 |
| H. Earl Clack Museum - Museum Learning Center and Expansion of Exhibit | 14,000 |
| Little Rockies Arts Association - Executive Director Salary Support | 7,000 |
| Butte Symphony Orchestra - SW MT Youth Orch./Butte Sym. Orch./Mgr. to Half Time | 6,000 |
| Hockaday Center for the Arts - Hockaday Center for the Arts Education Program | 20,000 |
| Great Falls Symphony - Ensemble Outreach | 12,000 |
| Livingston Depot Foundation - Museum Promotion Thru Tours and Educational Outreach | 14,000 |
| Young Audiences of Western Montana - Tour Support | 11,000 |
| Billings Preservation Society, Inc. -Education Director Position Support | 6,000 |
| Glacier Orchestra and Chorale - Glacier Orchestra and Chorale Artistic Support Project | 18,000 |
| Missoula Community Access TV - The Montana Media Arts in Education Project | 15,000 |
| Missoula Symphony Association - Missoula Symphony Orchestra Educational Outreach | 5,050 |

HeinOnline -- 1997 vol. II 2361 1997

| | |
|---|---|
| MT Hist. Soc./Library and Archives - Process and Preserve Historical State Medical Records<br>Contingency: The privacy of persons in records must be maintained. | 17,000 |
| Southwest MT Arts Council - Salary Support and Marketing Support | 7,000 |
| UM/Broadcast Media Center - U of M Broadcast Media Center Cultural Productions | 23,000 |
| Bozeman Symphony Orchestra - BSO Outreach Recording Project | 4,000 |
| Center for Native American Studies - Native American Awareness Week 1998 | 4,000 |
| MT Indian Contemporary Arts - NPN Artist Residencies and Annual Symposium | 8,000 |
| Very Special Arts Montana - Governor's Art Show - Touring Exhibit | 12,000 |
| Grandstreet Theatre - Theatre School Director Salary Support | 7,000 |
| MSU-Billings Inter-Tribal Indian Club - 1998 and 1999 MSU Annual Inter-Tribal PowWows | 7,000 |
| Helena Symphony Society - Cascade String Quartet Residency | 6,950 |
| The Helena Art Center - Rural Outreach | 3,000 |
| MT Ass'n. of Symphony Orchestras - MASO: | |
| Building Momentum - Rural Outreach and Service | 21,000 |
| Holter Museum of Art - Old Paint New: The Image of the Horse in Contemporary Art | 10,000 |
| VIAs, Inc. - Discovering Lewis and Clark: World Wide Web Site | 10,000 |
| MSU-Billings - Montana Moments: A Radio Series | 5,600 |
| MT Chorale - Operating Support | 7,000 |
| Missoula Writing Collaborative -Writers-in-the-Schools | 0 |
| MT Alliance for Arts Education - Arts Education Awareness and Advocacy Project | 11,000 |
| MSU Libraries - Farm, Ranch and MT Pioneer Women Collections Conservation | 0 |
| The Montana Transport Company - 1998-1999 Rural Montana Tours | 10,000 |
| Wolf Point Productions - Against the Grain: Dramatic Feature Film | 10,000 |
| Bozeman Hist. Pres. Advisory Comm. - The Bozeman Area Historic Walking Tours/Talking House | 5,000 |
| Deaconess-Billings Clinic - The Healing Environment | 0 |

HeinOnline -- 1997 vol. II 2362 1997

| | |
|---|---|
| Picture Tomorrow - Working the Woods, A Photographic Survey | 0 |
| Maggie Wagner - Big Timber Bygones: A Community Memory Album | 0 |
| Going-to-the-Sun Institute - Plains Indian Educational Game Development | 0 |
| Haynes Fine Art Gallery - MSU Traveling Faculty Exhibition | 0 |
| (c) Operational Support: | |
| The Writer's Voice - YMCA - Operational Support | $18,000 |
| MT Shakespeare in the Parks - Operational Support | 26,000 |
| MT Art Gallery Directors Association -Operational Support | 31,000 |
| Billings Symphony Society - Operational Support | 18,000 |
| Vigilante Players, Inc. - Operational Support | 25,000 |
| Archie Bray Fndn. for Ceramic Arts -Operational Support | 22,000 |
| Helena Presents - Operational Support | 30,000 |
| Hellgate Writers, Inc. - Operational Support | 13,000 |
| Custer County Art Center - Operational Support | 18,000 |
| International Wildlife Film Festival -Operational Support | 8,000 |
| MT Dance Arts Association - Operational Support | 6,000 |
| Copper Village Museum and Arts Center -Operational Support | 15,000 |
| Growth Thru Art, Inc. - Operational Support | 7,500 |
| (d) Capital Expenditure: | |
| Museum of the Rockies - Rockies Rise Again-Permanent Exhibition Construction | $20,000 |
| Fort Peck Fine Arts Council, Inc. - Ft. Peck Theatre Electrical Improvements and Toilet Rooms | 43,000 |
| Whitefish Theatre Co. - Whitefish Cultural Arts Center | 28,000 |
| Fort Connah Restoration Society - Fund Raising for Acreage to Secure Legal Access<br>Contingency: Clarification is requested as to how much land is being purchased and what entity holds ownership. | 14,000 |
| Arlee Historical Society, Inc. - Septic, Drainfield, and Roof Installation | 4,358 |
| Rialto Community Theatre, Inc. - Rialto Community Theatre Stage Area Electrical Upgrade | 5,400 |
| Gallatin County Historical Society -Attacbed Building Conversion to Museum Use | 4,000 |

| | |
|---|---|
| MT Agricultural Center and Museum - Roof Replacement<br>MT Agricultural Center and Museum<br>Contingency: A 3-to-1 match must be expended or encumbered during the grant period. | 10,000 |
| Sanders Community Hall, Inc. - Water System for Sanders Community Hall, Inc. | 5,700 |
| Upper Blackfoot Valley Hist. Society -Restoration of Two Historic Miner Cabins at Museum | 8,000 |
| Old Towne Development Corp. - St. Ignatius Outdoor Performing Arts Center | 5,700 |
| Paris Gibson Square Museum of Art - Capital Expenditure Historic Window Replacement | 32,000 |
| C.M. Russell Museum - Restoration of C.M. Russell Residence | 18,000 |
| (e) Challenge Grant: | |
| Paris Gibson Square Museum of Art -Endowment Challenge for Paris Gibson Square | $15,000 |
| Billings Pres. Soc. Endowment Trust -Building a Permanent Endowment for the BPS, Inc. | 0 |
| Glacier Orchestra and Chorale - Glacier Orchestra and Chorale Permanent Endowment Challenge Grant | 0 |
| Great Falls Symphony - Endowment Challenge | 0 |

(5) An amount not to exceed $11,000 is appropriated from money that may revert from appropriations made in subsection (4) to the Montana arts council for project evaluations. The evaluations must be done after July 1, 1998, and results must be included in a report on the projects funded by subsections (1) through (4) to be submitted to the 56th legislature.

**Section 2. Reversion of granted money.** On July 1, 1999, the unencumbered balance of the 1999 biennium grants reverts to the cultural and aesthetic project account provided for in 15-35-108.

**Section 3. Reduction of grants.** (1) Except as provided in subsection (2), if money in the cultural and aesthetic project account is insufficient to fund projects at the appropriation levels contained in [section 1], the Montana arts council shall allocate the available money on a pro rata basis to the authorized projects.

(2) If money in the cultural and aesthetic project account is insufficient to fund projects at the appropriation levels contained in [section 1], before reducing any of the other projects on a pro rata basis as required in subsection (1), the Montana arts council shall reduce the grant to the museum of the Rockies by $20,000.

Approved May 1, 1997

HeinOnline -- 1997 vol. II 2364 1997

# CHAPTER NO. 471

[HB 14]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1999; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AMENDING SECTION 12, CHAPTER 774, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** For the purposes of [sections 1 through 7], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 7].

(2) "CPF" means the capital projects fund.

(3) "Other funding sources" means money other than CPF money, including special revenue fund money, that accrues to an agency under the provisions of the law.

**Section 2. Appropriation of bond proceeds and other funds.** (1) The following money is appropriated from the CPF and other funding sources to the department of administration for the capital projects described in this section, contingent upon the respective authorization of general obligation long-range building program bonds by the 55th legislature and the sale of the bonds by the board of examiners:

| Agency/Project | CPF |
|---|---|
| DEPARTMENT OF ADMINISTRATION | |
| Critical Project Requirements, Capitol Renovation | $ 3,458,700 |
| Historic Restoration, Montana State Capitol | 678,902 |
| DEPARTMENT OF CORRECTIONS | |
| One Additional Regional Correctional Facility | 500,000 |
| New Food Service/Kitchen Facility, MSP, Deer Lodge | 2,150,000 |
| Campus Expansion/Consolidation, PHS, Miles City | 10,306,000 |
| 192 Bed, Infrastructure and Services Expansion and Fire/Life Safety/Road Improvements, MSP, Deer Lodge | 5,340,000 |
| MONTANA HISTORICAL SOCIETY | |
| Purchase of Virginia City and Nevada City Property | 3,912,500 |

HeinOnline -- 1997 vol. II 2365 1997

| | |
|---|---|
| MONTANA UNIVERSITY SYSTEM | |
| Replace Primary Electrical Distribution, MSU-Billings | 963,600 |
| Replace HVAC System, Science Complex, UM-Missoula | 1,200,000 |
| Utility Tunnel Extension, MSU-Bozeman | 5,623,113 |
| Repair/Replace Primary Electrical Distribution, MSU-Northern | 1,028,000 |
| Boiler Plant and Utility Distribution, UM-Dillon | 1,117,000 |
| Facility Renovation/Completion MSU-COT-GF | 3,950,000 |
| Addition to Special Education Building, MSU-Billings | 7,004,000 |

(2) It is the intent of the 55th legislature that at least 50% of all future operations and maintenance costs for the special education building addition at MSU-Billings he funded by Montana state university and that no more than 50% be funded with general fund money.

**Section 3. Authorization of bonds.** The board of examiners is authorized to issue and sell general ohligation long-range building program bonds in an amount not exceeding $47,231,815 for the projects described in [section 2] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1997, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds.

**Section 4. Planning and design.** The department of administration may proceed with the planning and design of capital projects before the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

**Section 5. Capital projects — contingent funds.** If a capital project is financed in whole or in part with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 2] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 1998-99 long-range building program presented to the 55th legislature.

**Section 6. Legislative consent.** (1) The appropriations authorized in [section 2] constitute legislative consent for the capital projects containod in [section 2] within the meaning of 18-2-102.

(2) The expenditure of $1,870,000 for the capitol renovation project authorized in [section 2] is contingent upon written permission to changs

HeinOnline -- 1997 vol. II 2366 1997

legislative control of rooms and offices as provided for in 2-17-108. The written approval of the renovation plans must be filed with the secretary of state.

**Section 7. Requirements for approval of state debt.** Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3]. If [section 3] is not approved by the required vote, [this act] is void.

**Section 8.** Section 12, Chapter 774, Laws of 1991, providing appropriations of bond proceeds to the department of administration for capital projects on page 2877, Laws of 1991, is amended to read:

"Construct Women's Correction Center ~~10,075,600~~

*6,261,100*"

**Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 10. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 1997

# CHAPTER NO. 472

[HB 53]

AN ACT GENERALLY REVISING LAWS GOVERNING DISABILITIES; SUBSTITUTING REFERENCES TO A PERSON WITH A DISABILITY FOR REFERENCES TO A HANDICAPPED PERSON; AND AMENDING SECTIONS 2-15-2205, 2-15-2212, 7-14-111, 7-15-4207, 7-15-4431, 13-3-201, 13-3-202, 13-3-203, 13-3-205, 13-3-207, 13-3-213, 13-13-211, 15-6-201, 15-30-114, 15-30-115, 18-5-101, 18-5-102, 18-5-103, 20-7-401, 20-25-707, 22-1-103, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004, 37-15-101, 37-30-307, 37-31-301, 37-31-308, 39-2-912, 39-3-406, 39-30-101, 39-30-102, 39-30-103, 39-30-106, 39-30-107, 39-30-201, 39-30-202, 39-30-203, 39-71-901, 39-71-903, 39-71-904, 39-71-905, 39-71-906, 39-71-907, 50-1-202, 50-5-105, 50-60-201, 52-1-103, 52-2-113, 53-2-201, 53-4-607, 53-7-101, 53-7-102, 53-7-105, 53-7-301, 53-7-306, 53-18-101, 53-18-103, 53-18-105, 53-19-102, 53-19-301, 53-19-302, 53-19-306, 53-19-307, 53-19-310, 53-20-102, 53-20-142, 53-20-148, 53-20-202, 53-20-203, 61-3-332, 61-3-454, 61-12-504, 69-3-307, 77-2-318, 87-2-706, 87-2-803, 90-6-103, AND 90-7-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-15-2205, MCA, is amended to read:

"**2-15-2205. Division of visual services.** There is a division of visual services within the department of public health and human services. The division head is an administrator appointed by the director of the department of public health and human services in accordance with classification requirements. The

division is responsible for administration of rehabilitative and other services for blind ~~and visually handicapped~~ persons *and persons with low vision.*"

**Section 2.** Section 2-15-2212, MCA, is amended to read:

"**2-15-2212. Committee on telecommunications services for ~~the handicapped~~ *persons with disabilities* — composition — allocation.** (1) There is a committee on telecommunications services for ~~the handicapped~~ *persons with disabilities.*

(2) The committee consists of 11 members appointed by the governor as follows:

(a) four members who are ~~handicapped~~ *persons with disabilities*, two of whom must be deaf or hard-of-hearing;

(b) two members who are not ~~handicapped~~ *persons with disabilities*, one of whom must be engaged in a business other than a business in the telecommunications industry and one of whom must be a senior citizen;

(c) one member from the department of public health and human services;

(d) one member from the largest local exchange company in Montana;

(e) one member from an independent local exchange company;

(f) one member from an interLATA interexchange carrier; and

(g) one member from the public service commission.

(3) The committee is allocated to the department of public health and human services for administrative purposes only as provided in 2-15-121."

**Section 3.** Section 7-14-111, MCA, is amended to read:

"**7-14-111. Transportation for senior citizens and ~~handicapped~~ persons *with disabilities.*** (1) A county, urban transportation district, or municipality may, in addition to all other property tax levies authorized by law, levy up to 1 mill of property taxes to fund special transportation services for senior citizens and ~~handicapped~~ persons *with disabilities.*

(2) The proceeds of the levy may be used to:

(a) contract with public or private transportation providers for services to senior citizens and ~~handicapped~~ individuals *with disabilities*; or

(b) augment or subsidize provisions for the transportation of senior citizens and ~~handicapped~~ individuals *with disabilities* provided by public transportation providers.

(3) If the taxing jurisdiction determines that it is not in the best interest of senior citizens and ~~handicapped~~ individuals *with disabilities* to use the tax levy as provided for in subsection (2), the taxing jurisdiction may use the proceeds of the levy to establish and operate an independent transportation system for senior citizens and ~~handicapped~~ individuals *with disabilities.*

HeinOnline -- 1997 vol. II 2368 1997

(4) Counties, urban transportation districts, and municipalities are encouraged to enter into interlocal agreements to provide regional transportation services to senior citizens and ~~handicapped~~ persons *with disabilities* and may create regional advisory committees to coordinate regional transportation services."

**Section 4.** Section 7-15-4207, MCA, is amended to read:

**"7-15-4207. Prohibition against discrimination.** For all of the purposes of this part and part 43, ~~no~~ *a* person may *not* be subjected to discrimination because of sex, race, creed, religion, age, physical or mental ~~handicap~~ *disability*, color, or national origin."

**Section 5.** Section 7-15-4431, MCA, is amended to read:

**"7-15-4431. Appointment of commissioners.** (1) An authority consists of seven commissioners appointed by the mayor~~, and he~~. *The mayor* shall designate the first ~~chairman~~ *presiding officer*. A commissioner may not be a city official.

(2) Two of the commissioners must be tenants of the housing autbority. One tenant commissioner shall represent family tenants, and one tenant commissioner shall represent elderly *tenants* and ~~handicapped~~ tenants *with disabilities*. Nominees for tenant commissioner sball submit te the city clerk a petition signed by not less tban 25 adult tenants of the authority or 25% of tbe adult tenants of the authority, whichever is greater. The city clerk sball submit a list of the tenant nominees to the mayor for appointment to the housing autbority. The staff of the housing authority may not involve itself in the nomination or appointment of tenant commissioners.

(3) The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and the certificate is conclusive evidence of the ~~due and~~ proper appointment of the commissioner."

**Section 6.** Section 13-3-201, MCA, is amended to read:

**"13-3-201. Purpose.** The purpose of this part is to promote the fundamental right to vote by improving access for ~~handicapped~~ *individuals with disabilities* and elderly individuals to polling places. The provisions of this part acknowledge that, in certain cases, it may not be possihle to locate a polling place that meets the standards for accessibility, either because ~~no~~ *an* accessible polling place ~~exists~~ *does not exist* or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part provides ~~handicapped~~ *voters with disabilities* and elderly voters an alternative means for casting a ballot on election day."

**Section 7.** Section 13-3-202, MCA, is amended to read:

**"13-3-202. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Accessible" means accessible to ~~handicapped~~ *individuals with disabilities* and elderly individuals for purposes of voting as determined in accordance with standards establisbed by the secretary of state under 13-3-205.

HeinOnline -- 1997 vol. II 2369 1997

*(2) "Disability" means a temporary or permanent physical impairment such as:*

*(a) impaired vision;*

*(b) impaired hearing; or*

*(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.*

~~(2)~~*(3)* "Elderly" means 65 years of age or older.

~~(3)~~*(4)* "Election" means a general, special, or primary election held in an even-numbered year, as provided for in 13-1-104(1) and 13-1-107(1).

~~(4) "Handicapped" means having a temporary or permanent physical impairment such as:~~

~~(a) impaired vision;~~

~~(b) impaired hearing; or~~

~~(c) impaired mobility. Individuals having impaired mobility include those who require use of a wheelchair and those who are ambulatory but are physically impaired due to age, disability, or disease.~~"

**Section 8.** Section 13-3-203, MCA, is amended to read:

"**13-3-203. Duty of secretary of state — rulemaking.** (1) Except as provided in 13-3-204, the secretary of state shall ~~assure~~ *cnsure* tbat all polling places are accessible to ~~handicapped~~ *electors with disabilities* and elderly electors on election day.

(2) The secretary of state shall adopt rules to establish standards that a polling place must meet in order to be designated accessible under this part.

(3) The secretary of state may adopt any other rules necessary for implementation of this part."

**Section 9.** Section 13-3-205, MCA, is amended to read:

"**13-3-205. Adoption of standards for polling place accessibility — rulemaking authority.** The secretary of state, with advice from election administrators and ~~handicapped~~ *individuals with disabilities* and elderly individuals, shall establish standards for accessibility of polling places. The standards, whenever possible, must be consistent with the standards for accessibility established by the American national standards institute and the uniform federal accessibility standards."

**Section 10.** Section 13-3-207, MCA, is amended to read:

"**13-3-207. Polling place classifications.** (1) As a result of the survey provided in 13-3-206, each polling place must be classified as:

(a) accessible;

HeinOnline -- 1997 vol. II 2370 1997

(b) inaccessible;

(c) technically inaccessible but usable; or

(d) rural.

(2) An accessible polling place is one that meets the standards for accessibility established by the secretary of state under 13-3-205.

(3) An inaccessible polling place is one that does not meet the standards for accessibility and cannot be made accessible through safe, practical, and cost-effective methods.

(4) A technically inaccessible but usable polling place is one that does not meet all the standards for accessibility but has been surveyed, evaluated, and certified as being adequate for use as a polling place. ~~Such~~ *The* certification is cause for the secretary of state to grant the polling place an exemption from the standards for accessibility. However, in a future election, the secretary of state may issue an objection to the criteria used for determining that the facility is usable as a polling place.

(5) A rural polling place is one that serves less than 200 registered electors and is:

(a) granted an exemption from the standards for accessibility established under 13-3-205; and

(b) subject to review and redesignation 45 days prior to an election.

(6) A rural designation may not be construed as cause for denying ~~handicapped~~ *electors with disabilities* or elderly electors at a polling place the right to choose an alternative means for casting a ballot on election day as provided in 13-3-213."

**Section 11.** Section 13-3-213, MCA, is amended to read:

"**13-3-213. Alternative means for casting ballot.** (1) The election administrator shall provide ~~handicapped~~ *individuals with disabilities* and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

(a) delivery of a ballot to the elector as provided in 13-13-118;

(b) voting by absentee ballot as provided in 13-13-222; and

(c) prearranged assignment to an accessible polling place within the county.

(2) ~~Any handicapped~~ *An elector with a disability* or *an* elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place or technically inaccessible polling place for the purpose of voting in the election;

HeinOnline -- 1997 vol. II 2371 1997

(c) shall sign ~~his~~ *the elector's* name on a special addendum to the official precinct register as required in 13-2-601; and

(d) ~~shall~~ *must* receive the same ballot to which ~~he~~ *the elector* is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot."

**Section 12.** Section 13-13-211, MCA, is amended to read:

**"13-13-211. Application of absentee, chronically ill, ~~handicapped,~~ elderly, or physically incapacitated elector *or elector with a disability* for ballot — special absentee ballot application.** (1) Except as provided in 13-2-214, during a period beginning 75 days before the day of election and ending at noon on the day before the election, an individual may apply to the election administrator for an absentee ballot if ~~he~~ *the individual* is:

(a) an elector expecting to be absent from the county in which ~~his~~ *the elector's* voting precinct is situated;

(b) an elector who is chronically ill or in general ill health;

(c) ~~a handicapped~~ *an elector with a disability* or *an* elderly elector who has been assigned to an inaccessible polling place; or

(d) an elector who will be unable to go to the polls because of physical incapacity.

(2) A qualified elector who is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day may request to vote by absentee ballot. The election administrator shall honor ~~any such~~ *a* request received up to and including noon on election day. The election administrator is not required to comply with a request by an elector who is absent from the county."

**Section 13.** Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

HeinOnline -- 1997 vol. II 2372 1997

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land *that* they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) property owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgagos of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This proporty is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campors;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable

HeinOnline -- 1997 vol. II 2373 1997

water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, ~~the mentally ill~~ *persons with mental illness*, or ~~the vocationally handicapped~~ *persons with physical or mental impairments that constitute or result in substantial impediments to employment* ~~as defined in 18-5-101~~ and that is not operated for gain or profit and property *that is* owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection *(1)* (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers and semitrailers that have a licensed gross weight of 26,000 pounds or more or that are registered through a proportional registration agreement under 61-3-721. For purposes of this subsection *(1)* (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

HeinOnline -- 1997 vol. II 2374 1997

(w) all vehicles registered under 61-3-456.

(2) (a) For the purposes of subsection (1)(e), the term "institutions of purely puhlic charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

**Section 14.** Section 15-30-114, MCA, is amended to read:

"**15-30-114. Additional exemption for dependent child with ~~handicap~~ *a disability*.** (1) In lieu of the exemption in 15-30-112(5), an exemption for twice the amount allowed for dependents ~~shall be~~ *is* allowed ~~for taxable years beginning after December 31, 1976,~~ for each dependent child with a ~~handicap~~ *disability*.

(2) In order to be eligible for the exemption, a dependent child with a ~~handicap~~ *disability* must, for the taxable year of the taxpayer, have as ~~his~~ *the child's* principal place of abode the home of the taxpayer and have a permanent ~~handicap~~ *disability* of great enough severity that it constitutes not less than 50% disability to the body as a whole. An exemption may be allowed for a dependent with a permanent ~~handicap~~ *disability* after ~~he~~ *the individual* reaches the age of majority if ~~he~~ *the individual* continues to be a dependent."

HeinOnline -- 1997 vol. II 2375 1997

**Section 15.** Section 15-30-115, MCA, is amended to read:

**"15-30-115. Physician's verification of ~~handicap~~ *disability* required.** A taxpayer claiming the exemption provided for in 15-30-114 ~~must~~ *shall* provide with ~~his~~ *the taxpayer's* income tax statement written documentation by a licensed physician that the ~~handicap~~ *disability* qualifies under ~~that section~~ *15-30-114*."

**Section 16.** Section 18-5-101, MCA, is amended to read:

**"18-5-101. Definitions.** As used in ~~18-5-101 through 18-5-103~~ *this part*, the following definitions apply:

(1) "Certified sheltered workshop" or "work activity center" means a nonprofit corporation incorporated under the laws of the state for the purpose of providing vocational services to ~~disabled vocationally handicapped individuals~~ *persons with disabilities*, in whole or in part, ~~which~~ *that*:

(a) holds a current certificate issued by the United States department of labor for either one or all of the following:

(i) evaluation or training;

(ii) a regular work program; or

(iii) *a* work activity center;

(b) complies with other applicable occupational, health, and safety standards of local, state, and federal governments governing the operation of ~~such~~ *the* facility not otherwise included in ~~18-5-101 through 18-5-103~~ *this part*;

(c) in the manufacture of products and in the provision of service, whether or not the product or service is procured under ~~18-5-101 through 18-5-103~~ *this part*, employs and trains ~~vocationally handicapped individuals~~ *persons with disabilities* for not less than 75% of the ~~man-hours~~ *hours* of direct labor required for the manufacture of products or the provision of service; and

(d) is ~~hereinafter~~ referred to as a "facility".

(2) "Department" means the department of administration.

(3) ~~"Vocationally handicapped"~~ *"Person with a disability"* means an individual ~~under~~ *with* a physical, mental, or emotional disability ~~which~~ *that* constitutes a substantial ~~handicap~~ *impediment* to employment and *that* prevents the individual ~~under~~ *with* the disability from engaging in normal competitive employment."

**Section 17.** Section 18-5-102, MCA, is amended to read:

**"18-5-102. Duties and powers of department of administration.** (1) The department shall maintain a current list of facilities located in this state, including a list of products and services provided by each facility, based on information provided by the facilities. A facility requesting to be included on the list shall indicate the products and services available from it and shall provide the department with updated information, as necessary.

(2) The department may contract with a nonprofit organization to:

HeinOnline -- 1997 vol. II 2376 1997

(a) certify facilities;

(b) provide technical assistance to facilities on matters of product or service capabilities;

(c) facilitate distribution of orders among facilities and to ~~insure~~ *ensure* equal opportunity in obtaining orders.

(3) The department shall adopt, revise, and amend rules to implement ~~18-5-101 through 18-5-103~~ *this part* in accordance with the procedures of the Montana Administrative Procedure Act."

**Section 18.** Section 18-5-103, MCA, is amended to read:

**"18-5-103. Procurement requirements.** State departments, institutions, and agencies may procure listed products and services from a facility. The provisions of this title relating to competitive bidding do not apply to purchases made in accordance with ~~18-5-101 through 18-5-103~~ *this part*."

**Section 19.** Section 20-7-401, MCA, is amended to read:

**"20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology service" means any service that directly assists a child with disabilities in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) the evaluation of the needs of a child with disabilities, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational

HeinOnline -- 1997 vol. II 2377 1997

performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.

(4) "Child with ~~disabilities~~ *a disability*" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having cognitive delay; hearing impairment, including deafness; speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; deaf-blindness; multiple disabilities; or specific learning disabilities and who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with disabilities without the specific disabilities being specified.

(5) "Cognitive delay" means siguificantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.

(7) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's educational performance.

(8) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.

(9) "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

HeinOnline -- 1997 vol. II 2378 1997

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disahilities Education Act.

(10) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance hut that is not included within the definition of deafness.

(11) "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, *or* cerebral palsy).

(12) "Other health impairment" means limited strength, vitality, or alertness ~~due to~~ *because of* chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, ~~sickle cell~~ *sickle cell* anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.

(13) "Related services" means transportation and any developmental, corrective, and other supportive services that are required to assist a child with disabilities to benefit from special education and includes speech-language pathology, audiology, occupational therapy, physical therapy, recreation, including therapeutic recreation, early identification and assessment of disahilities in children, counseling services, including rehabilitation counseling, and medical services for diaguostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.

(14) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with disabilities, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(15) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, tbat may manifest itself in an imperfect ahility to listen, think, speak, read, write, spell, or do mathematical calculations. The tern includes but is not limited to such conditions as perceptual ~~handicaps~~ *disabilities*, hrain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The tern does not include children who have learning prohlems that are primarily the result of visual, hearing, or motor ~~handicaps~~ *disabilities*; cognitive delay; or environmental, cultural, or economic disadvantages.

(16) "Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.

(17) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

(18) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.

(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness."

**Section 20.** Section 20-25-707, MCA, is amended to read:

**"20-25-707. Antidiscrimination.** ~~No~~ *An* employer is *not* eligible to employ any person under this program if the employer practices discrimination in employment against any individual because of race, creed, religion, color, political ideas, sex, age, marital status, physical or mental ~~handicap~~ *disability*, ancestry, or national origin."

**Section 21.** Section 22-1-103, MCA, is amended to read:

**"22-1-103. State library commission — authority.** The state library commission ~~has the power to~~ *may*:

(1) give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns, or regions in the state that ~~may~~ propose to establish libraries, as to the best means of establishing and improving those libraries;

(2) maintain and operate the state library and make provision for its housing;

(3) (a) accept and expend in accordance with the terms of a grant any grant of federal funds that ~~may become~~ *is* available to the state for library purposes;

(b) accept, receive, and administer any gifts, donations, bequests, and legacies made to the Montana state library. Unless otherwise provided by the donor, gifts, donations, bequests, and legacies must be deposited in the Montana state library trust established in 22-1-225.

(4) make rules and establish standards for the administration of the state library and for the control, distribution, and lending of books and materials;

(5) serve as the agency of the state to accept and administer any state, federal, or private funds or property appropriated for or granted to it for library service or foster libraries in the state and establish regulations under which funds must be disbursed;

(6) provide library services ~~for the blind and physically handicapped~~ *for the blind and for individuals with physical disabilities*;

(7) furnish, by contract or otherwise, library assistance and information services to state officials, state departments, and residents of those parts of the state inadequately serviced by libraries;

HeinOnline -- 1997 vol. II 2380 1997

(8) act as a state board of professional standards and library examiners, develop standards for public libraries, and adopt rules for the certification of librarians;

(9) designate areas for the establishment of federations of libraries and designate the headquarters library for the federations."

**Section 22.** Section 33-22-304, MCA, is amended to read:

**"33-22-304. Continuation of coverage for ~~handicapped~~ *individuals with disabilities* — individual contracts.** (1) An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state ~~after October 28, 1971, which~~ *that* provides that coverage of a dependent child ~~shall terminate~~ *terminates* upon attainment of the limiting age for dependent children specified in the policy or contract ~~shall~~ *must* also provide in substance that attainment of ~~such~~ *the* limiting age ~~shall~~ *may* not operate to terminate the coverage of ~~such~~ *the* child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical ~~handicap~~ *disability* and chiefly dependent upon the policyholder or subscriber for support and maintenance~~, provided proof~~ *. Proof* of ~~such incapacity~~ *retardation or the disability* and dependency ~~is~~ *must be* furnished to the insurer or hospital or medical service plan corporation by the policyholder or subscriber within 31 days of the child's attainment of the limiting age and subsequently as may bo required by the insurer or corporation. ~~but~~ *Proof may* not *be required* more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) ~~The~~ *Notwithstanding any other exemption or contrary law, the* provisions of this section ~~shall~~ have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts~~, any other exemption or law to the contrary notwithstanding~~."

**Section 23.** Section 33-22-506, MCA, is amended to read:

**"33-22-506. Continuation of coverage for ~~handicapped~~ *persons with disabilities* — group contracts.** (1) A group hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state ~~after October 28, 1971, which~~ *that* provides that coverage of a dependent child of an employee or other member of the covered group ~~shall terminate~~ *terminates* upon attainment of the limiting age for dependent children specified in the policy or contract ~~shall~~ *must* also provide in substance that attainment of ~~such~~ *the* limiting age ~~shall~~ *may* not operate to terminate the coverage of ~~such~~ *the* child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical ~~handicap~~ *disability* and chiefly dependent upon the employee or member for support and maintenance~~, provided proof~~ *. Proof* of ~~such incapacity~~ *retardation or the disability* and dependency ~~is~~ *must be* furnished to the insurer or hospital or medical service plan corporation by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation. ~~but~~ *Proof may* not *be required* more frequently than annually after the 2-year period following the child's attainment of the limiting age.

HeinOnline -- 1997 vol. II 2381 1997

(2) ~~The~~ *Notwithstanding any other exemption or contrary law, the* provisions of this section ~~shall~~ have equal application to hospital or medical expense insurance policies and hospital and medical service plan contracts~~, any other exemption or law to the contrary notwithstanding~~."

**Section 24.** Section 33-30-1003, MCA, is amended to read:

"**33-30-1003. Continuation of coverage for ~~handicapped~~ *persons with disabilities* — individual contracts.** (1) An individual hospital or medical service plan contract~~,~~ delivered or issued for delivery in this state ~~after October 28, 1971, which~~ *that* provides that coverage of a dependent child ~~shall terminate~~ *terminates* upon attainment of the limiting age for dependent children specified in the contract ~~shall~~ *must* also provide in substance that attainment of ~~such~~ *the* limiting age ~~shall~~ *may* not operate to terminate the coverage of ~~such~~ *the* child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical ~~handicap~~ *disability* and chiefly dependent upon the subscriber for support and maintenance~~,~~ ~~provided proof~~ *Proof* of ~~such incapacity~~ *retardation or the disability* and dependency ~~is~~ *must be* furnished to the hospital or medical service plan corporation by the subscriber within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation. ~~but~~ *Proof may* not *be required* more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) ~~The~~ *Notwithstanding any other exemption or contrary law, the* provisions of this section ~~shall~~ have equal application to hospital or medical expense insurance policies~~,~~ and hospital and medical service plan contracts~~, any other exemption or law to the contrary notwithstanding~~."

**Section 25.** Section 33-30-1004, MCA, is amended to read:

"**33-30-1004. Continuation of coverage for ~~handicapped~~ *persons with disabilities* — group contracts.** (1) A group hospital or medical service plan contract~~,~~ delivered or issued for delivery in this state ~~after October 28, 1971, which~~ *that* provides that coverage of a dependent child of an employee or other member of the covered group ~~shall terminate~~ *terminates* upon attainment of the limiting age for dependent children specified in the contract ~~shall~~ *must* also provide in substance that attainment of ~~such~~ *the* limiting age ~~shall~~ *may* not operate to terminate the coverage of ~~such~~*the* child while the child is and continues to be both incapable of self-sustaining employment by reason of mental retardation or physical ~~handicap~~ *disability* and chiefly dependent upon the employee or member for support and maintenance~~,~~ ~~provided proof~~ *Proof* of ~~such~~ *the* ~~incapacity~~ *retardation or disability* and dependency ~~is~~ *must be* furnished to the hospital or medical service plan corporation~~,~~ by the employee or member within 31 days of the child's attainment of the limiting age and subsequently as may be required by the corporation~~.~~ ~~but~~ *Proof may* not *be required* more frequently than annually after the 2-year period following the child's attainment of the limiting age.

(2) ~~The~~ *Notwithstanding any other exemption or contrary law, the* provisions of this section ~~shall~~ have equal application to hospital or medical expense insurance policies~~,~~ and hospital and medical service plan contracts~~, any other exemption or law to the contrary notwithstanding~~."

HeinOnline -- 1997 vol. II 2382 1997

**Section 26.** Section 37-15-101, MCA, is amended to read:

"**37-15-101. Purpose.** The legislature ~~of the state of Montana~~ declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists and to help ~~assure~~ *ensure* the availability of the highest possible quality speech-language pathology and audiology services to the ~~communicatively handicapped~~ people of this state *with communicative disabilities*, it is necessary to provide regulatory authority over persons offering speech-language pathology or audiology services to the public."

**Section 27.** Section 37-30-307, MCA, is amended to read:

"**37-30-307. Fees — ~~handicapped~~ persons *with disabilities* exempted — other fees prohibited.** (1) The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate must be prescribed by the board.

(2) A person registered as a barber shall, before the expiration date established by rule of the department, annually pay a license fee, set by the board based on clerical and administrative costs, for the renewal of the person's certificate of registration. If a barber fails to have the certificate renewed before the expiration date, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(3) However, ~~physically handicapped~~ persons *with physical disabilities* trained for the barber profession by the department of public health and human services and certified by that department as having graduated from a barber college licensed by the board are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(4) Another or an additional license or fee may not be imposed on barbers by a municipality or other subdivision of this state."

**Section 28.** Section 37-31-301, MCA, is amended to read:

"**37-31-301. Prohibited acts.** (1) Without an appropriate license issued under this chapter, it is unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology or school of manicuring;

(c) manage or operate a cosmetology salon, manicuring salon, or booth;

(d) teach in a school of cosmetology or school of manicuring;

HeinOnline -- 1997 vol. II 2383 1997

(e) practice manicuring for compensation;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for a person who owns, manages, or controls a cosmetology salon to employ or use an unlicensed person as a cosmetologist or manicurist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed salon as provided in this chapter, except when a licensed operator is requested:

(i) by a customer to go to a place other than a licensed salon and is sent to the customer from a licensed salon; or

(ii) by a ~~handicapped~~ *customer with a disability* or homebound customer to go to the customer's place of residence;

(d) for a person who owns, manages, or controls a manicuring salon to employ or use an unlicensed person as a manicurist;

(e) to operate a manicuring school without complying with 37-31-311;

(f) to violate any of the provisions of this chapter."

**Section 29.** Section 37-31-308, MCA, is amended to read:

**"37-31-308. Examination — reexamination — exemption for ~~handicapped~~ persons *with disabilities*.** (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology must be held at places and times specified by the board. The examinations must be supervised by the board. The examinations may not be confined to a specific method or system. The examinations must be conducted by persons who hold current licenses to practice in the profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring shall meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

HeinOnline -- 1997 vol. II 2384 1997

(5) ~~Physically handicapped persons~~ *Persons with physical disabilities* trained for cosmetology or manicuring by the department of public health and human services are, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a cosmetology school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

**Section 30.** Section 39-2-912, MCA, is amended to read:

**"39-2-912. Exemptions.** This part does not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. ~~Such~~ *The* statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, age, ~~handicap~~ *disability*, creed, religion, political belief, color, marital status, and other similar grounds.

(2) of an employee covered by a written collective bargaining agreement or a written contract of employment for a specific term."

**Section 31.** Section 39-3-406, MCA, is amended to read:

**"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) ~~handicapped workers~~ *persons with disabilities* engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment

HeinOnline -- 1997 vol. II 2385 1997

and further provided that during this exclusion period, wages paid the learners may not he less than 50% of the minimum wage rate estahlished in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mohile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(f) a salesperson primarily engeged in selling trailers, hoats, or aircraft if the salesperson is employed by a nonmanufacturing estahlishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

HeinOnline -- 1997 vol. II 2386 1997

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

HeinOnline -- 1997 vol. II 2387 1997

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective hargaining agreement when a collective bargaiming unit represents the employee or by mutual agreement of the employer and employee when a bargaiming unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must he compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town."

**Section 32.** Section 39-30-101, MCA, is amended to read:

"**39-30-101. Short title.** This chapter may be cited as the "Montana ~~Handicapped Persons'~~ *Persons With Disabilities* Employment Preference Act"."

**Section 33.** Section 39-30-102, MCA, is amended to read:

"**39-30-102. Purposes.** The purposes of this chapter are to recognize past employment discrimination against ~~handicapped~~ persons *with disabilities* and *to* facilitate the habilitation, rehabilitation, and readjustment of ~~handicapped~~ persons *with disabilities*."

**Section 34.** Section 39-30-103, MCA, is amended to read:

"**39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a ~~handicapped~~ person *with a disability* determined by the department of public health and human services to have a 100% disability *and* who is unable to use the employment preference because of the person's disability.

(2) ~~"Handicapped person" means an individual certified by the department of public health and human services to have a physical or mental impairment~~

HeinOnline -- 1997 vol. II 2388 1997

~~that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.~~

~~(3)~~ (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in ~~subsections (3)(a)(i) through (3)(a)(v)~~ *this subsection (2)*, current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in ~~subsections (3)(a)(i) through (3)(a)(v)~~ *this subsection (2)*, or current participants in a federally authorized employment program is not an initial hiring.

~~(4)~~*(3)* (a) "Mental impairment" means:

(i) ~~suffering from~~ a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically ~~handicapping~~ *disabling* condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

*(4) "Person with a disability" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.*

(5) "Position" means a permanent or seasonal position, as defined in 2-18-101, for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary pesition, as defined in 2-18-101, for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal ~~adviser~~ *adviser*, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the stato of Montana; and

(ii) any county, city, or town.

(h) The term does not include a school district, a vocational-teclinical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the pesition than the qualifications held by the other persons."

**Section 35.** Section 39-30-106, MCA, is amended to read:

**"39-30-106. Adoption of rules.** The department of administration shall adopt rules implementing this chapter and shall consult with the department of public health and human services in adopting rules governing certification of ~~handicapped~~ persons *with disabilities* for purposes of this chapter. The department of administration's rules apply to all public employers, local as well as state."

**Section 36.** Section 39-30-107, MCA, is amended to read:

**"39-30-107. Certification of ~~handicapped~~ persons *with disabilities*.** The department of public liealth and liuman services shall certify persons ~~as handicapped~~ *with disabilities* for the purpose of employment preference as provided in this chapter."

**Section 37.** Section 39-30-201, MCA, is amended to read:

**"39-30-201. Employment preference in initial hiring.** (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who

HeinOnline -- 1997 vol. II 2390 1997

is a ~~handicapped~~ porson *with a disability* or eligible spouse meets the eligihility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference-eligible applicant.

(h) In an initial hiring, a public employer shall hire a ~~handicapped~~ person *with a disability* over any otber preference-eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in 39-30-103~~(3)(b)~~*(2)(b)* or to any other personnel action that is not an initial hiring."

**Section 38.** Section 39-30-202, MCA, is amended to read:

**"30-30-202. Eligibility requirements.** An eligible spouse or ~~handicapped~~ person *with a disability* is not entitled to receive employment preference as provided in 39-30-201 unless:

(1) ~~he~~ *the individual* is a United States citizen;

(2) ~~he~~ *the individual* has resided continuously in tbe state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, ~~he~~ *the individual* has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) ~~he~~ *the individual* meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which ~~he~~ *the individual* is applying."

**Section 39.** Section 39-30-203, MCA, is amended to read:

**"39-30-203. Duration of preference.** Subject to 39-30-202, a ~~handicapped~~ person *with a disability* or eligible spouse qualifies for employment preference as long as the disabling condition exists."

**Section 40.** Section 39-71-901, MCA, is amended to read:

**"39-71-901. Definitions.** As used in this part, the following definitions apply:

(1) "Certificate" means documentation issued by the department to an individual who is ~~vocationally handicapped~~ *a person with a disability*.

(2) "Fund" means tbe subsequent injury fund.

(3) ~~"Vocationally handicapped"~~ *"Person with a disability"* means a person who has a medically certifiable permanent impairment ~~which~~ *that* is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection."

**Section 41.** Section 39-71-903, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2391 1997

"**39-71-903. Procedure and practice.** When a ~~vocationally handicapped~~ person *with a disability* receives a personal injury, the procedure and practice provided in this chapter ~~applies~~ *apply* to all proceedings under this part, except ~~where~~ *when* specifically otherwise provided ~~herein~~ *in this part*."

**Section 42.** Section 39-71-904, MCA, is amended to read:

"**39-71-904. Rules for certification.** The department shall promulgate rules for certification of ~~vocationally handi~~ ~~pped~~ persons *with disabilities*."

**Section 43.** Section 39-71-905, MCA, is amended to read:

"**39-71-905. Certification as ~~vocationally handicapped~~ *person with a disability*.** A person who wishes to be certified as ~~vocationally handicapped~~ *a person with a disability* for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for ~~vocationally handicapped~~ certification. A person shall apply for certification before employment or within 60 days after ~~he~~ *the person* becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of employment or reemployment. Failure to apply before employment or within 60 days after employment or reemployment precludes the employer from the protection and benefits of this part."

**Section 44.** Section 39-71-906, MCA, is amended to read:

"**39-71-906. Employer hiring or retaining certified ~~vocationally handicapped~~ person *with a disability* to file information with department — effect of failure to file.** Upon commencement of employment or retention in employment of a certified ~~vocationally handicapped~~ person *with a disability*, the employer sball submit to the department, on forms furnished by the department, all pertiment information requested by the department. The department shall acknowledge receipt of the information. Failure to file the required information with the department within 60 days after the first day of the ~~vocationally handicapped~~ person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part."

**Section 45.** Section 39-71-907, MCA, is amended to read:

"**39-71-907. Certified ~~vocationally handicapped~~ person *with a disability* to be compensated for injury as provided by chapter — insurer liability for compensation limited — appropriation.** (1) A person certified as ~~vocationally handicapped~~ *having a physical or mental disability that constitutes or results in a substantial impeaiment to employment* who receives a personal injury arising out of and in the course of employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from ~~such~~ *the* injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of tbe insurer for

HeinOnline -- 1997 vol. II 2392 1997

payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. ~~Thereafter~~ *After 104 weeks*, all compensation and the cost of all medical care and burial ~~is~~ *are* the liability of the fund.

(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

**Section 46.** Section 50-1-202, MCA, is amended to read:

**"50-1-202. General powers and duties.** The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) conduct health education programs;

(10) provide consultation to school and local community health nurses in the performance of their duties;

(11) consult with the superintendent of public instruction on health measures for schools;

(12) develop, adopt, and administer rules setting standards for a program to provide services to ~~handicapped~~ children *with disabilities*, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(13) provide consultation to local boards of health;

(14) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) accept and expend federal funds available for public health services;

(16) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) adopt rules imposing fees for the tests and services performed by the laboratory of the department of environmental quality. Fees, established on an annual basis, should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.

(18) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases;

(19) adopt and enforce rules regarding the transportation of dead human bodies; and

(20) adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease."

**Section 47.** Section 50-5-105, MCA, is amended to read:

**"50-5-105. Discrimination prohibited.** (1) All phases of the operation of a health care facility ~~shall~~ *must* be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental ~~handicap~~ *disability*, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship

HeinOnline -- 1997 vol. II 2394 1997

between a licensed physician and patient ~~shall~~ *must* continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 5 or 6.

(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria."

**Section 48.** Section 50-60-201, MCA, is amended to read:

"**50-60-201. Purpose of state building code.** The state building code ~~shall~~ *must* be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consonant with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements ~~which~~ *that* tend te reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient ~~utilization~~ *use* of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regnlations and requirements ~~which~~ *that* tend to increase unnecessarily construction costs, retard unnecessarily the use of proven new materials ~~which~~ *that* have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that any new buildinge constructed with public funds are accessible to and functional for ~~physically handicapped~~ persons *with physical disabilities* according to the principles applicable to accessibility to public buildings for ~~handicapped~~ persons *with disabilities* adopted, recommended, or issued as Part II, Uniform Federal Accessibility Standards, as it reads in the Federal Register dated August 7, 1984, and as the department may amend by rule to reflect changes in the principles;

(5) encourage efficiencies of design and insulation ~~which~~ *that* enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of ~~such~~ *the* equipment;

(6) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems ~~which~~ *that* promote the efficient use of energy."

**Section 49.** Section 52-1-103, MCA, is amended to read:

"**52-1-103. Powers and duties of department.** The department shall:

HeinOnline -- 1997 vol. II 2395 1997

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) provide the fellowing functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(4) register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster caro facilities;

(5) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(6) administer the interstate compact for children;

(7) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

(8) (a) make a written evaluation of each plan developed by the local family services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions;

(b) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed by the local family services advisory councils;

(9) administer services to the aged;

(10) provide consultant services to:

(a) facilities providing care for *adults who are* needy, indigent, ~~handicapped,~~ or dependent ~~adults~~ *or who have disabilities*; and

(b) youth care facilities;

(11) ~~utilize~~ *use* the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(12) contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

(13) adopt rules necessary to carry out the purposes of 41-3-1126 and this chapter."

**Section 50.** Section 52-2-113, MCA, is amended to read:

"**52-2-113. Child rehabilitation — duties of department.** The department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of abused or neglected children;

(2) use funds allocated or appropriated to the department for the purpose of providing for the special medical or material needs of children with developmental disabilities or ~~physically handicapped~~ children *with physical disabilities* who are eligible for department programs;

(3) cooperate for the purposes of this part with all reputable child-helping and child-placing agencies; and

(4) inspect and register or license youth care facilities, child-placing agencies, and adoption agencies."

**Section 51.** Section 53-2-201, MCA, is amended to read:

"**53-2-201. Powers and duties of department.** (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, aid to families with dependent children, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, and medical care payments in behalf of recipients of public assistance;

(b) give consultant service to private institutions providing care for ~~the~~ *adults who are* needy, indigent, ~~handicapped,~~ or dependent ~~adults~~ *or who have disabilities*;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(g) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

HeinOnline -- 1997 vol. II 2397 1997

(a) purchase, exchange, condemn, or receive by gift either real or personal property ~~which~~ *that* is necessary to carry out its public assistance functions. Title to property ohtained under this subsection must be taken in the name of tbe state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its puhlic assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to he provided to recipients of public assistance."

**Section 52.** Section 53-4-607, MCA, is amended to read:

"**53-4-607. Exemptions from time limitations in pathways.** (1) Recipients of aid to families with dependent children under the FAIM project may be exempted from the time limitations on assistance under pathways contained in 53-4-603 as provided by the department by rule.

(2) In establishing categories of individuals who are exempt from the time limitations on assistance under pathways, the department may take into consideration factors that may delay an individual's attainment of self-sufficiency, including but not limited te the following:

(a) The individual has a verifiable illness, injury, or physical or mental ~~impairment, handicap, or~~ disability.

(b) The individual is of advanced age.

(c) The individual does not have child care available.

(d) The individual is attending high school or is working toward a graduate equivalency diploma, if the individual is under 20 years of age.

(e) The individual is the parent of a child under 1 year of age.

(f) The individual is providing care to a household member with a disability who requires special care.

(g) The individual is a teenage parent participating in activities pursuant to a family investment agreement.

(h) The department failed to substantially comply with its obligations under the family investment agreement.

(i) The individual is a homeless person.

(j) The individual is a victim of domestic violence."

**Section 53.** Section 53-7-101, MCA, is amended to read:

"**53-7-101. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

(3) "Maintenance" means money payments made in accordance with 53-7-108.

(4) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

(5) "Person with ~~an employment handicap~~ *a disability*" means the same as "individual with ~~handicaps~~ *a disability*" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(8)(A), as may be amended. The term includes any individual who lacks ~~occupation~~ *occupational* or vocational achievement ~~due to~~ *because of* the presence of a physical or mental disability.

(6) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce the *impediment to* employment ~~handicap~~ of a person within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(7) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(8) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with ~~employment handicaps~~ *disabilities*. The barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(9) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with ~~an employment handicap~~ *a disability* to become independent and productive or employable.

(10) "Rehabilitation training" means training provided to a person with ~~an employment handicap~~ *a disability* to ~~rehabilitate~~ *overcome* the person's *impediment to* employment ~~handicap~~. The term includes but is not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(11) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with ~~an employment handicap~~ *a disability* to enable the person insofar as possible to become independent and productive or employable.

(12) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities,

HeinOnline -- 1997 vol. II 2399 1997

family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitata the person."

**Section 54.** Section 53-7-102, MCA, is amended to read:

**"53-7-102. Powers and duties of department.** The department:

(1) shall adopt rules necessary for the administration of this part. Rules adopted may include but are not limited to the provision of services, individual service plans, eligibility for services, application, service goals and design, quality of services, provider relationships, program standards, program staffing, staff training, provider accounting procedures, confidential information, recipient grievance procedures, hearings, and definitions necessary to carry out this part~~;~~.

(2) may take any other action *that* it determines necessary or appropriate to carry out the purposes of this part;

(3) may cooperate with other departments and agoncies and institutions, both public and private, in providing for vocational rehabilitation of persons with ~~employment handicaps~~ *disabilities*, in studying the problems involved in vocational rehabilitation, and in establishing, developing, and providing programs, facilities, and services;

(4) may conduct research and compile statistics relating to the vocational rehabilitation of persons with ~~employment handicaps~~ *disabilities*; and

(5) may accept and use gifts to carry out this part."

**Section 55.** Section 53-7-105, MCA, is amended to read:

**"53-7-105. Eligibility.** A person with ~~an employment handicap~~ *a disability* is eligible for vocational rehabilitation services if the department, after full investigation, determines that the person may become employable or achieve accepted vocational objectives tbrough the provision of vocational rehahilitation services that are made available as provided for in 53-7-108."

**Section 56.** Section 53-7-301, MCA, is amended to read:

**"53-7-301. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Blindness" means a visual disability in which:

(i) a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses; or

(ii) a person's visual field at the widest diameter subtends an angle no greater than 20 degrees.

(b) The term includes any visual disability that, in the determination of the department, renders vision seriously defective or causes blindness.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

HeinOnline -- 1997 vol. II 2400 1997

(3) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upen others for making decisions and conducting activities of daily living.

(4) "Low vision" means a visual impairment that, even with correction, remains so severe as to make performance of daily tasks difficult.

(5) "Maintenance" means money payments made in accordance with 53-7-310.

(6) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

(7) "Person with ~~an employment handicap~~ *a disability*" means the same as "individual with ~~handicaps~~ *a disability*" as defined in the federal Rehabilitation Act of 1973, 29 U.S.C. 706(8)(A), as may be amended. The term includes any individual who lacks ~~occupation~~ *occupational* or vocational achievement ~~due to~~ *because of* the presence of a physical or mental disability.

(8) (a) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce an *impediment to* employment ~~handicap~~ caused by blindness or low vision within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances.

(b) The term does not include curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(9) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(10) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with blindness or low vision. The barriers may exist in the areas of education, rehabilitation, employment, transpertation, independent living, and recreation.

(11) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services te assist a person with blindness or low vision to become independent and productive or employable.

(12) "Rehabilitation training" means training provided to a person with blindness or low vision to ~~rehabilitate~~ *overcome* the person's *impediment to* employment ~~handicap~~, including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(13) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with blindness or low vision to enable the person insofar as possible to become independent and productive or employable.

(14) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational gnidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical

HeinOnline -- 1997 vol. II 2401 1997

restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person."

**Section 57.** Section 53-7-306, MCA, is amended to read:

"**53-7-306. Eligibility for services.** A person with ~~an employment handicap due to~~ *a disability because of* blindness or low vision is eligible for vocational rehabilitation services if the department, after full investigation, determines that the person may become employable or achieve accepted vocational objectives through the provision of vocational rehabilitation services that are made available as provided for in 53-7-310."

**Section 58.** Section 53-18-101, MCA, is amended to read:

"**53-18-101. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Self-sufficiency trust" means a trust created by a nonprofit corporation that is a 501(c)(3) organization under the United States Internal Revenue Code of 1954, as amended, and that was organized under the Montana Nonprofit Corporation Act, Title 35, chapter 2, for the purpose of providing for the care and treatment of one or more persons who are residents of this state and are persons with developmental disabilities, ~~mentally ill~~ *mental illness*, ~~physically handicapped~~ *or physical disabilities*, or *are* otherwise eligible for department services, as defined by the department."

**Section 59.** Section 53-18-103, MCA, is amended to read:

"**53-18-103. Administration of trust account.** (1) The department may accept money from a self-sufficiency trust for deposit in the self-sufficiency trust account pursuant to an agreement with the self-sufficiency trust naming one or more beneficiaries who are residents of this state and are persons with developmental disabilities, ~~mentally ill~~ *mental illness*, ~~physically handicapped~~ *or physical disabilities*, or *are* otherwise eligible for department services, as defined by the department. The agreement must specify the care or treatment to be provided for each named beneficiary. Money in the trust account must be accounted for separately for each named beneficiary. The department of public health and human services shall administer the trust account for beneficiaries who are mentally ill.

(2) (a) The department shall adopt rules to administer the trust account.

(b) The money in the trust account may be spent by the department, pursuant to its rules, only to provide care or treatment for the named beneficiary in accordance with the terms of the agreement.

(c) If the director of the department determines that the money in the trust account for a named beneficiary cannot be used for the care and treatment of the beneficiary in a manner consistent with the rules of the department and the

HeinOnline -- 1997 vol. II 2402 1997

agreement or upon request of the self-sufficiency trust, the remaining money in the trust account for the named heneficiary, together with any accumulated interest, must be promptly returned to tbe self-sufficiency trust tbat provided the money for deposit in the trust account.

(3) The trust account money must be deposited in the state treasury and invested as required by law and the earnings credited to the trust account."

**Section 60.** Section 53-18-105, MCA, is amended to read:

**"53-18-105. Special account.** There is created within the self-sufficiency trust account a special account for the disabled. The director of the department may accept money from any source for deposit into the special account. The money in the special account must be used by the department, subject to appropriation, for the purpose of providing for the care and treatment of low-income persons with developmental disabilities, ~~mentally ill persons, and physically handicapped persons~~ *mental illness, or physical disabilities* or low-income persons otherwise eligible for department services, as defined by the department."

**Section 61.** Section 53-19-102, MCA, is amended to read:

**"53-19-102. Definitions.** As used in this part, the following definitions apply:

(1) "Community home for porsons with severe disabilities" means a facility licensed by the department, as provided for in 52-4-201 through 52-4-205.

(2) "Department" means the department of public health and human services established in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of tbe federal Rehabilitation Act of 1973, 29 U.S.C. 796, et seq., as may be amended.

(4) "Live and function independently" means to have control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon otbers for making decisions and conducting activities of daily living.

(5) "Person with *a* severe ~~disabilities~~ *disability*" means the same as "individual with *a* severe ~~handicaps~~ *disability*" as defined in the federal Reliabilitation Act of 1973, 29 U.S.C. 706(15)(B), as may be amended. The term includes an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of the physical or mental disability that the services provided under this part are required in order for the individual to achieve a greater level of independence in functioning in family or community or in engaging in or continuing in employment."

**Section 62.** Section 53-19-301, MCA, is amended to read:

**"53-19-301. Legislative findings and declaration.** (1) The legislature finds and declares that many Montana citizens ~~are physically handicapped~~ *have physical disabilities* and are unable to use traditional telecommunications equipment and services without assistance. These citizens constitute a substantial and valuable resource within tbe United States and tbe stato of

HeinOnline -- 1997 vol. II 2403 1997

Montana, and this segment of our population needs access to telecommunications services in order to function as contributing and productive members of our society.

(2) The legislature further finds and declares that the role of telecommunications in our world today is inestimable. Telecommunications is the primary vehicle of commerce and industry, the means to convey and receive information and knowledge, and the way *that* we connect with others on a personal as well as business level. Telecommunications gives people independence and self-sufficiency, and it provides goods and services, human contact, and fellowship.

(3) The legislature further finds that access to telecommunications services should be provided to persons who ~~are handicapped~~ *have disabilities* not only for their own sake but for the benefit of society at large. Access to telecommunications services would enhance the business and personal lives of ~~handicapped~~ persons *with disabilities*, and its availability to ~~the handicapped~~ *persons with disabilities* would be an investment of benefit to all of Montana.

(4) Consistent with the findings stated in subsections (1) through (3), the legislature finds it appropriate to provide ~~handicapped~~ persons *with disabilities* access to telecommunications services by creating a program to make specialized telecommunications equipment and services available to ~~the handicapped~~ *persons with disabilities*."

**Section 63.** Section 53-19-302, MCA, is amended to read:

"**53-19-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Committee" means the committee on telecommunications services for ~~the handicapped~~ *persons with disabilities* established in 2-15-2212.

(2) "Dual-party relay system" means a service that permits full and simultaneous communication between those using telecommunications devices for the deaf (TDD) and those using conventional telephone equipment.

~~(3) "Handicapped" means the condition of a person who is blind, deaf, hard of hearing, or speech impaired.~~

~~(4)~~*(3)* "Local exchange company" means a telecommunications company that provides telephone access lines to members of the general public who are its customers.

*(4) "Person with a disability" means the condition of a person who is blind, deaf, hard-of-hearing, or speech-impaired.*

(5) "Program" means the program established in 53-19-306.

(6) "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person ~~who is handicapped~~ *with a disability* to communicate with others by means of the conventional telephone network. The term includes but is not limited to telecommunications devices for the deaf (TDD), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, and telebraille.

HeinOnline -- 1997 vol. II 2404 1997

(7) "Telephone access line" means the telephone exchange access line or channel that provides access from the premises of a customer of a local exchange company to the telecommunications network to effect the transfer of information."

**Section 64.** Section 53-19-306, MCA, is amended to read:

**"53-19-306. Program established — purpose.** (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons ~~who are handicapped~~ *with disabilities*.

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons ~~who are handicapped~~ *with disabilities*; and

(b) provide a dual-party relay system to connect persons ~~who are handicapped~~ *with disabilities* with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101."

**Section 65.** Section 53-19-307, MCA, is amended to read:

**"53-19-307. Provision of services.** In administering the program established in 53-19-306, the committee shall:

(1) develop an appropriate means test to determine eligibility for participation in the program;

(2) require that participants in the program be residents of Montana and that residency be maintained as a condition of eligibility for continued participation in the program;

(3) require that participants provide satisfactory evidence that they ~~are handicapped~~ *have disabilities* and would benefit from the use of specialized telecommunications equipment;

(4) provide specialized telecommunications equipment to participants on the basis of a loan or lease arrangement that may include cost-sharing between the ~~handicapped~~ person *with a disability* and ~~his~~ *the person's* employer;

(5) determine the type of specialized telecommunications equipment *that* it considers necessary and economically feasible for use by Montana's ~~handicapped~~ *persons with disabilities*;

(6) purchase or lease all specialized telecommunications equipment through bid by wholesale manufacturers on a competitive basis;

(7) require, as a condition of each equipment purchase or lease, that the original manufacturer provide repair and maintenance service for new and returned equipment;

(8) maintain records of each item of equipment, including the location, serial number, and telephone number of each device;

HeinOnline -- 1997 vol. II 2405 1997

(9) require an appropriate security deposit for equipment at the time of delivery, which deposit must be refunded without interest when the equipment is returned;

(10) make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

(11) provide a dual-party relay system that, if feasible, would be available statewide for operation 7 days a week, 24 hours a day, including holidays; *and*

(12) ~~implement the service described in subsection (11) within 2 years following July 1, 1989; and~~

~~(13)~~ adopt rules necessary to administer the program."

**Section 66.** Section 53-19-310, MCA, is amended to read:

**"53-19-310. Fund for telecommunications services for ~~the handicapped~~ *persons with disabilities*.** (1) There is an account for telecommunications services for ~~the handicapped~~ *persons with disabilities* in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; and

(b) all charges billed and collected pursuant to 53-19-311.

(2) The money in the account is allocated to the committee for purposes of implementing this part.

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account."

**Section 67.** Section 53-20-102, MCA, is amended to read:

**"53-20-102. Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(3) "Court" means a district court of the state of Montana.

(4) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

HeinOnline -- 1997 vol. II 2406 1997

(5) "Developmental disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically ~~handicapping~~ *disabling* condition closely related to mental retardation and that requires treatment similar to that required by mentally retarded individuals. A developmental disability is a disability that originated before the individual attained age 18, that has continued or can be expected to continue indefinitely, and that ~~constitutes~~ *results in the person having* a substantial ~~handicap~~ *disability* ~~of the individual~~.

(6) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively witb personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(7) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

(8) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) "Qualified mental retardation professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person committed to a residential facility.

(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.

(12) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, ~~who are~~ *that is* responsible for screening a respondent to determine if the commitment of the respondent to a residential facility is appropriate.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and in need of developmental disability services in a residential facility.

(14) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(15) "Seriously developmentally disabled" means a porson who:

(a) has a developmental disability;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and who because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services."

HeinOnline -- 1997 vol. II 2407 1997

**Section 68.** Section 53-20-142, MCA, is amended to read:

**"53-20-142. Rights while in ~~a~~ residential facility.** Persons admitted to a residential facility for a period of habilitation sball enjoy the following rights:

(1) Residents have a right to dignity, privacy, and humane care.

(2) Residents are entitled to send and receive sealed mail. Moreover, it is the duty of the facility to foster tbe exercise of this right by furnishing the necessary materials and assistance.

(3) Residents must have the same rigbts and access to private telephone conmunication as patients at any public hospital except to the extent tliat the individual treatment planning teani or the qualified mental retardation professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents have an unrestricted right to visitation except to the extent that tlie individual treatnient planning team or the qualified mental retardation professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for tlie restrictions. The written order must be renewed monthly if restrictions are to be continued.

(5) Residents have a right to receive suitable educational and habilitation services regardless of chronological age, degree of retardation, or accompanying disabilities ~~or handicaps~~.

(6) Each resident must have an adequate allowance of neat, clean, suitably fitting, and seasonable clothing. Except when a particular kind of clotbing is required because of a particular condition, residents nust have tbe opportunity to select from various types of neat, clean, and seasonable clotbing. The clothing must be considered tbe resident's throughout ~~his~~ *the resident's* stay in the facility. Clothing, both in amount and type, must make it pessible for residents to go out of doors in inclenient weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(7) Each resident bas the right to keep and use ~~his~~ *the resident's* own personal possessions except insofar as ~~such~~ *the* clothes or personal possessions may be determined by the individual treatnient planning team or the qualified mental retardation professional to be dangorous either to ~~himself~~ *the resident* or to others.

(8) Each resident has a right to a humane physical environment within the residential facility. Tlie facility must be designed to make a positive contribution to the efficient attainment of tlie habilitation goals of tlie resident. To accomplish this purpose:

(a) regular housekeeping and maintenance procedures that will ensure that tlie facility is maintained in a safe, clean, and attractive condition must be developed and implemented;

HeinOnline -- 1997 vol. II 2408 1997

(b) pursuant to an established routine maintenance and repair program, the physical plant must be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety, and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents;

(c) the physical facilities ~~must~~ *shall* meet all fire and safety standards established by the state and locality. In addition, the facility ~~must~~ *shall* meet the provisions of the life safety code of the national fire protection association that are applicable to it.

(d) there must be special facilities for nonambulatory residents to ensure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision must be made to permit nonambulatory residents to communicate their needs to staff.

(9) Residents have a right to receive prompt and adequate medical treatment for any physical or mental ailments or injuries or physical disabilities and for the prevention of any illness or disability. ~~Such~~ *The* medical treatment must meet standards of medical practice in the community. However, nothing in this subsection may be interpreted to impair other rights of a resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of ~~such~~ treatment.

(10) Corporal punishment is not permitted.

(11) The opportunity for religious worship must be accorded to each resident who desires ~~such~~ worship. Provisions for religious worship must be made available to all residents on a nondiscriminatory basis. An individual may not be compelled to engage in any religious activities.

(12) Residents have a right to a nourishing, well-balanced diet. The diet for residents must provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions must be made for special therapeutic diets and for substitutes at the request of the resident, ~~his~~ *the resident's* parents, guardian, or next of kin, or the responsible person appointed by the court in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet may not be used as punishment.

(13) Residents have a right to regular physical exercise several times a week. It is the duty of the facility to provide both indoor and outdoor facilities and equipment for ~~such~~ exercise. Residents have a right to be outdoors daily in the absence of contrary medical considerations.

(14) Residents have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex except ~~where~~ *when* the individual treatment planning team or the qualified mental retardation professional responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons for the order. The order must be renewed monthly if the restriction is to be continued."

**Section 69.** Section 53-20-148, MCA, is amended to read:

**"53-20-148. Right to habilitation.** (1) Persons admitted to residential facilities ~~shall~~ have a right to habilitation, including medical treatment,

HeinOnline -- 1997 vol. II 2409 1997

education, and care suited to their needs, regardless of age, degree of retardation, or ~~handicapping~~ *disabling* condition. Each resident has a right to a habilitation program that will maximize ~~his~~ *the resident's* human abilities and enhance ~~his~~ *the resident's* ability to cope with ~~his~~ *the* environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize ~~his~~ *the resident's* fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residences;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within 30 days of ~~his~~ admission to a residential facility, each resident must have an evaluation by appropriate specialists for programming purposes.

(4) Each resident must have an individualized habilitation plan formulated by an individual treatment planning team. This plan must be implemented as soon as possible, but no later than 30 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, must commence promptly upon the resident's admission. Each individualized habilitation plan must contain:

(a) a statement of the nature of the specific limitations and the needs of the resident;

(b) a description of intermediate and long-range habilitation goals, with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professionals and other staff members who are responsible for the particular resident's attaining these habilitation geals;

(f) criteria for release to less restrictive settings for habilitation, based on the resident's needs, including criteria for discharge and a projected date for discharge.

(5) As part of ~~his~~ *the* habilitation plan, each resident must have an individualized postinstitutionalization plan that includes an identification of services needed to make a satisfactory community placement possible. This plan

must be developed by the individual treatment planning team that shall begin preparation of the plan upon the resident's admission to the facility and shall complete the plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, must be consulted in the development of the plan and must be informed of the content of the plan.

(6) In the interests of continuity of care, one qualified mental retardation professional shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. The qualified mental retardation professional ~~shall~~ *is* also ~~be~~ responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan must be reviewed monthly by the qualified mental retardation professional responsible for supervising the implementation of the plan and must be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident must receive a comprehensive psychological, social, habilitative, and medical diaguosis and evaluation and ~~his~~ *the resident's* habilitation plan must be reviewed and revised accordingly by the individual treatment planning team. A habilitation plan must be reviewed monthly.

(8) Each resident placed in the community must receive transitional habilitation assistance.

(9) The superintendent of the residential facility, or ~~his~~ *the superintendent's* designee, shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's habilitation and medical condition. The report must also state any appropriate habilitation program that has not been afforded to the resident because of inadequate habilitation resources.

(10) Each resident, the parents or guardian of each resident, and the responsible person appointed by the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning the care and habilitation of the resident that may be available to assist them in understanding the situation of the resident and the rights of the resident in the facility."

**Section 70.** Section 53-20-202, MCA, is amended to read:

**"53-20-202. Definitions.** As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

(a) evaluation services;

(b) diagnostic services;

(c) treatment services;

(d) day-care services;

(e) training services;

(f) education services;

(g) employment services;

(h) recreation services;

(i) personal-care services;

(j) domiciliary-care services;

(k) special living arrangements services;

(l) counseling services;

(m) information and referral services;

(n) follow-along services;

(o) protective and other social and sociolegal services; and

(p) transportation services.

(2) "Department" means the department of public health and human services.

(3) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other ~~neurological~~ *neurologically* ~~handicapping~~ *disabling* condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and ~~constitutes~~ *results in the person having* a substantial ~~handicap~~ *disability* ~~of the person~~.

(4) "Developmental disabilities facility" means any service or group of services offering care to persons with developmental disabilities on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(5) "Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-2204."

**Section 71.** Section 53-20-203, MCA, is amended to read:

"**53-20-203. Responsibilities of department.** The department shall:

(1) take cognizance of matters affecting the citizens of the state who are persons with developmental disabilities;

(2) initiate a preventive developmental disabilities program ~~which shall~~ *that must* include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means ~~shall~~ *must* be ~~utilized~~ *used* to

initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205 and 53-20-207.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare, with the assistance of the planning and advisory council, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services ~~shall~~ *must* include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(6) provide state personnel to assist regional councils provided for in 53-20-207;

(7) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state;

(8) require that habilitation plans be developed, implemented, and continuously maintained for all persons with developmental disabilities who are served through a community-based program funded by the state; and

(9) use funds available for cases in which special medical or material assistance is necessary to rehabilitate children with developmental disabilities or ~~physically handicapped~~ children *with physical disabilities* if ~~such~~ assistance is not otherwise provided for by law."

**Section 72.** Section 61-3-332, MCA, is amended to read:

"**61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable

HeinOnline -- 1997 vol. II 2413 1997

stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned te trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers.

HeinOnline -- 1997 vol. II 2414 1997

The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselsbell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teten, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must he assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal desiguating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the sanie rules and laws as govern the issuance of regular license plates, must he placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national gnard members, former prisoners of war, ~~handicapped~~ persons *with disabilities*, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (ancbor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). Tbe commanding officer of each armed forces reserve unit shall issuo to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two witli a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

HeinOnline -- 1997 vol. II 2415 1997

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a ~~handicapped person's~~ *person with a disability's* vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation *that* the department considers appropriate.

(e) Except as provided in subsection (10)(c), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection *(10)*(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

HeinOnline -- 1997 vol. II 2416 1997

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsection (10)(c), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of ~~the handicapped~~ *a* person *with a disability*."

**Section 73.** Section 61-3-454, MCA, is amended to read:

"**61-3-454. Special parking privilege.** A vehicle lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c)(i)(A) or 61-3-426(2) and conveying a 100% disabled veteran is entitled to the parking privileges allowed a ~~handicapped person's~~ *person with a disability's* vehicle under 49-4-302."

**Section 74.** Section 61-12-504, MCA, is amended to read:

"**61-12-504. Fees for identification cards.** (1) Fees not in excess of $8 for identification cards issued pursuant to this part must be collected and

HeinOnline -- 1997 vol. II 2417 1997

deposited in the general fund. A ~~handicapped~~ person *with a disability*, as defined in 39-30-103, may obtain a free identification card. An individual discharged from any correctional facility must be furnished a free identification card upon release, discharge, or parole.

(2) Each identification card expires on the anniversary of the date of birth of the holder 4 years after the date of issue."

**Section 75.** Section 69-3-307, MCA, is amended to read:

"**69-3-307. Treatment of advertisement costs and contributions.** Costs or expenses incurred by public utilities for advertising, transfers of funds without full and adequate consideration, contributions, donations, and gifts may not be treated as expenses deductible from income or from capital assets or in any other manner by the public service commission in setting or regulating rates ~~which~~ *that* may be charged by the public utilities pursuant to this chapter. This section ~~shall~~ *does* not apply to advertising ~~which~~ *that* encourages the conservation of energy or product safety or informs the public of the availability of alternative forms of energy or recommends usage at times of lower rates or lower demand. Furthermore, for communications public utilities, the provisions of this section ~~shall~~ *do* not apply to advertising ~~which~~ *that* relates to special equipment that is available to aid ~~the handicapped~~ *persons with disabilities* or to special services that are designed to protect the public health, welfare, and safety, to promote more efficient use of a communications system, or to promote increased use of regulated communications services."

**Section 76.** Section 77-2-318, MCA, is amended to read:

"**77-2-318. Sale of leased cabin or home sites or city or town lots.** (1) At the request of the lessee and if consistent with the orderly development and management of state lands, the board may make available for sale, in the manner provided in this part, any leased cabin or home site or city or town lot that was under lease on October 1, 1989.

(2) The lessee requesting the sale shall have prepared a current certificate of survey for the property. The cost of preparation of the certificate of survey must be included in the settlement for improvements, as provided for in 77-2-325, if a person other than the lessee is the purchaser.

(3) The sale of a lease is exempt from the subdivision laws, except that the development of any new, replacement, or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

(4) The sale of a leased cabin or home site or city or town lot under 77-2-318 through 77-2-320 must be completed no later than 10 years after October 1, 1989. A lessee may request a lease sale at any time during the 10-year period. Upon request, the board may grant a ~~handicapped~~ lessee *with a disability* or a lessee 65 years of age or older an additional 10-year period to request a sale of leased land.

(5) Upon a sale of leased land, the department shall, upon compliance with 77-2-101 through 77-2-106, grant a permanent easement across state lands to secure access using current routes."

HeinOnline -- 1997 vol. II 2418 1997

**Section 77.** Section 87-2-706, MCA, is amended to read:

**"87-2-706. Drawing for special antelope licenses.** (1) In the event *that* the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the department for the district, ~~such~~ *the* licenses ~~shall~~ *must* be awarded by a drawing. The department shall provide for those persons making valid application for special antelope licenses a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) The department shall reserve for applicants who are ~~permanently physically handicapped and~~ nonambulatory *and have a permanent physical disability*, as determined by the department, up to 25 of the total special antelope licenses authorized for sale in the state, for use in the district designated by the commission. If the number of valid disabled applicants exceeds the number of licenses available, the department may hold a drawing ~~whereby~~ *in which* all applicants have an equal chance of being selected.

(3) The department may promulgate ~~such~~ rules ~~and regulations as~~ *that* are necessary to implement this section."

**Section 78.** Section 87-2-803, MCA, is amended to read:

**"87-2-803. ~~Disabled persons~~ *Persons with disabilities.*** (1) ~~Disabled persons~~ *Persons with disabilities* are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years of age or older and who is under 62 years of age.

(3) A resident or nonresident ~~disabled~~ person *with a disability* who is certified as disabled by the department and who is not residing in an institution may carry a permit on a form prescribed by the department. A ~~disabled~~ person *with a disability who is* issued a permit under this subsection is entitled to have the department stamp the permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that the person is ~~permanently physically handicapped and~~ nonambulatory *and has a permanent physical disability* or that the person's mobility is substantially impaired.

(4) A ~~disabled~~ person *with a disability* carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle", may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. ~~Nothing in this~~ *This* subsection ~~allows~~ *does not allow* a ~~disabled~~ person *with a disability* to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A ~~disabled~~ person *with a disability* who hunts as authorized in this subsection must have a companion to assist in immediately

HeinOnline -- 1997 vol. II 2419 1997

dressing any killed game animal. The companion may also assist the ~~disabled~~ hunter *with a disability* hy hunting a game animal that has been wounded by the ~~disabled~~ hunter *with a disability* when the ~~disabled~~ hunter *with a disability* is unable to pursue and kill the wounded game animal. Any vehicle from which a ~~disabled~~ person *with a disability* is hunting must be conspicuously marked with an orange-colored international symbol of ~~the handicapped~~ *persons with disabilities* on the front, rear, and each side of the vehicle.

(5) A resident of Montana who is certified by the department as a blind individual, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure."

**Section 79.** Section 90-6-103, MCA, is amended to read:

**"90-6-103. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of housing created in 2-15-1814.

(2) "Bond" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by the board pursuant to this part, including those on which interest payments are taxable and those on which interest payments are tax exempt.

(3) "Capital reserve account" means the capital reserve account provided for in 90-6-107.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Federally insured mortgage" means a mortgage loan for land development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality ~~thereof~~ *of the United States* or a commitment by the United States or a gevernmental agency or instrumentalities ~~thereof~~ *of the United States* to insure ~~such~~ a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality ~~thereof~~ *of the United States*.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more ~~thereof~~ *of the entities listed in this subsection*.

(8) "Housing development" means single-family homes, multifamily projects, housing for the elderly projects, nursing home projects, ~~personal care~~ *personal-care* projects, and any work or undertaking financed in whole or in part under this part for the primary purpose of acquiring, constructing, or rehabilitating ~~such~~ accommodations for persons or families of lower income in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal properties ~~which~~ *that* are necessary,

HeinOnline -- 1997 vol. II 2420 1997

convenient, or desirable in connection ~~therewith~~ *with a development*, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities ~~as~~ *that* the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs incurred in a housing development approved by the board as reasonable and necessary, including but not limited to:

(a) cost of land acquisition and any buildings ~~thereon~~ *on the land*, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition, and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution, and financing of the housing development and the finding of an eligible mortgagee or mortgagees for the housing development;

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus, and similar facilities related to the real property;

(g) cost of land improvements, including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and, if applicable, a limited-profit housing sponsor;

(j) an allowance established by the board for working capital and contingency reserves and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) ~~costs~~ *cost* of other items, including tenant relocation, ~~as~~ *that* the board determines to be reasonable and necessary for the housing development, less any ~~and all~~ net rents and other net ~~revenues~~ *revenue* received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsors, nonprofit corporations, or other legal entities or any combination ~~thereof~~ *of the entities listed in this subsection* that are:

(a) approved by the board;

(b) qualified ~~either~~ to *either* own, construct, acquire, rehabilitate, operate, manage, or maintain a bousing development;

(c) subject to the rules of the board and other terms and conditions set fortb in tbis part.

(11) "Lending institution" means any public or private entity or governmental agency approved by the board maintaining an office in this state and authorized by law to make or participate in making residential mortgagos in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, otber entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary to carry out this part.

(13) "Mortgage" means a mortgage deed, deed of trust, or otber instrument ~~which shall constitute~~ *that constitutes* a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time *that* the mortgage is acquired~~, which~~ *that* does not expire for at least that number of years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest-bearing obligation secured by a mortgage on land and improvements in the state.

(15) "Nonprofit housing spensor" means a housing cooperative formed under Title 35, chapter 15, or a nonprofit corporation formed under Title 35, chapter 2, restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary, and whose articles of incorporation provide in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization ~~shall~~ *must* be used exclusively for housing development purposes and ~~no~~ part of the net income or net earnings of the organization ~~shall~~ *may not* inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain ~~therefrom~~ *from the organization* or seeking to eliminate or minimize losses in any transactions ~~therewith~~ *with the organization*, except that the limitations ~~shall~~ apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

HeinOnline -- 1997 vol. II 2422 1997

(16) "Persons and families of lower income" means persons and families with insufficient personal or family income or other financial resources who require assistance under this part, as determined by the board, taking into consideration:

(a) the amount of the total personal and family income, assets, and other financial resources available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families ~~due to~~ *because of* age or physical ~~handicaps~~ *disabilities*.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe, and sanitary housing or to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board."

**Section 80.** Section 90-7-104, MCA, is amended to read:

**"90-7-104. Eligible health facility.** (1) Eligible health facility means any structure or building used as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; ~~center~~ *facilities* for persons with ~~developmental~~ disabilities; ~~center for the handicapped;~~ chemical dependency treatment ~~center~~ *facilities*; nursing school; medical teaching facility; laboratory; dental care facility; or other structure or facility related to any of the foregoing or required or useful for the operation of a health facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the foregoing.

(2) An eligible health facility does not include such items as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and eligible health facility does not include a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship."

Approved May 2, 1997

HeinOnline -- 1997 vol. II 2423 1997

# CHAPTER NO. 473

[HB 99]

AN ACT REVISING THE TRAFFIC REGULATIONS IN A HIGHWAY CONSTRUCTION AREA; ESTABLISHING SPEED REGULATIONS IN A CONSTRUCTION ZONE AND A WORK ZONE; CREATING THE OFFENSE OF RECKLESS ENDANGERMENT OF HIGHWAY WORKERS; DEFINING "HIGHWAY WORKER", "CONSTRUCTION ZONE", AND "WORK ZONE"; DOUBLING THE PENALTIES FOR TRAFFIC VIOLATIONS IN A WORK ZONE; PROVIDING FOR DELAYED ENFORCEMENT OF RECKLESS ENDANGERMENT OF HIGHWAY WORKERS; AMENDING SECTIONS 61-8-303 AND 61-8-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Traffic violations in construction zone and work zone — definitions.** (1) As used in this section, the following definitions apply:

(a) "Construction zone" means an area on a public highway or on the adjacent right-of-way where construction, repair, maintenance, or survey work is heing performed by the department of transportation, a local authority, a utility company, or a private contractor under contract with the department of transportation or a local authority. A construction zone may include a work zone.

(b) "Public highway" has the same meaning as in 60-1-103.

(c) "Work zone" means the area where the construction, repair, maintenance, or survey work is actually taking place.

(2) A person may not operate a motor vehicle in a construction zone or in a work zone on a public highway in violation of any of the provisions of part 3 of this chapter.

(3) The speed limit in a construction zone or in a work zone must be set by the department of transportation or the local authority based on traffic conditions or the condition of the construction, repair, maintenance, or survey project.

(4) (a) The department of transportation, the local authority, the utility company, or the private contractor shall post signs that conform to the department of transportation's manual on uniform traffic control devices and that indicate the boundaries of the construction zone and the work zone and the speed limit in effect within both zones.

(b) The department of transportation, the local authority, the utility company, or the private contractor shall clearly indicate at the boundary of a construction zone that a person who violates any of the provisions of part 3 of this chapter in the work zone is subject to the fine provided in subsection (5)(a).

(c) The boundaries of the work zone may not exceed 500 feet in advance of and beyond the actual construction activity.

(5) (a) A person convicted of a traffic violation in a work zone is guilty of a misdemeanor. Upon arrest and conviction, the person shall be punished by a fine

HeinOnline -- 1997 vol. II 2424 1997

of not less than double the penalty provided for the violation in part 7 of this chapter.

(b) A person convicted of a traffic violation in a construction zone is guilty of a misdemeanor. Upon arrest and conviction, the person is subject to the penalty provided for the violation in part 7 of this chapter.

**Section 2. Reckless endangerment of highway workers — definition.** (1) As used in this section, "highway worker" means an employee of the department of transportation, a local authority, a utility company, or a private contractor.

(2) A person commits the offense of reckless endangerment of highway workers if the person purposely, knowingly, or negligently drives a motor vehicle in a highway construction zone in such a manner as to endanger persons or property or if the person purposely removes, ignores, or intentionally strikes a traffic control device in a highway construction zone for reasons other than:

(a) avoidance of an obstacle;

(b) an emergency; or

(c) to protect the health or safety of an occupant of the vehicle or another person.

**Section 3.** Section 61-8-303, MCA, is amended to read:

**"61-8-303. Speed restrictions — basic rule.** (1) A person operating or driving a vehicle of any character on a public highway of this state shall drive the vehicle in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to the view ahead. The person operating or driving the vehicle shall drive the vehicle so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(2) When no special hazard exists that requires lower speed for compliance with subsection (1), the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 is lawful, but a speed in excess of the following limits is unlawful:

(a) 25 miles per hour in an urban district;

~~(b) 35 miles per hour on a highway under construction or repair or on a highway being surveyed, unless the department establishes and posts a different limit due to traffic conditions or the condition of the construction, repair, or survey project;~~

~~(c)~~*(b)* 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour.

(3) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

HeinOnline -- 1997 vol. II 2425 1997

(4) The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, ~~and~~ 61-8-313, *and [section 1].*

(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition."

**Section 4.** Section 61-8-715, MCA, is amended to read:

**"61-8-715. Reckless driving — *reckless endangerment of highway workers* — penalty.** (1) A person convicted of reckless driving under 61-8-301(1)(a) or (1)(c) *or convicted of reckless endangerment of highway workers under [section 2]* shall be punished upon a first conviction by imprisonment for a period of not more than 90 days, ~~or~~ by fine of not less than $25 or more than $300, or by both ~~such fine and imprisonment,~~. ~~and on~~ *On* a second or subsequent conviction *the person* shall be punished by imprisonment for not less than 10 days or more than 6 months, ~~or~~ by a fine of not less than $50 or more than $500, or by both ~~such fine and imprisonment~~.

(2) A person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than $300 or more than $500. On a second or subsequent conviction, ~~he~~ *the person* shall be punisbed by imprisonment for a term of not less than 30 days or more than 1 year to which may be added at the discretion of the court a fine of not less than $500 or more than $1,000.

*(3) (a) For a 6-month grace period following [the effective date of this act], a peace officer shall issue one warning citation to a person found recklessly endangering a highway worker as the offense is described in [section 2]. If that person is found recklessly endangering a highway* worker a second or subsequent time during the grace period, the person is subject to the ponalties provided in this section.

*(b) At the expiration of the grace period, the penalties provided in this section apply to all convictions of reckless endangerment of a highway worker.*

*(c) The grace period provided in subsection (3)(a) applies only to reckless endangerment of a highway worker as defined in [section 2] and does not affect the penalties for or enforcement of any other violation of traffic regulations provided in Title 61."*

**Section 5. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 8, part 3, and the provisions of Title 61, chapter 8, part 3, apply to [sections 1 and 2].

**Section 6. Effective date.** [This act] is effective on passago and approval.

HeinOnline -- 1997 vol. II 2426 1997

**Section 7. Termination.** [Section 4(3)] terminates 6 months following [the effective date of this act].

Approved May 1, 1997

# CHAPTER NO. 474

[HB 102]

AN ACT ESTABLISHING THE CORRECTIONAL AND SENTENCING POLICY FOR THE STATE OF MONTANA; ADOPTING PRINCIPLES TO IMPLEMENT THE STATE POLICY; AND AMENDING SECTION 46-18-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-101, MCA, is amended to read:

**"46-18-101. Correctional *and sentencing* policy.** (1) It is the purpose of this section to ~~declare~~ *establish* the correctional *and sentencing* policy of the state of Montana. Laws for the punishment of crime ~~and for the rehabilitation of the convicted~~ are drawn to implement the policy established hy this section.

(2) The correctional *and sentencing* policy of the state of Montana is to ~~protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions, including, whenever possible, the restoration of all pecuniary losses sustained by a victim of the offense. Corrections laws and programs must be implemented to impress upon each individual the responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities. Finally, it is the policy of the state to recognize that the interests of crime victims should be considered so that, to the extent possible, victims of crime may be protected from threat of future harm by the offender.~~

~~(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:~~

~~(i) the crime committed;~~

~~(ii) the prospects of rehabilitation of the offender;~~

~~(iii) the circumstances under which the crime was committed;~~

~~(iv) the criminal history of the offender; and~~

~~(v) consideration of alternatives to imprisonment of the offender in the state prison or the women's correctional system.~~

~~(b) Dangerous offenders who habitually violate the law and victimize the public must be removed from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt with by probation, suspended~~

~~sentence, community corrections, community service, or fine whenever the disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders must include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.~~

*(a) punish each offender commensurate with the nature and degree of harm caused by the offense;*

*(b) protect the public by incarcerating violent offenders and serious repeat offenders;*

*(c) provide restitution, reparation, and restoration to the victim of the offense; and*

*(d) encourage and provide opportunities for the offender's self-improvement.*

~~(4) It is also the policy of the state that alternatives to imprisonment, such as community corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce recidivism and enable offenders to become productive members of society~~

*(3) To achieve the policy outlined in subsection (2), the state of Montana adopts the following principles:*

*(a) Sentencing and punishment must be certain, timely, consistent, and understandable.*

*(b) Sentences should be commensurate with the punishment imposed on other persons committing the same offenses.*

*(c) Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status.*

*(d) Sentencing practices must permit judicial discretion to consider aggravating and mitigating circumstances.*

*(e) Sentencing practices must include punishing violent and serious repeat felony offenders with incarceration.*

*(f) Sentencing practices must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records.*

*(g) Sentencing and correctional practices must emphasize that the offender is responsible for obeying the law and must hold the offender accountable for the offender's actions.*

*(h) Sentencing practices must emphasize restitution to the victim by the offender. A sentence must require an offender who is financially able to do so to pay restitution, costs as provided in 46-18-232, costs of court-appointed counsel as provided in 46-8-113, and, if the offender is a sex offender, costs of any chemical treatment."*

Approved May 1, 1997

HeinOnline -- 1997 vol. II 2428 1997

# CHAPTER NO. 475

[HB 122]

AN ACT REQUIRING A PRISONER IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO EITHER PAY A FILING FEE TO FILE A COMPLAINT IN A CIVIL PROCEEDING OR SUBMIT A CERTIFIED COPY OF THE PRISONER'S TRUST FUND ACCOUNT STATEMENT; PROVIDING THAT MONEY RECEIVED BY A PRISONER BE SUBJECT TO GARNISHMENT FOR PAYMENT OF VICTIM RESTITUTION, CHILD SUPPORT, AND PER DIEM COSTS OF IMPRISONMENT; PROHIBITING PRISONERS FROM FILING COMPLAINTS WITH THE DEPARTMENT OF COMMERCE AGAINST CERTAIN PROFESSIONALS; CLARIFYING THE USE OF AND PROVIDING LIMITATIONS ON THE ISSUANCE OF WRITS OF HABEAS CORPUS FOR INMATES TO TESTIFY IN CIVIL PROCEEDINGS; AMENDING SECTIONS 25-10-404 AND 37-1-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Prisoner attendance at civil proceeding prohibited — exceptions — costs.** (1) A person incarcerated in a correctional facility of the department of corrections may not attend a civil proceeding in which the person is a party unless:

(a) the person is a respondent in a proceeding to terminate parental rights; or

(b) the court determines that a party will be substantially and irreparably prejudiced by not attending the civil proceeding.

(2) A court may not issue a writ of habeas corpus ordering a person in the legal custody of the department of corrections to attend a court proceeding without first:

(a) notifying the department and allowing the department 15 days to file a written objection; and

(b) if requested, granting the department an opportunity to appear and present evidence that the person's attendance at the proceeding represents a security risk.

(3) A person who requests that a person in the legal custody of the department of corrections attend a civil proceeding shall pay all costs associated with security.

**Section 2. Garnishment — report by supervising authority.** (1) If the department of corrections becomes aware that a prisoner while incarcerated under the legal custody of the department of corrections is entitled to receive money from any source, the prisoner's supervising authority may prepare a report identifying:

(a) the total costs incurred by the state or county during the prisoner's incarceration;

(b) the criminal sentences imposed upon the prisoner, including:

HeinOnline -- 1997 vol. II 2429 1997

(i) the amount of restitution, if any, ordered in each sentence;

(ii) the name and current address of each victim or other person to whom restitution is owed;

(iii) the amount of restitution paid by the prisoner; and

(iv) the amount of restitution currently owed by the prisoner for each sentence;

(c) the amount of any child support owed by the prisoner.

(2) The supervising authority shall provide notice and a copy of the report to the board of crime control and the county attorney for the county in which the prisoner was sentenced, either of whom may submit the report along with a petition for garnishment to the court that sentenced the prisoner. The court may order garnishment of the prisoner's money for the payment of restitution, child support, and per diem costs of incarceration owed by the prisoner. Upon receipt of the petition, the court shall provide a copy of the report to the prisoner, who has 15 days following receipt to file an objection. The court may hold a hearing to consider objections raised by the prisoner.

(3) Upon compliance with the provisions of subsections (1) and (2), the court shall determine the amount of restitution, child support, and repayment for per diem costs owed by the prisoner. The court shall order, up to the amount of money available, payment of an amount equal to the restitution owed by the prisoner to the person designated under 46-18-245 to supervise the making of restitution payments, any outstanding child support payments to the department of public health and human services for disbursement to the obligee, and per diem costs owed by the prisoner. All restitution owed by the prisoner must be paid prior to payment of any child support payments. All child support owed by the prisoner must be paid prior to the payment of any per diem costs.

**Section 3.** Section 25-10-404, MCA, is amended to read:

**"25-10-404. Poor persons not required to prepay fees — *definition.*** (1) Except as provided in ~~subsection~~ *subsections* (3) *and (6)*, a person may request a waiver of fees by filing an affidavit, supported by a financial statement, stating that the person has a good cause of action or defense and is unable to pay the costs or procure security to secure the cause of action or defense. Except as provided in ~~subsection~~ *subsections* (2) *and (6)*, upon issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state and the officers of the courts and administrative tribunals shall issue and serve all writs and perform all services in the action without demanding or receiving their fees in advance.

(2) If a judge or presiding officer of an administrative tribunal is not available to approve a request for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval. If the request is subsequently denied, the fees must be paid before the case may proceed further.

(3) A person represented by an entity that provides free legal services to indigent persons is not required to file the financial statement required by subsection (1).

HeinOnline -- 1997 vol. II 2430 1997

(4) The department of justice shall, by rule, prescribe the form of the financial statement required by subsection (1) for use in determining indigence. The form may require the disclosure of income and assets, including but not limited to the ownership of real and personal property, cash, and savings.

*(5) A prisoner in the legal custody of the department of corrections who files a complaint or appeals a judgment in a civil action or proceeding without prepaying the required fees or security shall, in addition to filing the affidavit required in subsection (1), submit a certified copy of the prisoner's trust fund account statement, obtained from the facility in which the prisoner is confined, for the 6-month period immediately preceding any filing.*

*(6) If an indigent prisoner in the legal custody of the department of corrections files a civil complaint or an appeal from a civil judgment, the prisoner shall pay the total cost of the filing fee. If a prisoner is unable to pay the total filing fee, the court shall order the prisoner to make partial payments of any fees required by law when funds exist. The court shall consider the indigence policy of the department when determining whether funds exist.*

*(7) A prisoner may not be prohibited from filing a civil complaint or appealing a civil judgment or criminal conviction because of lack of assets or money to pay the initial partial filing fee. The court shall dismiss an action if the prisoner fails to pay either the partial or full amount of the filing fee as ordered by the court.*

*(8) As used in this section, "prisoner" means a person who is convicted of, sentenced for, or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, or a diversionary program and who is subject to incarceration, detention, or admission to any facility."*

**Section 4.** Section 37-1-308, MCA, is amended to read:

**"37-1-308. Unprofessional conduct — complaint — investigation — immunity — *exception*.** (1) *A Except as provided in subsection (3), a* person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

*(3) A person may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while incarcerated under the legal custody of the department of corrections. If the department of corrections has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person incarcerated under the legal custody of the department of corrections, the department of corrections shall report the possible violation to the department for appropriate action under subsection (2)."*

HeinOnline -- 1997 vol. II 2431 1997

**Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 25, chapter 10, and the provisions of Title 25, chapter 10, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to [section 2].

**Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 1997

# CHAPTER NO. 476

[HB 123]

AN ACT PROVIDING FOR A CAPITOL COMPLEX MASTER PLAN ACT; CREATING A CAPITOL COMPLEX ADVISORY COUNCIL; SPECIFYING THE ADVISORY COUNCIL'S DUTIES; REQUIRING LEGISLATIVE APPROVAL FOR NAMING CERTAIN BUILDINGS AND ESTABLISHING CERTAIN PERMANENT DISPLAYS; REQUIRING THE DEPARTMENTS OF ADMINISTRATION AND FISH, WILDLIFE, AND PARKS TO MAINTAIN INVENTORIES OF IMPROVEMENTS; AND AMENDING SECTION 5-11-115, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 7] may be cited as the "Capitol Complex Master Plan Act".

**Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Capitol complex" means the capitol building and all the state buildings within a 10-mile radius of the capitol building.

(2) "Council" means the capitol complex advisory council established in [section 3].

(3) "Legislative council" means the legislative council established in 5-11-101.

**Section 3. Capitol complex advisory council established — membership — staff services — compensation.** (1) There is a capitol complex advisory council.

(2) The council consists of nine members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) a public representative appointed by the governor; and

(d) the director or the director's designee of each of the following agencies:

(i) the Montana historical society established in 22-3-101;

(ii) the Montana arts council established in 2-15-1513;

(iii) the department of administration established in 2-15-1001; and

(iv) the department of fish, wildlife, and parks established 2-15-3401.

(3) The council shall select a presiding officer, who may call meetings to conduct council business. The departments of administration and fish, wildlife, and parks shall provide staff services to the council.

(4) (a) The council member appointed under subsection (2)(c) is entitled to compensation not to exceed the amount provided for in 5-2-301(3) for compensation of legislators for each day in which the member is actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(b) A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.

(c) A council member appointed under subsections (2)(a) or (2)(b) is entitled to compensation and expenses as provided in 5-2-302.

**Section 4. Council duties and responsibilities.** (1) The council shall:

(a) review proposals for permanent displays or the naming of state buildings in the capitol complex;

(b) advise the legislature on the placement of busts, statues, memorials, monuments, or art displays of a permanent nature within public areas of the capitol complex, including the executive residence and the original governor's mansion;

(c) advise the department of administration on interior decoration of the capitol; and

(d) advise the department of fish, wildlife, and parks on grounds maintenance and grounds displays.

(2) In advising the legislature on permanent displays, the council shall consider whether the bust, statue, memorial, monument, or art display:

(a) reasonably fits the master plan for the capitol and adjacent grounds developed under 5-11-115;

(b) adversely alters the appearance of the capitol or other capitol complex buildings;

(c) unreasonably affects foot traffic on the capitol complex;

HeinOnline -- 1997 vol. II 2433 1997

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in its design and construction;

(g) will be safely and aesthetically suited to its installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that it has reviewed for naming buildings and for permanently placing items in the capitol or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this section. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized.

**Seetion 5. Approval for displays and naming buildings.** (1) A state building in the capitol complex may not be named after an individual, and a bust, statue, memorial, monument, or art display may not be permanently displayed in the capitol or on the capitol complex grounds unless the building name or display is approved by the legislature and complies with this section.

(2) A state building in the capitol complex may not be named after an individual unless the individual has been deceased for at least 5 years.

(3) All busts, statues, memorials, monuments, or art displays authorized, but not installed within 5 years of authorization, must be reauthorized.

**Section 6. Department of administration to establish policies on capitol.** The department of administration, with the advice of the council, shall establish policies governing maintenance and beautification of the capitol, executive residence, and original governor's mansion. The policies must provide that all historic furnishings original to the capitol remain in the building if an agency relocates and may designate appropriate wall, floor, and window coverings for the capitol. The Montana Administrative Procedure Act does not apply to [sections 1 through 7].

**Section 7. Inventory of improvements.** (1) The department of fish, wildlife, and parks shall maintain an inventory of commemorative displays, statues, artwork, plaques, and other improvements upon the grounds of the capitol complex, including the executive residence and original governor's mansion.

(2) The department of administration shall maintain an inventory of commemorative displays, statues, artwork, plaques, and other improvements in the capitol building.

(3) Both departments shall make their inventories available to the council.

HeinOnline -- 1997 vol. II 2434 1997

**Section 8.** Section 5-11-115, MCA, is amended to read:

**"5-11-115. Function of department of administration — capitol area master plan — advice of *capitol complex advisory council and* legislative council.** (1) ~~The~~ *With advice from the council, the* ~~department~~ *departments* of administration *and fish, wildlife, and parks* shall establish and maintain a *long-range* master plan for the orderly development of state buildings in the immediate area of the capital city. The *long-range* master plan must be developed and maintained, with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County, based, without limitation, upon zoning regulations, population trends, and plans for rapid transit development; *and*

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and state property in the immediate area of the capital city.

(2) The legislative council shall consult with and advise the department of administration concerning the assignment of space in the capitol.

~~(3) The legislative council shall consult with and advise the Montana historical society on the placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol building. An item may not be permanently displayed unless approved by the legislature.~~

~~(4)~~ The Montana historical society shall protect and preserve the permanent artwork in the capitol ~~building~~ and request funding for periodic inspection, maintenance, and repair of the artwork from the trust fund established in 15-35-108 for protection of works of art in the state capitol and other cultural and aesthetic projects.

~~(5)~~*(4)* The legislative council shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol."

**Section 9. Codification instruction.** (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 2, chapter 17, and the provisions of Title 2, chapter 17, apply to [sections 1 through 7].

(2) Sections 2-17-109, 2-17-111, 2-17-113, 2-17-131, 5-11-115, and 5-11-116 are intended to be renumbered and codified as an integral part of [sections 1 through 7].

Approved May 1, 1997

HeinOnline -- 1997 vol. II 2435 1997

# CHAPTER NO. 477

[HB 136]

AN ACT PROVIDING FOR THE ISSUANCE OF REVENUE BONDS TO PROVIDE FUNDING FOR STATE CORRECTIONAL SERVICES BEING CONTRACTED TO A PRIVATE ENTITY; AUTHORIZING THE MONTANA HEALTH FACILITY AUTHORITY TO ADMINISTER THE PROGRAM; AMENDING SECTIONS 90-7-102, 90-7-103, 90-7-104, 90-7-111, 90-7-202, 90-7-204, 90-7-211, 90-7-213, 90-7-214, 90-7-303, 90-7-304, 90-7-305, 90-7-307, AND 90-7-317, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 90-7-102, MCA, is amended to read:

**"90-7-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana health facility authority created in 2-15-1815.

(2) "Capital reserve account" means the account established in 90-7-317.

(3) "Costs" means costs allowed under 90-7-103.

(4) ~~"Health facility"~~ *"Facility"* means any *health care* facility *or prerelease center* provided for in 90-7-104.

(5) ~~"Health institution"~~ *"Institution"* means any public or private~~,~~*;*

*(a)* nonprofit hospital, corporation, or other organization authorized to provide or operate a health facility in this state*; or*

*(b) nonprofit prerelease center, corporation, or other organization authorized to operate a prerelease center in this state.*

(6) "Participating ~~health~~ institution" means a health institution *or prerelease center* that undertakes the financing, refunding, or refinancing of obligations on the construction or acquisition of a ~~health~~ facility pursuant to the provisions of this chapter.

(7) "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of ~~such~~ *the* facilities."

**Section 2.** Section 90-7-103, MCA, is amended to read:

**"90-7-103. Allowable costs.** Costs eligible for financing or refinancing under this chapter include:

(1) the total of all reasonable or necessary costs incidental to the acquisition, construction, reconstruction, repair, alteration, equipment, enlargement, and improvement of an eligible ~~health~~ facility and the acquisition of all real and personal property interests necessary or useful in connection with the facility and all other undertakings ~~which~~ *that* the authority considers reasonable or necessary for the development of the facility;

HeinOnline -- 1997 vol. II 2436 1997

(2) the cost of demolishing or removing any building or structure on land so acquired, the cost of acquiring any land to which ~~such~~ *the* building or structure may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if judged advisable by the authority, for a period after completion of ~~such~~ construction, *and* the cost of financing the facility, including interest on bonds and notes issued hy the authority to finance the facility;

(3) reserves for principal and interest and for extensions, enlargements, additions, and improvements, including witbout limitation the cost of studies and surveys;

(4) the costs for land title and mortgage guaranty policies;

(5) the costs of plans, specifications, and architectural and engineering services;

(6) the costs of legal, organization, marketing, or other special services;

(7) the costs of financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings;

(8) tbe costs of rehabilitation, reconstruction, repair, or remodeling of existing buildings; and

(9) all other expenses necessary and incidental to the construction and acquisition of the facility, the financing of ~~such~~ construction, and tbe acquisition and placing of the facility into operation."

**Section 3.** Section 90-7-104, MCA, is amended to read:

**"90-7-104. Eligible ~~health~~ facility.** (1) Eligible ~~health~~ facility means any structure or building used as a hospital, clinic, nursing liome, or other health care facility as defined in 50-5-101; center for persons with developmental disabilities; center for the handicapped; chemical dependency treatment center; nursing school; medical teaching facility; laboratory; dental care facility; *prerelease center;* or other structure or facility related to any of the foregeing or required or useful for the operation of a ~~health~~ facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal proporty necessary or convenient as a site for any of tbe foregoing.

(2) An eligible ~~health~~ facility does not include such items as food, fuel, supplies, or other items that are customarily considered as current operating expenses~~;~~, and *an* eligible ~~health~~ facility does not include a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship."

**Section 4.** Section 90-7-111, MCA, is amended to read:

**"90-7-111. Credit of state not pledged — statement on obligation required.** (1) Obligations issued under tbe provisions of this chapter do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from tlie revenues or assets of the ~~health~~ institution being financed.

HeinOnline -- 1997 vol. II 2437 1997

(2) An obligation issued under this chapter must contain on the face ~~thereof~~ *of the obligation* a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation."

**Section 5.** Section 90-7-202, MCA, is amended to read:

**"90-7-202. Powers of authority.** The authority may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this chapter;

(4) issue bonds or incur other debt as described in this chapter, including the issuance of notes or refunding bonds;

(5) invest any funds obtained from the issuance of bonds and notes ~~which~~ *that* are not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for investment, must be deposited in an enterprise fund to the credit of the authority;

(6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it considers appropriate to carry out the purposes of this chapter;

(7) participate with any financial institution in the purchase or guarantee of any loan or obligation;

(8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding of eligible facilities;

(9) enter into agreements or make advance commitments to insure repayments required by loan agreements made by a lender. ~~Such~~ *The* agreements are subject to terms and conditions established by the authority.

(10) sell, purchase, or insure loans to finance the costs of eligible facilities;

(11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a municipality, or any other source;

(12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity consistent with the exercise of any power under this chapter;

(13) with regard to property:

(a) acquire real or personal property or any right, interest, or easement ~~therein~~ *in the property* by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose ~~thereof~~ *of property*;

(c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned hy it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or privato sale, with or without puhlic bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and

(h) operate, manage, lease, dispose of, and otherwise deal with ~~such~~ property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes if ~~such~~ *the* action is consistent with any agreement with ~~such~~ *the* holders;

(14) service, contract, and pay for the servicing of loans;

(15) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of eligible ~~health~~ facilities whenever considered appropriato;

(16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, or payment of any installment of principal, interest, or security or any othor term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(17) collect reasonable interest, fees, and charges from participating institutions in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. The interest, fees, and charges ~~shall~~ *must* be deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required to pay the costs of the authority, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(18) perform any other acts necessary and convenient to carry out the purposes of this chapter."

**Section 6.** Section 90-7-204, MCA, is amended to read:

"**90-7-204. Agent of the authority.** The authority may designate a participating ~~health~~ institution as its agent for determining the location and character of an eligible ~~health~~ facility undertaken by that institution under the provisions of this chapter. As agent, the institution may acquire, construct, reconstruct, renovate, replace, improve, maintain, repair, oporate, lease, as lessee or lessor, and enter into contracts for any and all such purposes, including contracts for the management and operation of the facility."

HeinOnline -- 1997 vol. II 2439 1997

**Section 7.** Section 90-7-211, MCA, is amended to read:

**"90-7-211. Necessary expenses — fees.** (1) All expenses of the authority incurred in carrying out tbe provisions of this chapter are payable solely from funds provided under the authority of this chapter, and ~~no~~ liability may *not* he incurred by the authority heyond the extent to which money has been provided under tbis chapter, except for the purposes of meeting the necessary expenses of initial organization and operation and until ~~such~~ *the* date ~~as~~ *that* the authority derives money from funds provided under this chapter. The authority may horrow money for necessary expenses of organization and operation. ~~Such~~ *The* borrowed money must be repaid within a reasonahle time after the authority receives funds provided for under this chapter.

(2) When an application is made to the authority by any participating ~~health~~ institution for financial assistance to provide for its facilities, the application may be accompanied by an initial planning service fee in an amount determined by the authority. ~~Such~~ *The* initial planning service fee may be included in the cost of the facilities to be financed and is not refundable hy the authority, whether or not any application is approved. In addition to tbe initial fee, an annual planning service fee may he paid to the authority by each participating ~~health~~ institution in an amount determined by the authority. The annual planning service fee may be paid on ~~such~~ dates or in installments as may be satisfactory to the authority. The fees must be used for:

(a) necessary expenses to determine the need for facilities in the area concerned, and to that end the authority may utilize recognized voluntary and official healtb planning organizations and agencies at local, regional, and state levels;

(b) necessary administrative expenses; and

(c) reserves for anticipated future expenses.

(3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm, partnership, association, or corporation for the furnishing of services and data for use by the authority in determining the need for and location of any eligible ~~health~~ facility for which application is being made or for ~~such~~ other services or surveys ~~as~~ *that* the authority considers necessary to carry out the purposes of this chapter."

**Section 8.** Section 90-7-213, MCA, is amended to read:

**"90-7-213. Loan limitation.** ~~No~~ *A* loan made by the autbority may *not* exceed the total cost of the eligible ~~health~~ facility being financed as ~~such cost is~~ determined by the participating institution and approved by the authority."

**Section 9.** Section 90-7-214, MCA, is amended to read:

**"90-7-214. Restriction on operating facility — leases.** (1) The authority may not operate an eligihle ~~health~~ facility as a business other than ~~as~~ a lessee or lessor. Tlie lease must provide for rentals adequate to pay tbe principal and interest due on bonds and to create and maintain ~~such~~ reserves and accounts for depreciation as the authority determines necessary.

HeinOnline -- 1997 vol. II 2440 1997

(2) The lease may contain terms and conditions that the authority considers proper. The lease may be terminated upon failure of the participating ~~health~~ institution to comply with any obligation under the lease. The lease may include a renewal or an option to purchase provision upon ~~such~~ terms or conditions as the authority considers desirable.

(3) Upon payment of all indebtedness incurred by the authority for financing a facility, the authority may convey any or all of the facility to the lessee, with or without consideration."

**Section 10.** Section 90-7-303, MCA, is amended to read:

**"90-7-303. Proccdure for issuance of bonds.** (1) The authority may not undertake to finance any eligible ~~health~~ facility unless, prior to the issuance of any bonds or notes, the members find that ~~such~~ *the* facility will be operated by a health institution for the purpose of fulfilling its obligation to provide health care facilities *or by a prerelease center for purpose of preparing persons to reenter society*.

(2) The authority may not allow the proceeds of any bonds or notes to be expended for any *health care* facility unless ~~such~~ *the* facility has been reviewed and approved by the appropriate regional and state health planning boards and has received any approval required by Title 50, chapter 5, part 3.

(3) The authority may not allow the proceeds of any bonds or notes to be expended for any facility until it has been shown that ~~such~~ *the* facility is financially feasible and that there will be sufficient revenues to ~~assure~~ *ensure* that principal and interest payments are made when they become due.

(4) The authority may not allow the proceeds of any honds or notes to be expended for any facility until it has considered the ability of the ~~health~~ institution to operate ~~such a~~ *the* facility based on the ~~health~~ institution's experience and expertise.

(5) The authority ~~must insure~~ *shall ensure* that its financings consistently provide fair and realistic terms and covenants sufficient to protect the position of the lenders or bondholders."

**Section 11.** Section 90-7-304, MCA, is amended to read:

**"90-7-304. Security of bondholders.** (1) The payment of the principal of and interest on any honds issued under this chapter must be secured by a pledge of the revenues out of which ~~such~~ *the* bonds are made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the participating ~~health~~ institution;

(b) a pledge of the lease or loan agreement relating to ~~such~~ *the* facility; or

(c) ~~such other~~ *another* security device ~~as may be~~ *that is* considered most advantageous by the authority.

(3) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter and any mortgage given to secure the ~~same~~ *bonds*,

HeinOnline -- 1997 vol. II 2441 1997

including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds, as the authority considers advisable. ~~Such~~ *The* provisions may not be in conflict with the provisions of this chapter, including without limitation provisions relating to:

(a) fixing and collection of rents or payments under any lease or loan agreement concerning the facility covered by ~~such~~ *the* proceedings or mortgage;

(b) terms to be incorporated in the lease or loan agreement;

(c) maintenance and insurance of ~~such~~ *the* facility;

(d) creation and maintenance of special funds from the revenues of ~~such~~ *the* facility; and

(e) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(4) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage, including a mortgage given by the lessee or borrower, securing ~~such~~ bonds may provide that in the event of a default in the payment of the principal of or the interest on ~~such~~ *the* bonds or in the performance of any agreement contained in ~~such~~ *the* proceedings or mortgage, ~~such~~ *the* payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with ~~such~~ *the* proceedings or the provisions of ~~such~~ *the* mortgege.

(5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide that, in the event of a default in the payment ~~thereof~~ *of the bonds* or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the mortgage or the holder of any of the bonds secured ~~thereby~~ *by the mortgage* may become the purchaser at any foreclosure sale if ~~he~~ *the trustee* is the highest bidder ~~therefor~~. ~~No~~ *A* breach of ~~any such~~ *an* agreement may *not* impose any pecuniary liability upon the authority."

**Section 12.** Section 90-7-305, MCA, is amended to read:

**"90-7-305. Trust agreement to secure bonds.** In the discretion of the authority, any bonds issued under this chapter may be secured by a trust agreement between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company in Montana. The trust agreement or the resolution providing for the issuance of ~~such~~ bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion ~~thereof~~ *of the project*. The trust agreement or resolution providing for the issuance of ~~such~~ bonds may contain ~~such~~ provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly ~~such~~ provisions ~~as~~ *that* have been specifically authorized to be included in any resolution of the authority authorizing bonds. Any bank or trust company incorporated under the laws of this state, which may act as depository of the proceeds of bonds or of revenues or other money, may

HeinOnline -- 1997 vol. II 2442 1997

furnish ~~such~~ indemnifying bonds or pledge ~~such~~ securities as may be required by the authority. ~~Any such~~ *A* trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, ~~any such~~ *a* trust agreement or resolution may contain ~~such~~ other provisions ~~as~~ *that* the authority may consider reasonable and proper for the security of the bondholders. All expenses incurred in carrying out ~~such~~ *the* trust agreement or resolution may be treated as a part of the cost of the operation of an eligible ~~health~~ facility."

**Section 13.** Section 90-7-307, MCA, is amended to read:

**"90-7-307. Conveyance of title ~~to health institution~~.** When the principal and interest on bonds issued by the authority to finance the cost of eligible ~~health~~ facilities or to refinance outstanding indebtedness of one or more participating ~~health~~ institutions, including any refunding bonds issued to refund and refinance ~~such~~ bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the ~~same~~ *bonds* and all other conditions of the resolution, lease, trust indenture, and mortgage or deed of trust or any other form of security arrangement, if any, authorizing and securing the ~~same~~ *bonds* have been satisfied and the lien of the mortgage or deed of trust or any other form of security arrangement bas been released in accordance with the provisions ~~thereof~~ *of the security arrangement*, the authority shall promptly convey its interest in the facilities and any other facilities mortgaged or subject to deed of trust or any other form of security arrangement to secure the bonds to the participating ~~health~~ institution or institutions."

**Section 14.** Section 90-7-317, MCA, is amended to read:

**"90-7-317. Capital reserve account.** (1) There is a capital reserve account in the enterprise fund provided for in 90-7-202(17).

(2) The authority shall deposit into the capital reserve account:

(a) funds from state appropriations received for deposit into the account, as provided in 90-7-319, for bonds issued to finance capital projects for community health facilities that contract with the state to provide health care services, ~~or~~ bonds issued to finance the facilities described in 90-7-220 and 90-7-221, *or bonds used to finance prerelease centers that contract with the state*;

(b) proceeds from the sale of bonds or notes to the extent provided in the resolutions or indentures of the authority authorizing their issuance;

(c) revenue from fees and charges imposed by the authority;

(d) income from the investment of funds belonging to the authority; and

(e) any other funds that may be available to the authority for the purpose of the account from any other source, including loans authorized under 90-7-320."

**Section 15. Procedure prior to financing projects.** In addition to meeting the other requirements contained in this chapter or in state or federal law, the following requirements must be met before financing is finalized and provided for a prerelease center:

(1) A contract must be approved by the authority and executed by the department of corrections and the institution.

HeinOnline -- 1997 vol. II 2443 1997

(2) The department of corrections, the institution, and any other third parties involved in the financing are required to execute, covenant, deliver, and assign as necessary all documents, representations, assignments, collateral, and any other conditions that the authority or its agents, underwriters, or attorneys may reasonably determine to be necessary to adequately protect the authority, the department of corrections, and the state from default, financial loss, or other harm and to provide an opportunity to lower borrowing costs.

(3) The prerelease center project must be determined to be in the public interest and to be consistent with the legislative policies governing the provision of the services.

(4) The applicant shall submit a statement indicating that contracts to construct the prerelease center project will require all contractors to comply with Title 18, chapter 2, part 4.

(5) Adequate provision must be made in the loan agreement, lease, or other credit arrangement regarding a prerelease center project to provide for the payment of debt service on the bonds issued to finance the project, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds.

**Section 16. Public hearing.** The department of corrections, when seeking funding under this chapter, shall hold a public hearing to determine whether or not the proposed project is in the public interest. The decision regarding public interest is determined by the department of corrections, not the authority. Notice of the public hearing must be published in a newspaper of general circulation in the community where the prerelease center would be located. Notice must be given at least once a week for 2 weeks prior to the date of the public hearing. The notice must include the time and place of the hearing, the general nature of the prerelease center project, the name of the borrower or user of the project, the estimated cost of the project, and the maximum amount of financing assistance to be provided under this chapter. A determination by the department of corrections that a prerelease center project is in the public interest does not require that it be financed under this chapter.

**Section 17. Additional reserves, funds, and accounts.** The authority may in its discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to further the accomplishment of the purposes of this chapter or to comply with the provisions of its resolution or agreements.

**Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 19. Codification instruction.** [Sections 15 through 17] are intended to be codified as an integral part of Title 90, chapter 7, and the provisions of Title 90, chapter 7, apply to [sections 15 through 17].

**Section 20. Effective date.** [This act] is effective July 1, 1997.

Approved May 1, 1997

HeinOnline -- 1997 vol. II 2444 1997

# CHAPTER NO. 478

[HB 137]

AN ACT CHANGING FROM MANDATORY TO DISCRETIONARY AN INQUEST FOR A CONVICTED PRISONER WHOSE DEATH IS CAUSED BY A TERMINAL CONDITION OR THE DEATH SENTENCE; AND AMENDING SECTION 46-4-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-4-201, MCA, is amended to read:

**"46-4-201. Inquest — definition, — when held, — how conducted.** (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of ~~any~~ *a* person and is conducted by the coroner before a coroner's jury.

(2) The coroner ~~shall~~ *may* hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, *the county attorney shall order the coroner to hold an inquest* if the death of ~~any~~ *a* person occurs:

*(a)* in a *prison,* jail, or *other* ~~penal~~ *correctional* ~~institution~~ *facility and is not caused by the terminal condition, as defined in 50-9-102, of, or the execution of a death penalty upon, the person while the person is incarcerated in the prison, jail, or other correctional facility because of conviction of a criminal offense*~~,~~*. This subsection (2)(a) applies to a death caused by terminal condition only if the person was under medical care at the time of death.*

*(b)* while a person is being taken into custody or is in the custody of a peace officer~~,~~ or *if the death* is caused by a peace officer, except ~~where~~ *when* criminal charges have been or will be filed~~, the county attorney shall order the coroner to hold an inquest~~.

(3) If an inquest is held, the proceedings are public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The inquest ~~is to~~ *must* be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a *prison,* jail, or ~~penal institution~~ *other correctional facility*;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest.

HeinOnline -- 1997 vol. II 2445 1997

The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county."

Approved May 1, 1997

# CHAPTER NO. 479

[HB 149]

AN ACT REVISING PROVISIONS RELATED TO THE HEALTH FACILITY AUTHORITY; REVISING DEFINITIONS TO INCLUDE ADDITIONAL VARIATIONS OF HEALTH INSTITUTIONS; CLARIFYING AUTHORITY TO MAKE DIRECT LOANS FROM THE AUTHORITY'S FUNDS; CLARIFYING FUNDING OF THE CAPITAL RESERVE ACCOUNT; PROVIDING THAT THE AUTHORITY MAY MAKE CERTAIN DEPOSITS INTO THE CAPITAL RESERVE ACCOUNT; CLARIFYING THAT THE AUTHORITY'S MEETINGS ARE COVERED UNDER THE OPEN MEETING LAW; AND AMENDING SECTIONS 90-7-102, 90-7-104, 90-7-201, 90-7-202, 90-7-211, 90-7-213, 90-7-302, 90-7-305, AND 90-7-317, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 90-7-102, MCA, is amended to read:

"**90-7-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana health facility authority created in 2-15-1815.

(2) "Capital reserve account" means the account established in 90-7-317.

(3) "Costs" means costs allowed under 90-7-103.

(4) "Health facility" means any facility provided for in 90-7-104.

(5) *(a)* "Health institution" means any public or private, nonprofit hospital, corporation, or other organization authorized to provide or operate a health facility in this state.

*(b) The term also includes the following, provided that the entity is a nonprofit entity or is controlled by one or more nonprofit entities:*

*(i) a network of health care providers, regardless of how it is organized;*

*(ii) an integrated health care delivery system;*

*(iii) a joint venture or partnership between or among health care providers;*

*(iv) a purchasing alliance composed of health care providers;*

*(v) any health insurers and third-party administrators that are participants in a system, network, joint venture, or partnership that provides health services through one or more health facilities.*

(6) "Participating health institution" means a health institution that undertakes the financing, refunding, or refinancing of obligations on the

construction or acquisition of a health facility pursuant to the provisions of this chapter.

(7) "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of ~~such~~ *the* facilities."

**Section 2.** Section 90-7-104, MCA, is amended to read:

**"90-7-104. Eligible health facility.** (1) ~~Eligible health facility~~ *The term "eligible health facility"* means any structure or building ~~used~~ *suitable for use* as:

*(a)* a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101;

*(b)* ~~center~~ *a facility* for persons with developmental disabilities;

*(c)* ~~center~~ *a facility* for the handicapped;

*(d)* a chemical dependency treatment center;

*(e)* a nursing school;

*(f)* a medical teaching facility;

*(g)* a laboratory;

*(h)* a dental care facility;

*(i) a diagnostic, treatment, or surgical center;* or

*(j)* ~~other~~ *a* structure or facility related to any of the ~~foregoing~~ *uses enumerated in subsections (1)(a) through (1)(i)* or required or useful for the operation of a health facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the ~~foregoing~~ *uses enumerated in subsections (1)(a) through (1)(i).*

(2) An eligible health facility does not include: ~~such~~

*(a)* items *such* as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and ~~eligible health facility does not include~~

*(b)* a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship."

**Section 3.** Section 90-7-201, MCA, is amended to read:

**"90-7-201. Authority — quorum — mode of action — expenses.** (1) Four members of the authority constitute a quorum for the purpose of conducting business. Action may be taken by the authority upon the affirmative vote of at least four of its members. ~~No~~ *A* vacancy in the membership of the authority ~~impairs~~ *does not impair* the right of a quorum to exercise all the rights and perform all the duties of the authority.

HeinOnline -- 1997 vol. II 2447 1997

(2) Each meeting of the authority for any purpose must be open to the public. ~~Notice of meetings must be as provided in the bylaws of the authority~~ *as provided for in Title 2, chapter 3, part 2.* Resolutions need not be published or posted.

(3) Each member is entitled to be paid $50 for each day ~~he~~ *that the member* is actually and necessarily engaged in the performance of board duties plus cost of travel, lodging, and meals as provided in 2-18-501 through 2-18-503."

**Section 4.** Section 90-7-202, MCA, is amended to read:

**"90-7-202. Powers of authority.** The authority may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this chapter;

(4) issue bonds or incur other debt as described in this chapter, including the issuance of notes or refunding bonds;

(5) invest any funds ~~obtained from the issuance of bonds and notes which~~ *that* are not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for investment, must be deposited in an enterprise fund to the credit of the authority *to be used to carry out the purposes of this chapter*;

(6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it considers appropriate to carry out the purposes of this chapter;

(7) participate with any financial institution in the purchase or guarantee of any loan or obligation;

(8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding of eligible facilities;

(9) enter into agreements or make advance commitments to insure repayments required by loan agreements made by a lender. ~~Such~~ *These* agreements are subject to terms and conditions established by the authority.

(10) *establish programs to make,* sell, purchase, or insure loans to finance the costs of eligible facilities *from any funds*;

(11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a municipality, or any other source;

(12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity consistent with the exercise of any power under this chapter;

(13) with regard to property:

HeinOnline -- 1997 vol. II 2448 1997

(a) acquire real or personal property or any right, interest, or easement ~~therein~~ *in real or personal property* by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose ~~thereof~~ *of property*;

(c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without puhlic bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and

(h) operate, manage, lease, dispose of, and otherwise deal with ~~such~~ property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes if ~~such~~ *that* action is consistent with any agreement with ~~such~~ *the* holders;

(14) service, contract, and pay for the servicing of loans;

(15) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of eligible health facilities whenever considered appropriate;

(16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, or payment of any installment of principal, interest, or security or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(17) collect reasonable interest, fees, and charges from participating institutions in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. The interest, fees, and charges ~~shall~~ *must* be deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required to pay the costs of the authority, including operating and administrative expenses, ~~and~~ reasonable allowances for losses that may be incurred, *and bond financing costs, and to provide funds to make loans to finance the costs of eligible facilities.*

(18) perform any other acts necessary and convenient to carry out the purposes of this chapter."

**Section 5.** Section 90-7-211, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2449 1997

"**90-7-211. Necessary expenses — fees.** (1) All expenses of the authority incurred in carrying out the provisions of this chapter are payable solely from funds provided under the authority of this chapter~~, and no liability~~. *Liability* may *not* be incurred by the authority beyond the extent to which money has been provided under this chapter, except for the purposes of meeting the necessary expenses of initial organization and operation and until ~~such~~ *the* date ~~as~~ *that* the authority derives money from funds provided under this chapter. The authority may borrow money for necessary expenses of organization and operation. ~~Such~~ *The* borrowed money must be repaid within a reasonable time after the authority receives funds provided for under this chapter.

(2) When an application is made to the authority by any participating health institution for financial assistance to provide for its facilities, the application may be accompanied by an initial planning service fee in an amount determined by the authority. ~~Such~~ *The* initial planning service fee may be included in the cost of the facilities to be financed ~~and is not refundable by the authority, whether or not any application is approved~~. In addition to the initial fee, an annual planning service fee may be paid to the authority by each participating health institution in an amount determined by the authority. The annual planning service fee may be paid on ~~such~~ *the* dates or in installments ~~as may be~~ *that are* satisfactory to the authority. The fees must be used for:

(a) necessary expenses to determine the need for facilities in the area concerned, and to that end the authority may utilize recognized voluntary and official health planning organizations and agencies at local, regional, and state levels;

(b) necessary administrative, *operating, and financing* expenses; ~~and~~

(c) reserves for anticipated future expenses *or loan losses; and*

*(d) loans to finance the costs of eligible facilities.*

(3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm, partnership, association, or corporation for the furnishing of services and data for use by the authority in determining the need for and location of any eligible health facility for which application is being made or for ~~such~~ other services or surveys ~~as~~ *that* the authority considers necessary to carry out the purposes of this chapter."

**Section 6.** Section 90-7-213, MCA, is amended to read:

"**90-7-213. Loan limitation.** ~~No~~ *A* loan made by the authority may *not* exceed the total cost *or appraised value* of the eligible health facility being financed as ~~such~~ *the* cost *or appraised value* is determined by the participating institution and approved by the authority."

**Section 7.** Section 90-7-302, MCA, is amended to read:

"**90-7-302. Bonds and notes of the authority.** (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed ~~$150~~ *$250* million, exclusive of bonds or notes issued to refund ~~its~~ outstanding bonds or notes.

HeinOnline -- 1997 vol. II 2450 1997

(2) Bonds must be authorized~~,~~. *The authority may specify that the bonds* must be dated~~,~~ and must mature ~~as the authority may specify~~, except that a bond may not mature more than 40 years from the date of its issue. Bonds must:

*(a)* bear interest at ~~the~~ *a* rate or rates~~,~~;

*(b)* be in ~~the~~ denominations~~,~~;

*(c)* be in the proper registered or bearer form~~,~~;

*(d)* be executed in ~~the~~ *a* manner~~,~~;

*(e)* be payable in ~~the~~ *a* medium of payment~~,~~ *and* at ~~the~~ *a* place or places~~, and~~; *and*

*(f)* be subject to ~~the~~ terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times ~~which~~ *that* the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves for payment of the principal and interest;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(7) The authority may combine, for the purposes of a single offering, bonds financing more than one facility under this chapter."

**Section 8.** Section 90-7-305, MCA, is amended to read:

**"90-7-305. Trust agreement to secure bonds.** In the discretion of the authority, any bonds issued under this chapter may be secured by a trust agreement between the authority and a corporate trustee, which may be any trust

HeinOnline -- 1997 vol. II 2451 1997

company or bank having the powers of a trust company in Montana *or outside of Montana, if it is determined by the authority to be in the best interest of financing the bonds.* The trust agreement or the resolution providing for the issuance of ~~such~~ *the* bonds may pledge or assign the revenues to be received or *the* proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion ~~thereof~~ *of the project.* The trust agreement or resolution providing for the issuance of ~~such~~ *the* bonds may contain ~~such~~ provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly ~~such~~ *any* provisions ~~as~~ *that* have been specifically authorized to be included in ~~any~~ *a* resolution of the authority authorizing bonds. ~~Any~~ *A* bank or trust company incorporated under the laws of this state~~, which~~ *that* may act as depository of the proceeds of bonds or of revenues or other money~~,~~ may furnish ~~such~~ indemnifying bonds or pledge ~~such~~ securities ~~as~~ *that* may be required by the authority. ~~Any such~~ *A* trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, ~~any such~~ *a* trust agreement or resolution may contain ~~such~~ other provisions ~~as~~ *that* the authority may consider reasonable and proper for the security of the bondholders. All expenses incurred in carrying out ~~such~~ *the* trust agreement or resolution may be treated as a part of the cost of the operation of an eligible health facility."

**Section 9.** Section 90-7-317, MCA, is amended to read:

**"90-7-317. Capital reserve account.** (1) There is a capital reserve account in the enterprise fund provided for in 90-7-202(17).

(2) The authority shall deposit into the capital reserve account:

(a) funds from state appropriations received for deposit into the account, as provided in 90-7-319, for bonds issued to finance capital projects for community health facilities that contract with the state to provide health care services or bonds issued to finance the facilities described in 90-7-220 and 90-7-221; *and*

(b) proceeds from the sale of bonds or notes to the extent provided in the resolutions or indentures of the authority authorizing their issuance~~;~~.

*(3) The authority may also deposit into the capital reserve account:*

~~(c)~~*(a)* revenue from fees and charges imposed by the authority;

~~(d)~~*(b)* income from the investment of funds belonging to the authority; and

~~(e)~~*(c)* any other funds that may be available to the authority for the purpose of the account from any other source, including loans authorized under 90-7-320."

Approved May 1, 1997

HeinOnline -- 1997 vol. II 2452 1997

# CHAPTER NO. 480

[HB 163]

AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING ADOPTION; PROVIDING PROCEDURES FOR VARIOUS TYPES OF ADOPTIONS; PROVIDING FOR A PUTATIVE FATHER REGISTRY; PROVIDING FOR THE RELINQUISHMENT AND TERMINATION OF PARENTAL RIGHTS; PROVIDING FOR DEGREES OF ACCESS TO RECORDS; PRESCRIBING A FEE FOR FILING A PETITION FOR ADOPTION; STATUTORILY APPROPRIATING FEES; AMENDING SECTIONS 2-6-104, 2-18-606, 17-7-502, 25-1-201, 33-22-130, 33-30-1016, 33-31-114, 37-60-301, 40-6-108, 41-3-609, 41-5-603, 41-5-604, 50-15-223, AND 52-2-505, MCA; REPEALING SECTIONS 40-6-125, 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136, 40-8-201, 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, AND 52-2-407, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of public health and human services authority to adopt administrative rules. The rules must provide procedures for the putative father registry, including methods of notification, filing, and accessing information. The department shall adopt rules for licensing child-placing agencies. To the extent feasible, the rules should incorporate existing procedures. The needs of the child in the adoption proceeding must be the primary focus of the rules.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 156] may be cited as the "Montana Adoption Act".

**Section 2. Adoption policy.** (1) It is the policy of the state of Montana to ensure tbat the best interests of the child are met by adoption proceedings.

(2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give the child the care, protection, and opportunities essential for healthy personal growth and development.

(3) The well-being of the adopted child is the main objective in the placement of a child for adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.

(4) It is the policy of the state of Montana to support relationships between adoptees and their birth families when desired by the affected parties.

**Section 3. Definitions.** As used in [sections 1 through 156], unless the context requires otherwise, the following definitions apply:

HeinOnline -- 1997 vol. II 2453 1997

(1) "Adoptee" means an adopted person or a person who is the subject of adoption proceedings that are intended to result in the adoptee becoming the legal child of another person.

(2) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(3) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(4) "Agency" means a public or nonprofit entity that is licensed by any jurisdiction of the United States and that is expressly empowered to place children preliminary to a possible adoption.

(5) "Birth parent" means the woman who gave birth to the child or the father of genetic origin of the child.

(6) "Child" means any person under 18 years of age.

(7) "Confidential intermediary" means a person certified by the department and under contract with or employed by a nonprofit entity with expertise in adoption.

(8) "Court" means a court of record in a competent jurisdiction and in Montana means a district court or a tribal court.

(9) "Department" means the department of public health and human services, provided for in 2-15-2201.

(10) "Direct parental placement adoption" means an adoption in which the parent of the child places the child with a prospective adoptive parent personally known and selected by the parent independent of an agency.

(11) "Extended family member" means a person who is or was the adoptee's parent, grandparent, aunt or uncle, brother or sister, or child.

(12) "Identifying information" means information that directly reveals or indirectly indicates the identity of a person and includes the person's name or address.

(13) "Nonidentifying information" means information that does not directly reveal or indirectly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved that were specifically intended to be provided to another party.

(14) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(15) "Placing parent" means a parent who is voluntarily making a child available for adoption.

(16) "Preplacement evaluation" means the home study process conducted by the department or a licensed child-placing agency that:

(a) assists a prospective adoptive parent or family to assess its own readiness to adopt; and

(b) assesses whether the prospective adoptive parent or family and home meet applicable standards.

(17) "Records" means all documents, exhibits, and data pertaining to an adoption.

(18) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual.

**Section 4. Venue.** (1) Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

(2) Petitions for appointment of a confidential intermediary may be filed:

(a) in the county where the decree of adoption was issued;

(b) in the county of residence of the petitioner; or

(c) if the petitioner resides out of state, in any county.

**Section 5. Who may be adopted.** (1) A child is legally free for adoption if:

(a) the child does not have a living parent;

(b) the parental rights of the living parents of the child have been terminated according to the laws of this state or of another jurisdiction; or

(c) the living parents, guardian authorized by the court, or department or agency with custody of the child consent to the adoption.

(2) An adult may be adopted as provided in [sections 121 through 125].

(3) A stepchild may be adopted as provided in [sections 112 through 120].

**Section 6. Who may adopt.** The following individuals who otherwise meet the requirements of [sections 1 through 156] are eligible to adopt a child:

(1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the child;

(2) an unmarried individual who is at least 18 years of age; or

(3) a married individual at least 18 years of age who is legally separated from the other spouse or whose spouse has judicially been declared incompetent.

**Section 7. Adoption prohibited if child not legally free.** (1) An adoption decree may not be entered if the child who is the subject of an adoption proceeding is not legally free for adoption.

(2) A child may be placed for adoption only by:

(a) the department or another agency to which the child has been relinquished for purposes of adoption;

(b) the department or another agency expressly authorized to place the child for adoption by a court order terminating the relationship hetween the child and the child's parent or guardian;

(c) the child's parents; or

(d) a guardian expressly authorized by the court to place the child for adoption.

**Section 8. Rights and responsibilities of parties in adoption proceedings.** (1) The legislature finds that the rights and interests of all parties affected by an adoption proceeding must he considered and balanced in determining the necessary constitutional protection and appropriate processes.

(2) The legislature finds that:

(a) every child deserves to be raised by a family in which support and care are promptly provided by one or more parents in a nurturing environment on a regular and ongeing basis;

(b) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in bolding parents accountable for meeting the needs of children;

(c) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, has the right to make timely and appropriate decisions regarding the mother's future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(d) adoptive children have a right to permanence and stability in adoptive placements;

(e) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child; and

(f) a birth father who is not married to the child's mother has the primary responsibility to protect the father's rights. The father's inchoate interest in the child requires constitutional protection only when the father has demonstrated a timely commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. The state has a compelling interest in requiring a birth father to demonstrate that commitment by:

HeinOnline -- 1997 vol. II 2456 1997

(i) timely and consistently providing financial support;

(ii) complying with the requirements of the putative father registry; and

(iii) demonstrating the establishment of a substantial relationship with the child as described in [section 73].

(3) If a birth father who is not married to the child's mother fails to grasp the opportunities that are available to the father to establish a relationship with the child, the father's parental rights will be lost entirely by the failure to timely exercise it or by the failure to comply with the available legal steps to substantiate the parental interest.

**Section 9. Need for finality — balancing of interests.** Finality is necessary in order to facilitate the state's compelling interest. The legislature finds that the interests of the child outweigh the interests of the state, the mother, the adoptive parents, and a birth father who is not married to the child's mother.

**Section 10. Presumed knowledge that child may be adopted without notice.** A birth father who is not married to the mother of the child is presumed to know that the child may be adopted without the father's consent and that the father is required to comply with the provisions of [sections 1 through 156] and manifest a commitment to the father's parental responsibilities.

**Section 11. Unmarried birth mother's right of privacy.** An unmarried birth mother has a right of privacy with regard to the mother's pregnancy and adoption plan. Birth mothers are encouraged to provide all known information about the birth father of any child for whom an adoption is planned.

**Section 12. Recognition of adoption in another jurisdiction.** (1) A decree or order of adoption has the same effect as a decree or order of adoption issued by a court of this state if the decree or order is:

(a) issued by a court of any other state that is entitled to full faith and credit in this state; or

(b) entered by a court or administrative entity in another country acting pursuant to:

(i) that country's law; or

(ii) to any convention or treaty on intercountry adoption that the United States has ratified.

(2) The rights and obligations of the parties as to matters within the jurisdiction of this state must be determined as though the decree or order were issued by a court of this state.

**Section 13. Proceedings subject to Indian Child Welfare Act.** A proceeding under [sections 1 through 156] that pertains to an Indian child, as defined in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, et seq., is subject to that act.

**Section 14. Interstate placement.** The Interstate Compact on the Placement of Children, Title 41, chapter 4, governs:

HeinOnline -- 1997 vol. II 2457 1997

(1) an adoption in this state of a child brought into this state from another state by a prospective adoptive parent;

(2) a person residing in or an agency doing business from another state who places the child for adoption in this state; and

(3) the placement of a Montana child in another state.

**Section 15. International placement.** An adoption in this state of a child brought into this state from another country by a prospective adoptive parent or by a person who places the child for adoption in this state is governed by [sections 1 through 156] and is subject to any convention or treaty governing adoption that the United States has ratified and to any relevant federal law.

**Section 16. Fees for services — special revenue account — statutory appropriation.** (1) The department shall establish fees that it may charge and that are reasonably related to the cost incurred by the department in completing or contracting for adoption services.

(2) The department may contract with licensed social workers or licensed child-placing agencies for the purposes of completing the preplacement or postplacement evaluation or for providing postplacement supervision.

(3) An agency contracting to perform the services may set and charge a reasonable fee commensurate with the services provided.

(4) There is an adoption services account in the state special revenue fund. The fees collected by the department under [sections 1 through 156] and from the district court filing fee pursuant to 25-1-201(1)(q) must be deposited into this account and may he used by tbe department for adoption services. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department.

**Seetion 17. Rulemaking authority.** The department may adopt rules to implement the administration and purposes of [sections 1 through 156].

**Section 18. Definitions.** As used in [sections 18 through 38], unless the context requires otherwise, the following definitions apply:

(1) "Child" includes an unborn child.

(2) (a) "Putative father" means an individual who may be a child's birth father but who:

(i) is not married to the child's mother on or before the date that the child is born; or

(ii) has not established paternity of the child prior to the filing of a petition for termination of parental rights to tbe child for purposes of adoption.

(b) The term includes an individual who is:

(i) less than 18 years of age; and

(ii) not married to the child's mother even though tbe individual is a presumed father within the meaning of 40-6-105.

(3) "Registry" means the putative father registry estahlished under [section 19].

**Section 19. Putative father registry.** The putative father registry is established within the vital statistics hureau of the department. The department shall adopt rules to administer the registry.

**Section 20. Purpose of registry.** (1) The purpose of the putative father registry is to provide notice of termination of parental rights to a putative father who asserts a parental interest in a child so that the putative father may appear in a proceeding and have an opportunity to estahlish that the putative father's inchoate rights in the child have vested because a substantial relationship with the child has been established as provided in [section 73].

(2) In addition to any other notice to which the putative fatlier is entitled, a putative father of a child who complies with the requirements of the putative father registry is entitled to notice of any proceedings involving termination of parental rights to the child.

**Section 21. Presumed knowledge of pregnancy — duty to register to be afforded notice — putative and presumed fathers.** (1) A person who engages in sexual relations with a member of the opposite sex is presumed to know that a pregnancy could result.

(2) In addition to any other notice to which the putative father is entitled, a putative father is entitled to notice of termination of parental rights proceedings for the purposes of adoption if the putative father has complied with the requirements of the putative father registry.

(3) An individual who is not married to the mother but who is presumed to be a father under 40-6-105 and registers in accordance with [sections 18 through 38] is entitled to receive notice of a termination of parental rights proceeding.

**Section 22. Registration.** (1) In addition to any other notice to which the putative father is entitled, a putative father is entitled to notice of any proceedings to terminate parental rights involving a child whom the putative fathe· might have fathered if the putative father timely files the following information with the department:

(a) the putative father's:

(i) full name;

(ii) address at which the putative father may be served by certified mail, return receipt requested, with notice of a proceeding to torminate parental rights;

(iii) social security number;

(iv) date of birth; and

(v) tribal affiliation if applicable;

(b) the mother's:

(i) name, including all other names known to the putative father that the mother uses; and

HeinOnline -- 1997 vol. II 2459 1997

(ii) address, social security number, and date of birth, if known;

(c) the child's:

(i) name and place of birth, if known; or

(ii) the approximate date and location of a possible conception and the approximate expected date of delivery.

(2) If a putative father does not have an address where the putative father can receive notice of a termination of parental rights proceeding, the putative father may designate another person as an agent for the purpose of receiving notice. The putative father shall provide the department with the agent's name and the address at which the agent may be served. Service of notice by certified mail, return receipt requested, constitutes service of notice upon the putative father.

(3) A putative father shall register under this section on a registration form prescribed by the department or with a legibly typed or handwritten statement that provides the required information and that is submitted to the department pursuant to [section 24]. The registration must be signed by the putative father and notarized.

(4) A putative father who registers under this section is responsible for providing written updates regarding any change of the putative father's name or address.

**Section 23. When putative father to register — actual knowledge of pregnancy not required.** (1) In order to be entitled, because of registration, to receive notice of a termination of parental rights proceeding, a putative father's registration form complying with the requirements of [section 22] must be received by the department not later than 5 days prior to a hearing to terminate parental rights.

(2) A putative father may file all information required by [section 22] before a child's birth even though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy has continued through gestation.

**Section 24. How registration submitted.** A putative father shall submit a registration form:

(1) in person; or

(2) by facsimile transmission, mail, private courier, or express delivery service.

**Section 25. Burden of putative father to preserve rights upon receipt of notice.** When a putative father receives notice that a child in whom the putative father claims a parental interest is the subject of a termination of parental rights proceeding, the putative father must appear at the hearing held on the petition to terminate parental rights and demonstrate, at a minimum, that the criteria set out in [section 73] for determining whether the putative father has made reasonable efforts to establish a substantial relationship with the child who is the subject of the proceedings have been met.

HeinOnline -- 1997 vol. II 2460 1997

**Section 26. Presumption created — admissibility in other proceedings.** A person filing a registration form is presumed to he the father of the child for purposes of adoption unless the mother denies that the registrant is the father. The registration or any revocation that is filed is admissible in a paternity proceeding and creates a rebuttable presumption as to the paternity of the child. The registration creates a rebuttable presumption as to paternity of the child for purposes of an abuse or neglect proceeding under Title 41, chapter 3, or a child support enforcement action under Title 40, chapter 5.

**Section 27. Duties of department.** (1) The department shall:

(a) prescribe a registration form for the information that a putative father submits under [section 22]; and

(b) make the registration forms available through:

(i) the department;

(ii) each clerk of a district court;

(iii) each local health department; and

(iv) each county clerk and recerder.

(2) A notice provided by the department that informs the public about the purpose and operation of the registry must be posted in a conspicuous place by each:

(a) clerk of a district court;

(b) driver's examination station of the motor vehicle division of the department of justice;

(c) local health department; and

(d) county clerk and recorder.

(3) The title and registration bureau of the motor vehicle division of the department of justice and the county treasurer of each county shall deliver a copy of the notice described in subsection (4) with the registration tags for every vehicle registered in Montana between July 1, 1997, and October 1, 1998. The department shall provide the copies of the notices to the title and registration bureau and the county treasurers.

(4) The notice under subsection (2) must include information regarding:

(a) where to obtain a registration form;

(b) where to register;

(c) the circumstances under which a putative father is required to register;

(d) the period under [section 23] during which a putative father is required to register in order to entitle the putative father to receive notice of a proceeding to terminate parental rights;

HeinOnline -- 1997 vol. II 2461 1997

(e) the information that must be provided for the registry and what other actions the putative father is required to take to preserve a right to notice;

(f) the consequences of not submitting a timely registration; and

(g) the penalties for filing a false claim with the putative father registry.

**Section 28. Duties of department.** (1) The department shall:

(a) prescribe a registration form for the information that a putative father submits under [section 22]; and

(b) make the registration forms available through:

(i) the department;

(ii) each clerk of a district court; and

(iii) each local health department.

(2) A notice provided by the department that informs the public about the purpose and operation of the registry must he posted in a conspicuous place hy each:

(a) clerk of a district court;

(b) driver's examination station of the motor vehicle division of the department of justice;

(c) local bealth department; and

(d) county clerk and recorder.

(3) The notice under subsection (2) must include information regarding:

(a) where to obtain a registration form;

(b) where to register;

(c) the circumstances under which a putative father is required to register;

(d) the period under [section 23] during which a putative father is required to register in order to entitle the putative father to receive notice of an adoption;

(e) the information that must be provided for the registry and what other actions the putative father is required to take to preserve a right to notice;

(f) the consequences of not submitting a timely registration; and

(g) the penalties for filing a false claim with the putative father registry.

**Section 29. Information maintained in registry.** The department shall maintain the following information in the registry:

(1) the registration information provided by the putative father under [section 22];

(2) the date that the department receives a putative father's registration;

(3) the name and affiliation of any person who requests that the department search the registry to determine whether a putative father is registered in relation to a mother whose child is or may be the subject of a termination proceeding and the date the request is submitted; and

(4) any other information that the department determines is necessary to access the information in the registry.

**Section 30. Storage of data.** The department shall store the registry's data in a manner so that the data is accessible through:

(1) the putative father's name;

(2) the mother's name, including her maiden name, if known;

(3) the date of birth of the putative father, the mother, and the child, if known;

(4) the child's name, if known; and

(5) the social security number for the putative father, the mother, and the child, if known.

**Section 31. Registry search — request — affidavit.** (1) The following persons may at any time request that the department search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

(a) a representative of the department;

(b) a representative of an agency when the agency is or may be arranging an adoption;

(c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a direct parental placement adoption who has the notarized consent of the birth mother; or

(d) any woman who is the subject of a registration.

(2) When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner shall:

(a) request that the department search the registry at least 1 day after the expiration of the period specified under [section 23]; and

(b) file an affidavit prepared by the department in response to a request under subsection (2)(a) with the court presiding over the termination of parental rights proceeding under [section 63]. The affidavit must meet the requirements of subsections (4) and (5).

(3) A request for information about a registration from the department must be in writing.

(4) Not later than 5 days after receiving a request under subsection (2)(a), the department shall submit an affidavit to the requestor verifying whether a putative father has registered within the period allowed under [section 23] in

relation to a mother whose child or expected child is the subject of the termination proceeding.

(5) Whenever the department finds that one or more putative fathers are registered, the department shall:

(a) submit a copy of each registration form with the department's affidavit; and

(b) include in the affidavit the date that the department representative, agency, or attorney submitted the request for the search.

(6) A court may not issue an order terminating parental rights unless the department's affidavit under subsection (5) is filed with the court.

**Section 32. Duties of department upon receipt of request.** (1) Whenever the department receives a request, the department shall:

(a) search its records of putative father registrations and search its records for any acknowledgement of paternity filed pursuant to 40-6-105; and

(b) notify the requestor as to whether a paternity action has been filed and a paternity order issued to the department requiring the issuance of a new birth certificate concerning a child who is or may be the subject of an adoption that the attorney or agency is arranging.

(2) The department may charge a reasonable fee for responding to a request under this section.

**Section 33. Failure of agency to post notice.** Failure of an agency to post a proper notice under [section 27] does not relieve a putative father of the obligation to register with the department in accordance with the putative father registry in order to entitle the putative father, because of registration, to notice of proceedings involving a child who may have been fathered by the putative father.

**Section 34. Revocation of registration.** Unless a support order has been issued, a putative father may revoke a registration at any time by submitting to the department a signed, notarized statement revoking the registration.

**Section 35. Certified copy of registration form to be furnished upon request.** The department shall furnish a certified copy of the putative father's registration form upon written request by:

(1) a putative father whose name appears on the registration form being requested;

(2) a mother whose name appears on the registration form being requested;

(3) upon reaching majority, a person who was the subject of a registration;

(4) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a direct parental placement adoption who has the notarized consent of the birth mother;

(5) a licensed child-placing agency;

HeinOnline -- 1997 vol. II 2464 1997

(6) a court that presides over a pending adoption;

(7) the child suppert enforcement division of the department; or

(8) a representative of the department involved in an adoption or a neglect and dependency proceeding under Title 41, chapter 3.

**Section 36. Information confidential.** Except as otherwise provided in [sections 18 through 38], information contained within the registry is confidential.

**Section 37. Registration of false information — criminal and civil penalties.** A person who purposely or knowingly registers false information or requests confidential information in violation of a putative father registry commits a misdemeanor and may he civilly liable for damages.

**Section 38. Responsibility of each party to protect interests — putative fathers — fraud no defense.** (1) The legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings and has provided protection of a putative father's rights. In balancing the rights and interests of the state and of all parties affected by fraud, specifically the child, the adoptive parents, and the putative father, the legislature determines that the putative father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of establishing fraud against the putative father hy clear and convincing evidence must he born by the putative father.

(2) Each parent of a child conceived or born outside of marriage to the other parent is respensible for that parent's own actions and assertion of their parental rights notwithstanding any action, statement, or omission of the other parent or third parties.

(3) A person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties. A fraudulent representation is not a defense for failure to comply with the requirements of the putative father registry and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the injured party.

(4) A putative father who resides in another state may contest an adoption prior to issuance of a decree of adoption and may assert the putative father's interest in the child. If the adoption is contested, the court shall hold an evidentiary hearing to determine if:

(a) the putative father resides and bas resided in another state where the unmarried mother lived or resided either at the time of conception or through a portion of tlie pregnancy;

(b) the mother left that state, concealing the location from the putative father regarding where the mother could be contacted or located;

(c) the father has, through every reasonable means, attempted to locate the mother hut has heen unahle to do so; and

(d) the putative father has complied with the requirements of the state where the mother previously resided or was located in order to protect and preserve the

putative father's parental interest and rights concerning the child in cases of adoption.

**Section 39. Consent required.** An adoption of a child may he decreed when written consents to adoption have heen executed by:

(1) the birth mother;

(2) the husband of the birth mother if the husband is the presumed father of the child under 40-6-105;

(3) any other person whose parental rights have been established by a court;

(4) the department or an agency that has custody of the child and the authority to place the child for adoption;

(5) the legal guardian of the child if both parents are dead or their rights have been judicially terminated and the guardian has authority by order of the court appointing the guardian to consent to the adoption;

(6) the child, either in writing or in court, if the child is 12 years of age or older unless the child does not have the mental capacity to consent.

**Section 40. Persons whose consent not required.** Consent to adoption of a child is not required from:

(1) an individual whose parental relationship to the child has been judicially terminated for unfitness or has been determined not to exist or who has waived parental rights;

(2) a parent who has been judicially declared incompetent;

(3) an individual who has not been married to the mother of the child and who, after the conception of the child, executes a notarized statement denying paternity or a notarized statement acknowledging paternity and denying any interest in the child; or

(4) the personal representative of a deceased parent's estate.

**Section 41. Form of consent.** The consents required by [section 39] must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department, an agency, or the court.

**Section 42. Child available for adoption — voluntary acts of parents.** A parent may voluntarily make a child available for adoption by:

(1) executing a voluntary relinquishment and consent to adoption;

(2) executing a denial of paternity; or

(3) submitting a notarized acknowledgment of paternity and a denial of any interest in custody of tbe child.

**Section 43. Voluntary relinquishment — validity.** (1) A voluntary relinquishment is not valid unless the parent specifically relinquishes custody of the child te the department, a licensed child-placing agency, or a specifically identified prospective adoptive parent and:

(a) the department or agency to whom the child is being relinquished has agreed in writing to accept custody of the child until the child is adopted; or

(b) the identified prospective adoptive parent has agreed in writing to accept temporary custody and to provide support and care to the child until that person's adoption petition is granted or denied.

(2) A voluntary relinquishment of a parent's rights solely to the child's other parent does not relieve the parent executing the relinquishment of any duty owed to the child or for the child's support.

**Section 44. Arrearages of child support — responsibility to child.** (1) A voluntary relinquishment of a parent's rights and responsibilities toward a child does not cancel any respensibility to pay arrearages of child support unless the party to whom the arrearages are owed agrees in writing to waive the payment of the arrearages.

(2) A parent who executes a voluntary relinquishment of rights and responsibilities toward a child remains financially responsible for the child until a court actually terminates parental rights to the child.

**Section 45. Who may relinquish — to whom.** (1) A parent or guardian whose consent to the adoption of a child is required may relinquish to the department or an agency all rights with respect to the child, including legal and physical custody and the right to consent to the child's adoption.

(2) A parent or guardian whose consent to the adoption of a child is required and who has filed a notice of parental placement under [section 95] for a direct parental placement adoption may:

(a) relinquish to the prospective adoptive parent all rights with respect to the child, including legal and physical custody; and

(b) consent to the child's adoption by the prospective adoptive parents.

**Section 46. Relinquishment by minor parent — separate legal counsel in direct parental placement adoption.** (1) A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.

(2) In a direct parental placement adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents under [section 147], subject to the limitations in [section 148].

**Section 47. Time and prerequisites for execution of relinquishment and consent to adoption — copy of preplacement evaluation — notarization.** (1) A parent whose consent to the adoption of a child is required may execute a relinquishment and consent to adoption only after the following criteria have been met:

(a) the child has been born;

(b) not less than 72 hours have elapsed since the birth of the child;

(c) the parent has received counseling in accordance with [section 48]; and

(d) in a direct parental placement adoption:

(i) the parent has been informed that fees for any required counseling and legal fees are allowable expenses that may be paid by a prospective adoptive parent under [section 147], subject to the limitations set in [section 148];

(ii) if the parent is a minor, the parent has been represented by separate legal counsel; and

(iii) prior to the execution of the relinquishment, the parent bas been provided a copy of the preplacement evaluation prepared pursuant to [section 86] pertaining to the prospective adoptive parent.

(2) A guardian may execute a relinquishment and consent to adopt at any time after being authorized by a court.

(3) The department or a licensed child-placing agency may execute a consent for the adoption at any time before or during the hearing on the petition for adoption.

(4) A child whose consent is required may execute a consent at any time before or during the hearing on the petition to adopt.

(5) Except as provided in this section, a relinquishment and consent to adopt must be a separate instrument executed before a notary public.

(6) If the person from whom a relinquishment and consent to adopt is required is a member of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

**Section 48. Counseling requirements.** (1) Counseling of the birth mother is required in department, agency, and direct parental placement adoptions. If any other parent is involved in an adoptive placement, counseling of that parent is encouraged.

(2) Counseling must be performed by a person employed by the department or by a staff person of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and consent to adopt executed prior to completion of required counseling is void.

(3) During counseling, the counselor shall offer an explanation of:

(a) adoption procedures and options that are available to a parent through the department or licensed child-placing agencies;

(b) adoption procedures and options tbat are available to a parent through direct parental placement adoptions, including the right to an attorney and that

legal expenses are an allowable expense that may be paid hy a prospective adoptive parent as provided in [sectic ns 147 and 148];

(c) the alternative of parenting rather than relinquishing the child for adoption;

(d) the resources that are availahle to provide assistance or support for the parent and the child if the parent chooses not to relinquish the child;

(e) the legal and personal effect and iinpact of terminating parental rights and of adoption;

(f) the options for contact and communication hetween the birth family and the adoptive family;

(g) postadoptive issues, including grief and loss;

(h) the reasons for and importance of providing accurate medical and social history information under [section 81];

(i) the operation of the confidential interniediary program; and

(j) the fact that the adoptee may be provided with a copy of the original birth certificate upon request after reaching 18 years of age, unless the birth parent has specificaliy requested in writing that the vital statistics bureau withhold release of the original hirth certificate.

(4) The counselor shall prepare a written report containing a description of the topics covered and the nuinber of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capahle of informed consent. The report must, on request, be released to the person counseled, to the department, to an agency, or with the consent of the person counseled, to an attorney for the prospective adoptive parents.

**Section 49. Revocation of relinquishment and consent.** (1) The parent who executed the relinquishment and consent to adopt and the department, agency, or prospective adoptive parent named or described in the relinquishment and consent to adopt may mutually agree to its revocation prior to the issuance of an order terminating parental rights.

(2) A relinquishment may not be revoked if an order has been issued terminating parental rights.

**Section 50. Conditional relinquishment and consent.** (1) A relinquishment and consent to adopt may provide that it not take effect only if:

(a) the other parent does not execute a relinquishment and consent te adopt within a specified period; or

(b) a court decides to not terminate another individual's parental relationship to the child.

(2) A relinquishment and consent to adopt inay not he conditioned on whether or not existing agreements for matters, including but not limited to visitation and ongeing communication witli the child, are later performed.

HeinOnline -- 1997 vol. II 2469 1997

**Section 51. Content of relinquishment and consent to adopt.** (1) A relinquishment and consent to adopt must be in writing and must contain:

(a) the date, place, and time of the execution of relinquishment and consent to adopt;

(b) the name, date of birth, and current mailing address of the individual executing the relinquishment and consent to adopt;

(c) the date of birth and the name of the child to be adopted; and

(d) the name, address, and telephone numbers of the department or agency to which the child is being relinquished or the name, address, and telephone numbers of the prospective adoptive parent or the lawyer representing the prospective adoptive parent with whom the individual executing the relinquishment and consent has placed or intends to place the child for adoption.

(2) A relinquishment and consent to adopt executed by a parent or guardian must state that the parent or guardian executing the document is voluntarily and unequivocally consenting to the:

(a) permanent transfer of legal and physical custody of the child to the department or agency for the purposes of adoption; or

(b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific identified adoptive parent whom the parent or guardian has selected.

(3) A relinquishment and consent to adopt must state:

(a) that after the document is signed or confirmed in substantial compliance with this section, it is final and, except under a circumstance stated in [section 50], may not be revoked or set aside for any reason, including the failure of an adoptive parent to permit the individual executing the relinquishment and consent to adopt to visit or communicate with the child;

(b) that the adoption will extinguish all parental rights and obligations that the individual executing the relinquishment and consent to adopt has with respect to the child, except for arrearages of child support unless the arrearages are waived by the person to whom they are owed, and that the relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed;

(c) that the individual executing the relinquishment and consent to adoption has:

(i) received a copy of the relinquishment and consent to adoption;

(ii) received a copy of a written agreement by the department, agency, or prospective adoptive parent to accept temporary custody and to provide support and care to the child until an adoption petition is granted or denied;

(iii) if required, received counseling services and information about adoption pursuant to [section 48] explaining the meaning and consequences of an adoption;

HeinOnline -- 1997 vol. II 2470 1997

(d) in direct parental placement adoptions, that the individual has:

(i) heen advised if the individual is:

(A) a minor parent, by a lawyer who is not representing an adoptive parent or the agency to which the child is heing relinquished; or

(B) an adult, of the right to have a lawyer who is not representing an adoptive parent or the agency and whose fees are allowable expenses that can be paid hy the prospective adoptive parents;

(ii) heen provided with a copy of the prospective adoptive parent's preplacement evaluation;

(e) in agency and direct parental placement adoptions, that the individual has:

(i) been advised of the obligation to provide the medical and social history information required under [section 81] pertaining to disclosures; and

(ii) not received or been promised any money or anything of value for execution of the relinquishment and consent to adopt, except for payments authorized by [sections 147 and 148].

(4) A relinquishment and consent to adopt may provide that the individual who is relinquishing waives notice of any proceeding for adoption.

**Seetion 52. Consequenccs of relinquishmcnt and consent to adopt.** Except under a circumstance stated in [section 50] a relinquishment and consent to the adoption of a child that is executed hy a parent or guardian in substantial compliance with [section 51] is final and irrevocable. The relinquishment and consent to adopt:

(1) unless a court orders otherwise to protect the welfare of the child, entitles the department, agency, or prospective adoptive parent named or described to the legal and physical custody of the child and imposes on that department, agency, or prospective adoptive parent responsihility for the support and medical and other care of the child;

(2) terminates, as provided in [section 44], any duty of the parent who executed the document with respect to the child except for arrearages of child support; and

(3) terminates any right of the parent or guardian who executed the document to:

(a) object to the placement of the child for adoption by the department or agency; and

(b) object to the child's adoption hy the prospective adoptive parent.

**Scction 53. Grounds for court to sct aside relinquishment and consent.** (1) The court shall set aside a relinquishment and consent to adopt if the individual who executed the relinquishment and consent establishes:

(a) by clear and convincing evidence, before a decree of adoption is issued, that the consent was obtained by fraud or duress; or

HeinOnline -- 1997 vol. II 2471 1997

(h) by a preponderance of the evidence, that a condition permitting revocation has occurred, as expressly provided for in [section 50].

(2) A verbatim record of testimony must be made.

**Section 54. Remedy when relinquishment and consent to adopt revoked or set aside — expediency.** (1) If a relinquishment and consent to adopt that was executed by an individual is revoked or set aside, the department, agency, or prospective adoptive parent shall immediately return the child to the individual's custody and move to dismiss a proceeding for adoption or termination of the individual's parental rights to the child unless:

(a) the department has legal custody pursuant to a court order;

(b) there are grounds for the department to seek a court order under the provisions of Title 41, chapter 3; or

(c) the individual did not have legal custody of the child at the time the relinquishment and consent to adopt was executed.

(2) In the circumstances described in subsections (1)(a) through (1)(c) and when there is no existing court order providing for care and custody, the court sball issue an order providing for the care and custody of the child according to the best interests of the child under any law applicable to tbe circumstances of the case.

(3) Except as provided in subsection (1), if after revocation or the setting aside of a relinquishment or consent a child is not returned immediately by the department, agency, or prospective adoptive parent, tbe individual may petition the court for appropriate relief. The action must take precedence over other cases and matters in tbe court. The court shall examine the petition, hear the case, and render a decision as soon as possible.

**Section 55. Notarized denial of paternity — no entitlement to notice.** (1) Execution of a notarized denial of paternity of a cbild is a voluntary act tbat constitutes a waiver of all parental rights to the child, except for the duty to pay support if paternity is established or presumed.

(2) A notarized denial of paternity is irrevocable when executed. An individual who has executed a denial of paternity toward a child who is the subject of adoption proceedings is not entitled to notice of either tbe hearing to terminato parental rights or the hearing on an adoption petition.

**Scction 56. Notarized acknowledgment of paternity and denial of interest in custody — no entitlement to notice.** (1) Submission of a notarized acknowledgment of paternity and a denial of any interest in the custody of the child is a voluntary act that constitutes a waiver of all parental rights to the child but does not absolve the person of the duty to pay support.

(2) An individual who bas executed an acknowledgment of paternity and denial of interest in the custody in a child who is the subject of adoption proceedings is not entitled to notice of either the hearing to terminate parental rights or the hearing on an adoption petition unless, subsequent to execution of the acknowledgment of paternity and denial of interest in custody, the individual

HeinOnline -- 1997 vol. II 2472 1997

has complied with all of the requirements of [section 22] and has done so within the time limits established in [section 23].

**Section 57. Timing of proceedings to terminate.** (1) In order to provide notice to a putative father at the earliest possible time of an expectant mother's intent to release an expected child for adoption and in order to facilitate early placement of a child for adoption, an expectant mother may initiate proceedings to terminate paternal rights by filing a petition of intent to place a child for adoption prior to the birth of the child.

(2) A petition to terminate parental rights may also be filed after a child is born.

**Section 58. Expected child — filing of petition indicating intent to release or consent to adoption.** (1) A pregnant individual may file a petition with the court indicating the intention to place an expected child for adoption.

(2) The petition must include the following information:

(a) the individual's intent to release the expected child for adoption;

(b) the approximate date and location of conception;

(c) the expected date of delivery;

(d) any information concerning the identity and whereabouts of any putative or presumed father of the expected child; and

(e) in a situation in which there is a presumed father, the grounds upon which the individual relies in contending that the nonexistence of the father and child relationship can be established in an action brought under 40-6-107.

(3) The petition may allege more than one putative or presumed father.

(4) The petition must be signed by the petitioner and notarized.

**Section 59. Notice to any named father of intent to release child for adoption.** (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a child for adoption.

(2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth of the child. Proof of service must be filed with the court.

(3) A notice of intent to release directed to a putative father must indicate the approximate date and location of conception of the child and the expected date of birth and must inform the putative father that:

(a) in order to protect the putative father's rights to the child, the putative father is required to file notice of intent to claim paternity before the expected date of birth;

(b) the putative father is required to appear at the hearing at the time and date set by the court;

(c) the failure to file notice of intent to claim paternity before the expected date of birth:

(i) constitutes a waiver of the right to receive the notice provided for in [section 66];

(ii) constitutes an irrevocable denial of the putative father's interest in the custody of the child; and

(iii) will result in the court's termination of the putative father's rights to the child.

(4) In addition to the information contained in subsection (3), a notice of intent to release directed to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds for seeking the declaration.

**Section 60. Notice to any named father of intent to release child for adoption.** (1) Upon the filing of the petition under [section 58], the court shall issue a notice of intent to release a child for adoption.

(2) The notice must be served by the petitioner, in the manner provided by the Montana Rules of Civil Procedure, upon each putative or presumed father at least 20 days prior to the expected date of birth of the child. Proof of service must be filed with the court.

(3) A notice of intent to release directed to a putative father must indicate the approximate date and location of conception of the child and the expected date of birth and must inform the putative father:

(a) that the putative father is required to appear at the hearing at the time and date set by the court;

(b) of the rights and responsibilities to which the putative father will be entitled upon registering with the putative father registry; and

(c) that the failure to timely comply with all requirements of filing with the putative father registry:

(i) constitutes a waiver of the right to receive the notice provided for in [section 22]; and

(ii) may result in the court's termination of the putative father's rights to the child.

(4) In addition to the information contained in subsection (3), a notice of intent to release directed to an individual presumed to be the father under 40-6-105 must also indicate the intention of the mother to ask for a declaration establishing the nonexistence of the father and child relationship and the grounds for seeking the declaration.

**Section 61. Venue.** Proceedings to terminate parental rights may be filed in the court in the county in which a petitioner resides, the child resides, or an office of the agency that is placing the child is located.

HeinOnline -- 1997 vol. II 2474 1997

**Section 62. Neeessity for parental rights to be terminated.** A child is not legally free for adoption until the parental rights of the birth parent or parents have been terminated by a court:

(1) as provided in [sections 1 through 156];

(2) pursuant to Title 41, chapter 3; or

(3) of competent jurisdiction in another state or country.

**Section 63. Petition for tcrmination of parentai rights.** (1) Pending the terınination or other disposition of the rights of the father of the child, the birth ınother may execute a relinquishment and consent to adoption.

(2) The department, a licensed child-placing agency, the prospective adoptive parent to whom the relinquishment is issued, or a guardian with custody of the child shall file with the court a signed and notarized petition for termination of parental rights pursuant to [sections 1 through 156] or pursuant to Title 41, chapter 3.

(3) At the request of the relinquishing parent, the execution of a relinquishment may be conditioned as set forth in [section 50].

(4) Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

**Seetion 64. Contents of petition for termination of parental rights.** (1) The petition for termination of parental rights ınust state:

(a) the identity of the petitioner;

(b) the date and location of the birth of the child;

(c) the date of the relinquishment by the birth mother or relinquishing parent;

(d) the current location of the child;

(e) the names and locations, if known, of any putative or presumed father of the child;

(f) efforts and inquiries ınade to locate any parent whose identity is known but whose whereabouts are unknown;

(g) the grounds on which the parental rights of any paront to the child should be terıninated;

(h) whether a putative or presumed father is one from whom consent is not required;

(i) whether court orders froın any other proceeding have been issued terminating parental rights to the child who is the subject of the petition;

(j) any other evidence supporting termination of the legal rights that a person has with regard to the child; and

(k) a request for custody of the child prior to the adoption.

HeinOnline -- 1997 vol. II 2475 1997

(2) The petitioner shall file with the petition for termination of parental rights the following documents received in support of the petition:

(a) any relinquishments and consents to adoption;

(b) any denials of paternity;

(c) any acknowledgments of paternity and denial of parental rights;

(d) any response from the department to a request of whether any notice of intent to claim paternity has been filed;

(e) a counseling report required under [section 48];

(f) proof of prior service of any notice or acknowledgement of service or waiver of service received; and

(g) proof of compliance with the Indian Child Welfaro Act of 1978 and Interstate Compact on the Placement of Children, if applicable.

**Section 65. Contents of petition for termination of parental rights.** (1) The petition for termination of parental rights must state:

(a) the identity of the petitioner;

(b) the date and location of the birth of the child;

(c) the date of the relinquishment by the birth mother or relinquishing parent;

(d) the current location of the child;

(e) the names and locations, if known, of any putative or presumed father of the child;

(f) whether a parent is one from whom consent is not required;

(g) whether court orders from any other proceeding have been issued terminating parental rights to the child that is the subject of the petition;

(h) any other evidence supporting termination of the legal rights that a person has with regard to the child; and

(i) a request for temporary custody of the child prior to the adoption.

(2) The petitioner shall file with tho petition for termination of parental rights the following documents received in support of the petition:

(a) any relinquishments and consonts to adoption;

(b) any denials of paternity;

(c) any acknowledgments of paternity and denial of parental rights;

(d) any affidavits from the putative father registry that have been executed by the department;

(e) a counseling report required under [section 48];

(f) proof of prior service of any notice or acknowledgement of service or waiver of service received; and

(g) proof of compliance with the Indian Child Welfare Act of 1978 and Interstate Compact on the Placement of Children, if applicable.

**Section 66. Notice of hearing — service.** (1) Notice of a hearing to be held on the petition for termination of parental rights must be served in any manner appropriate under the Montana Rules of Civil Procedure or in any manner that the court may direct on:

(a) a putative or presumed father;

(b) a putative father who was not served with a notice of intent to release at least 20 days before the expected date of birth as specified in the notice of intent to release;

(c) a spouse, if the parent relinquishing the child for adoption was married to that person at the time of conception of the child or at any time after conception but prior to birth;

(d) a parent or legal guardian of the child in question who has not waived notice; or

(e) any other person who is reasonably believed to be the father.

(2) The notice of hearing must inform the putative or presumed father that failure to appear at the hearing constitutes a denial of the individual's interest in custody of the child and will result in the court's termination of the individual's rights to the child.

(3) Proof of service of the notice of hearing must be filed with the court. A notarized acknowledgement of service by the party to be served is proof of personal service. Proof of service is not required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual entitled to receive notice is sufficient.

(4) If a person has not been identified as the father or putative father of the child, the court, on the basis of all information available, shall determine whether publication of notice of the proceeding is likely to lead to identification. If so, the court shall order publication in the manner that it considers appropriate. The name of the birth mother may be included in the publication only with the mother's written consent.

(5) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who has not waived the right to notice of hearing and that person is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

**Section 67. Notice of hearing — service.** (1) Notice of a hearing to be held on the petition for termination of parental rights must be served in any manner appropriate under the Montana Rules of Civil Procedure or in any manner that the court may direct on:

HeinOnline -- 1997 vol. II 2477 1997

(a) a putative or presumed father who has timely and properly complied with the putative father registry;

(b) a putative father who was not served with a notice of intent to release at least 20 days before the expected date of birth as specified in the notice of intent to release;

(c) a person adjudicated, in Montana, to be the father of the child for the purpose of child support;

(d) a person who is recorded on the child's birth certificate as the child's father;

(e) a person who is openly living with the child and the child's mother at the time that the proceeding is initiated or at the time the child was placed in the care of an authorized agency and who is representing to the public that the person is the child's father;

(f) a spouse, if the parent relinquishing the child for adoption was married to that person at the time of conception of the child or at any time after conception but prior to birth; or

(g) a parent or legal guardian of the child in question who has not waived notice.

(2) The notice of hearing must inform the putative or presumed father or other parent that failure to appear at the hearing constitutes a waiver of the individual's interest in custody of the child and will result in the court's termination of the individual's rights to the child.

(3) Proof of service of the notice of hearing must be filed with the court. A notarized acknowledgement of service by the party to be served is proof of personal service. Proof of service is not required if the putative father is present at the hearing. A waiver of notice of the hearing by an individual entitled to receive notice is sufficient.

(4) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to [section 22] or a notice required pursuant to this section and who has not waived the right to notice of hearing and that person is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

**Section 68. Hearing on petition to terminate parental rights.** (1) The court shall hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the parents of the child.

(2) If a putative father has not been named and no one has registered with the putative father registry, the court shall cause inquiry to be made in an effort to identify any legal father. The inquiry must include whether the mother was married at the time of conception of the child or at any time after conception and prior to birth.

(3) Based on the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father could not be determined.

HeinOnline -- 1997 vol. II 2478 1997

(4) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the court shall enter an order concerning the parental rights to the child.

(5) If the court terminates the parental rights to the child and the department, agency, or prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court shall issue an order awarding custody of the child to the petitioner.

**Section 69. Hearing on petition to terminate parental rights.** (1) The court shall hold a hearing as soon as practical to determine the identity of and terminate the parental rights of the parent of the child.

(2) If a putative father has not been named and no one has filed notice of intent to claim paternity, the court shall cause inquiry to be made in an effort to identify the father. The inquiry must include:

(a) whether the mother:

(i) was married at the time of conception of the child or at any time after conception and prior to birth;

(ii) was cohabiting with an individual of the opposite sex at the time of conception or birth of the child; and

(iii) has received suppert payments or promises of support payments for the child or in connection with the pregnancy; and

(b) whether any person formally or informally acknowledged possible paternity to the child.

(3) Proof of service of notice or proof of acknowledgement of service on any person or proof of waiver by a person legally required to be given notice must be filed with the court.

(4) Based on the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father could not be determined.

(5) Based on the grounds set forth in [section 70] and the evidence received at the hearing, the court shall enter an order concerning the parental rights to the child.

(6) If the court terminates the parental rights to the child and the department, agency, or prospective adoptive parent has agreed to accept custody of the child until the child is adopted, the court shall issue an order awarding custody of the child to the petitioner.

**Section 70. Grounds for termination of parental rights.** The court may terminate a parent's rights to a child who is the subject of an adoption proceeding based upon:

(1) the voluntary acts of the parent in:

(a) executing a voluntary relinquishment and consent to adopt;

HeinOnline -- 1997 vol. II 2479 1997

(b) submitting a notarized denial of paternity executed pursuant to [section 55]; or

(c) submitting a notarized acknowledgment of paternity and denial of interest in custody of the child executed pursuant to [section 56];

(2) a determination under [section 71] that the parent is unfit;

(3) a determination under [section 72] that the relationship of parent and child does not exist; or

(4) a determination that the parent has irrevocahly waived parental rights by failing to timely act to protect the rights.

**Seetion 71. Finding of unfitness.** (1) The court may terminate parental rights for purposes of making a child available for adoption on the grounds of unfitness if:

(a) the court makes a determination that the parent has been judicially deprived of custody of the child on account of abuse or neglect toward the child;

(b) the parent has in the state of Montana or in any other jurisdiction of the United States willfully abandoned the child, as defined in 41-3-102(7)(e), in Montana or in any other jurisdiction of the United States;

(c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

(d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to support either the child that is the subject of the adoption proceedings or other children with tbe same birth mother;

(e) the parent has been found guilty by a court of competent jurisdiction of:

(i) aggravated assault on the adoptee, as provided in 45-5-202;

(ii) sexual assault on a child, as provided in 45-5-502;

(iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

(iv) incest, as provided in 45-5-507, if the victim was a child;

(v) homicide of a child, as provided in 45-5-102 or 45-5-103;

(vi) sexual abuse of a child, as provided in 45-5-625; or

(vii) ritual abuse of a minor, as provided in 45-5-627;

(f) the child has been maintained by a public or private childron's institution, a charitable agency, a licensed child-placing agency, or the department for a period of 1 year without the parent contributing to the support of the child during that period, if able;

(g) a finding is made for a parent who is given proper notice of hearing:

HeinOnline -- 1997 vol. II 2480 1997

(i) that the parent has been convicted of a crime of violence or of violating a restraining or protective order; and

(ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to maintain a relationship of parent and child with the child;

(h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the petition to terminate parental rights and:

(i) by a preponderance of the evidence, it is found that termination is in the best interests of the child; and

(ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

(A) if the child is not in the legal and physical custody of the other parent, that the respondent is not able or willing to promptly assume legal and physical custody of the child and to pay for the child's support in accordance with the respondent's financial means;

(B) if the child is in the legal and physical custody of the other parent and a stepparent who is the prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain contact with the child and to pay for the child's support in accordance with the respondent's financial means;

(C) placing the child in the respondent's legal and physical custody would pose a risk of substantial harm to the physical or psychological well-being of the child because the circumstances of the child's conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the respondent's behavior with respect to other children indicates that the respondent is unfit to maintain a relationship of parent and child with the child; or

(D) failure to terminate the relationship of parent and child would be detrimental to the child.

(2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability to care for the child, the age of the child, the quality of any previous relationship between the respondent and the child and between the respondent and any other children, the duration and suitability of the child's present custodial environment, and the effect of a change of physical custody on the child.

**Section 72. Determination that no parent and child relationship exists.** For purposes of making a child available for adoption, the court may terminate the parental rights of a putative father on the grounds that the parent and child relationship does not exist if:

(1) a judicial determination is made under 40-6-107 that the parent and child relationship does not exist. This includes the termination of the parental rights of the husband of the mother who is placing the child for adoption or the parental rights of an individual who is a presumed father of the child.

(2) a determination is made that:

HeinOnline -- 1997 vol. II 2481 1997

(a) an individual has not timely registered with the putative father registry;

(h) a person has not been adjudicated, in Montana, to he tbe father of the child for the purpose of child support;

(c) a person has not been recorded on the child's hirth certificate as the child's father;

(d) a person is not openly living with the child and the child's mother at the time that the proceeding is initiated or at the time the child was placed in the care of an authorized agency and a person is not representing to the puhlic that the person is the child's father; or

(e) the child's mother was not married at the probable time of the child's conception or at the time the child was born; or

(3) a putative father who appears at the hearing but is unable to establish by a preponderance of the evidence the minimum requirements provided in [section 73] for demonstrating the establishment of a substantial relationship with the child.

**Section 73. Putative father — termination based upon failure to establish substantial relationship.** (1) The parental rights of a putative father may be terminated hy the court if the putative father has failed to timely establish and maintain a substantial relationsbip with the child.

(2) A putative father wlio is not married to the child's mother but who has openly lived with the child since the child's birth or for a period of 6 months imniediately preceding placement of the child with adoptive parents and has openly claimed to be the father of the child during that period is considered to have developed a substantial relationship with tlie child and to have otherwise met the requirements of this section.

(3) In order to meet the minimal showing of having established a substantial relationship with regard to a child who is the subject of an adoption proceeding, a putative father has the burden of showing that the putative father has:

(a) demonstrated a full commitment to the responsihilities of parentbood by providing financial suppert for the child in a fair and reasonable sum and in accordance with the putative father's ability and either:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(b) manifested an ability and willinguess to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(4) In order to meet the minimal showing of having estahlished a substantial relationship with regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months of age at the time the child becomes the subject of adoption proceedings, a putative father has tlie burden to show that:

(a) the putative father has manifested a full commitment to parental responsibilities by performing all of the acts described in this subsection (4) prior to the time the mother executed a relinquishment and consent for adoption, including registering with the putative father registry; and

(b) if the putative father had actual knowledge of the pregnancy, paying a fair and reasonable amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with the putative father's means when not prevented from doing so by the person or authorized agency having lawful custody of the child;

(c) making reasonable and consistent payments, in accordance with the putative father's means, for the support of the child since birth;

(d) visiting regularly with the child; and

(e) manifesting an ability and willingness to assume legal and physical custody of the child if, during this time, the child was not in the physical custody of the mother.

(5) The subjective intent of a putative father, whether expressed or otherwise, unsupported by evidence of acts specified in this section does not preclude a determination that the father failed to meet the requirements of this section.

**Section 74. Irrevocable waiver of parental rights.** (1) The court may find an irrevocable waiver of parental rights of:

(a) a putative father who was timely served with notice of intent to release if the court is provided with proof of service and proof that the putative father failed to timely file a notice of intent to claim paternity;

(b) a parent or putative father who is served with notice of proceedings and fails to appear at the hearing; or

(c) a parent or putative father who is served with notice of proceedings and appears and denies any interest in custody of the child.

(2) The court may terminate parental rights under this section upon a finding of irrevocable waiver of all rights to the child.

**Section 75. Irrevocable waiver of parental rights.** (1) The court may find an irrevocable waiver of parental rights of:

(a) a putative father who was timely served with notice of intent to release if the court is provided with proof of service and proof that the putative father failed to timely comply with the requirements of the putative father registry;

(b) a parent or putative father who is served with notice of proceedings and fails to appear at the hearing; or

(c) a parent or putative father who is served with notice of proceedings and appears and denies any interest in custody of the child.

(2) The court may terminate parental rights under this section upon a finding of irrevocable waiver of all rights to the child.

HeinOnline -- 1997 vol. II 2483 1997

**Section 76. Appearance of parent at hearing — determination of custody.** (1) If a parent appears at the hearing on the petition to terminate parental rights, objects to the termination of rights, and requests custody of the child, the court shall set deadlines that allow the parties to complete discovery and shall set a hearing on the determination of the parent's rights to the child.

(2) At the hearing, the court shall consider whether there is a basis for terminating parental rights and whether the best interests of the child will be served by granting custody to the respondent parent, the department, a licensed child-placing agency, or a prospective adoptive parent in a direct parental placement adoption.

(3) If the petitioner has established that there are grounds for terminating parental rights and it is in the best interests of the child for termination to occur, those rights must be terminated.

**Section 77. Effect of order terminating parental rights.** (1) An order granting the petition for termination of parental rights:

(a) terminates the parent and child relationship except for an obligation for arrearages of child support;

(b) terminates the jurisdiction of the court over the child in any dissolution or separate maintenance action;

(c) extinguishes any right the parent had to withhold consent to a proposed adoption of the child or to further notice of a proceeding for adoption; and

(d) awards custody of the child to the department, agency, or prospective adoptive parent to whom the relinquishment was given if the department, agency, or prospective adoptive parent has agreed in writing to accept custody of the child until the adoption is finalized.

(2) A person accepting custody is responsible for the support of the child.

**Section 78. Appeal.** An order terminating parental rights is a final order for purposes of appeal.

**Section 79. Expediency.** A contested termination of parental rights action must take precedence over other cases and matters in the court or on appeal. The court shall examine any issues raised in challenging termination of a parent's rights or regarding the validity of any interlocutory or final adoption decree and shall render a decision as soon as possible.

**Section 80. Finality.** Subject to the disposition of a timely appeal, upon expiration of 6 months after an order terminating parental rights has been issued, the order may not be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or the subject matter.

**Section 81. Duty to disclose information — form — availability — filing.** (1) Except for an adoption proceeding by a stepparent, in any adoption under [sections 1 through 156], a birth parent, the department, or an agency shall provide a prospective adoptive parent with social and medical histories of the birth families, including tribal affiliation, if applicable.

HeinOnline -- 1997 vol. II 2484 1997

(2) In a direct parental placement adoption, the birth family social and medical histories must be completed on a form provided by the department and filed with the court when the adoption petition is filed.

(3) The department shall make a form available to agencies and court administrators for public distribution.

**Section 82. Retention of disclosures.** (1) In a direct parental placement adoption, the disclosures required by [section 81] must be filed with the court in support of the notice of parental placement filed pursuant to [section 95] and must be permanently maintained.

(2) In an adoption arranged by the department or an agency, the disclosures required by [section 81] must be permanently maintained in the files of the department or the agency.

**Section 83. Preplacement evaluation — timing.** (1) A child may not be placed for purposes of adoption unless the person with whom a child is proposed to be placed has had a preplacement evaluation completed to determine fitness and readiness as an adoptive parent.

(2) In a direct parental placement adoption, the placing parent must be provided with a copy of the preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

(3) The required preplacement evaluation must provide all pertinent information pertaining to the topics identified in [section 85].

**Section 84. Initiation of preplacement evaluation — who conducts evaluation — payment of fees.** (1) A prospective adoptive parent who wishes to adopt a child may initiate the process by:

(a) establishing a client relationship with the department or a licensed child-placing agency; or

(b) requesting a preplacement evaluation from either the department or a licensed child-placing agency.

(2) The department may contract with a licensed social worker or a licensed child-placing agency to conduct the evaluation.

(3) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the department's or licensed child-placing agency's standards for placement of a child.

(4) A department or agency from which an individual is seeking to adopt a child may require the individual to be evaluated by its own qualified employee or independent contractor even if the individual has received a favorable preplacement evaluation from another evaluator.

(5) Fees for the study and report are set by the entity completing them and must be paid for by the prospective adoptive parent.

**Section 85. Information to be reviewed in conducting preplacement evaluation.** (1) A preplacement evaluation must include a review of the following information about the prospective adoptive parent:

HeinOnline -- 1997 vol. II 2485 1997

(a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under Title 41, chapter 3, and data pertaining to any involvement in incidents of domestic violence by any person over the age of 13 living in the prospective home;

(b) medical and social history and current health;

(c) assessment of potential parenting skills;

(d) assessment of ability to provide adequate financial support for a child; and

(e) assessment of the level of knowledge and awareness of adoption issues, including when appropriate, matters relating to open, interracial, cross-cultural, and special needs adoptions.

(2) (a) The prospective adoptive parent, the department of justice, and other state, county, and local agencies, after written notice to the subject of the study, shall give the department or agency completing the adoption study substantiated data pertaining to criminal convictions and any reports concerning domestic violence and substantiated abuse or neglect of children or vulnerable adults.

(b) The adoption study must also include a check of the youth court records of each person over the age of 13 living in the prospective home. Pursuant to sections 41-5-603 and 41-5-604, the youth court shall release the requested information to the agency or department completing the adoption study. The study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated abuse or neglect on the ability to care for a child.

(3) The preplacement evaluation must include at least one in-home visit with the prospective adoptive parent and at least one interview with each family member.

**Section 86. Contents of preplacement evaluation.** (1) The preplacement evaluation report must contain the following information if available:

(a) age and date of birth, nationality, racial or ethnic background, and any religious affiliation;

(b) marital status and family history, including the age and location of any child of the individual and the identity of and relationship to anyone else living in the individual's household;

(c) physical and mental health and any history of abuse of alcohol or drugs;

(d) educational and employment history and any special skills;

(e) property and income, including outstanding financial obligations as indicated in a current credit report or financial statement furnished by the individual;

(f) any previous request for an evaluation or involvement in an adoptive placement and the outcome of the evaluation or placement;

HeinOnline -- 1997 vol. II 2486 1997

(g) whether the individual has been charged with or convicted of domestic violence or has been involved in a substantiated charge of child abuse or neglect or elder abuse or neglect and the disposition of the charges;

(h) whether the individual is subject to a court order restricting the individual's right to custody or visitation with a child;

(i) whether the individual has been convicted of a crime other than a minor traffic violation;

(j) whether the individual has located a parent interested in placing a child with the individual for adoption and, if so, a brief description of the parent and the child; and

(k) any other fact or circumstance that may be relevant in determining whether the individual is suited to be an adoptive parent, including the quality of the environment in the individual's home and the functioning of other children in the individual's household.

(2) The report must contain recommendations regarding the suitability of the subject of the study to be an adoptive parent.

(3) A preplacement evaluation is valid for 1 year following its date of completion and must be updated if there is a significant change in circumstances.

(4) Prior to accepting physical custody of a child for purposes of adoption, a prospective adoptive parent must have the preplacement evaluation completed by the evaluator, and the evaluation must specifically address the appropriateness of placing the specifically identified child or children who will be the subject of the adoption proceedings with the prospective adoptive parent.

**Section 87. Recommendation.** (1) An evaluator shall assess the information required by [section 85] to determine if it raises a specific concern that placement of any child or a particular child in the home of the individual would pose a significant risk of harm to the physical or psychological well-being of the child.

(2) If an evaluator determines that the information assessed does not raise a specific concern, the evaluator shall find that the individual is suited to be an adoptive parent. The evaluator may comment about any factor that in the evaluator's opinion makes the individual suited in general or for a particular child.

(3) If an evaluator determines that the information assessed raises a specific concern, the evaluator, on the basis of the original or any further investigation, shall find that the individual is or is not suited to be an adoptive parent. The evaluator shall support the finding with a written explanation.

**Section 88. Distribution of evaluation — retention — immunity for evaluator.** (1) The evaluator shall furnish a copy of the evaluation to a department, agency, or other person authorized to place a child for adoption and, upon payment by the person evaluated of the cost of the evaluation services, to the person evaluated.

(2) An evaluator shall retain the original of a completed or incomplete preplacement evaluation and a list of each source for each item of information in

HeinOnline -- 1997 vol. II 2487 1997

the evaluation. An evaluator who ceases to do business in Montana shall give the evaluator's records to the department for retention.

(3) An evaluator, except a department evaluator, who conducted an evaluation in good faith is not subject to civil liability for anything contained in the evaluation.

**Section 89. Action by department.** If, before a decree of adoption is issued, the department learns from an evaluator or another person that a child has been placed for adoption with an individual who is the subject of a preplacement evaluation on file with the department containing a finding of unsuitability, the department shall immediately review the evaluation and make a determination of whether the department has authority pursuant to Title 41, chapter 3, to intervene.

**Section 90. Court waiver for relatives.** The court may waive the requirement of a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. A postplacement evaluation must be conducted during the pendency of a proceeding for adoption.

**Section 91. Filing of evaluation in adoption proceedings.** (1) In a direct parental placement adoption, the preplacement evaluation must be filed with the court in support of the petition to terminate parental rights for purposes of adoption.

(2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement evaluation must be permanently maintained in the files of the department or the licensed child-placing agency.

**Section 92. Requirement for preplacement evaluation.** (1) Before the department or licensed child-placing agency may place a child for purposes of adoption, the prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated as provided in [section 84].

(2) The department or agency shall prepare a written report containing the results of its evaluation.

**Section 93. Parties to direct parental placement adoption.** A parent of a child may directly place the child for adoption with a specifically identified prospective adoptive parent who:

(1) resides in Montana or in another state that allows direct parental placement;

(2) is known to and has been personally selected by the parent; and

(3) has previously obtained a favorable preplacement evaluation.

**Section 94. Duties of placing parent.** (1) A parent who is directly placing a child for adoption shall execute a voluntary relinquishment and consent to adopt, including:

(a) receiving the counseling required by [section 48]; and

HeinOnline -- 1997 vol. II 2488 1997

(b) if the parent is a minor, being advised by legal counsel other than the attorney representing the prospective adoptive parent.

(2) A placing parent shall identify and provide information on the location of any other legal parent or guardian of the child and any other person required to receive notice under [section 67], including:

(a) any current spouse;

(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child; and

(c) any adoptive parent.

(3) A placing parent shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) A parent placing a child for adoption in a direct parental placement adoption shall provide:

(a) the disclosures of medical and social history required pursuant to [section 81];

(b) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

(5) A parent placing a child for adoption in a direct parental placement adoption shall file a notice of parental placement.

(6) A parent placing a child for adoption in a direct parental placement adoption shall file a disclosure of all disbursements made to or for the benefit of the parent by the prospective adoptive parent or any person acting on behalf of the prospective adoptive parent.

(7) Subject to the limitations set in [section 148], counseling expenses, legal fees, and the reasonable costs of preparing reports documenting the required disclosures of medical and social history and the disclosures documenting disbursements are allowable expenses that can be paid for by the prospective adoptive parent.

**Section 95. Direct parental placement — information to be filed.** (1) A parent who proposes to place a child for adoption with a prospective adoptive parent who resides in Montana and who is not the child's stepparent or an extended family member shall file with the court of the county in which the prospective adoptive parent or the parent making the placement resides the following:

(a) a notice of parental placement containing the following information:

(i) the name and address of the placing parent;

(ii) the name and address of each prospective adoptive parent;

HeinOnline -- 1997 vol. II 2489 1997

(iii) the name and address or expected date and place of birth of the child;

(iv) the identity and information on the location of any other legal parent or guardian of the child and any other person required to receive notice under [section 67], including any current spouse, any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child, and any adoptive parent;

(v) all relevant information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.; and

(vi) the name and address of counsel, a guardian ad litem, or other representative, if any, of each of the parties mentioned in subsections (1)(a)(i) through (1)(a)(iii);

(b) a relinquishment and consent to adoption of the child by the adoptive parent;

(c) the counseling report required by [section 48];

(d) the medical and social history disclosures required by [section 81];

(e) a report of disbursements identifying all payments made to or to the benefit of the placing parent by the prospective adoptive parent or anyone acting on the parent's behalf that contains a statement by each person furnishing information in the report attesting to the truthfulness of the information furnished by that person;

(f) a certified copy of the child's birth certificate or other document certifying the place and date of the child's birth;

(g) a certified copy of any existing court orders pertaining to custody or visitation of the child; and

(h) the preplacement evaluation.

(2) The notice of parental placement must be signed by the parent making the placement.

**Section 96. Duty of prospective adoptive parent to provide preplacement evaluation.** (1) Prior to taking custody of a child whom the prospective adoptive parent intends to adopt, the prospective adoptive parent shall obtain a favorable preplacement evaluation.

(2) A placing parent must be provided with a copy of the preplacement evaluation prior to execution of a relinquishment and consent to adoption of the child.

**Section 97. Duty to promptly petition.** (1) Within 30 days after the filing of a notice of parental placement or the execution of a relinquishment and consent to the adoption of the child, whichever is later, a prospective adoptive parent shall promptly act to resolve the child's legal status by filing:

(a) a petition for termination of parental rights for purposes of adoption, including a request for custody, that includes:

(i) the relinquishment and consent to adopt executed by any legal parent other than the placing parent who has filed the notice of parental placement;

(ii) a certified copy of any court order terminating the rights and duties of any parent or guardian of the child; and

(iii) any other evidence supporting termination of the legal rights a person has with regard to the child;

(b) a petition to adopt the child who is the subject of the proceedings;

(c) a copy of the preplacement evaluation pertaining to the adoptive parent;

(d) a copy of an agreement with the department or a licensed child-placing agency agreeing to accept supervision over the postplacement evaluation period and to prepare the postplacement evaluation;

(e) a disclosure of all disbursements made with regard to the adoptive placement to date; and

(f) an affidavit from the department reporting on whether any individual has registered with the putative father registry and claims an interest in the child.

(2) The prospective adoptive parent shall request that the court promptly notice the matters provided for in subsection (1) for hearing in a timely manner.

**Section 98. Custody order.** (1) The court shall consider the petition to adopt and shall make a determination as to whether temporary custody should be awarded to the petitioner. In making that determination, the court shall consider:

(a) the preplacement evaluation that pertains specifically to placement of the child who is the subject of the adoption petition with the petitioner; and

(b) if any significant change in the petitioner's or child's circumstances has occurred since preparation of the preplacement evaluation.

(2) Upon a determination that it is in the best interests of the child, the court shall enter an order granting temporary custody to the prospective adoptive parent.

(3) Upon a determination that it is not in the best interests of the child to place custody with the prospective adoptive parent, the court shall deny the petition to terminate parental rights of the placing parent and shall make any other order with regard to the custody of the child that is necessary to protect the well-being of the child.

**Section 99. Period for postplacement supervision.** (1) In a direct parental placement adoption, the court shall maintain jurisdiction over the placement during a postplacement evaluation period and issue an order for postplacement supervision and a postplacement evaluation.

(2) The postplacement evaluation period must be supervised and evaluated by a qualified person appointed, contracted with, or employed by:

(a) the department, if the department has accepted supervision of the placement; or

HeinOnline -- 1997 vol. II 2491 1997

(b) a licensed child-placing agency.

(3) The court shall provide the evaluator with copies of the petition for adoption and the items filed with the petition.

(4) A decree of adoption may not be entered for at least 6 months from the date an order is entered granting temporary custody during the pendency of the proceedings.

**Section 100. Postplaeement evaluation for direct parental placement adoption.** (1) An evaluation must be based on a personal interview with the prospective adoptive parent in the prospective parent's home and an observation of the relationship between the child and the prospective adoptive parent.

(2) An evaluation must be in writing.

(3) At a minimum, the evaluation must include the following information:

(a) assessment of adaptation by the prospective adoptive parent to parenting the child;

(b) assessment of the health and well-being of the child in the prospective adoptive home;

(c) analysis of the level of incorporation by the child into the prospective adoptive parent's home, extended family, and community;

(d) assessment of the level of incorporation of the child's previous history into the prospective adoptive home, such as cultural or ethnic practices, or contact with former foster parents or biological relatives; and

(e) an account of any change in the prospective adoptive parent's marital status or family history, physical or mental health, home environment, property, income, or financial obligations since the filing of the preplacement evaluation.

(4) The evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption.

**Seetion 101. Time and filing of evaluation.** (1) Unless the court for good cause allows an earlier or later filing, the evaluator shall file a complete written evaluation with the court within not less than 90 days and not more than 180 days after receipt of the court's order for an evaluation.

(2) If an evaluation raises a specific concern, as described in [section 87], the evaluation must be filed immediately and must explain why the concern poses a significant risk of harm to the physical or psychological well-being of the child.

(3) An evaluator shall give the prospective adoptive parent a copy of the evaluation when it is filed with the court and shall permanently retain a copy of the evaluation and a list of every source for each item of information in the evaluation. If the evaluator ceases to conduct business in Montana, all evaluations in the evaluator's possession must be forwarded to the department for permanent retention.

HeinOnline -- 1997 vol. II 2492 1997

**Section 102. Motion to enter adoption decree.** (1) The prospective adoptive parent may file a motion for entry of an adoption decree no sooner than 6 months after the court has granted temporary custody to the prospective adoptive parent.

(2) The motion must be supported by the following documents:

(a) the postplacement evaluation prepared pursuant to [section 100]; and

(b) an updated list of all disbursements made in connection with the adoption proceeding.

(3) A notice of hearing is not required for any party whose parental rights have been terminated in prior proceedings.

(4) The court shall consider the petition and shall grant or deny the petition pursuant to the provisions of [sections 125 through 134].

(5) If the petition to adopt is denied, the court shall provide notice to the placing parent that the petition has been denied and shall take appropriate action for placement of the child pursuant to [section 131].

(6) Finality of the decree or the order denying the decree and the time for appeal are determined pursuant to [section 137].

**Section 103. Records.** All records filed with the court in a direct parental placement adoption must be permanently maintained by the court.

**Section 104. Factors to be considered — best interests of child.** (1) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstances;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development and as it relates to the express preference of a birth parent or a child to be placed with an adoptive parent of a particular religious faith or denomination.

(2) For purposes of ensuring that the best interests of the child are met, the department or a licensed child-placing agency is authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the age, marital status, and religious beliefs of a prospective adoptive parent. The authority granted by this subsection includes the authority to receive and to consider, consistent with the best interests of the child, the preferences of birth parents relating to the age, marital status, or religious beliefs of an adoptive parent.

HeinOnline -- 1997 vol. II 2493 1997

(3) Consideration of religious factors hy a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the ineaning of this section.

**Seetion 105. Parties to department or agency placement.** A parent of a child may relinquish the child for adoption to the department or a licensed child-placing agency. The department or agency shall agree in writing to accept the relinquishment of a placing parent as provided in [section 43] before the relinquishment is valid.

**Section 106. Duties of placing parent.** (1) A parent who is placing a child for adoption shall comply with the provisions for executing a voluntary relinquishment and consent to adopt.

(2) A parent placing a child for adoption shall identify and provide inforination on the location of:

(a) any other legal parent or guardian of the child and any other person required to receive notice under [section 67], including any current spouse; and

(b) any spouse who is the other birth parent and to whom the parent was married at the probable time of conception or birth of the child.

(3) A parent placing a child for adoption shall identify and provide information pertaining to any Indian heritage of the child that would bring the child within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) A parent placing a child for adoption shall provide:

(a) the disclosures of medical and social history;

(b) a certified copy of the child's birth certificato or other document certifying the place and date of the child's birth; and

(c) a certified copy of any existing court orders pertaining to custody or visitation of the child.

**Section 107. Counseling requirements.** To the extent required by [sections 1 through 156] and the department's or agency's standards, the departinent or agency shall provide counseling to the parties involved in the adoption.

**Section 108. Waiting period following placement of child.** (1) Once the department or agency has received custody of tlie child and placed the child for adoption, the department or agency shall supervise and evaluate the placement during a 6-month postplaceinent evaluation period.

(2) The departinent or agency may recoinmend in the postplacement evaluation filed with the petition for adoption that the court issue a decree of adoption sooner than the 6-month postplacement evaluation period if:

(a) (i) a period of at least 6 inonths has elapsed since the department or agency placed the child in the prospective adoptive home; and

HeinOnline -- 1997 vol. II 2494 1997

(ii) the department or agency has completed a postplacement evaluation during that period; or

(b) (i) a postplacement evaluation has been completed and filed with the court; and

(ii) there are detailed extenuating circumstances supporting a waiver of the 6-month postplacement evaluation period.

(3) The department or an agency may recommend the waiver of the 6-month postplacement evaluation period and the postplacement evaluation if the adoptee has been in the petitioner's home as a foster child for at least 1 year.

**Section 109. Petition for adoption filed by prospective adoptive parent.** After the child has been placed by the department or agency with the prospective adoptive parent, the parent shall file a petition for adoption.

**Section 110. Postplacement department or agency evaluation.** (1) The department or agency shall complete a written postplacement evaluation. The postplacement evaluation must be conducted according to the department's or agency's standards for placement of a child and at a minimum must include a personal interview with the prospoctive adoptive parent in that person's home and observation of the relationship between the child and the prospective adoptive parent.

(2) Upon the filing of a petition for adoption by the prospective adoptive parent, the department or agency shall file the postplacement evaluation.

(3) The evaluation must include the following information:

(a) whether tbe child is legally free for adoption;

(b) whether the proposed home is suitable for the child;

(c) a statement that the medical and social histories of the birth parents and child have been provided to the prospective adoptive parent;

(d) an assessment of adaptation by the prospective adoptive parent to parenting the child;

(e) a statement that the 6-month postplacement evaluation period has been complied with or should be waived;

(f) any other circumstances and conditions that may have a hearing on the adoption and of which the court should have knowledge;

(g) whether the agency waives notice of the proceeding;

(h) a statement that any applicable provision of law governing an interstate or intercountry placement of the child has been complied with; and

(i) a statement of compliance with any applicable provisions of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.

(4) Tbe evaluation must contain a definite recommendation stating the reasons for or against the proposed adoption.

HeinOnline -- 1997 vol. II 2495 1997

**Section 111. Consent to adoption.** (1) Upon the filing of the petition for adoption by the prospective adoptive parent, the department or agency that has custody of the child shall file its consent to adoption.

(2) Except as provided in subsection (3), the withdrawal of a consent for an adoption filed by the department or an agency in connection with that petition for adoption is not permitted.

(3) Upon a motion to witbdraw consent, notice and opportunity to be heard must be given to the petitioner and to the person seeking to withdraw consent. The court may, if it finds that the best interests of the child will be furthered, issue a written order permitting the withdrawal of the consent.

(4) The entry of a decree of adoption renders a consent irrevocable.

**Section 112. Relinquishment to stepparent.** (1) A parent may relinquish parental rights for the purposes of adoption of a child by the child's stepparent or a member of the child's extended family. The relinquishment must be executed in accordance with [sections 42 through 52]. The relinquishment may be executed at any time after the child is 72 hours old.

(2) The stepparent or extended family member shall accept the relinquisbment in writing.

**Section 113. Standing to adopt stepchild.** (1) A stepparent has standing to file a petition for adoption of a minor stepchild of the stepparent's spouse if:

(a) the spouse has sole legal and physical custody of the child and the child has been in the physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for adoption;

(b) tbe spouse is deceased or mentally incompetent but, before dying or being judicially declared mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with the stepparent during the 12 months preceding the filing of the petition; or

(c) the department or an agency placed the child with the stepparent.

(2) For good cause shown, a court may allow an individual who is not the stepparent but who bas the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated as if the petitioner were a stepparent.

(3) A petition for adoption by a stepparent may be joined with a petition for termination of parental rights.

**Section 114. Consent to adoption.** (1) Upon the filing of the petition for adoption by the stepparent, the child's parent shall file consent to adoption executed pursuant to [section 115 or 116].

(2) If the child has attained 12 years of age the child must consent to the adoption.

**Section 115. Consent to adoption — stepparent's sponse.** (1) A consent to adoption executed by a parent who is the stepparent's spouse must be signed in tbe presence of an individual authorized to take acknowledgements.

HeinOnline -- 1997 vol. II 2496 1997

(2) A consent must be in writing and must state that:

(a) the parent executing the consent has legal and physical custody of the parent's child and voluntarily and unequivocally consents to the adoption of the child by the stepparent;

(b) the adoption will not terminate the parental relationship between the parent executing the consent and the child; and

(c) the parent executing the consent understands and agrees that:

(i) the adoption will terminate the relationship of parent and child between the child's other parent and the child and will terminate any existing court order for custody, visitation, or communication with the child;

(ii) the child and any descendant of the child will retain rights of inheritance from or through the child's other parent; and

(iii) a court order for visitation or communication with the child by an individual related to the child through the parent executing the consent or an agreement or order concerning another individual that is approved hy the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption.

**Section 116. Consent to adoption — child's other parent.** A consent executed by a child's parent who is not the stepparent's spouse must he in writing and must state that:

(1) the parent executing the consent voluntarily and unequivocally consents to the adoption of the child by the stepparent and the transfer to the stepparent's spouse and the adoptive stepparent of any right that the parent executing the consent has to legal or physical custody of the child;

(2) the parent executing the consent understands and agrees that:

(a) the adoption will terminate the parent's parental relationship with the child and will terminate any existing court order for custedy, visitation, or communication with the child;

(b) the child and any descendant of the child will retain rights of inheritance from or through the parent executing the consent; and

(c) a court order for visitation or communication with the child by an individual related to the child through the child's other parent or an agreement or order concerning another individual that is approved by the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption.

**Section 117. Postplacement evaluation period — waiver.** If the child is a stepchild or a member of the extended family of the petitioner, the court may, if satisfied that the adoption is in the best interests of the child, waive the 6-month postplacement evaluation period and the postplacement evaluation and grant a decree of adoption.

HeinOnline -- 1997 vol. II 2497 1997

**Section 118. Pctition for adoption — notice — hearing.** A stepparent who desires to adopt a stepchild must file a petition for adoption, any necessary consents, any required postplacement evaluation, give notice of the hearing on the petition, and attend a hearing conducted hy the court.

**Scction 119. Legal consequences of adoption of stepchild.** (1) Except as provided in subsections (2) and (3), the legal consequences of an adoption of a stepchild by a stepparent are the same as the consequences under [section 136].

(2) An adoption by a stepparent does not affect:

(a) the relationship between the adoptee and the adoptee's parent who is the adoptive stepparent's spouse or deceased spouse;

(b) an existing court order for visitation or communication with a child by an individual related to the adoptee through either parent; or

(c) the right of the adoptee or a descendant of the adoptee to inheritance or intestate succession through or from the adoptee's former parent.

(3) Failure to comply with an agreement or order is not a ground for challenging tbe validity of an adoption by a stepparent.

**Section 120. Arrearages of child support.** A termination of a parent's rights and responsihilities toward a child does not cancel any responsibility to pay arrearages of child support unless the party to whom the arrearages are owed agrees in writing to waive payment.

**Scction 121. Adoption of adult.** A person who has attained the age of legal majority may he adopted without the consent of the person's parents.

**Section 122. Who may adopt adult or emancipatcd minor.** (1) An adult may adopt another adult or an emancipated minor pursuant to this section. However, an adult may not adopt the adult's spouse. An adoption of an incompetent individual of any age must comply with all requirements set by law for the adoption of a child.

(2) An individual who has adopted an adult or emancipated minor may not adopt another adult or emancipated minor within 1 year after the adoption unless the prospective adoptee is a sibling of the adoptee.

**Section 123. Consent to adoption.** (1) Consent to the adoption of an adult or emancipated minor is required only of:

(a) the adoptee;

(b) the prospective adoptive parent; and

(c) the spouse of the prospective adoptive parent unless:

(i) tbe spouse and the prospective adoptive parent are legally separated; or

(ii) the court finds that the spouse is not capable of giving consent or is withlholding consent contrary to the best interests of the adoptee and the prospective adoptive parent.

(2) The consent of the adoptee and the prospective adoptive parent must:

HeinOnline -- 1997 vol. II 2498 1997

(a) be in writing and be signed in the presence of the court or an individual authorized to take acknowledgments;

(b) state that the parties agree to assume toward each other the legal relationship of parent and child and to have all of the rights and be subject to all of the duties of that relationship; and

(c) state that the parties understand the consequences that the adoption may have for any right of inheritance, property, or support.

(3) The consent of the spouse of the prospective adoptive parent:

(a) must be in writing and be signed in the presence of the court or an individual authorized to take acknowledgments;

(b) must state that the spouse:

(i) consents to the proposed adoption; and

(ii) understands the consequences that the adoption may have for any right of inheritance, property, or support that the spouse has; and

(c) may contain a waiver of notice of any proceeding for adoption.

**Section 124. Jurisdiction and venue.** (1) The court has jurisdiction over a proceeding for the adoption of an adult or emancipated minor if the petitioner has lived in Montana for at least 90 days immediately preceding the filing of a petition for adoption.

(2) A petition for adoption must be filed in the court in the county in which a petitioner lives.

**Section 125. Procedure.** Except as otherwise provided in [sections 121 through 125], the procedure and law for adoption of a child set forth in [sections 1 through 156] is applicable in proceedings for the adoption of an adult. The provisions concerning the counseling requirement, preplacement evaluation, postplacement supervision period, and postplacement evaluation are not applicable to the adoption of an adult.

**Section 126. Petition for adoption.** (1) A petition for adoption must be filed in triplicate, must be notarized by the petitioners, and must specify:

(a) the full names, ages, and place and duration of residence of the petitioners;

(b) the current marital status of petitioners and, if married, the place and date of the marriage;

(c) the circumstances under which the petitioners obtained physical custody of the child and the name of the individual or agency who placed the child;

(d) the date and place of birth of the child, if known;

(e) the name used for the child in the proceeding and, if a change in name is desired, the full name by which the child is to be known;

HeinOnline -- 1997 vol. II 2499 1997

(f) that it is the desire of the petitioners that the relationship of parent and child be established between the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;

(g) a full description and statement of value of all property owned or possessed by the child;

(h) the facts, if any, that excuse consent on the part of a person whose consent is required for the adoption;

(i) that any applicable law governing interstate or intercountry placement was complied with;

(j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

(k) whether a previous petition has been filed by petitioner to adopt the child at issue or any other child in any court and the disposition of the petitions; and

(l) the name and address, if known, of any person who is entitled to receive notice of the petition for adoption.

(2) There must be attached to or accompanying the petition:

(a) any written consent required by [sections 125 through 134];

(b) a certified copy of any court order terminating the rights of the child's parents;

(c) a certified copy of any existing court order in any pending proceeding concerning custody of or visitation with the child;

(d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child with a special need;

(e) the postplacement evaluation prepared pursuant to [section 100 or 110];

(f) a disclosure of any disbursements made in connection with the adoption proceeding.

(3) One copy of the petition must be retained by the court. A copy must be sent to:

(a) the department or to the agency participating in the adoption proceeding; or

(b) the parent placing the child for adoption in a direct parental placement adoption.

**Section 127. Time for action on petition for adoption — waiver.** Not less than 6 months from the date the child has been placed with the prospective adoptive parent, the prospective adoptive parent may apply to the court for a decree of adoption. If the best interests of the adoptee are served, then pursuant to [sections 108 and 117], the court may waive the 6-month postplacement evaluation period and summarily consider an adoption petition.

HeinOnline -- 1997 vol. II 2500 1997

**Section 128. Notice of hearing.** (1) Upon the filing of a petition for adoption, notice of hearing must be served on:

(a) a person whose consent to adoption is required under [section 39];

(b) the department or agency whose consent to adoption is required;

(c) the spouse of the petitioner if the spouse has not joined in the petition;

(d) a person who has revoked a consent or relinquishment or is attempting to have a consent or relinquishment set aside; and

(e) any other person named by the court to receive notice.

(2) The notice must direct the person to appear in court at the time specified and to show cause why the petition should not be granted.

(3) The notice of hearing must be served in a manner appropriate under the Montana Rules of Civil Procedure.

(4) A notice of hearing is not required to be served on any party:

(a) whose parental rights have been terminated in prior proceedings;

(b) who waives notice in a relinquishment, consent, or other document signed by the party;

(c) who has consented in writing to an adoption; or

(d) whose consent to adoption is not required under [section 40].

**Section 129. Content of notice.** The notice required by [section 128] must contain:

(1) the caption of the petition;

(2) the address and telephone number of the court in which the petition is pending;

(3) a concise summary of the relief requested in the petition;

(4) the name, mailing address, and telephone number of the petitioner or the petitioner's attorney; and

(5) a statement of the method of responding to the notice and the consequences of failure to respond.

**Section 130. Hearing on petition for adoption.** (1) The petitioners and the child shall appear at the hearing unless the presence of the child is waived by the court.

(2) The court shall examine the petition, the documents accompanying the petition, and the petitioners and shall receive evidence in support of the petition.

**Section 131. Granting petition for adoption — denial of petition.** (1) The court shall issue a decree of adoption awarding custody of the child to the petitioners based on the evidence received if it determines that:

HeinOnline -- 1997 vol. II 2501 1997

(a) the child has been in the physical custody of the petitioners for at least 6 months, unless the court for good cause shown waives this requirement pursuant to [section 108 or 117];

(b) notice of hearing on the petition for adoption was properly served or dispensed with;

(c) every necessary consent, relinquishment, waiver, disclaimer, or judicial order terminating parental rights has been obtained and filed with the court;

(d) any evaluation required by [sections 1 through 156] has been filed with and considered by the court; and

(e) the adoption is in the best interests of the child.

(2) If the petition for adoption is denied, the court shall dismiss the petition and enter an appropriate order as to the future custody of the child according to the best interests of the child.

**Section 132. Best interests of child.** (1) In determining whether to grant a petition to adopt, the court shall consider all relevant factors in determining the best interests of the child. The court shall consider factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability.

(2) In a contested adoption proceeding involving a child, the court shall consider the factors set out in subsection (1) and shall also consider:

(a) the nature and length of any relationship already established between a child and any person seeking to adopt the child;

(b) the nature of any family relationship between the child and any person seeking to adopt the child and whether that person has established a positive emotional relationship with the child;

(c) the harm that could result to the child from a change in placement;

(d) whether any person seeking to adopt the child has adopted a sibling or half-sibling of the child;

(e) which, if any, of the persons seeking to adopt the child were selected by the placing parent or the department or agency whose consent to the adoption is required.

(3) In an Indian child placement, the court shall determine if the requirements of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., have been met.

**Section 133. Removal of child from state.** Before a decree of adoption is issued, a petitioner may not remove the child from the state for more than 30 consecutive days without the permission of:

(1) the court if the child was placed directly for adoption; or

(2) the department or the agency that placed the child for adoption.

**Section 134. Decree of adoption.** A decree of adoption must state:

(1) the original name of the child;

(2) the name of the petitioner for adoption;

(3) whether the petitioner is married or unmarried;

(4) whether the petitioner is a stepparent of the child;

(5) the name by which the child is to be known;

(6) for a child born in Montana, a direction to the vital statistics bureau to issue a new birth certificate unless the adoptee is 12 years of age or older and requests that a new certificate not be issued;

(7) the child's date and place of birth, if known;

(8) the effect of the decree of adoption as stated in [section 136];

(9) that the adoption is in the best interests of the child; and

(10) whether the birth mother objects to the release of the original birth certificate information upon the adoptee reaching 18 years of age.

**Section 135. Communication of deeree to department.** (1) Within 30 days after a decree of adoption becomes final, the clerk of court shall send a report of the adoption to the department.

(2) If petitioners have requested it, the court shall order the vital statistics bureau to issue a new hirth certificate te the child.

**Seetion 136. Effect of decree.** (1) After the decree of adoption is entered:

(a) the relationship of parent and child and all the rights, duties, and other legal consequences of the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the adoptive parent;

(b) the former parents and the kindred of the former parents of the adoptee, unless they are the adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child support.

(2) A decree of adoption should include a notice to the vital statistics bureau as to the birth mother's consent to release of the information on the original birth certificate upon the adoptee reaching 18 years of age.

(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72.

**Section 137. Finality of decree — expediency.** (1) For purposes of appeal, the decree of adoption is a final order when it is issued.

(2) A person may appeal from the order in the manner and form provided for appoals from a judgment in civil actions.

HeinOnline -- 1997 vol. II 2503 1997

(3) An appeal from a decree of adoption must be heard expeditiously pursuant to the provisions of [section 78].

**Section 138. Rights of adoptee.** A decree of adoption does not affect any right or benefit vested in the adoptee before the decree became final.

**Section 139. Foreign adoption decrees.** When the relationship of parent and child has been created by a decree of adoption of a court of any other state or country, the rights and obligations of the parties as to matters within the jurisdiction of this state must be determined pursuant to [sections 1 through 156].

**Section 140. Visitation and communication agreements.** (1) Except as otherwise provided in [sections 1 through 156], a decree of adoption terminates any existing order or written or oral agreement for contact or communication between the adoptee and the birth parents or family.

(2) Any express written agreement entered into between the placing parent and the prospective adoptive parent after the execution of a relinquishment and consent to adoption is independent of the adoption proceedings, and any relinquishment and consent to adopt remains valid whether or not the agreement for contact or communication is later performed. Failure to perform an agreement is not grounds for setting aside an adoption decree.

(3) A court may order that an agreement for contact or communication entered into under this section may not be enforced upon a finding that:

(a) enforcement is detrimental to the child;

(b) enforcement undermines the adoptive parent's parental authority; or

(c) due to a change in circumstances, compliance with the agreement would be unduly burdensome to one or more of the parties.

**Section 141. Confidentiality of records and proceedings.** (1) Unless the court orders otherwise, all hearings held in proceedings under [sections 1 through 156] are confidential and must be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption must be kept as a permanent record of the court and must be withheld from inspection. A person may not have access to the records, except:

(a) for good cause shown on order of the judge of the court in which the decree of adoption was entered;

(b) as provided in [sections 141 through 146];

(c) as provided in 50-15-121 and 50-15-122; or

(d) the department's child support enforcement division providing services under 42 U.S.C. 651, et seq.

(3) All files and records pertaining to adoption proceedings retained by the department, a licensed child-placing agency, a lawyer, or any authorized agency are confidential and must be withheld from inspection, except as provided in 50-15-121, 50-15-122, and [sections 141 through 146].

**Section 142. Disclosure of records — nonidentifying information — consensual release.** (1) The department or authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent; and

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122.

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing.

**Section 143. Petition for appointment of confidential intermediary.** (1) An adult adoptee, an adoptive or birth parent, or an adult extended family member of the adoptee or birth parent may petition the court for disclosure of identifying information regarding the adoptee, a birth child, a birth parent, or an extended family member.

(2) A petition for disclosure must contain:

(a) as much of the following information as is known by the petitioner:

(i) the name, address, and identification of the petitioner;

(ii) the date of the adoptee's birth;

(iii) the county and state where the adoption occurred;

(iv) the date of the adoption; and

(v) any other information known to the petitioner concerning the birth parents, the adoptive parent, and the adoptee that could assist in locating the person being sought;

(b) written documentation from a certified confidential intermediary agreeing to conduct the search; and

(c) if the petitioner is not the adoptee or birth parent, the reason the petitioner is requesting the appointment of a confidential intermediary.

**Section 144. Appointment of confidential intermediary — duties — payment.** (1) After a petition for disclosure has been filed under [section 143], the court shall appoint a confidential intermediary who shall:

(a) conduct a confidential search for the person sought as requested in the petition for disclosure;

HeinOnline -- 1997 vol. II 2505 1997

(b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless ordered to do so by the court; and

(c) make a written report of the results of the search to the court not later than 6 months after appointment.

(2) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual exponses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

(3) A confidential intermediary may inspect otherwise confidential records of the court, the department, or an authorized agency for use in the search. The confidential intermediary may not disclose identifying information from the records or any results of a search unless authorized by the court or unless the parties have executed written consent to the confidential intermediary. Nonidentifying information from any source may be disclosed without further order from the court.

(4) If a confidential intermediary locates the person being sought, a confidential inquiry must be made as to whether the located porson consents to having that person's present identity disclosed to the petitioner. The court may request that the confidential intermediary assist in arranging contact between the petitioner and the located person.

(5) If a confidential intermediary locates the person being sought and the located person does not consent te having that person's identity disclosed, identifying information regarding that person may be disclosed only upon order of the court for good cause shown.

(6) If the person being sought is found to be deceased, the court may order disclosure of identifying information regarding the deceased to the petitioner.

**Section 145. Disclosure authorized in course of employment.** [Sections 1 through 156] do not preclude an employee or agent of a court, department, or agency from:

(1) inspecting permanent, confidential, or sealed records for the purpose of discharging any obligation under [sections 1 through 156];

(2) disclosing the name of the court in which a proceeding for adoption occurred or the name of an agency tbat placed an adopteo to an individual described in [section 143(1)] who can verify the individual's identity; or

(3) disclosing nonidentifying information contained in confidential or sealed records in accordance with any other applicable state or federal law.

**Scction 146. Release of original birth certificate — certificate of adoption.** (1) For a person adopted on or before July 1, 1967, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon the written request of an adoptee.

(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the

department shall furnish a copy of the original birth certificate upon a court order.

(3) For a person adopted on or after [the effective date of this section], in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:

(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(b) a court order.

(4) For a person adopted on or after [the effective date of this section] and subject to subsection (5), upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.

**Section 147. Fees related to placement for adoption by parent.** (1) Reasonable adoption fees may be paid by the adoptive parent for the actual cost of services. The cost of services must relate to:

(a) a petition for adoption;

(b) placement of a child;

(c) medical care or services;

(d) prenatal care;

(e) foster care;

(f) a preplacement evaluation;

(g) counseling related to providing information necessary to make an informed decision to voluntarily relinquish a child;

(h) travel or temporary living costs for the birth mother;

(i) legal fees incurred for services on behalf of the placing parent;

(j) the reasonable costs incurred by a placing parent in a direct parental placement adoption to document the disclosures of medical and social history required by [section 81]; and

(k) other reasonable costs related to adoption that do not include education, vehicles, salary or wages, vacations, or permanent housing for the birth parent.

(2) A birth parent or a provider of a service listed in subsection (1) may receive or accept a payment authorized by subsection (1). The payment may not be made contingent on the placement of a child for adoption or upon relinquishment of

and consent to adoption of the child. If the adoption is not completed, a person who is authorized by subsection (1) to make a specific payment is not liahle for that payment unless the person has agreed in a signed writing with a birth parent or a provider of a service to make the payment regardless of tbe outcome of the proceeding for adoption.

**Section 148. Limitations on payment of counseling and legal fees.** (1) A prospective adoptive parent may pay counseling expenses for a maximum of 10 hours of counseling.

(2) A prospective adoptive parent may pay for legal costs entailed for providing legal counsel for one hirth parent unless tbe birth parents elect joint representation. Tbe right of a relinquishing parent to legal counsel paid hy the prospective adoptive parent continues only until the relinquishment hecomes irrevocable. An attorney may not represent both a birth parent and a prospective adoptive parent.

**Section 149. Prohibited aetivities — violations — penalties.** (1) A person, otber than tbe department or a licensed child-placing agency, may not:

(a) advertise in any public medium that the person:

(i) knows of a cbild who is available for adoption; or

(ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child; or

(b) engage in placement activities as defined in [section 151].

(2) An individual other than an extended family member or stepparent of a child may not obtain legal or physical custody of a child for purposes of adoption unless the individual has a favorable preplacement evaluation or a court-ordered waiver of the evaluation.

(3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a cbild, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person, either directly or indirectly, anything other than the fees allowed under [section 147] commits the offense of paying or charging excessive adoption process fees.

(4) It is illegal to require repayment or reimbursement of anything provided to a birtb parent under [section 147]. All payments by the adoptive parent made on behalf of a birth parent pursuant to this section are considered a gift to the birth parent.

(5) A person convicted of the offense of paying or charging excessive adoption process fees, attempting to recover expenses incurred from an adoption process, or otherwise violating [sections 1 through 156] may be fined an amount not to exceed $10,000 in an action brought by the appropriate city or county attorney. The court may also enjoin from further violations any person who violates [sections 1 through 156].

**Section 150. Action by departmcnt.** The department may review and investigate compliance with [sections 1 through 156] and may maintain an action in court to compel compliance.

HeinOnline -- 1997 vol. II 2508 1997

**Section 151. Definitions.** As used in [sections 151 through 156], the following definitions apply:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Placement activities" means any of the following:

(a) placement of a child for adoption;

(b) arranging or providing short-term foster care for a child pending an adoptive placement; or

(c) facilitating placement of a child by maintaining a list in any form of birth parents or prospective adoptive parents.

(3) "Soliciting" means to request, offer, promote, refer, or entice, either directly or indirectly through correspondence, advertising, or other method, a potential adoptive parent or couple, birth parent or parents, or placement of a child by a birth parent.

**Section 152. General duties of department.** The department shall:

(1) issue licenses to entities engaged in child placement activities on [the effective date of this section] if the licensed applicant has met the requirements established by the department by rule;

(2) prescribe the conditions upon which child-placing licenses are issued and revoked; and

(3) adopt rules for the conduct of the affairs of child-placing agencies that are consistent with the welfare of children.

**Section 153. License required — term of license — no fee charged.** (1) Only an entity holding a current child-placing agency license issued by the department may act as an agency for the purpose of:

(a) procuring or selecting proposed adoptive homes;

(b) placing children in proposed adoptive homes;

(c) soliciting persons to adopt children or arranging for persons to adopt children;

(d) soliciting persons to relinquish children or place children in potential adoptive homes; or

(e) engaging in placement activities.

(2) Licenses are valid for 1 year after issuance. A fee may not be charged for a license.

**Section 154. Requirements for licensure.** The department may issue licenses to agencies meeting the following minimum requirements:

(1) The chief function of the agency or a specific program within the agency must be the care and placement of children.

(2) The agency operates on a nonprofit basis and is financially responsible in and for its operation.

(3) The agency meets the requirements as designated by the department by rule.

(4) The directing or managing personnel of the agency must be qualified both on the basis of professional educational experience and character.

(5) Complete records must be kept of both the children and adopting parents with which the agency deals, and the records must be maintained in accordance with [section 141].

(6) The agency shall maintain and use an in-state office for making a social study of the child and proposed adoptive parent before placement of the child, particularly with regard to:

(a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent and the parent's ability to promote the child's welfare; and

(b) the physical and mental condition of the child and the child's family background.

(7) The agency must have the ability to provide education for adoptive parents and counseling for placing parents as required in [section 48] and department rules.

(8) The agency shall agree to cooperate with courts having jurisdiction in adoptive matters and with other public agencies having to deal with the welfare of children.

(9) The agency shall, annually, submit a full, complete, and true financial statement to the department, and the statement must contain a full accounting of the operations of the agency during the preceding year.

**Section 155. Investigation of agencies — cancellation of licenses.** (1) The department may, through its authorized representative, investigate the operations of licensed agencies and may cancel licenses for failure to observe prescribed rules or to maintain minimum requirements. An agency shall give to representatives of the department all information requested and allow them to observe the operation of the agency.

(2) When the department finds, upon the basis of the statement required by [section 154(9)] or upon its own investigation, that an agency has not conducted or is financially incapable of conducting its operations according to the established standards, the department may suspend, revoke, or deny a license for the agency.

HeinOnline -- 1997 vol. II 2510 1997

**Section 156. Violation a misdemeanor — penalty.** (1) Any person who maintains or conducts an agency for procuring the adoption of children or assists in the maintaining or conducting of an agency without first obtaining a child-placing license is guilty of a misdemeanor and upon conviction of a first offense shall be punished by a fine not exceeding $1,000 or imprisonment for up to 1 year in jail and shall be enjoined from further engaging in agency activities.

(2) Upon the second conviction of a person for violation of [sections 153 through 155], the person is guilty of a felony and may be punished by a fine not exceeding $10,000 or imprisonment for up to 5 years in prison and shall be enjoined from further engaging in agency activities.

**Section 157.** Section 2-6-104, MCA, is amended to read:

**"2-6-104. Records of officers open to public inspection.** Except as provided in ~~40-8-126 and~~ 27-18-111 *and [section 141]*, the public records and other matters in the office of any officer are at all times during office hours open to the inspection of any person."

**Section 158.** Section 2-18-606, MCA, is amended to read:

**"2-18-606. Parental leave for state employees.** (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave, immediately following the birth or placement of a child, for a period not to exceed 15 working days if:

(a) the employee is adopting a child; or

(b) the employee is a birth father.

(2) As used in this section, "placement" means placement for adoption as defined in ~~40-8-103~~ *33-22-130*."

**Section 159.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;

HeinOnline -- 1997 vol. II 2511 1997

18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; *[section 16];* 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 160.** Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of $120; and for filing a petition for legal separation, a fee of $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five pages of each file, per request, and 25 cents por additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

HeinOnline -- 1997 vol. II 2512 1997

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100;

*(q) for filing a petition for adoption, $75.*

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

HeinOnline -- 1997 vol. II 2513 1997

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

*(9) The clerk of district court shall remit to the credit of the special revenue account established in [section 16] $70 of the filing fee required in subsection (1)(q), and $5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations."*

**Section 161.** Section 33-22-130, MCA, is amended to read:

**"33-22-130. Coverage for adopted children from time of placement — preexisting conditions.** (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means ~~placement for adoption as defined in 40-8-103~~ *the transfer of physical custody of a child who is legally free for adoption to a person who intends to adopt the child."*

**Section 162.** Section 33-30-1016, MCA, is amended to read:

**"33-30-1016. Coverage for adopted children from time of placement — preexisting conditions.** (1) Each individual or group membership contract issued or amended by a health service corporation in this state that provides coverage of dependent children of a member must provide coverage for an adopted child of the member to the same extent as for natural children of the member.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" ~~means placement for adoption~~ *has the meaning* as defined in ~~40-8-103~~ *33-22-130*."

**Section 163.** Section 33-31-114, MCA, is amended to read:

**"33-31-114. Coverage for adopted children from time of placement — preexisting conditions.** (1) Each health maintenance contract regulated under this chapter must provide coverage for an adopted child of the enrollee to the same extent as for natural children of the enrollee.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" ~~means placement for adoption~~ *has the meaning* as defined in ~~40-8-103~~ *33-22-130*."

**Section 164.** Section 37-60-301, MCA, is amended to read:

**"37-60-301. License required.** (1) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status and shall renew their licenses on the renewal date as prescribed by the department.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a private investigator, a contract security company, a proprietary security organization, or a private security guard.

*(3) A person appointed by the court as a confidential intermediary under [section 144] is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in [section 3], without meeting the requirements of [section 144].*

~~(3)~~*(4)* A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411."

HeinOnline -- 1997 vol. II 2515 1997

**Section 165.** Section 40-6-108, MCA, is amended to read:

**"40-6-108. Statute of limitations.** (1) An action may be commenced at any time for the purpose of declaring the existence or nonexistence of the father and child relationship presumed under ~~subsection (a), (b), or (c) of~~ 40-6-105(1)*(a), (1)(b), or (1)(c).*

(2) After the presumption has been rebutted, paternity of the child by another ~~man~~ *individual* may be determined in the same action if the other ~~man~~ *individual* has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105:

(a) may not be brought by the child later than 2 years after the child attains the age of majority;

(b) may be brought by a state agency at any time after the first application is made under Title IV-D of the Social Security Act for services to the child and before the child attains the age of majority. This subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a paternity action was barred or could have been barred by a shorter limitation period. However, in previously barred actions that are revived by this subsection, the father is not liable to the state agency for support of the child.

(4) The father's liability for a statutory debt created by the payment of public assistance is limited to the amount of assistance paid during the 2-year period preceding commencement of the action. This subsection does not limit the subsequent accrual of a statutory debt.

(5) Section 40-6-107 and this section do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(6) After the conclusion of an adoption proceeding under ~~Title 40, chapter 8~~ *[sections 1 through 156]*, a further action to declare the existence or nonexistence of the father and child relationship of the adopted child may not be commenced, except as provided in 40-8-112."

**Section 166.** Section 41-3-609, MCA, is amended to read:

**"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to ~~40-6-135~~ *[sections 43 and 51]*;

(b) the child has been abandoned by the parents as set forth in 41-3-102(7)(e);

(c) the child is an adjudicated youth in need of care and both of the following exist:

HeinOnline -- 1997 vol. II 2516 1997

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved hy the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court ~~must~~ *shall* enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

HeinOnline -- 1997 vol. II 2517 1997

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.

(5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication."

**Section 167.** Section 41-5-603, MCA, is amended to read:

**"41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-604.

(2) Social, medical, and psychological records, predispositional studies, supervision records of probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203; ~~and~~

(i) persons allowed access to the records under 45-5-624(7); *and*

*(j) persons allowed access under [section 85].*

(3) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

(4) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youtb court, for good cause to:

(a) those persons and agencies listed in subsection (2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached tbe age of majority."

**Section 168.** Section 41-5-604, MCA, is amended to read:

**"41-5-604. Disposition of records.** (1) Except as provided in subsections (2) and (5), youth court records and law enforcement records portaining to a youtb covered by this chaptor must be physically sealed 3 years after supervision for an offense ends. The records may be unsealed if a new offense is committed.

(2) In those cases in wbich jurisdiction of tbe court or any agency is extended beyond the youth's 18tb birthday, tbe records and files not exempt from sealing under subsection (5) must be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, an agency or department that bas in its possession copies of tbe sealed records sball also seal or destroy the copies of the records. Anyone violating tbe provisions of this subsection is subject to contempt of court.

(4) This section does not prohibit the destruction of records with tbe consent of the youtb court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section do not apply to fingerprints, DNA records, photographs, youtb traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, or records referred to in 45-5-624(7) *or [section 85].*"

**Scction 169.** Section 50-15-223, MCA, is amended to read:

**"50-15-223. Certificates of birth following adoption, legitimation, or dctermination or acknowledgment of patcrnity.** (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificato of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of tbe decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request tbat a new certificate be established if the request shows that:

(i) a district court has determined the paternity of tbe person; or

HeinOnline -- 1997 vol. II 2519 1997

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment ~~may not be~~ *are only* subject to inspection, except upon order of a district court, as provided by rule, *as provided in [sections 141 through 146],* or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department may direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state either be sealed from inspection or be forwarded to the department for sealing from inspection.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person born in a foreign country who is not a citizen of the United States and who was adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

HeinOnline -- 1997 vol. II 2520 1997

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section."

**Section 170.** Section 52-2-505, MCA, is amended to read:

"**52-2-505. Records to be confidential.** All records regarding subsidized adoption are confidential and may be disclosed only in accordance with the provisions of ~~40-8-126~~ *[section 141]*."

**Section 171. Repealer.** Sections 40-6-125, 40-6-126, 40-6-127, 40-6-128, 40-6-129, 40-6-130, 40-6-135, 40-8-101, 40-8-102, 40-8-103, 40-8-104, 40-8-105, 40-8-106, 40-8-107, 40-8-108, 40-8-109, 40-8-110, 40-8-111, 40-8-112, 40-8-113, 40-8-114, 40-8-115, 40-8-116, 40-8-117, 40-8-121, 40-8-122, 40-8-123, 40-8-124, 40-8-125, 40-8-126, 40-8-127, 40-8-128, 40-8-135, 40-8-136, 40-8-201, 40-8-202, 52-2-401, 52-2-402, 52-2-403, 52-2-404, 52-2-405, 52-2-406, and 52-2-407, MCA, are repealed.

**Section 172. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 173. Applicability.** (1) [Sections 1 through 156] apply to proceedings commenced on or after Octeber 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed hy the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997.

**Section 174. Code commissioner instructions.** The code commissioner shall renumber Title 52, chapter 2, part 5, as an integral part of [sections 1 through 156] and make any changes necessary to reflect the renumbering. The entire body of material must be codified as Title 42.

**Section 175. Termination.** [Sections 27, 59, 64, 66, 69, and 74] terminate October 1, 1998.

**Section 176. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

**Section 177. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 1997.

HeinOnline -- 1997 vol. II 2521 1997

(2) [Sections 19 through 26, 28 through 38, 60, 65, 67, 68, and 75] are effective Octoher 1, 1998.

Approved May 2, 1997

# CHAPTER NO. 481

[HB 164]

AN ACT GENERALLY REVISING OCCUPATIONAL LICENSING LAWS, INCLUDING THOSE RELATED TO HEARING AID DISPENSERS, DENTISTS, BARBERS, PHYSICAL THERAPISTS, NATUROPATHIC PHYSICIANS, REAL ESTATE APPRAISERS, PRIVATE INVESTIGATORS, FIRE PROTECTION EQUIPMENT INSTALLERS, FIRE SUPPRESSION SYSTEM INSTALLERS, CRANE AND HOIST OPERATORS, AND LICENSED PROFESSIONS AND OCCUPATIONS WITHOUT BOARDS; AMENDING SECTIONS 2-15-1842, 2-15-1850, 37-4-202, 37-11-201, 37-11-303, 37-16-202, 37-16-303, 37-16-304, 37-16-405, 37-16-407, 37-26-201, 37-26-301, 37-30-203, 37-30-307, 37-54-102, 37-54-105, 37-54-201, 37-54-202, 37-54-210, 37-54-211, 37-54-301, 37-54-304, 37-54-305, 37-54-311, 37-60-303, 37-65-202, 50-39-101, 50-39-102, 50-76-103, AND 50-76-104, MCA; AND REPEALING SECTIONS 37-54-203, 50-39-104, 50-74-314, 50-76-106, 76-4-1201, 76-4-1202, 76-4-1203, 76-4-1204, 76-4-1205, 76-4-1206, 76-4-1207, 76-4-1208, 76-4-1209, 76-4-1210, 76-4-1211, 76-4-1212, 76-4-1213, 76-4-1221, 76-4-1222, 76-4-1223, 76-4-1224, 76-4-1225, 76-4-1226, 76-4-1227, 76-4-1228, 76-4-1229, 76-4-1230, 76-4-1231, 76-4-1232, 76-4-1233, 76-4-1234, 76-4-1235, 76-4-1236, 76-4-1237, 76-4-1238, 76-4-1239, 76-4-1240, 76-4-1241, 76-4-1242, 76-4-1243, 76-4-1244, 76-4-1245, 76-4-1246, 76-4-1247, 76-4-1248, 76-4-1249, 76-4-1250, AND 76-4-1251, MCA.

## STATEMENT OF INTENT

A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances tbat may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and tbe related requirements of financial institution regulatory agencies; and [sections 40 and 41], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30.

HeinOnline -- 1997 vol. II 2522 1997

*Be it enacted by the Legislature of the State of Montana:*

**Scction 1. Uniform regulation for licensing programs withont hoards — definitions.** As used in [sections 1 through 12], the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of commerce provided for in 2-15-1801.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted hy the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of Title 50, chapter 39, 74, or 76.

**Section 2. Unprofessional conduct — complaint — investigation — immunity.** (1) A person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of [sections 1 through 12] and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have violated a requirement of [sections 1 through 12], the department may investigate to determine whether there is reasonable cause to believe that tlie licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

**Section 3. Notice — request for hearing.** (1) If the department determines that reasonable cause exists supporting the allegation made in a complaint, the department legal staff shall prepare a notice and serve the alleged violator. The notice may be served by certified mail to the current address on file with the department or by other means authorized by the Montana Rules of Civil Procedure.

HeinOnline -- 1997 vol. II 2523 1997

(2) A licensee or license applicant shall give the department the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and must be received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the department may enter a decision on the basis of the facts available to it.

**Section 4. Hearing — adjudicative procedures.** The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies, the Montana Rules of Civil Procedure, and the Montana Rules of Evidence govern a hearing under [sections 1 through 12]. The department has all the powers and duties granted by Title 2, chapter 4.

**Section 5. Findings of fact — order — report.** (1) If the department finds by a preponderance of the evidence, following a hearing or on default, that a violation of [sections 1 through 12] has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated [sections 1 through 12], the department shall prepare and serve an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate puhlic and private organizations that serve the profession or occupation; and

(c) the public.

**Section 6. Sanctions — stay — costs — stipulations.** (1) Upon a decision that a licensee or license applicant has violated [sections 1 through 12] or is unable to practice with reasonahle skill and safety duo te a physical or mental condition or upon stipulation of the parties as provided in subsection (4), tho department may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefimite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the discipliming authority;

(f) censure or reprimand, either public or private;

HeinOnline -- 1997 vol. II 2524 1997

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed $1,000 for each violation;

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) Any fine collected by the department as a result of disciplinary actions must be deposited in the state general fund.

(3) A sanction may be totally or partly stayed by the department. To determine which sanctions are appropriate, the department shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the department consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(4) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(5) A licensee shall surrender a suspended or revoked license to the department within 24 hours after receiving notification of the suspension or revocation by mailing the license or delivering it personally to the department.

**Section 7. Appeal.** A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

**Section 8. Reinstatement.** A licensee whose license has been suspended or revoked under [sections 1 through 12] may petition the department for reinstatement after an interval set by the department in the order. The department may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The department may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

**Section 9. Enforcement of fine.** (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the department may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

**Section 10. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed hy this chapter:

(1) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

HeinOnline -- 1997 vol. II 2525 1997

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) the denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of the department;

(9) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(10) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(11) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a porson to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(12) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license.

**Section 11. Practice without license — investigation of complaint — injunction — penalties.** (1) The department may investigate a complaint concerning practice by an unlicensed person of a profession or occupation governed by [sections 1 through 12].

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by [sections 1 through 12].

**Section 12. Violation of injunction — penalty.** A person who violates an injunction issued pursuant to a proceeding under [sections 1 through 12] shall pay a civil penalty, as determined hy the court, of not more that $5,000. Fifty percent of the penalty must he deposited in the general fund of the county in which the injunction is issued, and 50% niust be deposited in the state general fund.

**Section 13.** Section 2-15-1842, MCA, is amended to read:

**"2-15-1842. Board of dentistry.** (1) There is a hoard of dentistry.

(2) ~~(a)~~ The board consists of five dentists, ~~one of whom shall serve as a nonvoting member,~~ one denturist, ~~one~~ *two* dental ~~hygienist~~ *hygienists*, and two public members, one of whom must be a senior citizen. All members are appointed by the gevernor with the consent of the senate. Each licensed member ~~shall~~ *must* be licensed to practice as a dentist, denturist, or dental hygienist in this state, ~~shall~~ *must* have actively practiced in this state for at least 5 continuous years immediately before ~~his~~ *the member's* appointment, ~~except as provided in subsection (2)(b),~~ and ~~shall~~ *must* be actively engaged in practice while serving on the board. Each member ~~shall~~ *must* he a resident of this state.

~~(b) The provision in subsection (2)(a) requiring a licensed member to have actively practiced in this state for at least 5 continuous years immediately before his appointment does not apply to the first denturist appointed to the board.~~

(3) Each member shall serve for a term of 5 years. ~~Each dentist appointed to the board for a statutory 5-year term shall serve the first year of the term as a nonvoting member of the board.~~ The gevernor may remove a member only for neglect or cause.

(4) The gevernor shall fill any vacancy within 30 days.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

**Section 14.** Section 2-15-1850, MCA, is amended to read:

**"2-15-1850. Board of hearing aid dispensers.** (1) There is a board of hearing aid dispensers.

(2) The board consists of ~~five~~ *seven* members appointed by the governor with the consent of the senate. The members are:

(a) one member who shall hold or be eligible for a certificate of qualification from the American board of otolaryngology;

(b) ~~three members who have been licensed dispensers and fitters of hearing aids for at least 5 years before their appointment to the board~~ *two members, each of whom has been a licensed hearing aid dispenser for at least 5 years, possesses national certification in audiology, and has a master's level college degree*;

(c) ~~one public member who is not in the hearing health care field~~ *two members, each of whom does not hold a master's level college degree in audiology but has been a licensed dispenser and fitter of hearing aids for at least 5 years before being appointed to the board;*

HeinOnline -- 1997 vol. II 2527 1997

*(d) two public members, each of whom is not in the hearing health field and one of whom regularly uses a hearing aid because the person has a demonstrated hearing impairment.*

(3) Each member shall serve for a term of 3 years. A member may not be reappointed within 1 year after the expiration of ~~his~~ *the member's* second consecutive full term.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

**Section 15.** Section 37-4-202, MCA, is amended to read:

**"37-4-202. Meetings — notice — quorum — records.** (1) The board shall meet at least once each year in this state at tbe call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) ~~Five~~ *Six* members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest.

(4) Money collected by the department under this chapter ~~shall~~ *must* be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of ~~moneys~~ *money* received and disbursements made by the department."

**Section 16.** Section 37-11-201, MCA, is amended to read:

**"37-11-201. General powers — rulemaking power — records.** (1) The board may:

(a) adopt rules to carry this chapter inte effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers;

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses ~~three times a year~~ at reasonable places and times determined by the board;

(b) review the qualifications of applicants wbo are approved for examination for licensure;

HeinOnline -- 1997 vol. II 2528 1997

(c) conduct written *or computerized* examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to he appropriate; and

(d) adopt rules to establish continuing education requirements of at least 20 hours biennially for license renewal for physical therapists and assistants.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every licensed physical therapist and licensed assistant, the therapist's or assistant's last-known place of business and last-known place of residence, and the date of issue and the number of every license and certificate issued to a licensed physical therapist or licensed assistant.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee."

**Section 17.** Section 37-11-303, MCA, is amended to read:

"**37-11-303. Qualifieations of applicants for license.** (1) To be eligible for a license as a physical therapist, an applicant must:

(a) be of good moral character and at least 18 years of age;

(b) have graduated from an accredited school of physical therapy approved by the board; and

(c) pass to the satisfaction of the board a written *or computerized* examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist.

(2) To be eligible for a physical therapist assistant license, an applicant must:

(a) be of good moral character and at least 18 years of age;

(b) have graduated from an accredited physical therapist assistant curriculum approved by the board; and

(c) have passed a written *or computerized* examination prescribed by the board."

**Section 18.** Section 37-16-202, MCA, is amended to read:

"**37-16-202. Powers and duties.** The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

HeinOnline -- 1997 vol. II 2529 1997

(2) establish a procedure to act as a grievance board to initiate or receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license and supervise and administer the examination;

(5) adopt rules necessary to carry out this chapter;

(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice *or engage in the business of* ~~the~~ fitting or selling ~~of~~ hearing aids;

(7) prepare examinations required hy the chapter;

(8) initiate legal action to enjoin from operation a person ~~or corporation~~ engaged in the sale, dispensing, or fitting of hearing aids in this state ~~who~~ *that* is not licensed under this chapter;

(9) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, and 37-16-411. Rules adopted by the board may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, and 37-16-411.

*(10) establish and adopt minimum requirements for the form of bills of sale and receipts.*"

**Section 19.** Section 37-16-303, MCA, is amended to read:

"**37-16-303. Bill of sale — ~~examination by otolaryngologist — notation on receipt that examination not medical opinion~~ *medical evaluation requirements — waiver.*** (1) Any person ~~who~~ *who* practices the selling, fitting, or dispensing of hearing aids and related devices shall, *upon the sale of a hearing aid or related device,* deliver to ~~each person supplied with a hearing aid or related device, by him or at his order or direction,~~ *the customer* a bill of sale that must contain:

(a) the seller's signature~~,~~ *and license number and* the name and address of ~~his~~ *the seller's* permanent place of business~~, and the number of his license~~;

(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, and the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned; ~~and~~

(e) a provision that maintenance service for tho hearing aid or related device is available*; and*

*(f) the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, contact the state Board of Hearing Aid Dispensers." The statement must also list the current telephone number and address of the board's office.*

(2) (a) ~~Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, if dealing with a person under 19 years of age, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain the otolaryngologist's recommendations. If the person has not been examined, the licensed hearing aid dispenser shall recommend to the parent or guardian or to the person if emancipated that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation.~~

~~(b) Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, if the aid or device is to be purchased with state funds, ascertain if the person has been examined by a licensed physician within 90 days prior to the fitting and shall obtain the licensed physician's recommendations. If the person has not been examined, the licensed hearing aid dispenser shall recommend to the person being fitted that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation~~ *Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that the person may benefit from a hearing aid.*

*(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration regulations found at 42 CFR 801.420 and 42 CFR 801.421.*

~~(3) A separate receipt issued under subsection (2) must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dispenser in connection with the dispensing, fitting, and selling of this hearing aid(s) or device is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice."~~

~~(4) The board may establish and adopt minimum requirements for the form of bills of sale and receipts.~~

~~(5) All purchase agreements or bills of sale must prominently display the following statement: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, please contact the Department of Commerce — Board of Hearing Aid Dispensers."~~

**Section 20.** Section 37-16-304, MCA, is amended to read:

**"37-16-304. Right to cancel — return of hearing aid or related device — notice — refund.** (1) A purchaser of a hearing aid or related device

may, *for any reason,* cancel the sale within 30 days of the date of delivery of the hearing aid or related device ~~if:~~

~~(a) the hearing aid or related device is defective in fit or function; or~~

~~(b) a licensed hearing aid dispenser has failed to correct a problem in fit or function.~~

~~(2) (a) If a purchaser cancels the sale of a hearing aid or related device for a reason provided in subsection (1), he shall provide~~ *by providing* written notice to the *establishment that employed the licensed hearing aid dispenser at the time the hearing aid was purchased* ~~seller~~ indicating ~~his~~ *the purchaser's* intention not to be bound by the sale contract. The purchaser shall ~~also~~ return *or hold for the licensed hearing aid dispenser's disposal* the hearing aid or related device in substantially the same condition as it was received by the purchaser.

~~(b)~~*(2)* For the purpose of determining whether cancellation has occurred within 30 days of the date of delivery, written notice:

~~(i)~~*(a)* given hy mail is considered given on the date mailed; and

~~(ii)~~*(b)* delivered in person is *considered* given when delivered to the hearing aid dispenser's permanent place of business.

(3) A licensed hearing aid dispenser shall refund to the purchaser the amount paid for the hearing aid or related device minus the dispensing fee within ~~30~~ *10* days of receipt of written notice of cancellation. For the purposes of this section, the dispensing fee may not exceed ~~20% of the total cost of the hearing aid or related device~~ *the actual cost of dispensing the hearing aid or related device to the purchaser. This cost must be substantiated by the dispenser, and regardless of the length of the trial period, the dispensing fee may not exceed 15% of the total cost of the hearing aid or related device. Thc licensed hearing aid dispenser shall also return any goods traded in contemplation of the salc, less any costs incurred by the licensee in making the goods ready for resale.*

(4) ~~All sales receipts for refunds issued by the seller of a hearing aid or related device must contain a statement of the reason for the cancellation.~~ *A licensed hearing aid dispenser may not sell a hearing aid in this state unless the seller provides the buyer with written notice of the 30-day trial period and money-back guarantee.*

*(5) If the hearing aid must be rcpaired, remadc, or adjusted during the 30-day trial period, the running of the 30-day period must be suspended for each day that the hearing aid is not in the purchaser's possession. The provisions of this subsection may not be waived."*

**Section 21.** Section 37-16-405, MCA, is amended to read:

**"37-16-405. Trainee license.** (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the practical examination under 37-16-403 may apply to the hoard for a trainee license.

(2) On receiving an application under suhsection (1), accompanied by a fee fixed by the board and commensurate with the cost of administering tbe license and related functions of the board and verification that the applicant has passed

the written portion of the examination with a *passing* score ~~of at least 70%,~~ *as determined by board rule,* the board shall issue a trainee license that entitles the applicant to engage in a 180-day training period during which the applicant:

(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license; and

(b) shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder ~~must~~ *shall* submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) (a) If a person who holds a trainee license takes and fails to pass the practical examination during the training period, the board may authorize the department to renew the trainee license for a period of 180 days, during which the provisions of subsection (2)(b) apply. In no event may more than one renewal be permitted.

(b) The fee for renewal must be set by the board commensurate with the cost of administering the license and related functions of the board.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the 180-day training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment."

**Section 22.** Section 37-16-407, MCA, is amended to read:

**"37-16-407. Renewal of license — fee — inactive status.** (1) A person ~~who~~ *who* practices the fitting of hearing aids and related devices shall annually pay to the department a fee as set by the board for a renewal of the person's license. The fee must be fixed by the board to be commensurate with board costs

HeinOnline -- 1997 vol. II 2533 1997

in administering licensure and related board functions. ~~The fee must be increased 10% for each month or major portion of a month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal may not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period after suspension~~ *The board shall impose a late fee for renewal applications received after the renewal deadline.*

(2) Each applicant for license renewal shall submit evidence showing completion of 10 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.

(3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

(b) An inactive licensee may be reinstated to active practice if the inactive licensee:

(i) applies for reinstatement;

(ii) pays a fee set by the board; and

(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board."

**Section 23.** Section 37-26-201, MCA, is amended to read:

**"37-26-201. Powers and duties of board.** The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;

(4) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(5) adopt rules that set nonrefundable fees, commensurate with costs, for application, examination, licensure, and other administrative services;

(6) approve naturopathic medical colleges as defined in 37-26-103;

(7) issue certificates of specialty practice; ~~and~~

(8) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery ~~or the legend drugs~~ allowed under 37-26-301; *and*

*(9) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301."*

**Section 24.** Section 37-26-301, MCA, is amended to read:

**"37-26-301. Practice of naturopathic health care — *alternative health care formulary committee.*** (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1)(n), with the following restrictions. A naturopathic physician may not:

~~(a) prescribe, dispense, or administer any legend drug as defined in 50-31-301 except for whole gland thyroid; homeopathic preparations; the natural therapeutic substances, drugs, and therapies described in subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);~~

*(a) prescribe, dispense, or administer any legend drug, as defined in 50-31-301, except for whole gland thyroid; homeopathic preparations; the natural therapeutic substances, drugs, and therapies described in subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);*

~~(b)~~*(b)* administer ionizing radioactive substances for therapeutic purposes;

~~(c)~~*(c)* perform surgical procedures except those minor surgery procedures authorized by this chapter; or

~~(d)~~*(d)* claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the following natural therapeutic substances, drugs, and therapies, *as well as drugs on the natural substance formulary list provided for in subsection (3)*:

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and nonprescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) *A five-member alternative health care formulary committee appointed by the board shall establish a natural substance formulary list. The committee consists of a licensed pharmacist plus four members of the board, two of whom must be licensed naturopathic physicians, one who must be a licensed medical doctor, and one who must be a public member. The list may not go beyond the scope of substances covered by approved naturopathic college curricula or continuing education and must be reviewed annually by the committee. Changes to the list that are recommended by the committee and accepted by the board must be published as administrative rules.*

HeinOnline -- 1997 vol. II 2535 1997

*(4)* Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical lahoratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

~~(4)~~*(5)* Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2). If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to tbe extent the drugs are not available within 10 miles of the naturopath's office, the naturopath may sell the drugs that are unavailable."

**Section 25.** Section 37-30-203, MCA, is amended to read:

**"37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors.** (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for certificates of registration to practice as registered barbers or barber instructors not less tban four times a year at times and places tbe board determines. The examinations ~~shall~~ *must* cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue certificates of registration.

(2) The board may adopt rules for the adıninistration of this chapter *and shall adopt rules pertaining to the following:*

*(a) the qualification, examination, and registration of license and instructor applicants;*

*(b) the qualification, eurriculum, and operating standards for barber schools, including the supervision of barber students; and*

*(c) the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30.*

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall receive a salary plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended."

**Section 26.** Section 37-30-307, MCA, is amended to read:

**"37-30-307. Fees — handicapped persons exempted — otber fees prohibited.** (1) The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a certificate of registration to practice barbering and for the issuance of the certificato ınust be prescribed by the board.

(2) A person registered as a barber shall, before the expiration date established by rule of the department, annually pay a license fee, set by tlıe board based on clerical and administrative costs, for the renewal of the person's certificate of registration. ~~If a barber fails to have the certificate renewed before the expiration date, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a~~

~~certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.~~

(3) However, physically handicapped persons trained for the barber profession by the department of public health and human services and certified by that department as having graduated from a barber college licensed by the board are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(4) Anotber or an additional license or fee may not be imposed on barbers by a municipality or other subdivision of tbis state."

**Section 27.** Section 37-54-102, MCA, is amended to read:

**"37-54-102. Definitions.** *Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Appraisal Practice, as issued by the appraisal foundation.* As used in this chapter, unless the context requires otherwise, the following definitions apply:

~~(1) "Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in or aspects of identified real estate.~~

~~(2) "Appraisal assignment" means an appraisal classified by the nature of the assignment as:~~

~~(a) a valuation appraisal, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time;~~

~~(b) an analysis assignment, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that relates to the nature, quality, or utility of identified real estate or identified real property; or~~

~~(c) a review assignment, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal.~~

~~(3)~~*(1)* "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, *pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq.* The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the *licensure and* certification ~~and recertification~~ of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other gevernmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

HeinOnline -- 1997 vol. II 2537 1997

~~(4) "Appraisal report" means a written or oral communication of a real estate appraisal. An appraisal report for a federally related transaction must be in writing. An appraisal report may be classified by the nature of the assignment as a "valuation report", an "analysis report", or a "review report". For the purposes of this chapter, testimony of a licensed or certified real estate appraiser dealing with the appraiser's analyses, opinions, or conclusions concerning identified real estate or identified real property is considered an oral appraisal report.~~

~~(5)~~*(2)* "Board" means the board of real estate appraisers provided for in 2-15-1868.

~~(6) "Certified appraisal report" means an appraisal or appraisal report given or signed and certified by a certified real estate appraiser. When identifying an appraisal or appraisal report as "certified", the certified real estate appraiser shall indicate the class of certification the appraiser holds.~~

~~(7)~~*(3)* "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

~~(8)~~*(4)* "Department" means the department of commerce provided for in 2-15-1801.

~~(9) "Independent appraisal service" means an engagement for which a person is employed or retained to act, or would be perceived by a third party or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property.~~

~~(10)~~*(5)* "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

~~(11) "Real estate" means an identified parcel or tract of land, including any improvements on the land.~~

~~(12) "Real property" means one or more defined interests, benefits, and rights inherent in the ownership of real estate.~~"

**Section 28.** Section 37-54-105, MCA, is amended to read:

"**37-54-105. Powers and duties of board.** The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of licensure and certification and renewal of a license or certificate;

~~(3) make available application forms for licensure and certification within 15 days of the first meeting of the board;~~

~~(4)~~*(3)* establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

HeinOnline -- 1997 vol. II 2538 1997

~~(5)~~*(4)* receive applications for examination from qualified applicants, prescribe and administer examinations to qualified applicants, and determine the acceptable level of performance on examinations;

~~(6)~~*(5)* receive and review applications for licensure and certification and issue licenses and certificates;

~~(7)~~*(6)* review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

~~(8)~~*(7)* retain all applications and other records submitted to it;

~~(9) maintain a registry of the names and addresses of licensees and certificate holders;~~

~~(10) establish disciplinary procedures for reprimand, suspension, or revocation of a license and certificate;~~

~~(11)~~*(8)* adopt by rule standards of professional appraisal practice in this state;

~~(12)~~*(9)* reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers; and

~~(13)~~*(10)* perform other duties necessary to implement this chapter."

**Section 29.** Section 37-54-201, MCA, is amended to read:

**"37-54-201. Real estate appraiser license — scope and display of license.** (1) Upon proof that an applicant meets the qualifications set out in 37-54-202 and upon payment of license fees adopted under 37-54-105, the board shall issue to the applicant a real estate appraiser license.

(2) The term "licensed real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual licensee. However, a licensed real estate appraiser may engage in real estate appraisal as a professional corporation.

(3) ~~Nothing in this~~ *This* chapter ~~precludes~~ *does not preclude* a person who is not a licensed or certified real estate appraiser from appraising real property for ~~nonfederally related~~ transactions *not related to a federal agency or project* for compensation, provided *that* the person does not ~~represent himself as~~ *purport to be* a licensed or certified real estate appraiser. A person who ~~refers to himself or his company as being~~ *purports that the person or the person's company is* licensed under this section or certified under 37-54-302 through 37-54-304 without possessing the applicable license or certificate is guilty of a misdemeanor.

(4) This section does not:

(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which ~~he~~ *the person* is licensed;

(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the ~~Federal Financial Institutions Examination Council (FFIEC)~~ *federal financial institutions examination council* agencies.

HeinOnline -- 1997 vol. II 2539 1997

(5) A licensed *or certified* real estate appraiser ~~has~~ *is subject to* restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council ~~(FFIEC)~~ agencies, and the restrictions must remain current with any changes in those rules.

(6) A licensed real estate appraiser shall conspicuously display the license in ~~his~~ *the appraiser's* principal place of business."

**Section 30.** Section 37-54-202, MCA, is amended to read:

"**37-54-202. Qualifications for licensure.** To qualify for a real estate appraiser license, an applicant:

~~(1) shall successfully complete at least 75 classroom hours of a course of study described in 37-54-203 and approved by the board.~~

~~(a) The course of study must be conducted by:~~

~~(i) an accredited university, college, or junior college;~~

~~(ii) an approved real estate appraisal or real estate related organization; or~~

~~(iii) another school approved by the board.~~

~~(b) The classroom hours must include:~~

~~(i) at least 60 hours relating to the basic principles of land economics and real estate appraisal; and~~

~~(ii) at least 15 hours relating to the standards of professional appraisal practice set out in 37-54-403 and the ethical rules, as established by board rule, to be observed by a real estate appraiser.~~

~~(2) shall pass an examination administered by the board that is based on the study required by 37-54-203 and subsection (1) of this section and is designed to test the applicant's knowledge of the basic principles of land economics and real estate appraisal, standards of professional appraisal practice, and ethical rules to be observed by a real estate appraiser;~~

~~(3) must be of good moral character;~~

~~(4) must have experience in real estate appraisal as prescribed by the board. The board shall adopt rules pertaining to real estate appraisal experience that substantially comply with and are not more stringent than those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.~~

*(1) must be of good moral character;*

*(2) shall successfully complete a course of study prescribed by the board;*

*(3) must have the type and amount of experience in real estate appraisal prescribed by the board;*

*(4) shall successfully complete an examination prescribed by the board; and*

(5) shall comply with any other requirements related to the practice of real estate appraisal as prescribed by the board by rule."

**Section 31.** Section 37-54-210, MCA, is amended to read:

"**37-54-210. License renewal.** (1) A real estate appraiser's license expires on the date set by department rule.

(2) A licensee may renew a license by filing an application with the board on a form approved by the board, paying a renewal fee prescribed by the board, and meeting all requirements of this chapter.

(3) In renewing a license, the board shall ensure that the licensee has a working knowledge of:

(a) current real estate appraisal theories; and

(b) practices and techniques that will enable the licensee to provide competent ~~independent~~ appraisal service under the authority of the license."

**Section 32.** Section 37-54-211, MCA, is amended to read:

"**37-54-211. Late renewal of license.** (1) A license that is not renewed within 1 year of the most recent renewal date automatically terminates. A licensee may renew the license within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the requirements for continued licensure; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a license if the licensee has continued to perform ~~independent~~ appraisal services as a licensed real estate appraiser following expiration of the license."

**Section 33.** Section 37-54-301, MCA, is amended to read:

"**37-54-301. Certification — use of term — standards of practice.** (1) A person may not represent ~~himself to be~~ *to the public that the person is* a certified real estate appraiser unless ~~he~~ *the person* is certified under this chapter.

(2) Only a certified real estate appraiser may prepare and sign a certified appraisal report relating to real estate or real property in this state. If an appraisal report is prepared, signed, and certified by a certified real estate appraiser, a person licensed under this chapter who assisted in the preparation of the appraisal may cosign the appraisal report.

(3) The term "certified real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual certificate holder. However, a certified real estate appraiser may develop and communicate an appraisal on behalf of a firm, partnership, corporation, or group.

HeinOnline -- 1997 vol. II 2541 1997

*(4) Whenever an appraisal or appraiser report is identified by the certified real estate appraiser as "certified", the appraiser shall indicate in writing the class of certification the appraiser holds."*

**Section 34.** Section 37-54-304, MCA, is amended to read:

**"37-54-304. Certification examination.** (1) A person who satisfies the qualification requirements of 37-54-202 and the education and experience requirements of 37-54-303 may apply for examination as a certified real estate appraiser in the manner prescribed by this section.

~~(2) The board shall adopt and administer a written examination for certified real estate appraisers and establish standards of acceptable performance for each class of certification that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.~~

~~(3)~~*(2)* ~~An~~ *In addition to the examination subjects required by the board, an* applicant must be examined on the ~~following subjects:~~

~~(a) technical terms commonly used in or related to:~~

~~(i) real estate appraisal;~~

~~(ii) appraisal report writing; and~~

~~(iii) economic concepts applicable to real estate;~~

~~(b) principles of land economics, real estate law, and real estate appraisal processes;~~

~~(c) problems likely to be encountered in gathering, interpreting, and processing data required for developing and communicating an appraisal;~~

~~(d) standards for the development and communication of certified real estate appraisals;~~

~~(e) (i) theories of depreciation and cost estimating;~~

~~(ii) methods of capitalization; and~~

~~(iii) the mathematics of real estate appraisal appropriate to the class or classes of certification sought by the applicant; and~~

~~(f)~~ types of misconduct for which disciplinary action may be initiated under this chapter.

~~(4)~~*(3)* Examinations must be given at least four times each year at times and places as the board determines.

~~(5)~~*(4)* An applicant may not retake the examination within 6 months after having failed it a second or subsequent time."

**Section 35.** Section 37-54-305, MCA, is amended to read:

HeinOnline -- 1997 vol. II 2542 1997

"**37-54-305. Issuance and display of certificate.** (1) The board shall issue a certificate and a pocket card to a person who meets the requirements of 37-54-302 through 37-54-304.

(2) The certificate must include the dates of issuance and renewal of certification.

(3) A certified real estate appraiser shall conspicuously display the certificate in ~~his~~ *the appraiser's* principal place of business.

(4) A certified real estate appraiser shall designate the class for which ~~he~~ *the appraiser* is certified and place ~~his~~ *the* certificate number on each appraisal report, contract, or other instrument ~~used by him~~ *that the appraiser uses* in conducting real estate appraisal activities."

**Section 36.** Section 37-54-311, MCA, is amended to read:

"**37-54-311. Late renewal of certificate.** (1) A certificate that is not renewed within 1 year of the most recent renewal date automatically terminates. A certificate holder may renew the certificate within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the requirements set by law; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a certificate if the certificate holder has continued to perform ~~independent~~ appraisal services in this state following expiration of the certificate."

**Section 37.** Section 37-60-303, MCA, is amended to read:

"**37-60-303. Licensure qualifications.** (1) Except as otherwise specified in this section, an applicant for licensure under this chapter shall submit evidence under oath that ~~he~~ *the applicant*:

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with ~~such~~ other experience qualifications as may be set by the rules of the board.

HeinOnline -- 1997 vol. II 2543 1997

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of ~~such~~ *the* training; and

(b) fulfill ~~such~~ other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that ~~he~~ *the applicant*:

(a) is at least 21 years of age;

(b) has at least a high school education or its equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service;

(d) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government; *and*

~~(e) has completed the training requirements of a private investigator training program certified by the board and furnished, on a form prescribed by the board, written notice of satisfactory completion of such training; and~~

~~(f)~~ has fulfilled ~~such other~~ *any other* requirements as the board may by rule prescribe.

(4) Up to one-half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(5) Applicants who will wear or carry firearms in performance of their duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as it may by rule prescribe.

(6) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.

(7) The board shall require an applicant to demonstrate by written examination such additional qualifications as the board may by rule require."

**Section 38.** Section 37-65-202, MCA, is amended to read:

**"37-65-202. Compensation of board members — expenses.** Each member of the board is entitled to receive compensation *and travel expenses* ~~at~~

HeinOnline -- 1997 vol. II 2544 1997

~~the rate~~ *as* provided in 37-1-133 ~~and the actual cost of mileage or other reasonable transportation costs, meals, and lodging when engaged in official board business~~."

**Section 39. Definitions.** As used in this chapter, the following definitions apply:

(1) "Apprentice" means a person who is working in a training capacity to service or instal fire alarm systems, special agent fire suppression systems, or fire extinguishing systems and who is studying in accordance with a program approved by the department of commerce.

(2) "Endorsement" means a document, issued by the department of commerce to an individual who has met qualifications, that authorizes the individual to sell, service, and install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.

(3) "Entity" means any business, partnership, sole proprietorship, organization, association, corporation, firm, governmental organization, fire agency, or any other business association.

(4) (a) "Fire alarm system" means a combination of approved compatible devices with the necessary electrical interconnection and energy to produce an alarm signaling the event of fire or system activation.

(b) The term does not include single station smoke or heat detectors.

(5) "Fire extinguisher" means a portable device containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire.

(6) "Fire extinguishing system" means a fire sprinkler system designed in accordance with nationally recognized standards that consists of an assembly of piping or conduits that conveys water, foam, or air with or without other agents to dispersal openings or devices to extinguish, control, or contain fire and to provide protection from exposure to fire or the products of combustion. Included are underground and overhead piping, ponds, tanks, pumps, extra or special hazard applications, and other related components or devices necessary for water supplies.

(7) "Inspection" means the periodic examination of premises, equipment, or procedures or of a licensed or endorsed person or entity to determine whether the person's or entity's business or profession is being conducted in a manner consistent with the public health, safety, and welfare. The term includes the inquiry, analysis, audit, or other pursuit of information, with respect to a written complaint or other information before the department of commerce, that is carried out for the purpose of assisting the department of commerce in determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) whether a license should be granted or denied; or

(c) whether the department of commerce should seek an injunction against unlicensed practice.

HeinOnline -- 1997 vol. II 2545 1997

(8) (a) "Install" means the technical work that may be performed only by an endorsed individual or an apprentice in the assemhly of a fire alarm system, special agent fire suppression system, or fire extinguishing system.

(b) The term does not include the delivery of supplies or the offsite cutting or threading of pipe.

(c) The term does include the following tasks:

(i) inspection of jobsites to determine the presence of obstructions and to ascertain that holes will not cause structural weaknesses;

(ii) determination of the course or plan of installation;

(iii) any jobsite bending of pipe or electrical conduit as part of the installation;

(iv) jobsite assembly and installation of metal or nonmetal pipe fittings, including but not limited to those made of brass, copper, lead, glass, and plastic;

(v) jobsite assembly and installation of wiring systems;

(vi) joining of piping by any means, including pipes joined by threaded, caulked, wiped, soldered, brazed, fused, or cemented joints;

(vii) securing of pipe, wire, or electrical conduit to the structure by any means, including but not limited to clamps, brackets, hangers, and welds; and

(viii) testing the installed system for electrical or mechanical malfunctions.

(9) "License" means the document issued by the department of commerce that authorizes a person or entity to engage in the business of servicing fire extinguishers or to engage in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.

(10) "Sell", "sale", and associated words mean offering or contracting to transfer, lease, or rent any merchandise, equipment, or service at retail to the public or any member of the public for an agreed sum of money or other consideration.

(11) (a) "Service", when referring to portable fire extinguishers and fire extinguisher cylinders, means maintenance and includes breakdown for replacement of parts or for agent, repair, recharging, or hydrostatic testing.

(b) When referring to alarm systems, fire extinguishing systems, and fire suppression systems, the term means maintenance and testing required to keep the protective signaling, extinguishing, and suppression system and its component parts in an operative condition at all times, together with replacement of the system or its component parts with listed or approved parts when for any reason they become undependable, defective, or inoperative.

(c) The term does not include resetting manual alarm systems that may be reset by a properly trained building owner or the owner's designated representative.

(12) "Special agent fire suppression system" means an approved system and components that require individual engineering in accordance with

manufacturer specifications and includes dry chemical, carbon dioxide, halogenated, gaseous agent, foam, and wet chemical systems. The term includes a preengineered system but does not include a fire extinguishing system.

**Section 40. Definitions.** As used in this part, the following definitions apply:

(1) "Crane" means a machine with a hoisting mechanism that is integral to the machine and that is used for lifting and lowering a load and for moving it horizontally.

(2) "Department" means the department of commerce provided for in 2-15-1801.

(3) "Gantry crane" and "trolley crane" are synonymous and mean a crane similar to an overhead crane except that the bridge for carrying the trolley or trolleys is rigidly supported on two or more legs running on fixed rails or another type of runway.

(4) "Hoist" means a power-driven apparatus capable of lifting and lowering loads and not desigued to facilitate horizontal movements.

**Section 41. Rulemaking authority.** The department may adopt rules consistent with the purposes of this chapter for the administration of the following classes of crane and hoist operators:

(1) crane and hoist oiler;

(2) crane and hoist hoisting;

(3) crane and hoist hydraulic;

(4) crane gantry and trolley;

(5) hoists;

(6) mine hoists;

(7) hydraulic and boom trucks; and

(8) tower crane.

**Section 42.** Section 50-39-101, MCA, is amended to read:

**"50-39-101. License and endorsements required.** (1) A person or entity shall obtain a license from the department of commerce before engaging in the business of servicing fire extinguishers or before engaging in the business of selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems. Each individual, except an apprentice, employed by the licensee to perform services under the license shall obtain from the department an endorsement to sell, service, or install:

(a) fire alarm systems;

(b) special agent fire suppression systems; or

(c) fire extinguishing systems.

HeinOnline -- 1997 vol. II 2547 1997

(2) The license and endorsement or endorsements must be prominently displayed at the business premises, and copies must be carried by the person conducting each installation or servicing and must be shown to anyone requesting to see them.

(3) It is a misdemeanor to knowingly or purposely service a fire extinguisher or sell, service, or install a fire alarm system, special agent fire suppression system, or fire extinguishing system without the required license and endorsement.

*(4) Nothing in this chapter may be construed to prohibit a licensed electrician, practicing within the scope of practice of electricians, as provided in Title 37, chapter 68, from installing components of fire protection equipment if the installation is inspected and approved by an individual endorsed to sell, service, or install fire protection equipment."*

**Section 43.** Section 50-39-102, MCA, is amended to read:

**"50-39-102. Application for license and endorsements.** (1) An application for a license and any endorsements must be made on a form prescribed by the department of commerce.

(2) The department shall annually issue a license and endorsement to an applicant who:

(a) submits satisfactory proof that the applicant is properly equipped and staffed to provide the sales or services to be licensed and endorsed; and

(b) submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements.

(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department; ~~and~~

*(b) issue an endorsement to an applicant who has been issued a letter of certification, specific to the endorsement being sought, from any national testing agency approved by the department; and*

~~(b)~~*(c)* annually renew the endorsement upon payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

**Section 44.** Section 50-76-103, MCA, is amended to read:

**"50-76-103. Crane and hoist license required.** (1) (a) It is unlawful for a person to operate any ~~hoisting~~ *crane and hoist* equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of more than 6 tons ~~or~~ *and* a boom length of more than 25 feet without first obtaining a license from the department of commerce. This equipment includes overhead trolley *and gantry* cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 applies to the operation of the equipment named in this section.

HeinOnline -- 1997 vol. II 2548 1997

(2) Licensing is as follows:

(a) First-class ~~hoisting~~ *crane and hoist* engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class ~~hoisting~~ *crane and hoist* engineer's license must be 18 years of age or older and:

(A) must have no less than 3 years' experience operating equipment requiring a second-class ~~hoisting~~ *crane and hoist* engineer's license or shall demonstrate equivalent competency by examination; and

(B) is required to pass a written test prescribed by the department of commerce.

(ii) ~~An annual~~ *A biennial* physical exam is required of all licensees.

(c) Second-class ~~hoisting~~ *crane and hoist* engineers are licensed to operate ~~hoisting~~ *crane and hoist* equipment with a manufacturer's rating of 6 tons ~~or~~ *and* a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) (i) An applicant for a second-class ~~hoisting~~ *crane and hoist* engineer's license must be 18 years of age or older and:

(A) must have no less than 2 years' experience in actual operation of ~~hoisting~~ *crane and hoist* equipment covered by this section or shall demonstrate equivalent competency by examination; and

(B) is required to successfully pass a written examination prescribed by the department of commerce.

(ii) ~~An annual~~ *A biennial* physical exam is required of all licensees.

(e) Third-class ~~hoisting~~ *crane and hoist* engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) An applicant for a third-class ~~hoisting~~ *crane and hoist* engineer's license is required to successfully pass a written test prescribed by the department of commerce and must be 18 years of age or older before receiving a license.

(3) The department of commerce shall reexamine each licensed engineer or operator every 5 years during the anniversary month of the issuance of the license if the licensee has not worked at the trade for 5 years."

**Section 45.** Section 50-76-104, MCA, is amended to read:

"**50-76-104. Application and fee for license.** Application for licenses must be made to the department of commerce and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department. ~~The same fee must be charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery under chapter 74 of this title.~~"

**Section 46. Repealer.** Sections 37-54-203, 50-39-104, 50-74-314, 50-76-106, 76-4-1201, 76-4-1202, 76-4-1203, 76-4-1204, 76-4-1205, 76-4-1206,

HeinOnline -- 1997 vol. II 2549 1997

76-4-1207, 76-4-1208, 76-4-1209, 76-4-1210, 76-4-1211, 76-4-1212, 76-4-1213, 76-4-1221, 76-4-1222, 76-4-1223, 76-4-1224, 76-4-1225, 76-4-1226, 76-4-1227, 76-4-1228, 76-4-1229, 76-4-1230, 76-4-1231, 76-4-1232, 76-4-1233, 76-4-1234, 76-4-1235, 76-4-1236, 76-4-1237, 76-4-1238, 76-4-1239, 76-4-1240, 76-4-1241, 76-4-1242, 76-4-1243, 76-4-1244, 76-4-1245, 76-4-1246, 76-4-1247, 76-4-1248, 76-4-1249, 76-4-1250, and 76-4-1251, MCA, are repealed.

**Section 47. Codification instruction.** (1) [Sections 1 through 12] are intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1, apply to [sections 1 through 12].

(2) [Section 39] is intended to be codified as an integral part of Title 50, chapter 39, and the provisions of Title 50, chapter 39, apply to [section 39].

(3) [Sections 40 and 41] are intended to he codified as an integral part of Title 50, chapter 76, part 1, and the provisions of Title 50, chapter 76, part 1, apply to [sections 40 and 41].

**Section 48. Coordination instruetion.** (1) If [this act] and __ Bill No. __ [LC 423] are both passed and approved, then [section 7], relating to unprofessional conduct complaint—sanctions, and [section 8], relating to penalty, of __ Bill No. __ [LC 423] are void.

(2) Any legislation enacted by the 55th legislature that enacts a license requirement for a profession or occupation that is not administered by a board must be subject to the provisions of [sections 1 through 12], and the code commissioner shall include appropriate references to reflect the provisions of [sections 1 through 12].

**Section 49. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, tlie part remains in effect in all valid applications tliat are severable from the invalid applications.

Approved May 1, 1997

# CHAPTER NO. 482

[HB 168]

AN ACT GENERALLY REVISING CHILD SUPPORT LAWS; CLARIFYING THAT HEARINGS BY THE DEPARTMENT MAY BE BY TELECONFERENCING METHODS; ALLOWING SERVICE OF CERTAIN NOTICES BY CERTIFIED MAIL; REVISING ADMINISTRATIVE PATERNITY PROCESSES; CLARIFYING JUDICIAL REVIEW OF A CHILD SUPPORT ORDER; CHANGING THE DEFINITION OF "SUPPORT ORDER" AS IT PERTAINS TO WITHHOLDING; REVISING THE DEFINITION OF MISTAKE OF FACT FOR INCOME WITHHOLDING HEARING PURPOSES; CHANGING HEALTH INSURANCE PROVISIONS RELATING TO SUPPORT; REVISING PATERNITY PRESUMPTIONS; PROVIDING FOR PRIORITY OF SUPPORT OF A DECEDENT'S CHILDREN IN PROBATE OF A DECEDENT'S ESTATE; AMENDING SECTIONS 17-4-105, 40-5-189, 40-5-201, 40-5-202, 40-5-225, 40-5-226, 40-5-231, 40-5-236, 40-5-253, 40-5-273,

HeinOnline -- 1997 vol. II 2550 1997

40-5-403, 40-5-412, 40-5-414, 40-5-703, 40-5-809, 40-5-824, 71-3-302, AND 72-3-807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-4-105, MCA, is amended to read:

**"17-4-105. Authority to collect debt — offsets.** (1) Once a debt of an agency has been transferred to the department, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies.

(2) The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this right of offset until the debtor has first been notified by the department and been given an opportunity for a hearing. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner determined appropriate by the department.

(3) (a) The department of revenue retains the power to offset tax refunds due individuals against taxes owed the state. The department of revenue may not exercise this right of offset until the taxpayer has been notified by the department of revenue and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department of revenue shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department of revenue after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and a decision made as a result of that proceeding has become final.

(4) (a) A debt owed to the department of public health and human services or being collected by the department of public health and human services on behalf of any person or agency may be offset by the department if the debt is being enforced or collected by the department of public health and human services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the department for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided for in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing.

HeinOnline -- 1997 vol. II 2551 1997

The request must be in writing and be mailed to the department. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and a decision made as a result of that proceeding has become final. The hearing must *initially* be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. *At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the department shall, following a telcconferencing hearing, grant a de novo in-person hearing.* The department of public health and human services shall adopt rules governing the hearing procedures.

(5) If the department determines that a person or entity has refused or neglected to file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity. If the claim is approved by the department, the claim has the same force and effect as though filed by the person or entity. The amount due any person or entity from the state or any agency of the state is the net amount otherwise owing the person or entity after any offset, as provided in this section."

**Section 2.** Section 40-5-189, MCA, is amended to read:

**"40-5-189. Procedure to contest validity or enforcement of registered order.** (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. *A court hearing may be conducted by teleconferencing methods. A department hearing must initially be conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the department shall, following a teleconferencing hearing, grant a de novo in-person hearing.* The nonregistering party may, pursuant to 40-5-190, seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing."

**Section 3.** Section 40-5-201, MCA, is amended to read:

**"40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a person who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; any person under 19 years of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act *(URESA) or the Uniform Interstate Family Support Act (UIFSA)* or under Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearing examiner" means the hearings officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

HeinOnline -- 1997 vol. II 2553 1997

(12) "Puhlic assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child; and

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated under the act."

**Seetion 4.** Section 40-5-202, MCA, is amended to read:

**"40-5-202. Department of public health and human services — powers and duties regarding collcction of support debt.** (1) The department may take action under the provisions of this chapter, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral on behalf of the child from an agency providing services to the child under the provisions of Title 41, Title 52, or Title 53;

(b) is providing services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

HeinOnline -- 1997 vol. II 2554 1997

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. Upon filing, the department may, on behalf of itself or on behalf of the obligee, obligor, or child, initiate, participate in, intervene in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) Whether acting on its own behalf or on behalf of the obligee, obliger, or child, the department and its attorneys serve the public interest in ensuring that children are supported by their parents, rather than maintained by public assistance. The department does not represent the interests of any individual person, and its attorneys represent only the department. An attorney-client relationship is not created between department attorneys and any person or entity other than the department. The obligee, obligor, and child may obtain the services of a private attorney to represent their interests. The existence or appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the department's right to act or provide services under this chapter. This chapter does not require the department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or child.

(4) The department has the power of attorney to act in the name of any obligee to endorse and cash any drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(5) (a) If the department is providing IV-D services, the department must be afforded notice and an opportunity to participate as an independent party in any proceeding relating to paternity, to termination of parental rights, or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obliger, or the child.

(b) The notice must reasonably inform the department of the issues to be determined in the proceeding, the names of the parties and the child, and the identity and location of the tribunal in which the issues will be determined. The notice is for informational purposes only and is not intended as a substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment, decree, or order is void as to any interest of the department that is or may be affected by the agreement, judgment, decree, or order if the department was not joined as a party in the manner provided in the Montana Rules of Civil Procedure.

(c) The notice must be personally served on the department. Within 20 days after service of the notice, the department may:

(i) decline to enter the proceeding as a party, in which case the proceeding may continue without the department's participation;

(ii) inform the tribunal that a substantial interest of the department could be adversely affected by the proceeding, in which case the proceeding may not continue without joining the department as a necessary party in the manner provided in the Montana Rules of Civil Procedure; or

(iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an administrative proceeding under this chapter in which the parties and some or all of the issues are the same as those in the proceeding

HeinOnline -- 1997 vol. II 2555 1997

before the tribunal. The tribunal shall then discontinue the proceeding as to the common issues until administrative remedies have been exhausted.

(6) (a) ~~A~~ *When the department is providing services, a* recipient or former recipient of public assistance who assigned support rights under ~~53-2-613~~ *42 U.S.C. 602(a)(26)* or a collection agency acting on behalf of the recipient or former recipient may collect only that part of a delinquent support amount that accrued after termination of public assistance. The recipient, former recipient, or collection agency may not commence or maintain an action against or make an agreement with the obligor to recover an assigned delinquent support amount unless the department, in writing:

(i) releases or relinquishes its assigned interest;

(ii) declares the support debt owed the department to be satisfied, in which case the balance of the delinquent amount is released; or

(iii) consents to the action or agreement.

(b) If a recipient, former recipient, or collection agency collects or receives value for any part of an assigned delinquent support amount and the department has not given its consent or released or relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt and full restitution to the department. If prompt and full restitution is not made, the department may send a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection agency is liable for damages equal to double the amount collected or value received. The amount of damages may be determined and assessed by the department under the contested case provisions of the Montana Administrative Procedure Act. The damages may be collected by the department by any method or remedy available for the enforcement of child support owed by an obligor parent.

(c) This subsection (6) does not limit the right of a person to recover money not assigned. If there are competing proceedings against an obligor for collection of delinquent support, the collection of support assigned to the department takes priority over the obligor's income and assets.

(7) An applicant for or recipient of services may not act to the prejudice of the department's rights while the services are being provided.

(8) Unless the department has consented to the agreement in writing, if public assistance is being or has been paid for a child, an agreement between an obligee and an obligor or a judgment, decree, or order adopting the agreement does not act to reduce or terminate any rights of the department to establish a support order or to recover a support debt from the obligor, even if the agreement, judgment, decree, or order purports to:

(a) relieve or terminate the obligor's support duty;

(b) waive, modify, compromise, or discharge the support debt;

(c) prepay future support obligations or settle past, present, or future support obligations; or

HeinOnline -- 1997 vol. II 2556 1997

(d) permit the obligor to pay past, present, or future support obligations:

(i) with noncash contributions;

(ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgago payments; or

(iii) by making contributions to a trust or other account or payments toward an asset if the contributed amounts are unavailable to the department.

(9) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(10) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a suppert debt. This right of subrogation is in addition to and independent of the assignment under ~~53-2-613~~ *42 U.S.C. 602(a)(26)* and the support debt created by 40-5-221.

(11) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under ~~53-2-613~~ *42 U.S.C. 602(a)(26)* and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(12) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(13) While providing services under this chapter and in order to carry out the purposes mentioned in this chapter, the department, through its director or the director's authorized representatives, may:

(a) administer oaths;

(b) certify official acts and records;

(c) issue investigative and hearing subpoenas;

(d) order discovery before and after a hearing;

(e) hold prehearing and settlement conferences;

(f) compel the attendance of witnesses and the production of books, accounts, documents, and evidence; ~~and~~

(g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint, including the examination of an obligor or other person in the manner provided for the taking of a deposition in a civil action*; and*

*(h) perfect service of investigative and hearing subpoenas by certified mail or in the manner prescribed for service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.*

HeinOnline -- 1997 vol. II 2557 1997

(14) In addition to any other requirement for service provided by the Montana Rules of Civil Procedure, if a person is required to give notice to, serve, or provide a written response to the department under this chapter, tbe notice, service, or response must he made to the department's child support enforcement division.

*(15) The department may collect any funds received under this chapter, and wrongfully retained, by the obligor through any remedy available for collection of child support."*

**Section 5.** Section 40-5-225, MCA, is amended to read:

**"40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure.** (1) (a) In the absence of a support order, the department may serve an obligor with a notice of financial responsibility alleging a child's need for support and tbe amount of the need and requiring the obligor to appear and show cause at a hearing held by tlie department why the obligor should not be finally ordered to pay the amount alleged in the notice.

(b) The notice must state:

(i) the names of the obligoe and child;

(ii) the amount of current and future support to be paid each month for the child;

(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in tlie notice must be finally ordered;

(iv) tliat the obligor is entitled to a fair hearing under 40-5-226.

(2) If, prior to the service of tlie notice under this section, the department has information concerning tbe obligor's fmancial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If sucli information is unknown to the department, the allegations of the obligor's monthly support responsibility must be based on tbe greater of:

(a) the amount of public assistance payable under Title 53, chapter 4; or

(b) tlie alleged need.

(3) If the obligor objects to the notice, the obligor shall file a written answer with the department within 20 days from the date of service or refusal of service. If the department receives a timely answer, it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall order the obligor to pay the amount stated in the notice.

(4) (a) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered, the department may issue to the ohligor a notice of temporary support obligation.

(b) The notice must contain:

HeinOnline -- 1997 vol. II 2558 1997

(i) the names of the child and the person or agency having the custodial care of the child;

(ii) an amount for temporary monthly support determined as provided in subsection (2);

(iii) a statement that the obligor may request a hearing at which the obligor may show that a different support amount is appropriate or that establishment of a support obligetion is inappropriate under the circumstances. The hearing must be conducted in accordance with tbe procedures of 40-5-226.

(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice or the order for a temporary support order will be entered in the amount stated in the notice; and

(v) a statement tbat the temporary support order will terminate upon the entry of a district court support order. If the district court order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the district court order for the same period, but excess amounts may not be refunded. If the district court determines that a periodic support obligation is not proper, any amount paid under the temporary support order must be refunded to the obligor.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds tbat the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under tbis subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice under this section if the parties subsequently separate.

(6) ~~Any~~ *A* notice of financial responsibility and the notice of temporary support obligation ~~must~~ *may* be served *either by certified mail or* in the ~~same~~ manner prescribed for the service of a summons in civil action in accordance with the Montana Rules of Civil Procedure."

**Section 6.** Section 40-5-226, MCA, is amended to read:

**"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must ~~be scheduled within 20 days.~~ *initially be conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing,*

HeinOnline -- 1997 vol. II 2559 1997

*the hearings officer shall, following a teleconferencing hearing, grant a de novo in-person hearing.*

(3) The hearings officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearings officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) ~~Within 20 days of the hearing, the~~ *The* hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

(7) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the

request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

(8) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

(9) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appoar at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(10) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

(11) For the purposes of income withholding provided for in subsection (10), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information.

(12) The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to any orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel tbe production of accounts, books, documents, and other evidence; and

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(13) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

HeinOnline -- 1997 vol. II 2561 1997

(d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with discovery requests; or

(e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In tbe case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(14) An affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than $500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(15) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than $500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(16) An amount imposed as a penalty may he collected by any remedy available to tbe department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(17) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected."

**Section 7.** Section 40-5-231, MCA, is amended to read:

**"40-5-231. Jurisdiction and venue.** (1) For purposes of an administrative action brought under this part, personal jurisdiction is established in the department over any individual or tlie individual's guardian or conservator if:

(a) the individual is personally *or by certified mail* served with notice within this state;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by the act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) Personal jurisdiction over the individuals described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under this part may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located."

**Section 8.** Section 40-5-236, MCA, is amended to read:

**"40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results *specifically requesting referral of the paternity issue to the district court.* Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of paternity determination and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

HeinOnline -- 1997 vol. II 2563 1997

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the hest interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

**Section 9.** Section 40-5-253, MCA, is amended to read:

**"40-5-253. Administrative findings and order — administrative remedies — judicial review.** (1) It is the intent of this part that administrative findings and orders be subject to judicial review, but administrative remedies must be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. ~~Such~~ *Except as provided in subsections (3) through (5), the* review must be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until ~~such~~ *the* remedies are exhausted.

(2) ~~Nothing in this~~ *This* part may *not* be construed to abridge or in any way affect the obligor's right to counsel during any and all judicial or administrative proceedings pursuant to this part.

*(3) A petition for judicial review is an original action and may not be filed under a preexisting cause number or joined with any other action.*

*(4) A summons must be issued and served under Rule 4, Montana Rules of Civil Procedure, upon the department and each party along with the petition for judicial review. The district court does not obtain jurisdiction unless the petition for judicial review is served on all parties within 30 days after the petition is filed with the district court.*

*(5) The district court shall set a briefing schedule for a petition for judicial review. A reference in a brief to the administrative record must be to a particular part of the record, suitably designated, and to specific pages of that part of the record. Intelligible abbreviations may be used. A reference to an exhibit must be to the pages of the transcript on which the exhibit is identified, offered in evidence, and received or rejected. After briefs have been filed, and upon motion of a party, the district court may order oral argument."*

**Section 10.** Section 40-5-273, MCA, is amended to read:

**"40-5-273. Administrative revlew of child support orders — modifying orders.** (1) A review application setting forth facts meeting any of the criteria for review of a child support order estahlished in 40-5-272 inust be scheduled for an administrative ~~hearing, and a hearings officer must be appointed by the department~~ *review*. Unless the ~~hearings officer~~ *department* determines

HeinOnline -- 1997 vol. II 2564 1997

under rules of the department that an in-person ~~hearing~~ *review* is necessary, the ~~hearing~~ *review* must be conducted by ~~telephone conference~~ *teleconferencing methods*. ~~The order scheduling the hearing~~ *A notice that an administrative review will be conducted* must be served on the obligor and the obligee ~~at least 60 days before the hearing~~. The ~~order~~ *notice* must include the following information as an exception to 2-4-601:

~~(a) the date and time for the hearing and, if appropriate, the place for the hearing;~~

~~(b)~~*(a)* a statement of the purpose, objectives, and possible consequences of the review;

~~(c)~~*(b)* a statement of the right of the obligor and the obligee to request the ~~hearings officer~~ *department* to issue subpoenas compelling the appearance of witnesses and the production of documents for ~~the~~ *a* hearing; and

~~(d)~~*(c)* a requirement that the obligor and the obligee provide the ~~hearings officer~~ *department* with telephone numbers at which they and their witnesses may be contacted for the ~~hearing~~ *review*.

(2) The ~~hearings officer~~ *department* may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be personally served with the ~~order scheduling the hearing~~ *notice that a review will be conducted*. The ~~hearings officer~~ *department* may also issue subpoenas ordering the ~~department or other~~ parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the ~~hearings officer~~ *department* must be provided to the ~~department and other~~ parties ~~prior to the~~ *before a* hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the ~~hearings officer~~ *department* under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the ~~hearing~~ *review* or fails to be at the number provided when telephoned for the ~~hearing~~ *review*, the failure ~~is~~ *may be* considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the ~~hearing~~ *review* or fails to be at the number provided when telephoned for the ~~hearing~~ *review*, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the ~~hearing~~ *review* or fails to be at the number provided when telephoned for the ~~hearing~~ *review*, the failure ~~is~~ *may be* considered an admission that the party or parties do not oppose the modification.

(4) *(a)* An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within ~~10~~ *30* days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available ~~for the hearing~~ when telephoned.

HeinOnline -- 1997 vol. II 2565 1997

*(b) A proposed modification consent order or notice of proposed modification becomes final 30 days after issuance unless during that period a party files with the department a written request for further administrative proceedings.*

*(c) The department shall grant a modification hearing if it receives a timely written request by a party aggrieved by the department's determination. The hearing is subject to the provisions of this section relating to a review. The department may adopt rules regulating the fair and efficient conduct of the hearing. Unless the department determines under department rules that an in-person hearing is necessary, the hearing must be conducted by teleconferencing methods.*

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the ~~hearings officer~~ *department* shall, to ensure the equitable determination of a support obligation, during a review ~~hearing~~:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the ~~hearing~~ *review*; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the ~~hearings officer~~ *department* may allow the counsel to present that party's case.

(7) The ~~hearings officer~~ *department* shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. *A stipulation by the parties in a proceeding under this section may not be contested before entry of the final department order.* If the ~~hearings officer~~ *department* determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the ~~hearings officer~~ *department* determines, after the review ~~hearing~~, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review ~~hearing~~, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order ~~must~~ *may* prospectively modify the underlying support order from the date of service of ~~the order scheduling the hearing~~ *a notice that an administrative review will be conducted under this section.*

(8) ~~The hearings officer shall make a written determination whether health insurance is available to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer determines health insurance is available to the child of the obligor, the hearings officer shall issue a modifying~~

HeinOnline -- 1997 vol. II 2566 1997

~~order that requires the obligor to obtain and keep health insurance for the child. If the hearings officer determines that health insurance is not available to the child of the obligor, he shall issue a modifying order containing the notices provided in subsection (9). An order to provide health insurance is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child.~~ *The department shall consider whether or not health insurance for the child is available and shall include an appropriate requirement for the provision of the child's health insurance needs in a modifying order in accordance with part 8 of this chapter.*

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of ~~his~~ *the obligor's* current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance; *and*

~~(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and~~

~~(c)~~*(b)* that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) ~~Orders~~ *An order* entered under this section ~~are~~ *by the department is a* final agency ~~decisions~~ *decision*, subject to judicial review pursuant to the Montana Administrative Procedure Act, *except as provided in 40-5-253.* ~~All orders~~ *An order* entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7. *A final order entered under a stipulation of parties waives the stipulating parties' right to judicial review.*

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d)."

**Section 11.** Section 40-5-403, MCA, is amended to read:

**"40-5-403. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and signed by the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

HeinOnline -- 1997 vol. II 2567 1997

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(4) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(5) "Ohligor" means a person who owes a duty to make payments under a support order.

(6) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

(7) "Support order" ~~means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:~~

~~(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;~~

~~(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and~~

~~(c) an order requiring payment of interest due on unpaid judgments for child support~~ *has the meaning provided in 40-5-201.*"

**Section 12.** Section 40-5-412, MCA, is amended to read:

"**40-5-412. Delinquency income withholding.** (1) In the case of support orders not subject to immediate income withholding under 40-5-411, including cases in which the court or administrative authority has made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's support payment. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.

(2) Notwithstanding the provisions of subsection (1), income withholding must be initiated, without regard to whether there is an arrearage, on the earlier of:

(a) the date the obligor requests that withholding begin; or

(b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

(3) To accomplish the purpose of subsection (1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obliger who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding a court order directing payments to be made to the obligee or clerk of court.

(4) The only basis for contesting withholding under this section is a mistake of fact, which *does not include a mistake of fact relating to establishment of custody and visitation but* includes a mistake:

(a) concerning the obligor's identity;

(b) concerning the existence of the support obligation;

(c) concerning the amount of support to be paid;

(d) in the determination that the delinquent support amounts owed are equal to or greater than 1 month's support payment;

(e) in computation of delinquent support amounts owed; or

(f) in the allegation that the obligor is in default of an alternative agreement."

**Section 13.** Section 40-5-414, MCA, is amended to read:

"**40-5-414. Hearing.** (1) To contest the withholding of income initiated under 40-5-412 because of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of being served with notice of intent to withhold income under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant te the contested case provisions of Title 2, chapter 4, part 6.

(2) Venue for the administrative hearing may be in the county where the obligor resides if the obliger resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(3) The ~~administrative~~ hearing must *initially* be held by teleconferencing methods ~~unless the obligor or the department expressly requests an in-person hearing before the hearings examiner~~ *and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall, following a teleconferencing hearing, grant a de novo in-person hearing.*

(4) If the obligor requests a hearing within the 10-day period:

(a) the initiation of delinquency income withholding by the department and the modification of an existing withholding order must be stayed until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the

HeinOnline -- 1997 vol. II 2569 1997

scheduled hearing. However, in a proceeding to initiate income withholding, if the obligor is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is not stayed. In a proceeding to modify an existing order, income withholding under the existing order to withhold is not stayed.

(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.

(5) The department shall issue an order to withhold income or a modified order to withhold in accordance with 40-5-415 if:

(a) the obligor fails to file a written request for hearing with the department within the specified 10-day period;

(b) the obligor fails to appear at a scheduled hearing;

(c) the hearings examiner determines from the evidence that the obligor owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum;

(d) there is an existing order to withhold and if the hearings examiner determines from the evidence that the obligor owes new or additional amounts in arrears; or

(e) in cases in which income withholding is being initiated at the request of an obligee without regard to whether there is an arrearage, the hearings examiner determines from the evidence that the obligor did not meet the terms of the alternative arrangement.

(6) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date on which the obligor was served with the notice of intent to withhold income. When the department is enforcing a current support obligation, payment of the arrearage after service of the notice is not a basis for not initiating income withholding.

(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

(8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearings examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation or determines that a modification of an existing order is proper, the department shall proceed with the intended action in accordance with 40-5-415."

**Section 14.** Section 40-5-703, MCA, is amended to read:

**"40-5-703. Hearing — order suspending license.** (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

HeinOnline -- 1997 vol. II 2570 1997

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. *A court hearing may be conducted by teleconferencing methods. A department hearing must initially be conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the department shall, following a teleconferencing hearing, grant a de novo in-person hearing.* The support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

(3) The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not a delinquency exists, and whether or not the obligor has entered into a payment plan.

(4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not entered into a payment plan, the support enforcement entity shall issue an order suspending the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support enforcement entity shall send a copy of the order suspending a license to the licensing authority and the obligor.

(6) The determinations of the department under this section are a final agency decision and are subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

(7) A determination made by the support enforcement entity under this part is independent of any proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license."

**Section 15.** Section 40-5-809, MCA, is amended to read:

"**40-5-809. Effect of order on health benefit plans.** (1) The duties and responsibilities under a plan pursuant to this part apply equally to a union or employer that serves as the administrator of a plan for a parent who is a member or employee.

(2) A copy of a medical support order requiring enrollment of a child in a health benefit plan may be submitted to the plan administrator by either parent, by the department, ~~or~~ by a third-party custodian, *or by an employer-payor of either parent.* The party submitting the order shall submit the child's name and birth date and the names and mailing addresses of the parents. If the child is a recipient of public assistance, the party submitting the order shall also submit the address of the department. If there is a third-party custodian of the child, the address of the third-party custodian must also be submitted. *A copy of a medical support order may be served on the plan administrator by certified mail.*

HeinOnline -- 1997 vol. II 2571 1997

(3) Presentation of the medical support order to the plan administrator authorizes each parent, the department, if the department has interest, or the third-party custodian to receive pertinent notices from the plan administrator and to freely communicate and generally interact with the plan administrator in all respects regarding the child's benefits as fully and effectively as if the obligated parent were to do so personally.

(4) If a medical support order requires the child to be enrolled in a health benefit plan, presentation of the order to the plan administrator binds the plan to enroll the child in the plan as provided by this part.

(5) If a health benefit plan is available through the obligated parent's employer or other payor of income, presentation of the medical support order to the payor binds the payor to enrollment of the child in the plan and to automatically deduct premium payments required by the plan from the obligated parent's income and remit them to the plan provider for as long as the obligated parent is eligible for coverage.

(6) (a) Ambiguities and discrepancies in an order may not he used to unreasonably or unnecessarily delay health benefit plan coverage for a child.

(b) If more than one plan is available to an obligated parent and the medical support order fails to specify a plan or combination of benefits to be provided for a child or if there has been a change in plans due to a change in employment of the obligated parent or for some other reason, the parties and the department shall apply the medical support order so as to provide the child with coverage under a plan that has a reasonable cost and that provides the child with benefits closest to those described in the order."

**Section 16.** Section 40-5-824, MCA, is amended to read:

"**40-5-824. Expedited enforcement procedures.** (1) A parent, the department, or the third-party custodian may apply to the court for expedited enforcement procedures under this part. If the child receives medicaid, a parent or third-party custodian may apply to the department for and the department may on its own motion use expedited enforcement procedures under this part.

(2) Upon receipt of an application, the tribunal may issue an order requiring the obligated parent to appear and show cause why an order, penalty, fine, or any combination should not be determined, assessed, and entered under one or more provisions of this part. The obligated parent may appear at the hearing or submit an affidavit asserting the obligated parent's position and defense. The show cause order must be issued if the tribunal finds that:

(a) a medical support obligation has heen established hy order of a tribunal or by a court or administrative agency of another state, territory, or Indian reservation;

(b) tbe obligated parent is liable for medical costs and expenses or premium payments under this part;

(c) a parent receives a reimbursement payment from individual insurance or a health benefit plan and fails to promptly turn the payment over to the party who has paid or is paying the underlying bill of the health service provider;

HeinOnline -- 1997 vol. II 2572 1997

(d) a parent is delinquent in paying to the other parent, the department, or a third-party custodian the parent's share of:

(i) copayments and deductihles required under the individual insurance or plan; or

(ii) costs and expenses not covered by individual insurance or a health benefit plan; or

(e) there are fines, penalties, or other financial sanctions that may be imposed under this part.

(3) Prior to applying for expedited enforcement, the applicant shall give the obligated parent notice of the claim under this part. The obligated parent may pay the claim within 30 days after receiving the notice. A copy of the notice must be given to the other parent, to the department, if the department is not the applicant or the tribunal hearing the matter and if public assistance is paid for the child, or to the third-party custodian. The other parent, the department, or the third-party custodian may participate in the proceedings as a party.

(4) An application for expedited enforcement may be based on any credible statements or evidence presented to the tribunal, including the sworn affidavit of:

(a) a health care provider who has provided care or benefits for the child;

(b) an authorized representative of the department, the health benefit plan, or the individual insurer;

(c) either parent of the child; or

(d) the third-party custodian of the child.

(5) The order to show cause must inform the obligated parent and any other party of the party's right to respond by affidavit. An affidavit may include written proof of payment. A hearing must he scbeduled ~~within 15 days~~ after ~~the date of~~ service of the order on the obligated parent. *A court hearing may be conducted by teleconferencing methods. A department hearing must initially be conducted by teleconferencing methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the department shall, following a teleconferencing hearing, grant a de novo in-person hearing.* If an affidavit with written proof of payment is not received by the tribunal within 15 days and the obligated parent does not appear at the hearing, judgment may be entered for the relief requested. If an affidavit with written proof of paynent is received but the obligated parent does not appear at the hearing, the trihunal may resolve the issues on the basis of credible documents and affidavits submitted.

(6) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule upon the issues. The proceeding must be dismissed if the trihunal finds written proof of paynent of the liabilitv and the amount of the liability is not contested by a party to the proceedings.

(7) If the tribunal finds the obligated parent liable, the tribunal shall enter the amount of the liability as an award against the liable parent. If requested to

HeinOnline -- 1997 vol. II 2573 1997

do so, the tribunal may make an award specifically in favor of a health care provider, health benefit plan, or individual insurer to the extent that an unsatisfied bill of the health care provider, health benefit plan, or individual insurer is part of the unsatisfied medical support liability involved. If the tribunal finds that the conduct, claim, or response of a party was frivolous or in bad faith, the tribunal may impose sanctions against the party including an award of costs and attorney fees.

(8) Awards under this section may be collected by any remedy available for the collection of delinquent child support, but claims for current or past-due child support have priority.

(9) An award under this section is a final order and may be appealed if the tribunal is a court or may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department."

**Section 17.** Section 71-3-302, MCA, is amended to read:

"**71-3-302. Priority in case of death of employer.** In case of the death of any employer, the wages of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within 4 months next preceding the death of the employer, in the amount actually owed, are preferred debts under 72-3-807~~(1)(d)~~*(1)(e)* and must be paid before other claims against the estate of the deceased person."

**Section 18.** Section 72-3-807, MCA, is amended to read:

"**72-3-807. Classification of claims as to priority of payment.** (1) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(a) costs and expenses of administration;

(b) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending ~~him~~ *the decedent*;

(c) federal estate and Montana state estate and inheritance taxes;

*(d) debt for a current support obligation and past-due support for decedent's children pursuant to a support order as defined in 40-5-201;*

~~(d)~~*(e)* debts with preference under federal and Montana law;

~~(e)~~*(f)* other federal and Montana state taxes;

~~(f)~~*(g)* all other claims.

(2) ~~No~~ *A* preference ~~shall~~ *may not* be given in the payment of any claim over any other claim of the same class, and a claim due and payable ~~shall~~ *may* not be entitled to a preference over claims not due."

**Section 19. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

HeinOnline -- 1997 vol. II 2574 1997

# CHAPTER NO. 483

[HB 248]

AN ACT CLARIFYING TERMS AND CONDITIONS OF BOARD OF INVESTMENTS LOANS TO STATE AGENCIES; INCREASING THE BONDING LIMIT OF THE BOARD OF INVESTMENTS FROM $50 MILLION TO $75 MILLION FOR THE PURPOSES OF THE MUNICIPAL FINANCE CONSOLIDATION ACT; PROVIDING AUTHORITY FOR FUNDING LOW-INCOME HOUSING UNITS; AMENDING SECTION 17-5-1608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-5-1608, MCA, is amended to read:

**"17-5-1608. Limitations on amounts.** The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part (except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101) to exceed ~~$50~~ *$75* million."

**Section 2. Loans to state agencies.** An agency responsible for the procurement and provision of vehicles and equipment using an enterprise fund or an internal service fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(1) the term of the indebtedness does not exceed the useful life of the items being financed; and

(2) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

**Section 3. Low-income housing.** Subject to available funding, the board of investments may initiate a deferred loan, in conjunction with other financing, to preserve affordable multifamily housing as originally provided for under the Emergency Low Income Housing Preservation Act of 1987 and the Low-Income Housing Preservation and Resident Homeownership Act of 1990. Variable rate bonds may be issued under Title 17, chapter 5, part 15, to be used as part of the financing arrangement. The honds may be secured by the bonding mechanism under 17-5-1516. The housing units, formerly provided for under both acts, must remain as low-income units for the entire length of the bonds or 30 years, whichever is longer. Any mortgeges securing the bonds must either be insured or guaranteed by a federal agency. Variable rate bonds must he secured by mortgages having a maximum interest rate of 5%. The bond indenture must provide a mechanism to reduce the likelihood of drawing upon the capital reserve account under 17-5-1516. The board may not make any loans or issue any bonds to finance housing units under this section unless the income from the financial

HeinOnline -- 1997 vol. III 2575 1997

properties, after deducting the expenses for the operation and maintenance of the housing units, is projected to be sufficient to repay the loans and bonds.

**Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 17, chapter 5, and the provisions of Title 17, chapter 5, apply to [section 2].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 1997

# CHAPTER NO. 484

[HB 343]

AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; INCREASING CERTAIN FILING FEES; CREATING AN ACCOUNT TO HELP FUND DOMESTIC VIOLENCE SHELTERS AND CRISIS LINES; PROVIDING THAT IN PARTNER OR FAMILY MEMBER ASSAULT SITUATIONS A PEACE OFFICER MAY ARREST THE PRIMARY AGGRESSOR; PROVIDING THAT IN ANY ASSAULT AGAINST A PARTNER OR FAMILY MEMBER AN OFFENDER MUST GO TO JAIL WITHOUT BAIL; PROVIDING THAT IN A HEARING FOR AN ORDER OF PROTECTION THE VICTIM'S PAST SEXUAL HISTORY MAY NOT BE PLACED INTO EVIDENCE; PROVIDING A PRIVILEGE FOR A VICTIM OF PARTNER OR FAMILY MEMBER ASSAULT FROM DISCLOSURE OF DISCUSSIONS WITH SHELTER WORKERS AND VOLUNTEERS; CLARIFYING THAT A CONVICTION UNDER THE FORMER DOMESTIC ABUSE STATUTE IS A CONVICTION UNDER THE CURRENT PARTNER OR FAMILY MEMBER ASSAULT STATUTE; AMENDING SECTIONS 25-1-201, 40-15-202, 40-15-302, 45-5-206, 46-6-311, AND 46-9-302, MCA; AND PROVIDING AN EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 25-1-201, MCA, is amended to read:

**"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of ~~$120~~ *$150*; and for filing a petition for legal separation, a fee of ~~$120~~ *$150*;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents per page for the first five pages of each file, per request, and 25 cents per additional page;

HeinOnline -- 1997 vol. III 2576 1997

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must he remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to tbe state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, *$30 must be deposited in the partner and family member assault intervention and treatment fund established by [section 9],* and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted

to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(h), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be depesited as provided in 19-5-404.

(7) Fees collected under suhsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries."

**Section 2. Temporary order or temporary injunction — continuing effect.** A temporary order or temporary injunction issued under 40-4-121 before October 1, 1995, continues in full force and effect as provided in the order or injunction.

**Section** 3. Section 40-15-202, MCA, is amended to read:

**"40-15-202. Order of protection — hearing — *evidence.*** (1) A hearing must be conducted within 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.

(2) The respondent may request an emergency hearing before the end of the 20-day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 working days of the filing of the affidavit.

(3) The order of protection may not be made mutually effective by the court. The respondent may obtain an order of protection from the petitioner only by filing an application for an order of protection and following the procedure described in this chapter.

HeinOnline -- 1997 vol. III 2578 1997

*(4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is not admissible in a hearing under this section.*

*(b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease may be admitted in a hearing under this section only if that sexual conduct is at issue in the hearing.*

*(5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall order a separate hearing to determine whether the proposed evidence is admissible under subsection (4)(b).*"

**Section 4.** Section 40-15-302, MCA, is amended to read:

"**40-15-302. Appeal to district court — *order to remain in effect.*** (1) An order issued by a justice's court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice's court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

(2) A case in which an order has been issued by a justice's court, municipal court, or city court pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

*(3) If a temporary order of protection or an order of protection issued by a court of limited jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless modified by the appellate court.*"

**Section 5.** Section 45-5-206, MCA, is amended to read:

"**45-5-206. Partner or family member assault — penalty.** (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

HeinOnline -- 1997 vol. III 2579 1997

(3) (a) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall he imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(b) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. *A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).*

(4) (a) An offender convicted of partner or family member assault ~~shall~~ *must* be required to pay for and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The ~~counselor~~ *counseling provider* must be approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender ~~shall~~ *must* be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

HeinOnline -- 1997 vol. III 2580 1997

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence."

**Section 6.** Section 46-6-311, MCA, is amended to read:

**"46-6-311. Basis for arrest without warrant — *arrest of primary aggressor.*** (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) *(a)* The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

*(b) When a peace officer responds to a partner or family member assault complaint and if it appears that the parties were involved in mutual aggression, the officer shall evaluate the situation to determine who is the primary aggressor. If, based on the officer's evaluation, the officer determines that one person is the primary aggressor, the officer may arrest only the primary aggressor. A determination of who the primary aggressor is must be based on but is not limited to the following considerations, regardless of who was the first aggressor:*

*(i) the prior history of violence between the partners or family members, if information about the prior history is available to the officer;*

*(ii) the relative severity of injuries received by each person;*

*(iii) whether an act of or threat of violence was taken in self-defense;*

*(iv) the relative sizes and apparent strength of each person;*

*(v) the apparent fear or lack of fear between the partners or family members; and*

*(vi) statements made by witnesses."*

**Section 7.** Section 46-9-302, MCA, is amended to read:

**"46-9-302. Bail schedule — acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is *any assault on a* partner or family member ~~assault~~, as *partner or family member is* defined in 45-5-206, or stalking, as defined in 45-5-220.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

HeinOnline -- 1997 vol. III 2581 1997

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

**Section 8. Advocate privilege.** (1) Unless a report is otherwise required by law, an advocate may not, without consent of the victim, be examined as to any communication made to the advocate by a victim and may not divulge records kept during the course of providing shelter, counseling, or crisis intervention services.

(2) This privilege belongs to the victim and may not be waived, except by express consent. The privilege continues even if the victim is unreachable. Consent may not be implied because the victim is a party to a divorce or custody proceeding. The privilege terminates upon the death of the victim.

(3) For purposes of this section, the following definitions apply:

(a) "Advocate" means an employee or volunteer of a domestic violence shelter, crisis line, or victim's services provider that provides services for victims of sexual assault, stalking, or any assault on a partner or family member.

(b) "Victim" means a person seeking assistance because of partner or family member assault, any sexual assault, or stalking, whether or not the victim seeks or receives services within the criminal justice system.

**Section 9. Partner and family member assault intervention and treatment fund account.** (1) There is a partner and family member assault intervention and treatment fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the department of public health and human services to fund services to victims of partner or family member assault, as provided in subsections (2) and (3).

(2) The department shall distributo the money in the account, as provided in subsection (3), to agencies that provide direct services to victims of partner or family member assault, including but not limited to shelters, crisis lines, safe homes, and victim's counseling providers. A service provider is eligible to receive money under this section for services provided to a victim of partner or family member assault, whether or not the victim seeks or receives services within the criminal justice system.

(3) A service provider that provides direct services to victims of partner or family member assault shall apply to the department for distribution of money under this section. The department shall evaluate a provider's eligibility to receive money under this section based on available money, the needs of the provider, whether the provider includes programs focused on prevention of partner and family member assault, the quality of services provided by the provider, the need for services in the community, and the need for improved or continuing services in the community.

**Section 10. Codification instruction.** (1) [Section 8] is intended to be codified as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to [section 8].

HeinOnline -- 1997 vol. III 2582 1997

(2) [Section 9] is intended to be codified as an integral part of Title 40, chapter 15, part 1, and the provisions of Title 40, chapter 15, part 1, apply to [section 9].

**Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 12. Retroactive applicability.** [Section 2] applies retroactively to October 1, 1995.

**Section 13. Effective date.** [This act] is effective July 1, 1997.

**Section 14. Termination.** [Sections 1 and 9] terminate June 30, 1999.

Approved May 1, 1997

# CHAPTER NO. 485

[HB 369]

AN ACT GENERALLY REVISING LOCAL GOVERNMENT LAW; REQUIRING CONTIGUOUS ANNEXATION BY A CITY OR TOWN TO BE APPROVED BY VOTE OF THE REGISTERED VOTERS RESIDING IN THE AREA TO BE ANNEXED UNLESS THERE ARE LESS THAN 300 RECORDED PARCELS IN THE AREA; INCREASING IN CERTAIN INSTANCES FROM 1 YEAR TO 5 YEARS THE PERIOD THAT A CITY OR TOWN COUNCIL IS REQUIRED TO WAIT TO INITIATE, WITHOUT PETITION, THE QUESTION OF ANNEXING AN AREA, CALCULATED FROM THE DATE VOTERS RESIDING IN THAT AREA VOTE AGAINST ANNEXATION; ELIMINATING A MAYOR'S AUTHORITY TO CALL OUT THE MILITIA; ELIMINATING A MAYOR'S RIGHT TO CALL OUT CITIZENS IN CASE OF A RIOT; MODIFYING A MAYOR'S RIGHT TO EXERCISE EXTRATERRITORIAL POWERS WITHIN 5 MILES OF THE CITY OR TOWN LIMITS FOR THE PURPOSE OF ENFORCING HEALTH AND QUARANTINE ORDINANCES; AMENDING SECTIONS 7-2-4303, 7-2-4311, 7-2-4312. 7-2-4313, 7-2-4314, 7-2-4325, 7-2-4502, 7-3-4101, 7-4-4303, AND 7-4-4306, MCA; AND REPEALING SECTIONS 7-2-4321, 7-2-4322, 7-2-4323, 7-2-4324, AND 7-4-4304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-2-4303, MCA, is amended to read:

**"7-2-4303. Restrictions on annexation power.** ~~Land~~ *Except as provided in 7-2-4314(1)(d), land* used for industrial, *railroad,* or manufacturing purposes ~~shall~~ *may* not be included in ~~such~~ *a* city *or town* under the provisions of 7-2-4311 through 7-2-4314 and ~~7-2-4321 through~~ 7-2-4325 without the *written* consent ~~in writing~~ of the owners of ~~such~~ *the* land."

**Section 2.** Section 7-2-4311, MCA, is amended to read:

**"7-2-4311. Annexation of contiguous land by cities ~~of the first class~~ *or towns.*** Any tracts or parcels of land ~~which~~ *that* have been or may ~~hereafter~~

be platted into lots or blocks, streets, and alleys or platted for parks, ~~and~~ the map or plat ~~thereof~~ *of which is* filed in the office of the county clerk and recorder of the county in which the ~~same~~ *tracts or parcels of land* are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided ~~in these codes~~ *by law*, ~~which~~ *if the* platted or unplatted land ~~shall be~~ *is* contiguous to any incorporated city ~~of the first class~~ *or town*, may be embraced within the corporate limits ~~thereof~~ *of the city or town*, and the boundaries of ~~such~~ *the* city ~~of the first class~~ *or town may be* extended ~~so as~~ to include the ~~same~~ *platted or unplatted land* in the manner provided in 7-2-4312 through 7-2-4314 *and 7-2-4325*."

**Section 3.** Section 7-2-4312, MCA, is amended to read:

"**7-2-4312. Resolution of intent by ~~first class~~ city *or town* — notice.** When, in the judgment of any city *or town* council, ~~of a city of the first class~~ expressed by a resolution ~~duly and regularly~~ *that is* passed and adopted, it ~~will be to~~ *is in* the best interest of ~~such~~ *the* city *or town* and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of ~~such~~ *the* city *or town* ~~shall~~ be extended ~~so as~~ to include the ~~same~~ *platted tracts or parcels of land or unplatted land* within the corporate limits ~~thereof~~ *of the city or town*, the city *or town* clerk ~~of such city~~ shall:

(1) immediately notify, in writing, ~~addressed to the address to which tax notices are sent,~~ all ~~owners and purchasers under contracts for deed of property~~ *registered voters* in the territory to be embraced; and

(2) cause a notice to be published in the newspaper published nearest ~~such~~ *the* platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, at least once a week for 2 successive weeks."

**Section 4.** Section 7-2-4313, MCA, is amended to read:

"**7-2-4313. Contents of notice — protest period.** The notice *under 7-2-4312* must state that:

(1) the resolution has heen ~~duly and regularly~~ passed; and

(2) for a period of 20 days after the first publication of the notice, the city *or town* clerk shall accept written comments approving or disapproving the proposed extensions of the boundaries of the city ~~of the first class~~ *or town* from ~~real property owners of~~ *registered voters residing in* the area proposed to be annexed."

**Section 5.** Section 7-2-4314, MCA, is amended to read:

"**7-2-4314. Hearing on question of annexation — *vote on question of annexation* — resolution of annexation.** (1) *(a)* The *city or town* clerk shall, at the next regular meeting of the city *or town* council ~~of a city of the first class~~ after the expiration of the 20-day period *provided for in 7-2-4313*, forward all written communication received by the clerk for the city *or town* council's consideration. ~~Except as provided in subsection (2), if after considering any written communication the~~

HeinOnline -- 1997 vol. III 2584 1997

*(b) Except as provided in subsection (1)(d), if the* city *or town* council, *after considering all written communication,* adopts a resolution approving the annexation, the ~~boundaries of the city must be extended to include the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed~~ *implementation of the resolution must be approved by the vote of the registered voters residing in the area proposed for annexation.* The resolution must state the date on which the *proposed* annexation ~~takes~~ *is intended to take* effect.

*(c) Within 45 days of adopting the resolution for annexation, the city or town council shall submit the question of approving the resolution to the registered voters residing in the area proposed for annexation. A notice of election must be mailed to all registered voters residing in the area proposed for annexation.*

*(d) If the area to be annexed contains less than 300 recorded parcels, the city or town council, after considering all written communication, may adopt a resolution approving the annexation and the boundaries of the city or town must be extended to include the platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed. An area annexed pursuant to this subsection may include land used for railroad purposes. A city or town council may not annex by resolution an area containing less than 300 recorded parcels if the resolution is disapproved in writing by a majority of real property owners of the area proposed to be annexed. If the resolution is disapproved by a majority of the land owners, the city or town council may not on its own initiative propose further resolutions relating to the annexation of the area or any portion of the area, without petition, for a period of 1 year.*

(2) ~~The resolution may not be adopted by the city council if disapproved in writing by a majority of the real property owners of the area proposed to be annexed, and further~~ *Except as provided in subsection (1)(d), further* resolutions relating to the annexation of the area or any portion of the area may not be considered or acted upon by the council on its own initiative, without petition, for a period of ~~1 year~~ *5 years* from the date of disapproval *by the voters as provided in subsection (1).*"

**Section 6.** Section 7-2-4325, MCA, is amended to read:

"**7-2-4325. Consolidation of proceedings for two or more tracts.** Whenever two or more adjacent tracts taken as a whole ~~shall~~ adjoin ~~the~~ *a* city or town, ~~they~~ *the tracts* may be included in one resolution under ~~7-2-4321 through 7-2-4325~~ *this part*, although one or more of ~~said~~ *the* tracts taken alone may not be adjacent to the corporate limits as then existing."

**Section 7.** Section 7-2-4502, MCA, is amended to read:

"**7-2-4502. Protest not available.** ~~The~~ *Wholly surrounded* land is annexed, if so resolved *by the city or town council*, whether or not a majority of the real property owners of the area to be annexed object. *The question of annexing the wholly surrounded land is not subject to being voted on by the registered voters of the area to be annexed.*"

**Section 8.** Section 7-3-4101, MCA, is amended to read:

"**7-3-4101. Strong mayor form of municipal government.** (1) The qualified electors of any city or town in this state may, in the manner provided

HeinOnline -- 1997 vol. III 2585 1997

in ~~part 42 of~~ chapter 5, *part 42*, ~~cause~~ *adopt* an ordinance ~~to be adopted which has as its subject the~~ vesting ~~of~~ any or all of the following powers with the office of mayor of ~~such~~ *the* city or town:

(a) to appoint and remove, without consent of the council, all nonelective officers of the city or town;

(b) to exercise absolute control over all departments and divisions of the city or town created in this title or that may be created by the council;

(c) to appoint one or more administrative assistants to assist ~~him~~ in the direction of the operations of the various city departments and agencies;

(d) to be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in ~~part 42 of~~ chapter 6, *part 42*;

(e) to appoint a budget and finance director whose functions ~~shall~~ include the preparation of the annual municipal budget under the direction of the mayor.

(2) If any ordinance duly adopted in accordance with this section is in conflict with 7-4-4114, 7-4-4303, ~~through 7-4-4306~~ *7-4-4305*, 7-5-4102(1), 7-5-4122, 7-5-4205, and 7-5-4206, the provisions of this section ~~shall~~ prevail."

**Section 9.** Section 7-4-4303, MCA, is amended to read:

**"7-4-4303. Powers of mayor related to municipal officers, personnel, and citizens.** The mayor has power to:

(1) nominate and, with the consent of the council, appoint all nonelective officers of the city or town provided for by the council, except as provided in this title;

(2) suspend and, with the consent of the council, remove any nonelective officer, stating in the suspension or removal the cause ~~thereof~~ *for the removal*;

(3) supervise the discharge of official duty by all subordinate officers;

(4) require of any of the officers of a city or town an exhibit of ~~such~~ *the* officer's books and papers;

~~(5) call on every citizen of the city or town over the age of 18 years to aid in the enforcement of the laws and ordinances in case of riot;~~

~~(6)~~*(5) request that the governor* call out the militia to aid the mayor in suppressing riots or other disorderly conduct, preventing and extinguishing fires, securing the peace and safety of the city *or town*, or carrying into effect any law or ordinance."

**Section 10.** Section 7-4-4306, MCA, is amended to read:

**"7-4-4306. Extraterritorial powers.** The mayor has power to exercise ~~such~~ *the* power as may be vested in the mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations ~~thereof~~ *of the city or town. The board of county commissioners of the county affected by the ordinance and the local health board, if a local health board exists*

*in the area affected by the ordinance, shall approve the ordinance by a majority vote."*

**Section 11. Repealcr.** Sections 7-2-4321, 7-2-4322, 7-2-4323, 7-2-4324, and 7-4-4304, MCA, are repealed.

Approved May 1, 1997

# CHAPTER NO. 486

[HB 371]

AN ACT REPLACING THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM WITH THE FAMILIES ACHIEVING INDEPENDENCE IN MONTANA (FAIM) FINANCIAL ASSISTANCE PROGRAM; MAKING PROVISIONS REGARDING OVERPAYMENT OF PUBLIC ASSISTANCE APPLY TO RECIPIENT ERROR; REQUIRING RECIPIENTS TO NOTIFY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES REGARDING ANY CHANGE THAT MAY AFFECT ELIGIBILITY FOR PUBLIC ASSISTANCE; AMENDING PROVISIONS REGARDING THE FOOD STAMP PROGRAM; ALLOWING THE DEPARTMENT TO ADOPT RULES; REPLACING THE JOBS PROGRAM WITH AN EMPLOYMENT AND TRAINING PROGRAM; DELETING THE CHILD SUPPORT PASS-THROUGH PAYMENT OF UP TO $50 A MONTH; REVISING THE TERMS "DEPENDENT CHILD" AND "FAMILY" FOR PURPOSES OF THE FAIM FINANCIAL ASSISTANCE PROGRAM; ALLOWING ADMINISTRATION OF THE FAIM FINANCIAL ASSISTANCE PROGRAM TO VARY ACROSS THE STATE; REQUIRING MEMBERS OF INDIAN TRIBES PARTICIPATING IN THE FAIM FINANCIAL ASSISTANCE PROGRAM TO BE SUBJECT TO THE SAME RULES, POLICIES, AND REQUIREMENTS OF THE PROGRAM; REQUIRING THE DEPARTMENT TO ADOPT ADDITIONAL RULES FOR THE FAIM FINANCIAL ASSISTANCE PROGRAM, INCLUDING RULES FOR EXEMPTIONS FROM TIME LIMITS, FOR ALIENS, AND FOR TEENAGE PARENTS; REVISING ELIGIBILITY PROVISIONS; MAKING THE PROVISION OF CHILD-CARE ASSISTANCE DISCRETIONARY; PROVIDING THAT THE FAIM FINANCIAL ASSISTANCE PROGRAM IS NOT AN ENTITLEMENT; PROVIDING A 24-MONTH MAXIMUM FOR RECEIPT OF PATHWAYS ASSISTANCE FOR SINGLE-PARENT AND TWO-PARENT FAMILIES, SUBJECT TO A 60-MONTH LIMITATION; REMOVING THE REQUIREMENT FOR WORKERS' COMPENSATION COVERAGE FOR FAIM PROJECT RECIPIENTS; MAINTAINING ELIGIBILITY FOR BASIC MEDICAID FOR RECIPIENTS OF FAIM FINANCIAL ASSISTANCE AND UNDER OTHER CIRCUMSTANCES; AMENDING SECTIONS 23-1-303, 39-7-303, 40-4-215, 53-2-108, 53-2-109, 53-2-201, 53-2-211, 53-2-606, 53-2-610, 53-2-613, 53-2-901, 53-2-902, 53-2-903, 53-2-904, 53-2-1103, 53-2-1109, 53-4-201, 53-4-202, 53-4-211, 53-4-212, 53-4-214, 53-4-221, 53-4-231, 53-4-233, 53-4-241, 53-4-246, 53-4-247, 53-4-248, 53-4-601, 53-4-602, 53-4-603, 53-4-606, 53-4-607, 53-4-608, 53-4-609, 53-4-611, 53-4-612, 53-4-613, 53-4-701, 53-4-702, 53-4-703, 53-4-705, 53-4-706, 53-4-717, 53-6-101, 53-6-113, 53-6-131, AND 53-6-134, MCA; REPEALING SECTIONS 39-7-601, 39-7-602, 39-7-603, 39-7-604, 39-7-605, 39-7-606, 53-4-249, 53-4-707, 53-4-708, 53-4-715, 53-4-716, 53-4-718, AND

HeinOnline -- 1997 vol. III 2587 1997

53-4-720, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 23-1-303, MCA, is amended to read:

**"23-1-303. Powers and duties of the division.** The division, in cooperation with the department, may:

(1) hire a corps coordinator;

(2) coordinate with state agencies to place eligible participants in work experience projects, including those ~~state general assistance (GA) and federal aid to families with dependent children (AFDC)~~ recipients *of FAIM financial assistance, as defined in 53-2-902,* utilizing grant diversion funding and youth under state supervision utilizing payments from the department of public health and human services;

(3) develop and approve work experience projects that meet the requirements of this part;

(4) ensure that work experience projects involve labor-intensive improvements to public lands or facilities that will result in a public value and have a potential to yield revenue;

(5) execute contracts or cooperative agreements containing the terms and conditions necessary and desirable for the employment of crewleaders and corpsmembers in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

(6) execute contracts or cooperative agreements with federal, state, or local agencies, persons, partnerships, associations, or corporations for the purpose of administering the requirements of this part;

(7) develop procedures for awarding incentive vouchers;

(8) authorize use of the corps for emergency projects, including but not limited to natural disasters, fire prevention and suppression, and rescue of lost or injured persons, and provide adequate training to corpsmembers prior to participation in an emergency project;

(9) apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including the acceptance of federal funds appropriated by the legislature;

(10) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience projects; and

(11) adopt rules and guidelines necessary to implement the provisions of this part and to effectively administer the program."

**Section 2.** Section 39-7-303, MCA, is amended to read:

**"39-7-303. Definitions.** As used in this part, the following definitions apply:

HeinOnline -- 1997 vol. III 2588 1997

(1) "Adult" means a person who is 18 years of age or older.

(2) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(3) "Displaced homemaker" means an adult who:

(a) has worked as an adult primarily without remuneration to care for the home and family and for that reason has diminished marketable skills and who has been dependent on public assistance or on the income of a relative but is no longer supported by that income; or

(b) (i) is a parent whose youngest dependent child will become ineligible to receive *financial* assistance under the ~~program for aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-2-902,* pursuant to Title 53, chapter 4, part 2, within 2 years of the parent's application for displaced homemaker assistance;

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iii) meets the qualifications described in subsection (3)(a) or (3)(b) and is a criminal offender."

**Section 3.** Section 40-4-215, MCA, is amended to read:

**"40-4-215. Investigations and reports.** (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian requests, the court may order an investigation and report concerning custodial arrangements for the child. The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-2-902,* food stamps, or public assistance and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order.

(2) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian. The child's consent must be obtained if the child has reached the age of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and

HeinOnline -- 1997 vol. III 2589 1997

the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing."

**Section 4.** Section 53-2-108, MCA, is amended to read:

**"53-2-108. Overpayment of assistance — civil penalty when fraud.** (1) If, due to department *or recipient* error, a recipient receives public assistance for which ~~he~~ *the recipient* is not eligible, the portion of payment that ~~he~~ *the recipient* is not entitled to receive ~~shall~~ *may* be returned at the discretion of the department.

(2) If a person obtains any part of an assistance payment through fraudulent means as specified in 53-2-107, 125% of the amount of assistance to which the person was not entitled ~~shall~~ *must* be repaid and, until fully paid, is a debt due the state."

**Section 5.** Section 53-2-109, MCA, is amended to read:

**"53-2-109. Recipients to report ~~income not previously declared~~ *changes in factors affecting eligibility.*** Recipients of public assistance shall notify the department ~~within 10 days of the receipt of any income or resources not previously declared to the department~~ *of any change or anticipated change in income, resources, household composition, or other factor that may affect eligibility for public assistance or the benefit amount within the period of time specified by the department by rule.* Failure of the department to verify information provided by the recipient does not absolve the recipient from ~~his~~ *the* obligation to provide accurate information to the department."

**Section 6.** Section 53-2-201, MCA, is amended to read:

**"53-2-201. Powers and duties of department.** (1) The department shall:

(a) administer and supervise public assistance, including the provision of food stamps, food commodities, ~~aid to families with dependent children,~~ *FAIM financial assistance, as defined in 53-2-902,* energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, ~~and~~ medical care payments in behalf of recipients of public assistance, *employment and training services for recipients of public assistance, and other programs as necessary to strengthen and preserve families*;

(b) give consultant service to private institutions providing care for the needy, *and* indigent, handicapped, or dependent adults;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

HeinOnline -- 1997 vol. III 2590 1997

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; ~~and~~

(g) make rules governing payment for services and supplies provided to recipients of public assistance; *and*

*(h) adopt rules regarding assignment of monetary and medical support upon application for FAIM financial assistance, as defined in 53-2-902, and related medical assistance.*

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property ~~which~~ *that* is necessary to carry out its public assistance functions. Title to property obtained under this subsection must be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

**Section 7.** Section 53-2-211, MCA, is amended to read:

**"53-2-211. Department to share eligibility data.** (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-2-902*, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program of the state and for no other purpose.

(2) The department shall make available to the unemployment compensation and the workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance, *and* weatherization~~, and general relief~~. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs of the state *and for no other purpose.*

HeinOnline -- 1997 vol. III 2591 1997

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-303(8)(c).

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

(4) The department may, to the extent permitted by federal law, make available to an agency of the state or to any other organization information contained in its files and records pertaining to the eligibility of persons for medicaid, ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-2-902*, food stamps, low-income energy assistance, weatherization, or other public assistance. The information may be disclosed only for purposes directly connected with the administration of a program or purpose of the agency and may not be used by the agency for any other purpose."

**Section 8.** Section 53-2-606, MCA, is amended to read:

**"53-2-606. Right of appeal.** (1) If an application for assistance for food stamps, ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-2-902*, or medicaid is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, the applicant or recipient may appeal to the board of public assistance for a fair hearing by addressing a request for a hearing to the department of public health and human services. The board of public assistance shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing.

(2) The department may upon its own motion review any decision of a county welfare board and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing of the decision. The department may have an additional investigation made and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title.

(3) If the department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the board of public assistance.

(4) All decisions of the department or the board of public assistance are final and are binding and must be complied with by the county department."

**Section 9.** Section 53-2-610, MCA, is amended to read:

**"53-2-610. County to reimburse department.** (1) On or before the 20th of each month, the department ~~of public health and human services~~ shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month.

HeinOnline -- 1997 vol. III 2592 1997

The county department shall make the reimbursement to the department ~~of public health and human services~~ within 20 days after the claim is presented.

(2) The counties may not be required to reimburse the department ~~of public health and human services~~ for:

(a) any portion of public assistance paid to a household eligible for ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-2-902,* if the household includes an enrolled Indian who is the caretaker relative of a needy dependent child; or

(b) any payment on behalf of any person in a state-operated medical institution.

(3) (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing bome or hospital, foster home, or private charitable institution are the financial responsibility of the appropriate county as provided in subsections (3)(b) through (3)(d).

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except ~~where~~ *when a* court decree declares the residency to be otberwise. When an adult is transferred from a facility or institution to one of tbe facilities listed in subsection (3)(a), the county tbat initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case tbe county in which the facility is located is considered the county of financial responsibility.

(c) In all cases in which a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If tlie custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, the porson may determine the county of residence when the person is restored to competency and released. The person becomes the financial responsibility of the new county of residence."

**Section 10.** Section 53-2-613, MCA, is amended to read:

**"53-2-613. Application for assistance — assignment of support rights.** (1) Applications for public assistance, including but not limited to ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-2-902,* and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application must be submitted, in tbe manner and form prescribed by tbe department ~~of public health and human services~~, and must contain information required by the department ~~of public health and human services~~.

(2) A person ~~by signing~~ *who signs* an application for ~~public assistance~~ *FAIM financial assistance, as defined in 53-2-902, or related medical assistance* assigns to the state, to the department ~~of public health and human services~~, and to the county welfare department all rights that the applicant may have to *monetary*

*and medical* support ~~and medical payments~~ from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made. *A person who signs an application for public assistance other than FAIM financial assistance, as defined in 53-2-902, or related medical assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the department, and to the county welfare department all rights that the applicant may have to monetary and medical support from any other person in the applicant's own behalf or on behalf of any other family member for whom application is made.*

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a child support or spousal support obligation is assigned to the department ~~of public health and human services~~ pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimhurse public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department."

**Section 11.** Section 53-2-901, MCA, is amended to read:

HeinOnline -- 1997 vol. III 2594 1997

**"53-2-901. Administration of food stamp program — rulemaking authority.** (1) The department is authorized to administer the food stamp program *in compliance with all federal laws and requirements.*

(2) The department shall adopt rules that are necessary and desirable for the administration of the food stamp program.

(3) The department shall adopt rules that may include but are not limited to rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amount;

(c) ~~certification periods~~ *periodic redetermination of eligibility*;

(d) reporting requirements;

(e) work registration, employment, and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, for voluntarily quitting a job without good cause, or for any other violation of program rules; and

(h) ponalties applicable to recipients of ~~aid to families with dependent children~~ *FAIM financial assistance* who have been sanctioned because of failure to meet any requirement of ~~the aid to families with dependent children~~ *that* program.

*(4) The department may adopt rules that include but are not limited to rules concerning:*

*(a) requirements for recipients to assign the right of support;*

*(b) requirements for recipients to cooperate with the state agency administering the child support enforcement program established under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.; and*

*(c) disqualification for failure to perform actions required by other means-tested programs, for failure to cooperate with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq., or for failure to pay court-ordered child support as provided in sections 819, 822, and 823 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 7 U.S.C. 2015."*

**Section 12.** Section 53-2-902, MCA, is amended to read:

**"53-2-902. Definitions.** As used in this part, the following definitions apply:

~~(1) "Child support pass-through payments" means child support received for a dependent child or children in a family receiving aid to families with dependent children, up to $50 a month, that is paid or "passed through" to the family pursuant to section 402 of the Social Security Act, 42 U.S.C. 602(a)(8)(A)(vi).~~

~~(2)~~*(1)* "Department" means the department of public health and human services provided in Title 2, chapter 15, part 22.

~~(3)~~*(2)* "Employment and training demonstration project" means the employment and training program for recipients of ~~aid to families with dependent children~~ *FAIM financial assistance* who are participating in the FAIM project.

*(3) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash, services, and noncash assistance.*

~~(4)~~*(4)* "FAIM project" means the families achieving independence in Montana project, including the ~~aid to families with dependent children~~ *FAIM financial assistance* part established in 53-4-603, a food stamp part administered pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

~~(5)~~*(5)* "Food stamp program" means the provision of ~~coupons~~ *food stamp benefits* that can be used to purchase food to low-income persons pursuant to the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq.

~~(6) "JOBS program" means the job opportunities and basic skills training program for recipients of aid to families with dependent children that is conducted in accordance with the requirements of section 201 of the federal Family Support Act of 1988, 42 U.S.C. 602(a)(19), 681 through 686.~~"

**Section 13.** Section 53-2-903, MCA, is amended to read:

"**53-2-903. Employment and training program.** The department shall establish and administer an employment and training program for food stamp recipients that is in compliance with federal requirements. For purposes of the FAIM project, ~~if~~ *in accordance with* waivers of federal law *that* are granted by the food and ~~nutrition~~ *consumer* service of the U.S. department of agriculture, the department may merge its food stamp program employment and training program with its ~~JOBS~~ *FAIM financial assistance employment and training* program or may modify the rules and requirements of the food stamp program employment and training program as necessary to make them consistent with those of the employment and training demonstration project."

**Section 14.** Section 53-2-904, MCA, is amended to read:

"**53-2-904. Income and resource exclusions — FAIM participants.** ~~If~~ *In accordance with* waivers of federal law *that* are granted by the food and ~~nutrition~~ *consumer* service of the U.S. department of agriculture, the department may by rule establish special income and resource exclusions to be applied to participants of the FAIM project in determining their eligibility for food stamps and in determining the benefit amount. Exclusions that may be established include but are not limited to exclusions for one-time only cash payments for special employment-related needs as provided in 53-4-603 ~~and child support pass-through payments of up to $50 a month~~ in determining the recipients' eligibility for food stamps and determining the benefit amount."

**Section 15.** Section 53-2-1103, MCA, is amended to read:

HeinOnline -- 1997 vol. III 2596 1997

**"53-2-1103. Definitions.** For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Economically disadvantaged person" has the same meaning as provided in section 4 of the Job Training Partnership Act (29 U.S.C. 1503).

(2) "Job Training Partnership Act" means the federal Job Training Partnership Act, Public Law 97-300 (29 U.S.C. 1501, et seq.), as amended.

(3) "Job training plan" means the plan for providing services and training in a service delivery area, as required in 53-2-1107.

(4) "Program" means the program created by 53-2-1104 to implement the provisions of Title II-A of the Job Training Partnership Act.

(5) "Program year" means the fiscal year beginning on July 1 of the year for which an appropriation is made for the program established under this part, as provided in section 161 of the Job Training Partnership Act (29 U.S.C. 1571).

(6) "Public assistance program" means the state program of ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-2-902.*

(7) "Service delivery area" means an area designated as provided in section 101 of the Job Training Partnership Act (29 U.S.C. 1511)."

**Section 16.** Section 53-2-1109, MCA, is amended to read:

**"53-2-1109. Coordination of services.** The state job training coordinating council shall identify, in coordination with the appropriate state and local agencies, the employment, training, and vocational education needs throughout the state and assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other federal, state, and local programs and services represent a consistent, integrated, and coordinated approach to meeting such needs. In carrying out this coordinating function, the council shall consider state policy set forth in 2-15-101 to eliminate overlapping and duplication of services within state government and in accordance with the provisions of section 121 of the Job Training Partnership Act (29 U.S.C. 1531) and other employment and training programs, including:

~~(1) programs operated under the federal Family Support Act of 1988; and~~

~~(2)~~ programs and services of public assistance agencies."

**Section 17.** Section 53-4-201, MCA, is amended to read:

**"53-4-201. Definitions.** As used in part 6 and this part, the following definitions apply:

~~(1) The term "aid to families with dependent children" means money payments made on behalf of a dependent child pursuant to Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.) and may include payments to meet the needs of a specified caretaker relative with whom the dependent child is living. The term also includes emergency assistance to families with children as provided by the federal Social Security Act.~~

HeinOnline -- 1997 vol. III 2597 1997

~~(2)~~*(1)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~*(2) (a)* ~~(a) The term "dependent~~ *"Dependent* child", for public assistance purposes, means~~:~~*:*

~~(i)~~*(i)* a child under ~~the age of~~ 18 *years of age~~; or~~; or*

~~(ii) a person under the age of 19 who is a student under the regulations prescribed by the department.~~

~~(b) The child described in subsection (3)(a)(i) or (3)(a)(ii) must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent and be living with a specified caretaker relative, as defined in rules adopted by the department~~

*(ii) a person under 19 years of age who is a student, as defined by the department by rule.*

*(b) The person described in subsection (2)(a)(i) or (2)(a)(ii) must be living with a specified caretaker relative, as defined by the department by rule.*

*(3) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash, services, and noncash assistance.*

~~(4)~~*(4)* "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

*(5) "Family" means a group of people who live with a dependent child, each of whom is related to the dependent child by blood, marriage, or adoption or by law, such as:*

*(a) a parent, including a natural or adoptive parent, a stepparent, or a person considered by law to be a parent in the case of a child conceived by artificial insemination; or*

*(b) a sibling.*

~~(5)~~*(6)* "Federal poverty level" means the measure of indigence established annually by the U.S. office of management and budget.

~~(5)~~*(7)* "Public assistance" or "assistance" means a type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

~~(7)~~*(8)* "Specified caretaker relative" means a person within a degree of kinship to the dependent child, as specified by department rule, who lives with the child and exercises care and control over the child.

*(9) "State plan" means the policies and procedures governing the state of Montana's FAIM financial assistance program and other programs funded by temporary assistance for needy families. It is prepared by the department and certified by the federal agency that provides funding for those programs.*

HeinOnline -- 1997 vol. III 2598 1997

*(10) "Temporary assistance for needy families" means the federal block grant that funds FAIM financial assistance and other programs to strengthen and preserve families pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996."*

**Section 18.** Section 53-4-202, MCA, is amended to read:

**"53-4-202. ~~Aid to families with dependent children~~ *FAIM financial assistance* to be in effect in all counties.** *(1)* It is mandatory and required that the state plan and ~~operation of aid to families with dependent children~~ *programs described in the state plan* must be in effect in each county of the state~~, and the administration and supervision of aid to families with dependent children must be uniform throughout the counties of the state. However, the~~.

*(2) It is not required that the programs funded under the temporary assistance for needy families block grant be uniformly administered in each county of the state, provided that it is administered in accordance with all requirements of the state plan and federal law. The* department may *also* administer demonstration programs pursuant to section 1115 of the ~~federal~~ Social Security Act, 42 U.S.C. 1315, or any other provision of that act that permits the states to administer experimental, pilot, or demonstration projects.

*(3) An enrolled member of an Indian tribe participating in a program that is funded by the temporary assistance for needy families block grant administered by the state of Montana must be subject to the same rules, policies, and requirements as all other applicants for and recipients of benefits funded by the temporary assistance for needy families block grant."*

**Section 19.** Section 53-4-211, MCA, is amended to read:

**"53-4-211. Administration of ~~aid to families with dependent children~~ *programs funded under temporary assistance for needy families block grant.*** *(1)* The department is ~~hereby~~ authorized and is charged with the general administration and supervision of ~~aid to families with dependent children~~ *programs funded under the temporary assistance for needy families block grant* under the powers, duties, and functions as prescribed in chapter 2 of this title.

*(2) The state of Montana shall maintain a fiscal effort equivalent to at least 80% of the federally calculated maintenance of effort necessary to draw down the temporary assistance to needy families block grant."*

**Section 20.** Section 53-4-212, MCA, is amended to read:

**"53-4-212. Department to make rules.** (1) The department shall make rules and take action as necessary or desirable for the administration of the ~~aid to families with dependent children~~ *FAIM financial assistance program and other programs funded under the temporary assistance for needy families* ~~program, including the FAIM project~~ *block grant.*

(2) The department shall adopt rules that may include but are not limited to rules concerning:

HeinOnline -- 1997 vol. III 2599 1997

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance and methods for computing benefit amounts;

~~(c) what constitutes deprivation of parental support or care sufficient to qualify a child as dependent;~~

~~(d)~~*(c)* the degree of kinship required for a person to qualify as a specified caretaker relative in order to be eligible for assistance;

~~(e)~~*(d) procedures and policies for employment and training programs,* requirements for participation in ~~the JOBS program~~ *employment and training programs,* and exemptions, *if any,* from ~~those~~ *participation* requirements;

~~(f) procedures and policies of the JOBS program;~~

~~(g) special requirements or criteria applicable to participants in the FAIM project, such as:~~

~~(i) community service~~

*(e)* requirements for specified caretaker relatives participating in the community services program, including the number of hours of community service work per month and other terms of performance;

~~(ii)~~*(f)* eligibility for and terms and conditions of child-care assistance for FAIM project participants, including maximum amounts of assistance payable and amounts of copayments required by specified caretaker relatives;

~~(iii)~~*(g)* maximum amounts of one-time only cash payments for special employment-related needs and the length of time that a family is required to remain off cash assistance after a payment is received;

~~(iv)~~*(h)* exemptions from time limits in pathways *and the community services program*;

~~(v)~~*(i)* terms of a specified caretaker relative's *or other family member's* ineligibility for assistance because of failure to enter into a family investment agreement or to comply with the ~~specified caretaker relative's~~ *individual's* obligations under the agreement, including the length of the period of ineligibility;

~~(vi)~~*(j)* requirements, if any, for participation in and exemptions from participation in and procedures and policies of the employment and training demonstration project; ~~and~~

~~(vii)~~*(k)* eligibility for and terms and conditions of extended child-care and medical assistance benefits;

~~(h)~~*(l)* reporting requirements; ~~and~~

~~(i)~~*(m)* sanctions, disqualification, or other penalties for failure to comply with the program rules or requirements;

*(n) exemptions from the 60-month limitation on assistance provided in 53-4-231 based on hardship or for families that include an individual who has been battered or subjected to extreme cruelty, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, including but not limited to the duration of the exemption;*

*(o) individuals who must be included as members of an assistance unit;*

*(p) categories of aliens who may receive assistance, if any;*

*(q) requirements relating to the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;*

*(r) requirements for eligibility and other terms and conditions of other programs to strengthen and preserve families;*

*(s) special eligibility or participation requirements applicable to teenage parents, if any; and*

*(t) conditions under which assistance may be continued when a dependent child is temporarily absent from the home and the length of time for which assistance may be continued.*"

**Section 21.** Section 53-4-214, MCA, is amended to read:

"**53-4-214. Distribution of copies of law and forms by department.** The department shall have printed and *shall* distribute copies of this part to all county welfare departments and shall prescribe the form of and print and supply to the county welfare department ~~blanks~~ of applications, reports, and ~~such~~ other forms ~~as~~ *that* may be necessary in relation to ~~aid to families with dependent children~~ *the FAIM financial assistance and other programs funded under the temporary assistance for needy families block grant*."

**Section 22.** Section 53-4-221, MCA, is amended to read:

"**53-4-221. County department charged with local administration.** The county department of public welfare ~~shall be~~ *is* charged with the local administration and supervision of ~~aid to families with dependent children~~ *programs funded under the temporary assistance for needy families block grant*, subject to the powers, duties, and functions prescribed for the county department in chapter 2 of this title."

**Section 23.** Section 53-4-231, MCA, is amended to read:

"**53-4-231. Eligibility.** (1) ~~Assistance shall~~ *Subject to the provisions of subsections (2) through (5), assistance may* be granted under this part to ~~any dependent child, as defined in 53-4-201, who is in need of such assistance.~~:

*(a) a dependent child;*

*(b) a specified caretaker relative or relatives, including but is not limited to the natural or adoptive parents of a dependent child;*

*(c) the stepparent of a dependent child who lives with the child and the child's natural or adoptive parent;*

HeinOnline -- 1997 vol. III 2601 1997

*(d) persons under 18 years of age who live in the home with a dependent child, including but not limited to siblings related to the dependent child by blood, marriage, or adoption or by law;*

~~(2)~~*(e)* ~~Aid to families with dependent children assistance payments may be made to~~ a needy pregnant woman with no other children *who is* receiving ~~such~~ payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

~~(3) Aid to families with dependent children shall be granted to or for the care of children of unemployed parents who would not otherwise be entitled to such aid because the child is living in the home with both parents. The department may adopt rules to administer the grant of assistance to children of unemployed parents pursuant to Title IV, section 407, of the federal Social Security Act (42 U.S.C. 607), as amended.~~

*(2) Persons who are not citizens of the United States are eligible for assistance only as provided in sections 401 through 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as codified in Title 8 of the United States Code.*

*(3) The following are not eligible for assistance:*

*(a) persons who are receiving supplemental security income payments under the Social Security Act;*

*(b) a dependent child who is or is expected to be absent from the home of the specified caretaker relative continuously for a period of time prescribed by the department by rule;*

*(c) a specified caretaker relative who fails to comply with requirements for reporting the absence of a dependent child from the specified caretaker relative's home as prescribed by the department by rule;*

*(d) families in which the specified caretaker relative fails or refuses to assign child and medical support rights to the department or to cooperate in establishing paternity or obtaining child or medical support as required by the department by rule;*

*(e) teenage parents who fail or refuse to attend secondary school or another training program as required by the department by rule;*

*(f) teenage parents who are not living in an adult-supervised setting as defined by the department by rule;*

*(g) a fugitive felon or probation or parole violator as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608;*

*(h) individuals who have fraudulently misrepresented their place of residence, as defined in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608, for a period of 10 years beginning on the date of conviction; and*

*(i) an individual convicted after August 22, 1996, of any offense that is classified as a felony and that has as an element the possession, use, or distribution*

HeinOnline -- 1997 vol. III 2602 1997

*of a controlled substance as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6).*

*(4) A family is not eligible for assistance if the family includes an adult who has received assistance in a program funded under the temporary assistance for needy families block grant in any state or states for 60 months or more, whether or not the months are consecutive, except as provided by the department by rule in accordance with section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608.*

*(5) This part may not be interpreted to entitle any individual or family to assistance under programs funded by the temporary assistance for ncedy families block grant."*

**Section 24.** Section 53-4-233, MCA, is amended to read:

**"53-4-233. Investigation of applications.** Whenever a county department receives an application for assistanco under this part, an investigation ~~shall~~ *must* be promptly made~~. The investigation of each application for aid to families with dependent children shall be conducted~~ by the county department of public welfare. Each applicant ~~shall~~ *must* be informed of ~~his~~ *the applicant's* right to a fair hearing and of the confidential nature of information secured ~~with regard to his circumstances~~. Upon completion of an investigation, aid ~~shall~~ *must* be furnished promptly to all eligible persons. Each applicant ~~shall~~ *must* receive written notice of the decision concerning ~~his application~~ *the applicant's request for assistance.*"

**Section 25.** Section 53-4-241, MCA, is amended to read:

**"53-4-241. Amount of assistance determined by department rules.** The amount of ~~aid to families with dependent children~~ *FAIM financial assistance* granted in any case~~, including cases in which the recipient is participating in the FAIM project,~~ must be determined according to the rules and standards of assistance established by the department~~, as required by the federal Social Security Act~~."

**Section 26.** Section 53-4-246, MCA, is amended to read:

**"53-4-246. County share of participation.** Each county where the recipient of ~~aid to families with dependent children~~ *FAIM financial assistance* resides shall reimburse tbe department ~~of public health and human services~~ in tbe amount ~~of 22.5%~~ *equal to the percentage* of tbe approved ~~aid to families with dependent children~~ *temporary assistance for needy families* grants, exclusive of the federal share. *However, a county may not be required to pay more than the amount appropriated to the department by the legislature for the state maintenance of effort for the temporary assistance for needy families block grant.*"

**Section 27.** Section 53-4-246, MCA, is amended to read:

**"53-4-246. County share of participation.** Each county where the recipient of ~~aid to families with dependent children~~ *FAIM financial assistance* resides shall reimburse the department ~~of public health and human services~~ in the amount ~~of 22.5%~~ *equal to the percentage* of the approved ~~aid to families with dependent children~~ *temporary assistance for needy families* grants~~, exclusive of the~~ *not paid with* federal ~~share~~ *temporary assistance for needy families funds.*"

HeinOnline -- 1997 vol. III 2603 1997

**Section 28.** Section 53-4-247, MCA, is amended to read:

**"53-4-247. County liability when recipient moves to another county.** A recipient of ~~aid to families with dependent children~~ *FAIM financial assistance* who moves to another county in the state shall continue to receive assistance. The county that the recipient moves to ~~shall~~ *must* be charged by the department for the county share of assistance. The county that a recipient moves from shall notify the county that the recipient moves to."

**Section 29.** Section 53-4-248, MCA, is amended to read:

**"53-4-248. Parents liable to department for ~~aid to families with dependent children~~ *public assistance* payments.** (1) A payment of public assistance money made to or for the benefit of a dependent child creates a debt due and owing to the department by the natural or adoptive parents who are legally responsible for the support of the child by statute or court decree in an amount equal to the amount of public assistance paid. However, where the support obligation is based upon a court decree, the debt is limited to the amount of the court decree.

(2) The department is subrogated to the right of the child or person having the care, custody, and control of the child to prosecute any support action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of *any* money ~~thus~~ expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department is subrogated to the debt created by the order and the money judgment is in favor of the department. ~~No~~ *An* obligee may *not* commence an action to recover support due and owing to ~~him~~ *the obligee* without first filing an affidavit with the court stating whether ~~he~~ *the obligee* has received public assistance from any source and, if ~~he~~ *the obligee* has received public assistance, that ~~he~~ *the obligee* has notified the department in writing of the pending action.

(3) ~~In no case may a~~ *A* debt arising under this section *may not* be incurred by or collected from a parent or other person while ~~he~~ *the parent or other person* is the recipient of public assistance money for the benefit of minor dependent children.

(4) The remedies ~~herein~~ provided *in this section* are in addition to and not in lieu of existing common law and statutory law.

(5) The department or its legal representatives may, at any time consistent with the income, earning capacity, and resources of the debtor, petition the court having jurisdiction over the particular case to set or reset a level and schedule of payments to be paid upon the debt."

**Section 30.** Section 53-4-601, MCA, is amended to read:

**"53-4-601. Demonstration project — purpose.** (1) The department is authorized to administer a demonstration project pursuant to section 1115 of the Social Security Act, 42 U.S.C. 1315, to provide assistance under Title IV of that act, 42 U.S.C. 601, et seq., to families who are currently receiving, eligible for, or at risk of becoming eligible for ~~aid to families with dependent children benefits~~ *FAIM financial assistance*. This demonstration project may be cited as the families achieving independence in Montana (FAIM) project.

HeinOnline -- 1997 vol. III 2604 1997

(2) The purpose of the demonstration project is to promote self-sufficiency and responsibility of participants by providing supports and incentives, such as child-care assistance, training, education, medical assistance, and resource referrals, and to make procedures and requirements less complex and more uniform in the ~~aid to families with dependent children~~ *FAIM financial assistance*, food stamp, and medicaid programs."

**Section 31.** Section 53-4-602, MCA, is amended to read:

"**53-4-602. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Cash assistance" means monetary payments to a recipient of ~~aid to families with dependent children~~ *FAIM financial assistance* to meet basic needs, such as shelter, utilities, clothing, and personal needs.

(2) "Child-care assistance" means payments to or on behalf of the specified caretaker relative of a dependent child to defray the cost of having a third party care for the child.

(3) "Department" means tbe department of public health and human services provided for in 2-15-2201.

(4) "FAIM project" means the families achieving independence in Montana project, including ~~an aid to families with dependent children~~ *a FAIM financial assistance* part established in 53-4-603, a food stamp part administered under the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

~~(5) "JOBS program" means the job opportunities and basic skills training program established in 53-4-703.~~"

**Section 32.** Section 53-4-603, MCA, is amended to read:

"**53-4-603. FAIM project — components.** (1) The ~~aid to families with dependent children~~ *FAIM financial assistance* part of the FAIM project consists of three components referred to as the job supplement program, pathways, and the community services program.

(2) The job supplement program is an alternative to the components of the FAIM project tbat provide cash assistance. An eligible family may receive assistance under the job supplement program instead of receiving assistance under pathways or the community services program or may receive assistance under the job supplement program either prior to or after receiving assistance under pathways or the community services program.

(3) Services that may be provided to eligible individuals in the job supplement program include:

(a) full medicaid benefits for dependent children, as provided in 53-6-101, and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, ~~if~~ *pursuant to* waivers of federal law *that* are granted by the secretary of tbe U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

HeinOnline -- 1997 vol. III 2605 1997

(b) child-care assistance, as provided in 53-4-611 and as specified by the department by rule;

(c) assistance in obtaining child support; and

(d) a one-time only cash payment to meet special employment-related needs of the family. In order to receive a one-time cash payment, the family is required to agree not to ~~apply for or~~ receive cash assistance for a period of time based on the size of the one-time cash payment received.

(4) (a) Pathways may provide eligible individuals with job training and education; resource referrals; assistance in obtaining child support; one-time cash payments for special employment-related needs; child-care assistance, as provided in 53-4-611 and as specified by department rule; cash assistance payments; *supportive services, if funding is available;* full medicaid benefits for dependent children, as provided in 53-6-101; and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, ~~if~~ *pursuant to* waivers of federal law *that* are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(b) A specified caretaker relative in *either* a single-parent family *or a two-parent family* may receive assistance under pathways for a maximum of 24 months, *subject to the time limitation on assistance provided in 53-4-231*. The 24 months do not need to be consecutive.

~~(c) Specified caretaker relatives in a two-parent family may receive assistance under pathways for a maximum of 18 months. The 18 months do not need to be consecutive.~~

(5) *(a)* In the community services program, a specified caretaker relative who has received ~~the maximum number of~~ *24* months of assistance ~~allowable~~ under pathways may continue to receive assistance for the specified caretaker relative's needs *for an additional 36 months or longer period, as specified by department rule,* if the specified caretaker relative performs community service work as required by the department, *subject to the time limitation on assistance provided in 53-4-231.*

*(b)* A specified caretaker relative who performs community service work as required is entitled to cash assistance for the specified caretaker relative's needs and basic medicaid benefits, as provided in 53-6-101, ~~if~~ *pursuant to* waivers of federal law *that* are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

*(c)* Job training and education, resource referrals, and assistance in obtaining child support may also be provided if determined by the department to be appropriate. Child-care assistance may be provided *to participants in the community services program* as set forth in 53-4-611 and as specified by department rule.

(6) Failure of a caretaker relative to participate in community service work as required must result in the needs of the specified caretaker relative being removed from the cash assistance payment.

HeinOnline -- 1997 vol. III 2606 1997

(7) A dependent child who meets all eligibility requirements for ~~aid to families with dependent children may receive assistance under any component of the FAIM project without any time limits.~~ *FAIM financial assistance is not subject to the time limits on assistance in pathways and the community services program that are provided for specified caretaker relatives in this section. However, a dependent child may be ineligible for FAIM financial assistance because of the 60-month limitation on assistance provided in 53-4-231.*

~~(8) The department shall furnish workers' compensation coverage, as provided in 39-71-118, for recipients in any component of the FAIM project who perform community service work or who participate in a work experience program.~~"

**Section 33.** Section 53-4-606, MCA, is amended to read:

"**53-4-606. Requirements for eligibility.** (1) Eligibility for ~~aid to families with dependent children benefits~~ *FAIM financial assistance* under the FAIM project with regard to income, resources, and all other factors of eligibility must be determined in accordance with the waivers granted by the U.S. secretary of health and human services under section 1115 of the Social Security Act, 42 U.S.C. 1315.

~~(2) If waivers of federal law are granted by the secretary of the U.S. department of health and human services, two-parent families applying for or receiving aid to families with dependent children benefits under the FAIM project based on the unemployment of one parent may not be required to meet the special eligibility requirements of section 407 of the Social Security Act, 42 U.S.C. 607.~~

~~(3)~~*(2)* (a) As a condition of eligibility for assistance under pathways and the community services program, all specified caretaker relatives *and other family members, as specified by the department by rule,* shall enter into a family investment agreement with the department and shall comply with the terms of that agreement. Entering into an agreement is not a condition of eligibility for the job supplement program.

(b) The family investment agreement must set forth the mutual obligations of the ~~specified caretaker relative~~ *participant* and the department to help the family achieve the goal of self-sufficiency. The agreement may contain provisions:

(i) regarding actions to be taken by the specified caretaker relative and by the department to secure child support;

(ii) requiring that the immunization and health-screening requirements of the early and periodic screening, diagnosis, and treatment program be met for all children in the family; and

(iii) specifying other services and activities appropriate for the ~~specified caretaker relative~~ *participant* or family.

(c) An individual who is required to enter into a family investment agreement and who fails without good cause to do so or fails without good cause to comply with the individual's obligations under the agreement is ineligible, as provided in 53-4-608, for ~~aid to families with dependent children~~ *FAIM financial assistance* ~~benefits~~.

HeinOnline -- 1997 vol. III 2607 1997

~~(4)~~*(3)* As a condition of eligibility for the community service program, a specified caretaker relative shall perform community service work as required by the department."

**Section 34.** Section 53-4-607, MCA, is amended to read:

**"53-4-607. Exemptions from time limitations in pathways *and community services program*.** (1) Recipients of ~~aid to families with dependent children~~ *FAIM financial assistance* under the FAIM project may he exempted from the time limitations on assistance under pathways *and the community services program* contained in 53-4-603 as provided by the department by rule.

(2) In establishing categories of individuals who are exempt from the time limitations on assistance under pathways, the department may take into consideration factors that may delay an individual's attainment of self-sufficiency, including hut not limited to the following:

(a) The individual has a verifiable illness, injury, or physical or mental impairment, handicap, or disability.

(b) The individual is of advanced age.

(c) The individual does not have *necessary state-paid* child care available.

(d) The individual is attending high school or is working toward a graduate equivalency diploma, if the individual is under ~~20~~ *18* years of age.

(e) The individual is the parent of a child under 1 year of age.

(f) The individual is providing care to a household member with a disahility who requires special care.

(g) The individual is a teenage parent *receiving assistance in the individual's own name and* participating in activities pursuant to a family investment agreement.

(h) The department failed to substantially comply with its obligations under the family investment agreement.

(i) ~~The individual is a homeless person.~~

~~(j)~~ The individual is a victim of domestic violence *as defined by the department by rule*."

**Section 35.** Section 53-4-608, MCA, is amended to read:

**"53-4-608. ~~Ineligibility because of~~ *Results of* failure to comply with terms of agreement.** If an individual is required to enter into a family investment agreement pursuant to 53-4-606 and fails without good cause ~~either~~ to enter into an agreement ~~or~~, *the individual is ineligible for FAIM financial assistance. If an individual is required to enter into a family investment agreement pursuant to 53-4-606 and fails without good cause* te comply with the individual's obligations under the agreement, the individual ~~is ineligible for aid to families with dependent children benefits~~ *must be sanctioned for a period of time specified by the department by rule* and the needs of the individual may not be taken into consideration in determining the assistance unit's amount of cash assistance.

HeinOnline -- 1997 vol. III 2608 1997

However, the family of ~~an ineligible~~ *a sanctioned* individual is entitled to assistance for its own needs if it is otherwise eligible. The income and resources of the individual must be considered in determining the family's eligibility for assistance during the period ~~of ineligibility~~ *that the individual is sanctioned.*"

**Section 36.** Section 53-4-609, MCA, is amended to read:

"**53-4-609. Categorical eligibility for other assistance.** ~~All recipients~~ *Recipients* of ~~aid to families with dependent children~~ *FAIM financial assistance* under a component of the FAIM project are *not* categorically eligible for food stamp benefits and the low-income energy assistance program~~, regardless of whether they would otherwise meet~~ *but are eligible only if they satisfy* all the eligibility requirements for those programs~~, unless otherwise prohibited by federal law~~."

**Section 37.** Section 53-4-611, MCA, is amended to read:

"**53-4-611. Child-care assistance.** (1) In the job supplement program component of the FAIM project, the department ~~shall~~ *may* provide child-care assistance to all single-parent families if child care is necessary to allow the parent to engage in paid employment *and if funding is available.* Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both parents to engage in paid employment *and if funding is available.*

(2) In the pathways component of the FAIM project, the department ~~shall~~ *may* provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement *and if funding is available.* ~~However, child-care assistance for single-parent families to enable the parent to participate in postsecondary education is not guaranteed and may be provided only if funding is available.~~ Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement *and if funding is available.*

(3) In the community services program component of the FAIM project, the department ~~shall~~ *may* provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement *and if funding is available.* Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement *and if funding is available.*"

**Section 38.** Section 53-4-612, MCA, is amended to read:

"**53-4-612. Extended child care and medical assistance benefits.** A family receiving ~~aid to families with dependent children~~ *FAIM financial assistance* ~~benefits~~ under a component of the FAIM project that loses eligibility for assistance because of increased income from any source may receive extended ~~child care and~~ medical assistance benefits if funding is available, provided that the family's income does not exceed a percentage of the federal poverty level

HeinOnline -- 1997 vol. III 2609 1997

specified by the department by rule, *and may receive child-care assistance pursuant to 53-4-611 if funding is available.*"

**Section 39.** Section 53-4-613, MCA, is amended to read:

"**53-4-613. ~~JOBS program~~ *Employment and training program.*** ~~(1)~~ In cases in which the department determines that participation in the ~~JOBS program~~ *employment and training program* would he appropriate for a participant in pathways, the participant may be required to participate in ~~the JOBS program~~ *employment and training* as one of the conditions of the participant's family investment agreement.

~~(2) If waivers of federal law are granted by the secretary of the U.S. department of health and human services, the exemptions from participation in the JOBS program provided in section 201 of the federal Family Support Act of 1988, 42 U.S.C. 602(a)(19), may not apply to recipients of aid to families with dependent children benefits who are participating in the FAIM employment and training demonstration project.~~"

**Section 40.** Section 53-4-701, MCA, is amended to read:

"**53-4-701. Purpose.** It is the purpose of this part to establish a ~~program, consistent with the provisions of the federal Family Support Act of 1988, to assure that recipients of the aid to families with dependent children program obtain~~ *component of the pathways program that:*

*(1) provides recipients of FAIM financial assistance with* the education, training, and employment *services* needed to avoid long-term welfare dependency*; and*

*(2) complies with the participation requirements established in section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 607.*"

**Section 41.** Section 53-4-702, MCA, is amended to read:

"**53-4-702. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Aid to families with dependent children" has the same meaning as provided in 53-4-201.~~

~~(2)~~*(1)* "Department" means the department of public health and human services provided for in 2-15-2201.

*(2) "FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash payments, services, and noncash assistance.*

~~(3)~~*(3)* "FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

~~(4) "Family Support Act of 1988" means the federal Family Support Act of 1988, Public Law 100-485, as amended.~~

HeinOnline -- 1997 vol. III 2610 1997

~~(5) "JOBS program" or "program" means the job opportunities and basic skills training program established in 53-4-703.~~"

**Section 42.** Section 53-4-703, MCA, is amended to read:

"**53-4-703. ~~JOBS program~~ *Employment and training program* established ~~—purpose.~~** ~~(1)~~ The department shall establish and administer ~~a job opportunities and basic skills training (JOBS) program that meets the requirements of section 201 of the federal Family Support Act of 1988 (42 U.S.C. 602(a)(19), 681 through 686)~~ *an intensive employment and training program in accordance with the requirements of section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 607.*

~~(2) The purpose of the program is to provide recipients of aid to families with dependent children the education, training, and employment that will help them avoid long-term welfare dependency.~~"

**Section 43.** Section 53-4-705, MCA, is amended to read:

"**53-4-705. Services and activities.** ~~(1)~~ Under the program provided for in 53-4-703, the department shall make available a broad range of services and activities to assist recipients of ~~aid to families with dependent children~~ *FAIM financial assistance as specified by the department by rule.* ~~Such services and activities may include:~~

~~(a) appropriate educational activities, including:~~

~~(i) high school education or its equivalent, combined with training as needed;~~

~~(ii) basic and remedial education to help participants achieve a basic literacy level; and~~

~~(iii) education for individuals with limited English language proficiency;~~

~~(b) job skills training;~~

~~(c) job readiness activities to help prepare participants for work;~~

~~(d) job development and job placement;~~

~~(e) group and individual job search activities as provided for in 42 U.S.C. 682(g);~~

~~(f) on the job training;~~

~~(g) work supplementation programs as provided for in 42 U.S.C. 682(e); and~~

~~(h) community work experience programs as provided for in 42 U.S.C. 682(f).~~

~~(2) In addition to the services and activities provided in subsection (1), the department may offer to participants under the program:~~

~~(a) postsecondary education in appropriate cases; and~~

~~(b) such other education, training, and employment activities as may be determined necessary.~~"

**Section 44.** Section 53-4-706, MCA, is amended to read:

HeinOnline -- 1997 vol. III 2611 1997

**"53-4-706. Participation requirements.** (1) Except as otherwise provided in this section ~~and 53-4-707~~, the department may require individuals to participate in the ~~JOBS~~ *employment and training* program as a condition of their eligibility for ~~aid to families with dependent children~~ *FAIM financial assistance*.

(2) To the extent that the program is available and that state resources permit, the department shall~~:~~

~~(a) require recipients of aid to families with dependent children who are not participating in the FAIM project and with respect to whom the state guarantees child care in accordance with section 402(g) of the Social Security Act (42 U.S.C. 602(g)) to participate in the program;~~

~~(b)~~ require recipients of ~~aid to families with dependent children~~ *FAIM financial assistance* who are participating in ~~either~~ the pathways ~~or community service program~~ component of the FAIM project to participate in the program if the department determines that it is an appropriate activity for the recipient and includes participation as a condition of the recipient's family investment agreement~~; and~~

~~(c) allow applicants for and recipients of aid to families with dependent children who are not required under subsection (2)(a) to participate in the program to do so on a voluntary basis.~~"

**Section 45.** Section 53-4-717, MCA, is amended to read:

**"53-4-717. Sanctions.** ~~(1) Except as provided in subsection (2), an individual who without good cause fails to participate in the JOBS program as required or who without good cause refuses to accept suitable employment shall lose eligibility for aid to families with dependent children as provided in 42 U.S.C. 602(a)(19)(G).~~

~~(2)~~ If an individual receiving ~~aid to families with dependent children~~ *FAIM financial assistance* under the FAIM project is required to participate in the ~~JOBS~~ *employment and training* program as a condition of the individual's family investment agreement and fails without good cause to participate, the individual must be sanctioned in accordance with rules established by the department."

**Section 46.** Section 53-6-101, MCA, is amended to read:

**"53-6-101. Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the ~~federal~~ Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

HeinOnline -- 1997 vol. III 2612 1997

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for bigh-risk pregnant women;

(j) services that are provided by physician assistants-certified within tbe scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders hy a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical tberapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

HeinOnline -- 1997 vol. III 2613 1997

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for tho mentally ill;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.

(5) ~~If~~ *In accordance with* waivers of federal law *that* are granted by tlie secretary of the U.S. department of health and human services, the department of public healtli and human services may implement limited medicaid benefits, to be known as basic medicaid, for *adult* recipients who are eligihle because they are receiving ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-4-702,* as tlie specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to ~~aid to families with dependent children~~ *the program of FAIM financial assistance, as defined in 53-4-702.* Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) througb (3)(p) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature for the FAIM project and whether the provision of a particular service is commonly covered by private healtli insurance plans. However, a recipient who is pregnant, *meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age* is entitled to full medicaid coverage.

(6) The department may implement, as provided for in Title XIX of the ~~federal~~ Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of tlie ~~federal~~ Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

HeinOnline -- 1997 vol. III 2614 1997

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

**Section 47.** Section 53-6-113, MCA, is amended to read:

**"53-6-113. Department to adopt rules.** (1) The department of public health and human services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and as may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the ~~federal~~ Social Security Act, 42 U.S.C. 1396, et seq., as amended.

(2) The department shall adopt rules as are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services being used are medically necessary and that the services are the most efficient and cost-effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set rates of reimbursement that it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to considering:

(a) the availability of appropriated funds;

(b) the actual cost of services;

(c) the quality of services;

(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

HeinOnline -- 1997 vol. III 2615 1997

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, ~~and~~ confidentiality of applicant and recipient information, *and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq.*

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the ~~federal~~ Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed-care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care.

(9) ~~(a)~~ The department shall establish by rule income limits for eligibility for extended medical assistance of persons receiving ~~aid to families with dependent children~~ *benefits from FAIM financial assistance, as defined in 53-4-702,* as participants of the FAIM project who lose eligibility because of increased income, as provided in 53-6-134, and shall also establish by rule the length of time for which extended medical assistance will be provided. The department, in exercising its discretion to set income limits and duration of assistance, may consider the amount of funds appropriated by the legislature for the FAIM project.

~~(b) Notwithstanding Title 53, chapter 2, part 9, and Title 53, chapter 4, part 6, it is the intent of the legislature that rules may not be adopted except to implement the waiver granted by the U.S. secretary of health and human services under section 1115 of the Social Security Act, 42 U.S.C. 1315, and to implement the FAIM program. Rules may not implement any other program or programs that may result because of federal welfare reform unless the rules are required for compliance with federal law.~~"

**Section 48.** Section 53-6-131, MCA, is amended to read:

**"53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a porson who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the ~~federal~~ Social Security Act, 42 U.S.C. 1381, et seq., *and does not have income or resources in excess of the applicable medical assistance limits* or ~~aid to families with dependent children~~ *receive from FAIM financial assistance, as definod in 53-4-702, benefits* under Title IV of the federal Social Security Act, 42 U.S.C. 601, et seq.

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the ~~state plan for aid to families with dependent children~~ *state plan, as defined in 53-4-201,* other than with respect to *age and* school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of tbe state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater tban the medically needy income level specified for federally alded categeries of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of tbe department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the ~~federal~~ Social Security Act; and

(b) has resources that do not exceed standards that tlie departinent determines reasonable for purposes of the program.

HeinOnline -- 1997 vol. III 2617 1997

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) ~~If~~ *In accordance with* waivers of federal law *that* are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-4-702,* as the specified caretaker relative of a dependent child under the FAIM project and to all adult recipients of medical assistance only who are covered under a group related to ~~aid to families with dependent children~~ *the program of FAIM financial assistance.* A recipient who is pregnant, *meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age* is entitled to full medicaid coverage as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal gevernment, medicaid and other assistance mandated by Title XIX of the ~~federal~~ Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees to be charged recipients for services. The fees may vary according to family income."

**Section 49.** Section 53-6-134, MCA, is amended to read:

HeinOnline -- 1997 vol. III 2618 1997

**"53-6-134. Extension of eligibility for medical assistance to persons terminated from ~~aid to families with dependent children~~ *FAIM financial assistance.*** (1) ~~In accordance with section 1925 of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6, the department of public health and human services shall provide for the extension of eligibility for medical assistance to persons who lose eligibility for aid to families with dependent children because of:~~

~~(a) increased hours or income from employment; or~~

~~(b) loss of federally prescribed earned income disregards.~~

~~(2)~~ In providing for the extension of eligibility for medical assistance under subsection ~~(1)~~ *(2)*, the department may provide for health insurance or other health coverage in accordance with subsections 1925(a)(4)(B) and 1925(b)(4)(C) of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6(a)(4)(B) and 42 U.S.C. 1396r-6(b)(4)(C), and may exercise the other options contained in section 1925 of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6, regarding the provision of medical assistance.

~~(3)~~*(2)* ~~If~~ *In accordance with* waivers of federal law *that* are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may provide extended eligibility for medical assistance for a period of time established by the department by rule for persons receiving ~~aid to families with dependent children~~ *FAIM financial assistance, as defined in 53-4-702,* under the job supplement program, pathways, or community services program components of the FAIM project described in 53-4-603 who lose eligibility because of increased income from any source *or because of exhausting time-limited earned income disregards*, provided that the family's income does not exceed a percentage of the federal poverty level established by the department by rule. The department, in exercising its discretion to establish income standards and duration of extended medical assistance by rule, may consider the amount of funds appropriated by the legislature for the FAIM project."

**Section 50. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 51. Repealer.** Sections 39-7-601, 39-7-602, 39-7-603, 39-7-604, 39-7-605, 39-7-606, 53-4-249, 53-4-707, 53-4-708, 53-4-715, 53-4-716, 53-4-718, and 53-4-720, MCA, are repealed.

**Section 52. Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Section 26] is effective July 1, 1997.

(3) [Section 27] is effective July 1, 1999.

**Section 53. Termination.** [Section 26] terminates June 30, 1999.

Approved May 2, 1997

HeinOnline -- 1997 vol. III 2619 1997

# CHAPTER NO. 487

[HB 376]

AN ACT INCREASING PUBLIC INPUT INTO STATE AGENCY DECISIONS BY REQUIRING A PUBLIC HEARING HELD FOR AN ACTION THAT DIRECTLY IMPACTS A SPECIFIC COMMUNITY OR AREA TO BE HELD IN AN ACCESSIBLE FACILITY IN THE IMPACTED COMMUNITY OR AREA; EXCEPTING THE BOARD OF REGENTS; AND AMENDING SECTIONS 2-3-111, 16-4-202, AND 75-10-924, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-3-111, MCA, is amended to read:

**"2-3-111. Opportunity to submit views — *public hearings.*** *(1)* Procedures for assisting public participation ~~shall~~ *must* include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

*(2) When a state agency other than the board of regents proposes to take an action that directly impacts a specific community or area and a public hearing is held, the hearing must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility."*

**Section 2.** Section 16-4-202, MCA, is amended to read:

**"16-4-202. Resort licenses.** (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail all-beverages licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this code, the department may issue resort retail all-beverages licenses in a resort area.

(2) For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as ~~hereinafter~~ provided *in this section*.

(3) The department shall determine that the area for which licenses are to be issued is a resort area~~;~~. ~~such~~ *The* determination ~~to~~ *must* be made under and pursuant to rules ~~to be first promulgated on or before December 31, 1975~~.

(4) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of a resort retail all-beverages license, must have a current actual valuation of resort or recreational facilities, including land and improvements ~~thereon~~, of not less than $500,000, at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5) ~~of this section~~. The word "control" ~~shall mean~~ *means* lands held under lease, option, or permit.

HeinOnline -- 1997 vol. III 2620 1997

(5) The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries~~,~~ *and* designating the ownership of the lands within the resort area~~,~~. ~~which~~ *The* plat must be verified by the resort developer or landowner and *must be* filed with the department prior to the filing of any applications by individuals for licenses within the resort area. ~~Such~~ *The* plat must show the location and general design of the buildings and other improvements to be built in ~~said~~ *the* area in which resort retail all-beverages licenses ~~are to or~~ may be located. A master plan for the development of the area may be filed by the resort developer in satisfaction of this section.

(6) Upon ~~such~~ filing, the department shall ~~forthwith~~ schedule a public hearing to be held in ~~Helena, Montana~~ *the proposed area*~~,~~ to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules of the department. At least 30 days prior to the date of the hearing, the department shall publish notice ~~thereof~~ *of the hearing*, with a description of the location of the proposed resort area, in a newspaper published in the county or counties in which the resort is located, once a week for 4 consecutive weeks. Each resort developer or landowner shall, at the time of filing ~~his~~ *the* application, pay to the department an amount sufficient to cover the costs of ~~said~~ publication.

(7) Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat.

(8) Within 30 days of the hearing, the department shall accept or reject the plat. If rejected, the department ~~must~~ *shall* state its reasons and set forth the conditions, if any, under which the plat will be accepted~~,~~. ~~and the~~ *The* decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort may not be changed without ~~full~~ hearing, as ~~above~~ provided *in this section*, and the prior approval of the department~~,~~. ~~which~~ *The* approval ~~shall~~ *must* be *made* according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department ~~by persons~~ for the issuance of resort retail all-beverages licenses within the resort area.

(b) Each applicant must submit plans showing the location, appearance, and floor plan of the premises for which application for a license is made.

(c) If an applicant otherwise qualifies for a resort license hut the premises to be licensed are still in construction or are otherwise incomplete at the time of ~~such~~ application, the department shall issue a letter stating that the license will be issued ~~at such time as~~ *when* the qualifications for a licensed premises have been met~~,~~. ~~setting~~ *The letter must set* forth ~~such~~ time limitations and requirements ~~as~~ *that* the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, ~~no~~ *a* resort retail all-beverages license may *not* be sold or transferred for operation at a location outside of the boundaries of the resort area.

HeinOnline -- 1997 vol. III 2621 1997

(12) A resort retail all-beverages license ~~shall not be~~ *is* subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail all-beverages license ~~shall~~ *must* be issued by the department on the basis that the department has determined that ~~such~~ *the* license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207."

**Section 3.** Section 75-10-924, MCA, is amended to read:

**"75-10-924. Hearing date — location — department to act as staff.** (1) Upon receipt of the department's report submitted under 75-10-922, the board shall set a date for a hearing to begin not more than 120 days after receipt of the report. A certification hearing must be conducted by the board ~~in Helena or~~ in the county seat of the county in which the facility or the greatest portion of the facility is to be located.

(2) Except as provided in 75-10-926, the department shall act as the staff for the board throughout the decisionmaking process and the board may request that the department present testimony or cross-examine witnesses as the board considers necessary and appropriate."

Approved May 1, 1997

# CHAPTER NO. 488

[HB 388]

AN ACT DEFINING AND REVISING BUILDING CODE LAW TERMS; EXPANDING THE TYPES OF BUILDINGS EXEMPT FROM BUILDING CODES; EXPANDING THE DUTIES OF MUNICIPALITIES AND COUNTIES; PROVIDING THAT RULE CHANGES ARE OF SIGNIFICANT INTEREST TO THE PUBLIC; CHANGING PROVISIONS RELATING TO CERTIFICATION OF BUILDING CODES BY THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 50-60-101, 50-60-102, 50-60-106, 50-60-203, 50-60-204, AND 50-60-302, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-60-101, MCA, is amended to read:

**"50-60-101. Definitions.** As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" ~~shall~~ *must* be construed as though followed by the words "or part or parts thereof ".

(2) *(a)* "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the

design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

*(b)* The term does not include zoning ordinances.

*(3) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.*

~~(3)~~*(4)* "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

~~(4)~~*(5)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(5)~~*(6)* "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

~~(6)~~*(7) (a)* "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation.

*(b)* "Factory-built building" does not include manufactured housing constructed after June 15, 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

~~(7)~~*(8)* "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

~~(8)~~*(9)* "Local legislative body" means the council or commission charged with governing the municipality.

~~(9)~~*(10)* "Municipality" means any incorperated city or town and its jurisdictional area as defined ~~by subsection (10) of~~ *in* this section.

~~(10)~~*(11)* ~~(a)~~*(a)* "Municipal jurisdictional area" means the area within the limits of an incorporated municipality ~~unless the area is extended at the written request of a municipality~~ *unless the area is extended at the written request of a municipality.*

*(b) Upon request of a municipality with the written consent of the county in which the municipality is located, the department may approve extension of the jurisdictional area to include:*

*(i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;*

*(ii) all of any platted subdivision that is partially within 4 1/2 miles of the corporate limits of a municipality; and*

*(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, that is partially within 4 1/2 miles of the corporate limits of a municipality.*

*(c) Distances must be measured in a straight line on a horizontal plane.*

*(d) The initial written consent by a county to an extended municipal jurisdiction area must disclose the scope of the building codes to be enforced, the type of structures to be subject to the building codes, and the schedule of fees to be charged for permits. If after the county's initial written consent, the municipality wishes to change either the scope of the building codes enforced or the type of structures covered, the changes must first be approved in writing by the county. Unapproved changes result in the rescission of the county approval of the extended municipal jurisdiction area.*

~~(b) Upon request, the department may approve extension of the jurisdictional area to include:~~

~~(i) all or part of the area within 4 1/2 miles of the corporate limits of a municipality;~~

~~(ii) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limits of a municipality; and~~

~~(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 1/2 miles of the corporate limits of a municipality.~~

~~(c) Distances shall be measured in a straight line in a horizontal plane.~~

~~(11)~~*(12)* "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

~~(12)~~*(13)* "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted on or towed by another vehicle, including hut not limited to a:

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

~~(12)~~*(14)* "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~(14)~~*(15)* "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments."

**Section 2.** Section 50-60-102, MCA, is amended to read:

**"50-60-102. Applicability.** (1) Except as provided in subsection (5), state building codes do not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building *of any size*, and any private garage or private storage structure *of any size* used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures;

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act; ~~or~~

(c) ~~petroleum refineries,~~ *petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or* ~~except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code~~

*(d) industrial process piping, vessels, and equipment and process-related structures located outside of another structure occupied on a regular basis by employees or the public.*

(2) Except as provided in subsection (5), the state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state building codes applicable to the buildings referred to in subsection (1) may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) When good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing in the area, or other factors that make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private sterago structure attached to a residential building and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

HeinOnline -- 1997 vol. III 2625 1997

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in 50-60-802 for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code."

**Section 3.** Section 50-60-106, MCA, is amended to read:

**"50-60-106. Powers and duties of municipalities.** (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the municipal jurisdictional area ~~shall be~~ *are* the responsibility of the municipalities of the state.

(2) Each municipality ~~may~~ *or county certified under 50-60-302 shall, within its jurisdictional area*:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the *applicable* provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the department;

(c) *during and in the course of construction* order in writing the remedying of any condition found to exist in, on, or about any building *that is being constructed* in violation of the *applicable* state or municipal building code. Orders may be served upon the owner or his authorized agent personally or by sending by registered or certified mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building. ~~Any~~ *A* local building department, by action of an authorized officer, may grant in writing such time as may be reasonably necessary for achieving compliance with the order. *For the purposes of this subsection (2)(c), the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building.*

(d) issue certificates of occupancy~~,~~ *as provided in 50-60-107;*

*(e) issue* permits, licenses, and ~~such~~ other *required* documents in connection with the construction of ~~the buildings as required~~ *a building*;

*(f) ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:*

*(i) used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund,*

*they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.*

*(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented.*

*(3) Each municipality or county certified under 50-60-302 may, within its jurisdictional area:*

~~(e)~~*(a)* make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of ~~reasonable~~ fees~~, which shall be comparable to fees imposed or prescribed by existing local building regulations~~ *and charges related to construction*;

~~(f)~~*(b)* prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code; *and*

*(c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the municipality or county under which the municipality or county will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. Municipal or county powers of enforcement may not be exercised.*"

**Section 4.** Section 50-60-203, MCA, is amended to read:

"**50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. ~~The department may amend or repeal the rules.~~ *The adoption, amendment, or repeal of a rule is of significant public interest for purposes of 2-3-103.*

(b) ~~In adopting rules~~ *Rules* concerning the conservation of energy~~, the department shall~~ *must* conform ~~those rules~~ to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part~~, but this does not prevent the department from adopting~~ *and may adopt* rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances in single-family dwellings."

**Section 5.** Section 50-60-204, MCA, is amended to read:

HeinOnline -- 1997 vol. III 2627 1997

**"50-60-204. Public hearing required — effective date of certain rules.** (1) Except as provided in subsection (2), a rule, amendment, or repeal of the state building code *is a matter of significant public interest for purposes of 2-3-103 and* may not take effect until after a public hearing by the department.

(2) If a hearing *with adequate public notice pursuant to 2-3-103* has been held by the department of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the department of public health and human services, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code."

**Section 6.** Section 50-60-302, MCA, is amended to read:

**"50-60-302. Certification of municipal and county building codes.** (1) A county or municipality may not enforce a building code unless:

*(a) the code enforcement program has been certified by the department as in compliance with applicable statutes and department certification rules;*

*(b)* the ~~code adopted~~ *current adopted code, a current list of fees to be imposed,* and a *current* plan for enforcement of the code have been filed with *and approved by* the department.; *and*

*(c) all inspectors inspecting or approving any installations, which if accomplished commercially require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is approved by the department before being permitted to inspect or approve any installations.*

(2) The department shall ~~set forth~~ *adopt additional* rules and standards governing the certification of municipal and county building code *enforcement* programs ~~as required in subsection (1)~~ *which must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule. The department may allow a county or municipality a reasonable amount of time, not to exceed 6 months, to correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the public health, safety, or welfare, in which case the department may require immediate correction. Failure to correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the code enforcement program. Continued operation of a county or municipal code enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the district court in the jurisdiction in which the county or municipality is located. The rules and standards must include provisions for the department to ensure that all code enforcement program functions are being properly performed.*

*(3) In addition to maintaining the continued compliance oversight required in subsection (1), the department shall require a detailed and fully documented annual report from a local government with a certified code enforcement program to ensure continued local government compliance with all requirements of*

HeinOnline -- 1997 vol. III 2628 1997

*applicable statutes and rules. If review of the annual report identifies compliance problems, the department shall immediately conduct an onsite evaluation.*

*(4) If the certification of any local government code enforcement program is revoked for any violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the municipal or county area and the local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects previously permitted by the local government, unless the reason for the decertification is directly related to the protection of health, safety, and welfare of the public.*

*(5) If a local government voluntarily decertifies its code enforcement program, the department must be given written notification of the intended decertification at least 90 days prior to the date of decertification. The local government retains the responsibility for completion of inspections and issuance of certificates of occupancy on any incomplete construction projects permitted by the local government prior to decertifying its code enforcement program."*

**Section 7. Effective date.** [This act] is effective July 1, 1998.

Approved May 1, 1997

# CHAPTER NO. 489

[HB 389]

AN ACT PROVIDING FOR GREATER PUBLIC PARTICIPATION IN AGENCY RULEMAKING; AMENDING PROVISIONS FOR NOTICE OF AGENCY RULES; DEFINING TERMS; STRENGTHENING THE REQUIREMENTS FOR AN EMERGENCY RULE; PROHIBITING THE USE OF AN ADOPTION NOTICE TO CURE DEFICIENCIES IN STATEMENTS OF REASONABLE NECESSITY; AND AMENDING SECTIONS 2-4-102, 2-4-302, 2-4-303, 2-4-305, AND 2-4-306, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-4-102, MCA, is amended to read:

**"2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) "Administrative code committee" or "committee" means the committee provided for in Title 5, chapter 14.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ~~Administrative Rules of Montana~~ *ARM* and the ~~Montana Administrative Register~~ *register*;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

*(5) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice. The term does not extend to contested cases.*

~~(5)~~*(6)* "License" includes the whole or part of ~~any~~ *an* agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

~~(6)~~*(7)* "Licensing" includes ~~any~~ *an* agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

~~(7)~~*(8)* "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but ~~nothing in~~ this chapter may *not* be construed to prevent an agency from admitting any person as a party for limited purposes.

~~(8)~~*(9)* "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

~~(9)~~*(10)* "Register" means the Montana Administrative Register.

~~(10)~~*(11)* "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

HeinOnline -- 1997 vol. III 2630 1997

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ~~Administrative Rules of Montana~~ *ARM*.

*(12) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals. The term does not extend to contested cases.*

~~(11)~~*(13)* "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

**Section 2.** Section 2-4-302, MCA, is amended to read:

**"2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice ~~shall~~ *must* include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views ~~thereon~~ *on the intended action. The rationale must be written in plain, easily understood language.*

(2) (a) The notice ~~shall~~ *must* be filed with the secretary of state for publication in the register as provided in 2-4-312 and mailed within 3 days of publication to *interested* persons who have made timely requests to the agency ~~for notice~~ *to be informed* of its rulemaking proceedings and to the office of any professional, trade, or industrial society or organization or member ~~thereof which~~ *of those entities that* has filed a request with the administrative code committee ~~when such request~~ *that* has been forwarded to the agency as provided in subsection (2)(b). *Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).*

HeinOnline -- 1997 vol. III 2631 1997

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the ~~Montana Administrative Register~~ *ARM*. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice ~~shall~~ *must* be published and mailed at least 30 days in advance of the agency's intended action. *In addition to publishing and mailing the notice under subsection (2)(a) of this section, the agency shall post the notice of the state electronic bulletin board or other electronic communications system available to the public.*

(3) If ~~any~~ *a* statute provides for a ~~different~~ method of publication *different from that provided in subsection (2)*, the affected agency shall comply with the statute in addition to the requirements contained ~~herein~~ *in this section*. However, ~~in no case may~~ the notice period *may not* be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and 28 days from the day of notice to submit data, views, or arguments, orally or in writing. In the case of substantive rules, the notice of proposed rulemaking must state that oppertunity for oral hearing ~~shall~~ *must* be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a gevernmental subdivision or agency, by the administrative code committee, or by an association having not less than 25 members who will be directly affected. *If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.*

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant te this section. If a hearing is otherwise required by statute, nothing ~~herein~~ *in this section* alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of any hearing on the intended action, the person designated by the agency to preside at the hearing shall:

*(a)* read aloud the "Notice of Function of Administrative Code Committee" appearing in the register*; and*

*(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.*"

**Section 3.** Section 2-4-303, MCA, is amended to read:

"**2-4-303. Emergency or temporary rules.** (1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed *upon special notice filed with the committee*, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable,

HeinOnline -- 1997 vol. III 2632 1997

to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. *Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act.* The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review *upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.*

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period *that* the temporary rule is effective."

**Section 4.** Section 2-4-305, MCA, is amended to read:

**"2-4-305. Requisites for validity — authority and statement of reasons.** (1) The agency shall *fully* consider ~~fully~~ written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the ~~Montana Administrative Register~~ *register*, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement.

HeinOnline -- 1997 vol. III 2633 1997

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a rule adopted is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. Subject to the provisions of subsection (8), reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) A rule is not valid unless *notice of it is given and* it is adopted in substantial compliance with 2-4-302, ~~or~~ 2-4-303, *or 2-4-306* and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in ~~statements of reasonable necessity, in~~ citations of authority for rules, and in citations of sections implemented by rules. *An agency may use an amended proposal notice, but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.*"

**Section 5.** Section 2-4-306, MCA, is amended to read:

"**2-4-306. Filing, format, and effective date — dissemination of emergency rules.** (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules ~~which~~ *that* are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance ~~therewith~~ *with this chapter*. ~~He~~ *The secretary of state* shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, which ~~shall~~ *must* be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing ~~such~~ copies.

(3) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 2-4-403 or the revenue oversight committee

HeinOnline -- 1997 vol. III 2634 1997

has conducted a poll in accordance with 5-18-109, the results of the poll ~~shall~~ *must* he puhlished with the rule.

(4) Each rule ~~shall become~~ *becomes* effective after publication in the register as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date ~~shall be~~ *is* the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule ~~shall become~~ *becomes* effective ~~immediately upon filing with the secretary of state or~~ at a stated date following publication in the register *or immediately upon filing with the secretary of state* if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a hrief statement of reasons ~~therefor shall~~ *for the finding must* be filed with the rule. The agency shall, *in addition to the required publication in the register,* take appropriate *and extraordinary* measures to make emergency rules known to every person who may be affected by them."

Approved May 1, 1997

# CHAPTER NO. 490

[HB 502]

AN ACT RELATING TO MENTAL HEALTH; DELETING THE DEFINITION OF "SERIOUSLY MENTALLY ILL" AND SUBSTITUTING "MENTAL DISORDER"; DEFINING THE TERMS "COMMITMENT" AND "MENTAL DISORDER"; ALLOWING COMMITMENT TO A COMMUNITY FACILITY OF A PERSON SUFFERING FROM A MENTAL DISORDER; CLARIFYING STATUTES RELATING TO VOLUNTARY AND INVOLUNTARY COMMITMENT OF MINORS; ALLOWING CLINICAL AND ADMINISTRATIVE USE OF PHOTOGRAPHS OF MENTAL HEALTH FACILITY PATIENTS; AMENDING SECTIONS 2-16-501, 2-16-503, 25-31-602, 27-2-401, 27-8-204, 33-20-121, 37-3-323, 37-6-311, 37-11-321, 37-12-322, 41-5-523, 46-14-206, 53-20-112, 53-21-101, 53-21-102, 53-21-112, 53-21-115, 53-21-116, 53-21-121, 53-21-122, 53-21-123, 53-21-126, 53-21-127, 53-21-128, 53-21-129, 53-21-132, 53-21-134, 53-21-138, 53-21-139, 53-21-144, 53-21-182, 53-21-195, 53-21-197, 53-21-198, 70-19-413, 70-29-113, 70-29-210, 70-29-328, AND 72-5-322, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-16-501, MCA, is amended to read:

**"2-16-501. Vacancies created.** An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

(1) tbe death of the incumbent;

(2) a determination pursuant to Title 53, chapter 21, part 1, that ~~he~~ *the incumbent* ~~is seriously mentally ill~~ *suffers from a mental disorder and is in need of commitment*;

(3) ~~his~~ resignation *of the incumbent*;

(4) ~~his~~ removal *of the incumbent* from office;

(5) ~~his~~ *the incumbent's* ceasing to be a resident of the state or, if the office ~~he~~ *is* local, of the district, city, county, town, or township for which ~~he~~ *the incumbent* was chosen or appointed or within which the duties of ~~his~~ *the incumbent's* office are required to be discharged;

(6) ~~his~~ absence *of the incumbent* from the state, without the permission of the legislature, beyond the period allowed by law;

(7) ~~his~~ *the incumbent's* ceasing to discharge the duty of ~~his~~ *the incumbent's* office for the period of 3 consecutive months, except when prevented by sickness or when absent from the state by permission of the legislature;

(8) ~~his~~ conviction of *the incumbent of* a felony or of ~~any~~ *an* offense involving moral turpitude or a violation of ~~his~~ *the incumbent's* official duties;

(9) ~~his~~ *the incumbent's* refusal or neglect to file ~~his~~ *the incumbent's* official oath or bond within the time prescribed;

(10) the decision of a competent tribunal declaring void ~~his~~ *the incumbent's* election or appointment."

**Section 2.** Section 2-16-503, MCA, is amended to read:

**"2-16-503. Notice of removal.** Whenever an officer is removed, ~~declared seriously mentally ill~~ *committed pursuant to 53-21-127*, or convicted of a felony or offense involving moral turpitude or a violation of ~~his~~ *the officer's* official duty or whenever ~~his~~ *the officer's* election or appointment is declared void, the body, judge, or officer before whom the proceedings were ~~had~~ ~~must~~ *conducted shall* give notice ~~thereof~~ *of the proceedings* to the officer authorized to fill the vacancy."

**Section 3.** Section 25-31-602, MCA, is amended to read:

**"25-31-602. When guardian necessary — how appointed.** When a minor ~~or seriously mentally ill or~~, incompetent porson, *or person who has been committed pursuant to 53-21-127* is a party, ~~he~~ *the minor or other person* ~~must~~ *shall* appear either by ~~his~~ general guardian, if ~~he~~ *the minor or other person* has one, or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice, ~~he~~ *the guardian ad litem* must be appointed as follows:

(1) If the minor ~~or seriously mentally ill or~~, incompetent person, *or person who has been committed pursuant to 53-21-127* is a plaintiff, the appeintment must be made before the summons is issued:

(a) in the case of a minor who is 14 or more years old, upon the application of the minor;

(b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~, *an* incompetent person, *or a person who has been committed pursuant to 53-21-127*, upon the application of a relative or friend;

(c) in ~~any~~ *a* case described in subsection (1)(a) or (1)(b) in which no application is made, upon the justice's own motion.

(2) If the minor ~~or seriously mentally ill or~~, incompetent person, *or person who has been committed pursuant to 53-21-127* is a defendant, the appointment must be made at the time *that* the summons is returned or before the answer:

(a) in the case of a minor who is 14 or more years old and who applies before the summons is returned or at the time of the return, upon the application of the minor;

(b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~, *an* incompetent person, *or a person who has been committed pursuant to 53-21-127*, upon the application of a relative or friend or any other party to the action;

(c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the justice's own motion."

**Section 4.** Section 27-2-401, MCA, is amended to read:

**"27-2-401. When person entitled to bring action is under a disability.** (1) If a person entitled to bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either a minor or ~~seriously mentally ill~~ *has been committed pursuant to 53-21-127*, the time of the disability is not a part of the time limit for commencing the action. However, the time limit cannot be extended more than 5 years by the disability of ~~serious mental illness~~ *commitment*.

(2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of the transaction upon which the action might have been founded ~~was~~ *were* under one of the disabilities mentioned in subsection (1) may, within 5 years after the cessation of the disability, maintain an action to recover damages. In the action, the person may recover the sum or the value of the property that the person would have received upon the final distribution of the estate if an action had been ~~seasonably~~ commenced *in a timely manner* by the personal representative.

(3) A person may not claim a disability unless it existed when the right of action or entry accrued.

(4) When both disabilities referred to in subsection (1) coexist at the time *that* the right of action or entry accrues, the limitation does not attach until both are removed."

**Section 5.** Section 27-8-204, MCA, is amended to read:

**"27-8-204. Declarations concerning administration of trusts and estates.** ~~Any~~ *A* person interested as or through an executor, administrator, trustee, guardian, ~~or~~ other fiduciary, creditor, devisee, heir, or cestui que trust in the administration of a trust or of the estate of a decedent, minor, ~~seriously~~

HeinOnline -- 1997 vol. III 2637 1997

~~mentally ill~~ person *committed pursuant to 53-21-127*, or insolvent *person* may have a declaration of rights or legal relations ~~in respect thereto~~:

(1) to ascertain any class of creditors, devisees, heirs, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing ~~any~~ *a* particular act in their fiduciary capacity; or

(3) to determine ~~any~~ *a* question arising in the administration of the estate or trust, including questions of construction of wills and other writings."

**Section 6.** Section 33-20-121, MCA, is amended to read:

**"33-20-121. Prohibited provisions — limitations on liability.** (1) A policy of life insurance may not be delivered or issued for delivery in this state if it contains a provision:

(a) for a period shorter than that provided by statute within which an action at law or in equity may be commenced on the policy; or

(b) that excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified in the policy in the event of death:

(i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of ~~any~~ *an* act or hazard of war or action or of service in the military, naval, or air forces or in civilian forces auxiliary ~~thereto~~ *to those military forces* or from any cause while a member of military, naval, or air forces of ~~any~~ *a* country at war, declared or undeclared, or of ~~any~~ *a* country engaged in military action;

(ii) as a result of aviation ~~or any~~, air travel, or flight;

(iii) as a result of a specified hazardous occupation or occupations;

(iv) while the insured is a resident outside the continental United States and Canada; or

(v) within 2 years from the date of issue of the policy as a result of suicide, while ~~seriously mentally ill~~ *committed pursuant to 53-21-127* ~~or otherwise~~. If a life insurance policy contains a dependent rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

(2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide that in the event of death under the circumstances to which the exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method on the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy does not provide for nonforfeiture benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) or by any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

HeinOnline -- 1997 vol. III 2638 1997

(3) This section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) This section does not prohibit a provision that in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section."

**Section 7.** Section 37-3-323, MCA, is amended to read:

**"37-3-323. Revocation or suspension of license.** (1) The department may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and ~~thereafter~~ has not *later* been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that it incapacitates the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies must be released to the board on written request.

(3) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, ~~or seriously mentally ill or~~ *to be* addicted to the use of addictive substances, *or to have been committed pursuant to 53-21-127,* the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been ~~proven~~ *proved* to the satisfaction of the board."

**Section 8.** Section 37-6-311, MCA, is amended to read:

**"37-6-311. Refusal or revocation of license — investigation.** (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to

HeinOnline -- 1997 vol. III 2639 1997

renew a license to practice podiatry if the consensus of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

(2) The department may investigate whenever it is brought to its attention that a licensed podiatrist:

(a) is mentally or physically unable to engage safely in the practice of podiatry;

(b) has procured the license by fraud, misrepresentation, or through error;

(c) has been declared incompetent by a court of competent jurisdiction and ~~thereafter~~ has not *later* been lawfully declared competent;

(d) has a condition that impairs the licensee's intellect or judgment to the extent that it incapacitates the licensee in the safe performance of professional duties;

(e) has been found guilty of unprofessional conduct;

(f) has practiced podiatry while the license was suspended or revoked;

(g) has had the license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(h) while under probation has violated its terms.

(3) The investigation must be for the purpose of determining the probability that the alleged conditions exist or that the alleged offenses were committed. Upon order of the board, the investigation may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies ~~shall~~ *must* be released to the board on written request.

(4) If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, ~~seriously mentally ill, or~~ *to be* addicted to the use of narcotics, *or to have been committed pursuant to 53-21-127,* the license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until the licensee is discharged as restored to reason or cured and the licensee's professional competence has been ~~proven~~ *proved* to the satisfaction of the board."

**Section 9.** Section 37-11-321, MCA, is amended to read:

**"37-11-321. Refusal to issue or renew license.** The board, after due notice and hearing, may refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2~~, of this title~~;

HeinOnline -- 1997 vol. III 2640 1997

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2~~, of this title~~;

(5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy or practice as an assistant;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been ~~declared to be seriously mentally ill~~ *committed pursuant to 53-21-127* by a court of competent jurisdiction and has not been released from ~~treatment~~ *commitment* and declared not to ~~be seriously mentally ill~~ *require further commitment*;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or assistant or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation of the person's training and education."

**Section 10.** Section 37-12-322, MCA, is amended to read:

**"37-12-322. Investigation of complaints.** (1) The department may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition ~~such~~ that *renders* the person ~~is~~ unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or ~~seriously mentally ill~~ *has been committed pursuant to 53-21-127* by a court of competent jurisdiction and ~~thereafter~~ has not *later* been declared competent or released from supervision;

(c) has procured the license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while the license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these must be released to the board on written request."

HeinOnline -- 1997 vol. III 2641 1997

**Section 11.** Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition — sentence to correctional facility — commitment to department — placement and evaluation of youth — restrictions.** (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making one or more of the following dispositions:

(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

(b) place the youth on probation;

(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and 46-23-506;

(e) place the youth in an in-state residence that ensures that the youth is accountable, provides for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that resources are available for placement of the youth at that residence.

(f) commit the youth to the department. In an order committing a youth to the department:

(i) the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home;

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(g) order restitution by the youth or the youth's parents;

(h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(i) require the performance of community service;

HeinOnline -- 1997 vol. III 2642 1997

(j) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(k) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(l) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(m) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(f), place a youth in a residential treatment facility.

(n) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is ~~seriously mentally ill~~ *suffering from a mental disorder and requires commitment* as defined in 53-21-102. The youth is entitled to all rights provided hy 53-21-114 through 53-21-119.

(i) A youth ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102~~ *determined to be suffering from a mental disorder and requiring commitment* may not he committed or sentenced to a state youth correctional facility.

(ii) A youth ~~adjudicated to be mentally ill or seriously mentally ill~~ *determined to be suffering from a mental disorder and requiring commitment* after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by tho youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of suporvision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

HeinOnline -- 1997 vol. III 2643 1997

(3) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is respensible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering

all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), tbe court shall order the youth's parents or guardians to pay an amount based on tbe uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and tbe person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withbolding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance witb the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, tbe department sball apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of tbe Social Security Act.

HeinOnline -- 1997 vol. III 2645 1997

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

**Section 12.** Section 46-14-206, MCA, is amended to read:

**"46-14-206. Report of examination.** (1) A report of the examination must include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant ~~is seriously mentally ill, as defined in 53-21-102~~ *suffers from a mental disorder and may require commitment*~~,~~ or is seriously developmentally disabled, as defined in 53-20-102;

(c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect."

**Section 13.** Section 53-20-112, MCA, is amended to read:

**"53-20-112. Procedural rights.** (1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of ~~the seriously mentally ill~~ *a person who suffers from a mental disorder and who requires commitment*, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a respondent have the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional of their choice when a professional is reasonably available, unless the person ~~so~~ chosen is objected to by the respondent or by a responsible person appointed by the court."

**Section 14.** Section 53-21-101, MCA, is amended to read:

**"53-21-101. Purpose.** The purpose of this part is to:

HeinOnline -- 1997 vol. III 2646 1997

(1) secure for each person who may be ~~seriously mentally ill or~~ suffering from a mental disorder ~~such~~ *and requiring commitment the* care and treatment ~~as will be~~ suited to the needs of the person and to ~~insure~~ *ensure* that ~~such~~ *the* care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is ~~so mentally ill as to require institutionalized care~~ *suffering from a mental disorder and requires commitment*; and

(4) ~~assure~~ *ensure* that due process of law is accorded any person coming under the provisions of this part."

**Section 15.** Section 53-21-102, MCA, is amended to read:

**"53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appeinted by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol; or

(b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health

HeinOnline -- 1997 vol. III 2647 1997

clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat of injury but which:

(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be committed;

(c) has deprived the person of the capacity to make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally ill or seriously mentally ill.

(15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat of injury or which has deprived the person afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because the person is an epileptic or is mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless

the condition causes the person to be seriously mentally ill within the meaning of this part.

(16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

**53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

*(2) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.*

~~(2)~~*(3)* "Court" means any district court of the state of Montana.

~~(3)~~*(4)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(4)~~*(5)* "Emergency situation" means a situation in which any person is in imminent danger of death or ~~serious~~ bodily harm from the activity of a person who appears to be ~~seriously mentally ill~~ *suffering from a mental disorder and appears to require commitment.*

~~(5)~~*(6)* "Friend of respondent" means any person willing and able to assist a ~~seriously mentally ill~~ person *suffering from a mental disorder and requiring commitment* or person alleged to be ~~seriously mentally ill~~ *suffering from a mental disorder and requiring commitment* in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause ~~shown~~, change its designation of the friend of respondent.

~~(5)~~*(7)* "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ *that* bas substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol; ~~or~~

(b) drug or alcobol intoxication*;*

*(c) mental retardation; or*

*(d) epilepsy.*

~~(7)~~*(8)* "Mental health facility" or "facility" means a public hospital or a licensed private hospital ~~which~~ *that* is equipped and staffed to provide treatment for persons with mental disorders or a community mental healtb center or any mental health clinic or treatment center approved by the department. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

HeinOnline -- 1997 vol. III 2649 1997

~~(8)~~*(9)* "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(9)~~*(10)* "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(10)~~*(11)* "Peace officer" means any sheriff, deputy sheriff, marshal, ~~policeman~~ *police officer*, or other peace officer.

~~(11)~~*(12)* "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

~~(12)~~*(13)* "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(13)~~*(14)* "Respondent" means a person alleged in a petition filed pursuant to this part to be ~~seriously mentally ill~~ *suffering from a mental disorder and requiring commitment.*

~~(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat of injury or which has deprived the person afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because the person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of this part.~~

(15) "State hospital" means the Montana state hospital."

**Section 16.** Section 53-21-112, MCA, is amended to read:

**"53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, ~~a minor who is 16 years of age or older~~ *a parent or guardian of a minor* may consent to ~~receive~~ mental health services to be rendered *to the minor* by:

(a) a facility ~~that is not a state institution~~; ~~or~~

(b) a person licensed *in this state* to practice medicine; or ~~psychology~~

*(c) a mental health professional licensed* in this state.

*(2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent to receive mental health services from those facilities or persons listed in subsection (1).*

~~(2)~~*(3)* Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

HeinOnline -- 1997 vol. III 2650 1997

~~(3)~~*(4)* Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment ~~shall be~~ *is* for the same period of time as that for an adult. A minor voluntarily admitted ~~shall have~~ *with consent of the minor's parent or guardian has* the right to be released within 5 days of ~~his~~ *a* request *by the parent or guardian* as provided in 53-21-111(3). ~~The~~ *A* minor ~~himself~~ *who has been admitted without consent by a parent or guardian, pursuant to subsection (2),* may *also* make ~~such~~ *a* request *and also has the right to be released within 5 days as provided in 53-21-111(3).* Unless there has been a periodic review and a voluntary readmission consented to by the *parent or guardian in the case of a* minor patient ~~and his counsel~~ *or consented to by the minor alone in the case of a minor patient who is at least 16 years of age,* voluntary admission terminates at the expiration of 1 year. Counsel ~~shall~~ *must* be appointed for the minor at the minor's request or at any time ~~he~~ *that the minor* is faced with potential legal proceedings.

~~(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the application for admission shall be treated as a petition for involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor.~~"

**Section 17.** Section 53-21-115, MCA, is amended to read:

**"53-21-115. (Temporary) Proceedural rights.** In addition to any other rights ~~which~~ *that* may be guaranteed hy the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning ~~him~~ *the person*;

(2) the right to know, in advance of any hearing, the names and addresses of any witnesses who will testify in support of the petition;

*(3) the right to know, before a hearing, the names and addresses of any witnesses who will testify in support of a petition;*

~~(3)~~*(4)* the right in any hearing to be present, te offer evidence, and to present witnesses in any proceeding concerning ~~him~~ *the person*;

~~(4)~~*(5)* the right in any hearing to cross-examine witnesses;

~~(5)~~*(6)* the right to be represented by counsel;

~~(6)~~*(7)* the right to remain silent;

~~(7)~~*(8)* the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

~~(6)~~*(9)* the right to view and copy all petitions on file with the court concerning ~~him~~ *the person*;

HeinOnline -- 1997 vol. III 2651 1997

~~(9)~~*(10)* tbe right to be examined by a professional person of ~~his~~ *the person's* choice when ~~such~~ *a* professional person is willing and reasonably available;

~~(10)~~*(11)* tbe right to be dressed in ~~his~~ *the person's* own clothes at any hearing held pursuant to this part; and

~~(11)~~*(12)* the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

**53-21-115. (Effective July 1, 1997) Procedural rights.** In addition to any other rights ~~which~~ *that* may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any bearing or other court proceeding concerning ~~him~~ *the person*;

(2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning ~~him~~ *the person*;

*(3) the right to know, before a hearing, the names and addresses of any witnesses who will testify in support of a petition;*

~~(3)~~*(4)* the right in any hearing to cross-examine witnesses;

~~(4)~~*(5)* the right to be represented by counsel;

~~(5)~~*(6)* the right to remain silent;

~~(6)~~*(7)* the right in any hearing to be proceeded against according to the rules of evidence applicahle to civil matters generally;

~~(7)~~*(8)* the right to view and copy all petitions on file with the court concerning ~~him~~ *the person*;

~~(8)~~*(9)* the right to be examined by a professional person of ~~his~~ *the person's* choice when ~~such~~ *the* professional person is willing and reasonably available;

~~(9)~~*(10)* the rigbt to be dressed in ~~his~~ *the person's* own clothes at any hearing held pursuant to this part; ~~and~~

~~(10)~~*(11)* the rigbt to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part; *and*

*(12) the right to voluntarily take necessary medications prior to any hearing pursuant to this part."*

**Section 18.** Section 53-21-116, MCA, is amended to read:

**"53-21-116. (Temporary) Right to be present at hearing or trial — appointment of counsel.** Tbe person alleged to be mentally ill or seriously mentally ill has the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

HeinOnline -- 1997 vol. III 2652 1997

**53-21-116. (Effective July 1, 1997) Right to be present at hearing or trial — appointment of counsel.** The person alleged to be ~~seriously mentally ill~~ *suffering from a mental disorder and requiring commitment* has the right to be present at any hearing or trial. If ~~he~~ *the person* has no attorney, the judge shall appoint one to represent ~~him~~ *the person* at either the hearing or the trial, or both, who ~~shall~~ *must* be compensated from the public funds of the county where the respondent resides."

**Section 19.** Section 53-21-121, MCA, is amended to read:

**"53-21-121. (Temporary) Petition for commitment — contents of — notice of.** (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court:

(a) alleging that there is a person within the county who is seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months; or

(b) alleging that there is a person within the county who is mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 30 days.

(2) The petition shall contain:

(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought; if there is no attorney, there shall be a statement as to whether to the best knowledge of the person requesting the petition the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition shall be hand-delivered to the respondent and to his counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent shall be hand-delivered or mailed to the person or

HeinOnline -- 1997 vol. III 2653 1997

persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

**53-21-121. (Effective July 1, 1997) Petition for commitment — contents of — notice of.** (1) The county attorney, upon the written request of any person *having direct knowledge of the facts*, may file a petition with the court alleging that there is a person within the county who is ~~seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months~~ *suffering from a mental disorder and who requires commitment pursuant to this chapter.*

(2) The petition ~~shall~~ *must* contain:

(a) the name and address of the person requesting the petition and ~~his~~ *the person's* interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental ~~illness~~ *disorder, a statement of the disposition sought pursuant to 53-21-127(2), and the need for commitment*;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the ~~person~~ *respondent* for whom evaluation is sought;

(e) the name and address of the ~~person's~~ *respondent's* next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the ~~person~~ *respondent* for whom evaluation is sought; if there is no attorney, there ~~shall~~ *must* be a statement as to whether to the best knowledge of the person requesting the petition the ~~person~~ *respondent* for whom evaluation is sought is indigent and ~~therefore~~ unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent, which ~~shall~~ *must* be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition ~~shall~~ *must* be hand-delivered to the respondent and to ~~his~~ *the respondent's* counsel on or before the initial appearance of the respondent before the judge or justice of the peace. *The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings.* Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent ~~shall~~ *must* be hand-delivered or mailed to the person or persons legally responsible for care, support, and

HeinOnline -- 1997 vol. III 2654 1997

maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and ~~his~~ *the respondent's* counsel, that no further notice will be given unless written request is filed with the clerk of court."

**Section 20.** Section 53-21-122, MCA, is amended to read:

**"53-21-122. (Temporary) Petition for commitment — filing of — initial hearing on.** (1) The petition shall be filed with the clerk of court who shall immediately notify the judge.

(2) (a) If a judge is available, he shall consider the petition, and if he finds no probable cause, it shall be dismissed.

(b) (i) If the judge finds probable cause, counsel shall be immediately appointed for the respondent, and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition.

(ii) The judge shall:

(A) appoint a professional person;

(B) appeint a friend of respondent; and

(C) set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(iii) The desires of the respondent shall be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

HeinOnline -- 1997 vol. III 2655 1997

**53-21-122. (Effective July 1, 1997) Petition for commitment — filing of — initial hearing on.** (1) The petition ~~shall~~ *must* be filed with the clerk of court who shall immediately notify the judge.

(2) If a judge is available, ~~he~~ *the judge* shall consider the petition, and if ~~he~~ *the judge* finds no probable cause, it ~~shall~~ *must* be dismissed. If the judge finds probable cause, counsel ~~shall~~ *must* be immediately appointed for the respondent, and the respondent ~~shall~~ *must* be brought ~~forthwith~~ before the court with ~~his~~ *the respondent's* counsel. The respondent ~~shall~~ *must* be advised of ~~his~~ *the respondent's* constitutional rights, ~~his~~ *the respondent's* rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition~~, which~~ *that may not be on the same day as the initial appearance and that* may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent ~~shall~~ *must* be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and *shall* read the petition te ~~him~~ *the judge*. If the judge finds no probable cause, the petition ~~shall~~ *must* be dismissed. If the judge finds probable cause, ~~he~~ *the judge* shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition~~, which~~ *that may not be on the same day as the initial appearance and that* may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order ~~shall~~ *must* also direct that the respondent be brought ~~forthwith~~ before a justice of the peace with ~~his~~ *the respondent's* counsel to be advised of ~~his~~ *the respondent's* constitutional rights, ~~his~~ *the respondent's* rights under this part, and the contents of the clerk's order, as well as to furnish ~~him~~ *the respondent* with a copy. The justice of the poace shall ascertain the desires of the respondent with respect to the appointment of ~~his~~ counsel, and this ~~shall~~ *information must* be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."

**Section 21.** Section 53-21-123, MCA, is amended to read:

**"53-21-123. (Temporary) Examination of respondent following initial hearing — recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent ~~shall~~ *must* be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify tho county attorney of ~~his~~ *the* findings in person or by phone and shall make a written report of ~~his~~ *the* examination to the court, with copies to the respondent's attorney and the county attorney. *If the professional person recommends commitment, the professional person's written report must contain a statement of the professional person's recommendations to the court for disposition under 53-21-127(2).*

HeinOnline -- 1997 vol. III 2656 1997

(2) The following action ~~shall~~ *must* be taken based on the professional person's findings:

(a) If ~~he~~ *the professional person* recommends dismissal, ~~he~~ *the professional person* shall additionally notify counsel and the respondent, if ~~he~~ *the respondent* has been detained, ~~shall~~ *must* be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If ~~he~~ *the court* finds that commitment proceedings should continue, the hearing ~~shall~~ *must* be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. ~~Such~~ *The* reasons ~~shall~~ *must* be set forth in the order, along with the amount of additional time needed. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

**53-21-123. (Effeetive July 1, 1997) Examination of respondent following initial hearing — recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent ~~shall~~ *must* be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of ~~his~~ *the* findings in person or by phone and shall make a written report of ~~his~~ *the* examination to the court, with copies to the respondent's attorney and the county attorney. *If the professional person recommends commitment, the professional person's written report must contain a statement of the professional person's recommendations to the court for disposition under 53-21-127(2).*

(2) The following action ~~shall~~ *must* be taken hased on the professional person's findings:

(a) If ~~he~~ *the professional person* recommends dismissal, ~~he~~ *the professional person* shall additionally notify counsel and the respondent ~~shall~~ *must* be released and the petition dismissed. However, tbe county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If ~~he~~ *the court* finds that commitment proceedings should continue, the bearing ~~shall~~ *must* be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. ~~Such~~ *The* reasons ~~shall~~ *must* be set forth in the order, along with the amount of additional time needed."

**Section 22.** Section 53-21-126, MCA, is amended to read:

**"53-21-126. (Temporary) Triai or hearing on petition.** (1) The respondent shall be present unless his presence has been waived as provided in 53-21-119(2), and he shall be represented hy counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is mentally ill or seriously mentally ill within the meaning set forth in this part.

HeinOnline -- 1997 vol. III 2657 1997

(2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is mentally ill or seriously mentally ill. Testimony from a professional person or others must be received on each element of the definition of mentally ill or seriously mentally ill as those terms are defined in 53-21-102.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

**53-21-126. (Effective July 1, 1997) Trial or hearing on petition.** (1) The respondent ~~shall~~ *must* be present unless ~~his~~ *the respondent's* presence has been waived as provided in 53-21-119(2), and ~~he~~ *the respondent* ~~shall~~ *must* be represented by counsel at all stages of the trial. The trial ~~shall~~ *must* be limited to the determination of whether or not the respondent is ~~seriously mentally ill within the meaning set forth in this part~~ *suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment, the court shall consider the following:*

*(a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;*

*(b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;*

*(c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and*

*(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide*

*for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.*

(2) The standard of proof in ~~any~~ *a* hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters~~, except that~~. *However, the respondent's* mental ~~disorders shall be evidenced~~ *disorder must be proved* to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others ~~shall be evidenced~~ *must be proved* by overt acts *or omissions*, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court ~~shall~~ *must* be present for the trial and subject to cross-examination. The trial ~~shall be~~ *is* governed by the Montana Rules of Civil Procedure ~~except that, if~~. *However, if the issues are* tried by a jury, at least two-thirds of the jurors ~~must~~ *shall* concur on a finding that the respondent is ~~seriously mentally ill~~ *suffering from a mental disorder and requires commitment*. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is ~~seriously mentally ill~~ *suffering from a mental disorder and requires commitment*. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

~~(a) the respondent is suffering from a mental disorder; and~~

~~(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his life or health~~

*-(a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;*

*(b) the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;*

*(c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; or*

*(d) (i) the respondent's mental disorder:*

*(A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the respondent's life or health;*

*(B) is treatable, with a reasonable prospect of success;*

*(C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment; and*

*(ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self*

HeinOnline -- 1997 vol. III 2659 1997

*or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.*

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

**Section 23.** Section 53-21-127, MCA, is amended to read:

**"53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not mentally ill or seriously mentally ill within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of a relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors

HeinOnline -- 1997 vol. III 2660 1997

and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.

(3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that the respondent receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the reason therefor if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless respondent is financially able.

(4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

**53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not ~~seriously mentally ill~~ *suffering from a mental disorder or does not require commitment* within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is ~~seriously mentally ill~~ *suffering from a mental disorder and requires commitment* within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing ~~shall~~ *must* be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to ~~a facility~~ *the state hospital* for a period of not more than 3 months;

*(ii) commit the respondent to a community facility, program, or course of treatment for a period of not more than 3 months;*

~~(ii)~~*(iii)* order the respondent to be placed in the care and custody of a relative or guardian or some other appropriate place other than an institution;

~~(iii)~~*(iv)* order outpatient therapy; or

~~(iv)~~*(v)* make some other appropriate order for treatment.

(b) ~~No~~ *A* treatment ordered pursuant to this subsection may *not* affect the respondent's custody *or course of treatment* for a period of more than 3 months.

(c) In determining which of the ~~above~~ alternatives *in subsection (2)(a)* to order, the court shall choose the least restrictive alternatives necessary to protect the respendent and the public and to permit effective treatment. ~~The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable.~~ The court may authorize the chief medical officer of a facility *or a physician designated by the court* to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent ~~and~~ *or* the public ~~and~~ *or* to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility *or a physician designated by the court* approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility *or program*. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis. ~~The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.~~

*(d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility and may not require commitment at the state hospital.*

*(e) In ordering commitment pursuant to this section, the court shall make the following findings of fact:*

*(i) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;*

*(ii) the alternatives for treatment that were considered;*

*(iii) the alternatives available for treatment of the respondent;*

*(iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;*

*(v) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;*

HeinOnline -- 1997 vol. III 2662 1997

*(vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives; and*

*(vii) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."*

**Section 24.** Section 53-21-128, MCA, is amended to read:

**"53-21-128. (Temporary) Petition for extension of commitment period.** (1) To extend the 3-month period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be followed:

(a) Not less than 2 calendar weeks prior to the end of the 3-month period, the professional person in charge of the patient at the place of detention may petition the district court in the county where the patient is detained for extension of the detention period unless otherwise ordered by the original committing court. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

HeinOnline -- 1997 vol. III 2663 1997

(2) To extend the period of treatment provided for in 53-21-127(3), the procedure set forth in this subsection (2) must be followed:

(a) Not less than 7 days prior to the end of the 30-day period of treatment ordered under 53-21-127(3), the professional person in charge of the respondent's care may petition the court for extension of the treatment period. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical condition. The report shall describe any tests and evaluation devices which have heen employed in evaluating the respondent, the course of treatment which has been undertaken for the respondent, and the future course of treatment anticipated hy the professional person.

(h) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the respondent, his next of kin, if reasonahly available, the friend of respondent appointed by the court, if any, and the respondent's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 5 days from the receipt of the request and notify the same people, including the professional person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment for a period not to exceed 30 days.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition under 53-21-121(1)(b) for the original treatment except that the respondent is not entitled to trial by jury. The hearing shall be held in the district court for the county in which the treatment is being supervised unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial proceedings.

(d) If upon the hearing the court finds the respondent not mentally ill within the meaning of this part, the petition shall be dismissed. If the court finds that the respondent continues to be mentally ill, the court shall order treatment for the respondent for a period not to exceed 30 days. In its order, the court sball describe what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not considered suitable. The court may not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the respondent. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(3) Further extensions of the period of detention provided for in 53-21-127(2) may be obtained under the same procedure described in subsection (1) except that the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1).

(4) The period of treatment provided for in 53-21-127(3) may be extended only once under this section. (Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)

**53-21-128. (Effective July 1, 1997) Petition for extension of commitment period.** (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of ~~detention~~ *commitment* provided for in 53-21-127(2), the professional person in charge of tbe patient at the place of ~~detention~~ *commitment*

may petition the district court in the county where the patient is ~~detained~~ *committed* for extension of the ~~detention~~ *commitment* period unless otherwise ordered by the original committing court. The petition ~~shall~~ *must* be accompanied by a written report and evaluation of the patient's mental and physical condition. The repert ~~shall~~ *must* describe any tests and evaluation devices ~~which~~ *that* have been employed in evaluating the patient, the course of treatment ~~which has been~~ *that was* undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, ~~his~~ *the patient's* next of kin, if reasonably available, the friend of respondent appointed hy the court, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the termination of the previous ~~detention~~ *commitment* authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested ~~shall~~ *must* be the same in all respects as the procedure on the petition for tbe original 3-month commitment except the patient is not entitled to trial by jury. The hearing ~~shall~~ *must* be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, ~~shall~~ *must* be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not ~~seriously mentally ill~~ *to be suffering from a mental disorder and requiring commitment* within the meaning of this part, ~~he~~ *the patient* ~~shall~~ *must* be discharged and the petition dismissed. If tbe court finds that the patient continues to suffer from ~~serious mental illness~~ *a mental disorder and to require commitment*, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) ~~except that no~~. *However, an* order may *not* affect ~~his~~ *the patient's* custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not ~~deemed~~ *found* suitable. The court ~~shall~~ *may* not order continuation of an alternativo ~~which~~ *that* does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative ~~shall~~ *must* include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1) ~~except that~~; *however*, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1)."

**Section 25.** Section 53-21-129, MCA, is amended to read:

**"53-21-129. Emergency situation — petition — detention.** (1) When an emergency situation exists, a peace officer may take any person who appears to ~~be seriously mentally ill and as a result of serious mental illness to be a danger to others or to himself~~ *have a mental disorder and to present an imminent danger*

HeinOnline -- 1997 vol. III 2665 1997

*of death or bodily harm to the person or to others* into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained ~~appears to be seriously mentally ill~~ *is a danger to the person or to others because of a mental disorder* and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file ~~his~~ findings with the county attorney who, if ~~he~~ *the county attorney* determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining ~~his~~ *the professional person's* actions.

(3) The county attorney of ~~any~~ *a* county may make arrangements with ~~any~~ *a* federal, state, regional, or private mental facility or with a mental health facility in ~~any~~ *a* county for the detention of persons held pursuant to this section. ~~Whenever~~ *If* an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility ~~must~~ *shall* certify to the county attorney that the facility does not have adequate room at that time.

(4) However, before ~~any~~ *a* person is transferred to the state hospital under this section, the state hospital must be notified prior to transfer and ~~must~~ *shall* state that a bed is available for the person."

**Section 26.** Section 53-21-132, MCA, is amended to read:

**"53-21-132. Cost of examination and commitment.** (1) The cost of ~~the~~ *precommitment* examination, ~~committal,~~ *detention, treatment,* and taking a person who is ~~seriously mentally ill~~ *suffering from a mental disorder and who requires commitment* to a mental health facility must be paid by the county in which ~~he~~ *the person* resides at the time ~~he~~ *that the person* is ~~adjudged to be seriously mentally ill~~ *committed*. The sheriff must be allowed the actual expenses incurred in taking a *committed* person ~~who is seriously mentally ill~~ to the facility, as provided by 7-32-2144.

(2) The county of residence shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody of the respondent. *However, the county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part.* The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

*(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental health program funds.*

HeinOnline -- 1997 vol. III 2666 1997

*(4) A community service provider that is a private, nonpublic provider may not be required to treat or treat without compensation a person who has been committed."*

**Section 27.** Section 53-21-134, MCA, is amended to read:

**"53-21-134. Receipt of ~~seriously mentally ill~~ nonresident person *suffering from a mental disorder* pending return to home state.** A person who is ~~seriously mentally ill~~ *suffering from a mental disorder and in need of commitment* and *who is* not a resident of this state may be received into the state hospital for a period not to exceed 30 days pending return to the state of ~~his~~ *the person's* residence."

**Section 28.** Section 53-21-138, MCA, is amended to read:

**"53-21-138. Diversion of certain ~~mentally ill~~ persons *suffering from mental disorders* from jail.** (1) The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be ~~seriously mentally ill~~ *suffering from mental disorders and who require commitment*, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is ~~seriously mentally ill~~ *suffering from a mental disorder and requires commitment*, the sheriff or administrator of the jail shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are ~~seriously mentally ill~~ *suffering from a mental disorder and who require commitment.*

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for ~~serious mental illness~~ *a mental disorder and the need for commitment* can be performed."

**Section 29.** Section 53-21-139, MCA, is amended to read:

**"53-21-139. Crisis intervention programs.** (1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of ~~seriously mentally ill~~ persons *suffering from a mental disorder and requiring commitment* in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

HeinOnline -- 1997 vol. III 2667 1997

(3) The department may provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101(3)(j); and

(b) a targeted case management service authorized in 53-6-101(3)(n)."

**Section 30.** Section 53-21-144, MCA, is amended to read:

"**53-21-144. Rights concerning photographs.** (1) A person admitted to a mental health facility may be photographed ~~upon admission for identification and the~~ *for the clinical or* administrative purposes of the facility. ~~Such~~ *The* photographs ~~shall be~~ *are* confidential ~~and shall not be released by the facility except pursuant to court order~~. *Photographs may be released to a law enforcement agency when needed to aid in the search for a person who has left a facility without authorization from the facility's medical staff and when it is determined that the person is a self-threat or self-danger or a threat or danger to others at the time that the person left the facility. A law enforcement agency may not subsequently release photographs to the public or other persons unless authorized by a court order.*

(2) ~~No other~~ *Other* nonmedical photographs ~~shall~~ *may not* be taken or used without consent of the patient or, if applicable, the patient's legal guardian *or without a court order.*"

**Section 31.** Section 53-21-182, MCA, is amended to read:

"**53-21-182. Court-ordered release to alternative placement or treatment.** At any time during the patient's commitment, the court may, on its own initiative or upon application of the professional person in charge of the patient, the patient, ~~his~~ *the patient's* next of kin, ~~his~~ *the patient's* attorney, *a third party responsible for payment for the care of the patient,* or the friend of respondent appointed by the court, order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient therapy or other appropriate placement or treatment."

**Section 32.** Section 53-21-195, MCA, is amended to read:

"**53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities — petition.** (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each district court that committed the patient for the period of ~~his~~ *the patient's* present hospitalization under 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

(2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

(3) The petition must state:

(a) the patient's name and last-known address;

HeinOnline -- 1997 vol. III 2668 1997

(b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent appointed by the court, if any and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to be ~~seriously mentally ill~~ *suffering from a mental disorder and requiring commitment* within the meaning of this part and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

(d) a simple and precise statement of the facts showing that the patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a result of this deterioration, the patient can no longer be appropriately served by outpatient care; and

(e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must be in conspicuous print and identified by a suitable heading.

(4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing must be held no more than 5 days after the date *that* the petition is filed, including weekends and holidays, unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient. Further, the judge ~~must~~ *shall* ensure that the notice and copy of the petition are immediately hand-delivered to tbe patient, to ~~his~~ *the patient's* friend of respondent, if any, and to ~~his~~ *the patient's* counsel."

**Section 33.** Section 53-21-197, MCA, is amended to read:

**"53-21-197. Hearing on rehospitalization petition — revocation of conditional release.** (1) The court may order that the patient's conditional release status be revoked and that the patient be returned to the mental health facility from which ~~he~~ *the patient* was conditionally released or *be* sent to another appropriate inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

(a) the conditionally released patient has been determined by the district court to be ~~seriously mentally ill~~ *suffering from a mental disorder and requiring commitment* and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128; and

(b) the conditionally released patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental condition, and that as a result of this deterioration, the patient can no longer be appropriately served by outpatient care.

(2) A revocation of the patient's conditional release status under subsection (1) must be based on the testimony of the professional person responsible for the patient's case.

(3) If the court revokes the patient's conditional release status pursuant to subsection (1), a treatment plan must be updated or a new plan prepared for the patient as required by and within the time set forth in 53-21-162.

HeinOnline -- 1997 vol. III 2669 1997

(4) Except as provided in 53-21-198, an order revoking the patient's conditional release status may not order hospitalization or impose other conditions of release that extend beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128."

**Section 34.** Section 53-21-198, MCA, is amended to read:

**"53-21-198. Extension of conditions of release — hearing.** (1) Conditions of release may be extended by the district court beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear and convincing evidence that:

(a) continuation of the conditions of release is necessary to prevent the deterioration of the patient's mental disorder; and

(b) the deterioration will predictably result in the necessity of further inpatient care for the ~~person~~ *patient*. Predictability may be established by the patient's medical history.

(2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the professional person responsible for the patient's case may petition the court for extension of the conditions of release. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices ~~which~~ *that* have been employed in evaluating the patient, the course of treatment ~~which~~ *that* has been undertaken for the patient, and the future course of treatment anticipated by the professional porson.

(3) Upon the filing of the petition, the court shall give written notice of the filing of the potition to the patient, ~~his~~ *the patient's* next of kin, if reasonably available, the friend of respondent appointed by the court, if any, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the end of the period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order extending the conditions of release for a period not to exceed 6 months.

(4) Procedure on the petition for extension is the same in all respects as the procedure for hearing on a rehospitalization potition pursuant to 53-21-197 ~~except that~~. *However,* in an extension proceeding, the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceeding.

(5) If upon the hearing the court finds that the showing required by subsection (1) has not been made, the conditions of release may not be extended. If the court finds that the required showing has been made, the court may extend the conditions of release as recommended by the professional person. In its order, the court shall describe what alternatives for treatment of the patient are

HeinOnline -- 1997 vol. III 2670 1997

available, what alternatives were investigated, and why the investigated alternatives were not ~~deemed~~ *considered* suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative ~~shall~~ *must* include a specific finding that a comprehensive, individualized plan of treatment exists.

(6) Further extensions may be obtained under the same procedure described in this section ~~except that~~. *However,* the patient's custody may not be affected for more than 1 year without a renewal of the extension under the procedures set forth in this section, including a hearing and a statement of the findings required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation provided in subsection (1)."

**Section 35.** Section 70-19-413, MCA, is amended to read:

**"70-19-413. Certain disabilities to suspend running of statutory period.** (1) Subsection (2) applies if a person entitled to commence an action for the recovery of real property or for the recovery of the possession ~~thereof~~ *of real property* or to make any entry or defense founded on the title to real property or to rents or services out of the same is, at the same time ~~such~~ *the* title first descends or accrues:

(a) under the age of majority;

(b) ~~seriously mentally ill~~ *committed pursuant to 53-21-127*; or

(c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term of less than for life.

(2) The time during which disability continues is not considered any portion of the time in this chapter limited for the commencement of ~~such~~ *the* action or the making of ~~such~~ *the* entry or defense~~, but such~~. *The* action may be commenced or entry or defense made within the period of 5 years after ~~such~~ *the* disability ceases or after the death of the person entitled who dies under ~~such~~ *the* disability, but ~~such~~ *the* action may not be commenced or entry or defense made after that period."

**Section 36.** Section 70-29-113, MCA, is amended to read:

**"70-29-113. Death or incompetency of parties — proceedings not delayed.** (1) If during the pendency of the action ~~any of the parties~~ *a party* dies ~~or becomes seriously mentally ill~~, *is committed pursuant to 53-21-127,* or otherwise *becomes* incompetent, the proceedings may not for that cause be delayed or suspended, but the attorney who has appeared for the party may continue to represent ~~such~~ *the party's* interest. If any party has not appeared by an attorney, the court shall appoint an attorney to represent the interest ~~which~~ *that* was held by the party until ~~his~~ *the party's* heirs ~~or~~, legal representatives, or successors in interest have appeared in the action.

(2) An attorney ~~so~~ appointed ~~shall~~ *pursuant to subsection (1) must* be allowed by the court a reasonable compensation for ~~his~~ *the attorney's* services~~, which~~. *The compensation* may be taxed as costs against the share or interest represented by the attorney and may be adjudged a lien ~~thereon~~ *on the share or interest,* in the discretion of the court."

HeinOnline -- 1997 vol. III 2671 1997

**Section 37.** Section 70-29-210, MCA, is amended to read:

**"70-29-210. Consent of guardian to share of ward.** The general guardian of a minor and the guardian entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person *committed pursuant to 53-21-127* or other person adjudged incapable of conducting ~~his~~ *the person's* own affairs, who is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize ~~his~~ *the person* being made a party to an action, may agree upon the share to be set off to ~~such~~ *the* minor or other person entitled ~~and~~ *to the share. The guardian* may execute a release, in ~~his~~ *the person's* behalf, to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court."

**Section 38.** Section 70-29-328, MCA, is amended to read:

**"70-29-328. Incompetent's share of proceeds — payment to guardian.** The guardian who may be entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person *committed pursuant to 53-21-127* or other person adjudged incapable of conducting ~~his~~ *the person's* own affairs, whose interest in real property has been sold, may receive ~~in~~ *on* behalf of ~~such~~ *the* person ~~his~~ *the person's* share of the proceeds of ~~such~~ *the* real property from the referees. *The guardian may receive the interest* on executing *an undertaking* with ~~sufficient sureties an undertaking,~~ *a surety. The undertaking must be* approved by a judge of the court~~, that he~~ *and must state that the guardian* will faithfully discharge the trust ~~reposed~~ *placed* in ~~him~~ *the guardian* and will ~~render a true and just~~ *make an accurate* account to the person entitled *to the accounting* or to ~~his~~ *the person's* legal representative."

**Section 39.** Section 72-5-322, MCA, is amended to read:

**"72-5-322. Petition of guardian for treatment of ward.** (1) If a guardian believes ~~his~~ *that the guardian's* ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment~~, provided that no such order shall~~. *However, the order may not* forcibly detain the ward against ~~his~~ *the ward's* will for more than 72 hours.

(2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights guaranteed ~~seriously mentally ill persons~~ *to a person with a mental disorder and who requires commitment* under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

**Section 40. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 41. Effective date.** [This act] is effective July 1, 1997.

Approved May 2, 1997

HeinOnline -- 1997 vol. III 2672 1997

# CHAPTER NO. 491

[HB 561]

AN ACT FURTHERING THE RENEWAL OF STATE GOVERNMENT BY HARMONIZING THE DEFINITIONS OF "WAGES" AND "EMPLOYMENT"; BY REENGINEERING, RESTRUCTURING, AND COMBINING THE REPORTING AND REMITTANCE OF EMPLOYER TAXES; BY COORDINATING THE ADMINISTRATION OF THE STATE'S INCOME TAX AND OLD FUND LIABILITY TAX WITHHOLDING, UNEMPLOYMENT INSURANCE TAX, AND THE EMPLOYERS' SHARE OF THE OLD FUND LIABILITY TAX SO THAT ALL REPORTS AND REMITTANCES MUST BE MADE TO THE DEPARTMENT OF REVENUE THEREBY PROVIDING AN EMPLOYER THE CONVENIENCE OF DEALING WITH ONLY ONE STATE AGENCY; BY CLARIFYING INDIVIDUAL LIABILITY FOR THE REPORTING AND PAYMENT OF EMPLOYER TAXES; AMENDING SECTIONS 15-1-302, 15-2-302, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-207, 15-30-208, 15-30-209, 37-31-101, 39-51-201, 39-51-204, 39-51-301, 39-51-1105, 39-51-1109, 39-51-1110, 39-51-1301, 39-51-1303, 39-51-1304, 39-51-2108, 39-51-2402, 39-71-123, 39-71-401, 39-71-2501, 39-71-2503, AND 39-71-2505, MCA; REPEALING ARM 24.11.831; AND PROVIDING EFFECTIVE DATES.

WHEREAS, House Bill No. 98 (Ch. 48, L. 1995), enacted by the 54th Legislature, excluded direct sellers from minimum wage, overtime, unemployment insurance, and workers' compensation requirements; and

WHEREAS, the Legislature in House Bill No. 98 adopted the federal definition of direct seller to apply to relevant Montana statutes; and

WHEREAS, ARM 24.11.831 narrowed the scope of the federal definition of direct seller; and

WHEREAS, an original purpose of this House Bill No. 561 was to codify the narrower definition of direct seller; and

WHEREAS, this House Bill No. 561 is the appropriate place to repeal Rule 24.11.831, Administrative Rules of Montana.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Confidentiality.** Reports and returns required to be filed under this part are confidential, subject to the limitations contained in 39-51-603(3) and (4).

**Section 2. Application and distribution of payments.** (1) Except as provided by rule, tax payments including delinquent tax, penalty, and interest must be applied to the taxpayer's account, prorated on the basis of the amount of each tax due to the amount of the total tax due, and distributed to the appropriate fund accounts as required by law.

(2) Payment of a penalty assessed for late filing of a report for which there is no tax due for the period must be applied to the employer's liability for the penalties and equally distributed to the fund accounts specified by law among the tax types the report covers.

HeinOnline -- 1997 vol. III 2673 1997

**Section 3. Statute of limitations.** (1) In the case of a nonfiled return, the department may, at any time, audit the employer or estimate the tax due from any information in its possession and issue an assessment for the amount of the tax, penalty, and interest the department determines to he due.

(2) If the department determines, pursuant to a review conducted pursuant to 15-30-145, that any return is incorrect, it may revise the return within 5 years of the due date of the original return, within 5 years of the date the return was filed, or 1 year from the date an amended return was filed, whichever is later.

(3) Notwithstanding the provisions of subsection (2), if an employer purposely or knowingly files a false or fraudulent return, with intent to evade the tax, the amount of tax, penalty, and interest due may be determined at any time after the return is filed and collected at any time after it becomes due.

(4) For the purposes of this section, a return filed before the due date is considered to be filed on the due date.

(5) The statute of limitations is suspended during any time in which an employer-employee relationship determination has been appealed as provided in 15-1-211, and the time for assessment extends for an additional 1 year from the date the decision becomes final.

**Section 4. Credits and refunds — period of limitations.** (1) If the department determines by examination of an employer's account, or upon claim filed hy an employer, that the employer has overpaid the amount of tax, penalty, or interest, the amount of the overpayment may be refunded to the employer or applied to current or future ohligations of any tax, penalty, or interest for any tax contained in this title at the discretion of the taxpayer.

(2) A credit or refund may he allowed only if the claim is filed or the determination is made within 5 years of the due date prescribed for filing a report or 1 year from the date of the notification of the overpayment by the department.

(3) The department shall notify the employer of the overpayment and the credit or refund options available to the employer. A credit must be applied to the employer account unless directed otherwise by the employer.

(4) If a claim is disallowed, the department shall notify the employer. The decision disallowing tbe claim is subject to review as provided in 15-1-211.

(5) Interest is:

(a) allowed on an overpayment at the same rate as charged for late tax payments under this part;

(b) payable from the due date of the payment or the date overpayment was verified, whichever is later;

(c) not payable if the overpayment is applied to current or future ohligations with the department.

(6) Interest is not allowed if the overpayment is refunded within 45 days from the date the employer directs the department to refund the overpayment.

HeinOnline -- 1997 vol. III 2674 1997

(7) If additional information is required to verify the amount of the overpayment, the 45-day period in subsection (6) does not begin until the information is provided.

**Section 5. Employment defined and exclusions from definition of employment.** (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by an employee for an employer.

(2) The term "employment" does not include:

(a) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 15-30-201(4)(c);

(b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom an exemption may be claimed by the employer under the Internal Revenue Code or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor pursuant to 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has previously acknowledged or acknowledges in writing that the person performing the service and the service are not covered for unemployment insurance purposes. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspapor with tbe service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowlodged in writing that the cosmetologist or barber working under contract is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

HeinOnline -- 1997 vol. III 2675 1997

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not he construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless tbe cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership or a limited liability partnership, or members of a member-managed limited liability company that has filed articles of organization with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed by a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negetiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all service as an independent contractor pursuant to a written contract.

HeinOnline -- 1997 vol. III 2676 1997

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training;

(n) service performed by an inmate of a state prison or other state correctional or custodial institution;

(o) service by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed for aid or sustenance only;

(q) active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(r) agricultural labor; or

(s) service performed by an independent contractor.

**Section 6. Employment defined and exclusions from definition of employment.** (1) As used in this part "employment", subject to the provisions of subsection (2), means the service by an employee for an employer.

(2) The term "employment" does not include:

(a) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-71-2501(4)(c);

(b) service performed by a dependent, as defined in 26 U.S.C. 152, of a sole proprietor for whom an exemption may be claimed by the employer under the Internal Revenue Code or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has previously acknowledged or acknowledges in writing that the porson performing the service and the service are not covered for unemployment insurance purposes. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

HeinOnline -- 1997 vol. III 2677 1997

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) service performed as a licensed real estate broker or salesperson under Title 37, chapter 51;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber who is working under contract is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership or a limited liability partnership, or members of a member-managed limited liability company that has filed articles of organization with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upen completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment neeessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed by a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all service as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for those individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training;

(n) service performed by an inmate of a state prison or other state correctional or custodial institution;

(o) service by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed for aid or sustenance only; or

(q) service performed by an independent contractor.

**Section 7. Special review procedure for certain tax issues that involve unemployment insurance benefit claim — notice — appeal.** (1) As used in this section, the following definitions apply:

(a) "Administrator" means the administrator of the income and miscellaneous tax division, department of revenue.

(b) "Board" means the state tax appeal board established by 15-2-101.

HeinOnline -- 1997 vol. III 2679 1997

(c) "Claimant" means an individual who has filed a claim for unemployment insurance benefits under Title 39, chapter 51, and has asserted that the individual's employer inaccurately or incompletely reported the individual's wages.

(d) "Employer" means an employer as defined in 39-51-202, that has a potential tax liability arising from the inaccurate or incomplete reporting of a claimant's wages.

(e) "Interested party" means the claimant, the employer, or the department of labor and industry.

(2) (a) The department sball promptly investigate whether wages earned by the claimant were properly reported by the employer. Upon completion of the investigation, the department shall issue a written determination stating whether the wages were properly reported and, if not, the correct amount of reportable wages earned by the claimant. A copy of the determination must be mailed to each interested party at the last-known address of each party.

(b) The determination is final unless an interested party, within 10 calendar days of the mailing of the determination, makes a written application for reconsideration of the determination or makes a written appeal of the determination. A late-filed application for reconsideration may be accepted by the department upon a showing of good cause in writing.

(c) The written application or appeal must specify the reasons for the application or appeal and provide any other information relevant to the application or appeal.

(d) An interested party may appeal the reconsideration of a determination by making a written appeal within 10 calendar days of the mailing of the notice of the redetermination. A late-filed application for reconsideration may be accepted by the department upon a showing of good cause in writing.

(3) (a) Upon appeal of a determination or redetermination, the administrator or a person appointed by the administrator shall hold an informal hearing that may be conducted by telephone or video conference. After the hearing, the administrator or a designee shall promptly make findings of fact and conclusions of law and affirm, modify, reverse, or remand the determination or redetermination. A copy of the decision, with supporting findings of fact and conclusions of law, must be mailed to each interested party at the last-known address of each party.

(b) (i) The decision is binding on the interested parties unless a written appeal is made to the board. The appeal must be filed with the board within 10 calendar days after notice of the decision was mailed. A late-filed application for reconsideration may be accepted by the board upon a showing of good cause in writing.

(ii) If the decision becomes final, the department shall proceed as provided in subsection (5).

(4) (a) An appeal to the board, pursuant to 15-2-302, is initiated by filing a complaint with the board. The board shall promptly mail a copy of the complaint to each interested party at the last-known address of each party.

HeinOnline -- 1997 vol. III 2680 1997

(b) Any interested party who wants to file an answer must do so within 10 calendar days after the board mails a copy of the complaint. An answer up to 10 days late may be accepted by the board upon a showing of good cause in writing.

(c) The decision of the board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review under this section are subject to the provisions of the Montana Administrative Procedure Act.

(5) When the department's decision becomes final, whether as the result of appeal, judicial review, or the lapse of time during which to take an appeal, the interested parties are bound by the decision and may not contest any issue that was decided as part of the decision either administratively or judicially. An employer who is determined to have inaccuratoly or incompletely reported wages may not contest the issue of whether wages should have been reported, or the amount of the wages that should have been reported, once the department assesses taxes on those wages.

**Section 8.** Section 15-1-302, MCA, is amended to read:

**"15-1-302. Witnesses — oaths, contempt, and fees.** (1) Oaths to witnesses in any investigation by the department may be administered by the director of revenue or ~~his~~ *the director's* agent.

(2) *(a)* ~~In case any~~ *If a* witness ~~shall fail~~ *fails* to obey ~~any~~ *a* summons to appear before the department or ~~shall refuse~~ *refuses* to testify or answer any material question or to produce records, books, papers, or documents when required to do so, ~~such failure or refusal shall be reported to the attorney general, who~~ *the department* shall ~~thereupon~~ institute proceedings in the ~~proper~~ district court to compel obedience to ~~any~~ *a* summons or order of the board or to punish the witness for ~~such~~ neglect or refusal *to obey the summons.*

*(b) As required by 15-30-209, the department, in addition to instituting proceedings to compel obedience to a summons or order shall, as a part of the proceedings, request the court to issue an order requiring the payment of all penalties assessed for the employer's failure to report.*

(3) ~~Any~~ *A* person who ~~shall testify~~ *testifies* falsely in any material matter under consideration by the department ~~shall be~~ *is* guilty of perjury and *shall be* punished accordingly.

(4) Witnesses attending *an investigation by the department* ~~shall~~ *must* receive ~~like~~ *the same* compensation as witnesses in the district court. ~~Such~~ *The* compensation ~~shall~~ *must* be charged to the proper appropriation for the department."

**Section 9.** Section 15-2-302, MCA, is amended to read:

**"15-2-302. Direct appeal from department decision to state tax appeal board — hearing.** (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

(a) property centrally assessed under chapter 23 ~~of this title~~;

(b) classification of property as new industrial property;

(c) any other tax, ~~(other than the property tax)~~, imposed under this title; or

(d) any other matter in which the appeal is provided by law.

(2) *(a)* ~~The~~ *Except as provided in subsection (2)(b), the* appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and *the* nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

*(b) An appeal from the department's determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department's final determination. The board shall promptly mail a copy of the complaint to each interested party at the last-known address of each party.*

(3) The department shall file with the board an answer within 30 days following filing of a complaint, *or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party as defined in [section 7(1)(e)] and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board,* and at that time mail a copy to the complainant. The answer must set forth the department's response to each ground for and type of relief demanded in the complaint.

(4) *(a)* ~~The~~ *Except as provided in subsection (4)(b), the* board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

*(b) (i) An appeal regarding the determination of whether wages earned by an unemployment insurance claimant were properly reported to the department, the appeal must be conducted informally and may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.*

*(ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.*

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

**Section 10.** Section 15-30-201, MCA, is amended to read:

"**15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing,

HeinOnline -- 1997 vol. III 2682 1997

feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

*(2) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.*

~~(2)~~*(3)* "Employee" means:

*(a)* an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana. ~~The term also includes~~;

*(b)* an officer of a corporation.;

*(c) any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance;*

*(d) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.*

~~(3)~~*(4)* "Employer" means:

*(a)* the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person. ~~However, if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term means the person who has control of the payment of wages.~~;

*(b) a person who pays $1,000 or more in wages within the current calendar year;*

*(c) a person who pays $1,000 or more in cash for domestic or household service in any quarter during the current calendar year;*

*(d) any individual or organization, including state government and any of its political subdivisions or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or a limited liability partnership that has filed with the secretary of state, or domestic or foreign corporation or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person who has or had in its employ one or more individuals performing services for it within this state; or*

*(e) any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes is considered an employer for state income tax withholding purposes.*

~~(4)~~*(5)* "Independent contractor" means an individual who renders service in the course of an occupation and:

HeinOnline -- 1997 vol. III 2683 1997

(a) has been and will continue to be free from control or direction over the performance of the services, both under contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

~~(5)~~*(6)* "Lookback period" means the 12-month period ending the preceding June 30.

~~(5)~~*(7)(a)* "Wages", *unless specifically exempted under subsection (7)(b),* means all remuneration~~, other than fees paid to a public official,~~ for services performed by an employee for the employer, including the cash value of all remuneration paid in any medium other than cash, ~~except that the term does not include remuneration paid:~~ *and includes but is not limited to the following:*

*(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;*

*(ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and*

*(iii) except those tips that are excmpted in subsection (7)(b)(v), tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.*

~~(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);~~

~~(b) for agricultural labor;~~

~~(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;~~

~~(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (d), an individual is considered to be regularly employed by an employer during a calendar quarter only if:~~

~~(i) on each of 24 days during a quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and~~

~~(ii) the individual was regularly employed, as determined under subsection (6)(d)(i), by the employer in the performance of service during the preceding calendar quarter.~~

~~(e) for services by a citizen or resident of the United States for a foreign government or an international organization;~~

~~(f) for services performed by an ordained, commissioned, or licensed minister of a church in the exercise of the ministry or by a member of a religious order in the exercise of duties required by the order;~~

~~(g) (i) for services performed by an individual under 18 years of age in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or~~

~~(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, with the individual's compensation based on the retention of the excess of the price over the amount at which the newspapers or magazines are charged to the individual, whether or not the individual is guaranteed a minimum amount of compensation for the service or is entitled to be credited with the unsold newspapers or magazines turned back;~~

~~(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when the payments are in the form of lodgings or meals and the services are received by the employee at the request of and for the convenience of the employer;~~

~~(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;~~

~~(j) as tips or gratuities that are in accordance with section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;~~

~~(k) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (6)(j) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)~~

*(b) The term "wages" does not include:*

*(i) the amount of any payment made by the employer for employees, if the payment was made for:*

*(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;*

*(B) sickness or accident disability under a workers' compensation policy;*

*(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or*

*(D) death, including life insurance for the employee or the employee's immediate family;*

*(ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;*

*(iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A), to a qualified individual employee;*

*(iv) payments made by an employee to any group plan or program to the extent that the payments are not taxable for state income tax purposes;*

*(v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered by 26 U.S.C. 3401 of the Internal Revenue Code, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging; or*

*(vi) payments that may not be taxed under federal law.*"

**Section 11.** Section 15-30-202, MCA, is amended to read:

"**15-30-202. Withholding of tax from wages.** *(1)* Each employer making payment of wages *for employment as defined in [section 5]* shall withhold from wages a tax determined in accordance with the withholding tax tables prepared and issued by the department. ~~Persons on active service as members of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33), are not subject to the provisions of this section.~~

*(2) An employer who maintains two or more separate establishments within this state is considered to be a single employer for the purposes of this part.*"

**Section 12.** Section 15-30-203, MCA, is amended to read:

"**15-30-203. Employer liable for ~~withholding~~ *employment taxes*.** (1) Each employer is liable for *the reports and payments required by 15-30-204,* the amounts required to be deducted and withheld under this part, and the amounts plus interest due on the amounts are a tax. With respect to the tax, the employer is the taxpayer.

(2) The officer ~~or employee~~ of a corporation whose ~~duty~~ *responsibility* it is to collect, truthfully account for, and pay to the state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable to the state for the amounts withheld and the penalty and interest due on the amounts.

*(3) (a) Each officer of the corporation is individually liable along with the corporation for filing reports to the extent that the officer has access to the requisite records and for unpaid taxes, penalties, and interest upon a determination that the officer:*

*(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and*

*(ii) possessed the responsibility on behalf of the corporation for directing the filing of tax reports or the payment of other corporate obligations and exerciscd that responsibility resulting in the corporation's failure to file reports required by this part or pay taxes due as required by this part.*

*(b) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (3)(a) to establish individual liability and may consider any other available information.*

HeinOnline -- 1997 vol. III 2686 1997

*(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any reports and the amount of taxes, penalties, and interest unpaid by the corporation.*

*(5) For the purpose of determining liability for the filing of reports and the remittance of taxes, penalties, and interest owed under this part, a member-managed limited liability company must be treated as a partnership with liability for filing reports and remitting taxes, penalties, and interest owed extending to eaeh member who was a member at the time the report or taxes were due.*

*(6) For determining personal liability for the failure to file reports and re nit taxes, penalties, and interest owed by a manager-managed limited liabiiity company, the managers of the limited liability company are jointly and severally liable along with the limited liability company for reports and any taxes, penalties, and interest owed.*

*(7) For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest due.*

~~(3)~~*(8)* If the employer fails to deduct and withhold the amounts specified in 15-30-202 and ~~thereafter~~ the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer."

**Section 13.** Section 15-30-204, MCA, is amended to read:

**"15-30-204. ~~Weekly, monthly, or annual payment~~ *Reporting and remittance requirements.*** ~~(1) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding lookback period was $12,000 or greater shall file a return in the form and containing the information that may be required by the department and shall pay the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding payroll period. The payment must be submitted on or before the date on which federal income tax weekly withholding payments are due. On or before the last day of April, July, October, and January, the employer shall file a return in the form and containing the information required by the department. The quarterly returns for employers subject to this subsection must be used to summarize and adjust payments and to request refunds of overpayments. The employer shall also file the annual statement as required by 15-30-207.~~

~~(2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding lookback period was less than $12,000 but greater than $1,199 shall remit a monthly payment to the department for the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding month. The monthly payment must be submitted on or before the 15th day of the month following the payment of the wages. The employer subject to this subsection shall, on or before February 28 of the year following payment of the wages, file an annual return in the form and containing the information required by the department and the~~

HeinOnline -- 1997 vol. III 2687 1997

~~annual statement required by 15-30-207. The annual returns for employers subject to this subsection must be used to summarize and adjust payments and to request refunds of overpayments.~~

*(1) For the purposes of this section, employers shall remit their taxes in accordance with the appropriate remittance schedule as follows:*

*(a) Employers whose total liability for state income tax withholding during the preceding lookback period was $12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's federal due dates for federal tax deposits.*

*(b) Employers whose total liability for state income tax withholding during the preceding lookback period was less than $12,000 but more than $1,199 shall remit on a "monthly schedule" for which the remittance due date is on or before the 15th day of the month following the payment of wages.*

*(c) Employers whose total liability for state income tax withholding during the preceding lookback period was less than $1,200 shall remit on a "quarterly schedule" for which the remittance due date is on or before the last day of the month following the close of each calendar quarter.*

*(d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and whose total liability for state income tax withholding, or if state income tax withholding is not required, whose total liability for old fund liability tax during the preceding lookback period was less than $1,200, may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year following payment of wages.*

*(2) (a) Every employer is required to file a report quarterly in the form required by the department.*

*(b) The report is due on or before the last day of the month following the close of the calendar quarter.*

*(c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect to file an annual report on or before February 28 for the preceding calendar year.*

*(d) An employer who has no payroll during a quarter may elect to report "no wages paid this quarter" using alternative reporting methods provided in department rules.*

*(e) An employer, in addition to the scheduled reports and remittances, must file the annual report and wage statements as required by 15-30-207.*

~~(3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202 upon the wages of all employees of any employer is less than $1,200 for the preceding lookback period, the employer shall, on or before February 28 of the year succeeding that in which the wages were paid, file an annual return in the form required by the department, together with the annual statement required by 15-30-207, and shall at the same time pay the amount required to be deducted and withheld by the employer from all wages paid during the preceding calendar year.~~

~~(b) An employer subject to the provisions of this subsection (3) may elect to remit monthly payments. If an employer elects to make monthly payments, the employer shall remit monthly payments during the entire year and is subject to the same interest and penalty provisions as employers subject to the provisions of subsection (2).~~

*(3) (a) Except as provided in subsection (3)(g), payments are due as required according to the remittance schedule for each employer.*

~~(c)~~*(b)* If an employer subject to the provisions of ~~this~~ subsection ~~(3)~~ *(1)(d)* does not ~~file the annual return required by subsection (3)(a),~~ *comply with the requirements of this section,* the employer ~~is~~ *may be* subject to the ~~payment and filing provisions of~~ *quarterly reporting schedule provided in* subsection (2)*(a) and to the quarterly remittance schedule provided in subsection (1)(c)* until the department determines from the employer's subsequent filing *and payment* history that the employer will file *and remit* in a timely fashion.

~~(4)(a)~~*(c)* On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.

~~(b)~~*(d)* ~~A~~ *Except as provided in subsection (3)(g), a* new employer or an employer with no filing history is subject to ~~the provisions of subsection (2)~~ *the quarterly remittance schedule in subsection (1)(c)* until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

*(e) An employer who is subject to the quarterly schedule in subsection (1)(c) may elect to remit payments on a more frequent basis. An employer who is on an annual schedule may elect to remit monthly or quarterly payments.*

*(f) An employer who exceeds either threshold, as defined in 15-30-201(4)(b) and (4)(c), must begin withholding state income tax on or before the last day of the month following the quarter in which the wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.*

*(g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and whose estimated annual state income tax withholding, or if state income tax withholding is not required, whose estimated old fund liability tax, is not expected to exceed $1,199 for the calendar year may remit according to the annual schedule and report annually on or before February 28.*

*(h) An employer may use alternative remittance methods in conjunction with the department's electronic remittance program in accordance with department rules.*

~~(5)~~*(4)* If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under ~~15-30-312 with respect to jeopardy assessments of income tax~~ *15-1-703*.

*(5) Each employer shall keep true and accurate payroll records containing the information that the department may prescribe by rule. Those records must be*

*open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer's expense.*"

**Section 14.** Section 15-30-207, MCA, is amended to read:

"**15-30-207. Annual statement by employer.** (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in ~~such~~ *the* form and summarizing ~~such~~ information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part ~~thereof~~ *of the calendar year* and showing the total amount of the federal income tax deducted and withheld from ~~such~~ *the* wages and the total amount of the tax deducted and withheld ~~therefrom~~ *from the wages* under the provisions of 15-30-201 through 15-30-209 and 39-71-2503.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and ~~no~~ additional information return is *not* required with respect to ~~such~~ *the* wage payments.

~~(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of $5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be $50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts.~~"

**Section 15.** Section 15-30-208, MCA, is amended to read:

"**15-30-208. Withheld taxes held in trust for state ~~—warrants to collect.~~** ~~(1)~~ Every employer who deducts and withholds any amounts under the provisions of 15-30-201 through 15-30-209 shall hold the ~~same~~ *amounts* in trust for the state of Montana.

~~(2) If any tax imposed by 15-30-201 through 15-30-209 or any portion of such tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.~~

~~(3) The tax lien provided for in subsection (2) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.~~

~~(4) A grantor who signs and delivers to the third party an affidavit as provided in subsection (3) is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding the provisions of 15-30-321(3), the department may bring an action as provided for in that subsection in the name of the state to recover the civil penalty and any delinquent taxes.~~"

**Section 16.** Section 15-30-209, MCA, is amended to read:

HeinOnline -- 1997 vol. III 2690 1997

**"15-30-209. Violations by employer — penalties, *interest*, and remedies.** (1) ~~If any employer shall fail to pay over to the state the tax deducted and withheld under the provisions of 15-30-201 through 15-30-208 or shall fail to file or furnish any statement provided for within the time prescribed therefor, the same additions to the amount of such tax shall be imposed and added as those specified in 15-30-321 with respect to failure to make a return of income or to pay any income tax, and any individual, corporation, or partnership or any officer or employee thereof who, with intent to evade any tax or any requirement of 15-30-201 through 15-30-208, or who, with like intent, files or supplies any false or fraudulent statement or information shall be liable to the same penalties as those imposed by 15-30-321 with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes~~ *The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.*

*(2) (a) A late report penalty may not be assessed if an employer files the late report prior to the issuance of a notice of delinquent report.*

*(b) If the report is not received prior to the issuance of a notice of delinquent report, a $50 penalty must be assessed at the same time the notice is issued.*

*(3) (a) Taxes unpaid on the date on which they are due and payable are subject to a penalty of 2% per month, or any portion of a month, on the late paid tax with a maximum penalty of 24%.*

*(b) A late payment penalty may be suspended if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the suspension and the penalty must be recomputed from the due date on the unpaid tax.*

*(4) An employer must be assessed interest at the rate of 18% a year, computed at 1 1/2% a month or fraction of a month, on any remaining unpaid tax required to be paid.*

*(5) (a) A subpoena penalty of $50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a subpoena pursuant to 15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703.*

*(b) If an employer fails to honor the subpoena provided in subsection (5)(a), an additional $100 penalty must be added to the liability.*

*(6) In addition to any other penalty provided by law, the failure of an employer to furnish a wage and tax statement as required by 15-30-207(1) subjects the employer to a penalty of $5 for each failure with a minimum of $50.*

*(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.*

HeinOnline -- 1997 vol. III 2691 1997

*(8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.*

*(9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.*

*(10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(3) if any part of the affidavit is untrue. Notwithstanding the provisions of 15-30-321(3), the department may bring an action as provided in that subsection in the name of the state to recover the civil penalty and any delinquent taxes.*

~~(2)~~*(11)* All of the remedies available to the state for the administration, enforcement, and collection of income taxes ~~shall be~~ *are* available and ~~shall~~ apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 *unless otherwise specifically addressed in this part.*"

**Section 17.** Section 37-31-101, MCA, is amended to read:

"**37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a cosmetology salon or manicuring salon that is rented or leased for the performance of cosmetologist services, as specified in 39-51-204~~(1)(l)~~*(1)(e)*.

(3) "Cosmetology salon" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and that must have a manager-operator in charge.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(6) "Manicuring salon" means premises, a building, or part of a building in which the art of manicuring is practiced.

(7) "Practice and teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business."

HeinOnline -- 1997 vol. III 2692 1997

**Section 18.** Section 39-51-201, MCA, is amended to read:

**"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the base period means the first 4 quarters of the last 5 quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which the individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

*(9) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.*

~~(9)~~*(10)* "Employing unit" means any individual or organization (including the state government and any of its political subdivisions or instrumentalities),

HeinOnline -- 1997 vol. III 2693 1997

partnership, association, trust, estate, joint-stock company, insurance company, limited liability company that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204~~(1)(a) and (1)(b)~~*(1)(a) and (1)(q)*. All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

~~(10)~~*(11)* "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or ~~such~~ other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

~~(11)~~*(12)* "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter must be paid.

~~(12)~~*(13)* "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

~~(13)~~*(14)* "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

~~(14)~~*(15)* "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

~~(13)~~*(16)* (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a

HeinOnline -- 1997 vol. III 2694 1997

bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding subsection ~~(15)(a)~~ *(16)(a)*, all universities in this state are institutions of higher education for purposes of this part.

~~(16)~~*(17)* "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

~~(17)~~*(18)* "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(16)~~*(19)* "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

~~(19)~~*(20)* (a) "Wages", *unless specifically exempted under subsection (20)(b),* means all remuneration payable for personal services, including ~~commissions and bonuses,~~ the cash value of all remuneration ~~payable~~ *paid* in any medium other than cash~~, and backpay received pursuant to a dispute related to employment~~. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant te rules prescribed by the department. *The term includes but is not limited to:*

*(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;*

*(ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and*

*(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.*

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer *for employees*, if the payment was made ~~under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee~~ for:

(A) retirement *or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code*;

(B) sickness or accident disability under a workers' compensation ~~law~~ *policy*;

(C) medical ~~and~~ *or* hospitalization expenses in connection with sickness or accident disability *including health insurance for the employee or the employee's immediate family*; or

(D) death~~;~~, *including life insurance for the employee or the employee's immediate family; or*

HeinOnline -- 1997 vol. III 2695 1997

(ii) ~~remuneration paid by a county welfare office from public assistance funds for services performed at the direction and request of the county welfare office; or~~

~~(iii)~~ employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

~~(20)~~*(21)* "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(21)~~*(22)* An individual's "weekly benefit amount" means the amount of benefits that the individual would be entitled to receive for 1 week of total unemployment."

**Section 19.** Section 39-51-204, MCA, is amended to read:

**"39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) ~~agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:~~

~~(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and~~

~~(ii) keeps separate books and records to account for the employment of persons in agricultural labor.~~

~~(b) household and domestic~~ *domestic or household* service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic *or household* service employment, all employees engaged in domestic *or household* service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic *or household* service; and

(ii) keeps separate books and records to account for the employment of persons in domestic *or household* service.

~~(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;~~

~~(d)~~*(b)* service performed by ~~an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother~~ *a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703*;

HeinOnline -- 1997 vol. III 2696 1997

~~(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law may not be entitled to exemption under this subsection and are subject to this chapter the same as state banks, provided that the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act (26 U.S.C. 3306(c)(7));~~

~~(f) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;~~

~~(g)~~*(c)* ~~services~~ *service* performed as a *freelance correspondent or* newspaper carrier ~~or free-lance correspondent~~ if the person performing the ~~services~~ *service,* or a parent or guardian of the person performing the ~~services~~ *service* in the case of a minor, has acknowledged in writing that the person performing the ~~services~~ *service* and the ~~services~~ *service* are not covered. As used in this subsection:

(i) ~~"free-lance~~ *"freelance* correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

~~(h)~~*(d)* ~~services~~ *service* performed ~~by~~ *as a* real estate~~, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings~~ *broker or salesperson who is licensed pursuant to Title 37, chapter 51*;

~~(i) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment will not be covered by any program of unemployment insurance;~~

~~(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection does not apply to service performed in a program established for or on behalf of an employer or group of employers;~~

~~(k) service performed in the employ of a hospital if the service is performed by a patient of the hospital;~~

~~(l)~~*(e)* ~~services~~ *service* performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for ~~services~~ *service* from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. ~~(the~~ *The* existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection~~)~~.

~~(m)~~*(f)* casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the ~~services are~~ *service is* performed during at least 24 days in the same quarter.

~~(n)~~*(g)* ~~employment of~~ *service performed by* sole proprietors, working members of a partnership, or members of a member-managed limited liability company that has filed with the secretary of state *or partners in a limited liability partnership that has filed with the secretary of state*;

~~(o)~~*(h)* ~~services~~ *service* performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform ~~services~~ *service* for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the ~~services~~ *service*; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

~~(p)~~*(i)* ~~employment of~~ *service performed as* a direct seller *as defined by 26 U.S.C. 3508* ~~as defined in 26 U.S.C. 3508~~;

~~(q)~~*(j)* ~~services~~ *service* performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for ~~services~~ *service* that ~~are~~ *is* directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

~~(2) Employment does not include elected public officials.~~

~~(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:~~

~~(a) in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;~~

~~(b)~~*(k) service performed* by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

~~(c)~~*(l) service performed by an individual receiving rehabilitation or remunerative work* in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market ~~by an individual receiving rehabilitation or remunerative work~~;

~~(d)~~*(m) service performed* as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training; ~~or~~

~~(e)~~*(n) service performed* for a state prison or other state correctional or custodial institution by an inmate of that institution~~.~~;

*(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;*

*(p) service performed by elected public officials;*

*(q) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:*

*(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and*

*(ii) keeps separate books and records to account for the employment of persons in agricultural labor.*

*(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption undsr this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;*

*(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;*

*(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commenccs to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;*

*(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;*

*(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; or*

*(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act.*

~~(4)~~*(2)* An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

~~(5)~~*(3)* This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act."

**Section 20.** Section 39-51-301, MCA, is amended to read:

**"39-51-391. Administration — duties and powers of department.** (1) It ~~shall be~~ *is* the duty of the department to administer this chapter and it ~~shall have power and authority to~~ *may* adopt, amend, or rescind ~~such~~ rules, te employ ~~such~~ persons, make ~~such~~ expenditures, require ~~such~~ reports, make ~~such~~ investigations, and take ~~such other~~ action as it ~~deems~~ *considers* necessary or suitable ~~to that end~~ *in administering this chapter.*

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal, which ~~shall be~~ *is* judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly ~~so~~ inform the governor and the legislature and make recommendations with respect ~~thereto~~ *to the change.*

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

*(5) The department shall delegate to the department of revenue duties associated with the administration of unemployment insurance contributions and the employment security account so long as the duties are carried out in conformity with the requirements of the program budget plan with the United States department of labor. The delegated duties do not include oversight duties such as revenue quality control, risk management, and trust fund management. The department of revenue must receive funds from the department for the performance of the delegated duties.*

*(6) Employees transferring from the department to the department of revenue as a result of a delegation of duties in subsection (5) are entitled to all rights including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department for recruitment purposes for the period from July 1, 1997, through June 30, 1998.*

*(7) The department of revenue shall succeed the department in its rights to property relating to the delegation of duties in subsection (5) to the extent that is*

HeinOnline -- 1997 vol. III 2701 1997

*consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.*

*(8) (a) The delegation of duties in subsection (5) does not affect the validity of any pending judicial or administrative proceeding.*

*(b) Appeals that were filed with the board of labor appeals or the department's hearings bureau before July 1, 1997, must follow the procedures and processes in effect when the appeal was first taken. An appeal that is filed on or after July 1, 1997, must be taken in accordance with the procedures and processes in effect on the date the appeal is filed.*

*(c) The department of revenue must be substituted for the department and succeed to all audits, determinations, and other actions that have not been appealed to the board of labor appeals or the department's hearings bureau prior to July 1, 1997.*

*(9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the delegation of duties in subsection (5) remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department of revenue is substituted for the department and, subject to the provisions of subsection (5), succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection (9) do not apply to the program budget plan agreement between the department and the United States department of labor."*

**Section 21.** Section 39-51-1105, MCA, is amended to read:

**"39-51-1105. Liability of corporate officers ~~or employees~~ for taxes, penalties, and interest owed by corporation.** (1) The officer ~~or employee~~ of a corporation whose ~~duty~~ *responsibility* it is to pay the taxes, penalties, and interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer ~~or employee~~ of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the ~~individual~~ *corporate officer*:

(i) possessed the ~~authority, duty, and~~ responsibility to file reports and pay taxes on behalf of the corporation; *and*

(ii) ~~possessed the authority on behalf of the corporation to direct the filing of reports and payment of taxes; or~~

~~(iii)~~ possessed the ~~fiscal authority~~ *responsibility* on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the ~~authority~~ *responsibility* that resulted in failure to file reports or pay taxes due.

(h) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes, penalties, and interest unpaid by the corporation.

(4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a member-managed limited liability company must be treated as a partnership, with liability for taxes, penalties, and interest owed extending to each member.

(5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable for any taxes, penalties, and interest owed."

**Section 22.** Section 39-51-1109, MCA, is amended to read:

**"39-51-1109. Tax appeals — procedure.** *(1)* A decision, determination, or redetermination of the department involving ~~contribution liability, contribution rate, application for refund, employment status,~~ *an employer-employee relationship* or the charging of benefit payments to employers ~~making payment in lieu of contributions~~ is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must be made in the same manner as prescribed in 39-51-2403 through 39-51-2410.

*(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, or other tax-related issues must be issued by the department of revenue as provided in Title 15, chapter 1, part 2, and [section 7], if applicable. The decision is final unless an interested party entitled to notification follows the uniform tax review procedures as prescribed in 15-1-211 and [section 7], if applicable."*

**Section 23.** Section 39-51-1110, MCA, is amended to read:

**"39-51-1110. Refunds to employers.** (1) ~~If not later than 3 years after the date on which any taxes or interest thereon became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid such taxes or interest thereon shall make application for an adjustment thereof in connection with subsequent tax payments or for a refund thereof because such adjustment cannot be made and the department shall determine that such taxes or interest or any portion thereof was erroneously collected, the department shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent tax payments by him or, if such adjustment cannot be made, the department shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment~~

HeinOnline -- 1997 vol. III 2703 1997

~~or refund may be so made on the department's own initiative.~~ *If an employer claims an adjustment or the department or its delegate, as provided in 39-51-301, determines through an examination of the employer's account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within one year from the date the payment is made, whichever is later. The department or its delegate pursuant to 39-51-301(5), shall credit or refund the amount to the employer, without interest.*

(2) If the department ~~shall determine~~ *or its delegate pursuant to 39-51-301(5), determines* that an employer has paid taxes to this state under this chapter ~~when such~~ *but the* taxes should have been paid to another state under a similar act of ~~such~~ *the* other state, *a* transfer of ~~such~~ *the* taxes to ~~such~~ *the* other state ~~shall~~ *must* be made upon discovery or, upon proof of payment that ~~such~~ *the* other state has been fully paid, then *a* refund to ~~such~~ *the* employer ~~shall~~ *must* be made ~~at any time~~ upon application without limitation of time.

(3) ~~In the event that~~ *If* this chapter is not certified by the secretary of labor under *26 U.S.C. 3304* ~~section 1603 of the Internal Revenue Code, as amended, 1939,~~ for any year, then ~~and in that event~~ refunds ~~shall~~ *must* be made of all taxes required under this chapter from employers for that year."

**Section 24.** Section 39-51-1301, MCA, is amended to read:

**"39-51-1301. Penalty and interest on past-due *reports and* taxes.** (1) ~~Taxes unpaid on the date on which they are due and payable, as provided by 39-51-1103(1) and (2) and 39-51-1125, that are paid by the end of the month following the due date are subject to a penalty assessment of $10 or 10% of the taxes due, whichever is greater. If the taxes are not paid by the end of the month following the due date, the employer is subject to a penalty assessment of $15 or 15% of the taxes due, whichever is greater. All past-due taxes bear interest at the rate of 18% a year, to be prorated on a daily basis.~~

~~(2) A penalty of $40 must be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay taxes on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.~~ *Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided by 15-30-209.*

~~(3)~~*(2)* There is an account in the federal special revenue fund. Penalties and interest collected ~~under this section~~ *for unemployment insurance obligations are distributed as provided in [section 2], and* must be deposited in that account. Money deposited in that account and appropriated to the department *or transferred by the department to its delegate, pursuant to 39-51-301(5),* may only be used by the department *or its delegate* to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

HeinOnline -- 1997 vol. III 2704 1997

~~(4) When failure to pay taxes on time was not caused by willful intent of the employer, the department may abate the penalty and interest.~~

~~(5)~~*(3)* All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due *unemployment insurance* taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

**Section 25.** Section 39-51-1303, MCA, is amended to read:

**"39-51-1303. Collection of unpaid taxes ~~by civil action~~.** (1) *The department, or its delegate pursuant to 39-51-301(5), has authority to enter into payment agreements with an employer to resolve unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement is entered into and adhered to. Failure to meet the terms of the payment agreement voids the penalty and interest abatement and penalty and interest must be recomputed from the due date of the unpaid tax.*

*(2)* If, after due notice, any employer, liable corporate officer ~~or employee~~, or liable member or manager of a limited liability company referred to in 39-51-1105 *or partner in a limited liability partnership* defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department, *or its delegate pursuant to 39-51-301(5),* may initiate a civil action in the name of the ~~department~~ *state* to collect the amount due, and the employer, liable corporate officer, ~~or~~ liable member or manager of a limited liability company referred to in 39-51-1105, *or partner in a limited liability partnership* adjudged in default shall pay the costs of the action.

~~(2)~~*(3)* An action for the collection of taxes due must be brought within 5 years ~~after~~ *from* the ~~due~~ date ~~of~~ the *original or amended report was filed or assessment became due, whichever is later,* ~~taxes~~ or it is barred.

~~(3)~~*(4)* The department, *or its delegate pursuant to 39-51-301(5),* may pursue its remedy under either 39-51-1304 or this section, or both."

**Section 26.** Section 39-51-1304, MCA, is amended to read:

**"39-51-1304. Lien for payment of unpaid taxes — levy and execution.** (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, or liable corporate officer ~~or employee~~ or liable member or manager of a limited liability company referred to in 39-51-1105, arising at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

HeinOnline -- 1997 vol. III 2705 1997

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period pursuant to the provisions of 25-13-102.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer, liable corporate officer ~~or employee~~, or liable member or manager of a limited liability company referred to in 39-51-1105 under 39-51-1303 or this section, or both, to collect the delinquent taxes, penalties, and interest.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

**Section 27.** Section 39-51-2108, MCA, is amended to read:

**"39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations.** (1) Benefits based on service in employment defined in ~~subsections (5) and (6) of~~ 39-51-203*(5) and (6)* ~~and subsections (2) and (3) of 39-51-204~~ are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or reasonable assurance of a contract to perform services in any ~~such~~ *instructional, research, or principal administrative* capacity for ~~any such~~ *the* educational institution for both ~~such~~ academic years or both ~~such~~ terms.

(2) Benefits based on services in any other capacity for an educational institution ~~shall~~ *must* be denied to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs ~~such~~ *the* services in the first of ~~such~~ *the* academic years or terms and there is a reasonable assurance that the individual will perform ~~such~~ *the* services in the second of ~~such~~ *the* academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform ~~such~~ *the* service for the educational institution for the second of ~~such~~ *the* academic years or terms, ~~such~~ *the* individual ~~shall be~~ *is* entitled to a retroactive payment of the benefits for each

HeinOnline -- 1997 vol. III 2706 1997

week for which the individual filed a timely claim for benefits and for which benefits were denied solely hy reason of the denial provided for in this section.

(3) Benefits hased on services described in subsections (1) and (2) of this section ~~shall~~ *must* be denied to any individual for any week ~~which~~ *that* commences during an established and customary vacation peried or holiday recess if ~~such~~ *the* individual performs ~~such~~ *the* services in the period inmediately before ~~such~~ *the* vacation period or holiday recess and there is reasonahle assurance that ~~such~~ *the* individual will perform ~~such~~ *the* service in the period immediately following ~~such~~ *the* vacation period or holiday recess.

(4) Benefits based on services described in subsections (1) and (2) ~~of this section~~ to an individual who performed ~~such~~ *the* services for an educational institution while in the employ of an educational service agency ~~shall~~ *must* be denied as specified in subsections (1)~~, (2), and~~ *through* (3) ~~of this section~~. The term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing ~~such~~ *the* service to one or more educational institutions."

**Section 28.** Section 39-51-2402, MCA, is amended to read:

"**39-51-2402. Initial determination — redetermination.** (1) A representative designated by the department and ~~hereinafter~~ referred to as a deputy shall promptly examine the claim and, on the basis of the facts *the deputy has* found, ~~by~~ the deputy~~,~~ shall ~~either~~ determine whether or not ~~such~~ *the* claim is valid. ~~and, if~~ *If the claim is* valid, *the deputy will determine* the week ~~with respect to which~~ *the* benefits ~~shall~~ commence, the weekly benefit amount payable, and the maximum benefit amount. ~~or shall~~ *The deputy may* refer ~~such~~ *the* claim or any question involved ~~therein~~ *in the claim* to an appeals referee who shall make the decision ~~with respect thereto~~ *on the claim* in accordance with the procedure prescribed in 39-51-2403. *With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals as prescribed in [section 7] and 15-2-302.* The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons ~~therefor~~ *for reaching the decision.*

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and ~~such~~ other interested parties of the amended decision and the reasons ~~therefor~~ *for the decision.*

(3) ~~No~~ *A* determination or redetermination of an initial or additional claim may *not* be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination ~~shall be deemed~~ *is* final unless an interested party entitled to notice ~~thereof~~ *of the decision* applies for reconsideration of the determination or appeals ~~therefrom~~ *the decision* within 10 days after ~~such~~ *the* notification was mailed to the interested party's last-known address~~;~~. ~~provided that such~~ *The 10-day* period may be extended for good cause.

(5) Except as provided in subsection (6), ~~no~~ *a* redetermination of a claim for benefits may *not* be made after 2 years from the date of the initial determination.

HeinOnline -- 1997 vol. III 2707 1997

(6) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

**Section 29.** Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means ~~the gross~~ *all* remuneration paid ~~in money, or in a substitute for money,~~ for services ~~rendered~~ *performed* by an employee *for an employer*, or income provided for in subsection (1)(d). Wages include *the cash value of all remuneration paid in any medium other than cash. The term includes* but ~~are~~ *is* not limited to:

(a) commissions, honuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) ~~board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value~~ *back pay or any similar pay made for or in regards to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan*;

(c) ~~payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement~~ *tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes*; ~~and~~

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

*(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and*

*(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.*

(2) ~~Wages do~~ *The term "wages" does* not include *any of the following*:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) ~~special rewards for individual invention or discovery~~ *the amount of the payment made by the employer for employees, if the payment was made for:*

*(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;*

*(ii) sickness or accident disability under a workers' compensation policy;*

*(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or*

HeinOnline -- 1997 vol. III 2708 1997

*(iv) death, including life insurance for the employee or the employee's immediate family;*

~~(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;~~

~~(d) contributions made by the employer to a group insurance or pension plan; or~~

~~(e)~~*(c)* vacation or sick leave benefits accrued but not paid*; or*

*(d) special rewards for individual invention or discovery.*

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wags may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred."

**Section 30.** Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

HeinOnline -- 1997 vol. III 2709 1997

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment ~~of~~ *as* a direct seller *as defined by 26 U.S.C. 3508* ~~as defined in 26 U.S.C. 3508~~;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or ~~free-lance~~ *freelance* correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, ~~"free-lance~~ *"freelance* correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204~~(1)(l)~~*(1)(e)*;

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled

tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey performing under a license issued by the board of horseracing from the time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

*(r) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order.*

(3) (a) A sole proprietor, a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

HeinOnline -- 1997 vol. III 2711 1997

(b) The application must be made in accordance with the rules adopted by the department. There is no fee for the initial application. Any subsequent application must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty impesed by this section.

(f) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limitod liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, or a member in or a manager of a limited liability

HeinOnline -- 1997 vol. III 2712 1997

company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally postod, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or proporty of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided hy the department, distributed through insurers or directly by the departinent, and pestod by employers in accordance with rules adopted by the departinent. An einployer who purposely or knowingly fails to post a sign as provided in this subsection is subject te a $50 fine for each citation."

**Section 31.** Section 39-71-2501, MCA, is amended to read:

**"39-71-2501. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means the workers' componsation bond repayment account established in 39-71-2504.

(2) "Department" means the departinent of revenue provided for in 2-15-1301.

*(3) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.*

~~(3)~~*(4)* "Employee" includes:

*(a)* an officer, employee, or elected public official of the Unitod States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. ~~The term "employee" also includes;~~

*(b)* an officer of a corporation;

*(c) any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance; and*

*(d) all classes, grades, or types of employees, including minors and aliens, superintendents, managers, and other supervisory personnel.*

~~(4)(a)~~*(5) (a)* "Employer" means~~,~~:

*(i)* ~~except as provided in subsection (4)(b),~~ the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.~~;~~

~~(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person who has control of the payment of wages.~~

*(ii) a person who pays $1,000 or more in wages within the current calendar year;*

*(iii) a person who pays $1,000 or more in cash for domestic service in any quarter during the current calendar year; or*

*(iv) any individual or organization, including state government and any of its political subdivision or instrumentalities, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or a limited liability partnership that has filed or registered with the secretary of state, corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person that has or had in its employ one or more individuals performing services for it within this state.*

*(b) Any person found to be an employer under Title 39, chapter 51, for unemployment insurance purposes is considered an employer for old fund liability tax purposes.*

~~(5)~~*(6)* "Federal workers' compensation legislation" means federal legislation that provides an employee with compensation or remuneration for accidental injury or death. This legislation includes hut is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base Act.

~~(6)~~*(7)* "Ongoing activities" means obligations or occurrences that are continuous, rather than intermittent or occasional, that exist for a definite period of time during the year, or that are intended to cover or apply to successive and similar obligations or occurrences.

~~(7)~~*(8)* "Publicly traded limited partnership" means a business entity that issues shares or similar ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders on a public exchange recognized by the securities exchange commission.

~~(6)~~*(9)* "State fund" means the state compensation insurance fund.

~~(6)~~*(10)* "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~(10)~~*(11) (a)* "Wagos" means all remuneration for services performed in the state of Montana by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term ~~does not include remuneration paid~~ *includes but is not limited to the following*:

*(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;*

*(ii) severance or continuation pay, back pay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and*

*(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.*

~~(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (10)(a), an individual is considered to be regularly employed by an employer during a calendar quarter only if:~~

~~(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and~~

~~(ii) the individual was regularly employed, as determined under subsection (10)(a)(i), by the employer in the performance of service during the preceding calendar quarter.~~

~~(b) for services not in the course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;~~

~~(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;~~

*(b) The term "wages" does not include:*

*(i) the amount of any payment made by the employer for employees, if the payment was made for:*

*(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;*

*(B) sickness or accident disability under a workers' compensation policy;*

*(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or*

*(D) death, including life insurance for the employee or the employee's immediate family;*

*(ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross income for state individual income tax purposes;*

~~(d)~~*(iii)* ~~as payments~~ *distributions* from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002, to a qualified individual employee;

~~(e)~~*(iv)* ~~as wages or compensation, the taxation of which is prohibited by~~ *payments that may not be taxed under* federal law; *or*

~~(f)~~*(v)* ~~as~~ wages or compensation for services performed by Montana residents outside the borders of the state of Montana."

**Section 32.** Section 39-71-2503, MCA, is amended to read:

**"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer, except an employer whose employees are covered by federal workers' compensation legislation, a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the wages paid *for employment as defined in this part* by the employer *in the preceding payroll period subject to reporting and remittance requirements contained in 15-30-204*.~~:~~

~~(i) for the preceding payroll period for employers subject to the payment schedule contained in 15-30-204(1);~~

~~(ii) for the preceding month for employers subject to the payment schedule contained in 15-30-204(2); and~~

~~(iii) for the preceding year for employers subject to the payment schedule contained in 15-30-204(3)(a).~~

(b) There is imposed on each employee, except an employee who is covered by federal workers' compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages *paid for employment, as defined in this part*. An employer paying wages for ~~services performed~~ *employment, as defined in this part,* in Montana shall deduct and withhold the tax from the wages.

(c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager derived from ongoing activities.

(ii) The tax imposed in this subsection *(1)*(c) applies only to the ordinary income of a shareholder, partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

(iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this subsection *(1)*(c).

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

HeinOnline -- 1997 vol. III 2716 1997

(e) A corporate officer of a closely held corporation who owns stock in a closely held corporation that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records that the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(b) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as received in the account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the account provided for in 39-71-2504.

(b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided for in 39-71-2504.

*(c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall begin withholding old fund liability tax on*

*or before the last day of the month following the quarter in which the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the employer and employee portions of the old fund liability tax. The report and remittance are due the last day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the threshold requirement. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.*

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of ~~15-30-303,~~ *[section 1]* ~~but the department may disclose the information to the department of labor and industry for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions that ensure the continued confidentiality of the information~~.

(6) The department of labor and industry and the state fund shall give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. The department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

**Section 33.** Section 39-71-2503, MCA, is amended to read:

**"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each employer, except an employer whose employees are covered by federal workers' compensation legislation, a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the wages paid *for employment as defined in this part* by the employer *in the preceding payroll period, subject to reporting and remittance requirements contained in 15-30-204:*.

~~(i) for the preceding payroll period for employers subject to the payment schedule contained in 15-30-204(1);~~

HeinOnline -- 1997 vol. III 2718 1997

~~(ii) for the preceding month for employers subject to the payment schedule contained in 15-30-204(2); and~~

~~(iii) for the preceding year for employers subject to the payment schedule contained in 15-30-204(3)(a).~~

(b) There is imposed on each employee, except an employee who is covered by federal workers' compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages *paid for employment, as defined in this part.* An employer paying wages for ~~services performed~~ *employment, as defined in this part,* in Montana shall deduct and withhold the tax from the wages.

(c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager derived from ongoing activities.

(ii) The tax imposed in this subsection *(1)*(c) applies only to the ordinary income of a shareholder, partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

(iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this subsection *(1)*(c).

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who owns stock in a closely held corporation that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records that the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

HeinOnline -- 1997 vol. III 2719 1997

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as received in the account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) *are due on or before the last day of the month following the close of each calendar quarter and* must be made pursuant to 15-30-204. The department shall ~~first~~ credit ~~a payment to the liability under 15-30-202 and credit any remainder to the account provided for in 39-71-2504~~ *payments as provided for in [section 2].*

(b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided for in 39-71-2504.

*(c) An employer who exceeds either threshold, as defined in 39-71-2501(5)(a)(ii) or (5)(a)(iii), shall begin withholding old fund liability tax on or before the last day of the month following the quarter in which the wages paid exceed the threshold requirement. The employer shall begin reporting and remitting the employer and employee portions of the old fund liability tax. The report and remittance are due the last day of the month of the subsequent quarter following the quarter in which the wages paid exceeded the threshold requirement. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.*

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of ~~15-30-303~~ *[section 1]*~~, but the department may disclose the information to the department of labor and industry for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment~~

~~insurance laws, under circumstances and conditions that ensure the continued confidentiality of the information.~~

(6) The department of labor and industry and the state fund shall give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. The department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

**Section 34.** Section 39-71-2505, MCA, is amended to read:

"**39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the stato fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying tlie claims for the ensuing year.

(2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1). In addition, the state fund shall forward to tlie budget director tlie schedule of projected liability payments and cash needs on wbich the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and tbe projected fiscal yearend cash for the year 2007.

(b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll *for wages paid* in the preceding ~~calendar quarter~~ *payroll period for wages paid for employment, as defined in this part.*

(ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the preceding ~~calendar quarter~~ *payroll period for wages paid for employment, as defined in this part.*

HeinOnline -- 1997 vol. III 2721 1997

(iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company.

(iv) The rate of the employer old fund liability tax determined by this section includes the 0.28% employer old fund liability tax provided for in 39-71-2503.

(v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007.

(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are outstanding, the old fund liability tax may not he imposed after the end of fiscal year 2007.

(vi) The old fund liability tax described in this section must be collected and deposited as provided in 39-71-2503 and 39-71-2504.

(3) If in any January the cumulative projected amount to be borrowed hy the state fund from reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1, 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, not including any outstanding bonds as of May 13, 1993, exceeds $80 million for the following fiscal year, the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance for the current fiscal year exceeds $25 million, the tax rate on the persons subject to the old fund liability tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

(4) The total tax on the porsons subject to the old fund liability tax may not exceed 0.75%.

(5) The budget director shall certify the cash flow projections of the state fund required by this section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected pursuant to this section."

**Section 35. Repealer.** ARM 24.11.831 is repoaled.

**Section 36. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 37. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 38. Codification instruction.** (1) [Sections 1 through 5 and 7] are intended to be codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to [sections 1 through 5 and 7].

(2) [Section 6] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and the provisions of Title 39, chapter 71, part 25, apply to [section 6].

HeinOnline -- 1997 vol. III 2722 1997

**Section 39. Coordination instruction.** (1) If Senate Bill No. 119 is passed and approved, then [section 4], amending 15-30-204, [section 5], amending 39-71-2503, and [section 6], amending 39-71-2505 in Senate Bill No. 119, are void.

(2) If Senate Bill No. 67 is passed and approved, then the amendment contained in 39-71-2503(3)(a) in [section 27] of the reference copy of Senate Bill No. 67, relating to the credit of the old fund liability tax to the account provided for in 39-71-2321, is void on January 1, 1999.

**Seetion 40. Effective dates.** (1) [Sections 1, 20 and 35 through 39 and this section] are effective July 1, 1997.

(2) [Sections 3 through 7, 9 through 12, 17 through 19, 21 through 23, 25 through 32, and 34] are effective January 1, 1998.

(3) [Sections 2, 8, 13 through 16, 24, and 33] are effective January 1, 1999.

Approved May 2, 1997

# CHAPTER NO. 492

[HB 598]

AN ACT GENERALLY REVISING THE LAWS GOVERNING PROFESSIONAL AND OCCUPATIONAL LICENSING; PROVIDING APPROPRIATIONS TO FUND COMPLIANCE AND ENFORCEMENT POSITIONS FOR CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSURE BOARDS; ALLOWING DEPARTMENTAL RULES TO PROVIDE FOR VARIATION FROM ANNUAL LICENSE RENEWAL PERIODS; AMENDING SECTIONS 23-3-501, 27-6-206, 37-3-301, 37-3-313, 37-4-307, 37-4-326, 37-4-406, 37-6-304, 37-7-303, 37-7-321, 37-7-606, 37-7-703, 37-8-431, 37-9-304, 37-9-305, 37-10-307, 37-11-308, 37-12-307, 37-13-306, 37-14-310, 37-16-407, 37-18-307, 37-19-301, 37-19-304, 37-19-306, 37-20-203, 37-20-302, 37-23-203, 37-23-205, 37-25-307, 37-27-205, 37-29-304, 37-29-306, 37-30-310, 37-30-423, 37-30-424, 37-31-302, 37-32-305, 37-40-203, 37-40-304, 37-50-203, 37-50-314, 37-50-317, 37-51-310, 37-51-603, 37-65-306, 37-66-307, 37-68-307, 37-68-310, 37-69-307, 37-72-306, 50-39-102, 50-74-313, AND 50-76-105, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

HeinOnline -- 1997 vol. III 2723 1997

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Appropriation.** (1) There is appropriated to the department of commerce for fiscal years 1998 and 1999 the amount specified in subsection (3). The amounts appropriated are for the purpose of hiring investigators, attorneys, and support staff whose services will be devoted to processing complaints and ensuring compliance with state laws and administrative rules promulgated by the boards identified in subsection (3). The appropriated funds are intended to assist boards to fulfill the duties set forth in 37-1-131 and must be appropriated from the accounts in the state special revenue fund into which fees from certain licensees are deposited.

(2) The appropriations in subsection (3) are contingent on the availability of funds as specified in subsection (3) on or after [the effective date of this act].

(3) Funds are appropriated for the purposes outlined in subsection (1) in the following amounts and for the specified boards as follows:

(a) up to $144,126 from money deposited in the state special revenue fund pursuant to 37-51-208. The appropriation may be used only for an investigator and an administrative support position for the board of realty regulation provided for in 2-15-1867;

(b) up to $144,126 from money deposited in the state special revenue fund pursuant to 37-68-313 and 37-69-308, in proportions determined by the department. The appropriation may be used only for an investigator and administrative support to be shared by the state electrical board provided for in 2-15-1874 and the board of plumbers established in 2-15-1875;

(c) up to $175,510 from money deposited in the state special revenue fund pursuant to 37-8-432. The appropriation may be used only for an attorney and a nurse, both of whom will serve as compliance officers for the board of nursing provided for in 2-15-1844;

(d) up to $94,464 from money deposited in the state special revenue fund pursuant to 37-3-314. The appropriation may be used only for an attorney for the board of medical examiners provided for in 2-15-1841;

HeinOnline -- 1997 vol. III 2724 1997

(e) up to $87,046 from money deposited in the state special revenue fund pursuant to 37-67-317. The appropriation may be used only for an investigator for the board of professional engineers and land surveyors provided for in 2-15-1873; and

(f) up to $184,816 from the pooled funds provided to tbe department by the boards in accordance with the provisions of 37-1-131. The appropriation may be used only for an investigator and an attorney for the purpose of fulfilling the of the department of commerce duties under 37-1-101.

(4) The appropriations in subsection (3) are biennial appropriations.

(5) The positions funded in this section must be shown as new proposals in the executive budget presented to the 56th legislature.

**Section 2.** Section 23-3-501, MCA, is amended to read:

**"23-3-501. Licenses — fees.** (1) The board may issue ~~an annual~~ *a renewable* license to a professional or semiprofessional boxing or wrestling promoter, whether an individual or organization, for the sole purpose of conducting professional or semiprofessional matches or exhibitions.

(2) The board may issue ~~annual~~ *renewable* licenses to qualified referees, managers, boxers, wrestlers, seconds, trainers, and judges.

*(3) A license issued in accordance with subsections (1) and (2) expires on the date set by department rule and may be renewed upon payment of a fee set by the board.*

~~(3)~~*(4)* Each application for ~~an original~~ *a* license under this section ~~or renewal of a license~~ must be accompanied by a fee set by the board, commensurate with costs related to the particular license as provided in 37-1-134."

**Section 3.** Section 27-6-206, MCA, is amended to read:

**"27-6-206. Funding.** (1) There is a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any income from it must be beld in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but is open to auditing by tbe legislative auditor.

(2) To create the fund, ~~an annual~~ *a* surcbarge must be levied on all health care providers. The amount of the assessment must be set annually by the director and must be apportioned among physicians, dentists, hospitals, and other healtb care providers by group. For tbe group of all physicians, the group of all dentists, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total bealth care providers brought before the panel tbat each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of tbe panel for the years preceding tbe year of assessment. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in tbe most recent compilation of the department of public health

HeinOnline -- 1997 vol. III 2725 1997

and human services. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, above the amount required for the annual administration of the chapter must be retained by the director and used te finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The ~~annual~~ surcharge must be *assessed on an annual basis and must be* paid on or before tbe date tbat physicians' and dentists' ~~annual~~ registration or renewal fees are due under 37-3-313 and 37-4-307. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the ~~annual~~ surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the ~~annual~~ surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians' and dentists' ~~annual~~ registration or renewal fees."

**Section 4.** Section 37-3-301, MCA, is amended to read:

**"37-3-301. License required — kinds of certificates.** (1) ~~Prior to the issuance of~~ *Before being issued* a license, an applicant may not engage in tbe practice of medicine in this state.

(2) The department may issue three forms of certificates of licensure under tlie board's seal: the physician's certificate, the restricted certificate, and the temporary certificate. The physician's certificate and the restricted certificate must be signed by the president, hut the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates must be designated as:

(a) physician's certificate, which is subject to ~~annual~~ *renewable* registration *in accordance with department rules*;

(b) restricted certificate; and

(c) temporary certificate, which is subject to specifications and limitations imposed by the board."

**Section 5.** Section 37-3-313, MCA, is amended to read:

**"37-3-313. ~~Annual registration~~ *Registration* fees — failure to pay — limiting authority to impose registration fees.** (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay ~~each year~~ to the department ~~an annual~~ *a* registration fee as prescribed by the board.

(2) Tlie ~~annual~~ payments for registration must be made prior to ~~April 1,~~ *the expiration date of the registration, as set forth in a department rule,* and a receipt acknowledging payment of the ~~annual~~ registration fee must be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

HeinOnline -- 1997 vol. III 2726 1997

(3) In case of default in the payment of the ~~annual~~ registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, the underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of ~~annual~~ registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the underlying certificate. A certificate may not be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the ~~annual~~ registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) A registration or license fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state."

**Section 6.** Section 37-4-307, MCA, is amended to read:

"**37-4-307. ~~Annual renewal~~ *Renewal* fee — default — local fees prohibited.** (1) Every licensed dentist shall pay ~~each year~~ a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the ~~annual~~ renewal fee must be made ~~each year~~ on or before the *license expiration* date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required by the department if the ~~annual~~ renewal fee is not ~~timely~~ paid *in a timely manner*.

(3) (a) In case of default in payment of the ~~annual~~ renewal fee by a licensee, the license must be revoked by the board. The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for revocation, the license may not be revoked.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each ~~year~~ *renewal period* they were unpaid, plus a late penalty fee for each ~~year~~ *renewal period*;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Each dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

HeinOnline -- 1997 vol. III 2727 1997

(5) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter."

**Section 7.** Section 37-4-326, MCA, is amended to read:

"**37-4-326. Acts constituting misdemeanors.** ~~Any~~ *A* person, company, or association ~~shall be~~ *is* guilty of a misdemeanor and upon conviction ~~thereof shall be punishable~~ *shall be punished* with a fine of not less than $50 or more than $200 or by imprisonment for not more than 6 months in the county jail or ~~by~~ both ~~such fine and imprisonment who shall~~ *if the person, company, or association*:

(1) ~~sell or barter or offer to sell or barter any~~ *sells, barters, or offers to sell or barter a* diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) ~~purchase or procure by barter any such~~ *purchases or procures by barter a* diploma, certificate, or transcript with *the* intent ~~that the same shall be used~~ *of using the diploma, certificate, or transcript* as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating ~~such~~ *dental* practice;

(3) with fraudulent intent, alter in a material regard ~~any such~~ *a* diploma, certificate, or transcript;

(4) use or attempt to use ~~any such~~ *a* diploma, certificate, or transcript ~~which~~ *that* has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in ~~his or her~~ *the* office the required ~~annual registration~~ certificate for the current ~~year~~ *period of licensed practice*; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to ~~said~~ *the* board the names and addresses of all persons practicing or assisting in the practice of dentistry in the office of ~~said~~ *the* person, company, or association at any time within 60 days prior to ~~said~~ *the* notice, together with a sworn statement showing under and by what license or authority ~~said~~ *the* person, company, or association and ~~said~~ *the* employee are and have been practicing dentistry, but ~~said~~ *the* affidavit ~~shall~~ *may* not be used as evidence against ~~said~~ *the* person, company, or association in any proceeding under this section."

**Section 8.** Section 37-4-406, MCA, is amended to read:

"**37-4-406. ~~Annual renewal~~ *Renewal* fee — default — revocation of license — local fees prohibited.** (1) Each licensed dental hygienist shall pay ~~each year~~ a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

HeinOnline -- 1997 vol. III 2728 1997

(2) Payment of the ~~annual~~ renewal fee must be made on or before the *license expiration* date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required if the ~~annual~~ renewal fee is not ~~timely~~ paid *in a timely manner.*

(3) In case of default in payment of the renewal fee by any licensee, the board must revoke the license.

(a) The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) The payment of the renewal fee on or before the time set for revocation, with a reasonable late fee set by the board, excuses the default.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each ~~year~~ *period* they were unpaid, plus a late penalty for each ~~year~~ *period*;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Each dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

(5) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.

(6) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter."

**Section 9.** Section 37-6-304, MCA, is amended to read:

"**37-6-304. Designations on license — recording — renewal — display.** (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses must be recorded by the department the same as other medical licenses.

(3) Licenses must be renewed ~~annually,~~ on a date set by ~~the~~ department *rule*.

(4) A license renewal fee set by the board must be paid ~~annually~~ on a date set by ~~the~~ department *rule*.

(5) The department shall mail renewal notices no later than 60 days prior to the ~~annual~~ renewal date.

HeinOnline -- 1997 vol. III 2729 1997

(6) If the ~~annual~~ renewal fee is not paid on or before the renewal date, the board may revoke the licensee's certificate after giving 30 days' notice to the licensee. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. A certificate may not he revoked for nonpayment of a renewal fee if the licensee pays the ~~annual~~ renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) A license revoked for nonpayment of the ~~annual~~ renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.

(8) Licenses must be conspicuously displayed by podiatrists at their offices or other places of practice."

**Section 10.** Section 37-7-303, MCA, is amended to read:

"**37-7-303. ~~Annual renewal~~ *Renewal* fee.** A person licensed and registered by the department shall ~~annually~~ pay to tho department on or before the *license expiration* date set by department rule a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the board. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed~~, not later than 1 year from its date~~ *by department rule.* A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with other requirements prescribed by law."

**Section 11.** Section 37-7-321, MCA, is amended to read:

"**37-7-321. Certified pharmacy license.** (1) The board shall provide for the original certification and ~~annual~~ renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee prescribed by the board, the department shall issuo a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The ~~annual~~ renewal fee for a pharmacy must be set by the board. Any default in the payment of the renewal fee after the date the ~~same~~ *fee* is due increases the renewal fee as prescribed by the board. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on the date set by department rule. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify the business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may impose discipline or deny or refuse to renew a pharmacy license for reasons specified in and subject to conditions specified in Title 37, chapter 1."

**Section 12.** Section 37-7-606, MCA, is amended to read:

"**37-7-606. Issuance of licenses.** The license for wholesale drug distributers is effective during the ~~12-month~~ period specified by department rule. An application for renewal of a license must be maiied to each licensee at least

HeinOnline -- 1997 vol. III 2730 1997

30 days prior to the renewal date, and if the renewal application and the fee are not mailed by the renewal date, the license is void upon its expiration date."

**Section 13.** Section 37-7-703, MCA, is amended to read:

**"37-7-703. Registration requirements.** Each out-of-state mail service pharmacy must be registered with the board of pharmacy. In order to be registered with the board to do business in this state and for ~~annual~~ *the* renewal of its registration, an out-of-state mail service pharmacy:

(1) (a) shall submit a certificate from the appropriate licensing authority with which it is currently licensed and in good standing in the state in which its dispensing facilities are located; and

(b) shall comply with all applicable laws, regulations, and standards of that state and the United States and, if requested by the board, provide evidence that it has ~~so~~ complied;

(2) shall register with the board and provide information on ownership and location, including the names and titles of the corporate officers, of the out-of-state mail service pharmacy and the identity of a pharmacist licensed in the state in which the pharmacy is located who is in charge of dispensing prescriptions for shipment to Montana from the out-of-state mail service pharmacy;

(3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the state where the mail service pharmacy is located. If the state in which the pharmacy is located does not establish a ratio of technicians to pharmacists for determining the number of pharmacy technicians or otherwise define the role of the pharmacist in compounding or dispensing drugs at the pharmacy, then the out-of-state mail service pharmacy may not allow a pharmacist to supervise more than one supportive person at any one time in the compounding or dispensing of prescription drugs, unless approved by the board as provided in 37-7-307 through 37-7-309.

(4) shall submit to the board proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is employed and the pharmacist's written commitment to comply with the utilization plan, if any, for each pharmacist identified under subsection (2) and shall provide to the board the same toll-free telephone service referenced in 37-7-706 in order to comply with all information requests by the board; and

(5) shall pay an initial registration fee and ~~annual~~ *a periodic* renewal fee in an amount to be determined by the board *and at a time established by the department by rule.*"

**Section 14.** Section 37-8-431, MCA, is amended to read:

**"37-8-431. Renewal of license.** (1) The license of a person licensed under this chapter must be ~~annually~~ renewed on the date set by department rule. At least 30 days prior to the renewal date, the department shall mail an application form for renewal of license to each person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee prescribed by the board on or before the renewal date.

HeinOnline -- 1997 vol. III 2731 1997

(2) The board may increase or decrease the ~~annual~~ license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of Title 37, chapter 1, and this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows the license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date the license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by the renewal date."

**Section 15.** Section 37-9-304, MCA, is amended to read:

"**37-9-304. Fees.** (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board. A license expires ~~each year~~ on a date set by department rule and must be ~~renewable annually~~ *renewed* upon timely payment of the license fee.

(3) The fee for issuing a duplicate license must be fixed by the board."

**Section 16.** Section 37-9-305, MCA, is amended to read:

"**37-9-305. Renewal of registration and license.** Each holder of a nursing home administrator's registration and license shall renew it ~~annually~~ by payment of the required fee for the next subsequent ~~year~~ *period* prior to the expiration date of the currently valid registration and license. Renewals of registrations or licenses must be granted as a matter of course. However, if the board finds, after ~~due~~ notice and hearing, that the applicant has acted or failed to act in a manner or under circumstances that would constitute grounds for discipline, it may not issue the renewal."

**Section 17.** Section 37-10-307, MCA, is amended to read:

"**37-10-307. ~~Annual renewal~~ *Renewal* — fee.** A registered optometrist who desires to continue the practice of optometry in this state shall, before the license expiration date established by rule of the department, ~~annually~~ pay to the department a renewal fee prescribed by the board in return for which a renewal of registration ~~shall~~ *must* be issued. If a person fails or neglects to procure ~~his annual~~ *a* renewal of registration, ~~his~~ *the person's* certificate of registration ~~shall~~ *must* be revoked by the board~~; however~~. *However*, ~~no~~ *a* certificate of registration may *not* be revoked without 90 days' notice having been given to the delinquent,

who within this period may renew ~~his~~ *the* certificate of registration on the payment of the renewal fee with a penalty prescribed by the board."

**Section 18.** Section 37-11-308, MCA, is amended to read:

**"37-11-308. ~~Annual renewal~~ *Renewal* of license — fee.** A licensed physical therapist and a licensed physical therapist assistant shall, on or before the date set by department rule, apply to the department for a license renewal and pay a fee set by board rule. A license that is not renewed before the renewal date automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee."

**Section 19.** Section 37-12-307, MCA, is amended to read:

**"37-12-307. ~~Annual renewal~~ *Renewal* of license — fees.** A license expires on the date set by department rule and must be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee qualifies for renewal. All applicants for renewal who have not paid the renewal fee on or before the renewal date shall pay an additional late fee prescribed by the board."

**Section 20.** Section 37-13-306, MCA, is amended to read:

**"37-13-306. ~~Annual renewal~~ *Renewal* — fee — military exemption.** (1) The license to practice acupuncture must be renewed ~~annually,~~ on a date set by the department, without examination and upon request of the licensee. The request for renewal must be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be in the hands of the secretary of the board not later than the expiration date of the license.

(2) Immediately following the renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, is in the hands of the secretary within 30 days of the renewal date.

(3) If the licensee fails to renew within 30 days following the renewal date, the secretary of the board shall cancel and revoke upon ~~its~~ *the board's* records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.

(4) A licensee who allows the license to lapse hy failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all ~~annual~~ renewal fees then accrued plus an additional fee prescribed by the board for each ~~year~~ *renewal period* following the cancelling of the license.

(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the ~~annual~~ renewal fee or make application for renewal until the renewal date of the calendar ~~year~~ *period* in which the person returns from military service to civilian or inactive status."

HeinOnline -- 1997 vol. III 2733 1997

**Section 21.** Section 37-14-310, MCA, is amended to read:

**"37-14-310. ~~Annual renewal~~ *Renewal* — fee — reissuance of license.** (1) Licenses expire ~~annually~~ on the date established by rule of the department.

(2) A license ~~shall~~ *must* be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing ~~such~~ information ~~as~~ *that* the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee."

**Section 22.** Section 37-16-407, MCA, is amended to read:

**"37-16-407. Renewal of license — fee — inactive status.** (1) A person who practices the fitting of hearing aids and related devices shall ~~annually~~ pay to the department a fee as set by the board for a renewal of the person's license. The fee must be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The fee must be increased 10% for each month or major portion of a month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal may not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period after suspension.

(2) Each applicant for license renewal shall submit evidence showing completion of 10 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.

(3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

(b) An inactive licensee may be reinstated to active practice if the inactive licensee:

(i) applies for reinstatement;

(ii) pays a fee set by the board; and

(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board."

**Section 23.** Section 37-18-307, MCA, is amended to read:

**"37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel.** (1) A person licensed to practice veterinary medicine in this state shall procure a certificate of registration from the department ~~annually~~ on or before the date set by department rule. The certificate must be issued by the department on the payment of a fee fixed by the board and

HeinOnline -- 1997 vol. III 2734 1997

on presentation of evidence satisfactory to the board that the licensee qualifies for renewal.

(2) Failure of a person licensed to procure a certificate of registration on or before the date set by department rule constitutes a forfeiture of tho license held by the person. A person who has forfeited the license may have it restored by making written application for restoration within 1 year of tbe forfeiture, setting forth the reasons for failure to procure tlie certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as tlie board requires. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of the license during the period of active duty with the armed services. However, within 1 year after release or discharge from duty in the armed services the person shall procure a certificate of renewal from tbe department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before ~~November 1 of any year~~ *the date set by department rule*, and the same forfeiture and restoration requirements apply.

(4) A person licensed ~~shall~~ *must* at all times have the person's residence and office address on file with the department."

**Section 24.** Section 37-19-301, MCA, is amended to read:

**"37-19-301. Funeral director's license — renewal — fee.** The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing ~~on June 1, 1963,~~ is entitled to ~~an annual~~ *the* renewal of the license on payment of a renewal fee to the department on or before the date set by department rule. The amount of the ~~annual~~ renewal license fee must be set by the board."

**Section 25.** Section 37-19-304, MCA, is amended to read:

**"37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship.** An applicant who passes the examination provided for in 37-19-302 shall, upen payment of a license fee prescribed by the board, he granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the ~~annual~~ license fee, may apply for and receive a mortician's license."

**Section 26.** Section 37-19-306, MCA, is amended to read:

**"37-10-306. ~~Annual renewal~~ *Renewal* of mortician's license — fee — suspension for nonrenewal.** (1) The ~~annual~~ license fee for a mortician's license must be pestmarked on or before the date set by departmnent rule. The amount of the ~~annual~~ renewal fee must be set by the board.

HeinOnline -- 1997 vol. III 2735 1997

(2) Failure to pay the ~~annual~~ renewal fee results in automatic suspension of the license. The license may be reinstatod by the payment of unpaid renewal fees plus a penalty prescribed by the board."

**Section 27.** Section 37-20-203, MCA, is amended to read:

"**37-20-203. Licensing of physician assistants-certified.** The Montana state board of medical examiners may issue the following two forms of physician assistants-certified licenses under its seal:

(1) a permanent license, signed by the president and subject to ~~annual~~ *periodic* renewal; and

(2) a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board."

**Section 28.** Section 37-20-302, MCA, is amended to read:

"**37-20-302. Utilization plan approval fee — renewal of license — renewal fee.** (1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed ~~annually,~~ *for a period and* on a date set by the department.

(4) A license renewal fee set by the board must be paid at tlie time the license is renewed.

(5) The department shall mail a renewal notice no later tlian 60 days prior to the renewal date. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of tlie department constitutes notice of intent to revoke the license.

(6) If the ~~annual~~ *license* renewal fee is not paid on or before tlie renewal date, the board may revoke the license after giving 30 days' notice to the licensee. A license may not be revoked for nonpayment of a renewal fee if the licensee pays tlie ~~annual~~ renewal fee plus a penalty prescribed by tlie board on or before the date fixed for revocation.

(7) Fees received by the department must be deposited in tlie state special revenue fund for use by the board in tlie administration of this chapter, subject to 37-1-101(6)."

**Section 29.** Section 37-23-203, MCA, is amended to read:

"**37-23-203. Issuanee, effective date, and display of license.** (1) If an applicant meets the requirements contained in 37-23-202 and has paid the appropriate fees, tlie board shall issue a license to the applicant attesting to tlie date and fact of licensure. The license is effective on the date of issuance and must be renewed ~~every year~~ as provided in 37-23-205.

HeinOnline -- 1997 vol. III 2736 1997

(2) The license must be displayed in the registrant's place of business or employment."

**Section 30.** Section 37-23-205, MCA, is amended to read:

"**37-23-205. Renewal of license.** (1) ~~A license may be issued for no longer than 1 year.~~ The department may adopt rules to provide for ~~annual~~ *the* renewal of an existing license.

(2) An application for renewal of an existing license must be made on or before the expiration date set by department rule.

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of qualification for renewal.

(4) The renewal fee is increased by 10% for each month or part of a month that the renewal is delayed. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(5) A license not renewed within 1 year following its expiration date terminates automatically."

**Section 31.** Section 37-25-307, MCA, is amended to read:

"**37-25-307. Renewal of license.** (1) An application for renewal of license must be made ~~annually~~ *for a period and* on a date set by the department.

(2) A renewal license must be issued when the applicant submits proof that requirements for continued licensure have been met and pays a renewal fee set by the board commensurate with costs.

(3) An additional fee may be imposed on applications for renewal received by the board more than 30 days after the ~~annual~~ *license* renewal date."

**Section 32.** Section 37-27-205, MCA, is amended to read:

"**37-27-205. Provisional license — apprentice license.** (1) Upon payment of a $200 fee to the department, the board may grant a provisional direct-entry midwife license only to a person who filed an affidavit required by section 2, Chapter 493, Laws of 1989.

(2) The provisional license is valid until the issuance of grades for the first examination administered pursuant to 37-27-202.

(3) Upon payment of a $200 fee to the department, the board may grant an apprentice direct-entry midwife license to a person who:

(a) is working under the personal supervision of a licensed direct-entry midwife, a certified nurse-midwife, a physician licensed under Title 37, chapter 3, or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance; and

(b) is seeking licensure as a direct-entry midwife under this chapter.

HeinOnline -- 1997 vol. III 2737 1997

(4) An apprentice direct-entry midwife license is valid for ~~1 year~~ *a period prescribed by department of commerce rule* and must be renewed ~~annually~~ *at an interval established by the department of commerce*, with a limit of four renewals."

**Section 33.** Section 37-29-304, MCA, is amended to read:

**"37-29-304. Applications and fees.** (1) The board is initially entitled to charge and collect the following fees:

(a) $200 application for licensing;

(b) $200 for original license;

(c) $200 ~~annual~~ license renewal fee;

(d) $200 for examination or reexamination, provided that if on reexamination only the written examination is required, the fee is $100; and

(e) $50 for a duplicate or replacement license or a license for a second address, provided that ~~no~~ *a* denturist may *not* hold licenses bearing more than two different addresses.

(2) The board may set otber fees and modify the initial fees in accordance witb the provisions of 37-1-134."

**Section 34.** Section 37-29-306, MCA, is amended to read:

**"37-29-306. Licensing.** (1) A denturist license is valid for a period ~~of 1 year~~ *established by department rule* and expires on the date set by department rule. A renewal license must be issued upon timely payment of the renewal fee and the submission of proof of continued qualification for licensure. In addition, tbe denturist shall submit proof that tbe denturist holds a current cardiopulmonary resuscitation card. The license must bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other ~~documentations~~ *documentation* necessary to establish that the applicant meets the requirements for licensure and is eligible to take tbe licensure examination. Applications must be accompanied by the appropriate fees."

**Section 35.** Section 37-30-310, MCA, is amended to read:

**"37-30-310. Instructor's certificate required — application and qualification — fees.** (1) Except as provided in subsection (3), ~~no~~ *a* person may *not,* for a fee, instruct another in the practice of barbering unless that person holds an instructor's certificate issued by the board.

(2) The board shall issue an instructor's certificate to:

(a) any person engaged as an instructor in a barber college on October 1, 1983, upon payment of the certification fee; or

(b) any person who passes the instructor's examination given by the department and pays a certification fee established by the board.

HeinOnline -- 1997 vol. III 2738 1997

(3) This section does not apply to persons paying the ~~annual~~ license fee required by 37-30-424."

**Section 36.** Section 37-30-424, MCA, is amended to read:

**"37-30-424. Fee for advaneed barber training program, clinie, or seminar.** ~~Any~~ *A* person *who is* not a resident of this state ~~eonducting~~ *who conducts* in this state any advanced barber training program, clinic, or seminar for barbers as defined in tlıis cbapter shall pay ~~an annual~~ *a* license fee prescribed by tbe board to the department or a 10-day license fee prescribed by the board and display the license wıile operating. ~~Any such~~ *An* advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation."

**Section 37.** Section 37-30-423, MCA, is amended to read:

**"37-30-423. Initial inspeetion fee — renewal.** (1) In addition to tlıe fees and cbarges provided by law on March 11, 1939, barbershops established prior to that date and ~~which~~ *that* had been under the inspection of the board shall pay ~~an annual~~ *a* license fee set by the board based on clerical and administrative costs. Barbershops establislıed after March 11, 1939, sliall pay an initial inspection fee prescribed by the board for the first ~~year or portion thereof~~ *licensure period or portion of the licensure period* and shall pay ~~an annual~~ *a* license fee set by the board.

(2) Barbershop, school, or college licenses, once issued, expire ~~each year~~ on the date established by rule of tlıe department, and an owner or manager of a barbershop, school, or college ~~which~~ *that* continues in active operation shall ~~annually~~, before the expiration date, renew ~~his~~ *the* barbershop, school, or college license and pay the required fee. A barbershop ~~which~~ *that* fails to have the license renewed before the expiration date ~~each year~~ shall, on renewal, pay a penalty prescribed by the board, and a barber school or college ~~which~~ *that* fails to have the license renewed before the expiration date ~~each year~~ sliall, on renewal, pay a penalty prescribed by tlıe board."

**Section 38.** Section 37-31-302, MCA, is amended to read:

**"37-31-302. License required to praetiee, teaeh, or operate salon, booth, or school.** (1) A person may not practice or teach cosmetology or practice or teach manicuring without a license.

(2) A place may not be used or maintained for tlıe teaching of cosmetology or manicuring for compensation except under a certificate of registration.

(3) A person may not operate or manage a cosmetology salon or a manicuring salon or practice cosmetology or manicuring without a manager-operator license.

(4) A person may not operate or conduct a school of cosmetology or a school of manicuring and teach the art of cosmetology or manicuring without a license to teach cosmetology.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnersbip, or corporation desiring to operate a cosmetology salon shall make an application to the department for a certificate

HeinOnline -- 1997 vol. III 2739 1997

of registration and license. The application must be accompanied by the ~~annual~~ registration fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid."

**Section 39.** Section 37-32-305, MCA, is amended to read:

"**37-32-305. Fees — renewal — deposit of money collected.** (1) The fee for an original electrologist license must be set by the board. The renewal is automatic, unless revoked or suspended for cause, and the renewal fee must be set by the board.

(2) The fee for an original electrologist salon license fee must be the same as that for cosmetology salons. The renewal fee must be the same as that for cosmetology salons.

(3) A license issued under this chapter expires on the date set by department rule and may be renewed ~~annually~~ *at periodic intervals as determined by department rule*. Failure to renew subjects the licensee to a late renewal fee prescribed by the board to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board in administration of the chapter."

**Section 40.** Section 37-40-203, MCA, is amended to read:

"**37-40-203. Rulemaking power.** (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board's rulemaking and hearing functions must be in accordance with the Montana Administrative Procedure Act. The board shall adopt rules:

(a) establishing standards of professional conduct in order to maintain a high standard of integrity, dignity, and competency in the profession of sanitarian, including competency in specific fields of sanitation;

(b) governing the conduct of matters before the board;

(c) governing educational equivalency requirements, as provided in 37-40-302, for registration of sanitarians; and

(d) defining qualifications for sanitarian-in-training status for issuance of the initial ~~annual~~ permit."

**Section 41.** Section 37-40-304, MCA, is amended to read:

"**37-40-304. Fees — renewal.** (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew the license by paying ~~an annual~~ *a renewal* fee and meeting qualifications set by the board.

(3) Renewal fees are due on or before the renewal date set by department rule. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board."

**Section 42.** Section 37-50-203, MCA, is amended to read:

"**37-50-203. Rules of the board.** (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any corporation failing to comply with the standards;

(e) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial ~~annual~~ permit; and

(f) rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession."

**Section 43.** Section 37-50-314, MCA, is amended to read:

"**37-50-314. ~~Annual permit~~ *Permit* required — display.** (1) A person may not engage in the practice of public accounting in this state without a current ~~annual~~ permit issued by the department. ~~An annual~~ *A* permit to engage in the practice of public accounting in this state must be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

(2) The current ~~annual~~ permit to engage in the practice of public accounting must be prominently displayed for public inspection."

**Section 44.** Section 37-50-317, MCA, is amended to read:

"**37-50-317. Certificate, license, and permit expiration — renewal fees.** (1) Certificates, licenses, and permits issued by the board expire on the date set by department rule.

HeinOnline -- 1997 vol. III 2741 1997

(2) Certificates and licenses must be renewed by the department upon payment of the ~~annual~~ *periodic* renewal fee *set by the board* and upon compliance with requirements prescribed by the board.

(3) Permits must be renewed by the department upon payment of the ~~annual~~ *periodic* renewal fee and upon compliance with the requirements prescribed by the board."

**Section 45.** Section 37-51-310, MCA, is amended to read:

**"37-51-310. ~~Annual renewal~~ *Renewal.*** (1) ~~Except as provided in subsection (2), annual fees~~ *License fees* are due and payable for the ensuing ~~year~~ *licensure period* ~~during the month of December of each year~~ *at a time prescribed by department rule.* Failure to remit ~~annual~~ *renewal* fees before ~~January 1~~ *the expiration date of the licensure period* automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless susponded or revoked by the board for just cause.

~~(2) The board may by rule change the annual renewal and automatic cancellation dates provided for in subsection (1).~~

~~(3)~~*(2)* A licensee who allows ~~his~~ *the* license to lapse by failing to remit the ~~annual~~ fees before ~~January 1~~ *the expiration date* may have ~~his~~ *the* license reinstated by the board by:

(a) within 45 days after ~~January 1~~ *the expiration date,* providing a satisfactory explanation to the board for ~~his~~ *the licensee's* failure to renew the license; and

(b) paying the current renewal fee prescribed by the board.

~~(4)~~*(3)* The board may also charge a late fee equal to twice the current renewal fee, but no less than $100, to a licensee who does not renew ~~his~~ *the* license as required by subsection (1)."

**Section 46.** Section 37-51-603, MCA, is amended to read:

**"37-51-603. Qualification of property manager applicants — examination — form of licenses.** (1) The board by rule shall require an applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property managor in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

HeinOnline -- 1997 vol. III 2742 1997

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) Examinations must be given at least once every 4 months at places within the state that the board prescribes. The board shall establish by rule the contents of and requirements to pass the examination.

(4) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(5) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(6) The department shall prepare and deliver ~~annually~~ to the licensee a pocket card in a form *and at times* prescribed by the board."

**Section 47.** Section 37-65-306, MCA, is amended to read:

**"37-65-306. ~~Annual renewal~~ *Renewal* — fee.** A licensed architect in this state who desires to continue the practice of the profession shall ~~annually~~, on or before the renewal date set by department rule:

(1) pay to the department a reasonable fee as prescribed by the board; and

(2) present evidence to the board of continued qualification for licensure."

**Section 48.** Section 37-66-307, MCA, is amended to read:

**"37-66-307. ~~Annual renewal~~ *Renewal* — withdrawal — deposit of fees.** (1) Certification of licensure or renewal of registration expires on the date set by department rule. Renewal may be effected on or before the renewal date by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the ~~annual~~ renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, shall give written notice to the board, and the board shall suspend the license. The person may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter must be deposited in the state special revenue fund by the department. The money collected must be used by the department to carry out the purpose, duties, and responsibilities ~~of the~~ *set forth in this* chapter, subject to 37-1-101(6)."

**Section 49.** Section 37-68-307, MCA, is amended to read:

**"37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration.** (1) To ensure impartiality, the examination for either the *residential,* master's, or journeyman's license must be by numbers drawn by lot. A paper may not be marked with the name of an applicant, but must be anonymously graded by the department. The examination passing grade is 75%.

HeinOnline -- 1997 vol. III 2743 1997

(2) ~~If~~ *If* it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license that authorizes the licensee to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

~~(3)~~*(3)* ~~Each~~ *Unless otherwise provided by rules established by the department, each* original license expires on a July 15 that is not more than 3 years subsequent to the date of issuance~~, at the discretion of the board~~."

**Section 50.** Section 37-68-310, MCA, is amended to read:

"**37-68-310. License renewal ~~every three years~~ *period* — renewal of lapsed licenses.** Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board *or unless the department changes the duration of the renewal period*, must be renewed for a period of 3 years by the department on application for renewal made to the department on or before the renewal date set by department rule and on the payment of a renewal fee. If application for renewal is not made on or before the renewal date, an additional fee prescribed by board rule must be paid. It is unlawful for a person who refuses or fails to pay the renewal fee to practice electrical work in this state. A person with a lapsed license may be issued a renewal license without examination if the applicant pays the original renewal fee and any delinquency fee within 1 year of the license expiration date. A lapsed license that is not renewed within 1 year following its expiration date may not be renewed unless the applicant passes the examination and pays the fee required for an original license."

**Section 51.** Section 37-69-307, MCA, is amended to read:

"**37-69-307. Examination fee and ~~annual~~ renewal fee.** (1) ~~No~~ *An* applicant for a master plumber's license may *not* submit to the examinations prescribed by the board until ~~he~~ *the applicant* has deposited with the department an examination fee prescribed by the board, and ~~no~~ *an* applicant for a journeyman plumber's license may *not* submit te the examination prescribed by the board until ~~he~~ *the applicant* has deposited with the department an examination fee as prescribed by the board.

(2) A license when issued expires ~~each year~~ on the date established by rule of the department. A license issued to a master plumber or a journeyman plumber may be renewed ~~annually~~ without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period ~~of 1 year~~ *established by the department by rule.*

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions."

**Section 52.** Section 37-72-306, MCA, is amended to read:

"**37-72-306. ~~Annual renewal~~ *Renewal.*** (1) A license issued under this chapter expires ~~January 1 following the date of its issuance or renewal~~ and is invalid ~~thereafter~~ *after the renewal date established by the department by rule.* The department shall notify each person licensed under this chapter of the date of the expiration of ~~his~~ *the person's* license and the amount of ~~his~~ *the license*

HeinOnline -- 1997 vol. III 2744 1997

renewal fee. The notice must be mailed to each licensed construction blaster at ~~his~~ *the blaster's* listed address at least 1 month before the expiration of ~~his~~ *the blaster's* license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a licensee to pay ~~his~~ *the* renewal fee by the expiration date does not deprive ~~him~~ *the licensee* of the right to renew ~~his~~ *the licensee's* license, but the fee must be increased 10% for each month or major portion ~~thereof~~ *of a month* that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more is subject to review by the department, and the applicant may be required to successfully complete an examination."

**Section 53.** Section 50-39-102, MCA, is amended to read:

**"50-39-102. Application for license and endorsements.** (1) An application for a license and any endorsements must be made on a form prescribed by the department of commerce.

(2) The department shall ~~annually~~ issue a license and endorsement to an applicant who:

(a) submits satisfactory proof that the applicant is properly equipped and staffed to provide the sales or services to be licensed and endorsed; and

(b) submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements.

(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department; and

(b) ~~annually~~ renew the endorsement *at time intervals prescribed by the department and* upon payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

**Section 54.** Section 50-74-313, MCA, is amended to read:

**"50-74-313. Renewal of licenses.** (1) All certificates of license to engineers of all classes ~~shall~~ *must* be renewed ~~yearly, except as herein provided~~ *at periodic intervals as established by the department by rule.*

(2) Any engineer failing to renew ~~his~~ *the* license ~~as herein provided or~~ within at least 30 days after the date of expiration ~~shall~~ *must* be assessed the fee for the original license of the same grade before the license will be reissued.

(3) Any engineer failing to renew ~~his~~ *the* license within 12 months of the date of expiration ~~must~~ *shall* reapply for an engineer's license as required by the provisions of 50-74-303 through 50-74-308.

(4) Any engineer whose license expired while ~~such~~ *the* engineer was in the military or naval service of the United States ~~shall have 90 days from the time~~

HeinOnline -- 1997 vol. III 2745 1997

~~such engineer is discharged from such military or naval service within which to renew his~~ *shall within 90 days of discharge renew the* license at the renewal fee."

**Section 55.** Section 50-76-105, MCA, is amended to read:

**"50-76-105. Renewal and period of validity of license.** The license is valid for ~~1 year from the date of issuance~~ *a period established by the department of commerce by rule* and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title."

**Section 56. Coordination instructions.** (1) If House Bill No. 266 and [this act] are both passed and approved, then [section 1(3)(b) of this act] must read as follows:

"(b) up to $44,391 from money deposited in the state special revenue fund pursuant to 37-68-313 and 37-69-308, in proportions determined by the department of commerce. The appropriation may be used only for a half-time administrative support pesition to be shared by the state electrical board provided for in 2-15-1874 and the state board of plumbers established in 2-15-1875;".

(2) If House Bill No. 396 and [this act] are both passed and approved, then 27-6-206(3) must read as follows:

"(3) The annual surcharge must be paid on or before April 1 of each year. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The panel may collect the annual surcharge by an action at law."

**Section 57. Effective date.** [This act] is effective July 1, 1997.

Approved May 1, 1997

# CHAPTER NO. 493

[HB 610]

AN ACT ESTABLISHING A LEGISLATIVE COMMITTEE TO STUDY THE REVENUE AND EXPENDITURES OF THE HIGHWAYS STATE SPECIAL REVENUE ACCOUNT AND MONTANA'S TRANSPORTATION INFRASTRUCTURE NEEDS; PROVIDING FOR APPOINTMENTS TO THE COMMITTEE; APPROPRIATING FUNDS FOR THE OPERATION OF THE COMMITTEE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, there is a declining working cash balance in the highways state special revenue account, which may lead to a reduction in state-funded construction projects; and

WHEREAS, highways state special revenue account money is being used to support an increasing number of programs and projects, and it is therefore appropriate to determine the proper use of dedicated revenue; and

WHEREAS, the Department of Transportation may be facing a decline in federal matching funds for construction and maintenance programs; and

HeinOnline -- 1997 vol. III 2746 1997

WHEREAS, increased travel on Montana's roads, highways, and bridges has intensified the need to strengthen Montana's highway infrastructure for the safety of the traveling public and the well-being of the state's economy.

THEREFORE, the Legislature finds it appropriate that an interim study committee be established and assignod to complete a comprehensive review of the highways state special revenue account and the state's transportation infrastructure needs.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Transportation funding and expenditure study committee — composition — appointments.** (1) There is a transportation funding and expenditure study committee.

(2) The committee is composed of the following members:

(a) four members of the house of representatives, two from each party, appointed by the speaker of the house; and

(b) four members of the senate, two from each party, appointed by the committee on committees.

(3) The department of transportation may provide support staff and technical advisers to assist the committee.

(4) The members of the committee shall elect a presiding officer from among the members.

(5) A vacancy occurring on the committee must be filled in the same manner as the original appointment.

**Section 2. Meetings.** (1) The presiding officer shall schedule meetings of the transportation funding and expenditure study committee as necessary and shall give advance notice to the committee members of the time and place of each meeting.

(2) The committee may adopt rules of procedure for the conduct of its meetings.

**Section 3. Reimbursement of expenses.** Each member of the transportation funding and expenditure study committee appointed under [section 1] is entitled to the compensation and expenses provided for in 5-2-302.

**Section 4. Powers and duties — staff support — recommendations — report.** (1) The transportation funding and expenditure study committee shall make a thorough study of:

(a) funding sources of the highways state special revenue account, including gasoline tax, diesel tax, permit fees, new car sales tax, and gross vehicle weight taxes and fees;

(b) expenditures from the highways state special revenue account, including legislative appropriations, statutory appropriations, statutory distributions, and refunds;

HeinOnline -- 1997 vol. III 2747 1997

(c) infrastructure usage and needs for the state's primary and secondary roads and the national highway and urban systems, including projected long-term needs;

(d) the most cost-effective use of highways state special revenue account dollars;

(e) the priority placed on and between hroad program investment categories, including:

(i) the investment of highways state special revenue account funds on maintenance of streets and highways;

(ii) matching federal-aid and highway program funds;

(iii) state-funded construction programs;

(iv) administrative and overhead costs of the department of transportation;

(v) the state highway patrol;

(vi) the state park, snowmobile, and off-highway vehicle accounts;

(vii) allocations to cities, counties, and towns;

(viii) the alcohol incentive program;

(ix) off-road tax refunds for agricultural use;

(x) tribal memher refund allocations;

(xi) the motor vehicle division of the department of justice; and

(xii) any other current statutory distribution of the highways state special revenue account money.

(2) The legislative fiscal division shall supply staff support to the committee.

(3) The committee is authorized to secure information of any type from any agency, board, or commission or from any independent organization. A state agency, board, or commission shall supply information upon the request of the committee.

(4) On or before August 1, 1998, the committee shall submit to the legislative finance committee and the 56th legislature a report of its findings and conclusions. The report must contain recommendations for legislation and drafts of proposed legislation to ensure that:

(a) highways state special revenue account funds are used in the most cost-effective manner to meet transportation infrastructure needs; and

(b) transportation infrastructure needs are addressed with the available highways state special revenue account funds identified by the committee pursuant to subsection (1)(a) in light of the findings made in subsection (1)(e).

**Section 5. Funding for study — appropriation.** There is appropriated to the legislative fiscal division an amount not to exceed $25,000. The money is appropriated from the nondedicated portion of the highways state special revenue

HeinOnline -- 1997 vol. III 2748 1997

fund for the purpose of conducting the study identified in [section 4]. The funds may be used only for fulfilling the duties of the transportation funding and expenditure study committee, including:

(1) reimbursing or compensating the committee members as provided in [section 3];

(2) contracting for services to assist in the study to be conducted by the committee; and

(3) paying other expenses incurred by the committee or by the legislative fiscal division in completing the study.

**Section 6. Effective date.** [This act] is effective July 1, 1997.

**Section 7. Termination.** [This act] terminates June 30, 1999.

Approved May 1, 1997

# CHAPTER NO. 494

[HB 615]

AN ACT ESTABLISHING AN INTERIM COMMISSION TO OVERSEE, PUBLICIZE, AND REPORT ON A STUDY OF THE SOCIOECONOMIC IMPACTS OF GAMBLING IN MONTANA; PROVIDING AN APPROPRIATION; AMENDING SECTION 23-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, The Constitution of the State of Montana provides for the legalization of gambling through a vote of the people or the action of the Legislature; and

WHEREAS, there is a public policy statement in state law concerning gambling activities that includes the creation and maintenance of a regulatory climate; and

WHEREAS, state and local governments receive tax revenues generated by gambling; and

WHEREAS, there are citizens who are adversely affected by legalized gambling, including compulsive gamblers and their families; and

WHEREAS, there is no recent reliable data in Montana that substantiates the economic or social impacts of gambling; and

WHEREAS, the results of gambling studies conducted in other states and on a national basis are not specifically relevant to conditions in Montana.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Gaming study commission — composition — vacancies.** (1) There is an interim gambling study commission.

(2) The commission is composed of the following five members:

(a) one member, to be appointed by the governor, who holds a doctorate in a social science that is pertinent to socioeconomic analysis;

(b) two members from the Montana university system, one from the bureau of business and economic research or the sociology department of the university of Montana, the other from the school of business or the sociology department of Montana state university. The president of the university of Montana and the president of Montana state university shall each nominate three candidates for commission membership. The governor shall select and appoint one member from each list of nominees.

(c) one member, to be appointed by the governor, who is a mental health professional and who holds a doctorate degree or a master's degree with relevant subsequent certification and who has experience in the treatment of mental disorders that manifest in addictive behavior that includes gambling but who has no significant financial interest in the treatment of gambling addiction;

(d) one member, to be appointed by the governor, who is a business owner who does not have an economic interest in and is not related to a person who has an economic interest in the gambling industry.

(3) The members of the commission shall elect a presiding officer from among the members.

(4) Any vacancy occurring on the commission must be filled in the same manner as the original appointment.

**Section 2. Meetings.** The presiding officer sball schedule meetings of the commission as considered necessary and shall give notice of the time and place of each meeting to the members of the commission.

**Seetion 3. Reimbursement of expenses — compensation.** Each member of the commission is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

**Seetion 4. Powers and duties — staff support — recommendations — report.** (1) The commission shall request, fund, and subsequently evaluate and publicize a detailed study of the socioeconomic effects of gambling in Montana. The study may include but is not limited to:

(a) a demographic profile of the people wbo participate in gambling in Montana, including both residents and nonresidents;

(b) the number of private sector jobs and the amount of personal and business income directly or indirectly attributable to gambling;

(c) the impact of gamhling on employment and income in other sectors of the economy outside of the gambling industry;

(d) the amount of tax revenue collected by the state and by local governments that is directly or indirectly attributable to gambling;

(e) the amount of expenditures by the state and by local governments, including law enforcement agencies, that is directly or indirectly attributable to gambling;

HeinOnline -- 1997 vol. III 2750 1997

(f) demographic data on pathological and problem gamblers that is derived in a way to allow longitudinal comparisons with earlier studies in Montana;

(g) the impact of gambling on state and federal government transfer payments;

(h) data on the effects of gambling on the family, such as statistics related to divorce, spousal abuse, child abuse and neglect, and other familial dysfunction as well as goneral health and economic statistics that are pertinent to family stability and well-being; and

(i) the relationship of gambling to the numbers of Montana citizens who file for bankruptcy, who bring cases to small claims court, and who are subject to real property foreclosures.

(2) The commission shall establish goals and a budget for an unbiased and scientifically credible study as well as minimum qualifications and selection criteria for persons who submit proposals to conduct the study.

(3) The commission is responsible for determining the most cost-effective allocation of the funds appropriated in [section 5].

(4) The legislative services division shall provide staff support to the commission for administrative purposes and for the purpose of drafting and issuing of a detailed request for proposals in order to recruit qualified persons to conduct the study or studies. The legislative services division may expend funds from the appropriation provided in [section 5] for staff services provided by the legislative services division to the commission.

(5) State and local agencies shall cooperate with the commission in the conduct of the study.

(6) On or before September 1, 1998, the commission shall submit to the legislature and the governor a comprehensive written report of its findings, conclusions, and recommendations. If legislation is recommended, the report must include a draft of the legislation.

(7) On or before October 1, 1998, the commission may use any available means, including informational public meetings, to disseminate the results of the study to the citizens of Montana.

**Section 5. Appropriation.** (1) There is appropriated to the legislative services division for the purposes of funding and administering the study described in [section 4] and supporting the commission described in [section 1] $100,000 from the state lottery fund established in 23-7-401.

(2) The appropriation in subsection (1) is a biennial appropriation.

**Section 6.** Section 23-7-402, MCA, is amended to read:

**"23-7-402. Disposition of revenue.** (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

HeinOnline -- 1997 vol. III 2751 1997

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. ~~Net~~ *Except as provided in subsection (5), net* revenue must he transferred quarterly from the enterprise fund established by 23-7-401 to the state general fund.

(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the office of budget and program planning.

*(5) For the purposes of funding a study of the socioeconomic impacts of gambling, $100,000 of net revenue may be appropriated from the enterprise fund established by 23-7-401."*

**Section 7. Effective date.** [This act] is effective July 1, 1997.

**Section 8. Termination.** [Section 6] terminates June 30, 1999.

Approved May 1, 1997

# CHAPTER NO. 495

[SB 44]

AN ACT CLARIFYING AND LIMITING A MOTOR VEHICLE LIABILITY INSURER'S LIABILITY UNDER A POLICY; AMENDING SECTIONS 33-23-203 AND 33-23-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-23-203, MCA, is amended to read:

**"33-23-203. Limitation of liability under motor vehicle liability policy.** (1) Unless a motor vehicle liability policy specifically provides otherwise, the limits of insurance coverage available under ~~any such~~ *each part of the* policy~~, including the limits of liability under uninsured motorist coverage,~~ must be determined as follows, regardless of the number of motor vehicles insured under the policy, *the number of policies issued by the same company covering the insured, or the number of separate premiums paid*:

(a) the ~~limit~~ *limits* of insurance ~~coverage~~ *coverages* available for any one accident ~~is~~ *are* the ~~limit~~ *limits* specified for *each coverage available under the policy insuring* the motor vehicle involved in the accident;

(b) if ~~no~~ *the* motor vehicle ~~insured under the policy is~~ involved in the accident *is not insured under a policy*, the ~~limit~~ *limits* of *the* insurance ~~coverage~~ *coverages* available for any one accident ~~is~~ *are* the highest ~~limit~~ *limits* of ~~coverage~~ *the coverages* specified *under one policy* for ~~any~~ one motor vehicle insured under ~~the~~ *that* policy; and

(c) the limits of ~~coverage~~ *the coverages* specified *under one policy or under more than one policy issued by the same company* ~~for each motor vehicle insured under the policy~~ may not be added together to determine the ~~limit~~ *limits* of

HeinOnline -- 1997 vol. III 2752 1997

insurance ~~coverage~~ *coverages* available under the policy *or policies* for any one accident.

(2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions, or reductions of coverage ~~which~~ *that* are designed to prevent duplicate payments for the same element of loss *or to prevent the adding together of insurance coverage limits in one policy or from more than one policy issued by the same company.*

*(3) An insurer that charges a premium for a specified coverage shall clearly inform or notify the insured in writing of the limits of the coverage with respect to the premium charged and whether the coverage from one policy or motor vehicle may be added to the coverage of another policy or motor vehicle.*

*(4) Nothing in this section is intended to create coverage for a motor vehicle that would otherwise be uninsured.*"

**Section 2.** Section 33-23-204, MCA, is amended to read:

"**33-23-204. Definitions.** As used in this part, the following definitions apply:

(1) "Motor vehicle" means ~~every~~ *a* vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state. The term does not include a bicycle as defined in 61-1-123.

(2) "Motor vehicle liability policy" means ~~any~~ *a* policy of automobile or motor vehicle insurance against liability ~~now or hereafter~~ required under Title 61, chapter 6, parts 1 and 3, *and all additional coverages included in or added to the policy by rider, endorsement, or otherwise, whether or not required under Title 61, including, without limitation, uninsured, underinsured, and medical payment coverages.*"

**Section 3. Applicability.** [This act] applies to all motor vehicle liability policies issued or renewed after [the effective date of this act].

**Section 4. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 496

[SB 57]

AN ACT GENERALLY REVISING THE CLASSIFICATION, VALUATION, AND TAXATION OF MOTOR VEHICLES; TAXING AUTOMOBILES, TRUCKS HAVING A MANUFACTURER'S RATED CAPACITY OF 1 TON OR LESS, VANS, AND SPORT UTILITY VEHICLES AT 2 PERCENT OF THE DEPRECIATED VALUE OF THE MANUFACTURER'S SUGGESTED RETAIL PRICE; EXEMPTING FROM PROPERTY TAXATION BUSES, TRUCKS HAVING A MANUFACTURER'S RATED CAPACITY OF MORE THAN 1 TON, TRUCK TRACTORS, AND PERSONAL PROPERTY ATTACHED TO THESE EXEMPT VEHICLES; IMPOSING A FEE IN LIEU OF PROPERTY TAXES ON BUSES, TRUCKS HAVING A MANUFACTURER'S RATED CAPACITY OF

HeinOnline -- 1997 vol. III 2753 1997

MORE THAN 1 TON, AND TRUCK TRACTORS; PROVIDING FOR THE PRORATION OF THE FEE IN LIEU OF TAX; CLARIFYING THAT SPECIAL MOBILE EQUIPMENT IS SUBJECT TO PROPERTY TAX; REPLACING THE TAX ON QUADRICYCLES WITH A FEE IN LIEU OF TAX; PROVIDING FOR AN ANALYSIS OF ALTERNATIVE METHODS OF CLASSIFICATION, VALUATION, AND TAXATION OF AUTOMOBILES AND TRUCKS HAVING A MANUFACTURER'S RATED CAPACITY OF 1 TON OR LESS; AMENDING SECTIONS 7-1-2111, 15-6-138, 15-6-201, 15-8-111, 15-8-201, 15-8-202, 15-16-202, 15-50-207; 20-9-141, 20-9-331, 20-9-333, 20-9-360, 20-9-501, 20-10-144, 20-10-146, 61-3-101, 61-3-208, 61-3-303, 61-3-456, 61-3-501, 61-3-503, 61-3-504, 61-3-506, 61-3-507, 61-3-509, 61-3-520, 61-3-527, 61-3-535, 61-3-537, 61-3-701, AND 61-12-402, MCA; REPEALING SECTIONS 15-24-101, 15-24-102, 15-24-103, 15-24-104, 15-24-105, AND 15-24-2501, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 61-3-506 gives rulemaking authority to the department of justice to implement the new methods for the valuation and taxation of light motor vehicles and for the imposition of fees in lieu of tax on buses and trucks. The rules adopted by the department may contain criteria for determining the manufacturer's suggested retail price, an alternative valuation when the manufacturer's suggested retail price is unavailable, the date of manufacture for vehicles not commercially manufactured for consumer purchase, and the age and rated capacity of buses and trucks.

The legislature contemplates that the rules adopted by the department should address, at a minimum, the following:

(1) the methods for determining the valuation of light motor vehicles for taxation purposes;

(2) the assessment and collection of taxes and fees on motor vehicles and buses and trucks;

(3) the methods for determining the manufacturer's suggested retail price for the valuation of motor vehicles;

(4) the procedures for establishing an equitable alternative value for vehicles that do not have a published manufacturer's suggested retail price; and

(5) the procedures for determining the age and manufacturer's rated capacity for buses and trucks.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-1-2111, MCA, is amended to read:

**"7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504~~(2)~~, as follows:

(a) first class—all counties having a taxable valuation of $50 million or ~~over~~ *more*;

(b) second class—all counties having a taxable valuation of ~~more than~~ $30 million *or more* and less than $50 million;

(c) third class—all counties having a taxable valuation of ~~more than~~ $20 million *or more* and less than $30 million;

(d) fourth class—all counties having a taxable valuation of ~~more than~~ $15 million *or more* and less than $20 million;

(e) fifth class—all counties having a taxable valuation of ~~more than~~ $10 million *or more* and less than $15 million;

(f) sixth class—all counties having a taxable valuation of ~~more than~~ $5 million *or more* and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a *manufacturer's* rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) *that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;*

*(d)* the value provided by the department of revenue under 15-36-324(10); and

~~(d)~~*(e)* 6% of the taxable value of the county on January 1 of each tax year."

**Section 2.** Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all trailers and semitrailers, ~~including those prorated under 15-24-102,~~ except those ~~subject to taxation under 61-3-504(2) or~~ exempt under 15-6-201(1)(v);

HeinOnline -- 1997 vol. III 2755 1997

(e) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class;

(f) ~~buses and trucks having a rated capacity of more than 1 ton, including those prorated under 15-24-102;~~

~~(g)~~ truck toppers weighing more than 300 pounds;

*(g) special mobile equipment as defined in 61-1-104;*

(h) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(i) x-ray and medical and dental equipment;

(j) citizens' band radios and mobile telephones;

(k) radio and television broadcasting and transmitting equipment;

(l) cable television systems;

(m) coal and ore haulers;

(n) theater projectors and sound equipment; and

(o) all other property not included in any other class in this part, except that property subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at:

(a) 9% of its market value for tax years ending on or before December 31, 1995;

(b) 8% of its market value for tax year 1996;

(c) 7% of its market value for tax year 1997; and

(d) 6% of its market value for tax years beginning after December 31, 1997."

**Section 3.** Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings in the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) property owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504~~(2)~~ and 61-3-537.

HeinOnline -- 1997 vol. III 2757 1997

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, the mentally ill, or the vocationally handicapped as defined in 18-5-101 and that is not operated for gain or profit and property owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection *(1)*(q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers and semitrailers that have a licensed gross weight of 26,000 pounds or more or that are registered through a proportional registration agreement under 61-3-721. For purposes of this subsection *(1)*(v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

HeinOnline -- 1997 vol. III 2758 1997

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(w) all vehicles registered under 61-3-456;

*(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and*

*(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i); and*

*(y) motorcycles and quadricycles.*

(2) (a) For the purposes of subsection (1)(e), the term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

**Section 4.** Section 15-8-111, MCA, is amended to read:

HeinOnline -- 1997 vol. III 2759 1997

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of ~~all motor trucks;~~ *special mobile equipment and* agricultural tools, implements, and machinery~~; and vehicles of all kinds~~ is the average wholesale value shown in national appraisal guides and manuals or the value ~~of the vehicle~~ before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

HeinOnline -- 1997 vol. III 2760 1997

(d) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(h) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

**Section 5.** Section 15-8-201, MCA, is amended to read:

**"15-8-201. General assessment day.** (1) The department shall, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county. The department shall assess property to the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1. The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1. A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

(2) The procedure provided by this section does not apply to:

(a) motor vehicles ~~that are required by 15-8-202 to be assessed on January 1 or upon their anniversary registration date~~;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as "special mobile equipment" that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(f) mobile homes held by a distributor or dealer of mobile homes as stock in trade; and

(g) property subject to the provisions of 15-16-203.

(3) Credits must be assessed as provided in 15-1-101(1)(f)."

**Section 6.** Section 15-8-202, MCA, is amended to read:

**"15-8-202. Motor vehicle assessment *by department of justice.*** (1) *(a)* ~~The department shall, in each year, ascertain and assess all motor vehicles, other than motor homes, travel trailers, and campers or mobile homes, in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles as provided by law, subject to 61-3-313 through 61-3-316 and 61-3-501.~~ The ~~assessment for~~ *department of justice shall assess* all ~~motor~~ *light* vehicles, ~~must be made~~ *subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation* in accordance with 61-3-503.

HeinOnline -- 1997 vol. III 2761 1997

*(b) The department of justice shall determine the fee in lieu of tax for all buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors in accordance with [sections 32 and 33].*

*(c)* ~~The motor vehicles~~ *Taxes or fees in lieu of tax on motor vehicles under this subsection (1)* must be assessed *or imposed* in each year ~~to~~ *on* the persons ~~by whom~~ *who* owned or claimed *the motor vehicles* or in whose possession or control ~~they were at midnight of January 1 or~~ *the motor vehicle was on* the anniversary registration date~~, whichever is applicable~~.

(2) A tax *or fee in lieu of tax* may not be assessed *or imposed* against motor vehicles subject to taxation *or to a fee in lieu of tax* that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation *or a fee in lieu of tax that are* brought into the state ~~subsequent to~~ *after* January 1 as motor vehicle dealers' inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1."

**Section 7.** Section 15-16-202, MCA, is amended to read:

**"15-16-202. Boats, snowmobiles, and motor vehicles — payment of current and back taxes and fees.** (1) The fee in lieu of personal property taxes assessed against a boat for the year in which application for decals is made and the immediately previous year must be paid before license decals may be issued pursuant to 23-2-515.

(2) The fee in lieu of tax imposed on a snowmobile for the year in which application for registration is made and the immediately previous year must be paid before a snowmobile may be registered pursuant to 23-2-616.

(3) Except for mobile homes as defined in 15-1-101, the new motor vehicle sales tax and the ~~personal property~~ *motor vehicle* tax or fee in lieu of tax imposed or assessed against a motor vehicle for the current year and the immediately previous year must be paid before a motor vehicle may be registered or reregistered pursuant to 61-3-303.

(4) The provisions of subsections (1) through (3) do not require payment of the immediately previous year's taxes or fees if ~~such~~ *the* taxes or fees have already been paid."

**Section 8.** Section 15-50-207, MCA, is amended to read:

**"15-50-207. Credit against other taxes — credit for personal property taxes and certain fees.** (1) The additional license fees withheld or otherwise paid as provided ~~herein~~ *in this chapter* may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

HeinOnline -- 1997 vol. III 2762 1997

(2) Personal property taxes *and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors as provided in [section 33]* paid in Montana on any personal property *or vehicle* of the contractor ~~which~~ *that* is used in the business of the contractor and is located within this state may he credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the ~~personal property~~ tax credit against the license fees ~~herein~~ required ~~shall~~ *under this chapter may* not be considered as license fees paid for the purpose of ~~such~~ *the* income tax or corporation license tax credit."

**Section 9.** Section 20-9-141, MCA, is amended to read:

**"20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323;

(B) revenue from ~~property~~ taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504~~(2)~~, 61-3-521, 61-3-527, 61-3-537, *[section 33],* and 67-3-204;

(C) oil and natural gas production taxes;

(D) interest earned hy the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid; and

HeinOnline -- 1997 vol. III 2763 1997

(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

**Section 10.** Section 20-9-331, MCA, is amended to read:

**"20-9-331. Basic county tax and other revenues for county equalization of the elementary district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504~~(2)~~, 61-3-521, 61-3-527, 61-3-537, *[section 33]*, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization,

the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus halance and each suhsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) oil and natural gas production taxes;

(h) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(i) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504~~(2)~~, 61-3-521, 61-3-527, 61-3-537, *[section 33]*, and 67-3-204."

**Section 11.** Section 20-9-333, MCA, is amended to read:

**"20-9-333. Basic special levy and other revenue for county equalization of high school district BASE funding program.** (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504~~(2)~~, 61-3-521, 61-3-527, 61-3-537, *[section 33]*, and 67-3-204, for the purposes of local and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation

HeinOnline -- 1997 vol. III 2765 1997

and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue hy the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) oil and natural gas production taxes;

(e) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(f) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504~~(2)~~, 61-3-521, 61-3-527, 61-3-537, *[section 33],* and 67-3-204."

**Section 12.** Section 20-9-360, MCA, is amended to read:

**"20-9-360. State equalization aid levy.** (1) There is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803, 61-3-504~~(2)~~, 61-3-521, 61-3-527, 61-3-537, *[section 33],* and 67-3-204. Except as provided in subsection (2), proceeds of the levy must be remitted to the state treasurer and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana.

(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to July 1, 1990, the state treasurer shall distribute each fiscal year from the state equalization aid levy to the municipality the amount, if any, equal to the product of the incremental taxable value of the urban renewal area times the reduced school levy for the area, each calculated for the fiscal year. The reduced school levy for a fiscal year is the difference between the aggregate amount of all property tax levies for school purposes in the urban renewal area, expressed in mills, in the fiscal year ended June 30, 1989, and the aggregate amount of all property tax levies for school purposes in the area or the district, expressed in mills, in the fiscal year, including the state equalization aid levy. The state

HeinOnline -- 1997 vol. III 2766 1997

treasurer shall distribute the amounts to municipalities in two equal installments on December 31 and June 30 of the fiscal year."

**Section 13.** Section 20-9-501, MCA, is amended to read:

"**20-9-501. Retirement fund.** (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504~~(2)~~, 61-3-521, 61-3-527, 61-3-537, *[section 33]*, and 67-3-204;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325;

(iv) coal gross proceeds taxes under 15-23-703;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

HeinOnline -- 1997 vol. III 2767 1997

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners sball fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000."

**Seetion 14.** Section 20-10-144, MCA, is amended to read:

**"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transpertation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

HeinOnline -- 1997 vol. III 2768 1997

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

HeinOnline -- 1997 vol. III 2769 1997

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504~~(2)~~, 61-3-521, 61-3-527, 61-3-537, *[section 33]*, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated oil and natural gas production taxes;

(h) anticipated local government severance tax payments for calendar year 1995 production;

(i) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the transportation fund levy

HeinOnline -- 1997 vol. III 2770 1997

requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

**Section 15.** Section 20-10-146, MCA, is amended to read:

"**20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county suporintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a spocial education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuir g school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504~~(2)~~, 61-3-521, 61-3-527, 61-3-537, *[section 337]*, and 67-3-204;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vi) federal forest reserve funds allocated under the provisions of 17-3-213; and

HeinOnline -- 1997 vol. III 2771 1997

(vii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

**Section 16. Light vehicle.** "Light vehicle" means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of 1 ton or less.

**Section 17. Sport utility vehicle.** "Sport utility vehicle" means a light vehicle designed to transport 10 or fewer persons that is constructed on a truck chassis or that has special features for occasional off-road use. The term does not include trucks having a manufacturer's rated capacity of 1 ton or less.

**Section 18.** Section 61-3-101, MCA, is amended to read:

**"61-3-101. Duties of department — records.** (1) The department shall keep a record as specified in this section of all motor vehicles, trailers, and semitrailers of every kind, ~~and~~ of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

(2) The record must show the following:

(a) name of owner, residence address by street or rural route, town, and county, and mailing address if different than residence address;

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and amount due under contract or lien;

(c) manufacturer of vehicle;

(d) manufacturer's designation of style of vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and shipping weight of vehicle as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle, if any;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on manufacturer's identification plate;

HeinOnline -- 1997 vol. III 2772 1997

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle; and

(k) other information that may from time to time be found desirable.

(3) The department shall file applications for registration received by it from ~~the~~ county treasurers ~~of the state~~ and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle; and

(d) ~~other~~ *another* index of registration as the department considers expedient.

*(4) The department shall determine the amount of motor vehicle taxes and fees to be collected at the time of registration for each light vehicle subject to tax under 61-3-503 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under [sections 32 and 33]. The county treasurer shall collect the taxes and fees on each motor vehicle at the time of its registration.*

*(5)* Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

~~(5)~~*(6)* In the case of dealers, the records must show the information contained in the application for a dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

~~(6)~~*(7)* In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

~~(7)~~*(8)* All records must be open to inspection during ~~all~~ reasonable business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department may require the applicant to provide identification. However, the department may, by rule, reasonably restrict disclosure of information on an owner or the owner's vehicle if the owner has requested in writing that the department not disclose the information."

**Section 19.** Section 61-3-208, MCA, is amended to read:

**"61-3-208. Affidavit and bond for certificate.** (1) If an applicant for a ~~motor~~ vehicle certificate of title cannot provide the department with a certificate of title transferred to the applicant, the department may issue a certificate of title for the vehicle if the applicant furnishes an affidavit in a form prescribed by the department.

HeinOnline -- 1997 vol. III 2773 1997

(2) The affidavit must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and include:

(a) the facts and circumstances through which the applicant acquired ownership and possession of the ~~motor~~ vehicle;

(b) information as required by the department to enable it to determine what security interests, liens, and encumbrances ~~against the motor vehicle~~, if any, are outstanding against the ~~motor~~ vehicle;

(c) the date and the amount secured by the security interests, liens, and encumbrances, if any; and

(d) a statement that the applicant has the right to have a certificate of title issued.

(3) If after examination of the application, affidavit, and any other evidence the department determines that a certificate of title for the ~~motor~~ vehicle should be issued to the applicant, the department shall require the applicant to file with the department a good and sufficient bond before issuing the certificate of title. The bond must be:

(a) in an amount equal to the *average trade-in or wholesale* value of the ~~motor~~ vehicle as determined ~~under the provisions of 61-3-503(1)(c)~~ *by the applicable national appraisal guide for the vehicle as of January 1* for the year in which the application for certificate of title is made~~.~~. *When a national appraisal guide is not available for a vehicle, the department shall determine an alternative value for the vehicle.*

(b) conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle~~,~~ and any respective successors in interest~~,~~ against expenses, losses, or damages caused by the issuance of the certificate or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the ~~motor~~ vehicle; and

(c) issued by a surety company authorized to do business in the state.

(4) Any interested person has a right of action to recover on the bond for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(5) Unless the department has heen notified of a pending action to recover the bond, the department shall return the bond at the earlier of:

(a) 3 years from tlie date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the vehicle is no longer registered in this state."

**Section 20.** Section 61-3-303, MCA, is amended to read:

**"61-3-303. Application for registration.** (1) Each owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file or cause to he filed in the office of the county treasurer where the owner permanently

HeinOnline -- 1997 vol. III 2774 1997

resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration ~~upon a blank~~ *on a* form ~~to be prepared and furnished~~ *prescribed* by the department. The application must contain:

(a) *the* name and address of *the* owner, giving *the* county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) *the* name and address of the holder of any security interest in the motor vehicle;

(c) *a* description of *the* motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the *manufacturer's* rated capacity is 1 ton or less, and type of body and, if a truck, *the manufacturer's* rated capacity;

(d) *the* declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733; and

(e) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456; and

(b) except as provided in 61-3-456 or unless it has been previously paid:

(i) the ~~personal property~~ *motor vehicle* taxes *or fees in lieu of tax* assessed *or imposed* against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department ~~of revenue~~ may not assess *or impose* and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department ~~of revenue~~ may make full and complete investigation of the tax status of the vehicle. An applicant for registration or reregistration shall submit proof from the tax or other appropriate records of the proper county at the request of the department ~~of revenue~~."

HeinOnline -- 1997 vol. III 2775 1997

**Section 21.** Section 61-3-456, MCA, is amended to read:

**"61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.** (1) An owner of a motor vehicle who is a Montana resident on active military duty and stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes described in 61-3-303(2)(b);

(b) assessment under 15-8-202 or 61-3-503 *or the fee in lieu of tax under [section 33]*; or

(c) any of the fees provided in part 5 of this chapter."

**Section 22.** Section 61-3-501, MCA, is amended to read:

**"61-3-501. When vehicle taxes and fees are due.** (1) ~~Property~~ *Motor vehicle* taxes, *fees in lieu of tax,* new car taxes, and fees must be paid on the date of registration or reregistration of the vehicle.

(2) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, ~~property~~ *motor vehicle* taxes *or fees in lieu of tax* abate on ~~such~~ *the* vehicle properly reported with the ~~department of revenue~~ *county treasurer* until the vehicle is sold ~~and thereafter~~. *After the sale,* the purchaser shall pay the pro rata balance of the taxes *or fees in lieu of tax* due and owing on the vehicle.

(3) In the event *that* a vehicle's registration period is changed under 61-3-315, all taxes *or fees in lieu of tax* and other fees due ~~thereon shall~~ *must* be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle ~~shall be~~ *is* registered. ~~Thereafter~~ *The* taxes *or fees in lieu of tax* and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees ~~shall~~ *must* be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle ~~shall~~ *must* again ~~register or reregister~~ *be registered or reregistered* and ~~shall pay~~ all taxes and fees ~~due thereon~~ *must be paid* for a 12-month period."

**Section 23.** Section 61-3-503, MCA, is amended to read:

"**61-3-503. Assessment.** (1) Except as provided in 61-3-520 and subsection ~~(2)~~ *(4)* of this section, the following apply to the taxation of motor vehicles:

~~(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing the application with the county treasurer submit the application to the department of revenue. The department of revenue shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.~~

~~(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. A motor vehicle is not subject to assessment, levy, and taxation more than once in each year.~~

~~(c)~~*(a)* Vehicles subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the ~~average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or another nationally published used vehicle or appraisal guide approved by the department of revenue or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the department of revenue, and depreciated 10% a year until a value of $500 is reached, not including additions or deductions for options and mileage but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines; and a~~ *depreciated value of the manufacturer's suggested retail price as determined in subsection (2).*

*(b)* A lien for taxes and fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the *depreciated* value ~~shown in any of the appraisal guides listed in this section~~ is less than $500, the department shall value the vehicle at $500.

~~(d) Quadricycles must be assessed, using the greater of the following:~~

~~(i) $250; or~~

~~(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide or another nationally published used vehicle or appraisal guide approved by the department of revenue, not including additions or deductions for options and mileage.~~

~~(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue shall depreciate the original f.o.b. factory list price, f.o.b. port of entry list price, or the manufacturer's suggested list price, using the following methods:~~

~~(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage is 20%; or~~

~~(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides or other approved guides referred to in this subsection (1). For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.~~

~~(f) When a minimum value of $500 is reached, the value must remain at that minimum as long as the vehicle is registered.~~

~~(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value must remain at that amount as long as the vehicle is registered.~~

*(2)(a) Except as provided in subsections (2)(c) and (2)(d), the depreciated value for the taxation of light vehicles is computed by multiplying the manufacturer's suggested retail price by a percentage multiplier based on the type and age of the vehicle determined from the following table:*

| *Age of Vehicle* | *Type of Vehicle* | | | |
|---|---|---|---|---|
| *(in years)* | *Automobile* | *Truck* | *Van* | *Sport Utility* |
| *-1* | *100%* | *100%* | *100%* | *100%* |
| *0* | *90* | *96* | *93* | *98* |
| *1* | *80* | *91* | *86* | *94* |
| *2* | *69* | *86* | *78* | *90* |
| *3* | *58* | *80* | *69* | *84* |
| *4* | *49* | *73* | *60* | *76* |
| *5* | *41* | *66* | *52* | *67* |
| *6* | *33* | *57* | *45* | *57* |
| *7* | *26* | *49* | *38* | *48* |
| *8* | *21* | *43* | *32* | *39* |
| *9* | *17* | *37* | *27* | *33* |
| *10* | *14* | *31* | *22* | *29* |
| *11* | *12* | *26* | *18* | *25* |
| *12* | *10* | *22* | *15* | *22* |
| *13* | *09* | *18* | *13* | *21* |
| *14* | *09* | *15* | *11* | *19* |

HeinOnline -- 1997 vol. III 2778 1997

| | | | | |
|---|---|---|---|---|
| *15* | *09* | *13* | *09* | *17* |
| *16* | *09* | *12* | *09* | *15* |

*(b) The age for the light vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the tax is due.*

*(c) If the value of the vehicle determined under subsection (2)(a) is $500 or less, the value of the vehicle is $500 and the value must remain at that amount as long as the vehicle is registered.*

*(d) The depreciated value of a light vehicle that is 17 years old or older is computed by depreciating the value obtained for the vehicle at 16 years old as determined under subsection (2)(a) by 10% a year until a minimum value of $500 is attained. The value must remain at that amount as long as the vehicle is registered.*

*(3) (a) For the purposes of this section, "manufacturer's suggested retail price" means the price suggested by the manufacturer for each given type, style, or model of light vehicle produced and first made available for retail sale by the manufacturer.*

*(b) The manufacturer's suggested retail price is based on standard equipment of a vehicle and does not contain price additions or deductions for optional accessories.*

*(c) When a manufacturer's suggested retail price is unavailable for a motor vehicle, the department shall determine an alternative valuation for the vehicle.*

~~(2)~~*(4)* The provisions of subsections ~~(1)(a)~~ *(1)* through ~~(1)(g)~~ *(3)* do not apply to *buses, trucks having a manufacturer's rated capacity of more than 1 ton, truck tractors,* motorcycles, motor homes, *quadricycles,* travel trailers, campers, or mobile homes as defined in 15-1-101(1)."

**Section 24.** Section 61-3-504, MCA, is amended to read:

**"61-3-504. Computation of tax.** (1) The amount of taxes on a ~~motor~~ *light* vehicle, ~~other than an automobile, truck having a rated capacity of 1 ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mobile home, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.~~

~~(2) The amount of tax on an automobile or truck having a rated capacity of 1 ton or less,~~ except for vehicles registered under 61-3-456 or owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c)~~(i)(A)~~ or 61-3-426(2), ~~and on a quadricycle~~ is 2% of the value determined under 61-3-503.

~~(3)~~*(2)* The amount of tax on fleet vehicles subject to the provisions of 61-3-318 is 1% of the value determined under 61-3-503.

~~(4) For all taxable motor vehicles, the amount of tax is entered on the application form in a space provided for that purpose.~~"

**Section 25.** Section 61-3-506, MCA, is amended to read:

**"61-3-506. Rules.** *(1)* The ~~department of revenue shall adopt rules for the payment of property taxes and the~~ department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520. ~~The department of revenue may adopt rules for the proration of taxes for the implementation and administration of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520, but shall specifically provide that new car taxes shall be for a 12-month period~~

*(2) The department of justice may adopt rules:*

*(a) for the assessment and collection of taxes and fees on light vehicles, including the proration of taxes under 61-3-520; and*

*(b) for the imposition and collection of fees in lieu of tax, including the proration of fees in lieu of tax under 61-3-520, on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including criteria for determining the vehicle's age and manufacturer's rated capacity.*"

**Section 26.** Section 61-3-507, MCA, is amended to read:

**"61-3-507. Exemption.** ~~(1) A motor vehicle subject to anniversary date registration as provided in 61-3-313 through 61-3-316 is exempt from the provisions of 61-3-503(1)(b).~~

~~(2)~~ A vehicle *that is* exempt from taxation under 15-6-215 or subject to the provisions of 61-3-520 is exempt from all other taxes and fees generally imposed on a vehicle by this part."

**Section 27.** Section 61-3-509, MCA, is amended to read:

**"61-3-509. Disposition of taxes.** (1) Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motorcycles, *quadricycles,* motor bomes, travel trailers, ~~and~~ campers, *buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors* collected under 61-3-504, 61-3-521, 61-3-527, ~~and~~ 61-3-537, *and [section 33]* to a motor vehicle suspense fund~~, and at~~. *At* some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same mamer as personal property taxes are distributed.

(2) The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on ~~an automobile or truck having a rated capacity of 1 ton or less~~ *light vehicles.* The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward tbe amount in the account to the state treasurer at the time that the county treasurer distributes *money from* the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund to be used for purposes of state funding of ~~the~~ district court expenses as provided in 3-5-901."

**Section 28.** Section 61-3-520, MCA, is amended to read:

**"61-3-520. ~~Taxation of~~ *Taxes and fees on* vehicles used exclusively in filming motion pictures or television commercials.** (1) A vehicle used

exclusively in the filming of motion pictures or television commercials that has been in the state for a period exceeding 180 consecutive days in a calendar year ~~must be assessed~~ *is subject to assessment or a fee in lieu of tax* as if the vehicle were not used exclusively for filming motion pictures or television commercials, but the assessment *or fee in lieu of tax* must be prorated as provided in subsection (2).

(2) The taxes assessed *or the fees in lieu of tax imposed* under subsection (1) must be prorated by dividing the number of days in excess of 180 consecutive days in the calendar year by 365.

(3) *(a)* Taxes on a vehicle imposed pursuant to this section must he collected as provided in Title 15, chapter 16, part 1, for the collection of personal property taxes generally.

*(b) Fees on a vehicle imposed pursuant to this section must be collected as provided in this chapter."*

**Seetion 29.** Section 61-3-527, MCA, is amended to read:

**"61-3-527. Fee in lieu of tax for motorcycles *and quadricycles* — schedule of fees.** (1) (a) There is a fee in lieu of property tax imposed on motorcycles *and quadricycles*. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) ~~need~~ *is* not *required to* be paid by a dealer for motorcycles *or quadricycles* that constitute inventory of the dealership.

(2) The owner of a motorcycle *or quadricycle* shall pay a fee based on the age of the motorcycle *or quadricycle* and the size of the engine, as follows:

(a) The fee schedule for a motorcycle *or quadricycle* with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

(i) less than 2 years old, $30;

(ii) 2 years old and less tban 5 years old, $25;

(iii) 5 years old and less than 11 years old, $15; and

(iv) 11 years old and older, $10.

(b) The fee schedule for a motorcycle *or quadricycle* with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

(i) less than 2 years old, $70;

(ii) 2 years old and less than 5 years old, $55;

(iii) 5 years old and less than 11 years old, $40; and

(iv) 11 years old and older, $30.

(c) The fee schedule for a motorcycle *or quadricycle* with an engine that measures 1,001 cubic centimeters and larger is as follows:

(i) less than 2 years old, $110;

(ii) 2 years old and less than 5 years old, $90;

HeinOnline -- 1997 vol. III 2781 1997

(iii) 5 years old and less than 11 years old, $65; and

(iv) 11 years old and older, $40.

(d) The age of a motorcycle *or quadricycle* is determined by subtracting the manufacturer's designated model year from the current calendar year."

**Section 30.** Section 61-3-535, MCA, is amended to read:

**"61-3-535. Vehicle reregistration by mail — ~~renewal cards~~ *reminder notice* and reregistration notice by mail.** (1) ~~Except as provided in subsection (2), an owner of the following types of motor vehicles may reregister by mail:~~

~~(a) light vehicles, quadricycles, and other vehicles subject to tax under 61-3-504(2); and~~

~~(b) motorcycles, travel trailers, campers, and motor homes subject to a fee in lieu of tax under 61-3-521 and 61-3-527.~~

~~(2) The option to reregister by mail need only be made available for vehicles, motor homes, and travel trailers registered at the close of the expiring registration period in the name of the applicant for reregistration and only if~~ *The department may allow the owner of a motor vehicle to renew the registration of a vehicle by mail when* the value, age, length, *weight,* or other criteria used to determine the tax or fee *for a particular type of vehicle* is available to the department *by electronic means.*

~~(3)~~*(2)* ~~The department shall develop a procedure to facilitate the reregistration by mail of the vehicles listed in subsection (1). The~~ *Any* mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration or recertification.

~~(4) The procedure implemented by the department to permit reregistration or camper decal application by mail must~~*and must* provide for a written reminder notice by mail to a vehicle owner of the requirement to reregister the owner's vehicle with the county treasurer or to apply for the annual camper decal.

~~(5)~~*(3)* The department shall adopt rules to implement the mail reregistration and decal application procedure."

**Section 31.** Section 61-3-537, MCA, is amended to read:

**"61-3-537. (Temporary) Local option vehicle tax.** (1) A county may impose a local vehicle tax on vehicles subject to a ~~property~~ tax under 61-3-504~~(2)~~ at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504~~(2)~~.

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504~~(2)~~. The first priority of the local vehicle tax is for district court funding, and the tax is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a

HeinOnline -- 1997 vol. III 2782 1997

city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution. The resolution may provide for the distribution of the local vehicle tax. (Terminates June 30, 2005—sec. 2, 3, Ch. 217, L. 1995.)

**61-3-537. (Effective July 1, 2005) Local option vehicle tax.** (1) A county may impose a local vehicle tax on vehicles subject to a ~~property~~ tax under 61-3-504~~(2)~~ at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504~~(2)~~.

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504~~(2)~~ and is distributed in the same manner, based on the registration address of the owner of the motor vehicle.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution."

**Section 32. Definitions.** As used in [section 33] and this section, unless the context requires otherwise, the following definitions apply:

(1) "Bus" has the same meaning as provided in 61-1-115.

(2) "Manufacturer's rated gross combined weight" means the manufacturer's published weight of the allowable load for a truck tractor and trailer combined and includes the weight of the truck tractor and the trailer.

(3) "Manufacturer's rated gross vehicle weight" means the manufacturer's published weight of the allowable load for a truck and includes the weight of the truck.

(4) "Truck" means a motor vehicle designed to carry an entire load. The truck may consist of a chassis and body or a chassis-cab and body or it may be of unitized construction so that the body and cab appear to be a single unit.

(5) "Truck tractor" has the same meaning as provided in 61-1-108.

**Section 33. Schedule of fees for buses, motor vehicles having rated capacity of more than 1 ton, and truck tractors — proration — exemption.** (1) (a) There is a fee in lieu of property tax imposed on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer of buses, trucks, or truck tractors that constitute inventory of the dealership.

(2) Subject to the conditions of subsection (4), the owner of a bus, truck with a manufacturer's rated capacity of more than 1 ton, or truck tractor shall pay a

HeinOnline -- 1997 vol. III 2783 1997

fee in lieu of tax based on the age and manufacturer's rated capacity of the vehicle according to the following schedule:

| Age of Vehicle | Rated Capacity (in pounds) | | | |
|---|---|---|---|---|
| (in years) | 16,999 or less | 17,000-26,999 | 27,000-54,999 | 55,000 or more |
| 1 or less | $234 | $334 | $568 | $750 |
| 2 | 218 | 300 | 500 | 600 |
| 3 | 200 | 268 | 440 | 532 |
| 4 | 184 | 234 | 368 | 484 |
| 5 | 166 | 218 | 320 | 390 |
| 6 | 150 | 200 | 268 | 334 |
| 7 | 132 | 182 | 234 | 294 |
| 8 | 116 | 166 | 200 | 250 |
| 9 | 100 | 150 | 184 | 218 |
| 10 | 82 | 116 | 158 | 184 |
| 11-12 | 66 | 100 | 134 | 152 |
| 13-14 | 56 | 74 | 104 | 122 |
| 15-16 | 50 | 60 | 76 | 94 |
| 17-18 | 36 | 52 | 58 | 72 |
| 19-20 | 26 | 38 | 44 | 52 |
| 21 or more | 20 | 24 | 32 | 40 |

(3) The age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the fee in lieu of tax is due.

(4) (a) The manufacturer's rated capacity for a bus or truck with a manufacturer's rated capacity of more than 1 ton is the manufacturer's rated gross vehicle weight.

(b) The manufacturer's rated capacity for a truck tractor is the manufacturer's rated gross combined weight.

(5) A motor vehicle brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from the fee in lieu of tax if the vehicle does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

(6) Except as provided in 61-3-520, the fee in lieu of tax on a vehicle subject to this section that is brought or driven into this state by a nonresident person for hire, compensation, or profit must be prorated according to the ratio that the

remaining number of months in the year bears to the total number of months in the year.

(7) (a) The fee in lieu of tax on a vehicle subject to this section that is registered in tho state for the first time must be prorated as provided in subsection (6).

(b) The fee in lieu of tax on a vehicle subject to this section that is reregistered in the state is for a full year.

(8) The fee in lieu of tax may not be refunded.

**Section 34. Assessment of proportionally registered interstate motor vehicle fleets — payment of tax or fee in lieu of tax required for registration.** (1) (a) Except as provided in subsection (2), the department of transportation shall determine the fee for the purpose of imposing the fee in lieu of tax as provided in [sections 32 and 33] on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, in interstate motor vehicle fleets that are proportionally registered under the provisions of 61-3-711 through 61-3-733. The fee must be apportioned on the ratio of total miles traveled to in-state miles traveled as prescribed by 61-3-721. The fee in lieu of tax on interstate motor vehicle fleets is imposed upon application for proportional registration and must be paid by the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(b) With respect to an original application for a fleet that has a situs in Montana for the purpose of the fee in lieu of tax under this part or any other provision of the laws of Montana, the fee in lieu of tax on fleet vehicles must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

(2) For the purpose of taxation, the department of transportation shall assess light vehicles, as defined in [section 16], that are part of an interstate motor vehicle fleet as follows:

(a) The value of each vehicle is determined in the same manner as provided in 61-3-503.

(b) The value determined under subsection (2)(a) multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, is the market value.

(c) The sum of the market value of all vehicles subject to tax under this subsection (2) multiplied by 2% is the tax for the entire fleet.

(d) With respect to an original application for a fleet that has a situs in Montana for the purpose of taxation under this part or any other provision of the laws of Montana, the taxes on taxable vehicles are determined as provided in subsection (2)(b).

(e) Vehicles taxed as part of a fleet under this subsection (2) are not subject to the local option tax imposed under 61-3-537.

(3) With respect to a renewal application for a fleet, taxable vehicles are assessed and taxed for a full year and for all other vehicles the fee in lieu of tax is imposed for a full year.

HeinOnline -- 1997 vol. III 2785 1997

(4) Vehicles contained in a fleet for which current taxes or fees, or both, have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of taxes, fees, or both for the current registration year. The payment of fleet vehicle taxes, fees in lieu of tax, and license fees is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

(5) All taxes and fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in [section 36].

**Section 35. Situs in state of proportionally registered fleets — collection of taxes and fees.** (1) For the purposes of this part, any vehicle previously registered or that has had application for registration made under the provisions of 61-3-711 through 61-3-733 has a situs in Montana for the purposes of taxation or the fee in lieu of tax.

(2) The department of transportation shall collect the fleet vehicle taxes, the fees in lieu of tax, and license fees prescribed in this part.

**Section 36. Deposit and distribution of taxes and fees on proportionally registered fleets.** The taxes, fees in lieu of tax, and license fees collected under this part must be deposited with the state treasurer for distribution to the general fund of each county on the following basis:

(1) for fleet vehicle taxes and fees in lieu of tax, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and

(2) for fleet vehicle license fees, according to the ratio of vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all fleet vehicle fees collected in all the counties.

**Section 37.** Section 61-3-701, MCA, is amended to read:

**"61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity.** (1) Before ~~any~~ *a* foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner ~~and/or~~ *or* user ~~thereof~~ *of the vehicle* uses the vehicle if ~~such~~ *the* owner ~~and/or~~ *or* user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall ~~make application~~ *apply* to a county treasurer for registration upon an application form furnished by the department. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of ~~property~~ *motor vehicle* taxes *or fees in lieu of taxes*, if appropriate, as required by 15-8-201, 15-8-202, 15-24-301, 61-3-504, ~~or~~ 61-3-537, *or [section 33],* the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) ~~The~~ *Upon payment of the fees or taxes, the* treasurer shall ~~thereupon~~ issue to the applicant a copy of the certificate entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which ~~shall~~ *must* at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the *effective* period ~~of the life~~ of the license.

HeinOnline -- 1997 vol. III 2786 1997

(3) The registration receipt ~~shall~~ *does* not constitute evidence of ownership but ~~shall~~ *must* be used only for registration purposes. ~~No~~ *A* Montana certificate of ownership ~~shall~~ *may not* be issued for this type of registration.

(4) This section is not applicable to ~~any~~ *a* vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana."

**Section 38.** Section 61-12-402, MCA, is amended to read:

**"61-12-402. Notice to owner.** (1) Within 72 hours after ~~any~~ *a* vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody ~~and~~ *of* the place where the vehicle is being held. In addition, the Montana highway patrol shall furnish the sheriff:

(a) a complete description of the vehicle, including year, make, model, serial number, and license number if available;

(b) any costs incurred to that date in the removal, storage, and custody of the vehicle; and

(c) any available information concerning its ownership.

(2) The sheriff or the city police shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If a name and address are ascertained, the sheriff or the city police shall notify the owner, ~~and~~ lienholder, or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the department, notice is considered to have been given when a ~~registered or~~ certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid, is mailed at least 30 days before the vehicle is sold.

(4) If the identity of the last-registered owner cannot be determined, if the registration does not contain an address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned is sufficient to meet all requirements of notice pursuant to this part. The notice by publication ~~can~~ *may* contain multiple listings of abandoned vehicles. The notice must be provided in the same manner as prescribed in 25-13-701(1)(b).

(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

HeinOnline -- 1997 vol. III 2787 1997

(6) A vehicle found by law enforcement officials to be a "junk vehicle", as defined by 75-10-501, and ~~certified as having an appraised~~ *that has a* value of $500 or less, as determined by the department ~~of revenue~~, may be directly submitted for disposal in accordance with the provisions of ~~part 5 of chapter 10,~~ Title 75, *chapter 10, part 5,* upon a release given by the sheriff or the city police. In the release, the sheriff or the city police shall include a description of the vehicle, including year, make, model, serial number, and license number if available. A release provided by the sheriff or the city police under this section must be transmitted to the motor vehicle wrecking facility and must be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted *for disposal* without notice and without a required holding period."

**Section 39. Legislative audit committee analysis.** (1) The legislative audit committee shall conduct or have conducted an analysis of alternative methods of classification, valuation, and taxation of automobiles and trucks having a manufacturer's rated capacity of 1 ton or less. The analysis must include:

(a) alternative methods of valuation and taxation;

(b) imposition of a flat tax or fees in lieu of taxes;

(c) multiyear licensing;

(d) cost-effectiveness and public convenience of alternative methods of classifying motor vehicles and of collecting motor vehicle taxes or fees;

(e) anticipated costs and revenue of alternative systems compared with the present system of classifying, valuing, and taxing motor vehicles; and

(f) alternative methods for formulas based on revenue allocations to counties.

(2) The committee shall report the results of its analysis to the 56th legislature.

**Section 40. Codification instruction.** (1) [Sections 16 and 17] are intended to be codified as an integral part of Title 61, chapter 1, part 1, and the provisions of Title 61, chapter 1, part 1, apply to [sections 16 and 17].

(2) [Sections 32 and 33] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [sections 32 and 33].

(3) [Sections 34 through 36] are intended to be codified as an integral part of Title 61, chapter 3, part 7, and the provisions of Title 61, chapter 3, part 7, apply to [sections 34 through 36].

**Section 41. Repealer.** Sections 15-24-101, 15-24-102, 15-24-103, 15-24-104, 15-24-105, and 15-24-2501, MCA, are repealed.

**Section 42. Effective dates — applicability — rulemaking.** (1) Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997.

HeinOnline -- 1997 vol. III 2788 1997

(2) For the purposes of promulgating administrative rules under 61-3-506 and conducting the analysis required by [section 39], [sections 25 and 39 and this section] are effective on passage and approval.

Approved May 1, 1997

# CHAPTER NO. 497

[SB 97]

AN ACT GENERALLY REVISING THE WATER LAWS TO CLARIFY THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION MAY ISSUE WATER PERMITS AND CHANGE AUTHORIZATIONS PRIOR TO THE COMPLETION OF AN ADJUDICATION IN A SOURCE OF SUPPLY; CLARIFYING THAT WATER RESERVED UNDER STATE LAW IS NOT SYNONYMOUS WITH FEDERAL AND INDIAN RESERVED WATER RIGHTS UNDER FEDERAL LAW; REQUIRING A WATER JUDGE TO GIVE PRIORITY OVER OTHER ADJUDICATION ISSUES TO ISSUES CERTIFIED TO THE DISTRICT COURT BY THE DEPARTMENT; ALLOWING THE DEPARTMENT TO NEGOTIATE INTERIM AGREEMENTS WITH TRIBAL GOVERNMENTS; AMENDING SECTIONS 85-2-101, 85-2-102, 85-2-217, 85-2-228, 85-2-301, 85-2-309, 85-2-311, 85-2-313, 85-2-316, 85-2-321, 85-2-329, 85-2-331, 85-2-336, 85-2-340, 85-2-341, 85-2-342, 85-2-401, AND 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, the Montana Supreme Court, in In the Matter of the Application for Beneficial Water Use Permit Nos. 66459-76L, Ciotti; 64988-g76L, Starner; and Application for Change of Appropriation Water Right No. G15152-s761, Pope, which was decided August 22, 1996, held that an applicant for a permit or change of use authorization on the Flathead Indian Reservation may not as a matter of law meet the applicant's burden of proof to establish that the proposed use will not interfere unreasonably with planned uses or developments for which water has been reserved until tho Confederated Salish and Kootenai Tribes' federal reserved water rights are quantified; and

WHEREAS, in 1973, Montana enacted comprehensive legislation referred to as the Montana Water Use Act of 1973, codified in Title 85, chapter 2, to implement Article IX, section 3(4), of the Montana Constitution, which requires that the Legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights, and to implement Article IX making the water of the state subject to appropriation for beneficial use hy its citizens; and

WHEREAS, Title 85, chapter 2, as amended, provides for the comprehensive adjudication of water rights and the continued development of Montana's water resources through a permit and change authorization process; and

WHEREAS, historically in Montana, water has been developed, water use rights acquired, and changes in water use completed in the ahsence of the adjudication of water rights in a source of supply; and

HeinOnline -- 1997 vol. III 2789 1997

WHEREAS, since July 1, 1973, it has been the intent of the Legislature that provisional permits and change authorizations be issued pursuant to statutory standards in the absence of a completed adjudication in a source of supply; and

WHEREAS, the dissent filed with the Montana Supreme Court decision raises a concern that the majority decision may he interpreted to apply statewide, but that interpretation does not reflect the intent of the Legislature to allow for the continued wise and efficient use of Montana's water resources and Montana's growing economy as required under Title 85, chapter 2.

STATEMENT OF INTENT

The legislature intends that the Montana Supreme Court's decision in In the Matter of the Application for Beneficial Water Use Permit Nos. 66459-76L, Ciotti, 64988-g76L, Starner; and Application for Change of Appropriation Water Right No. G15152-s761, Pope, 53 St. Rep. 777 at 784, 923 P.2d 1073, be negated by the passage and approval of this bill. The legislature further intonds that the portion of tlie district court decision in United States v. DNRC (1st Judicial District, Montana, June 15, 1987), No. 50612, (see also the concurring opinion in the Montana Supreme Court's decision in In the Matter of the Application for Beneficial Water Use Permit Nos. 66459-76L Ciotti, 64988-g76L, Starner; and Application for Change of Appropriation Water Right No. G15152-s761, Pope, 53 St. Rep. 777 at 784, 923 P.2d 1073), determining that in the absence of a quantification of existing water rights, the department of natural resources and conservation does not have the authority to issue a permit for a new wator application when questions of senior conflicting claims are raised, be negated by the passage and approval of this bill, specifically by the passage and approval of the amendments to 85-2-311. A statement of intent is desired for this bill in order to provide guidance to the department under 85-2-311 concerning implementation and interpretation of the physical availability of water and reasonable legal availability of water criteria. To find tbat water is available for the issuance of a permit, the department shall require a three-step analysis involving the following factors: identify physical water availability, identify existing legal demands on the source of supply, and compare and analyze the physical water supply at the proposed point of diversion with the existing legal demands on the source of supply.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 85-2-101, MCA, is amended to read:

"**85-2-101. Declaration of policy and purpose.** (1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter.

(2) A purpose of this chapter is to implement Article IX, section 3(4), of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation, and future beneficial use and development of Montana's water for the state and its citizens and for the continued development and completion of the comprehensive state water plan.

HeinOnline -- 1997 vol. III 2790 1997

(3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities ~~which~~ *that* store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of ~~stream flows~~ *streamflows*, and for ground water recharge.

(4) Pursuant to Article IX, section 3(1), of the Montana constitution, it is further the policy of this state and a purpose of this chapter to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose.

*(5) It is the intent of the legislature that the statutory determinations for issuing new water use permits and authorizing changes do not require the adjudication of all water rights in the source of supply. The legislature recognizes the unique character and nature of water resources of the state. Because water is a resource that is subject to use and reuse, such as through return flows, and because at most times all water rights on a source will not be exercised to their full extent simultaneously, it is recognized that an adjudication is not a water availability study. Consequently, the legislature has provided an administrative forum for the factual investigation into whether water is available for new uses and changes both before and after the completion of an adjudication in the source of supply. To allow for orderly permitting in the absence of a complete adjudication in the source of supply, permits issued under this chapter are provisional. A provisional permit is subject to reduction, modification, or revocation by the department as provided in 85-2-313 upon completion of the general adjudication.*

*(6) It is the intent of the legislature that the state, to fulfill its constitutional duties and to exercise its historic powers and responsibilities to its citizens living on and off reservations, comprehensively adjudicate existing water rights and regulate water use within the state. It is further the legislature's intent that the state, to the fullest extent possible, retain and exercise its authority to regulate water use and provide forums for the protection of water rights, including federal non-Indian and Indian water rights, and resolve issues concerning its authority over water rights and permits, both prior to and afier the flnal adjudication of water rights. In furtherance of this legislative intent:*

*(a) all permits issued are provisional, and it is the intent of the legislature that this status provide enforceable legal protection for existing rights; and*

*(b) any judicial determination of the state's authority to issue provisional permits on or off reservations should be decided in the appropriate state forum."*

**Section 2.** Section 85-2-102, MCA, is amended to read:

**"85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, lease water in accordance with 85-2-436; or

(d) in the Upper Clark Fork River basin, maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" *or "existing water right"* means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. *The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.*

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

*(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.*

~~(16)~~*(17)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(17)~~*(18)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(16)~~*(19)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited te geothermal water, diffuse surface water, and sewage effluent.

~~(19)~~*(20)* "Water division" means a drainage basin as defined in 3-7-102.

~~(20)~~*(21)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(21)~~*(22)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(22)~~*(23)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other ~~manmade~~ *constructed* waterways.

~~(22)~~*(24)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

**85-2-102. (Effeetive July 1, 1999) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

HeinOnline -- 1997 vol. III 2793 1997

(c) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or

(c) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" *or "existing water right"* means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. *The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.*

(9) "Ground water" means any water that is beneath the ground surface.

(10) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

HeinOnline -- 1997 vol. III 2794 1997

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

*(15) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.*

~~(15)~~*(16)* "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(16)~~*(17)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(17)~~*(18)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(16)~~*(19)* "Water division" means a drainage basin as defined in 3-7-102.

~~(16)~~*(20)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(20)~~*(21)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(21)~~*(22)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other ~~manmade~~ *constructed* waterways.

~~(20)~~*(23)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2005—sec. 14, Ch. 487, L. 1995.)

**85-2-102. (Effective July 1, 2005) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

HeinOnline -- 1997 vol. III 2795 1997

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" *or "existing water right"* means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. *The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.*

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency ~~thereof~~ *of the United States*, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

*(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.*

HeinOnline -- 1997 vol. III 2796 1997

~~(16)~~*(17)* "Substantial credible information" means probahle, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the porson providing the information.

~~(17)~~*(18)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(16)~~*(19)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(19)~~*(20)* "Water division" means a drainage basin as defined in 3-7-102.

~~(20)~~*(21)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(21)~~*(22)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(22)~~*(23)* "Watercourse" ineans any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other ~~manmade~~ *constructed* waterways.

~~(20)~~*(24)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

**Seetion 3.** Section 85-2-217, MCA, is amended to read:

"**85-2-217. Suspension of adjudication.** While negetiations for the conclusion of a coinpact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies ~~which~~ *that* are negotiating are suspended. The obligation to file water rights claims for those *federal non-Indian and Indian* reserved rights is also suspended. This suspension ~~shall be~~ *is* effective until July 1, 1999, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by July 1, 1999, the suspension ~~shall~~ *must* terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies ~~shall be~~ *are* subject to the special filing requirements of 85-2-702(3) and all other requirements of the state waıer adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negetiate their *federal non-Indian and Indian* reserved water rights are subject to the full operation of the state adjudication system and may not benefit from tbe suspension provisions of this section."

**Section 4.** Section 85-2-228, MCA, is amended to read:

"**85-2-228. Federal reserved water rights with priority date of July 1, 1973, or later — process and adjudication — purpose.** (1) The purpose of this section is to ensure that a federal reserved water right with a priority date of July 1, 1973, or later ~~be~~ *is* subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973.

(2) Under authority granted to the states by 43 U.S.C. 666, a federal reserved water right that has a priority date of July 1, 1973, or later and that is asserted

HeinOnline -- 1997 vol. III 2797 1997

by a federal agency is subject to the claim filing requirements and all other applicable requirements of the state water adjudication system provided for in Title 85, chapter 2, parts 2 and 7.

(3) At the request of a federal agency, the reserved water rights compact commission may negotiate to conclude a compact under Title 85, chapter 2, part 7, for a federal reserved water right with a priority date of July 1, 1973, or later.

(4) Whenever necessary, a water judge may reopen any decree issued pursuant to Title 85, chapter 2, to process the asserted or negotiated *federal* reserved water right."

**Section 5.** Section 85-2-301, MCA, is amended to read:

"**85-2-301. Right to appropriate — *recognition and confirmation of permits issued after July 1, 1973.*** (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter. A person may ~~only~~ appropriate water *only* for a beneficial use.

(2) (a) Only the department may appropriate water by permit in either of the following instances:

(i) for transport outside the following river basins:

(A) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(B) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(C) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(D) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(E) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(F) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota; or

(ii) whenever water in excess of 4,000 acre-feet a year and 5.5 cubic feet per second, for any use, is to be consumed.

(b) Water for these purposes or in these amounts may be leased from the department by any person under the provisions of 85-2-141.

(3) A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

*(4) All permit actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a permit by the department."*

**Section 6.** Section 85-2-309, MCA, is amended to read:

HeinOnline -- 1997 vol. III 2798 1997

"**85-2-309. Hearings on objections — jurisdiction.** (1) If the department determines that an objection to an application for a permit or change approval under 85-2-402 states a valid objection, it shall hold a public hearing on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. *Certified controversies must be given priority by a water judge over all other adjudication matters.*

*(b)* If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

~~(b)~~*(c)* Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

**Section 7.** Section 85-2-311, MCA, is amended to read:

"**85-2-311. Criteria for issuance of permit.** (1) *A permit may be issued under this part prior to the adjudication of existing water rights in a source of supply. In a permit proceeding under this part there is no presumption that an applicant for a permit cannot meet the statutory criteria of this section prior to the adjudication of existing water rights pursuant to this chapter. In making a determination under this section, the department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation.* Except as provided in subsections (3) and (4), the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a)*(i)* there ~~are unappropriated waters in the source of supply~~ *is water physically available* at the proposed point of diversion:

~~(i) at times when the water can be put to the use proposed by the applicant;~~

~~(ii)~~ in the amount that the applicant seeks to appropriate; and

~~(iii) during the period in which the applicant seeks to appropriate, in the amount requested and that is reasonably available;~~

*(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the*

*records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:*

*(A) identification of physical water availability;*

*(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and*

*(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.*

(b) the water rights of a prior appropriator *under an existing water right, a certificate, a permit, or a state water reservation* will not he adversely affected. *In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;*

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

~~(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;~~

~~(f)~~*(e)* the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use;

~~(g)~~*(f)* the water quality of a prior appropriator will not be adversely affected;

~~(h)~~*(g)* the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

~~(i)~~*(h)* the ahility of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not he adversely affected.

(2) The applicant is required to prove that the criteria in subsections ~~(1)(g)~~ *(1)(f)* through ~~(1)(i)~~ *(1)(h)* have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection ~~(1)(g)~~ *(1)(f)*, ~~(1)(h)~~ *(1)(g)*, or ~~(1)(i)~~ *(1)(h)*, as applicable, may not be met. For the criteria set forth in subsection ~~(1)(h)~~ *(1)(g)*, only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

(3) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet por second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in suhsection (1) are met;

~~(b) the rights of a prior appropriator will not be adversely affected;~~

~~(c)~~*(b)* the proposed appropriation is a reasonable use. A finding must be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands, such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for *federal non-Indian and Indian* reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (4) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(ii) and (4)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

HeinOnline -- 1997 vol. III 2801 1997

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.

(6) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section.

(7) The department may adopt rules to implement the provisions of this section."

**Section 8.** Section 85-2-313, MCA, is amended to read:

"**85-2-313. Provisional permit.** A permit issued prior to a final determination of existing *water* rights is provisional and is subject to that final determination. ~~The~~ *Upon petition, the* amount of the appropriation granted in a provisional permit ~~shall~~ *must* be reduced ~~or~~, modified, *or revoked by the department following a show cause hearing* ~~where~~ *in which it is determined that reduction, modification, or revocation is* necessary to protect and guarantee existing *water* rights determined in the final decree. *Because a provisional permit is issued on a reasonable determination of legal availability under 85-2-311(1)(b), in a show cause hearing under this section, legal availability must be determined on a consideration of the final decree in the affected basin or subbasin.* A person may not obtain any vested right to an appropriation obtained under a provisional permit by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action where the permit would have been denied or modified if the final decree had been available to the department."

**Section 9.** Section 85-2-316, MCA, is amended to read:

"**85-2-316. ~~Reservation~~ *State reservation* of waters.** (1) The state, ~~or~~ any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to ~~reserve waters~~ *acquire a*

*state water reservation* for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A *state* water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving a correct and complete application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided for in 85-2-309, the department shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The department may not adopt an order reserving water unless the applicant establishes to the satisfaction of the department by a preponderance of evidence:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the department may not adopt an order reserving water for withdrawal and transport

HeinOnline -- 1997 vol. III 2803 1997

for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a *state water* reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the *state water* reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the department by a preponderance of evidence that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The department shall limit any *state water* reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the department.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may issue the permit subject to terms and conditions that it considers necessary for the protection of the objectives of the reservation.

(8) (a) A person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of the applications for the conservation districts. The department shall, within its staffing and

budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time that the request was made. The department shall extend the time allowed to develop a plan identifying projects for using a district's reservation as long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use, the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes describing how the reserved water was put to use. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a *state* water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9), as follows:

(a) A *state water* reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a *state* water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a *state water* reservation.

(b) Upon receiving a notice of intention to apply for a *state* wator reservation, the department shall identify all potential *state* water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a *state water* reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete *state* water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the department may extend the time for preparing the application.

(d) The department may by order subordinate a *state* water reservation to a permit issued pursuant to this part if:

(i) the permit application was accepted by the department before the date of the order granting the reservation; and

(ii) the effect of subordinating the reservation to one or more permits does not interfere substantially with the purpose of the reservation.

(e) The department shall by order establish the relative priority of *state water* reservations approved under this section that have the same day of priority. A *state water* reservation may not adversely affect any rights in existence at that time.

(10) The department shall, periodically but at least once every 10 years, review existing *state water* reservations to ensure that the objectives of the ~~reservation~~ *reservations* are being met. When the objectives of ~~the~~ *a state water* reservation are not being met, the department may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or

HeinOnline -- 1997 vol. III 2805 1997

modification under this subsection is available for appropriation by others pursuant to this part.

(11) The department may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the *state water* reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of ~~reserved~~ water *reserved pursuant to a state water reservation* may be made by the department following notice and hearing if the department finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation retains its priority date despite reallocation to a different entity for a different use. The department may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a *state water* reservation under this section, except as permitted under 85-2-402 and this subsection. If the department approves a change, the department shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A *state water* reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right transfer certificate with the department, together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a *state water* reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) Nothing in this section vests the department with the authority to alter a water right that is not a *state water* reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the *state water* reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

**Section 10.** Section 85-2-321, MCA, is amended to read:

**"85-2-321. Milk River basin — suspension of action on permits — proposal — priority in adjudication process.** (1) (a) In order to balance the need for the continued development of Montana's water and for protection of existing rights in the Milk River basin, the department may suspend action on a class of applications or may close a source in the basin and refuse to accept a class

of applications, or both, for a permit under this part to appropriate from that source in the basin.

(b) Suspension or closure, or both, may only be proposed by the department.

(c) The proposal must state the source in the basin and class of applications for which suspension or closure, or both, is being proposed and any of the following allegations:

(i) that the frequency of occurrence of unappropriated waters is such that:

(A) any new appropriation from the source for the class of applications will adversely affect the rights of a prior appropriation from the source; or

(B) any new appropriation from the source for the class of applications will interfere unreasonably with another planned use or development for which a permit has been given or for which water has been reserved *pursuant to this part* in the source; or

(ii) that significant disputes or enforcement problems regarding priority of rights or amounts or duration of water in use by appropriators are in progress or will arise.

(2) After April 8, 1985, the chief water judge shall make issuance of a temporary preliminary decree in the Milk River basin the highest priority in the adjudication of existing water rights pursuant to Title 85, chapter 2, part 2."

**Section 11.** Section 85-2-329, MCA, is amended to read:

"**85-2-329. Definitions.** Unless the context requires otherwise, in 85-2-330 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a *state* water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4) "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers."

**Section 12.** Section 85-2-331, MCA, is amended to read:

"**85-2-331. Reservations within Missouri River basin and Little Missouri River basin.** (1) The state, ~~or~~ an agency or political subdivision of the state, or the United States or an agency of the United States that desires to apply for a *state water* reservation ~~of water~~ in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

HeinOnline -- 1997 vol. III 2807 1997

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for *state water* reservations within the Missouri River basin and the Little Missouri River basin.

(3) (a) The department shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for *state water* reservations ~~of water~~ in the Missouri River basin above Fort Peck dam.

(b) The department shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for *state water* reservations ~~of water~~ in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) The department shall determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) ~~Water~~ *State water* reservations approved by the department under this section have a priority date of July 1, 1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issues a permit under Title 85, chapter 2, part 3, prior to the granting of a *state water* reservation under this section, the department may subordinate the *state water* reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any *state water* reservation. The department shall by order establish the relative priority of applications approved under this section."

**Section 13.** Section 85-2-336, MCA, is amended to read:

**"85-2-336. Basin closure — exception.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water within the Upper Clark Fork River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application filed prior to January 1, 2000, for a permit to appropriate water to conduct response actions or remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Title 75, chapter 10, part 7, at sites designated as of January 1, 1994. The total flow rates for all permits issued under this subsection (2)(b) may not exceed 10 cubic feet per second. A permit issued to conduct response actions or remedial actions may not be used for dilution and must be limited to a term not to exceed the necessary time to complete the response or remedial action, and the permit may not be transferred to any person for any purpose other than the designated response or remedial action;

(c) an application for a permit to appropriate water for stock use;

(d) an application to store water; or

HeinOnline -- 1997 vol. III 2808 1997

(e) an application for power generation at existing hydroelectric dams. The department may not approve a permit for power generation if approval results in additienal consumption of water.

(3) Applications for *state* water reservations in the Upper Clark Fork River basin filed pursuant to 85-2-316 and pending as of May 1, 1991, have a priority date of May 1, 1991. The filing of a *state water* reservation application does not provide standing to object under 85-2-402.

(4) Tbe department may not process or approve applications for *state water* reservations ~~of water~~ in the Upper Clark Fork River basin filed pursuant to 85-2-316."

**Section 14.** Section 85-2-340, MCA, is amended to read:

**"85-2-340. Definitions.** Unless the context requires otherwise, in 85-2-341 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a *state* water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers.

(4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.

(5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions."

**Section 15.** Section 85-2-341, MCA, is amended to read:

**"85-2-341. Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department may not process or grant an application for a permit to appropriate water or for a *state water* reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3)."

HeinOnline -- 1997 vol. III 2809 1997

**Section 16.** Section 85-2-342, MCA, is amended to read:

"**85-2-342. Definitions.** Unless the context requires otherwise, in 85-2-343 and this section, the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a *state* water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4) "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries above Morony dam."

**Section 17.** Section 85-2-401, MCA, is amended to read:

"**85-2-401. Priority — *recognition and confirmation of changes in appropriations issued after July 1, 1973.*** (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise ~~his~~ *the* water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, ~~shall~~ *must* be determined as provided in part 2 of this chapter.

*(4) All changes in appropriation rights actions of the department after July 1, 1973, are recognized and confirmed subject to this part and any terms, conditions, and limitations placed on a change in appropriation authorization by the department.*"

**Section 18.** Section 85-2-402, MCA, is amended to read:

"**85-2-402. (Temporary) Changes in appropriation rights.** (1) *The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter.* An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

HeinOnline -- 1997 vol. III 2810 1997

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed ~~use~~ *change in appropriation right* will not adversely affect the *use of the existing* water rights of other persons or other *perfected or* planned uses or developments for which a permit *or certificate* has been issued or for which ~~water has been reserved~~ *a state water reservation has been issued under part 3.*

(b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant to 85-2-408 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

HeinOnline -- 1997 vol. III 2811 1997

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for *federal non-Indian and Indian* reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

HeinOnline -- 1997 vol. III 2812 1997

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or

HeinOnline -- 1997 vol. III 2813 1997

through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

**85-2-402. (Effective July 1, 1999) Changes in appropriation rights.** (1) *The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter.* An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed ~~use~~ *change in appropriation right* will not adversely affect the *use of the existing* water rights of other persons or other *perfected or* planned uses or developments for which a permit *or certificate* has been issued or for which ~~water has been reserved~~ *a state water reservation has been issued under part 3.*

(b) Except for a temporary change authorization pursuant to 85-2-408 or for water use pursuant to 85-2-439 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a temporary change authorization pursuant to 85-2-408 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more

HeinOnline -- 1997 vol. III 2814 1997

cubic feet per second of water unless the appropriator proves hy a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigetion systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for *federal non-Indian and Indian* reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriater proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

HeinOnline -- 1997 vol. III 2815 1997

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should

not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must he sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation rigbt except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995.)

**85-2-402. (Effective July 1, 2005) Changes in appropriation rights.** (1) *The right to make a change subjeet to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter.* An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence tbat the following criteria are met:

(a) The proposed ~~use~~ *change in appropriation right* will not adversely affect the *use of the existing* water rights of other persons or other *perfectcd or* planned uses or developments for which a permit *or certificate* has been issued or for which ~~water has been reserved~~ *a state water reservation has been issued under part 3.*

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

HeinOnline -- 1997 vol. III 2817 1997

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence tbat:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chaptor 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and tbe department finds that the criteria in subsections (2) and (4) are met; and

(b) the department then petitions the legislature and tbe legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for tbe state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation

HeinOnline -- 1997 vol. III 2818 1997

and use of its public waters are not in conflict with the puhlic welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, tbe legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, tlie legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

HeinOnline -- 1997 vol. III 2819 1997

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section."

**Section 19. Water administration agreements within Indian reservations.** (1) Because it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving the permitting and use of water within the exterior boundaries of an Indian reservation prior to the final adjudication of Indian reserved water rights and because the state does not intend by enactment of this section to limit, expand, alter, or waive state jurisdiction to administer water rights within the exterior boundaries of an Indian reservation, pursuant to the requirements of Title 18, chapter 11, the department may negotiate and conclude an interim agreement with the tribal government of any Indian tribe in Montana prior to final adjudication of Indian reserved water rights for the purpose of implementing a water administration plan and a permitting process for the issuance of water rights and changes in water right uses within the exterior boundaries of an Indian reservation.

(2) An agreement entered into pursuant to subsection (1) must:

(a) provide for the retention of exclusive authority by the state to issue permits to applicants who are not members of the tribe and to issue change of use authorizations;

(b) provide that any permits must be issued in accordance with the criteria established by state law; and

(c) provide that permits may be only for new uses with a date of priority in compliance with state law.

HeinOnline -- 1997 vol. III 2820 1997

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and tbe proposed agreement has heen made available for public review, to afford the public an opportunity to comment on the contents of the agreement.

**Section 20. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

**Section 21. Codification instruction.** [Section 19] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 19].

**Section 22. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 24. Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, to all permits and chango authorizations issued by the department of natural resources and conservation after July 1, 1973.

**Scction 25. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 1997

# CHAPTER NO. 498

[SB 99]

AN ACT GENERALLY REVISING THE LAWS RELATING TO JUVENILE JUSTICE; GENERALLY REVISING THE LAWS RELATING TO EXTENDED JURISDICTION PROSECUTION OF JUVENILES; AUTHORIZING THE COURT OR THE COUNTY ATTORNEY TO DESIGNATE A JUVENILE AS AN EXTENDED JURISDICTION JUVENILE; AUTHORIZING FELONY SENTENCES FOR EXTENDED JURISDICTION JUVENILES; EXTENDING YOUTH COURT JURISDICTION TO AGE 25 FOR EXTENDED JURISDICTION JUVENILES; GENERALLY REVISING THE LAW RELATING TO THE TRANSFER OF JUVENILE CASES TO THE DISTRICT COURT AFTER PROSECUTION IN THE YOUTH COURT WITH RESPECT TO CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; PROVIDING FOR TRANSFER, AFTER A HEARING, OF SUPERVISORY RESPONSIBILITY OF CERTAIN JUVENILE CASES FROM THE YOUTH COURT TO THE DISTRICT COURT AFTER PROSECUTION WITH RESPECT TO CASES THAT ARE NOT EXTENDED JURISDICTION JUVENILE PROSECUTION CASES OR WERE NOT PREVIOUSLY TRANSFERRED TO ADULT COURT FOR PROSECUTION; AMENDING SECTIONS 41-5-203, 41-5-205, 41-5-206,

HeinOnline -- 1997 vol. III 2821 1997

41-5-208, 41-5-501, 41-5-1102, 41-5-1103, 41-5-1104, AND 41-5-1105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-5-203, MCA, is amended to read:

**"41-5-203. Jurisdiction of ~~the~~ court.** (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of tho state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

*(3) The court has jurisdiction to:*

*(a) transfer a youth court case to the district court after notice and hearing; and*

*(b) with respect to extended jurisdiction juvenile cases:*

*(i) designate a proceeding as an extended jurisdiction juvenile prosecution;*

*(ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an extended jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;*

*(iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's majority, subject to the performance of the juvenile portion of the sentence;*

*(iv) continue, modify, or revoke the stay after notice and hearing;*

*(v) after revocation, transfer execution of the stayed sentence to the department;*

*(vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines by a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion of an extended jurisdiction sentence; and*

*(vii) transfer a juvenile case to district court after notice and hearing."*

**Section 2.** Section 41-5-205, MCA, is amended to read:

**"41-5-205. Retention of jurisdiction — termination.** *(1) The court may dismiss a petition or otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any time.* ~~Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless~~ *Unless* terminated by the court ~~or by mandatory termination in the following cases:~~ *and except as provided in subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.*

*(2) Court jurisdiction terminates when:*

~~(1)~~*(a)* ~~at the time~~ the proceedings are transferred to ~~adult criminal~~ *district* court *under 41-5-208 or an information is filed concerning the offense in district court pursuant to 41-5-206*;

~~(2)~~*(b)* ~~at the time~~ the youth is discharged by the department; ~~and~~ *or*

*(c) execution of a sentence is ordered under 41-5-1105(2)(b)(iii) and the supervisory responsibilities are transferred to the district court under 41-5-1105.*

~~(3) in any event, at the time the youth reaches the age of 21 years.~~

*(3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25 years of age unless the court terminates jurisdiction before that date.*"

**Section 3.** Section 41-5-206, MCA, is amended to read:

"**41-5-206. Transfer to criminal court prior to prosecution — *optional designation as extended jurisdiction juvenile prosecution.*** (1) ~~After~~ *Subject to subsection (10), after* a petition has been filed alleging delinquency *and before hearing the petition on its merits*, the court may, upon motion of the county attorney, ~~before hearing the petition on its merits,~~ transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court without a jury;

HeinOnline -- 1997 vol. III 2823 1997

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the youth's counsel, and the youth's parents, guardian, or custodian at least 10 days hefore the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is prohable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of tlie community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, tlie court may also consider the following factors:

(a) tlie sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youtli, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of itself grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to he unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate bomicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of tlie reasons why the jurisdiction of tlie youth court was waived and tlie case transferred to district court.

(5) The transfer terminates the jurisdiction of tlie youth court over tlie youth with respect to the acts alleged in the petition. A youtli nıay not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section. A case may he transferred to district court after prosecution as provided in 41-5-208 or 41-5-1105.

(6) Upon order of tlie youtli court transferring the case to the district court under subsection (5), tlie county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in suhsection (1) that arises during the commission of a crinie enumerated in suhsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of tlie county attorney and order of the youth court judge.

HeinOnline -- 1997 vol. III 2824 1997

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, the commitment must he to the department of corrections. The department shall confine the youth in whatever institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or otber adult detention facility hefore final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses.

*(10) After a hearing on the motion to transfer to district court, the court may designate the case as an extended jurisdiction juvenile prosecution under part 11 of this chapter, rather than transferring the matter to district court."*

**Section 4.** Section 41-5-208, MCA, is amended to read:

**"41-5-208. Transfer *of supervisory responsibility* to district court after ~~prosecution—~~*juvenile* disposition ~~in district court — limitation on jurisdiction~~ *nonextended jurisdiction and nontransferred cases.*** (1) ~~To~~ *After adjudication by the court of a case that was not transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter, the court may, on the youth's motion or the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile probation services to adult probation services. A transfer under this section may be made to* ensure continued compliance with the court's disposition under 41-5-523~~,~~ *and may be made* at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age~~, the youth court judge may transfer jurisdiction to district court and order the transfer of supervisory responsibility and the youth's case files to the department~~.

*(2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:*

*(a) written notice of the motion to transfer;*

*(b) an opportunity to be heard in person and to present witnesses and evidence;*

*(c) a written statement by the court of the evidence relied on and reasons for the transfer;*

*(d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and*

*(e) the right to counsel.*

HeinOnline -- 1997 vol. III 2825 1997

*(3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.*

~~(2)~~*(4)* If a youth whose case has been transferred to district court under this section violates a disposition *previously* imposed under 41-5-523, the district court may, *after hearing,* impose conditions as provided under 46-18-201 through 46-18-203.

~~(3)~~*(5)* If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

(b) be supervised by the department.

~~(4)~~*(6)* The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age."

**Section 5.** Section 41-5-501, MCA, is amended to read:

**"41-5-501. Petition — form and content.** *(1)* A petition initiating proceedings under this chapter ~~shall~~ *must* be signed by the county attorney and ~~shall~~ *must* be entitled "In the Matter of...., a youth" and ~~shall~~ *must* set forth with specificity:

~~(1)~~*(a)* the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent or in need of supervision;

~~(2)~~*(b)* the charge of an offense, ~~which~~ *that* ~~shall~~ *must*:

~~(a)~~*(i)* state the name of the offense;

~~(b)~~*(ii)* cite in customary form the statute, rule, or other provisions of law ~~which~~ *that* the youth is alleged to have violated;

~~(c)~~*(iii)* state the facts constituting the offense in ordinary and concise language and in *a* ~~such~~ manner ~~as to enable~~ *that enables* a person of common understanding to know what is intended; and

~~(d)~~*(iv)* state the time and place of the offense as definitely as can be done;

~~(3)~~*(c)* the name, birth date, and residence address of the youth;

~~(4)~~*(d)* the names and residence addresses of parents, guardian, and spouse of the youth and, if none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the adult relative residing nearest to the court;

~~(5)~~*(e)* whether the youth is in detention or shelter care and, if so, the place of detention or shelter care and the time ~~he~~ *that the youth* was detained or sheltered;

~~(6)~~*(f)* if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

~~(7)~~*(g)* a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The

names and addresses of any witnesses discovered after the filing of the petition ~~shall~~ *must* be furnished to the youth upon request.

*(2) When a county attorney files a delinquency petition alleging that a youth committed an offense that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth 12 years of age or older allegedly used a firearm, the county attorney shall indicate in the petition whether the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the county attorney files a delinquency petition alleging that a youth committed any other offense that would be a felony if committed by an adult, the county attorney may request that the court designate the proceeding an extended jurisdiction juvenile prosecution."*

**Section 6.** Section 41-5-1102, MCA, is amended to read:

**"41-5-1102. Extended jurisdiction *juvenile* prosecution ~~defined — jurisdiction extended~~ — *designation*.** (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult is an extended jurisdiction *juvenile* prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the ~~prosecutor~~ *county attorney* requests that the case be designated an extended jurisdiction *juvenile* prosecution, a hearing is held under 41-5-1103, and the court designates the case as an extended jurisdiction *juvenile* prosecution; ~~or~~

(b) *the county attorney designates in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution and the youth is alleged to have committed:*

*(i)* ~~the alleged~~ *an* offense *that* is ~~transferable~~ *listed* under 41-5-206*;* or

*(ii) any offense that would be a felony if committed by an adult in which the youth allegedly used a firearm, if* the youth was at least 12 years of age at the time of the alleged offense ~~and allegedly used a weapon.~~*; or*

*(c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.*

(2) To enforce the court's disposition in an extended jurisdiction *juvenile* prosecution, the court shall retain jurisdiction ~~until the case is transferred to district court under this part or jurisdiction is terminated under the provisions of~~ *as provided in* 41-5-205."

**Section 7.** Section 41-5-1103, MCA, is amended to read:

**"41-5-1103. Hearing ~~— court designation~~ *on request*.** (1) When a ~~prosecutor~~ *county attorney* requests that a case be designated as an extended jurisdiction *juvenile* prosecution under 41-5-1102(1)(a), the court shall hold a hearing to consider the request.

(2) The hearing must be held within 30 days of the filing of the request unless good cause is shown by the ~~prosecutor~~ *county attorney* or the youth that the hearing should be held later, in which case the hearing must be held within 90 days of the request.

HeinOnline -- 1997 vol. III 2827 1997

(3) If the ~~prosecutor~~ *county attorney* shows hy clear and convincing evidence that designating the case as an extended jurisdiction *juvenile* prosecution serves public safety, the court may, within 15 days after the hearing, designate the case as an extended jurisdiction *juvenile* prosecution. *In determining whether public safety is served, thc court shall consider the factors enumerated in [section 10].*

~~(4) An order designating a case as an extended jurisdiction prosecution is not appealable until after disposition under 41-5-1104.~~"

**Section 8.** Section 41-5-1104, MCA, is amended to read:

"**41-5-1104. Disposition in extended jurisdiction *juvenile* prosecutions.** (1) *After designation as an extended jurisdiction juvenilc prosecution, the case must proceed with an adjudicatory hearing, as provided in 41-5-521.* If a youth in an extended jurisdiction *juvenile* prosecution ~~pleads guilty to~~ *admits to* or is ~~found guilty of an offense described in 41-5-1102(1)(b)~~ *adjudicated to have committed an offense that would be a felony if committed by an adult*, the court shall:

(a) impose one or more juvenile dispositions under 41-5-523; and

(b) impose ~~an adult criminal~~ *any* sentence~~, the~~ *allowed by the statute that establishes the penalty for the offense of which the youth is convicted and that would be permissible if the offender were an adult. The* execution of ~~which~~ *the sentence imposed under this subsection* must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense. ~~If the youth violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed as provided in 41-5-1105.~~

(2) ~~Except as provided in subsection (3), if~~ *If* a youth ~~in~~ *prosecuted as* an extended jurisdiction ~~prosecution~~ *juvenile after designation by the county attorney in the delinquency petition under 41-5-1102(1)(b)* ~~is convicted of an offense~~ *admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult that is* not *an offense* described in 41-5-1102(1)(b), the court shall adjudicate the youth delinquent and order a disposition under 41-5-523.

(3) If a youth in an extended jurisdiction *juvenile* prosecution ~~pleads guilty to~~ *admits to or is adjudicated to have committed* an offense *that would* not *be* ~~described in 41-5-1102(1)(b)~~ *a felony if committed by an adult*, the court may impose, with the youth's consent, a disposition provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the court shall impose a disposition as provided under subsection ~~(2)~~ *(1)(a).*"

**Seetion 9.** Section 41-5-1105, MCA, is amended to read:

"**41-5-1105. ~~Execution~~ *Revocation of stay — disposition* ~~of adult sentence — exception — transfer to district court~~.** (1) If a court has imposed on a youth ~~an adult~~ *a* ~~criminal~~ sentence stayed under 41-5-1104(1)(b) and the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may, without notice, direct that the youth be taken into immediate custody ~~and revoke the stay~~. The court shall notify the youth, *the youth's counsel, and the youth's parents, guardian, or custodian* in writing of the reasons *alleged to exist* for ~~the~~ revocation *of the stay of execution of the sentence.*

HeinOnline -- 1997 vol. III 2828 1997

(2) (a) If the youth challenges the reasons for the revocation, the court shall hold a ~~summary~~ *revocation* hearing at which the youth is entitled to *receive:* ~~be heard and represented by counsel~~

*(i) written notice of the alleged violation;*

*(ii) evidence of the alleged violation;*

*(iii) an opportunity to be heard in person and to present witnesses and evidence;*

*(iv) the right to cross-examine witnesses, unless the court finde good cause for not allowing confrontation; and*

*(v) the right to counsel.*

(b) After the *revocation* hearing, if the court finds by a preponderance of the evidence presented that the conditions of the stay have been violated *or that the youth has committed a new offense,* the court shall *provide the youth with a written statement of the evidence relied on and reasons for revocation and shall:*

*(i) continue the stay and place the youth on probation;*

*(ii) impose one or more dispositions under 41-5-523 if the youth is under 18 years of age; or*

~~(i)~~*(iii) subject to 41-5-206(8) and (9),* order execution of the sentence imposed under 41-5-1104(1)(b)~~; or~~.

~~(ii) continue the stay and make written findings regarding the mitigating factors that justify continuing the stay.~~

~~(3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred to district court for execution of the sentence, subject to 41-5-206(8) and (9).~~

*(3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the department, rather than the youth court's juvenile probation services."*

**Section 10. Public safety.** (1) In determining whether the public safety is served by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the following factors:

(a) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors, the use of a firearm, and the impact on the victim;

(b) the culpability of the youth in committing the alleged offense, including the level of the youth's participation in planning and carrying out the offense and the existence of mitigating factors;

(c) the youth's prior record of delinquency;

(d) the youth's treatment history, including the youth's past willingness to participate meaningfully in available treatment;

HeinOnline -- 1997 vol. III 2829 1997

(e) the adequacy of the dispositions available in the juvenile justice system; and

(f) the dispositional options available for the youth.

(2) In considering the factors listed in subsection (1), the court shall give greater weight to the seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed factors.

**Section 11. Proceedings — rights.** A youth who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel, as provided in 41-5-511.

**Section 12. Enforcement of restitution orders.** If the court orders payment of restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure established by the court or probation officer, the youth's probation officer may, on the officer's own motion or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing to determine whether the conditions of probation should be changed. The probation officer shall ask for a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold the hearing before the youth's term of probation expires.

**Section 13. Coordination instruction.** If Senate Bill No. 48 and this bill are both passed and approved, then the reference to "41-5-206(8) and (9)" in 41-5-1105 in this bill must read "41-5-206(6) and (7)".

**Section 14. Codification instruction.** (1) [Sections 10 and 11] are intended to be codified as an integral part of Title 41, chapter 5, part 11, and the provisions of Title 41, chapter 5, part 11, apply to [sections 10 and 11].

(2) [Section 12] is intended to be codified as an integral part of Title 41, chapter 5, part 5, and the provisions of Title 41, chapter 5, part 5, apply to [section 12].

**Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 16. Effective date.** [This act] is effective on passage and approval.

**Section 17. Applicability.** [This act] applies to all offenses committed on or after [the effective date of this act].

Approved May 2, 1997

# CHAPTER NO. 499

[SB 207]

AN ACT AUTHORIZING THE BOARD OF INVESTMENTS TO OBLIGATE FUNDS TO ACQUIRE REAL PROPERTY OR CONSTRUCT A SCHOOL FACILITY IF THE ACQUISITION OR CONSTRUCTION DOES NOT EXCEED 20 PERCENT OF THE SQUARE FOOTAGE OF THE EXISTING REAL PROPERTY IMPROVEMENTS AND IS APPROVED BY THE QUALIFIED

HeinOnline -- 1997 vol. III 2830 1997

VOTERS OF THE DISTRICT; INCREASING THE TERM OF AN OBLIGATION FROM 5 TO 10 FISCAL YEARS; AMENDING SECTION 20-9-471, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-9-471, MCA, is amended to read:

**"20-9-471. Issuance of obligations — authorization — conditions.** (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, and electrical systems;

(c) any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and

(d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation, *including an obligation for a qualified energy project,* may not exceed ~~5~~ *10* fiscal years~~, except that the term of the obligation for a qualified energy project may not exceed 10 fiscal years~~. For the purposes of this subsection, a "qualified energy project" means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) The proceeds of the obligation may not be used to acquire real property or construct a facility *unless:*

*(a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;*

*(b) the 20% square footage limitation may not be exceeded within any 5-year period; and*

*(c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments for the construction project. The proposition must be approved at a special or regular election in accordance with all of the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.*

(5) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

HeinOnline -- 1997 vol. III 2831 1997

(6) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

(7) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406."

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved May 1, 1997

# CHAPTER NO. 500

[SB 251]

AN ACT CLARIFYING WORKERS' COMPENSATION ACT COVERAGE REQUIREMENTS FOR A STUDENT WHO IS ENROLLED IN AN ELEMENTARY, SECONDARY, OR POSTSECONDARY EDUCATIONAL INSTITUTION AND WHO PARTICIPATES AS A VOLUNTEER OR FOR WAGES IN WORK-BASED LEARNING ACTIVITIES; DEFINING "BUSINESS PARTNER" AND "WORK-BASED LEARNING ACTIVITIES"; AMENDING SECTIONS 39-71-116 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-71-116, MCA, is amended to read:

**"39-71-116. Definitions.** Unless the context otherwise requires, words and phrases used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means ~~any~~ *a* public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the

department. It is established at the nearest whole dollar number and must be adopted by the department ~~prior to~~ *before* July 1 of each year.

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

*(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.*

~~(6)~~*(7)* "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

~~(7)~~*(8)* "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

~~(8)~~*(9)* "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

~~(9)~~*(10)* "Days" means calendar days, unless otherwise specified.

~~(10)~~*(11)* "Department" means the department of labor and industry.

~~(11)~~*(12)* "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(12)~~*(13)* "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

HeinOnline -- 1997 vol. III 2833 1997

~~(13)~~*(14)* "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

~~(14)~~*(15)* "Invalid" means one who is physically or mentally incapacitated.

~~(15)~~*(16)* "Limited liability company" is as defined in 35-8-102.

~~(16)~~*(17)* "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

~~(17)~~*(18)* "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(16)~~*(19)* "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

~~(16)~~*(20)* "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

~~(20)~~*(21)* "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(21)~~*(22)* "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(22)~~*(23)* "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

~~(20)~~*(24)* "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(24)~~*(25)* The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

HeinOnline -- 1997 vol. III 2834 1997

~~(25)~~*(26)* "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(26)~~*(27)* "Public corporation" means the state or any county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

~~(27)~~*(28)* "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(25)~~*(29)* "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

~~(25)~~*(30)* (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection ~~(29)~~ *(30)*, "disability" means a condition in which a worker's ability to engago in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined witb factors, such as the worker's age, education, work history, and other factors that affect tlie worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

~~(30)~~*(31)* "Sole proprietor" means tbe person who has tlie exclusive legal right or title to or ownership of a business enterprise.

~~(31)~~*(32)* "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to tlie position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(30)~~*(33)* "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(30)~~*(34)* "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until tlie injured worker reaches maximum medical healing.

~~(34)~~*(35)* "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a

finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

~~(35)~~*(36)* "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where tbe physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection ~~(35)(a)~~ *(36)(a)*, in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

*(37) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.*

~~(35)~~*(38)* "Year", unless otherwise specified, means calendar year."

**Section 2.** Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or centract of hire with an employer, as defined in this chapter, and, *except as provided in subsection (9),* whether or not receiving payment from a third party. However, this subsection does not apply to students

HeinOnline -- 1997 vol. III 2836 1997

enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection *(1)*(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; ~~and~~

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301; ~~and~~ *and*

(g) a person who is an enrolled member of a volunteer fire department as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities; or

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

HeinOnline -- 1997 vol. III 2837 1997

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, the owner of tbe sole proprietorship, or any member of the limited liability company devoting full time to the partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to he reported, suhject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must he in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation henefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of tbis suhsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less tban $900 a month and not more than 1 1/2 times tbe average weekly wage, as defined in tbis chapter.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of tbis chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to he covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporato officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at tbe start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within tbe provisions of tbis chapter any volunteer firefigbter. A volunteer firefigbter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

*(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.*

~~(9)~~*(10)* For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

~~(10)~~*(11)* An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection ~~(9)(b)~~ *(10)(b)* or ~~(9)(d)~~ *(10)(d)* as a condition of approving the election under subsection ~~(9)(d)~~ *(10)(d).*"

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Effective date — applicability.** [This act] is effective July 1, 1997, and applies to injuries occurring on or after [the effective date of this act].

Approved May 2, 1997

HeinOnline -- 1997 vol. III 2839 1997

# CHAPTER NO. 501

[SB 283]

AN ACT REQUIRING A SOCIAL WORKER IN CHILD ABUSE AND NEGLECT CASES TO INTERVIEW THE PARENTS, IF AVAILABLE, BEFORE REQUESTING TEMPORARY INVESTIGATIVE AUTHORITY; REQUIRING THAT A PETITION FOR TEMPORARY INVESTIGATIVE AUTHORITY AND PROTECTIVE SERVICES IN CHILD ABUSE AND NEGLECT CASES MUST INCLUDE STATEMENTS, IF ANY, MADE BY THE PARENTS REGARDING THE FACTS OF THE CASE OR MUST ALLOW AN APPEARANCE BY THE PARENTS AT THE HEARING ON THE PETITION, EXCEPT IN EMERGENCY CASES; AMENDING SECTIONS 41-3-101, 41-3-402, AND 41-3-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 41-3-101, MCA, is amended to read:

**"41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possihle;

(d) preserve the unity and welfare of the family whenever possible; and

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect.

(2) It is the policy of this state to:

(a) protect, whenever possible, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened hy the conduct of those responsible for their care and protection; ~~and~~

*(c) require a department social worker to interview the parents of a child to which a petition pertains, if they are reasonably available, before the state may file a petition for temporary investigative authority and protective services and to require that a judge may not issue an order granting the petition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and*

~~(c)~~*(d)* ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

HeinOnline -- 1997 vol. III 2840 1997

(3) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(4) In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children."

**Section 2.** Section 41-3-402, MCA, is amended to read:

**"41-3-402. Petition for temporary investigative authority and protective services.** (1) In a case in which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services must state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services must be supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or must be supported by a department ~~of public health and human services~~ report stating in detail the facts upon which the request is based. *The petition, affidavit, or report of the department must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. Except as provided in 41-3-403, the parents must be given an opportunity to address the court before the court rules on the petition.*"

**Section 3.** Section 41-3-403, MCA, is amended to read:

**"41-3-403. Order for immediate proteetion of youth.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, *after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court,* may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the potition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date

HeinOnline -- 1997 vol. III 2841 1997

specified and show cause why the person has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having legal custody;

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) other temporary disposition that may be required in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined."

**Seetion 4. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 502

[SB 308]

AN ACT REQUIRING STATE AND LOCAL GOVERNMENT ENTITIES TO PROVIDE UPON REQUEST A WRITTEN STATEMENT OF THE LEGAL AUTHORITY UPON WHICH CERTAIN ACTION IS BASED; PROVIDING DEFINITIONS AND EXCEPTIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

HeinOnline -- 1997 vol. III 2842 1997

STATEMENT OF INTENT

The legislature finds that there have heen instances in which decisions made by government entities exceed, or appear to exceed, the legal authority of the government entity. Because the power of government comes ultimately from the people served by the government, it is therefore appropriate that government should upon request provide the legal authority upon which certain action is based.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 4] may be cited as the "Government Accountability Act".

**Section 2. Findings and purpose.** The purpose of [sections 1 tbrough 4] is to require government entities to make known the legal autbority upon which certain action is based. The benefits of this requirement will be that governmnent officials will articulate and reaffirm their legal authority to act and that botb the government and the people will bave a fuller understanding of the limits of the law and the facts to which the law applies. This understanding will benefit both government and tbe people by helping to resolve disputes between government servants and tbe people, witbout lengtby and costly litigation, by instilling trust in government, and by helping to identify deficiencies in the law so tbat those deficiencies may be addressed by legislative action.

**Section 3. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Aggrieved" means that a person can demonstrate a specific personal and legal interest, as distinguished from a general interest, tbat has been adversely affected.

(2) (a) "Government act" means the denial or issuance with conditions of a permit, certificate, license, or the equivalent of a permit, certificate, or license issued by a government entity.

(b) The term does not mean:

(i) litigation in wbich a government entity or other person litigates the authority of the government entity to take an act provided in subsection (2)(a);

(ii) an act provided in subsection (2)(a) for which a citation or warning is issued, other tban the statement required by [section 4], on which a reference clearly appears to the legal authority for the government action; or

(iii) a legislative act by tbe state of Montana.

(3) "Government entity" means a state agency or a local government unit.

(4) "Local government unit" means a city, county, town, unincorporated municipality or village, or special taxing unit or district and any commission, board, bureau, or other office of the unit.

(5) "Rule" has the meaning provided in 2-4-102.

(6) "State agency" has the meaning provided in 2-4-102(2)(a).

HeinOnline -- 1997 vol. III 2843 1997

(7) "Statement of government authority" or "statement" means the statement required by [section 4].

**Section 4. Statement of government authority required.** (1) When a government entity takes a government act, as defined in [section 3], it shall provide upon request to the applicant a written statement of legal authority upon which the action is based. The statement must be provided within 30 days of the government act.

(2) The statement must clearly cite the statute, rule, ordinance, resolution, or other legal authority for the government act.

**Section 5. Applicability.** [This act] applies to a government act as defined by [section 3] taken after [the effective date of this act].

**Section 6. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 503

[SB 339]

AN ACT CLARIFYING THE REVIEW OF CERTAIN PARCEL DIVISIONS; AMENDING SECTIONS 76-3-103, 76-3-201, AND 76-3-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 76-3-103, MCA, is amended to read:

**"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following ~~words or phrases shall have the following meanings~~ *definitions apply*:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliherate appropriation of land by an owner for any goneral and puhlic use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the puhlic use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat estahlishing the identity of the segregated parcels pursuant to this chapter. *The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.*

(4) "Examining land surveyor" means a registered land surveyor ~~duly~~ appointed by the governing body to review surveys and plats submitted for filing.

(5) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant ~~thereto~~ *to this chapter.*

(6) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

*(7) "Immediate family" means a spouse, children by blood or adoption, and parents.*

~~(7)~~*(8)* "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

~~(8)~~*(9)* "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that ~~comprise~~ *compose* a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

~~(8)~~*(10)* "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~(10)~~*(11)* "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision ~~which~~ *that* furnish a basis for review by a governing body.

~~(11)~~*(12)* "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

~~(12)~~*(13)* "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

~~(13)~~*(14)* "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(14)~~*(15)* "Subdivision" means a division of land or land so divided that *it* creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

~~(15)~~*(16) (a)* "Tract of record" means ~~a~~ *an individual* parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

*(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:*

HeinOnline -- 1997 vol. III 2845 1997

*(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or*

*(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.*

*(c) An instrument of conveyance does not merge parcels of* land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

**Section 2.** Section 76-3-201, MCA, is amended to read:

**"76-3-201. Exemption for certain divisions of land.** *(1)* Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter ~~shall~~ *may* not apply to any division of land ~~which~~ *that*:

~~(1)~~*(a)* is created by order of any court of record in this state or by operation of law or ~~which~~ *that*, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, ~~(~~Title 70, chapter 30~~)~~;

~~(2)~~*(b)* is created to provide security for construction mortgages, liens, or trust indentures;

~~(3)~~*(c)* creates an interest in oil, gas, minerals, or water ~~which~~ *that* is ~~now or hereafter~~ severed from the surface ownership of real property;

~~(4)~~*(d)* creates cemetery lots;

~~(5)~~*(e)* is created by the reservation of a life estate;

~~(5)~~*(f)* is created by lease or rental for farming and agricultural purposes.

*(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.*"

**Section 3.** Section 76-3-507, MCA, is amended to read:

**"76-3-507. Provision for bonding requirements to ensure construction of public improvements.** (1) Except as provided in subsection (2), the governing body shall require the subdivider to complete required improvements within the subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any puhlic improvements prior to the approval of a final plat, *the governing body shall at the subdivider's option allow* the subdivider ~~shall~~ *to* provide or cause to be provided a bond or otber reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of tbe improvements within a period specified by

HeinOnline -- 1997 vol. III 2846 1997

the governing body and expressed in the bonds or other security. The governing body shall reduce bond requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111."

**Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 5. Effective date — retroactive applicability.** [This act] is effective on passage and approval, and [section 1] applies retroactively, within the meaning of 1-2-109, to tracts filed before [the effective date of this act].

Approved May 1, 1997

# CHAPTER NO. 504

[SB 381]

AN ACT EXCLUDING THE APPLICABILITY OF MANDATED INSURANCE BENEFIT PROVISIONS AND FREEDOM OF CHOICE OF PRACTITIONER PROVISIONS FROM GROUP AND INDIVIDUAL UNIFORM HEALTH BENEFIT PLANS; AMENDING SECTIONS 33-22-245 AND 33-22-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-22-245, MCA, is amended to read:

**"33-22-245. Uniform health benefit plan — individual.** (1) Each insurer or health service corporation delivering or issuing for delivery in this state a health benefit plan, as defined in 33-22-243, to an individual shall make available a uniform health benefit plan providing the benefits and services required in subsection (2).

(2) The uniform health benefit plan must:

(a) provide coverage for the services and articles required by 33-22-1521(2);

(b) pay 50% of the covered expenses in excess of an annual deductible that may not exceed $1,000 per person or $2,000 per family;

(c) include a limitation of $5,000 per person or $7,500 per family on the total annual out-of-pocket expenses for services covered; and

HeinOnline -- 1997 vol. III 2847 1997

(d) be subject to a maximum lifetime benefit of $1 million.

*(3) Except as provided in this section, a health insurance issuer may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from an individual uniform health benefit plan delivered or issued for delivery in this state.*"

**Section 2.** Section 33-22-522, MCA, is amended to read:

"**33-22-522. Uniform health benefit plan — group.** (1) Each insurer or health service corporation delivering or issuing for delivery in this state a health benefit plan, as defined in 33-22-243, to a group shall make available a uniform health benefit plan providing the benefits and services required in subsection (2).

(2) The uniform health benefit plan must:

(a) provide coverage for the services and articles required by 33-22-1521(2);

(b) pay 50% of the covered expenses in excess of an annual deductible that may not exceed $1,000 per person or $2,000 per family;

(c) include a limitation of $5,000 per person or $7,500 per family on the total annual out-of-pocket expenses for services covered; and

(d) be subject to a maximum lifetime benefit of $1 million.

*(3) Except as provided in this section, a health insurance issuer may exclude any category of licensed health care practitioner and any benefit or coverage for health care services otherwise required by law or rule from a group uniform health benefit plan delivered or issued for delivery in this state.*"

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 505

[SB 390]

AN ACT GENERALLY ESTABLISHING RESTRUCTURING REQUIREMENTS FOR MONTANA'S ELECTRIC UTILITY INDUSTRY; PROVIDING CUSTOMER CHOICE; GENERALLY REVISING THE TERRITORIAL INTEGRITY LAWS; REMOVING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES FROM CLASS SEVEN PROPERTY; INCLUDING CERTAIN RURAL ELECTRIC COOPERATIVE PROPERTIES IN CLASS NINE PROPERTY; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; AMENDING SECTIONS 15-6-137, 15-6-141, 69-5-101, 69-5-102, 69-5-104, 69-5-105, 69-5-106, 69-5-107, 69-5-108, 69-5-109, 69-5-110, AND 69-5-111, MCA; REPEALING SECTION 69-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HeinOnline -- 1997 vol. III 2848 1997

STATEMENT OF INTENT

A statement of intent is required because this bill provides the public service commission with rulemaking authority.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 31] may be cited as the "Electric Utility Industry Restructuring and Customer Choice Act".

**Section 2. Legislative findings and policy.** The legislature finds and declares the following:

(1) The generation and sale of electricity is becoming a competitive industry.

(2) Montana customers should have the freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible. Affording this opportunity serves the public interest.

(3) The interests of Montana consumers should be protected and the financial integrity of electrical utilities should be fostered.

(4) The public interest requires the continued protection of consumers through:

(a) licensure of electricity suppliers;

(b) provision of information to consumers regarding electricity supply service;

(c) provision of a process for investigating and resolving complaints;

(d) continued funding for public purpose programs for:

(i) cost-effective local energy conservation;

(ii) low-income custemer weatherization;

(iii) renewable resource projects and applications;

(iv) research and development programs related to energy conservation and renewables;

(v) market transformation; and

(vi) low-income energy assistance;

(e) assurance of service reliability and quality; and

(f) prevention of anticompetitive and abusive activities.

(5) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana.

**Seetion 3. Definitions.** As used in [sections 1 through 31], unless the context requires otherwise, the following definitions apply:

HeinOnline -- 1997 vol. III 2849 1997

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers and purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of [the effective date of this act].

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(8) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

(9) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(10) "Financing order" means an order of the commission adopted in accordance with [section 31] that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of

recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(12) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(13) "Local governing body" means a local board of trustees of a rural electric cooperative.

(14) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recoguized levels that qualify those consumers for low-income energy-related assistance.

(15) "Nonbypassable rates or charges" means rates or charges approved by the commission imposed on a customer to pay the customer's share of transition costs or universal system benefits program costs even if the customer has physically hypassed either the utility's transmission or distribution facilities.

(16) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electric supply for all residential and commercial customers.

(17) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on [the effective date of this act], including the public utility's successors or assignees.

(18) "Transition bondholder" means a holder of transition bonds including trustees, collateral agonts, and other entities acting for the benefit of that holder.

(19) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(20) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(21) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(22) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the

HeinOnline -- 1997 vol. III 2851 1997

implementation of [sections 1 through 31] or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before [the effective date of this act] and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(23) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to [sections 1 through 31], during which utilities may phase in customer choice of electricity supplier.

(24) "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under [sections 1 through 31] or assignable pursuant to a financing order is only a contract right.

(25) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(26) "Transmission services provider" means a person controlling or operating transmission facilities.

(27) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

HeinOnline -- 1997 vol. III 2852 1997

(28) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(29) "Utility" means any public utility or cooperative utility.

**Section 4. Pilot programs.** (1) Except as provided in [sections 5(4) and 20], beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in [section 29] on or before July 1, 2000.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;

(c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers.

**Section 5. Public utility — transition to customer choice — waiver.** (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

HeinOnline -- 1997 vol. III 2853 1997

(2) (a) Except as provided for in subsection (3), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

(i) implementation would not be administratively feasible;

(ii) implementation would materially affect the reliability of the electric system; or

(iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) Except as provided in [sections 22 and 34 through 44], a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with [sections 1 through 31] until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to [section 6] to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

(4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of [sections 4, 6 through 12, 22, and this section].

**Section 6. Public utility — transition plans.** (1) All public utilities, pursuant to [sections 1 through 31], shall submit a transition plan to the commission. Plans must be filed with the commission not later than 1 year before the date by which any customers of the public utility are entitled to choice of electricity supplier pursuant to [section 5]. The commission may develop a schedule for public utilities that are required to file plans. The transition plan must demonstrate that the public utility meets all the requirements of [sections 1 through 31].

(2) The commission shall develop a procedural schedule that includes:

(a) a preliminary transition plan determination including the commission's findings on whether the plan is complete and adequate subject to the requirements of [sections 1 through 31]; and

(b) an opportunity for a public utility to file a revised plan based on the preliminary determination.

(3) Unless waived by the public utility, the commission shall issue a final order approving, modifying, or denying the transition plan before 9 months after the

date a public utility files a plan. All parties are afforded an opportunity for hearing before issuance of the final order.

(4) The commission shall process a request for approval of a transition plan pursuant to the contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(5) On approval of the plan, the commission shall enforce the public utility obligations as incorporated in the plan and in the commission's final order.

**Section 7. Public utility — customer choice — continued service — education of customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in [section 5]. Public utilities shall propose a method for customers to choose an electricity supplier.

(2) If a customer has not chosen an electricity supplier by the end of the transition period, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier.

(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in [section 5].

(4) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period.

**Section 8. Public utility — functional separation, divestiture, and nondiscrimination.** (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission and distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

(2) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.

(3) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(4) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistont with federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. The commission shall promulgate rules relating to the codes of conduct.

HeinOnline -- 1997 vol. III 2855 1997

**Section 9. Public utility — distribution services.** (1) A public utility's distribution services provider shall:

(a) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergency supplier of electricity and related services.

(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

**Section 10. Public utilities — transmission services.** For transmission services regulated by the commission, public utilities, through filed tariffs, shall make transmission services available for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and by customers.

**Section 11. Public utilities — electricity supply.** (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to [section 6], the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to [section 24].

**Section 12. Public utilities — transition costs and charges — rate moratorium.** (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

HeinOnline -- 1997 vol. III 2856 1997

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to [section 6(3)]; and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to geod faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in [sections 1 through 31], only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with

HeinOnline -- 1997 vol. III 2857 1997

the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by [sections 1 through 31] may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period as follows:

(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.

(b) From July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of [section 5(1)(b)], public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) portions of the increase or decrease in the annual state and local property tax expense that are greater than the payment or adjustment that results from applying the industry-recognized rates of inflation to the increase or decrease in the state and local property tax expense reflected in rates as of [the effective date of this act].

HeinOnline -- 1997 vol. III 2858 1997

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under [section 31] toward the rate moratorium pursuant to subsection (6).

(10) During the 4-year transition period, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not he reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings.

**Section 13. Cooperative utility — trausition plan for customer choice.** (1) Except as provided in [section 20], on or hefore July 1, 2001, the local governing body of a cooperative utility shall adopt a transition plan.

(2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that may not end later than July 1, 2002. At the conclusion of the transition period, all customers must have the opportunity to choose an electricity supplier.

(b) If after a pilot program for customers of a cooperative utility with loads less than 1,000 kilowatts, a competitive market, technology, or other conditions precedent to full customer choice have not developed, then the transition plan may be altered by the cooperative utility's governing body for those customers.

(3) [Sections 1 through 31] do not require the cooperative utility to divest itself of any generation, transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those assets.

(4) A cooperative utility's local governing body shall certify to the commission that the local governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative utility shall provide to the commission documentation that the cooperative utility's transition plan is consistent with [sections 1 through 31].

**Section 14. Cooperative utility — customer choice — education of customers — continued service.** (1) Except as provided in [section 20], cooperative utilities shall propose a method for cooperative utility customers to choose an electricity supplier.

(2) Customer choice may be phased in to promote the orderly transition to a competitive market environment.

(3) Cooperative utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This

HeinOnline -- 1997 vol. III 2859 1997

education process must give special emphasis to education efforts during the transition period.

(4) If a cooperative utility customer has not chosen an electricity supplier by the end of the transition period, then the electricity supplier is the cooperative utility that filed the plan or an electricity supplier designated by the cooperative utility.

**Section 15. Cooperative utility — functional separation.** (1) To the extent that a cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets and operations in the state of Montana. If the cooperative utility intends to exercise this option, the cooperative utility's transition plan must explain the cooperative utility's proposed separation process.

(2) A cooperative utility shall describe in the transition plan measures taken by the cooperative utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and in favor of the cooperative utility's affiliates, if any.

(3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory commission's code of conduct established in 18 CFR, part 37.

**Section 16. Cooperative utility — distribution services.** (1) A cooperative utility transition plan must include distribution facility tariffs that must be established by the cooperative utility's local governing body and must include the obligation for the cooperative utility to:

(a) make distribution services available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

(b) build and maintain distribution facilities; and

(c) be an emergoncy supplier of electricity and related services.

(2) If a distribution services provider acts as an emergency supplier of electricity and related services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual obligations shall reimburse the distribution services provider at an amount to be set by the local governing body but may not exceed the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.

(3) Recoverable costs for cooperative utilities must be based upon standard financial reporting statements and may reflect comparable rates of return of other utilities.

**Section 17. Cooperative utility — transmission services.** Transition plans must state whether the cooperative utility's transmission services, if any, are regulated by the federal energy regulatory commission. If those services are

HeinOnline -- 1997 vol. III 2860 1997

not regulated by the federal energy regulatory commission, the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers, distribution services providers, and customers. A cooperative utility's local governing body shall establish the cooperative utility's transmission tariffs.

**Section 18. Cooperative utility — electricity supply.** (1) A transition plan may provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer electricity supply service. The local governing body shall establish the price for electricity supply service offered by a cooperative utility.

(2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions of [section 24].

(3) If a cooperative utility offers electricity supply service competitively to customers using a public utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar structure to serve those customers that allows the entity to be taxed at the same level as other for-profit electricity suppliers.

**Section 19. Cooperative utility — transition costs and charges.** (1) For the purposes of this section, "transition costs" means those costs, liabilities, and investments that cooperative utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may not be recoverable as a result of the transition to a competitive market for electricity supply service.

(2) Transition costs eligible for treatment include but are not limited to:

(a) regulatory assets and deferred charges typically recoverable in rates;

(b) nonutility and utility power purchase contracts;

(c) existing commitments or obligations incurred before [the effective date of this act] and other cooperative utility investments rendered uneconomic as a result of the implementation of [sections 1 through 31] or the introduction of retail wheeling through federal legislation or regulation;

(d) costs associated with any renegetiation or buyout of the existing nonutility and utility power purchase contracts;

(e) revenue that appears as a portion of a facility charge necessary to meet debt service requirements, including any coverage amounts required by any mortgage, indenture, or other financing document;

(f) costs of refinancing and retiring debt of the cooperative utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers; and

(g) all costs, expenses, and reasonable fees related to transition bonds.

(3) For a cooperative utility's transition costs to be fully recoverable, the cooperative utility shall make reasonable efforts to mitigate those transition costs.

(4) Cooperative utilities may not collect any more costs, including costs reallocated to transition costs, at a level higher than would otherwise be

HeinOnline -- 1997 vol. III 2861 1997

anticipated had the current regulatory system remained intact, with the exception of:

(a) increased costs related to universal system benefits charges; and

(b) increased costs of metering, billing, and tecbnology necessary to facilitate full customer choice.

(5) Subject to the obligation to mitigate transition costs, a cooperative utility shall fully recover transition costs as approved by its local governing body. Unmitigable transition costs are nonbypassable and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution facilities in the receipt of electricity supply services.

(6) A cooperative utility may not collect transition costs from a customer for which the cooperative utility does not have and never has had an obligation to incur costs to provide electricity supply service unless the unmitigated transition costs were incurred solely on behalf of the customer.

(7) Approval of and collection of transition costs through a transition charge is a settlement of all transition claims by a cooperative utility. A cooperative utility seeking to recover transition costs through any other means may not collect transition charges.

**Section 20. Cooperative utility — exemption.** (1) Within 1 year after [the effective date of this act], a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan. Except as otherwise provided in the universal system benefits program pursuant to [section 22], a cooperative utility filing notice under this section is exempt from the provisions and requirements of [sections 1 through 31].

(2) A cooperative utility filing a notice under this section:

(a) may elect later to adopt a transition plan in accordance with [sections 1 through 31]; and

(b) may not use a public utility's distribution facilities unless preexisting contracts exist.

**Section 21. Maintaining safety and reliability.** Utilities shall maintain standards of safety and reliability of the electric delivery system and existing customer service requirements.

**Section 22. Universal system benefits programs.** (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless modified as provided in subsection (7), this funding level remains in effect until July 1, 2003.

HeinOnline -- 1997 vol. III 2862 1997

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for customers' programs or activities as provided in subsection (7).

(c) A utility at which the sale of power for final end-use occurs is the utility that receives credit for the universal system benefits program expenditure.

(d) For a utility to receive credit for low-income related expenditures, the activity must have taken place in Montana.

(e) If a utility's or a customer's credit for internal activities do not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal energy assistance fund.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) A customer with loads greater than 1,000 kilowatts shall:

(a) pay a universal system benefits program charge equal to the lesser of:

(i) $500,000 less the customer credits provided for in this subsection (7); or

(ii) the product of .9 mills per kilowatt hour multiplied by the customer's kilowatt hour purchases, less customer credits provided for in this subsection (7);

HeinOnline -- 1997 vol. III 2863 1997

(b) receive credit toward that customer's annual universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits program expenditure and these internal expenditures must include but not be limited to:

(i) expenditures that result in a reduction in the consumption of electrical energy in the customer's facility; and

(ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities; and

(c) customers making these expenditures must receive a credit against the customer's annual universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission and the transition advisory committee provided for in [section 29]. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The annual report must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of [sections 1 through 31];

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

**Section 23. Commission authority — rulemaking authority.** (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in [sections 1 through 31], and may not regulate the price of electricity supply except as electricity supply may be procured during the transition period by the distribution function of a public utility for those customers that have not chosen an electricity supplier or for those customers that have not yet been assigned an electricity supplier. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) If the transition period is extended for certain customers because the commission finds that workable competition in the electricity supply market does not exist, then the commission shall continue to regulate the provision of electricity supply by distribution services providers in accordance with [section 11].

(3) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to

HeinOnline -- 1997 vol. III 2864 1997

inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(4) The commission shall license electricity suppliers and enforce licensing provisions pursuant to [section 24].

(5) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(6) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with [sections 1 through 31], and on the public utility's transition plan.

(7) The commission shall certify that a cooperative utility has adopted a transition plan that complies with [sections 1 through 31]. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(8) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(9) In addition to promulgating rules expressly provided for in [sections 1 through 31], the commission may promulgate any other rules necessary to carry out the provision of [sections 1 through 31].

(10) [Sections 1 through 31] do not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with [sections 1 through 31]; or

(b) compel any change to a cooperative utility's certification filing made pursuant to [sections 1 through 31].

**Section 24. Licensing.** (1) Except as provided in [section 20], an electricity supplier shall file an application with and obtain a license from the commission before offering electricity for sale to retail customers in the state of Montana.

(2) As a condition of licensing, an electricity supplier shall identify and describe its activities and purposes and the purposes of each of the electricity supplier's affiliates, if any, including whether an affiliate that owns or operates distribution facilities offers customer choice through open, fair, and nondiscriminatory access to the electricity supplier's or the electricity supplier's affiliate's distribution facilities.

(3) The commission may require electricity suppliers that provide electricity supply service to small customers to make a standard service offer that ensures that those customers have access to affordable electricity.

(4) The commission may require:

HeinOnline -- 1997 vol. III 2865 1997

(a) proof of financial integrity and a demonstration of adequate reserve margins or the ability to obtain those reserves; and

(b) a licensee to post a bond should an electricity supplier fail to supply electricity or lack financial integrity.

(5) An electricity supplier shall provide the commission and all distribution services providers with copies of all license applications pursuant to subsection (2). Licensees shall update information and file annual reports with the commission and all distributien services providers.

(6) License applications are effective 30 days after filing with the commission unless the commission rejects the application during that period. If the commission rejects a license application, the commission shall specify the reasons in writing and, if practical, identify alternative ways to overcome deficiencies.

(7) Notwithstanding [sections 1 through 31], a cooperative utility is not required to apply for a license from the commission to be an electricity supplier to customers served by that cooperative utility in its electric facilities service territory or to any customers served by another cooperative utility subject to the consent of the other cooperative utility's local governing body.

**Section 25. Penalties — license revocation.** (1) The commission may begin a proceeding to reveke or suspend a license of an electricity supplier, impose a penalty, or both, for just cause on the commission's own investigation or upon the complaint of an affected party if it is established that the electricity supplier:

(a) intentionally provided false information to the commission;

(b) switched, or caused to be switched, the electricity supply for a customer without first obtaining the customer's written permission;

(c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; er

(d) committed fraud er engaged in deceptive practices.

(2) Any person selling or offering to sell electricity in this state in violation of [sections 24, 27,] and this section is subject to a fine of not less than $100 or more than $1,000 for the violation or a license revocation or suspension. Eacb day of each violation constitutes a separate violation.

(3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.

(4) A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

**Section 26. Bill information — customer nonpayment — commission rulemaking.** (1) Electrical bills to consumers must disclose each component of the electrical bill in accordance with rules promulgated by the commission. Electrical bills must disclose but are not limited to the following:

(a) distribution and transmission charges;

HeinOnline -- 1997 vol. III 2866 1997

(b) electricity supply charges;

(c) competitive transition charges; and

(d) universal system benefits charges.

(2) The commission shall promulgate rules establishing the procedures relating to how and when an electricity supplier may discontinue service to a customer because of the customer's nonpayment and the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that are cooperative utilities.

(3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities regarding:

(a) customer nonpayment and reconnection; and

(b) information contained in electrical bills to consumers.

**Section 27. Unauthorized switching — commission rulemaking.** (1) An electricity supplier or any person, firm, corporation, or governmental entity may not make any change in the electricity supplier for a customer without first obtaining the customer's written permission.

(2) The commission shall promulgate rules establishing procedures to prevent unauthorized switching.

**Section 28. Reciprocity.** (1) Except as provided in [section 20], all electricity suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable opportunity to compete.

(2) A distribution services provider or the distribution services provider's affiliates may not use another distribution services provider's facilities in the state of Montana to sell electricity to customers in the state of Montana unless the first distribution services provider or the distribution services provider's affiliates offer comparable and nondiscriminatory access to the distribution services provider's distribution facilities.

**Section 29. Transition advisory committee.** (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of eight voting members who are appointed as follows:

(a) The speaker of the house shall appoint four members from the house of representatives, not more than two of whom may be from one political party.

(b) The president of the senate shall appoint four members from the senate, not more than two of whom may be from one political party.

(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:

(a) The director of the department of environmental quality shall appoint one department representative.

(b) The legislative consumer committee shall appoint one representative.

HeinOnline -- 1997 vol. III 2867 1997

(c) One representative of the cooperative utility industry is appointed as designated by the Montana electrical cooperative association.

(d) The public utilities in the state of Montana shall appoint one member.

(e) The commission shall appoint one member.

(f) The governor shall appoint the following nonvoting committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the nonindustrial retail electric consumer sector;

(iii) one representative from organized labor;

(iv) one representative from the community comprising environmental and conservation interests;

(v) one representative from a low-income program provider;

(vi) one representative of Montana's Indian tribes; and

(vii) one representative of the electric power market industry.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in section 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must be appointed within 60 days of [the effective date of this act] to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

(8) The transition advisory committee on electric utility industry restructuring must dissolve on the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate, and the commission and shall provide quarterly interim summary reports to the members of the legislature through January 1, 1999.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

HeinOnline -- 1997 vol. III 2868 1997

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market. The annual report made in the year 2000 must evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include legislative recommendations, if it appears appropriate, about the best means to further encourage the development of customer choice and meaningful market access for the benefit of smaller customers. The annual report for the year 2000 must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(14) The transition advisory committee shall make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agoncy or private, nonprofit entity as the fund administrator and administration guidelines for the funds, including the means by which funds may be made available for use.

(15) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in [section 22] to coincide with the related activities of the region at that time.

(16) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.

HeinOnline -- 1997 vol. III 2869 1997

(17) On or before November 1, 2001, tbe transition advisory committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the opportunity provided pursuant to [sections 1 through 31] to utilities or their affiliates located outside the state of Montana. That information must be included in the report to the 58th legislature.

(18) On or before November 1, 1998, the transition advisory committee shall make recommendations to the governor and the legislature regarding the provision of low-income energy assistance programs in Montana by all energy providers.

**Section 30. Tax revenue analysis.** (1) The revenue oversight committee, as provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously regulated electricity suppliers that will enter the competitive market and report to the legislature annually on how revenue to the state or local government is changed by restructuring and competition.

(2) On or before November 30, 1998, the revenue oversight committee shall recommend legislative changes, if any, to address the establishment of comparable state and local taxation burdens on all market participants in the supply of electricity. Any legislation recommended by the revenue oversight committee should place comparable state and local taxation burdens upon all market participants.

**Section 31. Transition costs financing.** (1) A utility may, after July 1, 1997, apply to the commission for a determination that certain transition costs may be recovered through the issuance of transition bonds. If transition honds are issued, cost savings associated with and resulting from the bonds must benefit customers. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition property or to cause the transition bonds to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance. If transition bonds are not issued within 4 years of the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or renewal of a financing order.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property. A financing order may be adopted only upon the application of a utility and may only become effective in accordance with its terms after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed transition amounts and other charges.

(h) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The order must set forth the term over

which the transition bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section with respect to transition property that has been made the basis for the issuance of transition bonds and upon the issuance of transition bonds, the financing orders and the fixed transition amounts must be irrevocable.

(b) If transition bonds have been issued, the commission may not by rescinding, altering, or amending the financing order or otherwise:

(i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property;

(ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

(iii) in any way reduce or impair the value of transition property either directly or indirectly by taking fixed transition amounts into account when setting other rates for the utility.

(c) The total amount of the transition property may not be subject to reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed transition amounts, transition property, financing orders, or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these bonds.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are payable solely from the funds provided under this section. The bonds and offering documents must contain on their face a statement to the following effect:

This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith and credit nor the

HeinOnline -- 1997 vol. III 2871 1997

taxing power of the state of Montana is pledged to the payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of this hond. This bond is a limited obligation of the issuer, payable solely out of the transition property or the proceeds of that property spocifically pledged for its payment and not otherwise.

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any appropriation for bond payment.

(5) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval of applications within 120 days after a utility submits a complete application. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine on each anniversary of the issuance of the financing order and at additional intervals as may be provided for in the financing order whether the adjustments are required and shall provide for the adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in the financing order.

(6) Fixed transition amounts become transition property when and to the extent that a financing order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and the transition property must thereafter continuously exist as property for all purposes with all of the rights and privileges of [sections 1 through 31] for the period and to the extent provided in the financing order or until the transition bonds are paid in full including all principal, interest, premium, costs, and arrearages on the transition bonds.

(7) Transition bonds may be issued upon commission approval in the pertinent financing order. Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility, other than the transition property as specified in the pertinent financing order.

(8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in that transition property to one or more assignees in connection with the issuance of transition bonds to the extent approved in the pertinent financing order.

(b) A utility or an assignee may pledge transition property as collateral for transition bonds to tho extent approved in the pertinent financing order and may provide for a security interest in the transition property as provided in this section.

(c) Transition property may be sold, assigned, or transferred for the benefit of:

HeinOnline -- 1997 vol. III 2872 1997

(i) transition bondholders in connection with the exercise of remedies upon a default; or

(ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this section.

(9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will, subject to the utility's rights under subsection (18):

(i) continue to operate the utility's system and to provide service to the utility's customers;

(ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the assignee; and

(iii) account for and remit these amounts to or for the account of the assignee.

(b) Contracting with the assignee in accordance with the commission's authorization may not impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute assignment or transfer, or a grant of a security interest, as applicable.

(10) Notwithstanding any other provision of law, any provision under this section or under a financing order requiring that the commission take or refrain from taking action with respect to the subject matter of a financing order binds the commission and any successor commission or agency exercising functions similar to the commission, and the commission or any successor commission or agency may not rescind, alter, or amend that requirement in a financing order.

(11) A pledge or any other security interest in transition property is valid, is enforceable against the pledger and third parties, including judgment lien creditors, subject only to the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, and attaches only when all of the following have taken place:

(a) the commission has issued the financing order authorizing the fixed transition amounts included in the transition property;

(b) value has been given by the pledgees of the transition property; and

(c) the pledgor has signed a security agreement or other financing-related agreement covering the transition property.

(12) (a) A valid and enforceable security interest in transition property is perfected only when it has attached and when a financing statement has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing statement must name the pledgor of the transition property as debtor and identify the transition property.

(b) Any description of the transition property is sufficient if the description refers to the financing order creating the transition property.

HeinOnline -- 1997 vol. III 2873 1997

(c) The commission may require other filings with respect to the security interest in accordance with procedures the commission may establish, except that these filings may not affect the perfection of the security interest.

(13) A perfected security interest in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection. Transition property constitutes property for all purposes, including for contracts securing transition bonds, whether or not the revenue and proceeds arising with respect to the transition property have accrued.

(14) (a) Subject to the terms of the security agreement covering the transition property and the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by:

(i) the commingling of revenue arising with respect to the transition property with other funds of the utility that is the pledgor or transferor of the transition property; or

(ii) any security interest of any third party in a deposit account of that utility perfected under Title 30, chapter 9, part 3, into which the revenue is deposited.

(b) Subject to the terms of the security agreement, upon compliance with the requirements of this section, a pledgee of the transition property has a perfected security interest in all cash and deposit accounts of the utility in which revenue arising with respect to the transition property has been commingled with other funds, but the perfected security interest must be limited to an amount no greater than the amount of the revenue with respect to the transition property received by the utility within 12 months before any default under the security agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue to the pledgees during that 12-month period.

(15) (a) If a default occurs under the security agreement covering the transition property, a pledgee of the transition property, subject to the terms of the security agreement, has all rights and remedies of a secured party upon default under Title 30, chapter 9, part 5, and is entitled to foreclose or otherwise enforce the pledgee's security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section.

(b) The commission may require in the financing order creating the transition property that in the event of default by the utility in payment of revenue arising with respect to the transition property, the commission and any successor to the commission, upon the application by a pledgee or assignee of the transition property and without limiting any other remedies available to the pledgees or transferees by reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or transferor of the transition property.

HeinOnline -- 1997 vol. III 2874 1997

(c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the transition bonds and other costs arising under the security agreement must be remitted to the debtor or to the pledgor as provided in the security agreement.

(16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of all of the transferor's right, title, and interest, as in a true sale, and not as a pledge or other financing of the transition property, other than for federal and state income and franchise tax purposes.

(b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must be treated as a pledge or other financing unless the governing documentation of transfer specifically states that the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of transition property may only be considered perfected as against any third person, including any judicial lien creditor, when both of the following have taken place:

(a) the financing order authorizing the fixed transition amounts included in the transition property has become effective in accordance with subsection (2); and

(b) an assignment of the transition property, in writing, has been executed and delivered to the transferee.

(18) (a) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the secretary of state in accordance with procedures that the secretary of state may establish has priority. The financing statement must name the assignor of the transition property as debtor and must identify the transition property. Any description of the transition property is sufficient if the description refers to the financing order creating the transition property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to

HeinOnline -- 1997 vol. III 2875 1997

the assignee or pledgee, as the case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged to secure transition bonds.

(19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of transition property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles under 30-9-106. Any right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated transition property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or interest other than in the order and the transition property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition property previously perfected in the manner described in this section if value has been given by the purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated transition property, whether or not revenue has been accrued. Transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenue has accrued. The lien created under this section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the transition property, to the fixed transition costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section is not defeated or adversely affected by changes to the financing order or to the fixed transition amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of transition property to an assignee be filed in accordance with the same system.

(22) Any sale, assignment, or other transfer of transition property or any pledge of transition property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The transition bonds issued under [sections 1 through 31] are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to transition property and the proceeds thereof are governed by this section rather than Title 30, chapter 9.

(25) Upon the payment in full of transition bond principal and interest, the utility shall discontinue charging and collecting the competitive transition chargo associated with that portion of the utility's approved transition costs.

(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an

application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class of security, public utility, or class of public utility is not required by the public interest.

**Section 32.** Section 15-6-137, MCA, is amended to read:

**"15-6-137. Class seven property — description — taxable percentage.** (1) Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town, *except rural electric cooperative properties described in 15-6-141(1)(a)*;

(c) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.

(3) Class seven property is taxed at 8% of its market value."

**Section 33.** Section 15-6-141, MCA, is amended to read:

**"15-6-141. Class nine property — description — taxable percentage.** (1) Class nine property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities ~~(~~, not including rural electric cooperatives~~)~~. *However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.*

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

HeinOnline -- 1997 vol. III 2877 1997

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class twelve; and

(v) airline transportation property included in class twelve.

(2) Class nine property is taxed at 12% of market value."

**Section 34.** Section 69-5-101, MCA, is amended to read:

**"69-5-101. Short title.** This part ~~shall be~~ *is* known and may be cited as the "Territorial Integrity Act ~~of 1971~~"."

**Section 35.** Section 69-5-102, MCA, is amended to read:

**"69-5-102. Definitions.** When used in this part, the following definitions apply:

(1) ~~"Commercial premises" means the premises where the business of selling, warehousing, or distributing a commodity or other business activity is carried on or professional or other services are rendered.~~ *"Agreement" means a written agreement between two or more electric facilities providers that identifies the geographical area to be served exclusively by each electric facilities provider that is a party to the agreement and any terms and conditions pertinent to the agreement.*

(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana.

(3) "Electric ~~supplier~~ *facilities provider*" means any ~~electrical~~ utility ~~and any electric cooperative~~ *that provides electric service facilities to the public.*

*(4) "Electric service facilities" means any distribution or transmission system or related facility necessary to provide electricity to the premises, including lines.*

~~(4)~~*(5)* "Electric utility" means a person, firm, or corporation other than an electric cooperative ~~which furnishes electrical~~ *that provides electric* service *facilities* to the public.

~~(5) "Industrial premises" means the premises where an industrial activity is carried on, including but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping, cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other extractive, fabricating, or processing activities.~~

(6) "Line" means any electric *supply* conductor ~~operating at a nominal voltage level of 34,500 volts or less, measured phase to phase~~.

(7) "Premises" means a building, residence, structure, or facility to which ~~electricity is being~~ *electric service facilities are provided* or ~~is~~ *are* to be ~~furnished, provided, that~~ *installed; however,* two or more buildings, structures, or facilities ~~which~~ *that* are located on one tract or contiguous tracts of land and *that* are

~~utilized~~ *used* by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes ~~shall~~ *must* together constitute one premises, except that any ~~such~~ building, structure, or facility, other than a trailer court, ~~shall~~ *may* not, together with any other building, structure, or facility, constitute one premises if the electric service to it is separately metered and the charges for ~~such~~ *that* service are calculated independently of charges for service to any other building, structure, or facility.

*(8) "Utility" means a public utility regulated by the commission pursuant to Title 69, chapter 3, or a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18."*

**Section 36.** Section 69-5-104, MCA, is amended to read:

**"69-5-104. Continuation of ~~service~~ *electric service facilities* to existing consumers.** ~~Every~~ *Each* electric ~~supplier~~ *service facilities provider* ~~shall have~~ *has* the right to ~~serve~~ *provide electric service facilities to* all premises being served by it or to which any of its facilities are attached on ~~February 1, 1971~~ *[the effective date of this act]."*

**Section 37.** Section 69-5-105, MCA, is amended to read:

**"69-5-105. Service to new consumers.** (1) Subject to ~~69-5-106~~ *this part*, the electric ~~supplier~~ *facilities provider* having a line nearest the premises, as measured in accordance with subsection (2), shall ~~serve~~ *provide electric service facilities to the* premises initially requiring service after ~~February 1, 1971~~ *[the effective date of this act], which creates a rebuttable presumption that the nearest line is the least-cost electric service facility to the new customer. However, a customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost.*

(2) All measurements under this part ~~shall~~ *must* be made on the shortest straight line ~~which~~ *that* can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises. ~~Construction power for premises to be constructed shall be supplied by the electric supplier having the right to serve the completed premises.~~

*(3) If the electric facilities providers are unable to reach agreement as to which electric facilities provider can provide electric service facilities at least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the consumer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved."*

**Section 38.** Section 69-5-106, MCA, is amended to read:

**"69-5-106. ~~Service~~ *Electric service facilities* to ~~industrial or commercial premises~~ *large customers.*** (1) An electric utility has the right to furnish electric service *facilities* to any ~~industrial or commercial~~ premises if the estimated connected load for full ~~plant~~ operation at ~~such industrial or commercial~~ *the* premises will be 400 kilowatts or larger within 2 years from the date of initial

HeinOnline -- 1997 vol. III 2879 1997

service ~~provided such~~ *and if the* electric utility can extend its ~~lines~~ *facilities* to ~~such industrial or commercial~~ *the* premises at less cost to the electric utility ~~or the industrial or commercial customer~~ than the electric cooperative cost. The estimated connected load ~~shall~~ *must* be determined from the plans and specifications prepared for construction of the premises or, if ~~such~~ *an* estimate is not available, ~~shall~~ *must* be determined by agreement of the electric ~~supplier~~ *facilities provider* and the customer. The fact that *the* actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric ~~supplier~~ *facilities provider* initially providing *electric* service *facilities* to continue *to provide electric* service *facilities* to ~~such~~ *the* premises.

(2) An independent consultant engineer agreeable to both electric ~~suppliers~~ *facilities providers* or, in the event of failure of the electric ~~suppliers~~ *facilities providers* to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric ~~supplier~~ *facilities provider* can extend its ~~lines to the consumer~~ *facilities* at the least cost *to the utility*. The cost of ~~such~~ *those* engineering services ~~shall~~ *must* be paid equally by the electric ~~suppliers~~ *facilities providers* involved.

~~(3) No premises other than another such commercial or industrial premises shall be served from a line constructed under this section.~~"

**Section 39.** Section 69-5-107, MCA, is amended to read:

"69-5-107. ~~Service to property owned by electric supplier~~ ***Customer-owned facilities.*** ~~Nothing in 69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any property owned by the electric supplier.~~ *This part may not limit a customer's right to construct, own, or operate electric service facilities for the customer's own use, and construction, ownership, or use may not cause the customer to be considered a utility. A customer may not duplicate existing electric service facilities.*"

**Section 40.** Section 69-5-108, MCA, is amended to read:

"69-5-108. **Agreements between electric ~~suppliers as to service areas~~ *facilities providers.*** ~~Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric service to any consumer at any premises being served by another electric supplier upon written agreement of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant to this part, upon written agreement of the affected electric suppliers.~~ *Utilities may enter into agreements that identify the geographical area to be exclusively served by each electric facilities provider that is party to the agreement, overriding the provisions of 69-5-105 and 69-5-107. If an agreement is approved by the commission pursuant to this part, the agreement is valid and binding on all electric facilities providers and all customers, except those provided for in 69-5-106.*"

**Section 41.** Section 69-5-109, MCA, is amended to read:

"69-5-109. **Special provisions for annexed areas.** ~~With respect to service in areas which are annexed to incorporated municipalities having a~~

~~population in excess of 3,500 persons, electric suppliers have rights and are subject to restrictions as follows:~~

~~(1) Every electric supplier has the right to serve all premises being served by it on the date of annexation.~~

~~(2) An electric cooperative does not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which 95% or more of the premises were served by an electric cooperative on February 1, 1971.~~ *(1) Electric facilities providers providing electric service facilities in or near areas that are incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since 1985 or having existing municipal planning zones on [the effective date of this act] shall enter into agreements dividing the annexed and planning zone areas into exclusive service territories and shall submit the agreements to the commission for approval, pursuant to this part.*

*(2) The agreements do not apply to electric service facilities with loads of 400 kilowatts or greater. Agreements must be based on the location of facilities in place on [the effective date of this act].*

*(3) If electric facilities providers have failed to negotiate agreements within 1 year from the [effective date of this act], the commission shall divide the annexed and planning zone areas into exclusive service territories, using the considerations pursuant to [section 44].*

*(4) Until agreements are final, electric service facilities to new customers will be provided pursuant to 69-5-105.*"

**Section 42.** Section 69-5-110, MCA, is amended to read:

"**69-5-110. Jurisdiction of district courts over disputes.** The district courts of the county or counties within which the premises or lines involved in any dispute are located ~~shall~~ have jurisdiction under this part over all electric ~~suppliers~~ *facilities providers* subject to ~~the provisions thereof~~ *this part*."

**Section 43.** Section 69-5-111, MCA, is amended to read:

"**69-5-111. Judicial remedies.** (1) Whenever ~~it shall appear that any~~ *an* electric ~~supplier~~ *facilities provider* is failing or omitting or about to fail or omit to do anything required of it by this part or is doing or is about to do anything or to permit anything to be done contrary to or in violation of this part, ~~any~~ *the* electric ~~supplier~~ *facilities provider* affected ~~thereby shall have the right to~~ *may* file a complaint in the district court ~~briefly~~ setting forth the acts or omissions complained of and requesting an injunction.

(2) If an affidavit showing that grounds exist ~~therefor~~ *that an electric facilities provider is in violation of this part* is filed with the complaint, a temporary restraining order ~~shall~~ *must* be issued without notice. A copy of the temporary restraining order, complaint, and affidavit ~~shall~~ *must* be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified ~~therein~~ *in the order~~, which shall~~ and may* not be more

than 10 days after service ~~thereof~~ *of the order* and ~~shall~~ *must* take precedence over all matters pending before the district court. A judgment making the injunction permanent or dissolving the temperary restraining order ~~theretofore~~ *that was* issued and dismissing the complaint must be made ~~not later than~~ *before* 10 days after the hearing on the order to show cause.

(3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within 20 days ~~thereafter~~ *after filing the notice of appeal* and ~~shall~~ *must* take precedence over all matters pending before the supreme court of Montana."

**Section 44. Commission jurisdiction over agreements.** (1) All agreements between electric facilities providers must be submitted to the commission for approval. Each agreement must clearly identify the geographical area to be served by each electric facilities provider. The submission must include:

(a) a map and a written description of the area; and

(b) the terms and conditions pertaining to the implementation of the agreement.

(2) Whenever an agreement involves the exchange or transfer of customers within service territories, the following must also be included with the agreement submission:

(a) the number and class of customers to be transferred;

(b) assurance that the affected customers have been contacted and have received a written explanation of the difference in rates; and

(c) information with respect to the degree of acceptance by affected customers, such as the number in favor of and those oppesed to the transfer.

(3) In approving agreements, the commission shall consider but not be limited to consideration of:

(a) the reasonable likelihood that the agreement, in and of itself, will not cause a decrease in the reliability of electric service to the existing or future ratepayers of any electric facilities provider party of the agreement; and

(b) the reasonable likelihood that the agreement will eliminate existing or potentially uneconomic duplication of electric service facilities.

(4) An agreement approved by the commission is valid and enforceable, and except as provided in 69-5-106, an electric facilities provider may not offer, construct, or extend electric service facilities into an exclusive territory.

(5) The commission shall state its findings and conclusions for approving or disapproving an agreement and shall render a decision within 90 days of receipt of the agreement. The electric facilities providers submitting the agreement to the commission shall act according to the agreement until a decision is rendered.

(6) Upen approval of the agreement, any modification, changes, or corrections to this agreement must be approved by the commission.

HeinOnline -- 1997 vol. III 2882 1997

(7) The commission may promulgate rules to administer this part consistent with the requirements of this part.

**Section 45. Appropriation.** (1) The legislative services division may accept gifts, grants, or other donations for the purpose of offsetting the costs of conducting the activities of the transition advisory committee under [section 29] or the study required in [section 30].

(2) A gift, grant, or other donation made by a public utility, as defined in 69-3-101(1)(a), (1)(c), or (1)(d), is a cost that is nonrecoverable from ratepayers and must be borne 100% by the shareholders of the company making the gift, grant, or donation.

(3) The legislative services division is appropriated up to $200,000 of any gifts, grants, or other donations received under this section, and the appropriation is a biennial appropriation.

(4) If the amount of gifts, grants, or donations exceeds the amount appropriated under subsection (3), the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

(5) If the amount of the gifts, grants, and donations expended for conducting the activities of the transition advisory committee under [section 29] or the study required in [section 30] is less than the amount received as gifts, grants, or donations, the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

**Section 46. Repealer.** Section 69-5-103, MCA, is repealed.

**Section 47. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 48. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 49. Codification instructions.** (1) [Sections 1 through 31] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 31].

(2) [Section 44] is intended to be codified as an integral part of Title 69, chapter 5, part 1, and the provisions of Title 69, chapter 5, part 1, apply to [section 44].

**Section 50. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

HeinOnline -- 1997 vol. III 2883 1997

# CHAPTER NO. 506

[SB 396]

AN ACT ALLOWING NATURAL GAS UTILITIES TO PROVIDE FOR CUSTOMER CHOICE; ALLOWING NATURAL GAS UTILITIES TO USE TRANSITION BOND FINANCING FOR TRANSITION COSTS; ALLOWING FOR FUNCTIONAL SEPARATION AND CONSUMER PROTECTION; REQUIRING THE PUBLIC SERVICE COMMISSION TO LICENSE NATURAL GAS SUPPLIERS; ESTABLISHING RECIPROCITY FOR ALL NATURAL GAS SUPPLIERS; PROVIDING FOR OPTIONAL PERFORMANCE-BASED RATEMAKING; REQUIRING THE REVENUE OVERSIGHT COMMITTEE TO CONDUCT A TAX REVENUE ANALYSIS AND REPORT TO THE 56TH LEGISLATURE; PROVIDING FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required because this bill provides the public service commission with rulemaking authority.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 9] may be cited as the "Natural Gas Utility Restructuring and Customer Choice Act".

**Section 2. Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas transmission facilities, storage facilities, or distribution facilities.

(2) "Distribution facilities" means those facilities that are not transmission facilities:

(a) by and through which natural gas is received from a transmission services provider and transmitted to the customer; and

(b) operated by a distribution services provider.

(3) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of natural gas to the public.

(4) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the state of Montana.

(5) "Natural gas utility" means a utility regulated by the commission on [the effective date of this act] that provides natural gas services to the public.

(6) "Open access" means that a natural gas utility has made its transmission facilities, storage facilities, or distribution facilities available to all natural gas suppliers, transmission services providers, distribution services providers, and customers on a nondiscriminatory and comparable basis.

HeinOnline -- 1997 vol. III 2884 1997

(7) "Performance-based ratemaking" means those forms of regulation that include but are not limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies, release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers. A performance-based regulation may also include a mechanism for automatic annual adjustments of revenue to prices to reflect changes in any index adopted for the implementation of the performance-based form of regulation.

(8) "Storage facilities" means those facilities that are owned, controlled, or operated by a person offering storage service for natural gas and generally means any underground reservoir suitable for the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that underground reservoir.

(9) "Transition costs" means:

(a) a natural gas utility's net, verifiable production- and gathering-related costs, including costs of capital, that become unrecoverable as a result of customer choice and open access. These costs include but are not limited to:

(i) regulatory assets and deferred charges that exist as a result of current regulatory practices and that may be accounted for up to the point in time that the commission issues a final order in a docket addressing transition costs[, including all costs, expenses, and fees related to the issuance of transition bonds];

(ii) the above-market costs associated with existing gas supply commitments;

(iii) other natural gas utility investments rendered uneconomic as a result of implementation of customer choice and open access;

(iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts; and

(v) the costs associated with the issuance of any related transition bonds authorized by the commission pursuant to [section 3].

(b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(10) "Transmission facilities" means those facilities owned, controlled, and operated by a transmission services provider that are used to transport natural gas from a gathering line or storage facility to a distribution facility, storage facility, or end-use customer.

(11) "Transmission services provider" means a person controlling or operating transmission facilities.

(12) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

HeinOnline -- 1997 vol. III 2885 1997

(13) "Universal system benefits programs" means public purpose programs for cost-effective local energy conservation, low-income weatherization, and low-income energy bill assistance.

**Section 3. Customer choice.** (1) A natural gas utility may voluntarily offer its customers choice of natural gas supplier and provide open access to its transmission facilities, storage facilities, or distribution facilities.

(2) If a customer choice offering results in transition costs, the commission may allow those transition costs to be recovered in separate identifiable charges to customers. Upon commission approval, the natural gas utility must have the opportunity but not the obligation to finance the fixed transition costs and related financing costs using transition cost financing as provided for in [sections 3 and 31 of Senate Bill No. 390].

**Section 4. Functional separation — code of conduct — emergency services — customer protection.** (1) A natural gas utility that provides customer choice and open access on its system shall:

(a) functionally separate its natural gas production and gathering from its natural gas transmission, storage, and distribution services and remove natural gas production and gathering from the rate base;

(b) adopt and comply with commission-approved standards of conduct to be included in a tariff to govern its natural gas transmission, storage, and distribution services; and

(c) provide emergency natural gas supply and related services to the extent necessary to maintain the operational integrity of the transmission system as determined by the commission.

(2) The commission shall develop standards that protect consumers and natural gas suppliers from anticompetitive and abusive practices.

(3) [Sections 1 through 9] do not reduce or otherwise change the authority of the commission to review the prudence of natural gas purchases made by a natural gas utility for its customers that do not have a choice or that have not made a choice of natural gas suppliers or have not been assigned a natural gas supplier.

**Section 5. Licensing — procedures — commission rulemaking.** (1) The commission shall license natural gas suppliers and enforce licensing provisions pursuant to this section.

(2) A natural gas supplier shall file an application with and obtain a license from the commission to sell natural gas to customers in the state of Montana.

(3) A licensee shall:

(a) provide copies of all license applications to the commission and to all distribution services providers; and

(b) update information and file annual reports.

(4) A license application becomes effective 30 days after filing with the commission, unless the commission rejects the application during that period. If

HeinOnline -- 1997 vol. III 2886 1997

the commission rejects a license application, the commission shall specify the reasons in writing and, if practical, shall identify alternative ways to overcome deficiencies.

(5) The commission shall promulgate rules requiring licensing information that identifies the licensee and ensures that the natural gas supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(6) The commission may require proof of a licensee's financial integrity and a demonstration of adequate firm deliverability to meet load requirements.

(7) Pursuant to its own investigation or upon the complaint of an affected party, the commission may institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.

**Section 6. Reciprocity.** (1) All natural gas suppliers are afforded the comparable opportunity to compete.

(2) A natural gas distribution services provider or its affiliates may not use another natural gas distribution services provider's facilities in the state of Montana to sell natural gas to customers in the state of Montana unless the natural gas distribution services provider or its affiliates offer customer choice and open access to their natural gas distribution facilities.

**Section 7. Optional performance-based ratemaking for natural gas utilities — commission rulemaking.** (1) The commission may, upon application and after giving notice and conducting a hearing as provided in 69-3-303, authorize any natural gas utility to implement an optional form of rate regulation using a performance-based ratemaking methodology.

(2) The commission may approve a performance-based ratemaking methodology if it finds that the methodology:

(a) preserves adequate service to all classes of customers, including transportation-only customers;

(b) does not unreasonably prejudice or disadvantage any class of natural gas utility users;

(c) provides incentives for improved performance by the natural gas utility in the natural gas utility's public duties;

(d) results in rates that are not excessive; and

(e) is in the public interest.

(3) The commission may, after giving notice and conducting a hearing as provided in 69-3-303, modify or discontinue a natural gas utility's performance-based ratemaking previously authorized under this section if the commission finds that:

(a) natural gas service to one or more classes of customers has deteriorated or will deteriorate;

(b) any class of natural gas utility customer is being unreasonably prejudiced or disadvantaged;

HeinOnline -- 1997 vol. III 2887 1997

(c) the performance-based ratemaking is not providing or will not provide reasonable incentives for improved performance by a natural gas utility in the performance of its public duties;

(d) rates are excessive compared to a natural gas utility's cost of service;

(e) terms ordered by the commission in connection with the approval of a natural gas utility's implementation of performance-based ratemaking have been violated; and

(f) the performance-based form of regulation is not in the public interest.

(4) The commission shall promulgate rules for monitoring a natural gas utility that has implemented performance-based ratemaking to ensure that the natural gas utility is in compliance with the requirements of this section.

**Section 8. Universal system benefits programs — establishing nonbypassable rate.** (1) A natural gas utility shall implement, upon commission approval, a universal system benefits program that considers existing universal system benefits programs in the state.

(2) The commission shall establish a universal system benefits charge that either all natural gas transmission services providers or all distribution services providers, or both, in the state of Montana shall charge to all end-use customers, taking into consideration the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed in other states. The method of assessing those rates may not disproportionately burden a large transmission services provider's customers. Within the universal system benefits charge, a natural gas utility's annual funding requirement for low-income weatherization and low-income energy bill assistance is established at 0.42% of a natural gas utility's annual revenue. A natural gas utility must receive credit for its internal programs or activities that qualify as universal system benefits programs.

(3) On or before July 1, 2002, the commission shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for universal system benefits programs. The determination should focus specifically on the existence of markets to provide for any of the universal system benefits programs or on whether other means for funding those universal system benefits programs have developed. These recommendations may also address how future reevaluations will be provided, if necessary.

**Section 9. Tax revenue analysis.** (1) The revenue oversight committee, as provided for in 5-18-102, shall analyze the amount of state and local tax revenue derived from previously regulated natural gas suppliers that will enter the competitive market and shall report to the legislature on how revenue to the state or local government is changed by restructuring and competition.

(2) On or before November 30, 1998, the revenue oversight committee shall recommend to the 56th legislature legislative changes to address the establishment of comparable state and local taxation burdens on all market participants in the supply of natural gas.

**Section 10. Saving clause — retroactive applicability.** (1) Except as provided in (2), [this act] does not affect rights and duties that matured, penalties

HeinOnline -- 1997 vol. III 2888 1997

that were incurred, or proceedings that were hegun before [the effective date of this act].

(2) [This act] applies retroactively, within the meaning of 1-2-109, to restructuring filings filed with the public service commission after June 1, 1996.

**Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 12. Codification instruction.** [Sections 1 through 9] are intended to he codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 9].

**Section 13. Coordination instructions.** If Senate Bill No. 390 is not passed and approved or as passed and approved does not include [sections 3 and 31], then:

(1) [sections 2(9)(a)(v) and (9)(b) and 3(2) of this act] are void and the subsections of section 2(9) are renumbered; and

(2) the bracketed language contained in [section 2(9)(a)(i) of this act] is void.

**Section 14. Effeetive date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 507

[HB 399]

AN ACT TRANSFERRING THE DUTIES AND RESPONSIBILITIES FOR CERTIFYING CHEMICAL DEPENDENCY COUNSELORS FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE DEPARTMENT OF COMMERCE; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR DEPARTMENT POWERS AND DUTIES; PROVIDING CERTIFICATION REQUIREMENTS AND FEES; PROVIDING FOR COMPLAINTS OF UNPROFESSIONAL CONDUCT AND SANCTIONS; PROVIDING A CRIMINAL PENALTY FOR VIOLATIONS; PROVIDING FOR TRANSITION; AMENDING SECTIONS 33-22-705, 37-23-201, AND 53-24-204, MCA; REPEALING SECTIONS 53-24-215, 53-24-216, AND 53-24-217, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] grants rulemaking authority to the department of commerce.

It is tbe intent of the legislature that the department of commerce have authority to adopt rules to implement and enforce [sections 1 through 9] and specific authority to adopt rules regarding:

(1) certification applications and procedures necessary to receive and process those applications;

HeinOnline -- 1997 vol. III 2889 1997

(2) examinations and criteria for grading examinations;

(3) disciplinary standards for certificate holders, including definitions of conduct for which discipline may be appropriate;

(4) investigations of complaints;

(5) setting and modifying appropriate fees; and

(6) a process for renewal of certificates, including procedures for late renewal.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Purpose.** The legislature finds and declares that because the profession of chemical dependency counseling profoundly affects the lives of people of this state, it is the purpose of [sections 1 through 9] to provide for the common good by ensuring the ethical, qualified, and professional practice of chemical dependency counseling. [Sections 1 through 9] and the rules promulgated under [section 3] set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of chemical dependency counseling as certified chemical dependency counselors.

**Section 2. Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by a regional accrediting association for institutions of higher learning.

(2) "Certified chemical dependency counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of chemical dependency counseling and who is certified under the provisions of [sections 1 through 9].

(3) "Chemical dependency" means the use of any chemical substance, legal or illegal, that creates behavior or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, safety, or welfare.

(4) "Department" means the department of commerce provided for in 2-15-1801.

**Section 3. Department powers and duties.** (1) The department shall:

(a) examine, certify, and renew the certificates of qualified applicants;

(b) adopt rules:

(i) for eligibility requirements and competency standards;

(ii) prescribing the time, place, content, and passing requirements of the certification and competency examinations and passing scores for certification under [section 5];

(iii) for application forms and fees for certification and for renewal and certification expiration dates; and

HeinOnline -- 1997 vol. III 2890 1997

(iv) defining any unprofessional conduct that is not included in 37-1-316; and

(c) adopt and implement rules for training programs, internships, and continuing education requirements to ensure the quality of chemical dependency counseling.

(2) The department may:

(a) adopt rules necessary to implement the provisions of [sections 1 through 9];

(b) adopt rules specifying the scope of chemical dependency counseling that are consistent with the education required by [section 5]; and

(c) establish recertification requirements and procedures that the department considers appropriate.

**Section 4. Certificate required — exceptions.** (1) Except as otherwise provided in [sections 1 through 9], a person may not practice chemical dependency counseling or represent to the public that the person is a certified chemical dependency counselor unless the person is certified under the provisions of [sections 1 through 9].

(2) [Sections 1 through 9] do not prohibit an activity or service:

(a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a certified chemical dependency counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or service of the profession as long as the person does not represent by title that the person is a certified chemical dependency counselor.

(b) of, or use of an official title by, a person employed or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution if that activity or service or use of that title is a part of the duties of the office or position;

(c) of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) of a student, intern, or resident in chemical dependency counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study;

(e) of a person who is not a resident of this state if the activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year and if the person is authorized under the laws of the state or country of residence to perform the activity or service. However, the person shall report to the department the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

HeinOnline -- 1997 vol. III 2891 1997

(f) of a person who is working to satisfactorily complete supervised chemical dependency counseling experience required for certification.

(3) [Sections 1 through 9] are not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

**Section 5. Certification requirements — examination — fees.** (1) To he eligible for certification as a chemical dependency counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for certification as a certified chemical dependency counselor if the person has:

(a) received a baccalaureate degree in alcohol and drug studies, psychology, sociology, social work, counseling, or a related field from an accredited college or university;

(b) received an associate of arts degree in alcohol and drug studies, chemical dependency, or substance abuse from an accredited institution; or

(c) successfully completed at least 1 year of formalized training in chemical dependency counseling in a program approved by the department or recognized under the laws of another state.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in a chemical dependency treatment program as defined by the department, in an internship approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination process as defined by rules adopted by the department.

(5) A person holding a certificate to practice as a certified chemical dependency counselor in this state may use the title "certified chemical dependency counselor".

**Section 6. Renewal of license — application and fee.** (1) A certificate expires biennially on the date set by department rule.

(2) A certificate holder may renew a certificate by:

(a) filing an application on a form prescribed by the department; and

(h) paying a renewal fee in an amount established by the department.

(3) A default in the payment of a renewal fee after the date it is due may increase the fee, as prescribed by the department by rule.

(4) It is unlawful for a person who refuses or fails to pay the renewal fee to practice as a certified chemical dependency counselor in this state.

(5) A certificate not renewed within 1 year following its expiration date terminates automatically.

HeinOnline -- 1997 vol. III 2892 1997

**Section 7. Unprofessional conduct complaint — sanctions.** (1) A formal complaint alleging unprofessional conduct by a certified chemical dependency counselor may be directed to the department. The charges must be made by an affidavit, subscribed and sworn to by the person making it, and filed with the department.

(2) The complaint may allege any unprofessional conduct contained in 37-1-316 or as further defined by department rule that constitutes a threat to the public health, safety, or welfare and that is inappropriate to tbe practice of a certified chemical dependency counselor.

(3) The director of the department shall appoint a review panel to investigate a complaint of unprofessional conduct directed to the department. The panel must consist of:

(a) two certified chemical dependency counselors;

(b) one employee of the department; and

(c) two members of the public.

(4) The panel shall recommend to the department either that tbe person be cleared of any charges or that a sanction or combination of sanctions contained in 37-1-312 be imposed.

(5) For the purposes of this section, the department is vested with a board's authority for the purposes of the procedures in 37-1-307 through 37-1-318 regarding unprofessional conduct, and 37-1-301 through 37-1-318 apply to any proceeding under this section.

**Section 8. Penalty.** A person convicted of violating any provision of [sections 1 tbrough 9] is guilty of a misdemeanor and shall be fined an amount not to exceed $500, be imprisoned in a county jail for a term not to exceed 6 months, or both.

**Section 9. Deposit of fees.** All fees and money received by the department must be deposited in the state treasury to the credit of a state special revenue fund for use by the department in its performance of its duties under [sections 1 through 9].

**Section 10. Transition — transfer of certificates.** The department shall grant a certificate witbout the need for furtber application or other requirements to those persons bolding a current, unrestricted certificate as a certified chemical dependency counselor as of [the effective date of this act] that was issued by the department of public health and human services.

**Section 11.** Section 33-22-705, MCA, is amended to read:

**"33-22-705. Inpatient and outpatient benefits.** (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered porson while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a pbysician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a

HeinOnline -- 1997 vol. III 2893 1997

freestanding inpatient facility must be in a chemical dependency treatment center that is approved by the department of public health and human services under 53-24-208.

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of public health and human services under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or chemical dependency counselor certified by the department of ~~public health and human services under 53-24-204~~ *commerce under [sections 1 through 9]*."

**Section 12.** Section 37-23-201, MCA, is amended to read:

**"37-23-201. Representation or practice as licensed clinical professional counselor — license required.** (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor" or "professional counselor".

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the person's name or by any other means, engage in the practice of professional counseling, or represent that the person is engeged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or chemical dependency counselor certified pursuant to ~~53-24-215~~ *[sections 1 through 9]*, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable cede of ethics, from performing duties and services consistent with the person's training, as long as the person does not

HeinOnline -- 1997 vol. III 2894 1997

represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned graduate program as required by 37-23-202(1)(a) or is working to complete the 3,000 hours of social work experience as required by 37-22-301; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession."

**Section 13.** Section 53-24-204, MCA, is amended to read:

"**53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

HeinOnline -- 1997 vol. III 2895 1997

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium;

(c) provide for and conduct statewide service system evaluations;

(d) distrihute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to ~~chemically dependent~~ persons *with a chemical dependency*;

(f) establish criteria to be used for the development of new programs;

~~(g) certify and establish standards for the certification of:~~

~~(i) chemical dependency counselors; and~~

~~(ii) instructors providing chemical dependency educational courses;~~

~~(h)~~*(g)* encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

~~(i)~~*(h)* cooperate with the board of pardons and parole in establishing and conducting programs to provide treatment for ~~chemically dependent and~~ intoxicated persons *and persons with a chemical dependency* in or on parole from penal institutions;

~~(j)~~*(i)* establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; and

~~(k)~~*(j)* assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency."

**Section 14. Repealer.** Sections 53-24-215, 53-24-216, and 53-24-217, MCA, are repealed.

**Section 15. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 9].

**Section 16. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1997.

(2) The department may publish a notice of adoption of rules and of a hearing to adopt rules to be effective on July 1, 1997.

Approved May 1, 1997

HeinOnline -- 1997 vol. III 2896 1997

# CHAPTER NO. 508

[HB 534]

AN ACT MAKING THE STATE LIABLE FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT INVOLVING A CONTRACT; AMENDING SECTIONS 2-9-317 AND 18-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-1-404, MCA, is amended to read:

**"18-1-404. Liability of state ~~—limitations~~ — costs.** (1) *(a)* The state of Montana ~~shall be~~ *is* liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana ~~shall~~ *is* not ~~be~~ liable ~~for interest prior to or after judgment or~~ for punitive damages.

*(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. For purposes of this section, the interest rate is 10% simple interest each year, whether due before or after a judgment. If the contract does not specify when interest is payable before a judgment, interest must be paid at the time provided in 17-8-242(2).*

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs ~~shall~~ *must* be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant~~,~~. ~~except that such~~ *The* costs ~~shall~~ *must* ~~not~~ include ~~attorney's~~ *attorney* fees.

*(3) This section does not apply to a contract governed by Title 19."*

**Section 2.** Section 2-9-317, MCA, is amended to read:

**"2-9-317. No interest if judgment paid within two years — *exception.*** ~~If~~ *Except as provided in 18-1-404(1)(b), if* a governmental entity pays a judgment within 2 years after the day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity."

**Section 3. Effective date.** [This act] is effective on passago and approval.

Approved May 1, 1997

# CHAPTER NO. 509

[HB 554]

AN ACT ELIMINATING THE PROVISIONS THAT ALLOW CERTAIN PERSONS CLAIMING MONTANA RESIDENCY WHO ARE ON ACTIVE MILITARY DUTY AND LIVING OUTSIDE OF MONTANA TO PURCHASE LICENSE PLATES AND REGISTER A MOTOR VEHICLE FOR THE COST OF REGISTRATION ALONE; AMENDING SECTION 61-3-456, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND FOR APPLICARILITY.

HeinOnline -- 1997 vol. III 2897 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-3-456, MCA, is amended to read:

**"61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.** (1) ~~An~~ *As an incentive for military service, an* owner of a motor vehicle who is a Montana resident ~~on~~ *who entered* active military duty *from Montana* and *who is* stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who *meets the qualifications of subsection (1) and* is on active military duty and stationed outside Montana.

(2) The registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes described in 61-3-303(2)(b);

(b) assessment under 15-8-202 or 61-3-503; or

(c) any of the fees provided in part 5 of this chapter."

**Section 2. Applicability.** [This act] does not apply to military registrations under 61-3-456 that were issued by the department of justice prior to [the effective date of this act]. Military registrations issued under 61-3-456 that no longer qualify expire December 31, 1997.

**Section 3. Effective date.** [This act] is effective on passage and approval.

Approved May 1, 1997

# CHAPTER NO. 510

[HB 555]

AN ACT EXTENDING THE 30 CENTS PER GALLON TAX INCENTIVE FOR PRODUCTION OF ALCOHOL; LIMITING TO $3 MILLION THE MAXIMUM AMOUNT PAYABLE TO A PRODUCER; AND AMENDING SECTION 15-70-522, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-70-522, MCA, is amended to read:

HeinOnline -- 1997 vol. III 2898 1997

**"15-70-522. (Temporary) Tax incentive for production of alcohol — written plan required — reservation of incentives — rules.** (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

(i) was blended with gasoline for sale as gasohol in Montana;

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol; or

(iii) was used in the production of ethyl tertiary butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) (a) Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is 30 cents per gallon for each gallon that is 100% produced from Montana products, with the amount of the tax incentive per gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol.

(b) Beginning July 1, ~~2001~~ *2005*, there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period beginning April 1, 1985.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed $3 million in any consecutive 12-month period ~~beginning April 1, 1985~~.

(5) An alcohol distributor who begins production after July 1, 1991, may not receive tax incentive payments under subsection (2) unless the distributor has provided a written plan to the department of transportation at least 18 months before the distributor's anticipated collection of the tax incentives. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of alcohol;

(b) the anticipated source of agricultural products used in the production of alcohol; and

(c) the anticipated time, quantity, and duration of production of alcohol.

(6) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5).

(7) (a) Except as provided in subsection (7)(b), the department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and

HeinOnline -- 1997 vol. III 2899 1997

duration of production. Payment of the alcohol tax incentives must be based on actual production.

(b) No later tban 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection *(7)* if the department determines that the alcohol distributor has not materially complied with the written plan.

(8) A new tax incentive payment may not be made if the total tax incentive estahlished in subsection (3) has been reserved or paid. If an alcobol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or cancelod is available for reservation as provided in subsection (7)(a).

(9) The department shall prescribe rules necessary to carry out the provisions of this section. (Terminates July 1, 1997—sec. 2, Ch. 592, L. 1993.)

**15-70-522. (Effective July 1, 1997) Tax inccntive for production of alcohol — written plan required — reservation of incentives — rules.** (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol tbat:

(i) was blended with gasoline for sale as gasohol in Montana;

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol; or

(iii) was used in the production of ethyl butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) and (4), tlie tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is:

~~(a) beginning July 1, 1983, 70 cents per gallon;~~

~~(b) beginning April 1, 1985, 50 cents per gallon;~~

~~(c) beginning April 1, 1987,~~ 30 cents per gallon~~;~~ *for each gallon that is 100% produced from Montana products, with the amount of the tax incentive per gallon reduced proportionately, based upon the amount of agricultural or wood products not produced in Montana that is used in the production of the alcohol,* and ~~(d)~~ beginning July 1, ~~2001~~ *2005,* ~~and thereafter,~~ there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for tbe incentive under this part may not exceed $6 million in any consecutive 12-month period ~~beginning April 1, 1985~~.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed ~~$1.5~~ *$3* million in any consecutive 12-month period ~~beginning April 1, 1985~~.

HeinOnline -- 1997 vol. III 2900 1997

(5) An alcohol distributor who begins production after July 1, 1991, may not receive tax incentive payments under subsection (2) unless ~~he~~ *the distributor* has provided a written plan to the department of transportation at least 18 months before ~~his~~ *the distributor's* anticipated collection of the tax incentives. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of gasohol;

(b) the anticipated source of agricultural products used in the production of gasohol; and

(c) the anticipated time, quantity, and duration of production of gasohol.

(6) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5).

(7) (a) Except as provided in subsection (7)(b), the department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production. Payment of the alcohol tax incentives must be based on actual production.

(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection *(7)* if the department determines that the alcohol distributor has not materially complied with the written plan.

(8) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (7)(a).

(9) The department shall prescribe rules necessary to carry out the provisions of this section."

Approved May 1, 1997

# CHAPTER NO. 511

[HB 83]

AN ACT ALLOWING AND PROVIDING FOR THE REGULATION OF PRIVATE CORRECTIONAL FACILITIES; SPECIFYING THE DEPARTMENT OF CORRECTIONS DUTIES AND RESPONSIBILITIES; SPECIFYING THE DUTIES NOT DELEGABLE TO A CONTRACTOR; SPECIFYING THE REQUIREMENTS OF REQUESTS FOR PROPOSALS; SPECIFYING CERTAIN REQUIREMENTS OF CONTRACTS; SPECIFYING CONTRACTOR RESPONSIBILITY FOR CERTAIN COSTS; PROVIDING FOR LICENSURE OF FACILITIES; SPECIFYING ACTION BY THE DEPARTMENT FOR CONTRACTOR FAILURE TO COMPLY WITH LAW OR

HeinOnline -- 1997 vol. III 2901 1997

TO RENEW CONTRACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of corrections in adopting rules under [section 4]. It is the intent of the legislature that rules adopted by the department ensure public participation in the siting of a private correctional facility, ensure that the desigu and construction of a private correctional facility be reviewed and approved by the department of administration, and provide that the management and operation of a private correctional facility substantially conform with recognized correctional standards, such as the American correctional association standards and national commission on correctional health care standards.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Policy.** It is the policy of tlie state of Montana to encourage innovative methods to provide the correctional resources necessary to confine persons convicted of crimes. The state recognizes that there may be benefits to confining convicted persons in private correctional facilities operated consistently with public policy.

**Section 2. Definitions.** As used in [sections 1 through 11], the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) (a) "Private correctional facility" means a correctional facility that is either privately operated or privately owned and operated. Tlie term includes a regional correctional facility, as defined in 53-30-503, if privately operated or privately owned and operated.

(b) The term does not include a private detention center or a regional jail governed by Title 7, chapter 32, part 22.

**Section 3. Private correctional facilities — confinable persons.** (1) An individual, corporation, partnership, association, or other private organization or entity may not construct or operate a private correctional facility unless licensed by the department. A license is nontransferable.

(2) A person convicted in another state may not be confined in tlie portion of a private correctional facility in this stato that is used for the incarceration of convicted felons for a torm of over 1 year unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.

**Section 4. Department duties and responsibilities — rulemaking authority.** (1) (a) The department shall adopt administrative rules that include the minimum applicable standards for the siting, construction, operation, and physical condition of a private correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a private correctional facility.

(b) Tlie administrative rules must require that a private correctional facility conform to applicable American correctional association and national commission on correctional health care standards for the facility and achieve

accreditation from the American correctional association and national commission on correctional health care within 3 years from the date the facility begins operation.

(c) The administrative rules must provide for review and approval of facility design and construction by the department of administration.

(2) Within 90 days of [the effective date of this act] and on a biennial basis, the department shall publish a description of the long-range correctional needs, objectives, and goals of the department and the state.

(3) The department shall at least annually inspect each private correctional facility to determine compliance with [sections 1 through 11], applicable American correctional association and national commission on correctional health care standards, department rules, and contract requirements.

(4) The department shall present a biennial report of compliance inspections to the legislature.

**Section 5. Requirements of request for proposals.** (1) Prior to contracting for services with a private correctional facility, the department shall publish a request for proposals. The request for proposals must include a description of the long-range correctional needs, objectives, and goals of the department and the state.

(2) The request for proposals must include and identify the services requested and required and other information, including but not limited to:

(a) the physical plant, facility, and perimeter, including:

(i) the facility capacity and inmate population, including classification levels accepted;

(ii) inmate housing; and

(iii) security, safety, and emergency procedures;

(b) who is responsible for transportation of inmates:

(i) among facilities;

(ii) upon an inmate's release, including discharge or parole;

(iii) for court and administrative proceedings such as parole hearings and inmate participation as a witness;

(iv) for medical transportation; and

(v) for security;

(c) administration of the facility, including but not limited to:

(i) the organizational structure and staffing; and

(ii) a policy and procedures manual addressing:

(A) inmate discipline;

(B) incident reporting;

(C) grievance procedures;

(D) searches;

(E) drug testing;

(F) monitoring of facility standards; and

(G) the retention and maintenance of inmate and facility records by the private correctional facility;

(d) staffing issues regarding:

(i) management;

(ii) security;

(iii) administrative personnel;

(iv) qualifications and requirements;

(v) training; and

(vi) staff-to-inmate ratios;

(e) inmate needs such as food, clothing, sanitation, hygiene, and laundry;

(f) programs and services to be required such as vocational and educational training, religious services or customs, counseling, recreation, and canteen;

(g) medical, dental, optical, pharmaceutical, psychological, and other medical-related care;

(h) insurance requirements;

(i) indemnification;

(j) a performance bond that is sufficient to protect the state from damages upon default or nonperformance and that may not exceed the biennial amount of the compensation to be paid to the contracter;

(k) a requirement that proposers provide evidence or documentation demonstrating an ability to provide the services, to comply with acceptable services, and to comply with the rules, regulations, and contract requirements;

(l) a requirement that proposers provide documentation of financial stability or security; and

(m) monitoring of facility operations.

(3) The department may release separate requests for proposals or contracts for specific services such as transportation of inmates and medical, dental, vision, and sick call services. Each contract must include a detailed explanation of the services that must be provided.

HeinOnline -- 1997 vol. III 2904 1997

(4) The department shall maintain a list of qualified applicants and all proposal responses. The department shall retain all records related to the evaluation process and the awarding of a contract.

**Section 6. License — inspection.** (1) The department shall grant a license to a private correctional facility determined by the department to conform to [sections 1 through 11] and department rules.

(2) The department may grant a temporary license for 1 year to a facility that loses accreditation if the department determines that the facility is making satisfactory progress toward substantial conformity with [sections 1 through 11], applicable American correctional association and national commission on correctional health care standards, as determined by the department by administrative rule, department rules, and contract requirements and that the interests and well-being of the residents of the state and of the persons to be confined in the facility are protected. A temporary license may not be renewed.

(3) Except as provided in subsection (2), the department may not grant a license unless the contractor conforms to all state and federal statutes, applicable American correctional association and national commission on correctional health care standards, as determined by the department by administrative rule, department rules, and other requirements as defined in administrative rule. During the initial 3-year period of a contract, a private correctional facility is not required to be accredited by the American correctional association or the national commission on correctional health care in order to be granted a license by the department.

(4) The department may not grant a license to a private correctional facility unless the department determines that the facility conforms to the long-range correctional needs, objectives, and goals of the department and state.

(5) The department may not grant a license to a private correctional facility until the owner or operator of the facility has provided the department with proof of indemnity insurance that appropriately indemnifies the state and that is acceptable to the department.

(6) The department may not grant a license to a private correctional facility unless the facility is constructed in accordance with American correctional association facility construction requirements. In addition, the private correctional facility shall comply with any other applicable local, state, or federal laws or regulations.

(7) The department may not grant a license to a private correctional facility unless the facility has promulgated a policy to provide reasonable access to the facility by representatives of the public media.

(8) The department may not grant a license to a private correctional facility unless the facility has entered into an agreement with local and state law enforcement authorities. The private correctional facility shall demonstrate an adequate response for the mutual aid, assistance, and notification in the event of an escape, riot or disturbance, natural or human-caused event, or other act that may potentially affect public safety.

HeinOnline -- 1997 vol. III 2905 1997

(9) The department may not grant a license to a private correctional facility unless the legislature has appropriated funds for the housing of state inmates in private correctional facilities.

(10) The department shall at least annually inspect each private correctional facility to determine compliance with [sections 1 through 11] and department rules.

**Section 7. Licensure limitations — siting of private correctional facilities.** (1) The department may not grant a license to a private correctional facility located within 1 mile of a public or nonpublic school, not including a home school. However, if a public or nonpublic school is established after a facility has been approved, the department may not prevent the private correctional facility from operating because of this subsection (1).

(2) The department may not grant a license to a private correctional facility unless there bas been a public hearing in the county in which the private correctional facility is to be located and unless the county commissioners approve the location of the private correctional facility by a majority vote. If the proposed facility is to be located within the limits of a municipality, the department may not grant a license to a private correctional facility unless there has been a public hearing in the municipality and the local governing body approves the location of the private correctional facility by a majority vote.

(3) If the siting of a private correctional facility is proposed within 7 1/2 miles of an adjacent county or if the department determines that there are reasonable expectations tbat the siting may have a significant impact on an adjacent county, the department may not grant a license to a private correctional facility unless there has been a public hearing in the adjacent county and unless the concerns of the adjacent county have been considered.

**Section 8. Contracts with owners or operators of private correctional facilities.** (1) Upon request of the legislative audit committee, the legislative audit division shall review the procedures by which a contract was awarded and sball review each contract prior to execution to determine if the contract includes the requirements provided in [sections 1 through 11].

(2) A contract with an owner or operator of a private correctional facility must be awarded to the contractor who best meets the needs of the state and the department and demonstrates the capability of providing services requested.

(3) A contract must specify the type and level of services to be provided by the contractor. The contract must provide that a private contractor may not:

(a) choose the correctional facility to which an inmate is initially or subsequently assigned. A contractor may request the department to transfer an inmate to a state facility or to another private correctional facility.

(b) develop or adopt disciplinary rules that differ from the disciplinary rules, penalties, and policies of the department;

(c) make a decision that affects the sentence imposed on an inmate or the time served by an inmate;

HeinOnline -- 1997 vol. III 2906 1997

(d) make recommendations to the board of pardons and parole with respect to the denial or granting of parole or release, except to submit reports to the board of pardons and parole and to respond to requests by the department or the board of pardons and parole;

(e) develop or implement requirements that inmates engage in any type of work, except to the extent that those requirements are accepted by the department;

(f) determine inmate eligibility for any form of release from a correctional facility; or

(g) use an inmate classification system unless it is approved by the department.

(4) Contracts may not exceed a term of 30 years and must contain provisions for renegetiation after 30 years. The provisions of 18-3-104 and 18-4-313 that limit the term of a contract do not apply to a contract authorized by this section.

(5) The contract must specify that the private correctional facility shall grant access to the legislative audit division or a person contracting with the legislative audit division for compliance auditing. The contractor shall provide access to all areas of the facility and to all records maintained onsite or offsite that pertain to all aspects of the facility, including but not limited to operation, financial, and inmate records.

**Section 9. Contractor costs responsibility.** (1) The contractor is responsible for costs incurred by the state or any political subdivision of the state for legal costs relating to escapes, riots or disturbances, or other natural or human-caused events that occur at the facility because of the contractor's negligence, errors, omissions, intentional acts, or failure to comply with the terms of the contract.

(2) The contractor is responsible for all reasonable costs and expenses incurred by the state or a political subdivision of the state for defense of causes of action brought by or on behalf of an inmate that accrue while an inmate is incarcerated at a private correctional facility.

(3) The provisions of [sections 1 through 11] are not intended to create a private or public cause of action for any person, partnership, corporation, or other entity, including any inmate housed within any private correctional facility or any inmate housed within the state of Montana.

**Section 10. Restrictions on inmate movements.** An inmate may not leave the secure premises of a private correctional facility except to comply with a court order, to receive medical care that is not available at the private correctional facility, or as part of a work program without the express written approval of the department. Any movement of an inmate outside of the secure premises of the private correctional facility must be in compliance with approved policies and procedures established by the department.

**Section 11. Failure to comply with law — action by department.** (1) A contractor shall remain in strict compliance with [sections 1 through 11], established applicable American correctional association and national commission on correctional health care standards, as determined by the

HeinOnline -- 1997 vol. III 2907 1997

department by administrative rule, department rules, and contract requirements.

(2) If the department determines at any time that a private correctional facility does not conform to [sections 1 through 11], applicable American correctional association and national commission on correctional health care standards, department rules, and contract requirements, the department shall notify the chief executive officer and the owner or operator, or both, of the private correctional facility. The notice must state the deficiencies and order that they be remedied within a specified period of time not to exceed 1 year. If the deficiencies are not remedied within that time, the department may hold a contested case hearing under Title 2, chapter 4, and if the department finds that suspension or revocation is warranted by nonconformance with [sections 1 through 11], applicable American correctional association and national commission on correctional health care standards, department rules, and contract requirements, the department may suspend or revoke the facility's license.

(3) If a private correctional facility fails to comply with [sections 1 through 11], applicable American correctional association and national commission on correctional health care standards, department rules, or contract requirements within the specified time period, the state may assume control of the facility for the purpose of protecting the inmates, facility staff, or the public. If the state assumes control of the facility, the department shall suspend payment for any services, and the department assumes the costs of assuming control.

(4) The department may assume emergency control of a private correctional facility if substantial violations exist that affect the life, health, or safety of the inmates, facility employees, or the public or that otherwise substantially impact the security of the private correctional facility.

(5) In the event that a contractor fails to comply with [sections 1 through 11], applicable American correctional association and national commission on correctional health care standards, department rules, or contract requirements, the state may retain the option of purchasing or leasing the facility.

(6) If either the state or the contractor fails to renew a contract, the state may retain the option of purchasing or leasing the facility.

(7) If the state retains the option of purchasing or leasing the facility under subsections (5) and (6) of this section, because it requires the creation of state debt, the appropriation bill that funds the purchase of services from the facility must be treated in the same manner as a bill creating state debt and requires a vote of two-thirds of the members of each house of the legislature for passage.

**Section 12. Codification instruction.** [Sections 1 through 11] are intended to be codified as a new part in Title 53, chapter 30.

**Section 13. Applicability.** (1) [This act] applies to proceedings begun or contracts renewed on or after [the effective date of this act].

(2) [Section 7] does not apply to a private correctional facility that has been established prior to [the effective date of this act].

HeinOnline -- 1997 vol. III 2908 1997

**Section 14. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 512

[HB 100]

AN ACT REVISING THE PUNISHMENT FOR DRIVING UNDER THE INFLUENCE AND FOR DRIVING WITH AN ALCOHOL CONCENTRATION IN EXCESS OF 0.10; AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-714, MCA, is amended to read:

**"61-8-714. Penalty for driving under influenee of aleohol or drugs.** (1) Except as provided in subsections (8) and (9), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (8), on a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (8), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) (a) Except as provided in subsection (8), on the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third offense that occurred within 5 years of the first offense may not be suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appoars that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a porson other than the owner while the vehicle was unlawfully in the possession of a

HeinOnline -- 1997 vol. III 2909 1997

person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

~~(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.~~

~~(5)~~*(4)* In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug treatment, or both, must be ordered for a first-time offender upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of corrections. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors. On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or counselor may not require attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend the information course or treatment program, the counselor shall notify the court of the failure.

~~(6)~~*(5)* For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture

HeinOnline -- 1997 vol. III 2910 1997

of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture bas not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

~~(7)~~*(6)* For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

~~(8)~~*(7)* The court may order that a torm of imprisonment imposed ~~under this section~~ *for a first, second, or third offense* be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility inay be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

~~(9)~~*(8)* Except for the initial 24 hours on a first offense or the initial 48 hours on a second or ~~subsequent~~ *third* offense, the court may order that a term of imprisonment imposed ~~under this section~~ *for a first, second, or third offense* be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

~~(10)~~*(9)* A court may not defer imposition of sentence under this section."

**Section 2.** Section 61-8-722, MCA, is amended to read:

**"61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (9), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not inore than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (9), on a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) (a) Except as provided in subsection (9), on a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

HeinOnline -- 1997 vol. III 2911 1997

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

~~(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. Except as provided in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.~~

~~(5)~~*(4)* The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

~~(6)~~*(5)* In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both, in accordance with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

~~(7)~~*(6)* For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

~~(5)~~*(7)* For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.

HeinOnline -- 1997 vol. III 2912 1997

~~(9)~~*(8)* The court may order that a term of imprisonment imposed ~~under this section~~ *for a first, second, or third offense* be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

~~(10)~~*(9)* Except for the initial 24 hours on a first offense or the initial 48 hours on a second or ~~subsequent~~ *third* offense, the court may order that a term of imprisonment imposed ~~under this section~~ *for a first, second, or third offense* be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

~~(11)~~*(10)* A court may not defer imposition of sentence under this section."

**Section 3. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense.** (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(a) imprisonment for a term of not less than 6 months or more than 13 months, the imposition or execution of which may not be suspended, and during which the person is not eligible for parole;

(b) probation for a term of not less than 1 year or more than 4 years; and

(c) a fine of not less than $1,000 [$1,500] or more than $10,000.

(2) The court shall, subject to sentencing restrictions:

(a) specify one of the following facilities as the initial place in which the term of imprisonment must be served:

(i) a state prison;

(ii) a regional correctional facility;

(iii) a county jail;

(iv) a boot camp, provided the prior approval of the department of corrections has been obtained; or

(v) a prerelease center, provided the prior approval of the department of corrections has been obtained; or

(b) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and

(c) order a person who is financially able to pay the costs of imprisonment and probation under this section and of the information course and treatment under [section 9 of House Bill No. 559].

(3) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society;

(f) treatment in a state-approved public or private treatment facility; or

(g) any combination of the restrictions or conditions listed in subsections (3)(a) through (3)(f).

(4) (a) Following initial placement of a defendant in a boot camp or a prerelease center under subsection (2)(a), the department of corrections may, at its discretion, place the offender in another facility or program.

(b) The department of corrections may order all or any portion of the term of probation to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the probation.

(5) If a violation of the restrictions or conditions of the probation is established, the court may continue the period of probation or may require the defendant to serve the remainder of the probation sentence in one of the facilities set forth in subsection (2)(a) or (2)(b). The court may credit the remainder of the probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part of the time already served on probation.

**Section 4. Coordination.** (1) If House Bill No. 559 and [this act] are passed and approved, then subsection (1) of the coordination instruction in House Bill No. 559 is void, the bracketed references to "section 13" in House Bill No. 559 are replaced with a reference to [section 3] of House Bill No. 100, and [section 13], inserted by the coordination instruction in House Bill No. 559, is replaced with [section 3] of [this act].

(2) If House Bill No. 208 and [this act] are both passed and approved, then the bracketed amount in [section 3] is effective.

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

HeinOnline -- 1997 vol. III 2914 1997

# CHAPTER NO. 513

[HB 101]

AN ACT INCREASING THE AGGREGATE VALUE OF A CONSTRUCTION PROJECT THAT MAY BE PERFORMED BY INMATE LABOR FROM $25,000 TO $200,000 FOR EACH PROJECT; EXEMPTING THE PROJECTS FROM THE PROVISIONS OF TITLE 18, CHAPTER 2, FOR CONSTRUCTION, PUBLIC BIDDING, BONDING, AND CONTRACTS AND EXEMPTING INMATES WHO PROVIDE LABOR ON THE PROJECTS FROM THE LABOR AND WAGE REQUIREMENTS OF TITLE 18, CHAPTER 2, PART 4; ALLOWING THE USE OF INMATE LABOR FOR CONSTRUCTION PROJECTS APPROVED BY THE LEGISLATURE AT THE MONTANA STATE PRISON; AMENDING SECTION 53-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 53-1-301, MCA, is amended to read:

**"53-1-301. Permitted institutional industries, powers of departments, and incentive pay to inmates.** (1) Except as provided in subsection (4), the department of corrections or the department of public health and human services may:

(a) establish industries in institutions that will result in the production or manufacture of products and the rendering of services as may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by institutions and distribute tbe catalogs;

(e) fix the sale price for goods produced or manufactured at institutions. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require institutions to purchase needed goods from other institutions;

(g) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(h) provide for construction projects, up to the aggregate sum of ~~$25,000~~ *$200,000* ~~per~~ *for each* project, performed by residents of institutions~~, except when the construction work is covered by a collective bargaining agreement~~;. *The department of administration may:*

*(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and*

*(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (2).*

(i) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(j) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(k) sell manufactured or agricultural products and livestock on the open market;

(l) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(m) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate or resident is working;

(n) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(o) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) (a) Except as provided for in subsection (2)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for each program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(3) Premiums for workers' compensation and occupational disease coverage must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company

contracting with the federally certified prison industries program for services and products.

(4) Except as provided in subsection (5), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(5) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

**Section 2. Authorization of inmate labor for designated construction projects — exemptions.** (1) The department of corrections is authorized to use inmate labor for the purpose of construction projects at the Montana state prison that are authorized by the legislature.

(2) The department of administration shall provide for construction of the projects authorized by this section, which are to be built by the lowest responsible bidder, with contract specifications to allow the use of inmate labor. The percentage of inmate labor must be determined prior to the advertising for bid of the projects through negotiations among the department of corrections, the department of administration, representatives of construction industry employers, and representatives of the building trades.

**Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 4. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 2].

**Section 5. Coordination instruction.** If Senate Bill No. 2 is passed and approved and if it includes sections that amend 53-1-301 and 53-30-132, then [section 1 of this act], amending 53-1-301, is void and section 53-30-132(1)(i) must read as follows:

"(i) provide for construction projects, up to the aggregate sum of $200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5)."

**Section 6. Effective date — applicability.** [This act] is effective on passago and approval and applies to contracts for construction projects entered into on or after [the effective date of this act].

Approved May 2, 1997

HeinOnline -- 1997 vol. III 2917 1997

# CHAPTER NO. 514

[HB 129]

AN ACT GENERALLY REVISING THE LAW RELATING TO CHILD PROTECTIVE SERVICES; CLARIFYING DEFINITIONS; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES MAY NOT BE ORDERED TO SUPERVISE VISITATION; LIMITING THE REQUIREMENT FOR FOSTER CARE LICENSING; AMENDING SECTIONS 40-4-218, 40-8-111, 41-3-102, 41-3-201, 41-3-202, 41-3-204, 41-3-205, 41-3-609, 41-3-1102, 41-3-1141, AND 41-3-1142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-4-218, MCA, is amended to read:

"**40-4-218. Judicial supervision.** (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including the child's education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or the child's emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development significantly impaired, the court may order ~~the~~ *supervised visitation by the noncustodial parent. The court may not order the* department of public health and human services ~~to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out~~ *to supervise the visitation*."

**Section 2.** Section 40-8-111, MCA, is amended to read:

"**40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child; endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children, toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in ~~41-3-102(7)(e)~~ *41-3-102*;

(iv) who has caused the child to be maintained by any public or private children's institution, any charitable agency, or any licensed adoption agency or the department of public health and human services of the state of Montana for a period of 1 year without contributing to the support of the child during that period, if able;

(v) if it is proved to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and the guardian has authority by order of the court appointing the guardian to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to the agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in the agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall consent to adoption and a certified copy of its order must be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of public health and human services or of an agency or witnessed by a representative of the court."

**Section 3.** Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, ~~or~~ foster parent *or an adult who resides in the same home in which the child resides*;

(b) a ~~staff~~ person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person ~~legally~~ responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care *or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33*, including the prevention of the withholding of

HeinOnline -- 1997 vol. III 2919 1997

medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent *or legal guardian*, due to religious beliefs, does not provide ~~medical~~ *adequate health* care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare; or

(ii) threatened harm to a child's health or welfare.

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

*(7) "Emotional abuse" means injury to the emotional well-being or intellectual or psychological capacity of a child, as evidenced by an identifiable and substantial impairment of a child's physical, mental, or emotional ability to function.*

~~(7)~~*(8)* "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or ~~mental injury~~ *emotional abuse*;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes *malnutrition or* failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

*(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk;*

~~(e)~~*(f)* abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or willfully surrenders physical custody for a period of 6 months and during that period does not manifest to the child and the person

HeinOnline -- 1997 vol. III 2920 1997

having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

~~(f)~~*(g)* is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

~~(8)~~*(9)* "Limited emancipation" means a status conferred on a youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.~~

(10) "Parent" means a biological or adoptive parent ~~or stepparent~~.

(11) "Physical ~~injury"~~ *abuse"* means ~~death,~~ *substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, intentional burns, bone fractures, extreme pain,* permanent or temporary disfigurement, ~~or~~ impairment of any bodily organ or function, *or death if the injury or death is not accidental.* ~~The term includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.~~

*(12) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.*

*(13) "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.*

~~(12)~~*(14)* (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent.

~~(13)~~*(15)* "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(14)~~*(16)* "Social worker" means an employee of the department who, prior to the employee's field assignment, has been educated or trained or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

~~(15)~~*(17)* "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

HeinOnline -- 1997 vol. III 2921 1997

~~(16)~~*(18)* (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversihly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of tbe survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(16)~~ *(18)*, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

~~(17)~~*(19)* "Youth in need of care" means a youth who is abused or neglected."

**Section 4.** Section 41-3-201, MCA, is amended to read:

**"41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services or its local affiliate~~, which then shall notify the county attorney of the county where the child resides~~.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

HeinOnline -- 1997 vol. III 2922 1997

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, *staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program,* or ~~any other~~ *an* operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) clergy; or

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect.

(3) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a repert as required in this section on the grounds of a physician-patient or similar privilege.

(b) A clergyperson or priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the clergyperson or priest in that person's capacity as a clergyperson or priest;

(ii) the statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of the clergyperson's or priest's church or congregation; and

(iii) tbe person who made the statement or confession does not consent to the disclosure by the clergyperson or priest.

(c) A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) Tbe reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and tbe nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of tbe injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

HeinOnline -- 1997 vol. III 2923 1997

**Section 5.** Section 41-3-202, MCA, is amended to read:

**"41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into *the circumstances surrounding the allegations of abuse or neglect of the child, which may include an investigation at* the home of the child involved, *the child's school or day-care facility,* or any other place where the child is present~~, into the circumstances surrounding the injury of the child,~~ and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for *state or* federal assistance programs or to comply with the provisions of 41-3-406.

(2) An initial investigation ~~into the home of the child~~ *of alleged abuse or neglect* may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the ~~public~~ school attended by the child involved may participate in any interview of the child ~~if the child is enrolled in kindergarten through 8th grade~~.

(4) If the child's interview is videotaped, an unedited videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation ~~it appears~~ *the department has reasonable cause to suspect* that the child suffered abuse or neglect, the department ~~shall~~ *may* provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall ~~advise the county attorney and~~:

*(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and*

*(ii) notify* the child's family of its investigation *and determination, unless the notification can reasonably be expected to result in harm to the child or other person.*

(b) If from the investigation it ~~appears~~ *is determined* that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department *and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations*

HeinOnline -- 1997 vol. III 2924 1997

*of abuse or neglect* shall destroy all *of their* records concerning the report and the investigation. The destruction must be completed within ~~30~~ *30* days of the determination that the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system ~~containing~~ *documenting investigations and determinations of* child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department~~,~~ *through* its local ~~affiliate, and the county attorney of the county in which the facility is located~~ *office*."

**Section 6.** Section 41-3-204, MCA, is amended to read:

"**41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section must be paid hy the department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, the person shall include in the report either a written description or photographs of the evidence.

(4) A physician, either in the course of providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after tbe repert is sent as is possible. If a confirmation report is not made, tbe evidence and the initial report must be destroyed as provided in ~~41-3-202(3)(b)~~ *41-3-202*."

**Section 7.** Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of public health and human services and its local affiliate, the county welfare department, the county attorney, and the court

concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records *or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement*;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or ~~will~~ *may* be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

HeinOnline -- 1997 vol. III 2926 1997

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 *or of a family group conference* for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection *(3)*(o) must be made in writing. Disclosure under this subsection *(3)*(o) is limited to information that indicates a risk to children, *persons with developmental disabilities, or older persons* posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203; or

(y) a member of a youth placement committee formed under the provisions of 41-5-525.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

**Section 8.** Section 41-3-609, MCA, is amended to read:

"**41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by the parents as set forth in ~~41-3-102(7)(c)~~ *41-3-102*;

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not heen successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of ~~the~~ *a* child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a ~~sibling~~ *child* ~~due to~~ *because of* proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors *or clinical psychologists* submit testimony that the parent ~~is so severely mentally ill that the parent~~ cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

(c) the death of a ~~sibling~~ *child* caused by abuse or neglect by the parent has occurred.

(5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication."

**Section 9.** Section 41-3-1102, MCA, is amended to read:

**"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a ~~licensed~~ youth ~~foster home~~ *care facility*.

~~(4) "Operator of a youth care facility" means a person owning or operating a youth care facility into which the operator takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance the operator receives money or other consideration of value and~~

~~which child is neither the operator's son, daughter, nor ward, except that this part does not apply when any person accepts the care and custody of a child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of the child.~~

~~(5)~~*(4)* "Person" means any individual, partnership, voluntary association, or corporation.

~~(6)~~*(5)* "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of tbe home.

~~(7)~~*(6)* "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

~~(6)~~*(7)* "Substitute care" means full-time care of *a* youth in a residential setting ~~for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian~~ *who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental disabilities, mental health, or medicaid home- and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.*

~~(6)~~*(8)* "Youth care facility" means a facility licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, and child-care agencies.

~~(10)~~*(9)* "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(11)~~*(10)* "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth."

**Section 10.** Section 41-3-1141, MCA, is amended to read:

**"41-3-1141. License required.** ~~No~~ *(1) A* person ~~shall~~ *may not* maintain or operate a youth care facility for any child or children within the meaning of this part without first securing a license ~~in writing~~ from the department.

*(2) A kinship care provider who provides unlicensed care for a child placed pursuant to the legal authority of the department must receive approval in writing from the department.*

*(3) An extended family member, as defined by the department, who provides unlicensed care for a youth who receives services provided through the*

HeinOnline -- 1997 vol. III 2930 1997

*department's developmental disabilities program, mental health program, or medicaid home- and community-based services waiver program must receive approval in writing from the department.*

*(4)* ~~No~~ *The department may not charge a* fee ~~shall be charged~~ for ~~such~~ *a* license *or approval granted under this section.*"

**Section 11.** Section 41-3-1142, MCA, is amended to read:

"**41-3-1142. Issuance of license — authority of issuing agency — *rules.*** *(1)* The department ~~is hereby authorized to~~ *may* issue licenses to persons operating youth care facilities *or grant approval of kinship or extended family care providers* and ~~to~~ prescribe the conditions upen which ~~such~~ licenses ~~shall~~ *and approvals may* be issued. ~~and to~~ *The department may* make ~~such~~ rules ~~as it may deem advisable~~ *necessary* for the *licensure or approval,* operation, and regulation of ~~such~~ *those* facilities ~~for minor children~~ consistent with the welfare of ~~such children~~ *the residents.*

*(2)* ~~Such licensing agency shall have the power and authority to~~ *The department may* inspect all ~~such~~ licensed facilities ~~through its duly authorized representatives and to cancel~~ *or approved homes and, as appropriate, undertake action, including but not limited to the revocation of* licenses ~~theretofore issued for the failure to observe such rules~~ *and approvals.*

*(3)* The person ~~operating such homes~~ *providing care in the facilities or homes* shall give ~~to such representative such~~ *the department any* information ~~as~~ *that* may be required and afford ~~him~~ *the department* every reasonable opportunity for observing the operation of ~~such~~ *the facilities or* homes."

**Section 12. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 515

[HB 146]

AN ACT EXEMPTING A PERSON PLACED AS A PARTICIPANT IN A PUBLIC ASSISTANCE PROGRAM AUTHORIZED BY TITLE 53 INTO A WORK SETTING FOR THE PURPOSE OF DEVELOPING EMPLOYMENT SKILLS FROM WAGE AND HOUR REQUIREMENTS; EXEMPTING CHILD FOSTER CARE PROVIDERS FROM WAGE AND HOUR AND WORKERS' COMPENSATION REQUIREMENTS; DEFINING A PERSON PLACED AS A PARTICIPANT IN A PUBLIC ASSISTANCE PROGRAM AUTHORIZED UNDER TITLE 53 INTO A WORK SETTING AS AN EMPLOYEE FOR WORKERS' COMPENSATION PURPOSES ONLY AND REQUIRING WORKERS' COMPENSATION COVERAGE; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REIMBURSE PRIVATE AND LOCAL GOVERNMENTAL EMPLOYERS FOR THE COSTS OF WORKERS' COMPENSATION COVERAGE; AMENDING SECTIONS 39-3-406, 39-71-118, AND 53-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HeinOnline -- 1997 vol. III 2931 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-3-406, MCA, is amended to read:

**"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in compotitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508;

*(o) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.*

*(p) a person serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.*

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated

HeinOnline -- 1997 vol. III 2933 1997

for profit and not operated on a sharecrop hasis and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the husiness of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash hasis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargoining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective hargaining agreement when a collective bargaining unit represents the employee or by niutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day poriod must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

HeinOnline -- 1997 vol. III 2934 1997

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town."

**Section 2.** Section 39-71-118, MCA, is amended to read:

**"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined.** (1) The term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection *(1)*(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301; ~~and~~

(g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109, or a person who provides ambulance services under Title 7, chapter 34, part 1*; and*

*(h) a person placed at the employer's worksite as a participant in a public assistance program authorized by Title 53, chapter 4, parts 6 and 7, for workers' compensation purposes only. A person placed at an employer's worksite under Title 53, chapter 4, parts 6 and 7, may not be considered an independent contractor under 39-71-120. An employer may be reimbursed for the premium cost as provided in 53-4-603.*

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities; ~~or~~

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

*(d) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.*

HeinOnline -- 1997 vol. III 2936 1997

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice bas been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating tbe level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporato officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly

HeinOnline -- 1997 vol. III 2937 1997

compensation benefits, the electing employer may elect not less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (9)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(10) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (9)(b) or (9)(d) as a condition of approving the election under subsection (9)(d)."

**Section 3.** Section 53-4-603, MCA, is amended to read:

**"53-4-603. FAIM project — components.** (1) The aid to families with dependent children part of the FAIM project consists of three components referred to as the job supplement program, pathways, and the community services program.

HeinOnline -- 1997 vol. III 2938 1997

(2) The job supplement program is an alternative to the components of the FAIM project that provide cash assistance. An eligible family may receive assistance under the job supplement program instead of receiving assistance under pathways or the community services program or may receive assistance under the job supplement program either prior to or after receiving assistance under pathways or the community services program.

(3) Services that may be provided to eligible individuals in the job supplement program include:

(a) full medicaid benefits for dependent children, as provided in 53-6-101, and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(b) child-care assistance, as provided in 53-4-611 and as specified by the department by rule;

(c) assistance in obtaining child support; and

(d) a one-time only cash payment to meet special employment-related needs of the family. In order to receive a one-time cash payment, the family is required to agree not to apply for or receive cash assistance for a period of time based on the size of the one-time cash payment received.

(4) (a) Pathways may provide eligible individuals with job training and education; resource referrals; assistance in obtaining child support; one-time cash payments for special employment-related needs; child-care assistance, as provided in 53-4-611 and as specified by department rule; cash assistance payments; full medicaid benefits for dependent children, as provided in 53-6-101; and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, if waivers of federal law are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(b) A specified caretaker relative in a single-parent family may receive assistance under pathways for a maximum of 24 months. The 24 months do not need to be consecutive.

(c) Specified caretaker relatives in a two-parent family may receive assistance under pathways for a maximum of 18 months. The 18 months do not need to be consecutive.

(5) In the community services program, a specified caretaker relative who has received the maximum number of months of assistance allowable under pathways may continue to receive assistance for the specified caretaker relative's needs if the specified caretaker relative performs community service work as required by the department. A specified caretaker relative who performs community service work as required is entitled to cash assistance for the specified caretaker relative's needs and basic medicaid benefits, as provided in 53-6-101, if waivers of federal law are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits. Job training and education, resource referrals, and assistance in obtaining child

HeinOnline -- 1997 vol. III 2939 1997

support may also be provided if determined by the department to be appropriate. Child-care assistance may be provided as set forth in 53-4-611 and as specified by department rule.

(6) Failure of a caretaker relative to participate in community service work as required must result in the needs of the specified caretaker relative being removed from the cash assistance payment.

(7) A dependent child who meets all eligibility requirements for aid to families with dependent children may receive assistance under any component of the FAIM project without any time limits.

~~(8) The department shall furnish workers' compensation coverage, as provided in 39-71-118, for recipients in any component of the FAIM project who perform community service work or who participate in a work experience program.~~

*(8) The department may enter into an agreement to reimburse a private or local governmental employer for the premium cost of workers' compensation coverage for a participant of the program who is placed at the employer's worksite for developing employment skills."*

**Section 4. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 5. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 516

[HB 203]

AN ACT GENERALLY REVISING CHILD ABUSE AND NEGLECT LAWS; DEFINING BEST INTERESTS OF THE CHILD; PROVIDING FOR A PERMANENCY PLAN HEARING; AMENDING SECTIONS 40-8-111, 41-3-102, 41-3-202, 41-3-204, 41-3-303, 41-3-401, 41-3-403, 41-3-404, 41-3-406, 41-3-607, 41-3-609, 41-4-102, AND 41-5-530, MCA; REPEALING SECTIONS 41-3-410 AND 41-3-603, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 40-8-111, MCA, is amended to read:

**"40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

HeinOnline -- 1997 vol. III 2940 1997

incest, as provided in 45-5-507, if the victim was a child; endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children, toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102~~(7)(e)~~*(8)(e)*;

(iv) who has caused the child to be maintained by any public or private children's institution, any charitable agency, or any licensed adoption agency or the department of public health and human services of the state of Montana for a period of 1 year without contributing to the support of the child during that period, if able;

(v) if it is proved to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and the guardian has authority by order of the court appointing the guardian to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to the agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in the agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall consent to adoption and a certified copy of its order must be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of public health and human services or of an agency or witnessed by a representative of the court."

**Section 2.** Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent *or an adult who resides in the same home in which the child resides*;

(b) a staff person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent *or guardian*, due to religious beliefs, does not provide medical care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent ~~or~~ substantial risk of *serious* harm to the child.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

*(4) "Best interests of the child" means the physical, mental, and emotional conditions and needs of the child and any other factor considered by the court to be relevant to the child.*

~~(4)~~*(5)* "Child" or "youth" means any person under 18 years of age.

~~(5)~~*(6)* (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare; or

(ii) threatened harm to a child's health or welfare.

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

~~(6)~~*(7)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(7)~~*(8)* "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care,

though financially able to do so or offered financial or other reasonable means to do so;

(e) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or willfully surrenders physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(f) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the ~~parents~~ *parent or other person* have failed.

~~(8)~~*(9)* "Limited emancipation" means a status conferred on a youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(9)~~*(10)* "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

~~(10)~~*(11)* "Parent" means a biological or adoptive parent or stepparent.

*(12) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-135, 40-6-234, 40-8-109, 40-8-117, or part 6 of this chapter.*

~~(11)~~*(13)* "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function. The term includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

~~(12)~~*(14)* (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent *or other person responsible for the child's welfare.*

~~(13)~~*(15)* "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(14)~~*(16)* "Social worker" means an employee of the department who, ~~prior to~~ *before* the employee's field assignment, has been educated or trained or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

HeinOnline -- 1997 vol. III 2943 1997

~~(15)~~*(17)* "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

*(18) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.*

~~(15)~~*(19)* (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(16)~~ *(19)*, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children ~~over~~ 1 year of age *or older*.

~~(17)~~*(20)* "Youth in need of care" means a youth who is abused or neglected."

**Section 3.** Section 41-3-202, MCA, is amended to read:

**"41-3-202. Action on reporting.** (1) Upon receipt of a report, as required by 41-3-201, that a child is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of ~~41-3-406~~ *[section 10]*.

HeinOnline -- 1997 vol. III 2944 1997

(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, tbe investigation must within 48 hours develop independent, corrohorative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, bas the right of access to the child for interviews, photographs, and securing physical evidence and bas the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the cbild if the child is enrolled in kindergarten through 8th grade.

(4) If the child's interview is videotaped, an unedited videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall advise the county atterney and the child's family of its investigation.

(b) If from the investigation it appears that the child has not suffered ahuse or neglect and the initial report is determined to be unfounded, the department shall destroy all records concerning the report and tbe investigation. The destruction must be completed within 20 days of the determination tbat the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system containing child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the repert is made to the department, its local affiliate, and the county attorney of the county in which the facility is located."

**Section 4.** Section 41-3-204, MCA, is amended to read:

"**41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to he introduced into evidence, the report or its contents or any other fact related to the report or to tbe condition of the child who is the subject of tho report may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

HeinOnline -- 1997 vol. III 2945 1997

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visihle on a child who is the subject of a report. The cost of photographs taken under this section must be paid by the department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, the person shall include in the report either a written description or photographs of the evidence.

(4) A physician, either in the course of providing medical care to a minor or after consultation with cbild protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after the report is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in 41-3-202~~(3)(b)~~*(5)(b)*."

**Section 5.** Section 41-3-303, MCA, is amended to read:

"**41-3-303. Guardian ad litem.** (1) In every judicial proceeding, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. Tlie department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of tlie child's *best* interests. The guardian ad litem lias the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the suhject of tbe proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and tbe child's sihlings and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; and

(f) to perform other duties as directed by tbe court."

**Section 6.** Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney hired hy the county is responsible for filing all petitions alleging abuse or neglect. The county attorney, the attorney general, or

an attorney hired by the department with the written consent of the county attorney or the attorney general may require all state, county, and municipal agencies, including law enforcement agencies, to conduct the investigations and furnish reports that may be necessary.

(2) Upon receipt of a petition, *except a petition for temporary investigative authority,* the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 *working* days ~~prior to~~ *before* the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except when the proceeding is instituted or commenced at the request of the department of public health and human services, a citation must be issued and served upon a representative of the department ~~prior to~~ *before* the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, *as provided in 41-3-402*;

(b) temporary legal custody, *as provided in 41-3-406*;

HeinOnline -- 1997 vol. III 2947 1997

~~(c)~~*(c)* termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption, *as provided in 41-3-607*;

~~(d)~~*(d)* any combination of the provisions of subsections (10)(a) through ~~(10)(c)~~ *(10)(c)* or any other relief that may be required for the best ~~interest~~ *interests* of the ~~youth~~ *child*.

~~(11)~~*(11)* The petition may be modified for different relief at any time within the discretion of the court.

~~(12)~~*(12)* The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

**Section 7.** Section 41-3-403, MCA, is amended to read:

**"41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order ~~or~~ *and* to appear before the court issuing the order on the date specified ~~and show cause why the person has not complied with the order~~ *for a show cause hearing*. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. *At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the rules of civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order.* Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.

*(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part 10, review the case within 30 days of the show cause hearing and make a recommendation to the district court as provided in 41-3-1010.*

~~(d)~~*(e)* Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary ~~legal~~ *physical* custody of the youth with the department until further order.

HeinOnline -- 1997 vol. III 2948 1997

*(2) In an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to rehabilitate the family to prevent the child's removal from the home.*

~~(2)~~*(3)* The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having *physical or* legal custody;

(c) requirement that the youth, parents, guardians, or person having *physical or* legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having *physical or legal* custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of ~~41-3-406(3) through (6)~~ *[section 10]*;

(g) other temporary disposition that may be required in the best ~~interest~~ *interests* of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

*(4) An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county shall file a petition for one of the following:*

*(a) limited emancipation;*

*(b) temporary legal custody;*

*(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or*

*(d) dismissal.*

*(5) Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection (4).*

*(6) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."*

HeinOnline -- 1997 vol. III 2949 1997

**Section 8.** Section 41-3-404, MCA, is amended to read:

**"41-3-404. Adjudicatory hearing — temporary disposition.** (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine *by a preponderance of the evidence* whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse or neglect, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803 *and the mediator privilege granted by 26-1-811*, apply.

(4) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If ~~the court determines that the youth is an abused or neglected child~~ *the youth is adjudicated a youth in need of care*, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403~~(2)~~*(3)*."

**Section 9.** Section 41-3-406, MCA, is amended to read:

**"41-3-406. Dispositional hearing — ~~contributions by parents or guardians for youth's care~~ *temporary legal custody*.** (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's ~~parents~~ *parent* or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(c) transfer *temporary* legal custody to any of the following:

(i) the department;

(ii) a *licensed* child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who~~, after study~~ *is recommended* by the department or a licensed child-placing agency designated by the court, *and* is found by the court to be qualified to receive and care for the youth;

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the

HeinOnline -- 1997 vol. III 2950 1997

department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best ~~interest~~ *interests* of the ~~youth~~ *child* that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined *pursuant to [section 10].*

*(2) To grant temporary legal custody, the court shall make a finding that:*

*(a) returning the child to the child's parent or guardian would create a substantial risk of harm to the child or detriment to the child's physical or emotional well-being; and*

*(b) reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home.*

*(3) In making a finding regarding the risk of harm to the child or regarding detriment to the ehild, failure of the child's parent or guardian to participate in, to comply with, in whole or in part, or to meet the goals of a court-ordered treatment plan constitutes prima facie evidence that return of the child to the parent or guardian would be detrimental to the child's physical or emotional well-being.*

*(4) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:*

*(a) an extension of temporary legal custody upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;*

*(b) termination of the parent-child legal relationship and permanent legal custody with the right of adoption pursuant to 41-3-607; or*

*(c) dismissal.*

*(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (4).*

*(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.*

*(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.*

~~(2) If the youth is transferred to the custody of the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.~~

HeinOnline -- 1997 vol. III 2951 1997

~~(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.~~

~~(4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.~~

~~(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:~~

~~(i) good cause not to require immediate income withholding; or~~

~~(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.~~

~~(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:~~

~~(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and~~

~~(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.~~

~~(d) An alternative arrangement must:~~

~~(i) provide sufficient security to ensure compliance with the arrangement;~~

~~(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and~~

~~(iii) if approved by the court, be entered into the record of the proceeding.~~

~~(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).~~

~~(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.~~

~~(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.~~"

**Section 10. Contributions by parents or guardians for youth's care.** (1) If custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternativo arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parent or gnardian to pay, the court may modify its order for the payment of contributions required under subsection (2).

(5) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human

HeinOnline -- 1997 vol. III 2953 1997

services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

**Section 11. Permanency plan hearing.** (1) A permanency plan hearing must be held by the court no later than 12 months after the initial order is issued unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian. The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must contain the:

(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;

(b) extent to which the parent or guardian cooperated and used the services provided;

(c) status of the child, including the child's mental, physical, and emotional health; and

(d) plan for permanency for the child.

(3) At least 3 days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) If the court finds that the permanency plan is in the best interests of the child, the court shall:

(a) order the department to take whatever steps are necessary to effectuate the terms of the plan and shall order the county attorney, the attorney general, or an attorney hired by the county to petition the court within 30 days after the present hearing for one of the following:

(i) termination of parental rights;

(ii) temporary legal custody, not to exceed 6 months; or

(iii) dismissal; and

(b) in its discretion, enter any other order that it determines to be in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

HeinOnline -- 1997 vol. III 2954 1997

(5) If the permanency plan hearing results in an order for a 6-month extension of temporary legal custody, upon the expiration of the temporary legal custody order and the filing of a petition by the department and if the court finds that reunification of the child with the child's parent or guardian is not in the best interests of the child, the court shall order:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met; or

(b) long-term custody of a child if the evidence demonstrates by a preponderance of the evidence that:

(i) the child has been adjudicated a youth in need of care;

(ii) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(iii) the child has reached 12 years of age;

(iv) termination of parental rights to the child is not in the child's best interests; and

(v) the child has been in a placement in which the foster parent has committed to the long-term care and to a relationship with the child and it is in the best interests of the child to remain in that placement.

(6) The court may terminate long-term custody upon petition of the birth parents, those to whom legal custody has been transferred, or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served.

**Section 12.** Section 41-3-607, MCA, is amended to read:

**"41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial.** (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. If termination of a parent-child legal relationship is ordered, the court may transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(a) the department;

(b) a licensed child-placing agency; or

(c) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child.

(2) After a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed in accordance with 41-3-401~~(12)~~.

(3) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the

parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

**Section 13.** Section 41-3-609, MCA, is amended to read:

**"41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by the parents as set forth in 41-3-102~~(7)(c)~~*(8)(e)*;

*(c) the identity of the parent is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parent have failed;*

*(d) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born; or*

~~(c)~~*(e)* the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has heen approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering tbem unfit is unlikely to change within a reasonable time~~; or~~

~~(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.~~*; or*

*(f) the parent has substantially failed to successfully complete or meet the goals of a treatment plan approved by the court and the child has been in an out-of-home placement for a cumulative total period of 1 year or longer.*

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unahle, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider hut is not limited to the following:

HeinOnline -- 1997 vol. III 2956 1997

(a) emotional illness, mental illness, or mental deficiency of the parent of ~~such~~ *a* duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a ~~sibling~~ *child* due to proven ~~parental~~ abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

(c) the death *or serious bodily injury, as defined in 45-2-101(64),* of a ~~sibling~~ *child* caused by abuse or neglect by the parent has occurred.

~~(5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication.~~"

**Section 14.** Section 41-4-102, MCA, is amended to read:

"**41-4-102. Financial responsibility.** Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children ~~shall~~ *must* be determined in accordance with the provisions of Article V ~~thereof~~ *of that compact* in the first instance. However, in the event of partial or completo default of performance ~~thereunder~~ *under the compact*, the provisions of Title 40, chapter 5, *part 1* ~~(Revised Uniform Reciprocal Enforcement of Support Act)~~ *(Uniform Interstate Family Support Act)*, ~~41-3-406~~ *[section 10]*, and 41-3-1122 also may be invoked."

HeinOnline -- 1997 vol. III 2957 1997

**Section 15.** Section 41-5-530, MCA, is amended to read:

**"41-5-530. Parental contributions account — allocation of proceeds.** (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under ~~41-3-406~~ *[section 10]*, 41-5-403, 41-5-523, or 41-5-524 must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103."

**Section 16. Proceedings subject to Indian Child Welfare Act.** If a proceeding under this chapter involves an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the proceeding is subject to the Indian Child Welfare Act.

**Section 17. Repealer.** Sections 41-3-410 and 41-3-603, MCA, are repealed.

**Section 18. Codification instruction.** (1) [Section 16] is intended to be codified as an integral part of Title 41, chapter 3, part 1, and the provisions of Title 41, chapter 3, part 1, apply to [section 16].

(2) [Sections 10 and 11] are intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [sections 10 and 11].

**Section 19. Coordination instruction.** (1) If House Bill No. 163 is passed and approved and if 40-8-109 and 40-8-117 are repealed, a reference to [sections 1 through 156 of House Bill No. 163], the "Montana Adoption Act", should be substituted for the reference to "40-8-109, 40-8-117" in 41-3-102 under the definition of "parent-child legal relationship".

(2) If Senate Bill No. 110 is passed and approved, then 41-3-406 in Senate Bill No. 110 is void and section 10 of this bill must read:

"NEW SECTION. **Section 10. Contributions by parents or guardians for youth's care.** (1) If custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parent or guardian is financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian te pay a specified amount or an amount determined by the department. In either case, the amount must be based on the uniform child support guidelines adopted by the department pursuant to 40-5-209.

(3) A parent's or guardian's liability for contributions begins to accrue from the date the youth is removed from the home and continues until the youth is returned to the parent or guardian, the youth becomes emancipated, or the liability is terminated by order of the court.

HeinOnline -- 1997 vol. III 2958 1997

(4) (a) A parent or guardian who is ordered to pay a contribution for a youth under this section assigns to the department all rights to a child support order for that youth that are not otherwise assigned under 53-2-613. The assignment of a child support obligation:

(i) is effective for both current and accrued support;

(ii) takes effect on the date the youth is transferred to the custody of the department; and

(iii) remains in effect for as long as the youth lawfully remains in custody of the department and until all arrears that are owed prior to the termination of the department's custody are paid.

(b) The assigned child support obligation is in addition to the parent's or guardian's contribution determined under subsection (2) or (8), if applicable.

(c) The assigned child support obligation may be retained by the department in an amount sufficient to reimburse the costs for the youth's care that remain after the obligation has been satisfied.

(5) (a) Except as provided in subsection (5)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

HeinOnline -- 1997 vol. III 2959 1997

(6) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2) or the parent or guardian may apply to the department for an administrative modification provided for in Title 40, chapter 5, part 2. A modification must be based upon the uniform child support guidelines adopted by the department pursuant to 40-5-209.

(7) (a) If the court orders the payment of contributions under this section or the department orders the payment of contributions under subsection (8), the department shall collect and enforce the contribution order pursuant to Title IV-D of the Social Security Act.

(b) The department may collect and enforce a contribution order and an assigument of a child support obligation, if applicable, under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

(8) Upon a court order for commitment that does not contain an amount of a contribution or a referral by the court to determine an amount of a contribution, as provided in subsection (2), the department may determine, establish, and order the youth's parent or guardian to pay a contribution as provided for in subsection (1) using the procedure provided in Title 40, chapter 5, part 2, for establishing a child support order.

**Section 20. Applicability.** [Sections 1 through 10] apply to proceedings commenced on or after October 1, 1997.

Approved May 2, 1997

# CHAPTER NO. 517

[HB 298]

AN ACT PROVIDING FOR 2-YEAR TERMS FOR MEMBERS OF THE HEALTH CARE ADVISORY COUNCIL; PROVIDING THAT A MEMBER MAY SERVE THREE TERMS; EXTENDING THE TERMINATION PROVISION FOR THE HEALTH CARE ADVISORY COUNCIL TO THE YEAR 2001; AMENDING SECTION 50-4-203, MCA, AND SECTION 25, CHAPTER 378, LAWS OF 1995; PROVIDING AN APPROPRIATION; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 50-4-203, MCA, is amended to read:

**"50-4-203. (Temporary) Health care advisory council.** (1) There is a health care advisory council.

(2) The health care advisory council is composed of 10 members. ~~The members must be selected by May 1, 1995.~~

(a) There are four legislative members. Two members must be selected by the president of the senate from a pool of applicants from the senate, one representing each party. Two members must be selected by the speaker of the

house from a pool of applicants from the house of representatives, one representing each party.

(b) There are five members, each representing a health care planning region as provided in 50-4-403, selected by the governor from a pool of applicants.

(c) There is one member representing the executive branch of government, appointed by the governor.

(3) Legislators and members who represent health care planning regions and who want to serve on the health care advisory council shall apply to the president of the senate, speaker of the house, or governor, respectively, for a position on the council. The application must include:

(a) a statement of the reason that the person wishes to serve on the council;

(b) the experience that qualifies the person to serve; and

(c) a statement of the person's willingness to commit the substantial time required to serve on the council.

(4) The members of the health care advisory council shall elect a presiding officer from among the members.

(5) A vacancy on the health care advisory council must be filled in the same manner as the original appointment.

*(6) Each member shall serve a term of 2 years. A member may not serve more than three terms.* (Terminates June 30, ~~1997~~ *2001* ~~sec. 25, Ch. 378, L. 1995~~.)"

**Section 2. Appropriation.** There is appropriated to the department of public health and human services for the 1999 biennium $80,000 from the federal special revenue fund and $20,000 from the state special revenue fund for the purpose of funding the health care advisory council. Any matching funds required from the state general fund may be provided from the department's general fund appropriation contained in House Bill No. 2.

**Section 3.** Section 25, Chapter 378, Laws of 1995, is amended to read:

**"Section 25. Termination.** [Sections 1, 2(4), and 3 through 8] terminate June 30, ~~1997~~ *2001*."

**Section 4. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective July 1, 1997.

Approved May 2, 1997

# CHAPTER NO. 518

[HB 331]

AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; RESTRICTING THE SALE OF TOBACCO PRODUCTS THROUGH VENDING MACHINES; PROVIDING FOR HEARINGS

HeinOnline -- 1997 vol. III 2961 1997

PURSUANT TO CERTAIN RULES; AND AMENDING SECTIONS 16-11-306 AND 16-11-308, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-11-306, MCA, is amended to read:

**"16-11-306. Sales ~~from~~ *of* tobacco *through* vending machines *restricted.*** *(1)* Tobacco products may be sold through a vending machine ~~only in:~~ *only in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. The tobacco products must be in a vending machine that contains only tobacco products.*

*(2) Tobacco products may not be sold through a vending machine that is located in a restaurant unless the restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the requirements of subsection (1).*

*(3) The sale of tobacco products from a vending machine under the direct line-of-sight supervision of an owner or employee is considered a sale of tobacco products by the owner or employee for the purposes of 16-11-305.*

~~(1) factories, businesses, offices, and other places not open to the general public;~~

~~(2) places to which individuals under 18 years of age are not permitted access;~~

~~(3) places where alcoholic beverages are sold and consumed on the premises; and~~

~~(4) places where the vending machine is under the direct supervision of the owner or an employee of the establishment. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco products by that person for purposes of 16-11-305.~~"

**Section 2.** Section 16-11-308, MCA, is amended to read:

**"16-11-308. Tobacco education fee.** (1) Failure to obtain a license, as required by 16-11-303, or to post signs, as provided in 16-11-304, is punishable by a civil penalty of $100. The department may collect the penalty in the manner provided for the collection of other debts.

(2) A person who violates 16-11-305(1) or 16-11-307 at any one location within a 3-year period shall be punished as follows:

(a) A first through third offense is punishable by a verbal notification of violation.

(b) A fourth offense is punishable by a written notice of violation to be sent by the department of public health and human services to the owner of the establishment.

(c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco education fee of $500. The employee or other person

who sold the tobacco product, the establishment manager, and the establisbment owner, if the owner is a sole proprietor or partner, shall read and view the tobacco education matorial.

(d) A sixth offeuse is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

(e) A seventh and subsequent offense is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 1 year.

(3) After 2 years from the first violation, if a person has not received notice of any further violations, a second violation is considered a first violation for the purposes of subsection (2).

(4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco education fees are paid in full.

(5) Tobacco education fees must be assessed and collected by the department of public health and human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by the department of public health and human services within 30 days of the alleged violation by certified letter addressed to the establishment owner or manager. The notice of assessment against the owner of the establishment must provide an opportunity for a bearing ~~pursuant to the provisions of the Montana Administrative Procedure Act.~~ *The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act.* Within 30 days from the date *on which* the notice of assessment was mailed, the owner or manager shall notify the department of public health and human services that the owner or manager objects to the assessment and request a hearing pursuant to this subsection.

(6) In addition to tbe penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307 is punishable by an assessment of a tobacco education fee of $25 against the employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must bc made by the department of public health and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a hearing ~~pursuant to the provisions of the Montana Administrative Procedure Act.~~ *The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act.* Within 30 days from the date on which the notice of assessment was mailed, the employee sball notify the department of public health and human services that the employee objects to tbe assessment and requests a hearing pursuant to this subsection.

(7) The tobacco education material referred to in this section must be provided by tbe department of public health and human services in the form of written and video self-teaching materials. The education materials may be used only for tbe purposes provided in tbis section. Upon completion of the self-teaching materials, tbe establishment owner or manager shall execute a written statement on a form provided by the department of public health and human services verifying tbat the employee, owner, or manager, as appropriate,

HeinOnline -- 1997 vol. III 2963 1997

has read and viewed the self-teaching material and shall return the statement and the self-teaching video to the department of puhlic health and human services.

(8) Upon the sixth and suhsequent violation of this section, the department of puhlic health and human services shall notify the department of revenue in writing to initiate suspension of the licenses required hy 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the department of revenue declines to imitiate suspension proceedings, the violation may not he charged against the licensee for the purposes of this section.

(9) Fees assessed pursuant to this section must he deposited in an account in the state special revenue fund. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of public health and human services to defray the costs of the tohacco education program. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of revenue to defray the department's costs of implementing its duties pursuant to 16-11-144 and this section."

Approved May 2, 1997

# CHAPTER NO. 519

[HB 333]

AN ACT ESTABLISHING THE POLICY OF THE STATE TO PREVENT FETAL, INFANT, AND CHILD DEATHS; ENCOURAGING FETAL, INFANT, AND CHILD MORTALITY REVIEW THROUGH THE CREATION OF VOLUNTARY FETAL, INFANT, AND CHILD MORTALITY REVIEW TEAMS; PROVIDING ACCESS TO INFORMATION NECESSARY TO THE WORK OF FETAL, INFANT, AND CHILD MORTALITY REVIEW TEAMS; PROVIDING CIVIL AND CRIMINAL PENALTIES FOR UNLAWFUL USE OR DISCLOSURE OF THAT INFORMATION; AMENDING SECTIONS 44-5-303, 50-16-525, AND 50-19-323, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 6] may be cited as the "Fetal, Infant, and Child Mortality Prevention Act".

**Section 2. Statement of policy — access to information.** (1) The prevention of fetal, infant, and child deaths is hoth the policy of the state of Montana and a community responsibility. Many community professionals have expertise that can he used to promote the health, safety, and welfare of fetuses, infants, and children. The use of these professionals in reviewing fetal, infant, and child deaths can lead to a greater understanding of the causes of death and the methods of preventing deaths. It is the intent of the legislature to encourage

HeinOnline -- 1997 vol. III 2964 1997

local communities to establish voluntary multidisciplinary fetal, infant, and child mortality review teams to study the incidence and causes of fetal, infant, and child deaths.

(2) A health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased upon request of a local fetal, infant, and child mortality review team. The review team may request and may receive information from a county attorney as provided in 44-5-303(4) and from a health care provider as provided in 50-16-525 after the review team has considered whether the disclosure of the information by the provider satisfies the criteria provided in 50-16-529(6). The review team shall maintain the confidentiality of the information received.

(3) The local fetal, infant, and child mortality review team may only:

(a) compile statistics of fetal, infant, and child mortality;

(b) analyze the preventable causes of fetal, infant, and child deaths, including child abuse and neglect; and

(c) recommend measures to prevent future fetal, infant, and child deaths.

**Section 3. Local fetal, infant, and child mortality review team.** (1) A local fetal, infant, and child mortality review team must be approved by the county health department. Approval must be given if:

(a) the county health department has designated a lead person for the purposes of management of the review team;

(b) at least five of the individuals listed in subsection (2) have agreed to serve on the review team; and

(c) the five individuals have developed a plan that includes, at a minimum, operating policies of the review team covering collection and destruction of information obtained pursuant to 44-5-303(4) or [section 2(2)].

(2) If a local fetal, infant, and child mortality review team is established, the team must be multidisciplinary and may include only:

(a) the county attorney or a designee;

(b) a law enforcement officer;

(c) the medical examiner or coroner for the jurisdiction;

(d) a physician;

(e) a school district representative;

(f) a representative of the local health department;

(g) a representative of the department of public health and human services;

(h) a forensic pathologist;

(i) a pediatrician;

HeinOnline -- 1997 vol. III 2965 1997

(j) a family practice physician;

(k) an obstetrician;

(l) a nurse practitioner;

(m) a public health nurse;

(n) a mental health professional;

(o) a local trauma coordinator;

(p) a representative, appointed by the tribal government, of an Indian reservation that is located in whole or in part within the boundaries of the county;

(q) a representative of the bureau of Indian affairs or the Indian health service, or both, who is located within the county; and

(r) representatives of the following:

(i) local emergency medical services;

(ii) a local hospital;

(iii) a local hospital medical records department;

(iv) a local fire department; and

(v) the local registrar.

**Section 4. Records — confidentiality.** Material and information obtained by a local fetal, infant, and child mortality review team are not subject to disclosure under the public records law. Material and information obtained by a local fetal, infant, and child mortality review team are not subject to subpoena unless the material and information are reviewed by a district court judge and ordered to be provided to the person seeking access.

**Section 5. Unauthorized disclosure by review team member — civil penalty.** A person aggrieved by the use of information obtained pursuant to [section 2(2)] for a purpose not authorized by [section 2(3)] or by a disclosure of that information in violation of [section 2(2)] by a member of a local fetal, infant, and child mortality review team may bring a civil action in the district court of the county of the person's residence for damages, costs, and fees as provided in 50-16-553(6) through (8).

**Section 6. Unauthorized disclosure by review team member — misdemeanor.** A member of a local fetal, infant, and child mortality review team who knowingly uses information obtained pursuant to [section 2(2)] for a purpose not authorized by [section 2(3)] or who discloses that information in violation of [section 2(2)] is guilty of a misdemeanor and upon conviction is punishable as provided in 50-16-551.

**Section 7.** Section 44-5-303, MCA, is amended to read:

**"44-5-303. Dissemination of confidential criminal justice information.** (1) Except as provided in ~~subsection~~ *subsections (2) through (4)*, dissemination of confidential criminal justice information is restricted to criminal

justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

*(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information."*

**Section 8.** Section 50-16-525, MCA, is amended to read:

**"50-16-525. Disclosure by health care provider.** (1) Except as authorized in 50-16-529, ~~and~~ 50-16-530, *and [section 2]* or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed."

**Section 9.** Section 50-19-323, MCA, is amended to read:

**"50-19-323. Coordination of programs.** The department shall coordinate services under the MIAMI project with other services and programs in the state including:

(1) the early and periodic screening, diagnosis, and treatment services program under Title XIX of the federal Social Security Act;

(2) the Montana medicaid program established in 53-6-101; ~~and~~

HeinOnline -- 1997 vol. III 2967 1997

(3) programs administered with funds under the federal Maternal and Child Health Services Block Grant Act, Public Law 97-35, as may be amended; *and*

*(4) the services of fetal, infant, and child mortality teams as provided in [sections 1 through 6]."*

**Section 10. Codification instruction.** [Sections 1 through 6] are intended to he codified as an integral part of Title 50, chapter 19, and the provisions of Title 50, chapter 19, apply to [sections 1 through 6].

**Section 11. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 520

[HB 339]

AN ACT CHANGING THE PENALTIES FOR A PERSON UNDER THE AGE OF 21 WHO HAS AN ALCOHOL CONCENTRATION OF 0.02 OR MORE AND DRIVES OR WHO IS IN ACTUAL PHYSICAL CONTROL OF A VEHICLE UPON WAYS OF THIS STATE OPEN TO THE PUBLIC; RESTRICTING PROBATIONARY DRIVING PRIVILEGES FOR PERSONS UNDER THE AGE OF 18 FOR THE FIRST 30 DAYS OF LICENSE SUSPENSION; PROHIBITING USE OF CONVICTION FOR CERTAIN PURPOSES; REQUIRING PAYMENT OF A LICENSE REINSTATEMENT FEE PRIOR TO ISSUANCE OF A PROBATIONARY DRIVER'S LICENSE; AMENDING SECTION 61-8-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 61-8-410, MCA, is amended to read:

**"61-8-410. Operation of vehicle by person under twenty-one with alcohol concentration of 0.02 or more.** (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public.

~~(2) A person convicted of a violation of this section must be sentenced under the provisions of 45-5-624.~~

~~(3)~~ Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

*(2) Upon a first conviction under this section, a person shall be punished by a fine of not less than $100 or more than $500.*

*(3) Upon a second conviction under this section, a person shall be punished by a fine of not less than $200 or more than $500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.*

*(4) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not less than $300 or more than $500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.*

HeinOnline -- 1997 vol. III 2968 1997

*(5) In addition to the punishment provided in this section, regardless of disposition:*

*(a) the person shall comply with the alcohol information course and alcohol and drug treatment provisions in 61-8-714; and*

*(b) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or probationary driver's license may not be issued during the suspension period until the person has paid a license reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the offense, has completed at least 30 days of the suspension period.*

*(6) A conviction under this section may not be counted as a prior conviction under 61-8-401 or 61-8-406."*

**Section 2. Effective date.** [This act] is effective on passage and approval.

Approved May 2, 1997

# CHAPTER NO. 521

[HB 345]

AN ACT ADOPTING THE WORKFORCE DRUG AND ALCOHOL TESTING ACT; ESTABLISHING CRITERIA FOR DRUG AND ALCOHOL TESTING OF EMPLOYEES AND PROSPECTIVE EMPLOYEES; PROVIDING FOR CONFIDENTIALITY OF TEST RESULTS EXCEPT IN CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 39-2-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 7] may be cited as the "Workforce Drug and Alcobol Testing Act".

**Section 2. Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcobol, also called etbanol, or the hydrated oxide of ethyl.

(2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.

(4) "Employee" means an individual engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position for an employer and does not include an independent contractor. The term includes an elected official.

HeinOnline -- 1997 vol. III 2969 1997

(5) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(6) "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

(7) "Medical review officer" means a licensed physician trained in the field of substance abuse.

(8) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.

(9) "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in [sections 3 and 4].

(10) "Sample" means a urine specimen to determine the presence of a controlled substance or a breath alcohol test to determine the presence of alcohol.

**Section 3. Qualified testing program.** A qualified testing program must comply with the following criteria:

(1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and must be available for review by all employees 60 days before the terms are implemented or changed. Controlled substance and alcohol testing procedures must conform to 49 CFR, part 40. At a minimum, the policies and procedures must require:

(a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;

(b) the employer's program for regularly educating or providing information to employees on the health and workplace safety risks associated with the use of controlled substances and alcohol;

(c) the employer's standards of conduct that regulate the use of controlled substances and alcohol by employees;

(d) a description of available employee assistance programs, including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees;

(e) a description of the sanctions that the employer may impose on an employee if the employee is found to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test positive for the presence of a controlled substance or alcohol;

HeinOnline -- 1997 vol. III 2970 1997

(f) identification of the types of controlled substance and alcohol tests to be used from the types of tests listed in [section 4];

(g) a list of controlled substances for which the employer intends to test and a stated alcohol concentration level above which a tested employee must be sanctioned;

(h) a description of the employer's hiring policy with respect to prospective employees who test positive;

(i) a detailed description of the procedures that will be followed to conduct the testing program, including the resolution of a dispute concerning test results;

(j) a provision that all information, interviews, reports, statements, memoranda, and test results are confidential communications that may not be disclosed to anyone except:

(i) the tested employee;

(ii) the designated representative of the employer; or

(iii) in connection with any legal or administrative claim arising out of the employer's implementation of [sections 1 through 7] or in response te inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of $1,500, when there is reason to believe that the tested employee may have caused or contributed to the accident; and

(k) a provision that information obtained through testing that is unrelated to the use of a controlled substance or alcohol must be held in strict confidentiality by the medical review officer and may not be released to the employer.

(2) In addition to imposing appropriate sanctions on an employee for violation of the employer's standards of conduct, an employer may require an employee who tests positive on a test for controlled substances or alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitation program as a condition of continued employment. An employer may require the employee to submit to periodic followup testing as a condition of the counseling, treatment, or rehabilitation program.

(3) Testing must be at the employer's expense, and all employees must be compensated at the employee's regnlar rate, including henefits, for time attributable to the testing program.

(4) The collection, transport, and confirmation testing of urine samples must be performed in accordance with 49 CFR, part 40.

(5) Before an employer may take any action based on a positive test result, the employer shall have the results reviewed and certified by a medical review officer who is trained in the field of substance abuse. An employee or prospective employee must be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs.

HeinOnline -- 1997 vol. III 2971 1997

(6) Breath alcohol tests must be administered by a certified breath alcohol technician and may only be conducted using testing equipment that appears on the list of conforming products published in the Federal Register.

(7) A breath alcohol test result must indicate an alcohol concentration of greater than 0.04 for a person to be considered as having alcohol in the person's body.

**Section 4. Qualified testing program — allowable types — procedures.** Each of the following activities is permissible in the implementation of a qualified testing program:

(1) An employer may test any prospective employee as a condition of hire.

(2) An employer may use random testing if the employer's controlled substance and alcohol policy includes one or both of the following procedures:

(a) An employer or an employer's representative may establish a date when all salaried and wage-earning employees will be required to undergo controlled substance or alcohol tests, or both.

(b) An employer may manage or contract with a third party to establish and administer a random testing process that must include:

(i) an established calendar period for testing;

(ii) an established testing rate within the calendar period;

(iii) a random selection process that will determine who will be tested on any given date during the calendar period for testing;

(iv) all supervisory and managerial employees in the random selection and testing process; and

(v) a procedure that requires the employer to obtain a signed statement from each employee that confirms that the employee has received a written description of the random selection process and that requires the employer to maintain the statement in the employee's personnel file. The selection of employees in a random testing procedure must be made by a scientifically valid method, such as a random number table or a computer-based random number generator table.

(3) An employer may require an employee to submit to followup tests if the employee has had a verified positive test for a controlled substance or for alcohol. The followup tests must be described in the employer's controlled substance and alcohol policy and may be conducted for up to 1 year from the time that the employer first requires a followup test.

(4) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to suspect that an employee's faculties are impaired on the job as a result of the use of a controlled substance or alcohol consumption. An employer shall comply with the supervisory training requirement in 49 CFR, part 382.603, whenever the employer requires a test on the basis of reasonable suspicion.

(5) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to believe that the employee's

HeinOnline -- 1997 vol. III 2972 1997

act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of $1,500.

**Section 5. Employee's right of rebuttal.** The employer shall provide an employee who has been tested under any qualified testing program described in [section 4] with a copy of the test report. The employer is also required to obtain, at the employee's request, an additional test of the urine split sample by an independent laboratory selected by the person tested. The employer shall pay for the additional tests if the additional test results are negative, and the employee shall pay for the additional tests if the additional test results are positive. The employee must be provided the opportunity to rebut or explain the results of any test.

**Section 6. Limitation on adverse action.** No adverse action, including followup testing, may he taken hy the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed.

**Section 7. Confidentiality of results.** (1) Except as provided in subsection (2) and except for information that is required by law to be reported to a state or federal licensing authority, all information, interviews, reports, statements, memoranda, or test results received by an employer through a qualified testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding.

(2) Material that is confidential under subsection (1) may be used in a proceeding related to:

(a) legal action arising out of an employer's implementation of [sections 1 through 7]; or

(b) inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of $1,500 when there is reason to believe that the tested employee may have caused or contributed to the accident.

**Section 8.** Section 39-2-304, MCA, is amended to read:

**"39-2-304. Lie detector tests prohibited ~~—regulation of blood and urine testing~~.** ~~(1)~~ A person, firm, corporation, or other business entity or its representative may not require~~:~~

~~(a) as a condition for employment or continuation of employment,~~ a person to take a polygraph test or any form of a mechanical lie detector test~~;~~ *as a condition for employment or continuation of employment.*

~~(b) as a condition for employment, a person to submit to a blood or urine test, except for employment in:~~

~~(i) hazardous work environments;~~

~~(ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or~~

~~(iii) jobs involving the intrastate commercial transportation of persons or commodities by a commercial motor carrier or an employee subject to driver qualification requirements; and~~

~~(c) as a condition for continuation of employment, an employee to submit to a blood or urine test, except when:~~

~~(i) the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use;~~

~~(ii) the employer has reason to believe that an employee may have contributed to a work-related accident that causes death or personal injury or property damage in excess of $1,500; or~~

~~(iii) drug testing is being conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.~~

~~(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing.~~

~~(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide the person with the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests. In the case of an accident referred to in subsection (1)(c)(ii), the tests may not be delayed, but the person, firm, corporation, or other business entity or its representative shall, as soon as possible, make a written finding as to whether the act or failure to act is believed to be a direct or proximate cause of the accident and shall provide the tested employee with a copy of the finding. The written record of a blood or urine test of an employee who is required to submit to testing pursuant to subsection (1)(c)(ii) and whose acts or failure to act is subsequently found not to be the direct or proximate cause of a work-related accident must be removed from the employee's work record and be destroyed.~~

~~(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.~~

~~(5) A person who violates this section is guilty of a misdemeanor.~~

~~(6) As used in this section:~~

~~(a) "commercial motor carrier" has the meaning provided in 61-1-320 and in 69-12-101; and~~

~~(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state.~~"

**Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 39, chapter 2, part 2, and the provisions of Title 39, chapter 2, part 2, apply to [sections 1 through 7].

**Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 2, 1997

# CHAPTER NO. 522

[HB 407]

AN ACT DEFINING "CONSTRUCTION SERVICES", "NONCONSTRUCTION SERVICES", AND "PUBLIC WORKS CONTRACT" FOR PURPOSES OF THE PREVAILING WAGE LAWS; PROVIDING THAT OTHER INFORMATION OR METHODS MAY BE CONSIDERED TO COMPUTE STANDARD PREVAILING WAGE RATES WHEN INADEQUATE DATA IS OBTAINED BY SURVEY; ELIMINATING THE REQUIREMENT THAT ALL STATE PUBLIC WORKS CONTRACTS BE SUBJECT TO LEGAL REVIEW; AUTHORIZING TEMPORARY STANDARD PREVAILING WAGE RATES; AMENDING SECTIONS 18-2-401, 18-2-403, 18-2-404, 18-2-421, 18-2-422, 18-2-432, AND 20-15-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is desired for this bill because it authorizes the commissioner of labor to adopt rules specifying the method or methods of determining the standard prevailing rate of wages in the absence of sufficient data in a district. It is the intent of the legislature that the commissioner of labor adopt rules establishing a process for determining when there is insufficient data generated by a survey of employers in the district. It is the intent of the legislature that the rules identify an amount of data that constitutes insufficient data under the amendments to 18-2-401. It is the further intent of the legislature that methods for identifying the prevailing wage in the absence of sufficient data in the district provide for review and incorporation of data from work of a similar character that is conducted as near as possible to the district.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-2-401, MCA, is amended to read:

**"18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered

to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

*(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.*

*(b) The term does not include:*

*(i) engineering, superintendence, management, office, or clerical work on a public works contract; or*

*(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.*

~~(3)~~*(4)* "Department" means the department of labor and industry provided for in 2-15-1701.

~~(4)~~*(5)* "District" means a prevailing wage rate district established as provided in 18-2-411.

~~(5)~~*(6)* "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

*(7) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:*

*(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;*

*(b) custodial or security services for publicly owned buildings and facilities;*

*(c) grounds maintenance for publicly owned property;*

*(d) the operation of public drinking water supply, waste collection, and waste disposal systems;*

*(e) law enforcement, including janitors and prison guards;*

*(f) fire protection;*

*(g) public or school transportation driving;*

*(h) nursing, nurse's aid services, and medical laboratory technician services;*

*(i) material and mail handling;*

*(j) food service and cooking;*

*(k) motor vehicle and construction equipment repair and servicing; and*

*(l) appliance and office machine repair and servicing.*

~~(6) "Labor" means all services in excess of $25,000 performed in construction, maintenance, or remodeling work in a state, county, municipal, school district, or political subdivision project and does not include engineering, superintendence, management, or office or clerical work.~~

*(8) "Public works contract" means a contract for cons ruction services or nonconstruction services let by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is in excess of $25,000.*

~~(7)~~*(9)* (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages ~~is~~ *must be computed from* a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district *unless the survey of employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by a survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner* of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

~~(8)~~*(10)* "Work of a similar character" means work on private or commercial projects as well as work on public projects."

HeinOnline -- 1997 vol. III 2977 1997

**Section 2.** Section 18-2-403, MCA, is amended to read:

**"18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception.** (1) In ~~any~~ *every public works* contract ~~let for state, county, municipal, school, or heavy and highway construction, services, repair, or maintenance work under any law of this state~~, there must be inserted in the bid specification and the *public works* contract a provision requiring the contractor to give preference to the employment of bona fide ~~Montana~~ residents *of Montana* in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy and highway construction, must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every *public works* contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for the project.

(4) A contract, *other than a public works contract,* let for a project costing more than $25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993, must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(5) A *public works* contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in subsections (1) through (4) in it, provided that in *public works* contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency."

HeinOnline -- 1997 vol. III 2978 1997

**Section 3.** Section 18-2-404, MCA, is amended to read:

**"18-2-404. Approval of *public works* contract — bond.** (1) All public works contracts under this part ~~shall~~ *must* be approved in writing by the legal adviser of the contracting ~~state,~~ county, municipal corporation, school district, assessment district, or special improvement district body or officer prior to execution by the contracting public officer or officers.

(2) In all *public works* contracts entered into under the provisions of this part, at least $1,000 of the contract price ~~shall~~ *must* be withheld at all times until the termination of the *public works* contract."

**Section 4.** Section 18-2-421, MCA, is amended to read:

**"18-2-421. Notice.** When a public works project is accepted by the public contracting agency, a notice of acceptance and the completion date of the project ~~shall~~ *must* be sent to the department. However, in the case of ~~projects~~ *public works contracts* that amount to $50,000 or less in cost, the notice of acceptance and the completion date of the project is not required unless the department requests that information. The 90-day limitation for filing an action in district court, as provided in 18-2-407, does not begin until the public contracting agency notifies the department of its acceptance of the public works project."

**Section 5.** Section 18-2-422, MCA, is amended to read:

**"18-2-422. Bid specification and *public works* contract to contain *standard* prevailing wage rate.** All ~~bid specifications and~~ *public works* contracts ~~for public works projects~~ *and the bid specifications for those contracts* must contain a provision stating for each job classification the *standard* prevailing wage rate, including fringe benefits, that the contractors and subcontractors ~~must~~ *shall* pay during construction of the project."

**Section 6.** Section 18-2-432, MCA, is amended to read:

**"18-2-432. Penalty for violation.** (1) If a person, firm, or corporation fails to comply with the provisions of this part, the state, county, municipality, school district, or officer of a political subdivision that executed the *public works* contract shall retain $1,000 of the contract price as liquidated damages for the violation of the terms of the *public works* contract, and the money must be credited to the proper funds of the state, county, municipality, school district, or political subdivision.

(2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any *public works* contracts or subcontracts that are subject to the provisions of this chapter.

(3) Whenever an action has been instituted in a district court in this state against any person, firm, or corporation for the violation of this part, the court in which the action is pending is authorized to issue an injunction to restrain the person, firm, or corporation from proceeding with a *public works* contract with

HeinOnline -- 1997 vol. III 2979 1997

the state, county, municipality, school district, or political subdivision, pending the final determination of the instituted action."

**Section 7.** Section 20-15-403, MCA, is amended to read:

**"20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, *18-2-401,* 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201~~, 82-10-202,~~ *through* 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

**Section 8. Transition for necessary prevailing wage rates.** (1) The commissioner of labor and industry may adopt temporary standard prevailing wage rates for an occupation or trade for which a standard prevailing wage rate has never been established but that is necessary to implement the provisions of [this act].

(2) The commissioner may temporarily incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction wage rates to provide uniformity between federal and state standard prevailing wage rates for heavy and highway construction.

**Section 9. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 11. Effective date.** [This act] is effective July 1, 1997.

Approved May 2, 1997

HeinOnline -- 1997 vol. III 2980 1997

# CHAPTER NO. 523

[HB 547]

AN ACT REQUIRING THAT THE PROCEEDS, LESS COSTS, FROM THE SALE OF GAME ANIMAL MEAT SEIZED FROM A PERSON FOUND GUILTY OF ILLEGALLY KILLING A WILD ANIMAL OR GAME ANIMAL BE STATUTORILY APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSES OF AWARDING GRANTS TO THE MONTANA FOOD BANK NETWORK; REQUIRING THAT MEAT FROM AN ILLEGALLY TAKEN GAME ANIMAL SEIZED BY GAME WARDENS BE EITHER DONATED DIRECTLY TO THE MONTANA FOOD BANK NETWORK OR PUBLIC OR CHARITABLE INSTITUTIONS OR SOLD, WITH THE PROCEEDS, LESS COSTS, GOING TO THE DEPABTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; ALLOWING THE DEPARTMENT OF LIVESTOCK TO CAPTURE, TEST, QUARANTINE, VACCINATE, AND SELL LIVE WILD BUFFALO OR BISON TO HELP DEFRAY COSTS INCURRED AS PART OF THE DISEASE CONTROL PROGRAM; ALLOWING THE DEPARTMENT OF LIVESTOCK TO TRANSFER BRUCELLOSIS-FREE WILD BUFFALO OR BISON TO QUALIFIED TRIBAL ENTITIES UNDER CERTAIN CONDITIONS; PROVIDING THAT REVENUE GENERATED IN EXCESS OF FUNDS NEEDED FOR THE WILD BUFFALO OR BISON DISEASE CONTROL PROGRAM BE STATUTORILY APPROPRIATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSES OF AWARDING GRANTS TO THE MONTANA FOOD BANK NETWORK; AND AMENDING SECTIONS 17-7-502, 81-2-120, 87-1-506, AND 87-1-513, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361;

HeinOnline -- 1997 vol. III 2981 1997

20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; *87-1-513;* 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to tbe laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the stato treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 2.** Section 81-2-120, MCA, is amended to read:

**"81-2-120. Management of wild buffalo or bison for disease control.** (1) Whenever a publicly owned wild buffalo or bison from a herd that is infected with a dangerous disease enters the state of Montana on public or private land and the disease may spread te porsons or livestock or whenever the presence of wild buffalo or bison may jeopardize Montana's compliance with *other state-administered or* federally administered livestock disease control programs, the department may, under a plan approved by the governor, use any feasible method in taking one or more of the following actions:

(a) The live wild buffalo or bison may be physically removed by tbe safest and most expeditious means from within the state boundaries, including but not limited to hazing and aversion tactics or capture, transportation, *quarantine,* or delivery to a department-approved slaugbterhouse.

(b) The live wild buffalo or bison may be destroyed by the use of firearms. If a firearm cannot be used for reasons of public safety or regard for public or privato property, the animal may be relocatod te a place that is free from public or private hazards and destroyed by firearms or by a humane means of euthanasia.

*(c) The live wild buffalo or bison may be captured, tested, quarantined, and vaccinated. Wild buffalo or bison that are certified by the state veterinarian as brucellosis-free may be:*

*(i) sold to help defray the costs that the department incurs in building, maintaining, and operating necessary facilities related to the capture, testing, quarantine, or vaccination of the wild buffalo or bison; or*

*(ii) transferred to qualified tribal entities that participate in the disease control program provided for in this subsection (1)(c). Acquisition of wild buffalo or bison by a qualified tribal entity must be done in a manner that does not jeopardize compliance with a state-administered or federally administered livestock disease control program. The department may adopt rules consistent with this section*

HeinOnline -- 1997 vol. III 2982 1997

*governing tribal participation in the program or enter into cooperative agreements with tribal organizations for the purposes of carrying out the disease control program.*

*(d) Proceeds from the sale of live, brucellosis-free, vaccinated wild buffalo or bison must be deposited in the state special revenue fund to the credit of the department.*

*(e) Any revenue generated in excess of the costs referred to in subsection (1)(c)(i) must be deposited in the state special revenue fund provided for in 87-1-513(2).*

(2) Whenever the department is responsible for the death of a wild buffalo or bison, either purposefully or unintentionally, the carcass of the animal must be disposed of by the most economical means, including but not limited to burying, incineration, rendering, or field dressing for donation or delivery to a department-approved slaughterhouse or slaughter destination.

(3) In disposing of the carcass, the department:

(a) as first priority, may donate a wild buffalo or hison carcass to a charity or to an Indian tribal organization; or

(b) may sell a wild buffalo or bison carcass to help defray expenses of the department. If the carcass is sold in this manner, the department shall deposit any revenue derived from the sale of the wild buffalo or bison carcass to the state special revenue fund to the credit of the department.

(4) The department may adopt rules with regard to management of puhlicly owned wild buffalo or bison that enter Montana on private or public land and that are from a herd that is infected with a contagious disease that may spread to persons or livestock and may jeopardize compliance with *other state-administered or* federally administered livestock disease control programs."

**Section 3.** Section 87-1-506, MCA, is amended to read:

**"87-1-506. Enforcement powers of wardens.** *(1)* A warden may:

~~(1)~~*(a)* serve a subpoena issued by a court for the trial of a violator of the fish and game laws;

~~(2)~~*(b)* search, without a warrant, any tent not used as a residence, any boat, vehicle, box, locker, basket, creel, crate, game bag, or package, or their contents upon probahle cause te helieve that any fish and game law or department rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;

~~(3)~~*(c)* search, with a search warrant, any dwelling house or other building;

~~(4)~~*(d)* seize game, fish, game birds, and fur-bearing animals and any parts of them taken or possessed in violation of the law or the rules of the department;

~~(5)~~*(e)* seize and hold, subject to law or the orders of the department, devices ~~which~~ *that* have been used to unlawfully take game, fish, birds, or fur-hearing animals;

~~(6)~~*(f)* arrest, in accordance with Title 46, chapter 6, a violator of a fish and game law or rule of the department, violation of which is a misdemeanor;

~~(7)~~*(g)* enforce the disorderly conduct and public nuisance laws, ~~(~~45-8-101 and 45-8-111~~)~~, as they apply to the operation of motorboats on all waters of the state;

~~(6)~~*(h)* as provided for in 37-47-345, investigate and make arrests for violations of the provisions of Title 37, chapter 47, and of any rules adopted pursuant to that chapter relating to the regulation of outfitters and guides in the state; and

~~(9)~~*(i)* exercise the other powers of peace officers in the enforcement of the fish and game laws, the rules of the department, and judgments obtained for violation of those laws or rules.

*(2) The meat of game animals that are seized pursuant to subsection (1)(d) must be donated directly to the Montana food bank network, or to public or charitable institutions, to the extent reasonably feasible. Any meat that the department is unable to donate must be sold pursuant to 87-1-511, with the proceeds to be distributed as provided in 87-1-513(2)."*

**Section 4.** Section 87-1-513, MCA, is amended to read:

**"87-1-513. Disposition of proceeds of sale.** *(1)* The money obtained upon the sale of seized property must be retained and accounted for by the department when the person having the property in possession at the time of seizure is prosecuted or when a prosecution of the person is pending. If the person charged with violation of the law is found guilty of or forfeits bond for violation of the fish and game laws of the state, the money received for the sale of seized property must be paid over to the state treasurer and be deposited to the credit of the ~~fish and game fund~~ *fish and game fund, except as provided in subsection (2).* If the party from whom the property was taken is not found guilty of any violation of the fish and game laws of this state, the money must be paid to the party from whom the game birds, wild animals, fish, or parts or portions thereof were taken. An officer is not liable for any damage on account of any search, examination, seizure, or sale. When wild animals, game birds, or fish are seized as provided in this part and the person or persons who killed or captured the wild animals, game birds, or fish cannot be ascertained or when the animals sold were killed pursuant to 87-1-225, then the money received from the sale of the wild animals, game birds, or fish must be paid directly to the state treasurer. The cost of advertising notice of sale, as required by 87-1-511, must be paid from the fish and game fund.

*(2) The proceeds, after the department's cost of conducting the sale and costs incurred in donating game animal meat are deducted, from the sale of seized game animal meat must be deposited in the state special revenue fund to the credit of the department of public health and human services and are statutorily appropriated, as provided in 17-7-502, to the department of public health and human services for the purposes of awarding grants to the Montana food bank network in this state. Money from the grants awarded to the Montana food bank network must be used for the processing of donated game animal meat. Any grant funds remaining after donated game animal meat is processed may be used for other appropriate purposes by the Montana food bank network."*

Approved May 2, 1997

HeinOnline -- 1997 vol. III 2984 1997

# CHAPTER NO. 524

[HB 558]

AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER COMMUNICABLE DISEASES, INCLUDING SEXUALLY TRANSMITTED DISEASES; REMOVING THE REQUIREMENT FROM THE AIDS PREVENTION ACT THAT INFORMED CONSENT BE IN WRITING; DEFINING "INFORMED CONSENT"; AND AMENDING SECTIONS 50-16-1003 AND 50-16-1007, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases.** It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable diseases, including sexually transmitted diseases, by adopting the most currently accepted public health practices with regard to testing, reporting, partner notification, and disease intervention. Nothing in this section is intended to prohibit the department from allowing testing for HIV infection to be performed and reported without identification of the subject of the test. The department shall adopt rules, as provided in 50-1-202, to reflect this policy.

**Section 2.** Section 50-16-1003, MCA, is amended to read:

**"50-16-1003. Definitions.** As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means:

~~(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or~~

~~(b) any other~~ *a* person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include

HeinOnline -- 1997 vol. III 2985 1997

a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

*(9) "Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling.*

~~(9)~~*(10)* "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

~~(10)~~*(11)* "Local board" means a county, city, city-county, or district board of health.

~~(11)~~*(12)* "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

~~(12)~~*(13)* "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

~~(10)~~*(14)* "Person" means an individual, corporation, organization, or other legal entity.

~~(14)~~*(15)* "Posttest counseling" means counseling, conducted at the time *that* the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

~~(15)~~*(16)* "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

~~(10)~~*(17)* "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

HeinOnline -- 1997 vol. III 2986 1997

~~(17)~~*(18)* "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

~~(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the subject's behalf. The written informed consent must include at least the following:~~

~~(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;~~

~~(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;~~

~~(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;~~

~~(iv) a statement that the test may be obtained anonymously if the subject wishes;~~

~~(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and~~

~~(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.~~

~~(b) The department shall develop an agreement form that may be used for purposes of this subsection.~~"

**Section 3.** Section 50-16-1007, MCA, is amended to read:

**"50-16-1007. Testing — counseling — ~~informed~~ *informed* consent — penalty.** (1) An HIV-related test may be ordered only by a health care provider and only after receiving the ~~written informed~~ *informed* consent of:

(a) the subject of the test;

(b) the subject's legal guardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated;

(ii) there is no legal guardian;

(iii) there are medical indications of an HIV-related condition; and

(iv) the test is advisable in order to determine the proper course of treatment of the subject; or

(d) the subject's next of kin or significant other or the person, if any, designated by tbe subject in hospital records to act on the subject's behalf if:

(i) the subject is in a hospital; and

(ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

(2) When a health care provider orders an HIV-related test, the provider also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test ~~executes an informed consent agreement~~ *gives informed consent*, the health care provider ordering the test or the provider's designee ~~must~~ *shall* give pretest counseling to:

(a) the subject;

(b) the subject's legal gnardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated; and

(ii) there is no gnardian; or

(d) the subject's next of kin or significant otber or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in the hospital; and

(ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of tbe counseling-testing sites established by the department, or elsewhere.

(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, ~~as part of a written informed~~ *after giving informed* consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.

(6) At the time *that* the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company ~~must~~ *shall obtain the informed consent in writing and* ensure that:

(a) negative results can be obtained by the subject or the subject's representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or the subject's representative.

HeinOnline -- 1997 vol. III 2988 1997

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved hy the researcher;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisahle in order to determine the proper course of treatment of the suhject; and

(iv) none of the individuals listed in subsection (1)(h), (1)(c), or (1)(d) exists or is availahle within a reasonahle time after the test is determined to he advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still he given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702 has heen voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized hy the centers for disease control of the United States puhlic health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek ~~written-informed~~ *informed* consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If ~~written-informed~~ *informed* consent cannot he obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of tbe results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection *(10)*, ~~"written-informed-consent"~~ *"informed consent"* means an agreement ~~in writing~~ that is freely executed, *either orally or in writing,* by the subject of an HIV-related test, hy the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the

HeinOnline -- 1997 vol. III 2989 1997

subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 16, part 10, and the provisions of Title 50, chapter 16, part 10, apply to [section 1].

Approved May 2, 1997

# CHAPTER NO. 525

[HB 559]

AN ACT GENERALLY REVISING AND RECODIFYING PENALTY LAWS RELATING TO ALCOHOL OR DRUGS AND DRIVING-RELATED OFFENSES; PROVIDING ON SECOND OR SUBSEQUENT CONVICTIONS, THAT THE REMAINING PORTION OF A PREVIOUSLY SUSPENDED SENTENCE MAY BE IMPOSED IF A DEFENDANT FAILS TO COMPLETE MONTHLY MONITORING FOLLOWING A TREATMENT PROGRAM AND THAT 6 MONTHS' ADDITIONAL MONITORING MAY BE IMPOSED; DELETING THE REQUIREMENT THAT DRIVING UNDER THE INFLUENCE OR EXCESSIVE ALCOHOL CONCENTRATION VIOLATIONS BE CONSIDERED CONFIDENTIAL CRIMINAL JUSTICE INFORMATION UPON PASSAGE OF 5 YEARS WITHOUT SUBSEQUENT CONVICTION; RECOGNIZING CONVICTIONS FROM TRIBAL COURTS FOR THE PURPOSE OF DETERMINING NUMBER OF PRIOR CONVICTIONS; AMENDING SECTIONS 46-18-201, 61-8-401, 61-8-406, 61-8-421, 61-8-422, 61-8-714, 61-8-722, AND 61-11-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 46-18-201, MCA, is amended to read:

**"46-18-201. (Temporary) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ *[section 11]* for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

HeinOnline -- 1997 vol. III 2990 1997

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender he placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impese, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

HeinOnline -- 1997 vol. III 2991 1997

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentenco of imprisonment imposed under the following sections may not be deferred or susponded: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or susponded.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

**46-18-201. (Effective July 1, 1997) Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in ~~61-8-714 and 61-8-722~~ *[section 11]* for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

HeinOnline -- 1997 vol. III 2993 1997

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court sball state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

HeinOnline -- 1997 vol. III 2994 1997

**Section 2.** Section 61-8-401, MCA, is amended to read:

**"61-8-401. Persons under the influence of alcohol or drugs.** (1) It is unlawful and punishable as provided in 61-8-714, ~~and~~ 61-8-723, *[sections 9, 10, and 11] [section 13]* for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or ~~such~~ a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination ~~thereof~~ *of alcohol and drugs*, a person's ability to safely operate a motor vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the person's blood, urine, or breath, shall give rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact ~~shall~~ *may* not give rise to any inference that the person was or was not under the influence of alcohol but ~~such~~ *the* fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or ~~a~~ *any* combination of ~~the two~~ *alcohol and drugs*.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, *[sections 9, 10, and 11] [section 13]* and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties ~~therein~~ provided *in those sections*.

HeinOnline -- 1997 vol. III 2995 1997

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

**Section 3.** Section 61-8-406, MCA, is amended to read:

**"61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.** It is unlawful and punishable as provided in 61-8-722 ~~and~~, 61-8-723, *[sections 9, 10, and 11][section 13]* for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown hy analysis of the person's blood, breath, or urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section."

**Section 4.** Section 61-8-421, MCA, is amended to read:

**"61-8-421. Forfeiture procedure.** (1) A motor vehicle forfeited under ~~61-5-212, 61-8-714, or 61-8-722~~ *[section 10]* must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicahle.

(2) Forfeiture proceedings undcr 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rehut the presumption by proving a defense under ~~61-8-714(3)(b)(ii) or 61-8-722(3)(b)(ii)~~ *[section 10(2)]* or by proving that tlie owner was not convicted of a ~~second or subsequent offense under 61-5-212 or of a~~ third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault."

**Section 5.** Section 61-8-422, MCA, is amended to read:

**"61-8-422. Prohibition on transfer, sale, or encumbrance of vehicles subject to seizure or forfeiture — penalty.** (1) It is unlawful for the owner of a vehicle subject to ~~actions under 61-5-212(3) or (6)~~ *seizure under 61-5-212* or *seizure and* forfeiture under ~~61-8-714 or 61-8-722~~ *[section 10]* to transfer, sell, or encumber the owner's interest in that vehicle from the time of the owner's arrest

HeinOnline -- 1997 vol. III 2996 1997

or the filing of the underlying charge until the time that the underlying charge is dismissed, the owner is acquitted of the underlying charge, the issue of seizure or forfeiture is resolved hy the sentencing court, or the underlying charge is otherwise terminated.

(2) The prohibition against transfer of title may not be stayed pending the determination of an appeal from the conviction on the underlying charge.

(3) A person who violates this section is guilty of a felony and upon conviction shall be imprisoned in the county jail for not more than 2 years, fined an amount not more than $20,000, or both."

**Seetion 6.** Section 61-8-714, MCA, is amended to read:

**"61-8-714. Penalty for driving under influenee of alcohol or drugs.** (1) ~~Except as provided in subsections (8) and (9), a~~ *A* person convicted of a violation of 61-8-401 shall be punished by imprisonment ~~in the county jail~~ for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less tban $100 or more than $500. *The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest.* The imprisonment sentence may not be suspended unless the judge finds tbat the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-beíng.

(2) ~~Except as provided in subsection (8), on~~ *On* a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days~~, at least 48 hours of which must be served consecutively,~~ or more than 6 months. *At least 48 hours of the imprisonment term must be served consccutively in the county jail and may not be served under home arrest.* ~~Except as provided in subsection (8), 3~~ *Three* days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) ~~(a) Except as provided in subsection (8), on~~ *On* the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days~~, at least 48 hours of which must be served consecutively,~~ or more than 1 year and by a fine of not less than $500 or more than $1,000. *At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest.* ~~Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the~~ *The* imposition or execution of the first 10 days of the imprisonment sentence ~~imposed for a third offense that occurred within 5 years of the first offense~~ may not be suspended.

~~(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.~~

~~(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or~~

HeinOnline -- 1997 vol. III 2997 1997

~~omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.~~

~~(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.~~

(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished /by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000/ *[as provided in section 13].* ~~Except as provided in subsection (8), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the~~ *The* imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

~~(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may include alcohol or drug treatment, or both. Alcohol or drug treatment, or both, must be ordered for a first time offender upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of corrections. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors. On a second or subsequent conviction, the treatment program must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program. A court or counselor may not require attendance at a self help program other than at an "open meeting" as that term is defined by the self help program. A defendant may voluntarily participate in self help programs. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend the information course or treatment program, the counselor shall notify the court of the failure.~~

HeinOnline -- 1997 vol. III 2998 1997

~~(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.~~

~~(7) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.~~

~~(8) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.~~

~~(9) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

~~(10) A court may not defer imposition of sentence under this section.~~"

**Section 7.** Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) ~~Except as provided in subsection (9), a~~ *A* person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) ~~Except as provided in subsection (9), on~~ *On* a second conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours, *to be served in the county jail and not on home arrest,* or more than 30 days and by a fine of not less than $300 or more than $500.

(3) ~~(a) Except as provided in subsection (9), on~~ *On* a third conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 48 consecutive hours, *to be served in the county jail and not on home arrest,* or more than 6 months and by a fine of not less than $500 or more than $1,000.

~~(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated~~

HeinOnline -- 1997 vol. III 2999 1997

~~by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.~~

~~(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.~~

~~(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.~~

(4) On the fourth or subsequent conviction, the person is guilty of a felony offense and shall be punished by imprisonment for a term of not less than 1 year or more than 10 years and by a fine of not less than $1,000 or more than $10,000. ~~Except as provided in subsection (9), notwithstanding any other provision providing for suspension of execution of a sentence imposed under this subsection, the~~ *The* imposition or execution of the first 6 months of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended.

~~(5) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.~~

~~(6) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both, in accordance with the provisions of 61-8-714. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.~~

~~(7) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes. If there has not been an additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 45-5-103, and public access to the information may only be obtained by district court order upon good cause shown.~~

~~(8) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-401 also constitutes a conviction for a violation of 61-8-406.~~

~~(9) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.~~

~~(10) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.~~

~~(11) A court may not defer imposition of sentence under this section.~~"

**Section 8.** Section 61-11-101, MCA, is amended to read:

"**61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.** (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory the suspension or revocation of the driver's license of the person by the department, the court in which ~~such~~ *the* conviction is had shall require the surrender to it of all driver's licenses then held by the person ~~so~~ convicted. The court shall ~~thereupon~~, within 5 days, forward the license to the department and at the same time forward a record of ~~such~~ *the* conviction to the department, providing that if ~~such~~ *the* person does not possess a driver's license the court shall ~~so~~ indicate *that fact* in its report to the department.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any ~~such~~ *motor vehicle* laws, other than regulations governing standing or parking, and may recommend the suspension of the driver's license of the person ~~so~~ convicted. The court may also recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that ~~he~~ *the person* attend and complete an alcohol information course as provided in ~~61-8-714 and 61-8-722~~ *[section 9]*. The department shall issue a restricted probationary license unless the person ~~otherwise~~ is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee is subject to the restrictions set forth ~~thereon~~ and may not operate a vehicle in violation of those restrictions.

(3) Any court or other agency of this state, or a subdivision ~~thereof~~ *of the state*, ~~which~~ *that* has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report ~~any such~~ *the* action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department."

HeinOnline -- 1997 vol. III 3001 1997

**Section 9. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — alcohol information course required.** (1) (a) In addition to the punishments provided in 61-8-714 and 61-8-722 [and section 13], regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which may include alcohol or drug treatment, or both.

(b) As long as the alcohol information course is approved as provided in this section and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

(c) Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in an alcohol information course or treatment program. If the defendant fails to attend the information course or treatment program, the counselor shall notify the court of the failure.

(d) A court or counselor may not require attendance at a self-help program other than at an "open meeting" as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

(2) Alcohol or drug treatment, or both, must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

(3) (a) On conviction of a second or subsequent offense under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, in addition to the punishment provided in 61-8-714 or 61-8-722, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both.

(b) (i) On a second or subsequent conviction, the treatment program provided for in subsection (1) must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

(ii) If a defendant fails to comply with the monitoring program imposed under subsection (3)(b)(i), the court shall revoke the suspended sentence, impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months.

HeinOnline -- 1997 vol. III 3002 1997

**Section 10. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — forfeiture of vehicle.** (1) On the third or subsequent conviction of a violation of 61-8-401 or 61-8-406, the court, in addition to the punishments provided in 61-8-714 and 61-8-722 and any other penalty imposed hy law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under 61-8-421.

(2) A vehicle used hy a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(3) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

**Seetion 11. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — conviction defined — place of imprisonment — home arrest — exceptions — deferral of sentence not allowed.** (1) (a) For the purpose of determining the number of convictions under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, "conviction" means a final conviction, as defined in 45-2-101, in this state; conviction for a violation of a similar statute or regnlation in another state, or a federally recognized Indian reservation; or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state, another state, or a federally recognized Indian reservation, which forfeiture has not been vacated.

(b) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction, unless the offense is the offender's fourth or subsequent offense, in which case all previous convictions must be used for sentencing purposes.

(c) A previous conviction under 61-8-714 or 61-8-722 for violation of 61-8-401 or 61-8-406 may be counted for purposes of determining the numher of a subsequent conviction for violation of either 61-8-401 or 61-8-406.

(2) [Except as provided in section 13] The court may order that a term of imprisonment imposed under 61-8-714 or 61-8-722 be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, sball bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, hut is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

HeinOnline -- 1997 vol. III 3003 1997

(3) Subject to the limitations set forth in 61-8-714 and 61-8-722 concerning minimum periods of imprisonment, the court may order that a term of imprisonment imposed under either section be served by imprisonment under home arrest, as provided in Title 46, chapter 18, part 10.

(4) A court may not defer imposition of sentence under 61-8-714 or 61-8-722 [or section 13].

(5) The provisions of 61-2-107, 61-2-302, 61-5-205(2), and 61-5-208(2), relating to suspension and revocation of driver's licenses and later reinstatement of driving privileges, apply to any conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406.

**Section 12. Codification instruction.** (1) [Sections 9, 10, and 11] are intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [sections 9, 10, and 11].

(2) If [sections 13 and 14] are effective, then they are intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 7, part 8, apply to [sections 13 and 14].

**Section 13. Coordination.** (1) (a) If House Bill No. 100 and [this act] are both passed and approved, then House Bill No. 100 is void, the bracketed references to "section 13" in [this act] are effective, the bracketed phrase referring to the term of imprisonment and a fine for a fourth conviction in 61-8-714 is void, and a new section 13 is added to [this act] that reads:

"NEW SECTION. **Section 13. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense.** (1) (a) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person shall be punished by imprisonment for a term of not less than 6 months or more than 13 months and by a fine of not less than $1,000 [$1,500] or more than $10,000. The imposition or execution of the imprisonment sentence imposed for a fourth or subsequent offense may not be suspended. ~~The person is not eligible for parole.~~

(b) The court shall:

(i) specify one of the following facilities as the place in which the initial term of imprisonment must be served:

(A) a state prison;

(B) a regional correctional facility;

(C) a county jail;

(D) a boot camp, provided the prior approval of the department of corrections has been obtained;

(E) a prerelease center, provided the prior approval of the department of corrections has been obtained; or

(F) a state-approved public or private treatment facility; or

(ii) sentence the person to the department of corrections for placement in an appropriate correctional institution or program.

(c) Following initial placement of a defendant in the facility specified by the court in accordance with subsection (1)(b)(i), the department of corrections may, at its discretion, place the offender in another facility or program.

(2) (a) After serving the term of imprisonment imposed under subsection (1)(a), the person shall serve a supervised release term of not less than 1 year or more than 2 years. The release must be supervised by the department of corrections, which may order all or any portion of the supervised release term to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the supervised release.

(b) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of supervised release. Reasonable restrictions or conditions may include:

(i) conditions for supervised release;

(ii) payment of a fine as provided in 46-18-231;

(iii) payment of costs as provided in 46-18-232 and 46-18-233;

(iv) payment of costs of court-appointed counsel as provided in 46-8-113;

(v) community service;

(vi) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society; or

(vii) any combination of the restrictions or conditions listed in subsections (2)(b)(i) through (2)(b)(vi).

(c) If a violation of the restrictions or conditions of the supervised release is established, the court may continue the period of supervised release or may require the defendant to serve the remainder of the supervised release sentence in one of the facilities set forth in subsection (1)(b). The court may credit the remainder of the supervised release or the time to be served in a facility set forth in subsection (1)(b) with all or part of the time already served on supervised release.

(3) The court sball order a person wbo is financially able to pay the costs of imprisonment and supervised release under this section and of the information course and treatment under [section 9]."

(b) If House Bill No. 100 and [this act] are not passed and approved, tben the bracketed references to "section 13" in [this act] are void.

(2) If House Bill No. 208 and [this act] are both passed and approved, then the bracketed amount in [section 13] of [this act] is effective and a new section 14 is added to [this act] that reads:

"NEW SECTION. **Section 14. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — no suspension of fines — community service as payment.** (1) Except upon written findings

of extenuating and mitigating circumstances by the court, no fine imposed under 61-8-714, 61-8-722, or [section 13] against a defendant convicted of a violation of 61-8-401 or 61-8-406 may be suspended.

(2) If the court determines that the person is unable to pay the fine, the court may sentence the person to supervised community service."

**Section 14. Applicability.** [This act] applies to offenses committed on or after October 1, 1997.

Approved May 2, 1997

# CHAPTER NO. 526

[HB 10]

AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Policy.** [Sections 1 through 15] implement the policy stated in 90-4-210.

**Section 2. Definitions.** As used in [sections 1 through 15], the following definitions apply:

(1) "Amoco payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the decision and order of the U.S. department of energy in Case No. HQF 0588 and any interest accrued on the payments.

(2) "Carryover" means unspent oil overcharge funds previously appropriated and incorporated into an approved program plan for one of the federal energy conservation programs, but not included in unspent project funds as defined in subsection (9).

(3) "Cities service payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the consent agreement between cities service oil and gas and the U.S. department of energy, as affirmed by the federal energy regulatory commission, and any interest accrued on the payments.

(4) "Diamond shamrock payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the southern district of Ohio eastern division in Civil Action No. C2-84-1432 and any interest accrued on the payments.

(5) "Exxon payments" means the oil overcharge payments made by the exxon corporation to the U.S. treasury for distribution to the state of Montana pursuant to the order of the U.S. district court for the District of Columbia in Civil Action No. 78-1035 and any interest accrued on the payments.

HeinOnline -- 1997 vol. III 3006 1997

(6) "Getty oil payments" means the oil overcharge payments made to the U.S. treasury for distribution to the stato of Montana pursuant to the order of disbursement issued in Civil Action No. 77-347 (MMS) in the U.S. district court for the district of Delaware and any interest accrued on the payments.

(7) "Stripper well payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the district of Kansas, Cause No. M.D.L. 378, and any interest accrued on the payments. The term also includes but is not limitod to cities service payments, as defined in subsection (3), getty oil payments, as defined in subsection (6), texaco payments, as defined in subsection (8), and any unspent project funds, as defmed in subsection (9).

(8) "Texaco payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the texaco final consent order, 53 Fed. Reg. 32929, August 29, 1988, and any interest accrued on the payments.

(9) "Unspent project funds" means stripper well payments that were not expended or otherwise legally obligated during the 1997 biennium but were appropriated for tbe 1997 biennium in Chapter 63, Laws of 1995, in:

(a) section 4;

(b) section 5;

(c) section 6;

(d) section 7; and

(e) section 8.

**Section 3. Deposit of oil overcharge revenue.** All funds from stripper well, amoco, and exxon payments must be deposited by tbe state treasurer in the federal special revenue fund. All interest earned on any of these funds or payments also must be deposited in the federal special revenue fund.

**Section 4. Matching funds for low-income energy assistance — appropriation.** (1) There is appropriated $180,000 from the stripper well payments contained in tbe federal special revenue fund to the department of public bealth and human services for the purpose described in subsection (2).

(2) Tlie department of public health and human services shall use the funds appropriated in subsection (1) to match private contributions to energy share, inc., to be used to provide emergency energy assistance to residents with incomes between 125% and 150% of poverty guidelines who are not eligible for federal low-income energy assistance. All of the funds appropriated to the department for this purpose under subsection (1) must be used for clients' fuel bills or other emergency energy needs.

**Section 5. Low-income home weatherization — appropriation.** There is appropriated $230,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for use in the home weatherization program created in 90-4-201.

HeinOnline -- 1997 vol. III 3007 1997

**Section 6. Recommissioning state-owned buildings — appropriation.** (1) There is appropriated $80,000 from the stripper well payments contained in the federal special revenue fund to the department of environmental quality to identify and implement low-cost maintenance activities and modifications to equipment and procedures that will enable state building systems to operate at their designed efficiencies, reducing energy consumption in huildings by 5% to 10%.

(2) Although the aggregate energy cost savings realized from this program could be significant, the amount of savings realized by individual agencies is not likely to be suhstantial. Therefore, it is the intent of the legislature that agencies be allowed to keep and use any energy cost savings realized as an incentive te participate in this program. The department of environmental quality shall report the amount of savings to the 1999 legislature, at which time this policy may be reevaluated.

**Section 7. Infrastructure to support purchase and use of ethanol-fueled vehicles — appropriation.** There is appropriated $70,000 from the stripper well payments contained in the federal special revenue fund to tbe department of environmental quality to help establish a refueling infrastructure that will support the use of ethanol-fueled (E-85) vehicles. A one-time investment of oil overcharge dollars will be used to leverage private sector funds to provide pilot alternative refueling stations to supply alternative-fueled vehicles.

**Section 8. Reduce petroleum use in Yellowstone region — appropriation.** There is appropriated $25,000 from the stripper well payments contained in the federal special revenue fund to the department of environmental quality to promote expanded use of alternative fuels within Yellowstone park and neighboring Montana communities.

**Section 9. Smali business and tribal environmental compliance loan fund program — appropriation.** There is appropriated $180,000 from the stripper well payments contained in the federal special revenue fund to the department of environmental quality to provide a grant to the department of commerce microbusiness finance prograin to offer loans te small businesses and tribal communities for pollution control equipment, petroleum-based chemical product substitution, equipment replacement, pollution prevention, energy conservation, and waste minimization.

**Section 10. Recycling for mercury-containing lamps — appropriation.** There is appropriated $36,000 from the stripper well payments contained in the federal special revenue fund to the department of environmental quality to reduce disposal costs and enhance energy savings from lighting retrofits by providing equipment and training to establish a self-sustaining lamp recycling program.

**Section 11. Low-income home weatherization — appropriation.** There is appropriated another $295,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for use in the home weatherization program created in 90-4-201.

HeinOnline -- 1997 vol. III 3008 1997

**Section 12. Food bank network transportation — appropriation.** There is appropriated $5,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for use in assisting the Montana food bank network with coordinated energy-efficient transportation of food to drop sites and local food banks statewide.

**Section 13. Carryover — reappropriations.** There is reappropriated $25,000 from the stripper well payments, $50,000 from the exxon payments, $57,000 from the diamond shamrock payments, and $1,500 from the amoco payments contained in the federal special revenue fund to the department of environmental quality to fund the state energy program administered by the department pursuant to 10 CFR 420.

**Section 14. Conditions applied to appropriations.** (1) The appropriations made in [sections 4 through 13] are biennial appropriations.

(2) One-half of the total amount appropriated to each program in [sections 4 through 13] is appropriated in fiscal year 1998 and the remainder is appropriated in fiscal year 1999. As biennial appropriations, the unexpended funds appropriated in fiscal year 1998 may be carried forward within each program to fiscal year 1999.

(3) The appropriations in [section 13] are limited to available funds. Expenditures of carryover funds may not exceed the actual amount of unspent funds available.

**Section 15. Appropriations prioritized.** (1) The appropriations in [sections 4 through 12] are approved in order of priority as they appear in [sections 4 through 12], with the appropriation in [section 4] having the highest priority and the appropriation in [section 12] having the lowest priority. If the U.S. department of energy does not approve one or more of the programs that are funded by [sections 4 through 12], any stripper well payments that are not used to fund the higher-priority program must be provided to the lower-ranked program up to the amounts appropriated in [sections 4 through 12].

(2) If stripper well payments are insufficient to fully fund the appropriations made in [sections 4 through 12], allocations to the lowest-ranking program must be reduced until the deficiency is eliminated. If the deficiency is in excess of the appropriation to the lowest-ranking program, the next lowest-ranking program must have its appropriation reduced until the deficiency is eliminated and so forth as the programs are prioritized. These priorities must be applied to one-half of the total amount appropriated in [sections 4 through 12] for fiscal year 1998 and to the remaining appropriation for fiscal year 1999.

(3) In order to provide continuity for the programs when establishing the appropriations for each fiscal year of the 1999 biennium, anticipated stripper well payments that will be received under terms of the stripper well agreement during the biennium may be considered as available to fund the activities.

(4) The expenditure of money appropriated by [sections 4 through 12] may not exceed the amount of the stripper well payments available in the biennium.

**Section 16. Coordination instruction.** If House Bill No. 12 is passed and approved, the stripper well payments appropriated in House Bill No. 12 have a

HeinOnline -- 1997 vol. III 3009 1997

higher priority than any appropriation of stripper well payments in [sections 4 through 12].

**Section 17. Effective date.** [This act] is effective July 1, 1997.

Approved May 5, 1997

# CHAPTER NO. 527

[HB 27]

AN ACT PROHIBITING HEALTH CARRIERS AND MANAGED CARE ORGANIZATIONS FROM INTERFERING WITH CERTAIN MEDICAL COMMUNICATIONS MADE BY PERSONS PROVIDING HEALTH CARE SERVICES IN A MANAGED CARE SETTING; PROVIDING DEFINITIONS; PROVIDING A PENALTY; AMENDING SECTION 33-31-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 33-31-111, MCA, is amended to read:

**"33-31-111. Statutory construetion and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not he considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) The provisions of this section do not exempt a health maintenance organization from material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-701 through 33-3-704.

*(6) This section does not exempt a health maintenance organization from prohibitions against interference with certain communications as provided under [sections 2 through 5].*"

**Section 2. Definitions.** As used in [sections 2 through 5], unless the context requires otherwise, the following definitions apply:

(1) "Enrollee" means the individual to whom a health care service is provided or will be provided under a health plan.

(2) "Health care provider" or "provider" means a health care professional or facility.

(3) "Health carrier" means an entity that is subject to the insurance laws and rules of this state and that contracts, offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. The term includes a disability insurer, health maintenance organization, or a health service corporation or other entity providing a health benefit plan.

(4) "Health plan" or "health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

(5) "Managed care organization" means an entity that manages, owns, contracts with, or employs health care providers to provide health care services under a health plan. The term includes a health maintenance organization, as defined in 33-31-102, and an entity that does not itself provide health plans.

(6) "Medical communication" means:

(a) a communication made by a health care provider to an enrollee or to the guardian or other legal representative of an enrollee receiving health care services from the provider:

(i) concerning the mental or physical health care needs or treatment of the enrollee and the provisions, terms, or requirements of the health plan or another health plan relating to the needs or treatment of the enrollee; and

(ii) including a communication concerning:

(A) a test, consultation, or treatment option and a risk or benefit associated with the test, consultation, or option;

(B) variation among health care providers and health care facilities, as defined in 50-5-101, in experience, quality of health care services, or health outcomes;

(C) the basis or standard for the decision of the enrollee's health carrier or managed care organization to authorize or deny a health care service;

(D) the process used by the enrollee's health carrier or managed care organization to determine whether to authorize or deny a health care service; or

(E) a financial incentive or disincentive provided by the enrollee's health carrier or managed care organization to a health care provider to authorize or deny a health care service;

(b) a communication made by a health care provider to another health care provider, an employee or contractor of the enrollee's managed care organization, or an employee of the health carrier advocating a particular method of treatment on behalf of an enrollee.

HeinOnline -- 1997 vol. III 3011 1997

**Section 3. Gag clauses and other action affecting medical communications prohibited — exceptions.** (1) A health carrier or managed care organization may not by an oral or written contract, hy an oral or written direction or requirement, or by a financial inducement or penalty prohibit a provider from making or interfere with a provider making a medical communication to an enrollee. A contract, direction, requirement, or financial inducement or penalty violating this subsection is void.

(2) Subsection (1) does not apply to:

(a) an oral or written contract, direction, requirement, or financial inducement or penalty prohibiting a provider from disclosing a trade secret, as defined in 30-14-402, to the same extent as other employees or contractors of the health carrier or managed care organization are prohibited from disclosing the trade secret;

(b) an oral or written contract, direction, requirement, or financial inducement or penalty prohibiting a health care provider from referring an enrollee to another health plan or managed care organization in which the provider making the referral has a direct financial interest; and

(c) the terms of an oral or written contract inutually agreed upon by a health carrier or managed care organization and a provider requiring the provider to participate in and cooperate with all programs, policies, and procedures implemented by the health carrier or managed care organization to ensure, review, or iinprove the quality of health care.

**Section 4. Sanction because of medical communication prohibited.** A health carrier or managed care organization may not take any of the following actions with regard to a health care provider because the provider made a medical coinmunication to an enrollee or to the guardian or legal representative of the enrollee:

(1) terminate an agreement between the health carrier or managed care organization and the health care provider to provide health care services;

(2) reduce coinpensation to the provider;

(3) demote the provider in regard to relative seniority within the managed care organization;

(4) transfer the provider to other duties within the managed care organization;

(5) deny the provider admitting or other privileges; or

(6) take other action against the provider in retaliation for a medical coinmunication made by the provider to an enrollee.

**Scction 5. Civil penalty — civil action for collcction of penalty.** (1) A health carrier or a managed care organization violating [section 3 or 4] is subject to a civil penalty, as provided in 33-1-317, for each violation. Each day of violation constitutes a separate violation for the purposes of this section.

(2) In addition to other enforcement methods provided by law, the commissioner may bring a civil action in the district court of the first judicial

HeinOnline -- 1997 vol. III 3012 1997

district to collect the civil penalty provided for in subsection (1) from a person violating a provision of [sections 2 through 5]. An amount collected by the commissioner pursuant to this section must be deposited in the general fund.

**Section 6. Codification instruction.** [Sections 2 through 5] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 2 through 5].

**Section 7. Applicability.** [This act] applies to contracts entered into or renewed after [the effective date of this act] between a health care provider and a health carrier or managed care organization.

Approved May 5, 1997

# CHAPTER NO. 528

[HB 78]

AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; REVISING THE CONDITIONS UNDER WHICH A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY TO THE TRANSFER OF A LICENSE IS REQUIRED; REVISING LICENSE APPLICATION PROCEDURES AND THE PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL APPROVAL OF A LICENSE; PROVIDING ADDITIONAL GROUNDS FOR DENYING A LICENSE; REVISING SPECIAL PERMIT FEES; AMENDING SECTIONS 16-4-105, 16-4-115, 16-4-203, 16-4-207, 16-4-402, 16-4-404, 16-4-405, AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 16-4-105, MCA, is amended to read:

**"16-4-105. Limit on retail beer licenses — wine license amendments ~~— off-premises consumption~~.** (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or corporation *qualified* to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license~~, which may not be used in conjunction with a retail all-beverages license~~;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate

limits of the cities or towns, one retail beer license for every 500 inhabitants~~, which may not be used in conjunction with retail all beverages licenses~~;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every additional 2,000 inhabitants~~, which may not be used in conjunction with retail all beverages licenses~~;

(b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail beer licenses that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

(c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations;

(d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity *pursuant to 16-4-203*.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. A person holding a ~~beer and wine~~ *beer and wine* license may sell wine for consumption on or off the premises. Nonretention of the beer

HeinOnline -- 1997 vol. III 3014 1997

license, for whatever reason, means automatic loss of the wine amendment license."

**Section 2.** Section 16-4-115, MCA, is amended to read:

**"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption may be issued only to a person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or corporation *qualified* to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that the department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny an application for any ~~such~~ license or suspend or revoke any license for cause.

(2) Upon receipt of a completed application for a license under this section, accompanied by the necessary license fee as provided in 16-4-501, the department shall request that the department of justice make a thorough investigation of all matters relating to the application.

*(3)* Based on the results of the investigation *or in exercising its sound discretion as provided in subsection (1)*, the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business; and

(c) the requirements of this code and the rules promulgated by the department are met and complied with.

~~(3)~~*(4)* License applications submitted under this section are not subject to the provisions of 16-4-203 and 16-4-207.

~~(4)~~*(5)* If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business as a bona fide grocery store or a drugstore licensed as a pharmacy."

**Section 3.** Section 16-4-203, MCA, is amended to read:

**"16-4-203. Determination of public convenience and necessity.** *(1)* An original license issued pursuant to 16-4-104, 16-4-201, ~~or~~ 16-4-202, *or 16-4-208* or the transfer of location of ~~a~~ *an on-premises retail* license may be approved ~~only if the department has determined, upon a hearing held pursuant to the Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public convenience and necessity. If there is no opposition to the application for issuance or transfer of the license, a hearing is not required~~ *if the department does not receive the minimum number of protests required for a public convenience and necessity determination pursuant to 16-4-207, in which case the application must be regarded as a prima facie showing*

*of public convenience and necessity and no further determination of public convenience and necessity is allowed.*

*(2) (a) If the department receives at least the minimum number of protests required for a public convenience and necessity determination, as provided in 16-4-207, an application must be approved when evidence indicates that the issuance of an original license or transfer of location will materially promote the public's ability to engage in the licensed activity.*

*(b) The issuance of an original license or a transfer of location will materially promote the public's ability to engage in the licensed activity if:*

*(i) the applicant's history and experience demonstrate the capacity to operate the proposed license in a lawful manner;*

*(ii) the approval of the application for the premises at the proposed location is consistent with the public's demand or probable demand for the licensed activity that presently exists or is reasonably expected to exist within the next 5 years in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located;*

*(iii) the approval of the application for the premises at the proposed location contributes to the public's ability to participate in the licensed activity throughout the quota area where the proposed premises is located and quota areas adjacent to the quota area where the proposed premises is located;*

*(iv) the approval of the application for the premises at the proposed location is consistent with adopted or pending planning, annexation, and zoning ordinances of local governments that confer or will confer jurisdiction over business and developments such as the proposed license in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located.*

*(3) When determining whether or not an application is justified by public convenience and necessity, the department may:*

*(a) receive evidence at the public hearing specified in 16-4-207 only from the applicant, any protestors whose protests the department has accepted pursuant to 16-4-207, and any other person summoned or called by either a protestor or applicant;*

*(b) find that the application is justified by public convenience and necessity if the applicant has provided substantial credible evidence as provided for in this subsection (3) that shows that the department's approval of the application will materially promote the public's ability to engage in the licensed activity. The substantial credible evidence required must include a consideration of each of the components of materially promoting the public's ability to engage in the licensed activity as provided in subsection (2)(b).*

*(4) For the purposes of this section, the following definitions apply:*

*(a) "Confer or will confer jurisdiction" means the power or authority that a local government or an appointed subsidiary of a local government has or may obtain within 1 year from the date of the hearing to consider and adopt planning, annexation, or zoning ordinances.*

*(b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in a business licensed to sell alcoholic beverages at retail for on-premises consumption.*

*(c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local government or an appointed subsidiary of a local government that were publicly considered within the year preceding the date of the hearing or are presently being considered."*

**Section 4.** Section 16-4-207, MCA, is amended to read:

**"16-4-207. Notice of application — investigation — publication — protest.** (1) When an application has heen filed with the department for a license to sell alcoholic heverages at retail or to transfer *the location of* a retail license, the department shall review the application for completeness and ~~to~~, *based upon review of the application and any other information supplied to the department,* determine whether the applicant or the premises to he licensed meets criteria provided hy law. *The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. If the applicant does not provide the additional application information within 60 days of the department's request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application is not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application.* ~~The~~ *When the application is complete, the* department shall request that the department of justice investigate the application as provided in 16-4-402. If ~~after the investigation~~ the department does not discover a basis to deny the application *within 30 days after the department requests the investigation by the department of justice*, the department shall ~~promptly~~ publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail ~~license~~ *on-premises license or a transfer of location* and that protests *may be made* against the ~~issuance of a license~~ *approval of the application* ~~to the applicant~~ by a person who has extended credit to the transferor or *by* residents of the county from which the application comes or adjoining Montana counties. *Protests* may be mailed to a named administrator in the department of revenue within 10 days after the final notice is puhlished. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer *of ownership or location* of a license must be published once a week for 2 consecutive weeks. Notice may be suhstantially in the following form:

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

Notice is given that on the.... day of...., 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of..... counties may protest against the ~~issuance of the license~~ *approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest.*

HeinOnline -- 1997 vol. III 3017 1997

Protests may be mailed to...., department of revenue, Helena, Montana, on or before the.... day of...., 19...

Dated..... Signed

.....
ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) *(a)* If the administrator receives no written protests, the department may ~~issue or transfer the license~~ *approve the application* without holding a public hearing.

*(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).*

*(c)* If *the department receives sufficient* written protests ~~by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties~~ *that satisfy the requirements in subsection (1)* against the ~~issuance or transfer of the license are received,~~ *approval of the application,* the department shall hold a public hearing *as provided in subsection (4).*

*(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.*

*(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.*

*(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1),(2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses."*

HeinOnline -- 1997 vol. III 3018 1997

**Section 5.** Section 16-4-402, MCA, is amended to read:

**"16-4-402. Application — investigation.** (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. The application must be verified by the affidavit of the person making it before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the department of justice make a thorough investigation of all matters relating to the application. Based on the results of the investigation *or on other information*, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

*(c) For an original license application and an application for transfer of location of a license, the department of justice's investigation and the department's determination under this subsection (2) must be completed within 90 days of the request from the department to the department of justice. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The basis for the tolling of the deadline must be documented.*

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) ~~If, within 30 days of receiving the completed application, the department finds no basis for denying the application, the department shall proceed to publish the notice of the application as required by 16-4-207.~~ *The department shall issue a conditional approval letter upon the last occurrence of either:*

*(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or*

*(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.*

HeinOnline -- 1997 vol. III 3019 1997

*(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:*

*(a) there is false or erroneous information in the application;*

*(b) the premises are not approved by local building, health, or fire officials;*

*(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or*

*(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4).*"

**Section 6.** Section 16-4-404, MCA, is amended to read:

"**16-4-404. Protest period — contents of license — posting — privilege — transfer.** (1) A license may not be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code must state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises wbere the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited upon request to any authorized representative of the department or the department of justice or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) (a) A licensee may apply to the department for a transfer of the license to different premises *within the quota area* if:

(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

(ii) the lease of the licensed premises has expired;

(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or

(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.

(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and *the transfer* is justified by public convenience and necessity, *pursuant to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207.* The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in *16-4-204 and* subsections (2) through (6) ~~and 16-4-204~~ *of this section*, a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a subsequent licensee has the obligation to pay for the beer or wine."

**Section 7.** Section 16-4-405, MCA, is amended to read:

**"16-4-405. Denial of license.** (1) The department may deny the issuance of a retail alcoholic beverages license if it determines that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(2) A retail license may not be issued by the department for a premises situated within a zone of a city ~~or~~, town, *or county* where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has been filed with the department.

(3) A license under this code may not be issued if the department finds from the evidence at the hearing held pursuant to 16-4-207(3) that:

(a) the welfare of the people residing *or of retail licensees located* in the vicinity of the premises for which the license is desired will be adversely and seriously affected;

(b) *if required,* there is not a public convenience and necessity justification *pursuant to 16-4-203*;

(c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria established by this code; ~~or~~

(d) *a possible reason for denial listed in a conditional approval letter, as provided in 16-4-402, has been verified; or*

*(e)* the purposes of this code will not be carried out by the issuance of the license."

**Section 8.** Section 16-4-501, MCA, is amended to read:

**"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400; each subwarehouse, $400;

(c) each beer retailer, $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of ~~$15~~ *$10* a day for each day beer and table wine are sold at those events lasting 2 or more days, but ~~in no case shall~~ the fee ~~be less than $30~~ *may not exceed $300 for a series of scheduled sporting events.*

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses ~~shall~~ *must* be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual fee for resort retail all-beverages licenses within a given resort area ~~shall be~~ *is* $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to he licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeahle by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-heverage license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees provided in this section are exclusive of and in addition to other license fees chargeahle in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year.

(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

HeinOnline -- 1997 vol. III 3023 1997

**Section 9. Applicability.** [This act] applies to applications for the issuance or transfer of a license received on or after [the effective date of this act].

**Section 10. Effective date.** [This act] is effective July 1, 1997.

Approved May 5, 1997

# CHAPTER NO. 529

[HB 104]

AN ACT TRANSFERRING THE RESPONSIBILITY FOR PAYMENT OF EDUCATION COSTS FOR A STUDENT PLACED IN AN OUT-OF-STATE TREATMENT FACILITY TO THE STATE AGENCY RESPONSIBLE FOR THE PLACEMENT DECISION; AMENDING SECTIONS 20-5-321, 20-5-323, 20-5-324, 20-7-403, 20-7-420, AND 20-7-422, MCA; REPEALING SECTION 20-5-316, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 20-5-321, MCA, is amended to read:

**"20-5-321. Attendance with mandatory approval — tuition and transportation.** (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school tbe child would attend in the resident district and:

(i) the resident district does not provide transportation; or

(ii) the district of residence provides transportation and is not within the same county as the child's scbool district of choice;

(b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the school nearest the child's residence;

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that tbe child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school;

(d) the child *is under the protective care of a state agency or* has been adjudicated ~~by a court of competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or~~ *to be* a youth in need of supervision or a delinquent youth, as defined in 41-5-103~~, and has been placed in a licensed youth care facility that is approved by the department of public health and human services and, as a result of the placement, is required to attend school outside of the child's district of residence~~; or

(e) the child is required to attend school outside of the district of residence as the result of a placement ~~by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction~~ *in foster care or a group home licensed by the state.*

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

**Section 2.** Section 20-5-323, MCA, is amended to read:

**"20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections (3) ~~and (4)~~ *through (5)*, whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the basis of the rate of tuition is a flat rate for each of the 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of each year, using statewide district expenditure and revenue data for the general fund, debt service fund, and retirement fund to determine the average district contribution.

(2) The tuition for children with disabilities must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost; and

HeinOnline -- 1997 vol. III 3025 1997

(b) for a Montana resident student, the average district per-ANB foundation payment amount received in the year for which the tuition charges are calculated must be subtracted from the per-student program costs for a Montana resident student.

(4) When a child attends a public school of another state or province ~~or has been placed by a state agency in an out-of-state residential program~~, the amount of daily tuition may not be greater than the average annual cost per student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with disabilities pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314; ~~or~~

(c) an order issued under Title 40, chapter 4, part 2*; or*

*(d) out-of-state placement by a state agency.*

*(5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.*

~~(5)~~*(6)* The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost per student in the child's district of residence or 21.25 cents per mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year."

**Section 3.** Section 20-5-324, MCA, is amended to read:

**"20-5-324. Tuition report and payment provisions — *exemption*.** (1) At the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent:

(a) the name and district of residence of each child who is attending a school of the district under an approved mandatory out-of-district attendance agreement;

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each reported child; and

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state.

HeinOnline -- 1997 vol. III 3026 1997

(2) The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to the superintendent of public instruction, who shall determine the total per-ANB entitlement for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) Except as provided in subsection (6), when a child has approval to attend a school outside the child's district of residence under the provisions of 20-5-320 or 20-5-321, the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(6) When a child has mandatory approval under the provisions of 20-5-321, the tuition and transportation obligation for an elementary school child attending a school outside of the child's county of residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the county of residence by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence for the per-ANB entitlement determined in subsection (3).

(9) (a) Any tuition receipts received under the provisions of Title 20, chapter 7, part 4, or 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district

HeinOnline -- 1997 vol. III 3027 1997

miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

*(10) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422."*

**Section 4.** Section 20-7-403, MCA, is amended to read:

**"20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying children with disabilities;

(5) recommending to districts the type of special education class or program needed to serve the children with disabilities of the districts and preparing appropriate guides for developing individualized education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all children with disabilities;

(8) approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with

HeinOnline -- 1997 vol. III 3028 1997

disabilities administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the otber agencies and political subdivisions their full responsibilities for otber aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to children with disabilities within the state;

(13) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(14) *except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6,* contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child ~~when a state agency places a child with disabilities who is in need of special education in:~~

~~(a) an in-state residential facility or children's psychiatric hospital; or~~

~~(b) an out-of-state public school or private residential facility~~ *placed in an in-state residential facility or children's psychiatric hospital.*"

**Section 5.** Section 20-7-420, MCA, is amended to read:

**"20-7-420. Residency requirements — financial responsibility for special education.** (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 for a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child ~~with disabilities~~ who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed $500,000 during any biennium.

HeinOnline -- 1997 vol. III 3029 1997

~~(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and related services and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402.~~

~~(5)~~*(4)* A state agency that makes a placement of a child with disabilities is responsible for the financial costs of room and board and the treatment of the child. *The state agency that makes an out-of-state placement of a child with disabilities is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.*"

**Section 6.** Section 20-7-422, MCA, is amended to read:

"**20-7-422. Out-of-state placement of children with disabilities — payment of costs.** (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with disabilities who is in need of special education and related services ~~is adjudicated by a court of competent jurisdiction to be an abused or neglected child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and~~ is placed by a state agency in an out-of-state ~~private~~ residential facility, the ~~superintendent of public instruction~~ *state agency making the placement* shall ~~negotiate with:~~

~~(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and~~

~~(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program~~ *pay the education costs resulting from the placement.*

(4) ~~Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation~~ *The state agency shall place the child with disabilities in a facility that will provide the child with a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.*"

**Section 7. Repealer.** Section 20-5-316, MCA, is repealed.

**Section 8. Coordination instruction.** If House Bill No. 2 does not include appropriations to the department of corrections and to the department of public

health and human services to pay for the education costs associated with out-of-state education placements, then [this act] is void.

**Section 9. Effective date.** [This act] is effective July 1, 1997.

Approved May 5, 1997

# CHAPTER NO. 530

[HB 117]

AN ACT REQUIRING THAT CREDIT DISABILITY INSURANCE FOR CREDIT CARD INDEBTEDNESS PROVIDE COVERAGE FOR MINIMUM PAYMENTS OR FINANCE CHARGES, PREMIUM PAYMENTS, AND OTHER CHARGES THROUGHOUT THE TERM OF COVERAGE; AND AMENDING SECTION 33-21-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 33-21-202, MCA, is amended to read:

**"33-21-202. Amount.** (1) The initial amount of credit life insurance may not exceed the total amount repayable under the contract of indebtedness. If an indebtedness is repayable in substantially equal installments, the amount of credit life insurance may not exceed the scheduled or actual amount of unpaid indebtedness on the date of death, whichever is greater. The amount of credit life insurance written in connection with:

(a) a credit transaction repayable over a term in excess of 63 months or, at the option of the insurer, for a shorter term may not exceed the actual amount of unpaid indebtedness on the date of death, excluding any:

(i) unearned interest or finance charges; and

(ii) delinquency or extension exceeding 4 months;

(b) an open-end credit agreement having a credit limit exceeding $10,000 may not exceed the plan's credit limit;

(c) an agricultural loan commitment not exceeding 1 year may not exceed the amount of the loan commitment on a nondecreasing or level term plan; and

(d) an education loan commitment may be for the amount of the portion of the commitment that has not been advanced by the creditor.

(2) The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, may not exceed:

(a) the aggregate of the periodic scheduled unpaid installments of indebtedness; and

(b) the original indebtedness divided by the number of periodic installments.

*(3) A group or individual credit disability insurance policy or a certificate that provides coverage for credit card indebtedness must provide a disability benefit during each credit card billing cycle throughout the term of coverage that, subject*

*to any specified dollar amount limit defined in the policy or certificate, may not be less than the sum of the following amounts payable in the billing cycle and based on the insured balance on the date that an insured disability commences:*

*(a) the greater of:*

*(i) the minimum payment required by the creditor for the billing cycle, less any past-due payments and accelerated payments required for the overlimit usage of the credit card; or*

*(ii) the finance charge calculated pursuant to the credit card contract;*

*(b) all premiums charged for credit disability insurance coverage; and*

*(c) all other charges related to the insured balance as of the date the insured disability commences that are incurred in the billing cycle as a result of the insurer's delay in processing a claim payment."*

Approved May 5, 1997

# CHAPTER NO. 531

[HB 131]

AN ACT GENERALLY REVISING STATE INSURANCE LAWS; PROVIDING FOR UNIFORM HEALTH INSURANCE CLAIM FORMS; PROVIDING PENALTIES FOR MISREPRESENTATIONS MADE TO THE COMMISSIONER; AMENDING SECTIONS 18-8-103, 33-1-1205, 33-2-307, 33-2-317, 33-2-514, 33-2-517, 33-2-537, 33-2-704, 33-2-806, 33-2-1359, 33-2-1902, 33-3-303, 33-3-307, 33-4-202, 33-4-203, 33-4-204, 33-4-313, 33-4-314, 33-5-402, 33-10-202, 33-15-1105, 33-15-1106, 33-16-1027, 33-17-102, 33-17-212, 33-17-301, 33-17-1203, 33-20-101, 33-22-107, 33-22-508, 33-22-903, 33-22-907, 33-22-910, 33-22-1803, 33-22-1819, 33-22-1820, 33-22-1828, 33-30-102, 33-30-107, 33-31-111, AND 33-31-211, MCA; REPEALING SECTIONS 33-2-515, 33-2-536, 33-2-721, 33-2-722, 33-2-723, 33-4-404, 33-4-409, 33-22-1201, 33-22-1202, 33-22-1203, 33-22-1204, AND 33-22-1205, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 18-8-103, MCA, is amended to read:

**"18-8-103. Exemptions.** This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health care providers;

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;

(4) consulting actuaries to the public retirement boards, ~~or~~ the state compensation insurance fund, *or the commissioner of insurance*;

(5) private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations; or

(6) private consultants employed by the Montana state lottery."

**Section 2.** Section 33-1-1205, MCA, is amended to read:

**"33-1-1205. Duties of authorized insurers, adjusters, administrators, consultants, and producers.** (1) Each insurer, independent adjuster, independent administrator, independent consultant, and independent producer shall cooperate fully with the commissioner with respect to the provisions of this part.

(2) An insurer, an officer, *or an* employee~~, or producer~~ of the insurer, an independent adjuster, an independent administrator, an independent consultant, or an independent producer who has reason to believe that an insurance fraud has been or is being committed shall provide notice of the alleged insurance fraud to the commissioner within 60 days. *A producer of an insurer who has reason to believe that an insurance fraud has been or is being committed shall report the alleged fraud to the insurer within 60 days of discovery of the alleged insurance fraud.* The insurer shall review the report. If the insurer determines that there is reasonable likelihood that fraud has occurred, the insurer shall forward the report to the commissioner within 30 days of receipt of the report.

(3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud has been committed in connection with an insurance claim, application, or policy tolls any applicable time period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding unfair claims settlement practices."

**Section 3.** Section 33-2-307, MCA, is amended to read:

**"33-2-307. Requirements for eligible surplus lines insurers.** (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) $7 million. An insurer possessing less than ~~$6~~ *$7* million capital and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may

not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than ~~$6~~ *$7* million.

(ii) in the case of Lloyd's or another similar group including incorporated and unincorporated alien insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount of capital and surplus for all policyholders and creditors in the United States of each member of the group. The incorporated members of the group may not engage in any business other than underwriting as a member of the group and must be subject to the same level of solvency regulation and control by the groups of domiciliary regulators as are the unincorporated members. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and the trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. The trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date that may not at any time be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer ~~no~~ *not* more than 6 months after the close of the period reported upon, or quarterly if considered necessary by the commissioner, and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This

subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. An action may not lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

**Section 4.** Section 33-2-317, MCA, is amended to read:

"**33-2-317. Exemptions.** The Surplus Lines Insurance Law does not apply to reinsurance or to the following kinds of insurance when placed by a licensed insurance producer of this state:

(1) wet marine ~~and transportation insurances~~ *insurance*;

(2) insurance on subjects located, residing, or to he performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of the aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of the aircraft."

**Section 5.** Section 33-2-514, MCA, is amended to read:

"**33-2-514. Reserve for disability insurance.** *(1)* For all disability insurance policies, the insurer shall maintain an active life reserve ~~which shall place~~ *that places* a sound value on its liabilities under ~~such~~ *the* policies and *that may not* be ~~not~~ less than ~~the reserve according to appropriate standards set forth~~

~~in regulations issued by the commissioner and, in no event, less in the aggregate than~~ the pro rata gross unearned premiums for ~~such~~ *the* policies.

*(2) The commissioner may promulgate rules to define additional standards for reserve requirements."*

**Section 6.** Section 33-2-517, MCA, is amended to read:

**"33-2-517. Title insurance reserves.** (1) In addition to an adequate reserve as to outstanding losses as required under 33-2-511, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

(a) Ten percent of the total amount of the risk premiums written in the calendar year for title insurance contracts ~~shall~~ *must* be assigned originally to the reserve.

(b) During each of the 20 years next following the year in which the title insurance contract was issued, the reserve applicable to the contract ~~shall~~ *must* be reduced by 5% of the original amount of ~~such~~ *the* reserve.

(2) The *reserve* sums ~~herein~~ required ~~to be reserved~~ *by subsection (1)* for unearned premiums on contracts of title insurance ~~shall~~ *must* at all times and for all purposes be considered and constitute unearned portions of the original premiums and ~~shall~~ *must* be held in trust for the benefit of policyholders.

(3) The reduction of the unearned premium reserve required by subsection (1)(b) ~~of this section shall~~ *must* be made for all title insurance contracts issued after December 31, 1958, with respect to which 10% of the risk premiums have been assigned to the reserve pursuant to subsection (1)(a) ~~of this section. In the event that any title insurer has not in accordance with subsection (1)(b) of this section reduced the amount of its unearned premium reserve by 5% of the amount originally assigned to the reserve pursuant to subsection (1)(a) of this section for years ending after December 31, 1958, and before January 1, 1977, the insurer shall effect such reduction for such prior years during its accounting year which includes December 31, 1976.~~ *If the insurer has not reduced the amount of its unearned premium reserves pursuant to subsection (1)(b) for a previous year or years, the insurer shall make the reduction for the prior year or years in its next accounting year."*

**Section 7.** Section 33-2-537, MCA, is amended to read:

**"33-2-537. Reserve calculation — indeterminate premium plans — minimum standards for disability plans.** (1) In the case of a plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of a plan of life insurance or annuity that is of ~~such~~ a nature that the minimum reserves cannot be determined by the methods described in 33-2-525 and 33-2-526(3), the reserves that are held under the plan must:

(a) be appropriate in relation to the benefits and the pattern of premiums for that plan; and

(b) be computed by a method that is consistent with the principles of 33-2-521 through 33-2-529~~, as determined by rules promulgated by the commissioner~~.

HeinOnline -- 1997 vol. III 3036 1997

(2) The commissioner ~~shall~~ *may* promulgate a rule containing the minimum standards applicable to the valuation of disability plans."

**Section 8.** Section 33-2-704, MCA, is amended to read:

**"33-2-704. Insured lives reporting requirement.** On or before ~~February 15~~ *March 1* of each year, each insurer providing disability insurance shall, on a form prescribed by the commissioner, report the number of Montana residents insured on February 1 under any policy of individual or group disability insurance, including excess of loss or stop loss insurance policies covering disability insurance."

**Section 9.** Section 33-2-806, MCA, is amended to read:

**"33-2-806. Diversification of investments.** An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) An insurer may not, except with the consent of the commissioner, have at any one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person or insurer aggregating an amount exceeding 5% of the insurer's assets. This restriction does not apply as to general obligations of the United States of America or of any state or include policy loans made under 33-2-825.

(2) An insurer may not invest in or hold at any one time more than 10% of the outstanding voting stock of any corporation, except with the consent of the commissioner ~~given with respect to voting rights of preference stock during default of dividends~~. This provision does not apply as to stock of a ~~wholly-owned~~ *wholly owned* subsidiary of the insurer or to controlling stock of an insurer acquired under 33-2-821.

(3) An insurer, other than title insurer, shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for ~~under the following sections:~~ *in* 33-2-811(1), 33-2-812, and 33-2-830.

(4) A life insurer shall also invest and keep invested its funds in an amount not less than the reserves under its life insurance policies and annuity contracts, other than variable annuities, in force in cash, in securities, in both cash and securities, or in investments provided for ~~under~~ *in* 33-2-531.

(5) Except with the commissioner's consent, an insurer may not have invested at any one time more than 20% of its assets in the class of securities described in 33-2-818, exclusive of obligations of public utilities.

(6) *Except with the commissioner's consent, an* ~~An~~ insurer may not invest and have invested at any one time in aggregate amount more than 15% of its assets in all stocks ~~under~~ *provided for in* 33-2-820 and 33-2-821. Determination of the amount that an insurer has invested in common stocks for the purposes of this provision must be based on the cost of the stocks to the insurer. This provision does not apply ~~as~~ to stock of a controlled or subsidiary insurance corporation or other corporations ~~under~~ *provided for in* 33-2-821 and 33-2-822.

HeinOnline -- 1997 vol. III 3037 1997

(7) Except with the commissioner's consent, an insurer may not have invested at any one time more than 5% of its assets in securities allowed ~~under~~ *in* 33-2-824. *Money market funds, as defined by the commissioner by rule, are exempt from the 5% limitation of this subsection.*

(8) Except with the commissioner's consent, an insurer may not have invested at any one time more than 10% of its assets in the class of securities described in ~~any one of the following sections:~~ 33-2-814, 33-2-819, and 33-2-823.

(9) Limits ~~as to~~ *of* investments in ~~the category of~~ real estate ~~shall~~ *must* be as provided in 33-2-832. Other specific limits apply as stated in the sections dealing with other respective kinds of investments."

**Section 10.** Section 33-2-1359, MCA, is amended to read:

"**33-2-1359. Setoffs ~~and counterclaims~~.** (1) Mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this part ~~shall~~ *must* be set off and the balance only ~~shall be~~ allowed or paid, except as provided in ~~subsection (2) and~~ 33-2-1362 *and subsection (2) of this section.*

(2) ~~No~~ *A* setoff ~~or counterclaim~~ may *not* be allowed in favor of any person when:

(a) the obligation of the insurer to the person would not at the date of the filing of a petition for liquidation entitle the person to share as a claimant in the assets of the insurer;

(b) the obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff; *or*

(c) the obligation of the person is to pay an assessment levied against the members or subscribers of the insurer or is to pay a balance upon a subscription to the capital stock of the insurer or is in any other way in the nature of a capital contribution.~~; or~~

~~(d) the obligation of the person is to pay premiums, whether earned or unearned, to the insurer.~~"

**Section 11.** Section 33-2-1902, MCA, is amended to read:

"**33-2-1902. Definitions.** As used in this part, the following definitions apply:

(1) "Adjusted RBC report" means an RBC report that has been adjusted by the commissioner in accordance with 33-2-1903(5).

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions that the commissioner has determined are required.

(3) "Domestic insurer" means any insurance company domiciled in this state.

(4) "Foreign insurer" means any insurance company licensed to do business in this state under 33-2-116 but not domiciled in this state.

(5) "Life or disability insurer" means:

HeinOnline -- 1997 vol. III 3038 1997

(a) any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of disability insurance, as described in 33-1-207, or life insurance, as described in 33-1-208; ~~or~~

(b) a licensed property and casualty insurer writing only disability insurance; *or*

*(c) any insurer engaged solely in the business of reinsurance of life or disability contracts.*

(6) "NAIC" means the national association of insurance commissioners.

(7) "Negative trend" means, with respect to a life or health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions.

(8) (a) "Property and casualty insurer" means:

*(i)* any insurance company licensed under 33-2-116 and engaged in the business of entering into contracts of property insurance, as described in 33-1-210, or casualty insurance, as described in 33-1-206;

*(ii) any insurance company engaged solely in the business of reinsurance of property and casualty contracts; or*

*(iii) any insurance company engaged in the business of surety and marine insurance.*

(b) The term does not include monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers.

(9) "RBC instructions" means the RBC report, including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(10) "RBC level" means an insurer's authorized control level RBC, company action level RBC, mandatory control level RBC, or regulatory action level RBC, where:

(a) "authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(b) "company action level RBC" means, with respect to any insurer, the product of 2 and its authorized control level RBC;

(c) "mandatory control level RBC" means the product of 0.70 and the authorized control level RBC; and

(d) "regulatory action level RBC" means the product of 1.5 and its authorized control level RBC.

(11) "RBC plan" means a comprehensive financial plan containing the elements specified in 33-2-1904(2). If the commissioner rejects the RBC plan and it is revised by the insurer, with or without the commissioner's recommendation, the plan must be called a revised RBC plan.

HeinOnline -- 1997 vol. III 3039 1997

(12) "RBC report" means the report required in 33-2-1903.

(13) "Total adjusted capital" means the sum of:

(a) an insurer's statutory capital and surplus; and

(b) other items, if any, as the RBC instructions may provide."

**Section 12.** Section 33-3-303, MCA, is amended to read:

"**33-3-303. Meetings of stockholders or members.** (1) Meetings of stockholders or members of a domestic insurer ~~shall~~ *must* be held in the city or town of its principal office or place of business in this state.

(2) ~~No~~ *A* meeting of stockholders or members ~~shall~~ *may not* amend the insurer's articles of incorporation unless the proposal ~~so~~ to amend was included in the notice of the meeting.

(3) *Except with the commissioner's consent, each* ~~Each~~ insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its stockholders or members to fill vacancies existing or occurring in the board of directors, *must* receive and *shall* consider reports of the insurer's officers as to its affairs, and *shall* transact ~~such~~ other business ~~as may~~ properly ~~be~~ brought before it. Not less than 20 days' notice ~~shall~~ *must* be given of ~~such~~ *the* meeting in the manner provided in the bylaws, except ~~where~~ *when* notice of the annual meeting of a mutual insurer is contained in its policies.

(4) Special meetings of the stockholders or members may be called at any time for any purpose by the board of directors upon not less than 10 days' notice, *with notice given* as provided in the bylaws. The notice ~~shall~~ *must* state the purpose of the meeting, and ~~no~~ business *for which notice was not given may not* ~~shall~~ be transacted at the meeting ~~of which notice was not so given~~.

(5) If more than 15 months are allowed to elapse without an annual stockholders' or members' meeting being held, any stockholder or member may call ~~such a~~ *for an annual* meeting to be held. At any time, upon written request of any director or of any stockholders or members holding in the aggregate one-fifth of the voting power of all stockholders or members, it ~~shall be~~ *is* the duty of the secretary to call a special meeting of stockholders or members to be held at ~~such~~ *the* time ~~as~~ *that* the secretary may fix, not less than 10 or more than 30 days after the receipt of the request. If the secretary fails to issue ~~such~~ *a* call, the director, stockholders, or members making the request may do so.

(6) A stockholders' or members' meeting duly held ~~can~~ *may* be organized for the transaction of business whenever a quorum is present. Except as otherwise provided by law or the articles of incorporation:

(a) the presence, in person or by proxy, of the holders of a majority of the voting power of all stockholders or of all members ~~shall constitute~~ *constitutes* a quorum;

(b) the stockholders or members present at a duly organized meeting ~~can~~ *may* continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders or members to leave less than a quorum;

HeinOnline -- 1997 vol. III 3040 1997

(c) if any necessary officer fails to attend ~~such~~ *a* meeting, any stockholder or member present may be elected to act temporarily in lieu of ~~any such~~ *the* absent officer;

(d) if a meeting cannot be ~~organized~~ *held* because a quorum ~~has not attended~~ *is not present*, those present may adjourn the meeting to ~~such~~ *a* time ~~as~~ *that* they ~~may~~ determine, but in the case of any meeting called for the election of any director, the adjournment must be to the next day and those who attend the second ~~of such adjourned meetings~~ *meeting*, although less than a quorum as fixed in this section or in the articles of incorporation, ~~shall nevertheless~~ constitute a quorum for the purpose of electing any director; and

(e) an annual or special meeting of stockholders or members may be adjourned to another date without new notice being given."

**Section 13.** Section 33-3-307, MCA, is amended to read:

**"33-3-307. Bond of officers.** (1) The president, secretary, and treasurer of ~~every~~ *each* mutual insurer *or stock insurer* shall each file with the commissioner and ~~thereafter~~ maintain in force so long as ~~he~~ *that individual* is ~~such~~ an officer a fidelity bond in ~~the sum of $10,000~~ *an amount set by the commissioner by rule and* issued by an authorized corporate surety in favor of the insurer. *The commissioner shall consider the insurer's exposure, total assets, and total income in determining the bond amount.* In lieu of individual bonds, ~~all such~~ officers may be covered under a blanket bond for the same respective amounts~~,~~. ~~and which~~ *The* blanket bond ~~shall likewise~~ *must* be filed with the commissioner.

(2) The premium for the bond ~~shall~~ *must* be payable by the insurer.

(3) ~~No such~~ *A* bond ~~shall~~ *is not* ~~be~~ subject to cancellation except upon written notice to both the insurer and the commissioner, delivered not less than 30 days in advance of the effective date of ~~such~~ *the* cancellation.

(4) The insurer shall provide for the bonding by authorized corporate surety of all other officers in any way responsible for the handling of the funds of the insurer.

(5) This section ~~shall~~ *may* not be ~~deemed~~ *considered* to limit the amount of bonded protection ~~which~~ *that* the insurer may carry as to any officer."

**Section 14.** Section 33-4-202, MCA, is amended to read:

**"33-4-202. Declaration of intention to incorporate — articles of incorporation — fee.** (1) The individuals proposing to form a farm mutual insurer as referred to in 33-4-201 shall file with the commissioner:

(a) a declaration of their intention to form the corporation signed by at least 100 incorporators if a proposed state mutual insurer or by at least 25 incorporators if a proposed county mutual insurer; and

(b) *four copies of* proposed articles of incorporation executed ~~in triplicate~~ by three or more of the incorporators. ~~and acknowledged by each before a person authorized to take and verify acknowledgments of conveyance of real property~~ *The signatures of the incorporators must be notarized.*

(2) The articles of incorporation must state:

HeinOnline -- 1997 vol. III 3041 1997

(a) the name of the corporation. If a state mutual insurer, the words "farm mutual" must be a part of the name; if a county mutual insurer, the name must contain the words "farm mutual" or "rural mutual" together with the name of the county in which its principal place of business is to be located. The name may not be so similar to one already used by a corporation in this state as to be misleading.

(b) if a county mutual insurer, the name of the county or counties in which the corporation is to transact insurance and the address where its principal business office will be located;

(c) if a state mutual insurer, the location of its principal business office, which must be located in this state;

(d) the objects and purposes for which the corporation is formed;

(e) whether ~~it~~ *the insurer* intends to transact business on the cash premium plan or the assessment plan;

(f) the duration of ~~its~~ *the corporation's* existence, which may be perpetual;

(g) the number of its directors, which may not be less than 5 or more than 11, and the names and addresses of the members of the initial board of directors appointed to manage the affairs of the corporation until the first annual meeting of the members ~~and~~ *at which time* successors are elected and qualified;

(h) other provisions, not inconsistent with law, considered appropriate by the incorporators;

(i) the names, residences, and addresses of the incorporators and the value of their property to be insured in the county or counties where the operations of the corporation are to be ~~carried on~~ *transacted*.

(3) At the time of filing of the articles of incorporation as provided in subsection (1), the incorporators shall pay to the commissioner a filing fee of $10. The commissioner shall deposit the fees with the state treasurer to the credit of the general fund."

**Section 15.** Section 33-4-203, MCA, is amended to read:

**"33-4-203. Approval of articles — commencement of corporate existence.** (1) If the commissioner finds the proposed articles of incorporation to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States of America or of this state, the commissioner shall make a certificate of the facts.

(2) If the commissioner considers the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, the commissioner shall reject the name applied for and shall notify the incorporators of the rejection.

(3) When the proposed articles of incorporation have been approved by the commissioner, the commissioner shall endorse the ~~commissioner's~~ approval upon each set of the articles and forward ~~three~~ *four* sets of articles to the incorporators. The incorporators shall file one of the sets of articles with the secretary of state, one set with the commissioner bearing the certification of the secretary of state,

and one set with the county clerk of the county in which the principal place of business of the corporation is located and shall pay to the secretary of state and the county clerk the customary filing fees. The remaining set of articles must be made a part of the corporation's records.

(4) The corporation has legal existence upon the approval of the articles by the commissioner and completion of the filings referred to in subsection (3), but it may not transact business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority as provided in 33-4-505."

**Section 16.** Section 33-4-204, MCA, is amended to read:

"**33-4-204. Amendment of articles.** A farm mutual insurer may, by a vote of two-thirds of its members present at any annual meeting or at any special meeting ~~of members~~ called for that purpose, amend its articles of incorporation to extend its corporate duration or ~~in~~ any *other* particular within the scope of this chapter by causing amended articles to be filed in the same form and manner as required for original articles of incorporation. *The commissioner shall review the amended articles for compliance with this title.* The amended articles of incorporation ~~shall~~ *may* be signed only by the president and secretary of the corporation and attested by the corporate seal. Notice of the proposed amendment ~~shall~~ *must* be contained in the notice ~~given~~ of ~~any such~~ *the* annual or special meeting."

**Section 17.** Section 33-4-313, MCA, is amended to read:

"**33-4-313. Annual statement ~~—report—filing~~.** ~~(1)~~ The president and secretary of ~~every~~ *each* insurer, on or before March 1 each year, shall prepare, affirm under oath, affix the corporate seal ~~thereto~~ *to*, and file with the commissioner, on forms ~~as~~ prescribed and furnished by ~~him~~ *the commissioner*, an annual statement for the preceding calendar year showing the condition of ~~such~~ *the* insurer as of December 31 of ~~such~~ *the preceding* year and exhibiting the following facts:

~~(a)~~*(1)* the names of the president and secretary;

~~(b)~~*(2)* the date of the annual meeting;

~~(c)~~*(3)* the amount of insurance in force;

~~(d)~~*(4)* the number of members;

~~(e)~~*(5)* the number of assessments made during the year;

~~(f)~~*(6)* the amount paid in losses during the year;

~~(g)~~*(7)* the amount of the losses claimed and not paid, with the reason for nonpayment;

~~(h)~~*(8)* the number of members withdrawn, suspended, and expelled during the year;

~~(i)~~*(9)* the number of new members admitted during the year;

~~(j)~~*(10)* the expenses during the year;

~~(k)~~*(11)* the amount of money on hand;

HeinOnline -- 1997 vol. III 3043 1997

~~(l)~~*(12)* the amount and character of the insurer's assets;

~~(m)~~*(13)* the amount of the insurer's liabilities, including any reserves required to be established under this chapter; *and*

~~(n)~~*(14)* ~~such~~ other information concerning the insurer's affairs ~~as~~ *that* the commissioner may reasonably require.

~~(2) A report of an insurer's expenditures for educational purposes, if any, for the preceding year must be filed with the commissioner at the same time and in conjunction with the annual report of such insurer, as required under 33-4-404.~~"

**Section 18.** Section 33-4-314, MCA, is amended to read:

"**33-4-314. Annual statement — exclusive report — penalty for failure to file.** (1) ~~No~~ *A* report, statement, or return of any nature ~~shall~~ *may not* be required of any farm mutual insurer other than those required by 33-4-313.

(2) The commissioner may:

*(a)* suspend or revoke the certificate of authority of any insurer failing to file its annual statement as required; *or*

*(b) impose a fine of up to $100 a day for each day that an insurer is late in filing its annual statement, with the aggregate penalty not to exceed $1,000.*"

**Section 19.** Section 33-5-402, MCA, is amended to read:

"**33-5-402. Contributions to insurer.** The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms ~~such~~ funds ~~as~~ *that* it may require from time to time in its operations. Sums ~~so~~ advanced ~~shall~~ *may* not be treated as a liability of the insurer. ~~and, except~~ *Except* upon liquidation of the insurer, ~~shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus~~ *during any calendar year, the total of withdrawals and repayments of the advanced sums may not exceed the lesser of the insured's realized earned surplus or 10% of the sums advanced as of the previous December 31.* ~~No such~~ *A* withdrawal or repayment ~~shall~~ *may not* be made without the advance approval of the commissioner. This section does not apply to bank loans or to loans for which security is given."

**Section 20.** Section 33-10-202, MCA, is amended to read:

"**33-10-202. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means any of the three accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under ~~subsections~~ *33-10-201*(4) through (6) ~~of 33-10-201~~.

(5) "Impaired insurer" means:

HeinOnline -- 1997 vol. III 3044 1997

(a) an insurer ~~which after July 1, 1974,~~ *that* becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer considered by the commissioner ~~after July 1, 1974,~~ to be unable or potentially unable to fulfill its contractual obligations.

(6) (a) "Member insurer" means any insurer that is licensed or that holds a certificate of authority to transact any kind of insurance in this state for which coverage is provided under ~~33-2-201~~ *33-10-201 and 33-10-224* and includes any insurer whose license or certificate of authority may have been suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The term does not include:

(i) a health service corporation;

(ii) a health maintenance organization;

(iii) a fraternal benefit society;

(iv) a mandatory state pooling plan;

(v) a mutual assessment company or any entity that operates on an assessment basis;

(vi) an insurance exchange; or

(vii) an entity similar to any of the entities listed in subsections (6)(b)(i) through (6)(b)(vi).

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) *(a)* "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations on premiums and dividends paid or credited to policyholders on the direct business.

*(b)* ~~"Premiums" do~~ *The term does* not include premiums and considerations on contracts between insurers and reinsurers.

*(c)* As used in 33-10-227, ~~"premiums"~~ *premiums* are those for the calendar year preceding the determination of impairment.

(9) "Resident" means any person who resides in this state at the time *that* the impairment is determined and to whom contractual obligations are owed.

(10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

**Section 21.** Section 33-15-1105, MCA, is amended to read:

**"33-15-1105. Nonrenewal — renewal premium.** (1) *(a)* An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute

or unless a longer term is provided in the policy, at least 30 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a notice of such intention. The insurer shall also mail or deliver a copy to the insured's insurance producer.

*(b) Notification or nonrenewal to the insured's insurance producer via electronic transfer of data or by electronic data retrieval device meets the requirement of a mailed or delivered copy.*

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. The notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable."

**Section 22.** Section 33-15-1106, MCA, is amended to read:

**"33-15-1106. Renewal with altered terms.** (1) If an insurer offers or purports to renew a policy but on less favorable terms, at a higher rate, or at a higher rating plan, the new terms, rate, or rating plan take effect on the policy renewal date only if the insurer has mailed or delivered notice of the new terms, rate, or rating plan to the insured at least 30 days before the expiration date. ~~If the insured has not been so notified, he may cancel the renewal policy within 30 days after receiving the notice. The insurer shall continue coverage for a period of not less than 30 days after mailing or delivery of the notice. If the insured terminates the policy within the 30-day period, the insurer shall calculate the earned premium pro rata based upon the prior policy's rate. The new rate is effective only after the required 30-day notification period has been met. If the insured does not terminate the policy, the premium increase and other changes are effective the day following the prior policy's expiration or anniversary date.~~

(2) This section does not apply if the increase in the rate or the rating plan, or both, results from a classification change based on the altered nature or extent of the risk insured against."

**Section 23.** Section 33-16-1027, MCA, is amended to read:

**"33-16-1027. Rate filing review.** (1) The commissioner shall review each insurance filing to ensure compliance with the following guidelines:

(a) The effective date of each workers' compensation insurer or advisory organization filing must be the date specified in the filing. The effective date of the filing may not be earlier than 30 days after the date on which the filing is received by the commissioner or the date of receipt of the information furnished in support of the filing, if the supporting information is required by the commissioner.

(b) Upon written application of the insurer or advisory organization, the commissioner may authorize a filing that becomes effective before the expiration of the period described in subsection (1)(a).

HeinOnline -- 1997 vol. III 3046 1997

(c) A filing is considered to have met the requirements of this part unless disapproved by the commissioner within the period described in subsection (1)(a) or any extension of the period.

(2) Whenever a filing is not accompanied by the information required under this section, the commissioner shall inform the filer of the deficiency within ~~10~~ *30* days of the initial filing. The filing is considered made when the required information is furnished or when the filer certifies to the commissioner that the additional information requested by the commissioner is not maintained or cannot be provided."

**Section 24.** Section 33-17-102, MCA, is amended to read:

"**33-17-102. Definitions.** As used in this title, the following definitions apply:

(1) "Adjuster" means a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

(a) licensed attorney who is qualified to practice law in this state;

(b) salaried employee of an insurer or of a managing general agent;

(c) licensed insurance producer who adjusts or assists in adjustment of losses arising under policies issued by the insurer; or

(d) licensed third-party administrator who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.

(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on these coverages.

(b) The term does not mean:

(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;

(ii) a union on behalf of its members;

(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or

(B) a health service corporation as defined in 33-30-101;

(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;

(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;

(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;

(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;

(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;

(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims; ~~or~~

(xi) a person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities.; *or*

*(xii) a person appointed as a managing general agent in this state whose activities are limited exclusively to those described in 33-2-1501(10) and Title 33, chapter 2, part 16.*

(4) "Administrator license' means a document issued by the commissioner that authorizes a person to act as an administrator.

(5) "Consultant" means a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

(6) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.

(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of the person or the person's spouse, employer, or business.

(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.

(9) "Insurance producer", except as provided in 33-17-103:

(a) means:

(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(A) policies of insurance for risks residing, located, or to be performed in this state; or

(B) membership contracts as defined in 33-30-101;

(ii) a managing general agent. For purposes of this chapter, the term "managing general agent" has the same meaning as set forth in 33-2-1501.

(h) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried employee of an insurance producer who assists and is responsible to the insurance producer.

(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.

(11) "Person" means an individual, partnership, corporation, association, or other legal entity.

(12) "Public adjuster" means an adjuster employed by and representing the interests of the insured."

**Section 25.** Section 33-17-212, MCA, is amended to read:

"**33-17-212. Examination required — exceptions — fees.** (1) Except as provided in subsection (7), an individual applying for a license shall pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (6) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination and collecting the fees required by 33-2-708. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) Each individual applying for an examination shall remit the fees required by 33-2-708.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all required fees and forms before being rescheduled for another examination.

(5) If the applicant is a partnership or corporation, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall take the examination.

(6) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. For the purposes of this provision, property insurance includes marine insurance.

HeinOnline -- 1997 vol. III 3049 1997

(d) casualty insurance;

(e) surety insurance;

(f) credit life and disability insurance;

(g) title insurance.

(7) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and ~~thereafter continuing~~ *who continues* to be licensed;

(b) an applicant for *a* license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or refused to continue the previous license, except that this subsection *(7)*(b) does not apply to a title insurance producer, as defined in 33-25-105;

(c) an applicant for *a* license as *a* nonresident insurance producer;

(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that ~~he~~ *the applicant* is qualified to sell the insurance;

(e) transportation ticket agents of common carriers applying for *a* license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;

(f) an association applying for *a* license under 33-17-211;

(g) a mechanical breakdown insurance producer~~.~~*;*

*(h) a service contract insurance producer; or*

~~(h)~~*(i)* an individual who, within 60 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and ~~which~~ *that* is not covered under the license held in the other state."

**Section 26.** Section 33-17-301, MCA, is amended to read:

**"33-17-301. Adjuster liceuse — qualificatious — catastrophe adjustments — public adjuster.** (1) A person may not ~~in this state~~ act as or hold ~~himself~~ *the person* out to be an adjuster *in this state* unless licensed as an adjuster under this chapter. A person shall apply for an adjuster license to the commissioner according to forms *that* the commissioner prescribes and furnishes.

The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster upon payment of the license fee provided in 33-2-708.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that will permit residents of Montana regularly to act as adjusters in the other state;

(c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make ~~him~~ *the applicant* competent to fulfill the responsibilities of an adjuster;

(d) must be trustworthy and of good character and reputation; *and*

(e) ~~shall~~ *must* bave and *shall* maintain in this state an office accessible to the public and *shall* keep in the office *for not less than 5 years* the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A partnership or corporation, whether or not organized under the laws of this state, may he licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license. An additional full license fee must be paid for each individual in excess of one named in the partnership or corporation adjuster license to exercise its powers.

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on hehalf of an insurer or adjusting partnership or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

(5) An adjuster license continues in force until expired, suspended, revoked, or terminated. The license is subject to annual payment to the commissioner of tbe renewal fee required by 33-2-708, accompanied by a written request for renewal.

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

**Section 27.** Section 33-17-1203, MCA, is amended to read:

**"33-17-1203. Continuing education — basic requirements — exceptions.** (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) a person licensed to act as an insurance producer only for credit life and disability insurance shall, during each calendar year, complete 5 credit hours of approved continuing education in the areas of insurance law, ethics, or credit life and disability insurance;

(e) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause ~~shown~~, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(7)(d) through ~~(7)(g)~~ *(7)(h)*;

(b) a person holding a temporary license issued under 33-17-216;

(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state ~~accords~~ *grants* substantially similar privileges to and has similar requirements ~~of~~ *for* residents of this state;

(d) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license; or

(e) an insurance producer or consultant otherwise exempted by the commissioner."

**Section 28.** Section 33-20-101, MCA, is amended to read:

**"33-20-101. Scope.** (1) Except as provided in subsection (2), parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) Sections 33-20-114 and 33-20-131 *also* apply to group life insurance and group annuities."

**Section 29.** Section 33-22-107, MCA, is amended to read:

**"33-22-107. Premium increase restriction — exception.** (1) An insurer *or a health service corporation that issues a policy, certificate, or membership contract covering a resident of this state* may not increase a premium in an individual's or an ~~individual group's~~ *individual's group* disability insurance

policy more frequently than once during a 12-month period unless failure to increase the premium more frequently than once during the 12-month period would:

(a) place the insurer in violation of the laws of this state; or

(b) cause the financial impairment of the insurer to the extent that further transaction of insurance by the insurer injures or is hazardous to its policyholders or to the public.

(2) Subsection (1) does not apply to a premium increase necessitated by a state or federal law, court decision, or rule adopted by an agency of competent jurisdiction of the state or federal government."

**Section 30.** Section 33-22-508, MCA, is amended to read:

"**33-22-508. Conversion on termination of eligibility.** (1) A group disability insurance policy or certificate of insurance delivered or issued for delivery or renewed after October 1, 1981, must contain a provision that if the insurance or any portion of it on a person or the person's dependents or family members covered under the policy ceases because of termination of the person's employment or of the person's membership in the class or classes eligible for coverage under the policy or as a result of a person's employer discontinuing the employer's business or as a result of a person's employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan and if the person had been insured for a period of 3 months and the person is not insured under another major medical disability insurance policy or plan, the person is entitled to have issued to the person by the insurer, without evidence of insurability, group coverage or an individual policy or, in the absence of an individual policy issued by the insurer, a group policy issued by the insurer, of hospital or medical service insurance on the person or the person's dependents or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity. In addition, the insurer shall make available a conversion policy as required by subsection (4).

(3) The premium on the individual policy or group policy must be at no more than 200% of the insurer's then customary rate applicable to the coverage of the individual or group pelicy. The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(4) The insurer shall *also* make available ~~an individual~~ *a* conversion policy, *certificate, or membership eontract* that provides *at least* the level of benefits provided by the insurer's lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under part 18, the insurer shall make available ~~an individual~~ *a* conversion policy, *certificate, or membership contract* that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan."

HeinOnline -- 1997 vol. III 3053 1997

**Section 31.** Section 33-22-903, MCA, is amended to read:

**"33-22-903. Definitions.** As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) in the case of a group medicare supplement policy, the proposed certificate holder.

(2) "Certificate" means a certificate delivered or issued for delivery in this state under a group medicare supplement policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(4) "Entity" means an insurer as defined in 33-1-201, a health service corporation as defined in 33-30-101, and a health maintenance organization as defined in 33-31-102.

(5) "Health care expenses":

(a) means expenses of a health maintenance organization associated with the delivery of health care services that are analogous to incurred losses of an insurer;

(b) does not include home office and overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, or claims processing costs.

(6) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any entity delivering or issuing for delivery in this state medicare supplement policies or certificates.

(7) "Medicare" means Health Insurance for the Aged, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(8) "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract of a health service corporation, other than a policy issued pursuant to a contract under ~~42 U.S.C. 1395l or 1395mm~~ *42 U.S.C. 1395ss(g)(1)*, or a policy issued under a demonstration project authorized pursuant to amendments to the federal Social Security Act, that is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare. The term does not include:

(a) a policy or contract of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or a combination of employers, organizations, and trustees, for employees or former employees, or a combination of current and former employees, or for members or former members, or a combination of current and former members, of the labor organizations; or

(b) individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions that are inconsistent with the requirements of this part or policies issued to employees or members as additions to franchise plans in existence on April 8, 1981.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer."

**Section 32.** Section 33-22-907, MCA, is amended to read:

**"33-22-907. Disclosure standards — informational brochure — rules.** (1) In order to provide for full and fair disclosure in the sale of medicare supplement policies and certificates, a medicare supplement policy may not be delivered or issued for delivery in this state and a certificate may not be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time *that* application is made. The outline of coverage must be filed with the commissioner as required by 33-1-501. The filing must be made at least 60 days in advance of the date *that* the outline of coverage is delivered to any resident of this state.

(2) (a) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1).

(b) For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions.

(c) The outline of coverage must include:

(i) a description of the principal benefits and coverage provided in the policy or certificate;

(ii) a statement of the exceptions, reductions, and limitations contained in the policy or certificate;

(iii) a statement of the renewal provisions, including any reservation by the issuer of a right to change premiums and disclosure of the existence of any automatic renewal premium increases based on the policyholder's or certificate holder's age;

(iv) a statement that the outline of coverage is a summary of the policy or certificate issued or applied for and that the policy or certificate should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and *to* improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare at the same time *that* the outline of coverage is delivered. With respect to direct response insurance policies, the commissioner may require by rule that

the prescribed brochure be provided upon request, but not later than the time of policy delivery, to any prospective insureds eligible for medicare.

(4) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for medicare, other than:

(a) medicare supplement policies or certificates; *or*

(b) disahility income policies~~;~~

~~(c) basic, catastrophic, or major medical expense policies;~~

~~(d) single premium, nonrenewable policies; or~~

~~(e) other policies excepted in 33-22-903(8).~~

(5) The commissioner may further adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies or certificates by persons eligible for medicare.

(6) As soon as practicable, but no later than 30 days before the annual effective date of a medicare benefit change, every entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders and certificate holders, in a format that the commissioner prescribes by rule, of the changes *that* it has made to the medicare supplement policy or certificate."

**Section 33.** Section 33-22-910, MCA, is amended to read:

"**33-22-910. Filing requirements for advertising.** Every issuer of medicare supplement policies or certificates in this state shall provide to the commissioner for the commissioner's ~~review or~~ approval a copy of any medicare supplement advertising intended for use in this state, whether through written, radio, or television medium."

**Section 34.** Section 33-22-1803, MCA, is amended to read:

"**33-22-1803. Definitions.** As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier's standard benefit plan and that provides the benefits required by 33-22-1827.

(6) "Benefit equivalency" means a method developed by the small employer carrier for comparing the types of health care services and articles covered under a health benefit plan with the types of health care services required to be covered under a uniform, basic, or standard health benefit plan.

(7) "Benefit value" means an actuarially based method developed by the small employer carrier for comparing the value of determinable contingencies covered under a health benefit plan with the value of determinable contingencies required under a uniform, basic, or standard health benefit plan.

(8) "Board" means the board of directors of the program established pursuant to 33-22-1818.

(9) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(10) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(11) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(12) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(13) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.

(14) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(15) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include:

(a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance *or any other limited benefit plan*;

(b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or

(c) automobile medical payment insurance.

(16) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(17) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual was entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent may not be considered a late enrollee if:

(a) the individual requests enrollment within 30 days after termination of the qualifying previous coverage and:

(i) the individual was covered under qualifying previous coverage at the time of the initial enrollment; or

HeinOnline -- 1997 vol. III 3058 1997

(ii) the individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a spouse, or divorce;

(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(18) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(19) "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

(20) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(21) "Program" means the Montana small employer health reinsurance program created by 33-22-1818.

(22) "Qualifying previous coverage" means benefits or coverage provided under:

(a) medicare or medicaid;

(b) an employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the minimum basic health benefit plan; or

(c) an individual health insurance policy, including coverage issued by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided under the minimum basic health benefit plan, provided that the policy has been in effect for a period of at least 1 year.

(23) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(24) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819.

(25) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to coverod individuals.

HeinOnline -- 1997 vol. III 3059 1997

(26) "Small employer" means a person, firm, corporation, partnership, or association that is actively engaged in business and that, on at least 50% of its working days during the preceding calendar quarter, employed at least 3 hut not more than 25 eligible employees, the majority of whom were employed within this state or were residents of this state. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of an association that:

(i) has heen in existence for 1 year prior to January 1, 1994;

(ii) provides a bealth benefit plan to employees of its members as a group; and

(iii) does not deny coverage to any small employer member of its association or any employee of its small employer members who applies for coverage as part of a group.

(27) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(28) "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828."

**Section 35.** Section 33-22-1819, MCA, is amended to read:

**"33-22-1819. Program plan of operation — treatmcnt of losses — exemption from taxation.** (1) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program. The commissioner may, after notice and hearing, approve the plan of operation if the commissioner determines it to be suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation is effective upon written approval by tbe commissioner.

(2) If the board fails to submit a suitable plan of operation within 180 days after its appointment, the commissioner sball, after notice and hearing, promulgate and adopt a tomporary plan of operation. Tbe commissioner shall amend or rescind any tomporary plan adoptod under this subsection at the time a plan of operation is submitted by the board and approved by the commissioner.

(3) The plan of oporation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from assessable carriers to fund claims incurred by the program;

(e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to fund administrative expenses incurred or to be incurred by the program; and

(f) provide for any additional matters necessary for the implementation and administration of the program.

(4) The program has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program may:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of this part;

(e) establish conditions and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program;

(h) to the extent permitted by federal law and in accordance with subsection (8)(c), make annual assessments against assessable carriers and make interim assessments to fund claims incurred by the program; and

(i) borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

HeinOnline -- 1997 vol. III 3061 1997

(5) A reinsuring carrier may reinsure with the program as provided for in this subsection (5):

(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

(d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

(ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(e) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

(f) A small employer group health benefit plan in effect before January 1, 1994, may not be reinsured by the program until ~~January 1, 1997, and then only if~~ the board determines that sufficient funding sources are available.

(g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(6) (a) As part of the plan of operation, the board shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology must provide for the development of base reinsurance premium rates that must be multiplied by the factors set forth in subsection (6)(b) to determine the premium rates for the program. The base reinsurance premium rates must be established by the board, subject to the

approval of the commissioner, and must be set at levels that reasonably approximate the premiums necessary to recover one-half of the expenses for the calendar year. For purposes of this section, expenses include administrative expenses, one-half of the program net loss for the previous calendar year, and the actuarially anticipated claims to be incurred, adjusted to reflect retention levels required under this part.

(b) Premiums for the program are as follows:

(i) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection (6).

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection (6).

(c) The board shall annually review the methodology established under subsection (6)(a), including the system of classification and any rating factors, to ensure that it is actuarially sound and that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(7) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged te the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in 33-22-1809.

(8) (a) Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses, and the actuarially anticipated losses for the calendar year. The sum of one-half of the program net loss for the previous calendar year plus the anticipated net loss for the calendar year must equal the total assessment amount. If the program net loss for the previous calendar year is zero or less, the total assessment amount must equal the actuarially anticipated losses for the calendar year.

(b) (i) Each assessable carrier shall share in the program in an amount determined by multiplying the total assessment amount by a fraction, the numerator of which is the number of individuals in this state covered under disability insurance by the assessable carrier and the denominator of which is the number of all individuals in this state covered under disability insurance by all assessable carriers.

(ii) The board shall make a reasonable effort to ensure that each insured individual is counted only once for the purpose of assessment. The board shall require each assessable carrier that provides excess of loss or stop loss insurance to include in its count of insured individuals all individuals whose coverage is reinsured in whole or in part, including coverage under excess of loss or stop loss insurance. The board shall allow an assessable carrier who is an excess of loss or

HeinOnline -- 1997 vol. III 3063 1997

stop loss insurer to exclude from its count of insured individuals those who have been counted by a primary disability insurer or by a primary reinsurer.

(iii) ~~The board shall base each assessable carrier's assessment on reports filed with the commissioner as required by 33-22-1820.~~ The board may use any reasonable method of estimating the number of individuals insured by an assessable carrier if the specific number is unknown.

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liability for its share of the contribution to the program and, except as otherwise provided by this section, make an annual assessment against each assessable carrier to the extent of that liability. Payment of an assessment is due within 30 days of receipt by the assessable carrier of written notice of the assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing business. The board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed $10.

(d) The board may establish and maintain program reserves not to exceed five times the actuarially anticipated losses for the calendar year.

(e) If the sum of the reinsurance premiums and assessments in any calendar year exceeds the sum of the administrative expenses and incurred claims for that year, the board may proportionately credit the excess to assessable carriers or it may place the excess in program reserves, subject to the limits in subsection (8)(d).

(9) The participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by this part may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

(10) The board, as part of the plan of operation, shall develop standards setting forth the minimum levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board shall take into consideration the need to ensure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to small employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

(11) The program is exempt from taxation.

(12) On or before March 1 of each year, the commissioner shall evaluate the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimate of future costs of the program, assessments necessary to pay those costs, the appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverage of small employers, and any recommendations for change to the plan of operation.

(13) All premiums and other money paid to the small employer carrier reinsurance program and all property and securities acquired through the use of

HeinOnline -- 1997 vol. III 3064 1997

money and interest and dividends earned on money belonging to the small employer carrier reinsurance program are solely the property of the program and must be used exclusively for the operations and obligations of the program. Money collected by the program is not subject to legislative appropriation."

**Section 36.** Section 33-22-1820, MCA, is amended to read:

"**33-22-1820. Periodic market evaluation — report.** The ~~board shall~~ *commissioner may* study and report at least every 3 years to the ~~commissioner~~ *governor or other interested persons* on the effectiveness of this part. The report must analyze the effectiveness of this part in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small employer health insurance markets. The report must address whether carriers and producers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of this part. The report may contain recommendations for market conduct or other regulatory standards or action."

**Section 37.** Section 33-22-1828, MCA, is amended to read:

"**33-22-1828. Benefits required in standard benefit plan.** (1) The minimum benefits must be equal to at least 75% of the covered expenses in excess of an annual deductible that does not exceed $500 per person or $1,000 per family. The coverage must include a limitation of $2,000 per person or $4,000 per family on the total annual out-of-pocket expenses for services covered. The coverage may be subject to a maximum lifetime benefit, but a maximum, if any, may not be less than $1 million.

(2) The commissioner may not require coverage in a standard health benefit plan for any benefit unless other provisions of Title 33, chapter 22, 30, or 31, specifically require coverage for the benefit. A small employer carrier may offer coverage for additional services and articles.

(3) A standard health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparable level of benefits to those required by subsection (1), as determined by the ~~benefit equivalency and~~ benefit value."

**Section 38.** Section 33-30-102, MCA, is amended to read:

"**33-30-102. Application of this chapter — construction of other related laws.** (1) All health service corporations are subject to the provisions of this chapter. In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to health service corporations as follows: *33-3-308; 33-3-701 through 33-3-704;* 33-17-101; Title 33, chapter 17, parts 2 and 10 through 12; *and* Title 33, chapters 1, 15, 18, 19, and 22, except 33-22-111; ~~and 33-3-701 through 33-3-704~~.

(2) A law of this state other than the provisions of this chapter applicable to health service corporations must be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict the provisions of this chapter prevail."

HeinOnline -- 1997 vol. III 3065 1997

**Section 39.** Section 33-30-107, MCA, is amended to read:

"**33-30-107. Annual statement.** (1) On or before March 1 of each year, each health service corporation shall file an annual statement for the preceding year on form No. 13 N.A.I.C. with the commissioner of insurance. This annual statement must be completed in accordance with the national association of insurance commissioners' annual statement instructions.

(2) The health service corporation shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) (a) Each health service corporation shall file electronic diskette versions of its annual and quarterly financial statements with the national association of insurance commissioners. The filing date for submission of the annual statement diskette is March 1. The filing dates for the other three quarterly statements are as follows:

(i) the first quarter statement is due May 15;

(ii) the second quarter statement is due August 15; and

(iii) the third quarter statement is due November 15.

(h) Tbe commissioner may exempt health service corporations operating only in Montana from these filing requirements.

*(4) The commissioner may, after notice and hearing, suspend or revoke a health service corporation's license or impose a fine not to exceed $100 a day and not to exceed $1,000 upon a health service corporation that fails to file an annual statement as required by this part.*"

**Section 40.** Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

HeinOnline -- 1997 vol. III 3066 1997

(5) The provisions of this section do not exempt a health maintenance organization from *the prohibition of pecuniary interest under 33-3-308 or the* material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of *33-3-308 and* 33-3-701 through 33-3-704."

**Section 41.** Section 33-31-211, MCA, is amended to read:

**"33-31-211. Annual statement — revocation for failure to file — penalty for false swearing.** (1) Unless it is operated by an insurer or a health service corporation as a plan, each authorized health maintenance organization shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must he in the general form and content required by the commissioner. The statement must be verified by the oath of at least two principal officers of the health maintenance organization. The commissioner may ~~in his discretion~~ waive any verification under oath.

(2) At the time of filing its annual statement, the health maintenance organization shall pay the commissioner the fee for filing its statement as prescribed in 33-31-212. The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-31-212, *may impose a penalty of $100,* or may ~~in his discretion~~ suspend or revoke the certificate of authority of a health maintenance organization that fails to file an annual statement when due. *Each day that the insurer fails to file its annual statement constitutes a separate violation. The total penalty may not exceed $1,000.*

(3) The commissioner may, after notice and hearing, impose a fine not to exceed $5,000 ~~per~~ *for each* violation upon a director, officer, partner, member, insurance producer, or employee of a health maintenance organization who knowingly subscribes to or concurs in making or publishing an annual statement required by law that contains a material statement ~~which~~ *that* is false.

(4) The commissioner may require ~~such~~ reports ~~as he~~ *that the commissioner* considers reasonably necessary and appropriate to enable ~~him~~ *the commissioner* to carry out ~~his~~ *the commissioner's* duties under this chapter, including but not limited to a statement of operations, transactions, and affairs of a health maintenance organization operated by an insurer or a health service corporation as a plan."

**Section 42. Uniform claim forms and proeedures.** The commissioner of insurance, after consultation with the health care advisory council, may adopt by rule uniform health insurance claim forms and uniform standards and procedures for the use of the forms and processing of claims, including the submission of claims by means of an electronic claims processing system.

**Section 43. Loss and loss expense reserves for property and casualty insurance.** (1) (a) In determining the financial condition of a property and casualty insurer for the purpose of applying the provisions of this chapter and in any financial statement or report of an insurer, loss reserves and loss expense reserves at least equal to the amounts required under the provisions of this section must be included in the insurer's liabilities. The date from which the determination, statement, or report is made is, for the purpose of this part, the date of determination.

HeinOnline -- 1997 vol. III 3067 1997

(b) Accepted actuarial standards as adopted by the actuarial standards board must be taken into consideration for the purpose of determining the loss reserves and loss expense reserves.

(2) Except as provided in subsections (3) and (4), the reserves for all outstanding losses and loss expenses must include the following:

(a) the aggregate estimated amounts due or to become due on account of all known losses, claims, and loss expenses incurred but not paid, including the estimated liability on any notice received by the insurer of the occurrence of any event that may result in a loss; and

(b) the aggregate amounts of liability for all losses and loss expenses incurred for which notice has not been received, estimated in accordance with the insurer's prior experience, if any, or otherwise in accordance with Montana industry experience, or countrywide industry experience if this state's experience is not credible, for similar contracts of insurance. The estimated liabilities for losses under all bonds, policies, or contracts of fidelity insurance may not be less than 10% of the net premiums in force, and the estimated liabilities for all of those losses under all the insurer's surety contracts may not be less than 5% of the net premiums in force.

(3) Except as provided in subsection (4), tabular reserves for outstanding losses under policies of workers' compensation insurance may be actuarially calculated for both indemnity and medical payments. The loss adjustment expenses are not eligible for discounting. Tabular reserves are those reserves that are:

(a) calculated using discounts determined with reference to actuarial tables, which incorporate mortality, interest, not to exceed 4%, remarriage, and other contingencies applied to a reasonably determinable payment stream associated with lifetime benefit cases; or

(b) annuities certain, such as those arising from structured settlements.

(4) Whenever, in the judgment of the commissioner, the loss and loss expense reserves of any property and casualty insurer doing business in this state, calculated in accordance with the provisions of this section, are inadequate or excessive, the commissioner may prescribe any other method that will produce adequate and reasonable reserves.

(5) The excess, if any, of statutory reserves over statement reserves must be calculated in accordance with the annual statement instructions adopted by the national association of insurance commissioners.

**Section 44. Repealer.** Sections 33-2-515, 33-2-536, 33-2-721, 33-2-722, 33-2-723, 33-4-404, 33-4-409, 33-22-1201, 33-22-1202, 33-22-1203, 33-22-1204, and 33-22-1205, MCA, are repealed.

**Section 45. Codification instruction.** (1) [Section 43] is intended to be codified as an integral part of Title 50, chapter 4, part 5, and the provisions of Title 50, chapter 4, part 5, apply to [section 43].

HeinOnline -- 1997 vol. III 3068 1997

(2) [Section 44] is intended to be codified as an integral part of Title 33, chapter 2, part 5, and the provisions of Title 33, chapter 2, part 5, apply to [section 44].

**Section 46. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 47. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective October 1, 1997.

(2) [Section 9] and this section are effective on passage and approval.

Approved May 5, 1997

# CHAPTER NO. 532

[HB 169]

AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING APPROPRIATIONS AND THE ADMINISTRATION OF STATE GOVERNMENT FINANCES; CLARIFYING THE TREASURY FUNDS SUBJECT TO APPROPRIATION; REVISING AND CLARIFYING THE DEPOSIT OF CERTAIN FUNDS; REVISING THE STATUTORY APPROPRIATION OF CERTAIN FUNDS; CONFORMING THE ADMINISTRATION OF RETIREMENT SYSTEMS TO CONSTITUTIONAL REVISIONS; AUTHORIZING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO HIRE THEIR OWN PERSONNEL; LIMITING THE ADMINISTRATIVE EXPENSES OF THE RETIREMENT SYSTEMS; CLARIFYING APPROPRIATIONS CARRYOVER RESTRICTIONS; AMENDING SECTIONS 2-9-202, 2-15-1009, 2-18-812, 15-36-324, 15-36-325, 17-2-101, 17-2-102, 17-2-103, 17-2-121, 17-3-221, 17-3-222, 17-6-201, 17-7-304, 17-7-402, 17-7-502, 17-8-101, 19-2-404, 19-2-408, 19-2-502, 19-5-404, 19-6-709, 19-8-504, 19-9-702, 19-9-1007, 19-13-604, 19-13-1006, 19-13-1009, 19-17-301, 19-18-512, 19-19-205, 19-19-305, 19-19-506, 19-20-203, 19-20-501, 19-20-605, 50-3-109, 61-3-321, AND 76-13-114, MCA; REPEALING SECTIONS 19-9-208, 19-13-615, 19-18-513, 19-18-606, AND 19-20-606, MCA, AND SECTION 13, CHAPTER 23, SPECIAL LAWS OF NOVEMBER 1993; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 2-9-202, MCA, is amended to read:

**"2-9-202. Apportionment of costs — creation of deductible reserve.** (1) The department of administration shall apportion the costs of all insurance purchased under 2-9-201 to the individual state participants, and the costs ~~shall~~ *must* be paid to the department subject to appropriations by the legislature.

(2) The department, if it elects to ~~utilize~~ *use* a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient

amount over the actual cost of the deductible insurance to replenish ~~such~~ *the* deductible reserves.

(3) The department may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund ~~are statutorily appropriated, as provided in 17-7-502, to~~ *must be used by* the department to pay claims under parts 1 through 3 of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of the fund must he made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(4) Money in reserve funds established under this section *that is* not needed to meet expected expenditures ~~shall~~ *must* be invested and all proceeds of the investment credited to the fund."

**Section 2.** Section 2-15-1009, MCA, is amended to read:

**"2-15-1009. Public employees' retirement board — terms — allocation.** (1) There is a public employees' retirement board.

(2) The board consists of six members appointed by the governor. The members are:

(a) three public employees who are active members of a public retirement system (not more than one of these members may be an employee of the same department);

(h) one retired public employee who is an inactive member of the public employees' retirement system; and

(c) two members at largo.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. *The board shall hire necessary employees as provided in 19-2-404.*

(5) Members of the board ~~shall~~ *must* be compensated and receive travel expenses as provided for in 2-15-124."

**Section 3.** Section 2-18-812, MCA, is amended to read:

**"2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized — requirements.** The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department ~~must~~ *shall* maintain state employee group benefit plans on an actuarially sound basis.

(2) The department ~~must~~ *shall* maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department ~~must~~ *shall* deposit all reserve funds and premiums paid to a state employee group benefit plan, and the deposits ~~are statutorily appropriated, as provided in 17-7-502, to the department to~~ *must* be expended for claims under the plan.

(4) The department ~~must~~ *shall* deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) ~~of this section~~ in order to offset the costs of administering the plan. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(5) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance. ~~The department may not implement any full self-insurance alternative prior to July 1, 1981.~~

(6) The provisions of Title 33 ~~shall~~ *do* not apply to the department when exercising the powers and duties provided for in this section."

**Section 4.** Section 15-36-324, MCA, is amended to read:

**"15-36-324. Distribution of taxes.** (1) For each calendar quarter, the department of revenue shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally drilled wells located in the taxing unit.

(2) Except as provided in subsections (3) and (4), oil production taxes must be distributed as follows:

(a) The amount equal to 41.6% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (7).

(b) The remaining 58.4% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the ~~agency~~ *state special revenue* fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (8).

(3) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (7).

(4) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from

HeinOnline -- 1997 vol. III 3071 1997

horizontally drilled wells and on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (7).

(5) Except as provided in subsection (6), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14.6% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (7).

(b) The remaining 85.4% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the ~~agency~~ *state special revenue* fund in the state treasury and transferred te the county and school taxing units for distribution as provided in subsection (8).

(6) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from post-1985 wells occurring during the first 12 months of preduction must be distributed as provided in subsection (7).

(7) The department shall, in accordance witb the provisions of 15-1-501(6), distribute the state portion of oil and natural gas production taxes, including late payment interest and penalty collected, as follows:

(a) 85% to the state general fund;

(b) 4.3% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 10.7% to be distributed as provided by 15-38-106(2).

(8) (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to tbe total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection (9), the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying tbe unit value, as adjusted in this subsection (8)(a), by the units of production on wbich oil and natural gas production taxes from pre-1985 wells were owed for tbe calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (8)(a) must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

HeinOnline -- 1997 vol. III 3072 1997

(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as provided in subsection (8)(c), the county treasurer shall distribute the money received under subsection (9) from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (8)(b), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (8)(c)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (8)(d)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b) and (5)(b) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection (8)(e) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

HeinOnline -- 1997 vol. III 3073 1997

(g) The money distributed in subsection (8)(e) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection (8)(b) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributed under subsection (8)(e) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (8)(h) and (8)(i) is for the exclusive use and benefit of the county and school taxing units.

(9) The department shall remit the amounts to be distributed in subsection (8) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(10) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

*(11) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."*

**Section 5.** Section 15-36-325, MCA, is amended to read:

**"15-36-325. Local government severance tax payments for calendar year 1995 production — distribution of payments — not subject to I-105 limitations.** (1) The local government severance tax imposed under 15-36-101, as that section read before January 1, 1996, for calendar year 1995 production is due as follows:

(a) for oil and natural gas production occurring in the first calendar quarter of 1995, the tax is due May 31, 1996;

(h) for oil and natural gas production occurring in the second calendar quarter of 1995, the tax is due May 31, 1997;

(c) for oil and natural gas production occurring in the third calendar quarter of 1995, the tax is due May 31, 1998; and

(d) for oil and natural gas production occurring in the fourth calendar quarter of 1995, the tax is due May 31, 1999.

(2) (a) If the taxpayer pays the entire local government severance tax liability for calendar year 1995 on or before June 30, 1996, the taxpayer must receive a 6% reduction in the total local government severance tax liability.

(b) Any payment of local government severance taxes for calendar year 1995 made on or before June 30, 1997, does not accrue interest. Any payment of local government severance taxes for calendar year 1995 made after June 30, 1997, must accrue interest at the rate of 1% a month or fraction of a month from July 1, 1997, to the date of payment. Any payment for the third quarter of 1995 received after May 31, 1998, and any payment for the fourth quarter of 1995 received after May 31, 1999, is subject to the late payment penalty provisions in 15-36-311.

(c) In the case of the dissolution of the operator or a change in the operator of any lease or unit, any unpaid local government severance tax for calendar year 1995 becomes due on the date of dissolution or on the date of the change in operator. The operator is subject to the provisions of subsection (2)(a) regarding the 6% tax liability reduction or the provisions of subsection (2)(b) regarding interest and penalties.

(3) The department shall determine the amount of tax collected under subsections (1) and (2) from within each taxing unit.

(4) For purposes of the distribution of local government severance taxes collected under this section, the department shall use the unit value of oil and gas for each taxing unit as determined in 15-36-323.

(5) The local government severance tax must be deposited in the ~~agency~~ *state special revenue* fund in the state treasury and transferred to the county for distribution as provided in subsection (6).

(6) For the purpose of the distribution of the local government severance tax for calendar year 1995 production, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters for which the distribution occurs plus penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters for which the distribution occurs. The taxes must be calculatod and distributed as follows:

(a) By July 31 of each of the years 1996, 1997, 1998, and 1999, the department shall calculate and distribute to each eligible county the amount of local government severance tax for calendar year 1995 production, determined by

HeinOnline -- 1997 vol. III 3075 1997

multiplying the unit value, as adjusted in this subsection (6), by the units of production on which the local government severance tax was owed during calendar year 1995 production.

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsection (6)(a) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(7) (a) The county treasurer shall distribute the money received under subsection (6) between the county and school taxing units. The distribution between county and school taxing units is the ratio of the number of mills levied for fiscal year 1990 against 1988 production in each taxing unit for the county and schools, including the county equalization levies that were in effect under 20-9-331 and 20-9-333 as those sections read on July 1, 1989, and the university 6-mill levy imposed under 20-25-423, except that a distribution may not be made to a municipal taxing unit or the state equalization aid levy imposed under 20-9-360. Distribution of money for the county equalization levies and the university levy must be remitted to the state by the county treasurer. The amounts distributed under subsections (7)(b) and (7)(c) are for the exclusive use of county and school taxing units.

(b) The county treasurer shall deposit the money from subsection (7)(a) allocated to county levies to the oil and gas tax accelerated fund.

(c) The trustees of a school district may allocate any payment received under subsection (7)(a) to any budget fund of the district or to the miscellaneous programs fund established in 20-9-507. The trustees shall direct the county treasurer to deposit the local government severance tax payments under this section to the funds of the district in accordance with the allocations determined by the trustees.

(8) Local government severance tax payments to a county pursuant to this section are not subject to the limitations of Title 15, chapter 10, part 4. Payments of local government severance tax pursuant to this section may not be used for county classification purposes under 7-1-2111 and may not be considered in the determination of bonding limits under 7-7-2101, 7-7-2203, 7-14-2524, and 7-16-2327.

*(9) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."*

**Section 6.** Section 17-2-101, MCA, is amer ·d to read:

**"17-2-101. Title and purpose.** *(1)* Sections 17-2-101 through 17-2-107 may he cited as the "Treasury Fund Structure Act".

*(2)* The purpose of these sections is to:

*(a) comply with Article VIII, section 12, of the Montana constitution;*

*(b)* simplify the accounting system and treasury fund structure of the state~~,~~;

*(c)* ~~to~~ make possible the full utilization of modern accounting methods~~,~~;

*(d)* ~~to~~ provide the legislature with a greater measure of control over public ~~moneys,~~ *money;* and

*(e)* ~~to~~ enable the financial records of the state to accurately reflect the state's ~~revenues~~ *revenue*, expenditures, expenses, and financial position in accordance with generally accepted accounting principles."

**Section 7.** Section 17-2-102, MCA, is amended to read:

**"17-2-102. Fund structure.** (1) ~~There~~ *For the purpose of ensuring strict accountability for all revenue received and spent, there* are in the state treasury only the following fund categeries and types:

(a) the governmental fund category, which includes:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state and other nonfederal sources deposited in the stato treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(iii) the capital projects fund type, which accounts for financial resources to be used for tbe acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) the proprietary fund category, which includes:

HeinOnline -- 1997 vol. III 3077 1997

(i) the enterprise fund type, which accounts for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general puhlic on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) pension trust fund type; and

(iv) agoncy fund type.

(d) the higher education funds, which include:

(i) the current fund, which accounts for money deposited in the state treasury that is used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the current fund are subdivided, for operational purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) Tho restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regonts and the legislature.

(C) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order te accumulate costs that are to be recharged as allocated to other funds or subfunds;, identifies financial activities related to special organized activities of educational departments in which the activity is fully supported by supplemental assessments;, and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

HeinOnline -- 1997 vol. III 3078 1997

(D) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the student loan fund, which accounts for money deposited in the state treasury that may he loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system;

(iii) the endowment fund, which accounts for money deposited in the state treasury by the Montana university system wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the annuity and life income fund, which accounts for money deposited in the state treasury by the Montana university system under an agreement whereby the money is made available on condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the agency fund, which accounts for money deposited in the state treasury wherein the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1), there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v); and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v)."

**Section 8.** Section 17-2-103, MCA, is amended to read:

**"17-2-103. Previous definitions of funds — identification or segregation of ~~moneys~~ *money* and funds.** (1) It is the intent of the legislature that the definitions in 17-2-102 supersede all previous definitions of public funds ~~which~~ *that* are inconsistent with the definitions found in this part.

HeinOnline -- 1997 vol. III 3079 1997

(2) Any laws enacted in the future or any contracts entered into in the future in pursuance of law that require the segregation of ~~moneys~~ *money* in tho state treasury by means of a separate treasury fund ~~shall~~ *must* be interpreted as permitting the segregation of ~~such moneys~~ *the money* by means of a subfund or account within one of the funds created by 17-2-102.

(3) Each federal grant or other federal money within any subfund or account of one of the funds created by 17-2-102(1)(a) through (1)(c) must be identifiable as a separate accounting entity, reporting center, responsibility center, or revenue identification code, and an account must be made of each such grant or other money by income and expenditure for each federal grant year or fiscal year as may be applicable.

(4) Unless otherwise specifically provided in the statutes pertaining to the tax, the portion of taxes collected by the state that, pursuant to a statute, are to be allocated or distributed to units of local government, school districts, authorities, or other local governmental entities ~~shall~~ *must* be accounted for in a ~~fiduciary~~ *state special revenue* fund, established in 17-2-102, as prescribed by the department in accordance with generally accepted accounting principles."

**Section 9.** Section 17-2-121, MCA, is amended to read:

**"17-2-121. Deposits by insurance commissioner.** ~~All~~ *Except as provided in 33-2-708, all* fees, miscellaneous and examination charges, fines, penalties, and those amounts received pursuant to 33-2-311, 33-2-705, ~~or~~ 33-2-706, *or 50-3-109* collected by the insurance commissioner pursuant to Title 33 and the rules adopted ~~thereunder~~ *to implement Title 33* must be deposited in the general fund."

**Section 10.** Section 17-3-221, MCA, is amended to read:

**"17-3-221. State treasurer to be custedian of ~~moneys~~ *money* received under Taylor Grazing Act.** The state treasurer ~~shall be~~ *is* the custodian of all ~~moneys~~ *money* that the treasurer of the United States ~~may transfer~~ *transfers* to the state of Montana under the terms of section 10 of the Taylor Grazing Act approved June 28, 1934, (Public No. 482), which provides that the secretary of the United States treasury pay one-half of the ~~moneys~~ *money* received from each grazing district each year to the state where collected, to be expended as the legislature may prescrihe. *The money must be deposited in the federal special revenue fund.*"

**Seetion 11.** Section 17-3-222, MCA, is amended to read:

**"17-3-222. Apportionment of moneys to counties.** *(1)* It ~~shall be~~ *is* the duty of the state treasurer to properly apportion and allocate ~~these moneys~~ *the money received pursuant to 17-3-221* to the county treasurers, who ~~will~~ *shall* allocate and pay ~~all such moneys~~ *the money* as follows:

*(a)* 50% to the county general fund; and

*(b)* 50% to the common school fund of the county.

*(2) The payments from the state to the county treasurers provided for in subsection (1) are statutorily appropriated as provided in 17-7-502."*

HeinOnline -- 1997 vol. III 3080 1997

**Section 12.** Section 17-6-201, MCA, is amended to read:

**"17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must he administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the henefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be investod in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest stato funds. Another agency may not invest stato funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board bas the power to veto any investments made under its general suporvision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

HeinOnline -- 1997 vol. III 3081 1997

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board ~~and are statutorily appropriated, as provided in 17-7-502~~. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305."

**Section 13.** Section 17-7-304, MCA, is amended to read:

**"17-7-304. (Temporary) Disposal of unexpended appropriations.** (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) and except as provided in subsection (4) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended halance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held

by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated.

(4) For the 2 years following the end of a fiscal year, 30% of the money appropriated to an agency for that year by the general appropriations act for personal services, operating expenses, and equipment, *by fund type,* and remaining unexpended and unencumbered at the end of the year may be spent for any purpose that is consistent with the goals and objectives of the agency. The dollar amount of the 30% amount that may be carried forward and spent must be determined by the office of budget and program planning. (Terminates July 1, 1997—sec. 13, Ch. 23, Sp. L. November 1993.)

**17-7-304. (Effeetive July 1, 1997) Disposal of unexpended appropriations.** (1) All money appropriated for any specific purpose except that appropriated for the university system units listed in subsection (2) must, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana campuses at Missoula, Butte, Dillon, and Helena and the Montana state university campuses at Bozeman, Billings, Havre, and Great Falls, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, and the bureau of mines and geology with central offices in Butte must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount

HeinOnline -- 1997 vol. III 3083 1997

that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated."

**Section 14.** Section 17-7-402, MCA, is amended to read:

**"17-7-402. Budget amendment requirements.** (1) Except as provided in subsection (6), a budget amendment may not be approved:

(a) by tbe approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for tbose agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91; or

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections;

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure *or the expenditure is exempt under subsection (4)*;

(d) by the approving authority unless it will provide additional services;

(e) by the approving authority for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments must itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst. *The proposed expenditure of money from nonstate or nonfederal sources that is restricted by law must be submitted to the legislative fiscal analyst.*

HeinOnline -- 1997 vol. III 3084 1997

(4) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

(5) An appropriation that would usually be the subject of a budget amendment that is submitted to the legislature for approval during a legislative session may not include authority to spend money beyond the first fiscal year of the next biennium.

(6) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

**Section 15.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: ~~2-9-202;~~ 2-17-105; ~~2-18-812;~~ 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; *15-36-324; 15-36-325;* 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; *17-3-222;* 17-5-404; 17-5-424; 17-5-804; 17-6-101; ~~17-6-201;~~ 17-7-304; 18-11-112; ~~19-2-502;~~ 19-6-709; *19-9-702;* 19-9-1007; *19-13-604; 19-13-1006;* 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2501; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7,

HeinOnline -- 1997 vol. III 3085 1997

Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 16.** Section 17-8-101, MCA, is amended to read:

**"17-8-101. Appropriation and disbursement of money from treasury.** (1) ~~Except as provided in subsection (5)~~ *For purposes of complying with Article VIII, section 14, of the Montana constitution*, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection ~~(3)~~ *(4)*, must be paid out of the treasury only on appropriation made by law.

(2) Money deposited in the ~~enterprise fund type,~~ *enterprise fund type, debt service fund type,* internal service fund type, ~~debt service fund type,~~ expendable trust fund type, ~~nonexpendable trust fund type, pension trust fund type,~~ *agency fund type, and* state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, ~~and agency fund type~~ may be paid out of the treasury*:*

*(a) by appropriation; or*

*(b)* under general laws, or contracts entered into in pursuance of law, permitting the disbursement.

*(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.*

~~(3)~~*(4)* ~~Subject to the provisions of subsection (8), money~~ *Money* paid into the state treasury through error or under circumstances~~,~~ such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law~~,~~ may be refunded upon the submission of a verified claim approved by the department of administration.

~~(4)~~*(5)* Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

~~(5)~~*(6)* Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

~~(5)~~*(7)* The office of budget and program planning shall include in the budget submitted to the legislature a report on:

(a) enterprise funds, including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

HeinOnline -- 1997 vol. III 3086 1997

(b) internal service fund type fees and charges, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Internal service fund type fees and charges must be approved by the legislature in the general appropriations act. Fees and charges in any biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

~~(7)~~*(8)* ~~Any~~ *The creation of* accounts in the enterprise fund or the internal service fund ~~created after July 1, 1995,~~ must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

~~(8)~~*(9)* Enterprise ~~and internal service~~ *and internal service* funds must he appropriated if they are ~~used as a part of a program that is not an enterprise or internal service function and otherwise requires an appropriation~~ *used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. The payment of funds into an internal service fund must be authorized by law.*"

**Section 17.** Section 19-2-404, MCA, is amended to read:

"**19-2-404. Appointment and compensation of administrative staff.** The ~~department~~ *board* shall ~~appoint~~ *hire* and fix the compensation of an administrator and other necessary employees to assist the board in administering the retirement systems. *The compensation of the administrator and employees must be established in accordance with Title 2, chapter 18.*"

**Section 18.** Section 19-2-408, MCA, is amended to read:

"**19-2-408. Administrative expenses.** (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) The administrative expenses of the retirement systems administered hy the board must he paid from the investment earnings on the pension trust fund of the public employees' retirement system, except as provided in subsection (3). Before the fiscal yearend closing, the board shall compute the administrative expenses attributable to each retirement system administered by the board for the immediately preceding fiscal year and transfer that amount from each retirement system's pension trust fund to the pension trust fund of the puhlic employees' retirement system. *The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total retirement benefits paid.*

(3) On January 1 of each year, each employer under the public employees' retirement system shall contribute on behalf of each member then in its service a membership fee of $1 in addition to other required contributions. The ~~appropriation of these~~ fees~~, together with other money appropriated for that purpose,~~ must be used for the purpose of defraying the administrative expense of chapters 2, 3, 5 through 9, *and* 13~~,~~ and this chapter.

HeinOnline -- 1997 vol. III 3087 1997

~~(4) Any request for an increase in spending authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4.~~

~~(5)~~ The board may assess and the division may collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering chapter 8 of this title."

**Section 19.** Section 19-2-502, MCA, is amended to read:

**"19-2-502. ~~Statutory appropriation of payments~~ *Payments* from pension trust funds.** *(1)* ~~Assets~~ *The board shall administer the assets* of the pension trust funds ~~are statutorily appropriated, as provided in 17-7-502, to the division for payment of benefits and refunds to eligible recipients and for paying the necessary administrative and investment expenses of the retirement systems~~ *as provided in Article VIII, section 15, of the Montana constitution*, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.

*(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."*

**Section 20.** Section 19-5-404, MCA, is amended to read:

**"19-5-404. Contribntions by state.** (1) The state of Montana shall contribute monthly to the pension trust fund a sum equal to 6% of the compensation of each member. In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6) to the state, which shall first deposit in the pension trust fund an amount equal to 34.71% of the total compensation paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the division to be credited to the pension trust fund.

(2) The state of Montana shall contribute monthly from the renewable resource grant and loan program account in the state special revenue fund to the judges' pension trust fund an amount equal to 34.71% of the compensation paid to the chief water court judge. *The judiciary shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section."*

**Section 21.** Section 19-6-709, MCA, is amended to read:

**"19-6-709. (Temporary) Supplemental benefits for certain retirees.** (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection (2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, and must be:

HeinOnline -- 1997 vol. III 3088 1997

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability or survivorship benefit under 19-6-601 or 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) (a) ~~Twenty-five~~ *An amount equal to 25* cents of each motor vehicle registration fee provided for in 61-3-321*(5)* must be ~~deposited in~~ *paid from the general fund to* the pension trust fund at the end of each fiscal year. The ~~fee~~ *payment* is statutorily appropriated, as provided in 17-7-502, *to the pension fund* for payment of benefits to eligible recipients. The total funds must be distributed by the division in lump-sum payments to eligible recipients along with their normal retirement benefit payment.

(b) The lump-sum payment must be distributed proportionally to all eligible recipients based on service credit at the time of retirement, subject to the following:

(i) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(ii) any recipient of a service retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(iii) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section after August 31, 1993, is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system.

(5) Every 10 years following July 1, 1991, the division shall review the size of the additional fee collected under 61-3-321(5) and ~~deposited in the account~~ *paid to the pension trust fund* in accordance with subsection (4)(a) and recommend to each legislature following the division's review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section."

HeinOnline -- 1997 vol. III 3089 1997

**Section 22.** Section 19-8-504, MCA, is amended to read:

**"19-8-504. Statc's contribution.** Each month, the state treasurer shall pay to the pension trust fund out of the department of fish, wildlife, and parks funds, a sum equal to 8.15% of all members' salaries. *The department of fish, wildlife, and parks shall include in its budget and shall request for legislative appropriation an amount necessary to defray the state's portion of the costs of this section.*"

**Section 23.** Section 19-9-702, MCA, is amended to read:

**"19-9-702. State contribution.** The state of Montana shall make its contributions ~~through the state auditor out of~~ *from the general fund* ~~the premium tax on motor vehicle property and casualty insurance policies~~. The ~~payments~~ *general fund contributions* must be made annually after the end of each fiscal year but no later than November 1 ~~from the gross premium tax after deduction for cancellations and returned premiums~~. The division shall notify the *state* auditor by September 1 of each fiscal year of the annual compensation paid to all active members during the preceding fiscal year. The state's contribution is 15.66% of compensation paid to members. *The contributions are statutorily appropriated as provided in 17-7-502.*"

**Section 24.** Section 19-9-1007, MCA, is amended to read:

**"19-9-1007. Supplement to certain benefits.** (1) The benefits paid in each fiscal year to a retired member or the member's survivors may not be less than one-half of the compensation that will be paid in the current fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before October 1 of each year, the division shall make a report including the following information:

(a) the names of all retired members who are receiving benefits from the retirement system as of the date of the report;

(b) the names of all surviving spouses or dependent children who are receiving benefits from the retirement system because of the death of an active or retired member of this or a prior plan;

(c) for the purpose of determining the base retirement, disability, or survivorship benefits for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the benefits paid in the base fiscal year to each retired member described in subsection (2)(a);

(ii) the amount of the benefits paid in the base fiscal year to each surviving spouse or dependent child described in subsection (2)(b);

(iii) upon the death after the base fiscal year of any retired member who was receiving benefits, the amount of benefits that would have been paid to an eligible surviving spouse of the retired member if the surviving spouse had been receiving benefits in the base fiscal year;

HeinOnline -- 1997 vol. III 3090 1997

(d) the original amount of retirement, disability, or survivorship benefits paid to retired members or their eligible survivors as of the original retirement dates after July 1, 1975;

(e) the compensation that will be paid during the current fiscal year to a newly confirmed police officer of each city or town participating in the retirement system.

(3) The division shall compute the difference between each amount reported under subsections (2)(c) through (2)(e) and one-half the compensation to be paid during the current fiscal year to a newly confirmed police officer of the appropriate city or town. The difference must be reported to the state auditor, who shall pay the difference *from the general fund* te the pension trust fund ~~out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-18-512(3)~~ no later than November 1. If the compensation of a newly confirmed police officer has not been set for the current fiscal year in time to be included in the October 1 report to the state auditor, the division shall make any retroactive adjustments necessary to individual supplemental benefits after the current compensation has been determined and shall include these amounts in the next year's report for reimbursement at tbat tiine.

(4) The ~~premium tax~~ amount paid by the state auditor is statutorily appropriated, as provided in 17-7-502, for the payment of supplemental retirement benefits to eligible retired members and their survivors. This ~~payment~~ *amount* is in addition to the payment to be made by the state auditor under 19-9-702.

(5) If more tban one dependent child is entitled to supplementary benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the supplementary benefits must be paid to the dependent children collectively."

**Section 25.** Section 19-13-604, MCA, is amended to read:

**"19-13-604. State contribution.** The state sball make its contributions ~~through the state auditor~~ from the ~~premium taxes on the insurance risks enumerated in 19-18-512~~ *general fund.* ~~These payments~~ *Payments* must be made annually *from the general fund* to the pension trust fund after the end of each fiscal year but no later than November 1 ~~from the gross premium taxes after deduction for cancellations and returned premiums~~. The division shall notify the *state* auditor of the annual compensation, excluding evertime, holiday payments, shift differential payments, compensatery time payments, and payments in lieu of sick leave, paid to all active members during the preceding year. The state's contribution is 24.21% of this total compensation. ~~As soon as practicable after receipt of the state contribution, the division shall deposit it in the pension trust fund.~~ *The contributions are statutorily appropriated as provided in 17-7-502.*"

**Section 26.** Section 19-13-1006, MCA, is amended to read:

**"19-13-1006. Supplement to retirement benefits for persons retiring before July 1, 1973.** (1) The retirement system shall pay to each meinher retired before July 1, 1973, or the member's surviving spouse or dependent children a monthly retirement benefit of not less than one-half the

HeinOnline -- 1997 vol. III 3091 1997

regular monthly compensation paid to a confirmed active firefighter of the city that last employed the member as a firefighter, as provided each year in the budget of that city. If the city that last employed the member as a firefighter no longer employs a full-paid firefighter, the member's or survivor's benefit may not be less than one-half the average regular monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter. In the case of volunteer firefighters, the retirement benefit may not exceed $75 per month. Distribution of the money provided for this purpose under ~~19-18-606(1)~~ *subsection (2)* must be made according to subsection ~~(2)~~ *(3)*.

*(2) The state auditor shall deposit the proceeds of the tax collected pursuant to 50-3-109(1)(b) in the general fund. The state auditor shall pay an amount equal to the proceeds of the tax from the general fund to the pension trust fund to be used to pay claims as provided in subsection (3). The paymcnt is statutorily appropriated as provided in 17-7-502. If the amount paid is in excess of the amount necessary for the payment of claims as provided in subsection (3), the excess must be used to pay thc supplementary benefits provided for in 19-13-1009.*

~~(2)~~*(3)* (a) At the beginning of each fiscal year, the division sball request and, except as provided in subsection ~~(2)(b)~~ *(3)(b)*, the state auditor shall ~~issue~~ *pay* from the state ~~special revenue~~ *general* fund ~~and deliver~~ to the ~~division~~ *pension trust fund* an amount certified to be equal te the total annual dollar difference between the total retirement benefits paid te all retirees or their surviving speuses or dependent children in the previous fiscal year and the total benefits payable on June 30, 1973. ~~The division shall deposit this money into the pension trust fund.~~

(b) If *the amount of* ~~insufficient~~ money ~~is contained in the state special revenue fund to pay the amount requested~~ *paid* in suhsection ~~(2)(a)~~ *(3)(a) is insufficient*, the ~~auditor shall pay to the division the balance contained in the state special revenue fund. The~~ division shall continue to request *the payment of* any portion of the amount requested under subsection ~~(2)(a)~~ *(3)(a) that was* not paid in previous fiscal years plus sufficient interest to reimburse the pension trust fund~~, which~~ *The* amounts must be paid to the ~~division~~ *pension trust fund* prior to determining whether sufficient ~~cash remains in the special revenue fund~~ *taxes have been collected* to make any *amount available for* payments ~~into the account established in 19-13-615~~ *of supplementary benefits provided for in 19-13-1009*. The *state* auditor shall pay the ~~requests~~ *amounts* as *premium tax* money in the state ~~special revenue~~ *general* fund becomes available."

**Section 27.** Section 19-13-1009, MCA, is amended to read:

**"19-13-1009. Supplement to retirement benefits for persons hired on or after July 1, 1981.** (1) The division shall pay a supplemental benefit ~~from the account provided for in 19-13-615~~ to each member hired on or after July 1, 1981, who has earned 20 years of membership service as an active firefighter or to the member's surviving spouse or dependent children. Except as provided in subsection (2), tbe supplemental benefit, when added to the service retirement benefit, must equal one-half the regular monthly compensation paid to a newly confirmed full-paid active firefighter of the city that last employed the member as a firefighter as provided each year in the budget of that city. If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's supplemental benefit must be calculated on the basis

HeinOnline -- 1997 vol. III 3092 1997

of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(2) If the amount available ~~to the account~~ is insufficient to fully fund the supplemental benefit provided for in subsection (1), the supplemental benefit for each eligible member or survivor must be reduced by an equal percentage so that the amount ~~contained in the account~~ *available for this purpose* is not exceeded."

**Section 28.** Section 19-17-301, MCA, is amended to read:

**"19-17-301. Fire insurance premium tax to be paid into pension trust fund.** The state auditor ~~and ex officio commissioner of insurance~~ shall annually ~~deposit in~~ *pay from the general fund to* the pension trust fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in ~~19-18-512~~ *50-3-109*. The sum must be computed before the amounts provided for by 19-13-604, *19-13-1006,* and 19-18-512 are deducted. The money must he used for the payment of claims, benefits, and administrative costs as provided in this chapter. The money is statutorily appropriated as provided in 17-7-502."

**Section 29.** Section 19-18-512, MCA, is amended to read:

**"19-18-512. State auditor ~~to pay~~ — *payment to* association ~~out of insurance premium taxes~~.** (1) After the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of ~~every~~ *each* city or town ~~which~~ *that* has a fire department relief association entitled by law to receive payments. Tho warrant ~~shall~~ *must* be for the use and benefit of the association. ~~It shall~~ *The warrant must* he for an amount equal to 1 1/2 mills of the total taxable value of the city or town and ~~shall~~ *must* be paid out of the ~~premium taxes on insurance risks enumerated in subsection (3) collected by the state auditor~~ *general fund*. The payment is statutorily appropriated as provided in 17-7-502.

(2) ~~If the~~ *The* payment provided for in subsection (1) ~~is less than $100, an additional payment shall be made from the same tax moneys so that the total amount received is~~ *must be for at least* $100.

~~(3) The risks referred to in subsection (1) are:~~

~~(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;~~

~~(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;~~

~~(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;~~

~~(d) insurance of growing crops against loss or damage resulting from hail or the elements;~~

~~(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;~~

HeinOnline -- 1997 vol. III 3093 1997

~~(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and~~

~~(g) insurance against theft of the whole or any part of any vehicle.~~"

**Section 30.** Section 19-19-205, MCA, is amended to read:

"**19-19-205. Actuarial valuation of police retirement fund.** (1) The city treasurer shall submit to the department of administration before October 1 of each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the city's police retirement fund. The valuation ~~shall~~ *must* consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation ~~is to~~ *must* be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state auditor shall make payment to the actuary ~~designated in the request~~ *from the general fund*. The payment is statutorily appropriated as provided in 17-7-502."

**Section 31.** Section 19-19-305, MCA, is amended to read:

"**19-19-305. Annual state payments to municipality with police department.** (1) After the end of each fiscal year, the state auditor shall issue and deliver to the treasurer of each city and town in Montana ~~which~~ *that* has a police department and ~~which~~ *that* is not a participant in the municipal police officers' retirement system ~~his~~ *a* warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to 19-18-512. The payment *from the general fund* is statutorily appropriated as provided in 17-7-502.

(2) ~~The payments provided for by 19-19-205 and subsection (1) of this section shall be paid from the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-18-512. Such payments may only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.~~

~~(3)~~ Each city or town ~~which~~ *that* has a police retirement fund shall deposit the payment to the credit of its police retirement fund.

~~(4)~~*(3)* Payments provided for in 19-19-205 and subsection (1) of this section are in addition to those provided for in 19-19-301."

**Section 32.** Section 19-19-506, MCA, is amended to read:

"**19-19-506. Supplement to certain pensions.** (1) The payment for each fiscal year to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may ~~be~~ not *be* less than one-half of the salary

HeinOnline -- 1997 vol. III 3094 1997

paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police retirement fund of the city or town as of the date of the report and *who* were receiving ~~such~~ *the* payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police retirement fund because of the death of a police officer who was receiving ~~such~~ payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police retirement fund and who were receiving ~~such~~ payments prior to July 1, 1975, or in the case of minor children, whose parent, the spouse of a police officer, was receiving ~~such~~ payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child ~~(or children)~~ described in subsection (2)(b) or (2)(c);

(iii) upon the death after April 18, 1977, of any police officer on the retired list who was receiving payments from the police retirement fund prior to July 1, 1975, and who is survived by a spouse or minor ~~children~~ *child* entitled to receive payments ~~therefrom~~ *from the police retirement fund*, the amount ~~which~~ *that* would have been paid to an eligible spouse of ~~such~~ *the* police officer ~~had~~ *if* that spouse *had* been receiving payments in the base fiscal year.

(3) Each fiscal year immediately after the adoption by a city or town having a police retirement fund of its budget for that fiscal year, ~~each such~~ *the* city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (2)(d)(i) through (2)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference ~~shall~~ *must* be paid by the state auditor out of the ~~premium tax collected on insurance, as provided in 19-19-305(2),~~ *general fund* to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 19-19-305(1). The payment is statutorily appropriated as provided in 17-7-502.

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them to the credit of the city or town's police retirement fund. The board of trustees of the fund shall use the funds to supplement the

monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to ~~such~~ *the* minor children under this section ~~shall~~ *must* be determined as if there were one ~~such~~ minor child and the supplementary payment ~~shall~~ *must* be made to the minor children collectively."

**Section 33.** Section 19-20-203, MCA, is amended to read:

**"19-20-203. Officers and employees of retirement board.** (1) It is the duty of the retirement board to:

(a) elect a presiding officer from its membership;

(b) appoint a secretary, who may be one of its members;

(c) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system *and establish their compensation pursuant to Title 2, chapter 18*; and

(d) designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(2) A quorum of the board is three members."

**Section 34.** Section 19-20-501, MCA, is amended to read:

**"19-20-501. Financial administration of money.** The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money *as provided in Article VIII, section 15, of the Montana constitution* in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

(3) The retirement board annually shall divide among the several reserves of the retirement system an amount equal to the average balance of the reserves during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 19-20-605(5), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to ~~the expense fund under the provisions of 19-20-606~~ *administrative expenses. The administrative expenses of the retirement system may not exceed 1.5% of retirement benefits paid.*

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

HeinOnline -- 1997 vol. III 3096 1997

(5) ~~All~~ *For purposes of Article VIII, section 12, of the Montana constitution, all* the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

*(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination."*

**Section 35.** Section 19-20-605, MCA, is amended to read:

**"19-20-605. Pension accumulation fund — employer's contribution.** The pension accumulation fund is the fund in which the reserves for payment of pensions and annuities must be accumulated and from which pensions, annuities, and benefits must be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund must be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to 7.47% of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of tho Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and othor earnings realized on the money of the retirement system ~~shall~~ *must* be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund ~~shall~~ *must* be transferred to that fund from the pension accumulation fund.

(6) All pensions, annuities, and benefits must be paid from the pension accumulation fund.

(7) Tbe retirement board may~~, in its discretion,~~ transfer from the pension accumulation fund *to the expense fund* an amount necessary to cover expenses of administration."

**Section 36.** Section 50-3-109, MCA, is amended to read:

**"50-3-109. Tax on fire insurance premiums ~~for maintenance of state fire prevention and investigation activities of department of justice~~.** *(1)* Each insurer authorized to effect insurance on risks enumerated in ~~19-18-512~~ *subsection (2)* doing business in this state shall pay to the state auditor ~~and commissioner of insurance ex officio~~ during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, ~~a tax of 1%~~ *taxes* on the fire portion of the direct premiums on ~~such~~ *the enumerated*

risks received during the calendar year next preceding after deducting cancellations and return premiums. *The taxes are:*

*(a) 1% to be deposited as provided in 17-2-121; and*

*(b) 1 1/2% to be used for purposes of 19-13-1006.*

*(2) The risks referred to in subsection (1) are:*

*(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;*

*(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;*

*(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;*

*(d) insurance of growing crops against loss or damage resulting from hail or the elements;*

*(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;*

*(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and*

*(g) insurance against theft of the whole or any part of a vehicle."*

**Section 37.** Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors or trucks, $10;

(f) buses, which are classed as motortrucks, licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds declared weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds declared weight (except housetrailers), $5;

HeinOnline -- 1997 vol. III 3098 1997

(i) trailers and semitrailers over 6,000 pounds declared weight, $10, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers that are not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except a passenger car, that is used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(5) An additional fee of $5.25 a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall ~~distribute~~ *pay an amount equal to* 25 cents from ~~the~~ *each* motor vehicle registration fee *from the general fund to the pension trust fund* for payment of supplemental benefits provided for in 19-6-709.

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335. (See compiler's comments for contingent termination of certain text.)"

**Section 38.** Section 76-13-114, MCA, is amended to read:

**"76-13-114. Disposition of fines.** Fines collected in a court of the state under this part or part 2, except those collected in a justice's court, ~~shall~~ *must* be transferred to the state treasurer for deposit in the ~~agency~~ *state special revenue* fund. Whenever a person is convicted in any court of a violation of this part or part 2, the court may levy and collect as costs in the case the amount necessary to compensate the county for the expenditures made in and for the prosecution of the offender. These costs when collected, except those collected in a justice's court, ~~shall~~ *must* be deposited by the court with the proper county treasurer for the benefit of the county."

**Section 39. Coordination instructions.** (1) If House Bill No. 170 is passed and approved and if it contains a new [section 4] providing for state

HeinOnline -- 1997 vol. III 3099 1997

contributions to the public employees' retirement system on behalf of local governments, then:

(a) the new [section 4 of House Bill No. 170] shall read:

**"Section 4. State contributions for local government and school district employers.** The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation of members employed by local government entities and school districts on and after [the effective date of this act]. The division shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payment is statutorily appropriated as provided in 17-7-502."; and

(b) [section 15 of this act], amending 17-7-502, shall include in the list of sections with a statutory appropriation, [section 4 of House Bill No. 170].

(2) If either House Bill No. 173 or House Bill No. 430, is passed and approved, or if both are passed and approved, and if either or both repeal 19-13-1006, then:

(a) [section 28 of this act], amending 19-17-301, shall read:

**"Section ~~27~~ *28*.** Section 19-17-301, MCA, is amended to read:

**"19-17-301. Fire insurance premium tax to be paid into pension trust fund.** The state auditor ~~and ex-officio commissioner of insurance~~ shall annually ~~deposit in~~ *pay from the general fund to* the pension trust fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in ~~19-18-512~~ *50-3-109*. The sum must be computed before the amounts provided for by 19-13-604 and 19-18-512 are deducted. The money must be used for the payment of claims, benefits, and administrative costs as provided in this chapter. The money is statutorily appropriated as provided in 17-7-502.""; and

(b) the internal reference to 19-13-1006 in [section 15 of this act], amending 17-7-502, must be removed.

**Section 40. Repealer.** (1) Sections 19-9-208, 19-13-615, 19-18-513, 19-18-606, and 19-20-606, MCA, are repealed.

(2) Section 13, Chapter 23, Special Laws of November 1993, is repealed.

**Section 41. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1997.

(2) [Section 40(2) and this section] are effective on passage and approval.

Approved May 5, 1997

HeinOnline -- 1997 vol. III 3100 1997

# CHAPTER NO. 533

[HB 287]

AN ACT GENERALLY REVISING SECURITY LAWS; ADDING TO THE LIST OF EXEMPT EXCHANGES; INCREASING THE COMMISSIONER'S AUTHORITY TO CONDITION THE EXEMPTION OF A SECURITY AND THE REGISTRATION OF SALESPERSONS; PROVIDING FOR THE SERVICE OF AN ORDER OR NOTICE; PERMITTING THE DENIAL OF REGISTRATION OF A SECURITY FOR ANY VIOLATION OF STATE SECURITY LAW INCLUDING ACTS IN CONNECTION WITH PREVIOUS OFFERINGS; PROVIDING FOR THE OFFER AND SALE OF FEDERAL COVERED SECURITIES; REGULATING THE ACTIVITIES OF FEDERAL COVERED ADVISERS; AND AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-107, 30-10-110, 30-10-201, 30-10-202, 30-10-206, 30-10-207, 30-10-209, 30-10-301, AND 30-10-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-10-103, MCA, is amended to read:

**"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name as amended on the effective date of this subsection.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

*(8) "Federal covered adviser" means a person who is:*

*(a) registered under section 203 of the Investment Advisers Act of 1940; or*

*(b) excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.*

*(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated by the commissioner.*

~~(8)~~*(10)* "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

~~(8)~~*(11)* (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection ~~(9)(a)~~ *(11)(a)* to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection ~~(9)(a)~~ *(11)(a)* to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection ~~(9)(a)~~ *(11)(a)* is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection ~~(9)(a)~~ *(11)(a)* is solely incidental to the practice of the person's profession; ~~or~~

*(viii) a federal covered adviser; or*

~~(viii)~~*(ix)* other persons not within the intent of this subsection ~~(9)~~ *(11)* as the commissioner may by rule or order designate.

HeinOnline -- 1997 vol. III 3103 1997

~~(10)~~*(12)* (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, *except clerical or ministerial personnel,* employed by or associated with an investment adviser~~, except clerical or ministerial personnel,~~ who:

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(iv) supervises employees who perform any of the foregoing.

(b) Investment adviser representative does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection ~~(10)(a)~~ *(12)(a)* is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser.

~~(11)~~*(13)* "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, ~~(~~or persons performing similar functions~~)~~, or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

~~(12)~~*(14)* "Nonissuer" means not directly or indirectly for the benefit of the issuer.

~~(13)~~*(15)* "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

~~(14)~~*(16)* "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

~~(15)~~*(17)* "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

~~(16)~~*(18)* (a) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Each sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as each sale or offer of a security that gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

~~(17)~~*(19)* "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition. Salesperson does not include an individual who represents:

*(a)* an issuer in:

~~(a)~~*(i)* effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

~~(b)~~*(ii)* effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; ~~or~~

*(iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933; or*

~~(c)~~*(iv)* effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; *or*

*(b) a broker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.*

~~(15)~~*(20)* "Securities Act of 1933", "Securities Exchange Act of 1934", "Puhlic Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names ~~as amended before or after July 1, 1961~~.

~~(19)~~*(21)* (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or

HeinOnline -- 1997 vol. III 3105 1997

lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

~~(20)~~*(22)* "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

~~(21)~~*(23)* "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

**Section 2.** Section 30-10-104, MCA, is amended to read:

**"30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security, ~~(~~including a revenue obligation~~)~~, issued or guaranteed hy the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless ~~such~~ *the* enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through ~~(14)~~ *(15)* of tbis section;

(2) any security issued or guaranteed by Canada, ~~any~~ *a* Canadian province, ~~any~~ *a* political subdivision of ~~any such~~ *a* province, or ~~any~~ *an* agency or corporate or other instrumentality of one or more of the foregeing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by ~~any~~ *a* bank organized under the laws of the United States or ~~any~~ *a* bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in, or a debt of, or guaranteed by ~~any~~ *a* federal savings and loan association or ~~any~~ *a* building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by ~~any~~ *a* federal credit union or ~~any~~ *a* credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by ~~any~~ *a* railroad, other common carrier, public utility, or holding company which is:

HeinOnline -- 1997 vol. III 3106 1997

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of ~~such~~ a *registered holding* company within the meaning of that act;

(c) regulated in respect of its rates and charges by a gevernmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by ~~such~~ *the* railroad or public utility would be exempt under this subsection;

(7) any security tbat meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of ~~such~~ *the* agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been ~~so~~ registered for the 3 years immediately preceding the offering date;

(c) ~~neither~~ the issuer ~~nor~~ *or* a significant subsidiary has *not* had a material default during the last 7 years, ~~(~~or *during* the issuer's existence if *that period is* less than 7 years~~)~~, in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income, ~~(~~before extraordinary items and the cumulative effect of accounting changes,~~)~~ of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year", as used in this subsection (7)(d), means the most recent year for which audited financial statements are available, provided that ~~such~~ *the* statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, ~~such~~ *the* securities have voting rights and ~~such~~ rights ~~include~~ *including* the right to bave at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, ~~such~~ *the* securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on ~~such~~ *that* date there are at least 750,000 ~~such~~ *of the* shares outstanding with an aggregate market value, based on the average bid price for that day, of at least

$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within ~~such~~ *the* 20-day period;

(9) any commercial papor ~~which~~ *that* arises out of a current transaction or the proceeds of which have been or are to be used for *the* current transaction and ~~which~~ *that* evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of ~~such~~ *the* paper which is likewise limited or any guarantee of ~~such~~ *the* papor or of any ~~such~~ renewal, when ~~such~~ *the* commercial paper is sold to banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, *the Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange* or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for hy subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. *The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection*~~;~~.

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of tho securities listed in this subsection. *The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection*~~;~~.

(14) any security issued by and representing an interest in, or a debt of, or any security guaranteed by any insurer organized and authorized to transact business under the laws of any state;

HeinOnline -- 1997 vol. III 3108 1997

*(15) any security for which an offer or sale is not directed to or received by a person in this state, and the issuer does not maintain a place of business in the state."*

**Section 3.** Section 30-10-107, MCA, is amended to read:

**"30-10-107. Administration.** (1) The administration of the provisions of parts 1 through 3 of this chapter ~~shall~~ *must* be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may, from time to time, make, amend, and rescind ~~such~~ rules and forms as ~~are~~ necessary to carry out the provisions of parts 1 through 3 of this chapter. ~~No~~ *A* rule or form may *not* be ~~made~~ *adopted* unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes ~~fairly intended by~~ *of* the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms the commissioner may cooperate witb the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) It is unlawful for the commissioner or any of ~~his~~ *the commissioner's* officers or employees to use for porsonal benefit any information ~~which is~~ filed with or obtained by the commissioner and ~~which is~~ not made public. ~~No provision~~ *The provisions* of parts 1 through 3 of this chapter ~~authorizes~~ *do not authorize* the commissioner or any of ~~his~~ *the commissioner's* officers or employees to disclose any ~~such~~ information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) ~~No provision~~ *The provisions* of parts 1 through 3 of this chapter imposing ~~any~~ liability ~~applies~~ *do not apply* to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding ~~shall~~ *must* be public unless the commissioner ~~in his discretion~~ grants a request joined in by all the respondents that the hearing be conducted privately.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements ~~which~~ *that* are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders ~~which~~ *that* have ever been entered under parts 1 through 3 of this chapter. The register ~~shall~~ *must* be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under ~~such~~ rules ~~as~~ the commissioner prescribes.

(6) Upon request and at ~~such~~ *a* reasonable ~~charges as he prescribes~~ *charge*, the commissioner shall furnish to any person photostatic or other copies, ~~(~~certified ~~under his seal of office~~ if requested,~~)~~ of any entry in the register or any document ~~which~~ *that* is a matter of public record. In any proceeding or

prosecution under parts 1 through 3 of this chapter, any *certified* copy ~~so certified~~ is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any national securities exchange, or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

*(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's last recorded principal place of business on file at the commissioner's office. An order or notice that is mailed is considered to have been given at the time it is mailed."*

**Section 4.** Section 30-10-110, MCA, is amended to read:

**"30-10-110. Scope.** (1) Sections 30-10-201(1), 30-10-202, 30-10-301(1), 30-10-303, and 30-10-307 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 30-10-201(1), 30-10-301(1), and 30-10-303 apply to persons who huy or offer to buy when an offer to huy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or buy is made in this state, whether or not either party is then present in this state, when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer~~, but for the purpose of 30-10-202, an offer to sell which is not directed to or received by the offeree in this state is not made in this state~~.

(4) For the purpose of this section, an offer to buy or sell is accepted in this state when acceptance is communicated to the offeror in this state and acceptance has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably helieving the offeror to be in this state, and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy is not made in this state when:

(a) the publisher circulates or there is circulated on ~~his~~ *the publisher's* behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation ~~which~~ *that* is:

(i) not puhlished in this state; or

(ii) published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(b) a radio or television program originating outside this state is received in this state.

(6) Sections 30-10-201(3), 30-10-301(2) and (3), and 30-10-303, as far as investment advisers and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state."

**Section 5.** Section 30-10-201, MCA, is amended to read:

**"30-10-201. Registration *and notice filing requirements* of broker-dealers, salespersons, investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the broker-dealer or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) the person is ~~so~~ registered under parts 1 through 3 of this chapter;

~~(b) the person is registered as a broker-dealer under parts 1 through 3 of this chapter;~~

~~(c)~~*(b) the person does not have a place of business in the state and* the person's only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

*(iii) federal covered advisers;*

~~(iii)~~*(iv)* broker-dealers;

~~(iv)~~*(v)* banks;

~~(v)~~*(vi)* trust companies;

~~(vi)~~*(vii)* savings and loan associations;

~~(vii)~~*(viii)* employee benefit plans with assets of not less than $1 million;

~~(viii)~~*(ix)* governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

~~(ix)~~*(x)* other institutional investors as ~~are~~ designated by rule or order of the commissioner; or

~~(d)~~*(c)* the person does not have a place of business in this state and during ~~any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not the person or any of the persons to whom the communications are directed are then present in this state~~ *the*

*preceding 12-month period the person has not had more than five clients who are residents of this state, other than those clients specified in subsection (3)(b).*

*(4) Except for federal covered advisers whose only clients are clients listed in subsection (3)(b), it is unlawful for a federal covered adviser to conduct advisory business in this state unless the federal covered adviser complies with the provisions of subsection (6)(b).*

*(5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30, chapter 10, parts 1 through 3, to employ an investment adviser representative unless the investment adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.*

*(b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an investment adviser representative who maintains a place of business in this state unless the investment adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.*

~~(4)~~*(6) (a)* A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in the form that the commissioner prescribes and payment of the fee prescribed in 30-10-209. ~~A salesperson acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond must be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to comply, the salesperson is liable to any and all persons who may suffer loss by reason of a failure to comply.~~

*(b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b) or (3)(c), a federal covered adviser shall, prior to acting as a federal covered adviser in this state, pay the fee prescribed in 30-10-209 and shall file with the commissioner copies of any documents filed with the securities and exchange commission that the commissioner requires by rule or order.*

~~(5)~~*(7)* The application must contain whatever information the commissioner requires. A registration application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn before the commissioner approves or denies the registration, without the express written consent of the commissioner.

~~(6)~~*(8)* When the registration requirements are met, the commissioner shall make the registration effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn or terminated without the express written consent of the commissioner.

~~(7)~~*(9)* ~~Except as provided in subsection (6), registration~~ *Registration* of a broker-dealer, salesperson, investment adviser, or investment adviser representative:

HeinOnline -- 1997 vol. III 3112 1997

(a) is effective until December 31 following the registration or any other time as the commissioner may by rule adopt; and

(b) may be renewed *pursuant to subsection (11).*

~~(8)~~*(10) (a)* The registration of a salesperson is not effective during any period when the salesperson is not associated with an issuer or a registered broker-dealer specified in the application. When a salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the commissioner.

~~(9)~~*(b)* The registration of an investment adviser representative is not effective during any period when the person is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner. *When an investment adviser representative begins or terminates a connection with a federal covered adviser, the investment adviser representative shall promptly notify the commissioner.*

~~(10)~~*(11)* Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative *or notice filing for a federal covered adviser* may be renewed by filing, prior to the expiration of the registration *or notice filing*, an application containing information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration ~~as a broker-dealer, salesperson, investment adviser, or investment adviser representative filed by the applicant~~ *or notice filing, and* payment of the ~~prescribed~~ fee *prescribed by 30-10-209.* ~~, and, in the case of a~~ *A* broker-dealer who is not a member of NASD, inc., ~~by filing~~ *is required to file* a financial statement ~~showing the financial condition~~ of the broker-dealer ~~as of a date~~ within 90 days *of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange Act of 1934.* A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

~~(11)~~*(12) (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser, every* ~~Every~~ registered broker-dealer and investment adviser shall make and keep accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner *by rule or order.* All required records *of an investment adviser* must be preserved for ~~3 years unless~~ *the period* the commissioner prescribes ~~otherwise for particular types of records~~ *by rule or order.* All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to reasonable periodic, special, or other examinations, within or outside this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

*(b) The commissioner may require investment advisers who are registered or required to be registered to furnish or disseminate certain information as*

HeinOnline -- 1997 vol. III 3113 1997

*necessary or appropriate in the public interest or for the protection of investors and advisory clients.*

*(c) If information contained in any document filed with the commissioner is, or becomes, inaccurate or incomplete in any material respect, the registrant or federal covered adviser must promptly file a correcting amendment.*

~~(12)~~*(13)* The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) has filed an application for registration under this section that, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection ~~(12)~~ *(13)* without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

HeinOnline -- 1997 vol. III 3114 1997

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection ~~(12)~~ *(13)*, and the commissioner shall vacate any order when the deficiency has been corrected; or

(k) has failed to reasonably supervise the person's salespersons or employees or investment adviser representatives or employees to assure their compliance with this act.

~~(13)~~*(14)* The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.

~~(14)~~*(15)* The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

~~(15)~~*(16)* Upon the entry of the order under subsection ~~(12)~~ *(13)* ~~of this section~~, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesperson or investment adviser representative, that it has been entered and of the reasons for the order and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set for hearing. If a hearing is not requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

~~(13)~~*(17)* If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservater, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

~~(17)~~*(18)* The commissioner may, after suspending or revoking registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative, impose a fine not to exceed $5,000 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesperson, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of the broker-dealer, salesperson, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesperson, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

HeinOnline -- 1997 vol. III 3115 1997

~~(18)~~*(19)* A sole proprietor registered as a broker-dealer or investment adviser who does not employ other salespersons or investment adviser representatives, other than the sole proprietor, is not required to register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser representative if the sole proprietor meets the examination requirements established hy the commissioner by rule.

~~(18)~~*(20)* A person who is subject to the provisions of this section and who has passed the general securities principal's examination is not required to also pass the uniform investment adviser law examination. The commissioner shall by rule provide for a form that a person who passes the general securities principal's examination shall file with the commissioner as a verification of having passed tlie examination unless the commissioner can verify electronically that the person has passed the exam."

**Seetion 6.** Section 30-10-202, MCA, is amended to read:

**"30-10-202. Registration of seeurities.** It is unlawful for any person to offer or sell any security in this state, except securities exempt under 30-10-104 or when sold in transactions exempt under 30-10-105, unless:

*(1)* ~~such~~ *the* security is registered by notification, coordination, or qualification under parts 1 through 3 of this chapter*; or*

*(2) for a federal covered security, the security has been filed with the commissioner pursuant to [section 10] and the fee prescribed in 30-10-209 has been paid.*"

**Section 7.** Section 30-10-206, MCA, is amended to read:

**"30-10-206. General provisions regarding registration of securities.** (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) (a) The commissioner may require as a condition of registration by qualification or coordination:

(i) that the following securities be deposited in escrow:

(A) any security issued within the past 3 years or to be issued to:

(I) a promoter for a consideration substantially different from the public offering price; or

(II) any person for a consideration other than cash; and

(B) any security issued or to be issued to a promoter while a corporation is still in a promotional or developmental stage; however, if shares were issued by a corporation while it was in a promotional or developmental stage and it no longer is in ~~such~~ *that* stage, then this condition does not apply; and

(ii) that the proceeds from the sale of the registered security in this state be impeunded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere.

HeinOnline -- 1997 vol. III 3116 1997

(b) The commissioner may determine the conditions of any escrow or impounding required ~~hereunder~~, but ~~he~~ may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered, or by any registered broker-dealer. ~~Every~~ *A* registration ~~shall~~ *must* remain effective for a period of 1 year unless it is revoked by the commissioner, terminated upen request of the registrant with the consent of the commissioner, or renewed under 30-10-209(1)(b)~~;~~. ~~however~~ *However*, ~~said~~ *the* registration ~~shall~~ *must* be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to ~~said~~ *the* securities and ~~shall~~ *must* continue *to be* suspended so long as ~~such~~ *the* proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a currently registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. Subject to the provisions of 30-10-104 and 30-10-105, a salesperson who offers or sells registered securities must be registered pursuant to 30-10-201.

(4) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities ~~which:~~ *that*

~~(a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940; or~~

~~(b)~~ are being offered and sold directly by or for the account of the issuer.

(5) ~~No~~ *A* securities registration statement may *not* be withdrawn, whether or not ~~such~~ *the* statement has become effective, without the express written consent of the commissioner."

**Section 8.** Section 30-10-207, MCA, is amended to read:

**"30-10-207. Denial, suspension, and revocation of registration of securities.** (1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if ~~he finds that~~ the order is in the public interest and ~~that~~:

(a) the registration statement, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement ~~which~~ *that* was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of parts 1 through 3 of this chapter or any rule, order, or condition lawfully imposed under parts 1 through 3 of this chapter has been willfully violated~~, in connection with the offering,~~ by:

(i) the person filing the registration statement;

HeinOnline -- 1997 vol. III 3117 1997

(ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(iii) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state law applicable to the offering, but:

(i) the commissioner may not institute a proceeding against an effective registration statement under this subsection *(1)*(c) more than 1 year from the date of the injunction relied on; and

(ii) ~~he~~ may not enter an order under this subsection *(1)*(c) on the basis of an injunction entered under any other state law unless that order or injunction was based on facts ~~which~~ *that* would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities ~~which~~ *that* are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for ~~such~~ registration *by notification*;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by 30-10-204(1)(g);

(h) the applicant or registrant has failed to pay the proper registration fee, but the commissioner may enter only a denial order under this subsection, and ~~he~~ shall vacate any ~~such~~ *denial* order when the deficiency has been corrected; or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a suspension or revocation order against an effective registration statement on the basis of a fact or transaction known to ~~him~~ *the commissioner* when the registration statement became effective.

(3) Upon the entry of an order under subsection (1) ~~of this section~~, the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons ~~therefor~~ *for the order* and that, if requested by the issuer or registrant within 15 days after the receipt of the commissioner's notification, the matter will be set promptly ~~down~~ for hearing. If ~~no~~ *a* hearing is *not* requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order."

HeinOnline -- 1997 vol. III 3118 1997

**Section 9.** Section 30-10-209, MCA, is amended to read:

**"30-10-209. Fees.** The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, *or for notice filing of a federal covered security,* there must be paid to the commissioner for the ~~first~~ *initial* year of registration *or notice filing* a ~~registration~~ fee of $200 for the first $100,000 of initial issue or portion ~~thereof~~ *of the first $100,000* in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum *fee* of $1,000.

(b) Each succeeding year, a registration of securities *or a notice filing of a federal covered security* may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of ~~an additional registration~~ *a renewal* fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year~~, even though the maximum fee was paid the preceding year~~. The ~~additional registration~~ *renewal* fee may not be less than $200 or more than $1,000. The registration ~~statement for the securities~~ *or the notice filing* may be amended to increase the amount of securities to be offered.

(c) If a registrant *or issuer of federal covered securities* sells securities in excess of the aggregate amount registered for sale in this state, *or for which a notice filing has been submitted,* the registrant *or issuer* may file an amendment to the registration statement *or notice filing* to include the excess sales. If the registrant *or issuer of a federal covered security* fails to file an amendment before the expiration date of the registration order *or notice,* the registrant *or issuer* shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration *or notice* of the excess securities is effective retroactively to the date of the existing registration *or notice.*

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a portfolio ~~registration~~ *notice filing* fee to be calculated as provided in subsections (1)(a) through (1)(c). The portfolio ~~registration~~ *notice filing* fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer. A salesperson who is dually registered as an investment adviser representative with a broker-dealer dually registered as an investment adviser is not required to pay the $50 fee to register as an investment adviser representative.

*(c) For a federal covered adviser the fee is $200 for the initial notice filing and $200 for each annual renewal.*

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

HeinOnline -- 1997 vol. III 3119 1997

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner hy rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) Except for portfolio registration fees established in this section, all fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this cbapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund."

**Section 10.** Section 30-10-301, MCA, is amended to read:

"**30-10-301. Fraudulent and other prohibited practiees.** (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, in, into, or from this state, to:

(a) employ any device, scheme, or artifice to defraud;

(b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) engage in any act, practice, or course of business ~~which~~ *that* operates or would operate as a fraud or deceit upon any person.

(2) (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise:

(i) to employ any device, scheme, or artifice to defraud the other person;

(ii) to engege in any act, practice, or course of business ~~which~~ *that* operates or would operate as a fraud or deceit upon the other person; or

(iii) without disclosing to the client in writing before the completion of the transaction the capacity in which ~~he~~ *the person* is acting and ohtaining the consent of the client to the transaction:

(A) acting as principal for ~~his~~ *the person's* own account, to knowingly sell any security to or purchase any security from a client; or

(B) acting as agent for a person other than ~~such~~ *the* client, to knowingly effect the sale or purchase of any security for the account of ~~such~~ *the* client.

(b) The prohibitions of subsection (2)(a)(iii) do not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not being compensated for rendering investment advice in relation to ~~such~~ *the* transaction.

(3) In the solicitation of advisory clients, it is unlawful for a person to:

(a) make a false statement of a material fact; or

HeinOnline -- 1997 vol. III 3120 1997

(b) omit a material fact necessary to make a statement not misleading in light of the circumstances under which it is made.

(4) Except as permitted by rule or order of the commissioner, it is unlawful for any investment adviser *who is registered or required to be registered* to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

(a) the investment adviser ~~shall~~ *may* not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) ~~no~~ *an* assignment of the contract may *not* be made by the investment adviser without the consent of the other party to the contract; and

(c) the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

(5) Subsection (4)(a) does not prohibit an investment advisory contract ~~which~~ *that* provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. "Assignment", as used in subsection (4)(b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, ~~no~~ *an* assignment of an investment advisory contract is *not* considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(6) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client if:

(a) the commissioner by rule prohibits ~~such~~ custody; or

(b) in the absence of rule, the investment adviser fails to notify the commissioner that ~~he~~ *the investment adviser* has or may have ~~such~~ custody."

**Section 11.** Section 30-10-303, MCA, is amended to read:

**"30-10-303. Unlawful representation concerning registration or exemption.** ~~Neither the~~ *(1) The* fact that an application for registration under 30-10-201~~(4)~~*(6), a notice filing under [section 12],* or a registration statement under 30-10-203, 30-10-204, or 30-10-205 has been filed ~~nor~~ *or* the fact that a person or security is effectively registered *or a complete notice filing has been made* ~~constitutes~~ *does not constitute* a finding by the commissioner that any document filed under parts 1 through 3 of this chapter is true, complete, and not misleading.

*(2)* ~~Neither any such~~ *The* fact *that an application for registration or a notice filing has been filed or a person or security is effectively registered or a complete notice filing has been made as provided in subsection (1) or* ~~nor~~ the fact that an

exemption or exception is available for a security or a transaction ~~means~~ *does not mean* that the commissioner has passed in any way upon the merits of, qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section."

**Section 12. Federal covered securities.** (1) The commissioner may require an issuer to file any or all of the following documents with respect to a federal covered security provided for in section 18(b)(2) of the Securities Act of 1933:

(a) documents that are part of a current federal registration statement filed with the securities and exchange commission or amendments to a current registration statement filed with the securities and exchange commission;

(b) a consent to the service of process signed by the issuer and payment of the fee required in 30-10-209; and

(c) annual or periodic reports of the value of the federal covered securities offered or sold in this state.

(2) The commissioner may require the issuer of a federal covered security under 18(b)(4)(D) of the Securities Act of 1933 to file within 15 days after the first sale in this state a notice on a form prescribed by the commissioner and a consent to service of process and may require the issuer to pay the notice filing fee prescribed in 30-10-209.

(3) The commissioner may require the filing of any document filed with the securities and exchange commission under the Securities Act of 1933, with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933, and may require payment of the notice filing fee prescribed in 30-10-209.

(4) The commissioner may issue a cease and desist order suspending the offer and sale of a federal covered security if the commissioner finds that the order is in the public interest and there is a failure to comply with any requirement of this section.

(5) The commissioner may waive any of the provisions of this section.

**Section 13. Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 30, chapter 10, part 2, and the provisions of Title 30, chapter 10, part 2, apply to [section 12].

**Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 5, 1997

# CHAPTER NO. 534

[HB 293]

AN ACT PROVIDING FOR CERTAIN VOLUNTARY ENVIRONMENTAL AUDITS; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 6] may be cited as the "Voluntary Environmental Audit Act".

**Section 2. Purpose.** The legislature finds that environmental protection and environmental quality will be enhanced by incentives to voluntarily identify and remedy violations of environmental laws and that the public will be benefited by the voluntary identification and remedy. The legislature further finds that nothing in [sections 3 through 6] is intended to inhibit or to be a substitute for the exercise of the regulatory authority by those agencies entrusted with protecting Montana's environment.

**Section 3. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Department" means the:

(a) department of justice provided for in 2-15-2001;

(b) department of agriculture provided for in 2-15-3001; or

(c) department of environmental quality provided for in 2-15-3501.

(2) "Environmental audit" is a periodic, documented, voluntary internal assessment, evaluation, or review not required by law, rule, or permit that is conducted by a regulated entity or its agent and initiated by the regulated entity for the purpose of determining compliance with environmental law, rule, or permit enforced by the department.

**Section 4. Immunity from imposition of civil or administrative penalties for violations found and disclosed.** The state or the department may not pursue civil or administrative penalties under this title against a regulated entity or its agent acting within the scope of the agent's authority for violations discovered during an environmental audit and disclosed within 30 days in writing to the department after the violation is determined to exist if the following conditions are met:

(1) a written compliance schedule is negotiated between the department and the regulated entity to promptly correct violations disclosed unless the violation has been resolved to the satisfaction of the department at the time of the disclosure;

(2) the regulated entity takes steps to prevent recurrence of the violation; and

(3) the regulated entity cooperates with the department and provides information that is necessary for the implementation of [sections 1 through 6].

HeinOnline -- 1997 vol. III 3123 1997

**Section 5. Submission and use of environmental audit information.** (1) If a regulated entity discloses a violation to the department that is found during an environmental audit, the disclosure must be submitted on a form provided by the department that includes submittal of the following information:

(a) the date of discovery of the violation;

(b) the name and location of the regulated entity;

(c) identification of the law or rule violated;

(d) a description of the conditions relating to or affecting tbe violation;

(e) compliance efforts made to correct or eliminate the violation;

(f) recommendations for additional compliance efforts, if necessary, to correct or eliminate the violation; and

(g) recommendations necessary to prevent reoccurrence of the violation.

(2) (a) The form submitted to the department in subsection (1) is public information, hut the department may not request the environmental audit. The department may request all relevant facts and data that the department needs to independently establish the nature and extent of the violation and to determine whether all damage created by the violation has been corrected. The environmental audit report and its relevant underlying data is subject to discovery according to the rules of civil or criminal procedure. Any information contained in an environmental audit form pertaining to violations that were discovered as a result of the audit and disclosed and corrected as required by [sections 1 through 6] may not be used by the department against the regulated entity in any administrative hearing or judicial action.

(b) The prohibition in subsection (2)(a) does not apply to the use of voluntary statements made in connection with the information when offered for impeachment purposes or in a subsequent action for porjury, false statoment, or contempt.

(3) Documents, communications, compliance data, reports, or other information required to be collected, developed, maintained, or reported to the department according to state law, rule, or permit are not covered by the provisions of [sections 1 through 6].

**Section 6. Limitations on applicability.** (1) [Sections 1 through 5] do not apply to a violation if:

(a) the regulated entity purposely or knowingly committed the violation;

(b) the violation was the result of gross negligence of the regulated entity;

(c) the regulated entity has estahlished a pattern of violating a specific stato or federal environmental law, rule, regulation, permit, order, or compliance schedule within the 3 years before the date of the disclosure at the same facility;

(d) the regulated entity has not corrected the violation according to any compliance schedule negotiated pursuant te [section 4];

HeinOnline -- 1997 vol. III 3124 1997

(e) before the date of the environmental audit through which a violation was discovered, an investigation or an administrative or judicial proceeding regarding the specific voluntarily disclosed violation is initiated by the department;

(f) (i) the department has assumed primacy over the administration of a federally delegated environmental law or program and [sections 1 through 5] would cause the state program not to meet the delegation requirements for that program; or

(ii) [sections 1 through 5] would prevent the state from obtaining primacy; or

(g) the violation disclosed to the department by the regulated entity caused actual substantial damage to human health or the environment.

(2) An environmental audit may not be used to prevent the department from carrying out its statutory or regulatory functions.

**Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 8. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun hefore [the effective date of this act].

**Section 9. Codification instruction.** [Sections 1 through 6] are intended to he codified as an integral part of Titles 75 and 80, and the provisions of Titles 75 and 80 apply to [sections 1 through 6].

**Scction 10. Termination.** [This act] terminates October 1, 2001.

Approved May 5, 1997

# CHAPTER NO. 535

[HB 395]

AN ACT SPECIFYING THE VENUE FOR ACTIONS BROUGHT BY THIRD PARTIES TO ENFORCE COMPLIANCE WITH THE METAL MINE RECLAMATION LAWS AND FOR ACTIONS BROUGHT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR RECOVERY OF CIVIL PENALTIES OR INJUNCTIVE RELIEF UNDER THE METAL MINE RECLAMATION LAWS; AND AMENDING SECTIONS 82-4-354 AND 82-4-361, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 82-4-354, MCA, is amended to read:

**"82-4-354. Mandamus to eompel enforcement.** (1) ~~Any~~ *A* person having an interest that is or may be adversely affected, with knowledge that a requirement of this part or a rule adopted under this part is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule, may hring the failure to the attention of the public officer or employee by

an affidavit stating the specific facts of the failure. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed for false swearing, as provided in 45-7-202.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the affidavit to enforce the requirement or rule, the affiant may bring an action of mandamus in the district court of the first judicial district or in the district court of the county in which the land is located. If the court finds that a requirement of this part or a rule adopted under this part is not being enforced, it shall order the public officer or employee to perform ~~his~~ *the* duties. If ~~he~~ *the officer or employee* fails to do so, the public officer or employee must be held in contempt of court and is subject to the penalties provided by law.

(3) ~~Any~~ *A* person having an interest that is or may be adversely affected may commence a civil action ~~on his own behalf~~ to compel compliance with this part against ~~any~~ *a* person for the violation of this part or any rule, order, or permit issued under it. However, ~~no such~~ *an* action may *not be* ~~commence~~ *commenced*:

(a) prior to 60 days after the plaintiff has given notice in writing to the department and to the alleged violator; or

(b) if the department has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this part or any rule, order, or permit issued under it. ~~Any~~ *A* person having an interest that is or may be adversely affected may intervene as a matter of right in ~~any such~~ *the* civil action.

*(4) Legal actions under subsection (3)(a) must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district.*

~~(4)~~*(5)* Nothing in this section restricts any right of any person under any statute or common law to seek enforcement of this part or the rules adopted under it or to seek any other relief."

**Section 2.** Section 82-4-361, MCA, is amended to read:

**"82-4-361. Violation — penalties — waiver.** (1) (a) Except as provided in subsections (1)(b) and (2), a civil penalty of not less than $100 or more than $1,000 for each of the following violations, an additional civil penalty of not less than $100 or more than $1,000 for each day during which the violation continues, and an injunction from continuing the violation may he imposed against:

(i) a person or operator who violates a provision of this part, a rule or order adopted under this part, or a term or condition of a permit; or

(ii) any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation of a provision of this part, a rule or order adopted under this part, or a term or condition of a permit.

(b) If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is $5,000 for each day of violation.

(2) (a) The department may bring an action for a restraining order or a temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

HeinOnline -- 1997 vol. III 3126 1997

(b) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(3) The department shall notify the person or operator of the violation. The department shall issue a statement of proposed penalty within 30 days after notice of the violation. The porson or operator, by filing a written request within 20 days of receipt of the notice of proposed penalty, is entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper. After tbe hearing or after the time for requesting a hearing has expired, the board sball make findings of fact and issue a written decision as to the occurrence of the violation and whether the amount of penalty is warranted. The hoard shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty or petition for judicial review within 30 days of receipt of the order. A person or operator who fails to request the hearing provided for in this subsection or who fails to petition for judicial review within 30 days of receipt of the order forfeits that person's or operator's right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brougbt by the department.

*(4) Legal actions for injunctive relief under this section must be brought in the district court of the county in which the alleged violation occurred or, if mutually agreed to by the parties to the action, in any other judicial district. Legal actions for review of penalty orders or for recovery of penalties must be brought in the district court in the first judicial district, Lewis and Clark County."*

Approved May 5, 1997

# CHAPTER NO. 536

[HB 426]

AN ACT GENERALLY REVISING THE UNIFORM COMMERCIAL CODE; REPLACING THE FORMER LAWS GOVERNING LETTERS OF CREDIT WITH UPDATED LAWS; CONFORMING THE LAWS GOVERNING LETTERS OF CREDIT TO CURRENT USAGE AND PRACTICE; ACCOMMODATING NEW FORMS OF LETTERS OF CREDIT, PARTICULARLY THE USE OF ELECTRONIC MEDIA; MAINTAINING LETTERS OF CREDIT AS AN INEXPENSIVE AND EFFICIENT INSTRUMENT FOR FACILITATING TRADE; REPLACING THE FORMER LAWS GOVERNING INVESTMENT SECURITIES WITH UPDATED LAWS; ADDRESSING SECURITIES HOLDING THROUGH SECURITIES INTERMEDIARIES; PROVIDING A MODERN LEGAL STRUCTURE FOR CURRENT SECURITIES HOLDING PRACTICES; PROVIDING RULES FOR DETERMINING RIGHTS UNDER THE INDIRECT HOLDING OF SECURITIES; REVISING OTHER LAWS TO REFLECT THE REVISIONS TO THE LAWS GOVERNING LETTERS OF CREDIT AND INVESTMENT SECURITIES; AMENDING SECTIONS 30-1-105, 30-1-206, 30-2-512, 30-3-124, 30-4-104, 30-9-103, 30-9-104, 30-9-105, 30-9-106, 30-9-203, 30-9-301, 30-9-302,

HeinOnline -- 1997 vol. III 3127 1997

30-9-303, 30-9-304, 30-9-305, 30-9-306, 30-9-309, 30-9-312, AND 32-1-426, MCA; AND REPEALING SECTIONS 30-5-102, 30-5-103, 30-5-104, 30-5-105, 30-5-106, 30-5-107, 30-5-108, 30-5-109, 30-5-110, 30-5-111, 30-5-112, 30-5-113, 30-5-114, 30-5-115, 30-5-116, 30-5-117, 30-8-102, 30-8-103, 30-8-104, 30-8-105, 30-8-106, 30-8-107, 30-8-108, 30-8-201, 30-8-202, 30-8-203, 30-8-204, 30-8-205, 30-8-206, 30-8-207, 30-8-208, 30-8-301, 30-8-302, 30-8-303, 30-8-304, 30-8-305, 30-8-306, 30-8-307, 30-8-308, 30-8-309, 30-8-310, 30-8-311, 30-8-312, 30-8-313, 30-8-314, 30-8-315, 30-8-316, 30-8-317, 30-8-318, 30-8-319, 30-8-320, 30-8-321, 30-8-401, 30-8-402, 30-8-403, 30-8-404, 30-8-405, 30-8-406, 30-8-407, 30-8-408, 30-10-401, 30-10-402, 30-10-403, 30-10-404, 30-10-405, 30-10-406, 30-10-407, 30-10-408, 30-10-409, 30-10-410, AND 30-10-411, MCA.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 30-1-105, MCA, is amended to read:

**"30-1-105. Territorial application of the code — parties' power to choose applicable law.** (1) Except as provided ~~hereafter~~ in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of ~~such~~ *the* other state or nation shall govern their rights and duties. Failing ~~such~~ agreement, this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.

Applicability of the Chapter on Leases. 30-2A-105 and 30-2A-106.

Applicability of the Chapter on Bank Depesits and Collections. 30-4-102.

Governing law in the Chapter on Funds Transfers. 30-4A-507.

*Letters of Credit. [Section 20].*

Applicability of the Chapter on Investment Securities. ~~30-8-106~~ *[section 30].*

Perfection provisions of the Chapter on Secured Transactions. 30-9-103."

**Section 2.** Section 30-1-206, MCA, is amended to read:

**"30-1-206. Statute of frauds for kinds of personal property not otherwise covered.** (1) Except in the cases described in subsection (2) ~~of this section~~ a contract for the sale of personal property is not enforceable by way of action or defense beyond $5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by ~~his~~ *the party's* authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (30-2-201) nor of securities (~~30-8-319~~ *[section 33]*) nor to security agreements (30-9-203)."

HeinOnline -- 1997 vol. III 3128 1997

**Section 3.** Section 30-2-512, MCA, is amended to read:

**"30-2-512. Payment by buyer before inspection.** (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this code (~~30-5-114~~ *[section 13(2)]*).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of ~~his~~ *the buyer's* remedies."

**Section 4.** Section 30-3-124, MCA, is amended to read:

**"30-3-124. Subject matter.** (1) This chapter applies to negotiable instruments. It does not apply to money or to payment orders governed by chapter 4A. A negotiable instrument that is also a certificated security under ~~30-8-102(1)(a)~~ *[section 22(1)(d)]* is subject to chapter 8 and to this chapter.

(2) In the event of conflict between the provisions of this chapter and those of chapter 4, chapter 8, or chapter 9, the provisions of chapter 4, chapter 8, and chapter 9 prevail over those of this chapter.

(3) Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this chapter to the extent of the inconsistency."

**Section 5.** Section 30-4-104, MCA, is amended to read:

**"30-4-104. Definitions and index of definitions.** (1) In this chapter, unless the context otherwise requires:

(a) "account" means any deposit or credit account with a bank and includes a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(b) "afternoon" means the period of a day between noon and midnight;

(c) "banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "clearinghouse" means an association of banks or other payors regularly clearing items;

(e) "customer" means a person having an account with a bank or for whom a bank has agreed to collect items and includes a bank maintaining an account at another bank;

(f) "documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities *([section 22])* or ~~transfer statements~~ *instructions* for uncertificated securities *([section 22])*, or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

HeinOnline -- 1997 vol. III 3129 1997

(g) "draft" means a draft as defined in 30-3-104 or an item, other than an instrument, that is an order;

(h) "item" means an instrument or a promise or an order to pay money handled hy a hank for collection or payment. The term does not include a payment order governed by chapter 4A or a credit or debit card slip.

(i) "midnight deadline" with respect to a bank is midnight on its next hanking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(j) "settle" means to pay in casb, by clearinghouse settlement, in a charge or credit or hy remittance, or otherwise as agreed. A settlement may be either provisional or final.

(k) "suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to tbis chapter and tbe sections in which they appear are:

"Bank". 30-4-105.

"Collectmg bank". 30-4-105.

"Depositary bank". 30-4-105.

"Intermediary bank". 30-4-105.

"Payor bank". 30-4-105.

"Presenting bank". 30-4-105.

"Presentment notice". 30-4-111.

(3) The following definitions in other chapters apply to this chapter:

"Acceptance". 30-3-410.

"Alteration". 30-3-407.

"Cashier's check". 30-3-104.

"Certificate of deposit". 30-3-104.

"Certified check". 30-3-410.

"Check". 30-3-104.

"Drawee". 30-3-102.

"Good faith". 30-3-102.

"Holder in due course". 30-3-302.

"Instrument". 30-3-104.

HeinOnline -- 1997 vol. III 3130 1997

"Notice of dishonor". 30-3-508.

"Order". 30-3-102.

"Ordinary care". 30-3-102.

"Person entitled to enforce". 30-3-301.

"Presentment". 30-3-504.

"Promise". 30-3-102.

"Prove". 30-3-102.

"Teller's check". 30-3-104.

"Unauthorized signature". 30-3-404.

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

**Section 6. Definitions.** (1) In this chapter:

(a) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(b) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(c) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(d) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(e) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(f) (i) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion:

(A) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in [section 12(5)]; and

(B) which is capable of being examined for compliance with the terms and conditions of the letter of credit.

(ii) A document may not be oral.

HeinOnline -- 1997 vol. III 3131 1997

(g) "Good faith" means honesty in fact in the conduct or transaction concerned.

(h) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) upon payment;

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(i) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(j) "Letter of credit" means a definite undertaking that satisfies the requirements of [section 8] by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(k) "Nominated person" means a person whom the issuer:

(i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit; and

(ii) undertakes by agreement or custom and practice to reimburse.

(l) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(m) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(n) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(2) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Accept" or "Acceptance" 30-3-410

"Value" 30-3-303, 30-4-209

(3) Chapter 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this chapter.

HeinOnline -- 1997 vol. III 3132 1997

**Section 7. Scope.** (1) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(2) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(3) With the exception of this subsection, subsections (1) and (4), [sections 6(1)(i) and (1)(j), 10(4), and 18(4)], and except to the extent prohibited in 30-1-102(3) and [section 21(4)], the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(4) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

**Section 8. Formal requirements.** A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated:

(1) by a signature; or

(2) in accordance with the agreement of the parties or the standard practice referred to in [section 12(5)].

**Section 9. Consideration.** Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

**Section 10. Issuance, amendment, cancellation, and duration.** (1) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(2) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(3) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(4) A letter of credit that states that it is perpetual expires 5 years after its stated date of issuance, or if none is stated, after the date on which it is issued.

**Section 11. Confirmer, nominated person, and adviser.** (1) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and

HeinOnline -- 1997 vol. III 3133 1997

the confirmer had issued the letter of credit at the request and for the account of the issuer.

(2) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(3) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(4) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (3). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

**Section 12. Issuer's rights and obligations.** (1) Except as otherwise provided in [section 13], an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (5), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in [section 17] and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(2) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(a) to honor;

(b) if the letter of credit provides for honor to be completed more than 7 business days after presentation, to accept a draft or incur a deferred obligation; or

(c) to give notice to the presenter of discrepancies in the presentation.

(3) Except as otherwise provided in subsection (4), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(4) Failure to give the notice specified in subsection (2) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in [section 13(1)] or expiration of the letter of credit before presentation.

(5) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(6) An issuer is not responsible for:

(a) the performance or nonperformance of the underlying contract, arrangement, or transaction;

(b) an act or omission of others; or

(c) observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (5).

(7) If an undertaking constituting a letter of credit under [section 6(1)(j)] contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(8) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(9) An issuer that has honored a presentation as permitted or required by this chapter:

(a) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(b) takes the documents free of claims of the beneficiary or presenter;

(c) is precluded from asserting a right of recourse on a draft under 30-3-414 and 30-3-415;

(d) except as otherwise provided in [sections 14 and 21], is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(e) is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

**Section 13. Fraud and forgery.** (1) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(a) the issuer shall honor the presentation, if honor is demanded by:

(i) a nominated person who has given value in good faith and without notice of forgery or material fraud;

(ii) a confirmer who has honored its confirmation in good faith;

(iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person; or

(iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(b) the issuer, acting in good faith, may honor or dishonor the presentation in any other case.

HeinOnline -- 1997 vol. III 3135 1997

(2) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin tbe issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(a) the relief is not prohibited under tlie law applicable to an accepted draft or deferred obligation incurred by the issuer;

(b) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(c) all of the conditions to entitle a person to tlie relief under the law of this state have been met; and

(d) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under suhsection (1)(a).

**Section 14. Warranties.** (1) If its presentation is honored, tlie beneficiary warrants:

(a) to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in [section 13(1)]; and

(b) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended hy them to he augmented by the letter of credit.

(2) The warranties in subsection (1) are in addition to warranties arising under chapters 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those chapters.

**Section 15. Remedies.** (1) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the suhject of the dishonor or repudiation. If the issuer's obligation under tbe letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the hurden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(2) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach,

HeinOnline -- 1997 vol. III 3136 1997

including incidental but not consequential damages, less any amount saved as a result of the breach.

(3) If an adviser or nominated person other than a confirmer breaches an obligation under this chapter or an issuer breaches an obligation not covered in subsection (1) or (2), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (1) and (2).

(4) An issuer, nominated person, or adviser who is found liable under subsection (1), (2), or (3) shall pay interest on the amount owed from the date of wrongful dishonor or other appropriate date.

(5) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this chapter.

(6) Damages that would otherwise be payable by a party for breach of an obligation under this chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

**Section 16. Transfer of letter of credit.** (1) Except as otherwise provided in [section 17], unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(2) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(a) the transfer would violate applicable law; or

(b) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in [section 12(5)] or is otherwise reasonable under the circumstances.

**Section 17. Transfer by operation of law.** (1) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(2) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (5), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in [section 12(5)] or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

HeinOnline -- 1997 vol. III 3137 1997

(3) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(4) Honor of a purported successor's apparently complying presentation under subsection (1) or (2) has the consequences specified in [section 12(9)] even if the purported successor is not the successor of a beneficiary. Documents signed in the namo of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of [section 13].

(5) An issuer whose rights of reimbursement are not covered by suhsection (4) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (2).

(6) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a heneficiary under this section.

**Section 18. Assignment of procceds.** (1) (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit.

(b) The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(3) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(4) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if tlie assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(5) Rights of a transferee beneficiary or nominated person are independent of tlie beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(6) Neitlier the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor tbe issuer's or nominated person's payment of proceeds to an assignee or a third person affect tlie rights between the assignee and any person otlier than the issuer, transferee beneficiary, or nominated person. Tlie mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by cliapter 9 or other law. Against persons other tlian the issuer, transferee heneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by chapter 9 or other law.

HeinOnline -- 1997 vol. III 3138 1997

**Seetion 19. Statute of limitations.** An action to enforce a right or obligation arising under this chapter must he commenced within 1 year after the expiration date of the relevant letter of credit or 1 year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

**Section 20. Choice of law and forum.** (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen hy an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in [section 8] or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(2) Unless subsection (1) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(3) (a) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject.

(b) The rules of custom and practice govern except to the extent of any conflict with the nonvariable provisions specified in [section 7(3)] if:

(i) this chapter would govern the liability of an issuer, nominated person, or adviser under subsection (1) or (2);

(ii) the relevant undertaking incorporates rules of custom or practice; and

(iii) there is conflict between this chapter and those rules as applied to that undertaking.

(4) If there is conflict between this chapter and chapter 3, 4, 4A, or 9, this chapter governs.

(5) The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (1).

**Section 21. Subrogation of issuer, applicant, and nominated person.** (1) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

HeinOnline -- 1997 vol. III 3139 1997

(2) An applicant that reimhurses an issuer is suhrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (1).

(3) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(a) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(b) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(c) the applicant to same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(4) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (1) and (2) do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (3) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

**Section 22. Definitions.** (1) In this chapter:

(a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(b) "Bearer form" as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(d) "Certificated security" means a security that is represented by a certificate.

(e) "Clearing corporation" means:

(i) a person that is registered as a "clearing agancy" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

HeinOnline -- 1997 vol. III 3140 1997

(f) "Communicate" means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of [section 61(2)(b) or (2)(c)], that person is the entitlement holder.

(h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(i) (i) "Financial asset," except as otherwise provided in [section 23], means:

(A) a security;

(B) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(C) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

(ii) As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(m) "Registered form," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(n) "Securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(o) "Security," except as otherwise provided in [section 23], means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(p) "Security certificate" means a certificate representing a security.

(q) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in [sections 61 through 71].

(r) "Uncertificated security" means a security that is not represented by a certificate.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Appropriate person" [section 27]

"Control" [section 26]

"Delivery" [section 47]

"Investment company security" [section 23]

"Issuer" [section 37]

"Overissue" [section 46]

"Protected purchaser" [section 49]

"Securities account" [section 61]

(3) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(4) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

**Section 23. Rules for determining whether certain obligations and interests are securities or financial assets.** (1) A share or similar equity interest issued hy a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, hut is a financial asset.

(6) A commodity contract, as defined in [section 76], is not a security or a financial asset.

**Section 24. Acquisition of security or financial asset or interest therein.** (1) A person acquires a security or an interest therein, under this chapter, if:

(a) the person is a purchaser to whom a security is delivered pursuant to [section 47]; or

(b) the person acquires a security entitlement to the security pursuant to [section 61].

(2) A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.

(3) A person who acquires a security entitlement to a security or other financial asset has the rights specified in [sections 61 through 71], but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only te the extent provided in [section 63].

(4) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchango, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (1) or (2).

HeinOnline -- 1997 vol. III 3143 1997

**Section 25. Notice of adverse claim.** (1) A person has notice of an adverse claim if:

(a) the person knows of the adverse claim;

(b) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(c) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(2) Having knowledge that a financial asset or interest therein is or has been transferred by a representative impeses no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(3) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(a) 1 year after a date set for presentment or surrender for redemption or exchange; or

(b) 6 months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(4) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(a) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(5) Filing of a financing statement under chapter 9 is not notice of an adverse claim to a financial asset.

**Section 26. Control.** (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:

(a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(h) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) the uncertificated security is delivered to the purchaser; or

(b) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) the purchaser hecomes the entitlement holder; or

(b) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent hy the entitlement holder.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)(b) or (4)(b) has control even if the registered owner in the case of subsection (3)(b) or the entitlement holder in the case of subsection (4)(b) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

**Section 27. Whether indorsement, instruction, or entitlement order is effective.** (1) "Appropriato person" means:

(a) with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(b) with respect to an instruction, the registered owner of an uncertificated security;

(c) with respect to an entitlement order, the entitlement holder;

(d) if the person designated in subsection (1)(a), (1)(b), or (1)(c) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(e) if the person designated in subsection (1)(a), (1)(b), or (1)(c) lacks capacity, the designated person's guardian, conservator, or other similar ropresentative who has power under other law to transfer the security or financial asset.

HeinOnline -- 1997 vol. III 3145 1997

(2) An indorsement, instruction, or entitlement order is effective if:

(a) it is made by the appropriate person;

(b) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under [section 26(3)(b) or (4)(b)]; or

(c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

**Section 28. Warranties in direct holding.** (1) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser that:

(a) the certificate is genuine and has not been materially altered;

(b) the transferor or indorser does not know of any fact that might impair the validity of the security;

(c) there is no adverse claim to the security;

(d) the transfer does not violate any restriction on transfer;

(e) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(f) the transfer is otherwise effective and rightful.

(2) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(a) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(b) the security is valid;

(c) there is no adverse claim to the security; and

(d) at the time the instruction is presented to the issuer:

(i) the purchaser will be entitled to the registration of transfer;

(ii) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) the transfer will not violate any restriction on transfer; and

(iv) the requested transfer will otherwise be effective and rightful.

(3) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(a) the uncertificated security is valid;

(b) there is no adverse claim to the security;

(c) the transfer does not violate any restriction on transfer; and

(d) the transfer is otherwise effective and rightful.

(4) A person who indorses a security certificate warrants to the issuer that:

(a) there is no adverse claim to the security; and

(b) the indorsement is effective.

(5) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(a) the instruction is effective; and

(b) at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(6) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(7) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate

HeinOnline -- 1997 vol. III 3147 1997

warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(8) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (7).

(9) Except as otherwise provided in subsection (7), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (1) through (6). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (1) or (2) and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

**Section 29. Warranties in indirect holding.** (1) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(a) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(b) there is no adverse claim to the security entitlement.

(2) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in [section 28(1) or (2)].

(3) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in [section 28(1) or (2)].

**Section 30. Applicability — choice of law.** (1) The local law of the issuer's jurisdiction, as specified in subsection (4), governs:

(a) the validity of a security;

(b) the rights and duties of the issuer with respect to registration of transfer;

(c) the effectiveness of registration of transfer by the issuer;

(d) whether the issuer owes any duties to an adverse claimant to a security; and

(e) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5), governs:

HeinOnline -- 1997 vol. III 3148 1997

(a) acquisition of a security entitlement from the securities intermediary;

(b) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(c) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in subsections (1)(b) through (1)(e).

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(b) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subsection (5)(a), but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(c) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subsection (5)(a) or (5)(b), the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(d) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subsection (5)(a) or (5)(b) and an account statement does not identify an office serving the entitlement holder's account as provided in subsection (5)(c), the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account.

**Seetion 31. Clearing corporation rules.** A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and

HeinOnline -- 1997 vol. III 3149 1997

its participants in the clearing corporation is effective even if the rule conflicts with this chapter and affects another party who does not consent to the rule.

**Section 32. Creditor's legal process.** (1) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by tbe officer making the attachment or levy, except as otberwise provided in subsection (4). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(2) The interest of a debtor in an uncertificated security may be reached hy a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in suhsection (4).

(3) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (4).

(4) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon tlie secured party.

(5) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

**Section 33. Statute of frauds inapplicable.** A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within 1 year of its making.

**Section 34. Evidentiary rules concerning certificated securities.** The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

HeinOnline -- 1997 vol. III 3150 1997

**Section 35. Securities intermediary and others not liable to adverse claimant.** A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or hailee:

(1) took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued hy a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process;

(2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) in the case of a security certificate that has heen stolen, acted with notice of the adverse claim.

**Section 36. Securities intermediary as purchaser for value.** A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement estahlishes a security entitlement to the financial asset in favor of an entitlement holder.

**Section 37. Issuer.** (1) With respect to an ohligation on or a defense to a security, an "issuer" includes a person that:

(a) places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(b) creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(c) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented hy a security certificate; or

(d) becomes responsible for, or in place of, another person described as an issuer in this section.

(2) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(3) With respoct to a registration of a transfer, issuer means a person on whose behalf transfer hooks are maintained.

**Section 38. Issuer's responsibility and defenses — notice of defect or defense.** (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation,

HeinOnline -- 1997 vol. III 3151 1997

order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in [section 41], lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

**Section 39. Staleness as notice of defect or defense.** After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) is not covered hy subsection (1) and the purchaser takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

**Section 40. Effect of issuer's restriction on transfer.** A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) the security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) the security is uncertificated and the registered owner has been notified of the restriction.

**Section 41. Effect of unauthorized signature on security certificate.** An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the persons listed in subsection (1), entrusted with responsible handling of the security certificate.

**Section 42. Completion of alteration of security certificate.** (1) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

**Section 43. Rights and duties of issuer with respect to registered owners.** (1) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(2) This chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

**Section 44. Effect of signature of authenticating trustee, registrar, or transfer agent.** (1) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(a) the certificate is genuine;

(b) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(c) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person signing under subsection (1) does not assume responsibility for the validity of the security in other respects.

**Section 45. Issuer's lien.** A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

**Section 46. Overissue.** (1) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(2) Except as otherwise provided in subsections (3) and (4), the provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(3) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(4) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

**Section 47. Delivery.** (1) Delivery of a certificated security to a purchaser occurs when:

(a) the purchaser acquires possession of the security certificate;

(b) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

HeinOnline -- 1997 vol. III 3154 1997

**Section 48. Rights of purchaser.** (1) Except as otherwise provided in subsections (2) and (3), upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

**Section 49. Protected purchaser.** (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(a) gives value;

(b) does not have notice of any adverse claim to the security; and

(c) obtains control of the certificated or uncertificated security.

(2) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

**Section 50. Indorsement.** (1) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(2) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(3) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(4) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(5) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(6) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in [section 28] and not an obligation that the security will be honored by the issuer.

**Section 51. Instruction.** (1) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

HeinOnline -- 1997 vol. III 3155 1997

(2) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by [section 28] and not an obligation that the security will be honored by the issuer.

**Section 52. Effect of guaranteeing signature, indorsement, or instruction.** (1) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(c) the signer had legal capacity to sign.

(2) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(a) the signature was genuine;

(b) the signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(c) the signer had legal capacity to sign.

(3) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (2) and also warrants that at the time the instruction is presented to the issuer:

(a) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(b) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) A guarantor under subsections (1) and (2) or a special guarantor under subsection (3) does not otherwise warrant the rightfulness of the transfer.

(5) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (1) and also warrants the rightfulness of the transfer in all respects.

(6) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (3) and also warrants the rightfulness of the transfer in all respects.

(7) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(8) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

**Section 53. Purchaser's right to requisites for registration of transfer.** Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

**Section 54. Duty of issuer to register transfer.** (1) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(a) under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(b) the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(c) reasonable assurance is given that the indorsement or instruction is genuine and authorized ([section 55]);

(d) any applicable law relating to the collection of taxes has been complied with;

(e) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with [section 40];

(f) a demand that the issuer not register transfer has not become effective under [section 56], or the issuer has complied with [section 56(2)] but no legal process or indemnity bond is obtained as provided in [section 56(4)]; and

(g) the transfer is in fact rightful or is to a protected purchaser.

(2) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

**Section 55. Assuranee that indorsement or instruction is effeetive.** (1) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(a) in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

HeinOnline -- 1997 vol. III 3157 1997

(b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(c) if the indorsement is made or the instruction is originated by a fiduciary pursuant to [section 27(1)(d) or (1)(e)], appropriate evidence of appointment or incumbency;

(d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(2) An issuer may elect to require reasonable assurance beyond that specified in this section.

(3) In this section:

(a) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(b) "Appropriate evidence of appointment or incumbency" means:

(i) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(ii) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

**Section 56. Demand that issuer not register transfer.** (1) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(2) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to:

(a) the person who initiated the demand at the address provided in the demand; and

(b) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

HeinOnline -- 1997 vol. III 3158 1997

(i) the certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

(ii) a demand that the issuer not register transfer had previously been received; and

(iii) the issuer will withhold registration of transfer for a peried of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(3) The period described in subsection (2)(b)(iii) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(4) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(a) obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(b) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(5) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

**Section 57. Wrongful registration.** (1) Except as otherwise provided in [section 59], an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(a) pursuant to an ineffective indorsement or instruction;

(b) after a demand that the issuer not register transfer became effective under [section 56(1)] and the issuer did not comply with [section 56(2)];

(c) after the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(d) by an issuer acting in collusion with the wrongdoer.

(2) An issuer that is liable for wrongful registration of transfer under subsection (1) on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by [section 46].

HeinOnline -- 1997 vol. III 3159 1997

(3) Except as otherwise provided in subsection (1) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

**Section 58. Replacement of lost, destroyed, or wrongfully taken security certificate.** (1) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(a) so requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies other reasonable requirements imposed by the issuer.

(2) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by [section 46]. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

**Section 59. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.** If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under [section 57] or a claim to a new security certificato under [section 58].

**Section 60. Autbenticating trustee, transfer agent, and registrar.** A person acting as autbenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in tbe cancellation of surrendered security certificates has the same obligetion to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

**Section 61. Securities account — acquisition of security entitlement from securities intermediary.** (1) "Securities account" means an account to which a financial asset is or may he credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(2) Except as otherwise provided in subsections (4) and (5), a person acquires a security entitlement if a securities intermediary:

(a) indicates by book entry that a financial asset has been credited to the person's securities account;

(b) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(c) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(3) If a condition of subsection (2) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(4) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not heen indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(5) Issuance of a security is not establishment of a security entitlement.

**Scction 62. Assertion of adverse claim against entitlement holder.** An action hased on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under [section 61] for value and without notice of the adverse claim.

**Section 63. Property interest of entitlement holder in financial asset held by securities intermediary.** (1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intormediary, except as otherwise provided in [section 71].

(2) An entitlement holder's property interest with respect to a particular financial asset under suhsection (1) is a pro rata property interest in all interests in that financial asset held by tho securities interniediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(3) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may he enforced against the securities intermediary only by exercise of the entitlement holder's rights under [sections 65 through 68].

(4) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) may be enforced against a purchaser of the financial asset or interest therein only if:

(a) insolvency proceedings have been initiated by or against the securities intermediary;

(b) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(c) the securities intermediary violated its obligations under [section 64] by transferring the financial asset or interest therein to the purchaser; and

(d) the purchaser is not protected under subsection (6).

(5) The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(6) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (1), whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under [section 64].

**Section 64. Duty of securities intermediary to maintain financial asset.** (1) A securities intermediary sball promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(2) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (1).

(3) A securities intermediary satisfies the duty in subsection (1) if:

(a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement bolder and the securities intermediary; or

(b) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(4) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

**Section 65. Duty of securities intermediary with respect to payments and distributions.** (1) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

HeinOnline -- 1997 vol. III 3162 1997

(b) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(2) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

**Section 66. Duty of securities intermediary to exercise rights as directed by entitlement holder.** A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

**Section 67. Duty of securities intermediary to comply with entitlement order.** (1) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(a) the securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(b) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(2) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

**Section 68. Duty of securities intermediary to change entitlement holder's position to other form of security holding.** A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

HeinOnline -- 1997 vol. III 3163 1997

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

**Section 69. Specification of duties of securities intermediary by other statute or regulation — manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.** (1) If the substance of a duty imposed upon a securities intermediary by [sections 64 through 68] is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(2) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(3) The obligation of a securities intermediary to perform the duties imposed by [sections 64 through 68] is subject to:

(a) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(b) rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(4) [Sections 64 through 68] do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

**Section 70. Rights of purchaser of security entitlement from entitlement holder.** (1) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under [section 62], the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in chapter 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

**Section 71. Priority among security interests and entitlement holders.** (1) Except as otherwise provided in subsections (2) and (3), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security

HeinOnline -- 1997 vol. III 3164 1997

entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than tbe creditor, have priority over the claim of the creditor.

(2) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(3) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

**Section 72.** Section 30-9-103, MCA, is amended to read:

**"30-9-103. Perfection of security interests in multiple state transactions.** (1) (a) Subsection (1) applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in subsection (1), perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in anotber jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until 30 days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of tbis chapter to perfect the security interest:

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of 4 months after the collateral is hrought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter considered to have been unperfected as against a person wbo became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in (1)(d)(i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (30-9-307(2)), the period of the effectiveness of a filing in the jurisdiction from which the

HeinOnline -- 1997 vol. III 3165 1997

collateral is removed is governed by the rules with respect to perfection in (1)(d)(i) and (ii).

(2) (a) Subsection (2) applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in suhsection (2), perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until 4 months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title withim the meaning of this section.

(c) Except with respect to the rights of a buyer described in (2)(d), a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in (1)(d).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of tbat kind to the extent that ~~he~~ *the buyer* gives value and receives delivery of the goods after issuance of the certificate and without knowledgo of the security interest.

(3) (a) Subsection (3) applies to accounts (otber than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more tban one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery, and commercial harvesting machinery, and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in

HeinOnline -- 1997 vol. III 3166 1997

subsection (3)(c), "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be considered located at ~~his~~ *the debtor's* place of business if ~~he~~ *the debtor* has one, at ~~his~~ *the* chief executive office if ~~he~~ *the debtor* has more than one place of business, otherwise at ~~his~~ *the debtor's* residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act, it shall be considered located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of 4 months after a change of the debtor's location to another jurisdiction or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is considered to have been unperfected as against a person who became a purchaser after the change.

(4) The rules stated for geods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) *(a)* ~~The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.~~ *This subsection (6) applies to investment property.*

*(b) Except as otherwise provided in subsection (6)(f), during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security are governed by the local law of that jurisdiction.*

*(c) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in [section 30(4)].*

*(d) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in [section 30(5)].*

*(e) Except as otherwise provided in subsection (6)(f), perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this subsection (6)(e):*

HeinOnline -- 1997 vol. III 3167 1997

*(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.*

*(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subsection (6)(e)(i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.*

*(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.*

*(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subsections (6)(e)(i) or (6)(e)(ii) and an account statement does not identify an office serving the commodity customer's account as provided in subsection (6)(e)(iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief exccutive office of the commodity intermediary.*

*(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located."*

**Section 73.** Section 30-9-104, MCA, is amended to read:

**"30-9-104. Transactions excluded from chapter.** This chapter does not apply:

(1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that the statute governs the rights of parties to and third parties affected by transactions in particular types of property;

(2) to a landlord's lien;

(3) to a lien given by statute or other rule of law for services or materials except as provided in 30-9-310 on priority of such liens;

(4) to a transfer of a claim for wages, salary, or other compensation of an employee;

(5) to a transfer by a government or governmental subdivision or agency;

(6) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract, or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness;

HeinOnline -- 1997 vol. III 3168 1997

(7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312);

(8) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral);

(9) to any right of setoff;

(10) except to the extent that provision is made for fixtures in 30-9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents under the lease;

(11) to a transfer in whole or in part of any claim arising out of tort;

(12) to a transfer of an interest in any depesit account (30-9-105(1)), except as provided with respect to proceeds (30-9-306) and priorities in proceeds (30-9-312); ~~or~~

(13) to liquor in an agency liquor store as defined in 16-1-106*; or*

*(14) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit.*"

**Section 74.** Section 30-9-105, MCA, is amended to read:

"**30-9-105. Definitions and index of definitions.** (1) In this chapter, the following definitions apply unless the context otherwise requires:

(a) "Account dehtor" means the person who is obligated on an account, chattel paper, or general intangihle.

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not be owns or has rights in the collateral, and includes the seller of accounts or chattel paper. When the debtor and tbe owner of the collateral are not the same person, the term "dehtor" means tbe owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires.

(e) "Deposit account" means a demand, time, savings, passbook, or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

(f) "Document" means document of title as defined in the general definitions of chapter 1 (30-1-201) and a receipt of the kind described in 30-7-201(2).

HeinOnline -- 1997 vol. III 3169 1997

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (30-9-313), but does not include money, documents, instruments, *investment property,* accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber that is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(i) "Instrument" means a negotiable instrument (defined in 30-3-104)~~, or a certificated security (defined in 30-8-102)~~ or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment. *The term does not include investment property.*

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(k) An advance is made "pursuant to commitment" if the secured party has bound ~~himself~~ *the secured party* to make it, whether or not a subsequent event of default or other event not within ~~his~~ *the secured party's* control has relieved or may relieve ~~him~~ *the secured party* from ~~his~~ *the secured party's* obligation.

(l) "Security agreement" means an agreement which creates or provides for a security interest.

(m) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or trolley bus business; the electric or electronics communications transmission business; the transmission of geods by pipeline; or the transmission or the production and transmission of electricity, steam, gas, or water or the provision of sewer service.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". 30-9-106.

"Attach". 30-9-203.

*"Commodity contract". [section 76].*

*"Commodity customer". [section 76].*

*"Commodity intermediary". [section 76].*

"Construction mortgage". 30-9-313(1).

"Consumer goods". 30-9-109(1).

*"Control". [section 76].*

"Equipment". 30-9-109(2).

"Farm products". 30-9-109(3).

"Fixture". 30-9-313(1).

"Fixture filing". 30-9-313.

"General intangibles". 30-9-106.

"Inventory". 30-9-109(4).

*"Investment property". [section 76].*

"Lien creditor". 30-9-301(3).

"Proceeds". 30-9-306(1).

"Purchase money security interest". 30-9-107.

"United States". 30-9-103.

(3) The following definitions in other chapters apply to this chapter:

*"Broker". [section 22].*

*"Certificated security". [section 22].*

"Check". 30-3-104.

*"Clearing corporation". [section 22].*

"Contract for sale". 30-2-106.

*"Control". [section 26].*

*"Delivery". [section 47].*

*"Entitlement holder". [section 22].*

*"Financial asset". [section 22].*

"Holder in due course". 30-3-302.

*"Letter of credit". [section 6].*

"Note". 30-3-104.

*"Proceeds of a letter of credit". [section 18(1)].*

"Sale". 30-2-106.

*"Securities intermediary". [section 22].*

*"Security". [section 22].*

*"Security certificate". [section 22].*

*"Security entitlement". [section 22].*

*"Uncertificated security". [section 22].*

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

**Section 75.** Section 30-9-106, MCA, is amended to read:

**"30-9-106. Definitions — "account" — "general intangibles".** "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, *investment property, rights to proceeds of written letters of credit,* and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts."

**Section 76. Investment property.** (1) In this chapter:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is.

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) "Commodity intermediary" means:

(i) a person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) a person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in [section 26]. A secured party has control over a commodity contract if hy agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a

HeinOnline -- 1997 vol. III 3172 1997

securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) "Investment property" means:

(i) a security, whether certificated or uncertificated;

(ii) a security entitlement;

(iii) a securities account;

(iv) a commodity contract; or

(v) a commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in subsections (4)(c) and (4)(d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary bas no effect for purposes of perfection or priority with respect to tbat security interest.

(d) If a dehtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

HeinOnline -- 1997 vol. III 3173 1997

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in subsections (5)(c) and (5)(d), conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by 30-9-312(5), (6), and (7). Section 30-9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking.

**Section 77. Security interest arising in purchase or delivery of financial asset.** (1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

HeinOnline -- 1997 vol. III 3174 1997

**Section 78.** Section 30-9-203, MCA, is amended to read:

**"30-9-203. Attachment and enforceability of security interest — procceds, formal requisites.** (1) Subject to the provisions of 30-4-208 on the security interest of a collecting bank, ~~30-8-321~~ *[sections 76 and 77]* on security interests in ~~securities~~ *investment property*, and 30-9-113 on a security interest arising under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, *the collateral is investment property and the secured party has control pursuant to agreement,* or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value bas been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against tbe debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by 30-9-306.

(4) A transaction, although subject to this chapter, is also subject to Title 23, chapter 2, part 5, to Title 23, chapter 2, part 6, to Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959, to Title 31, cbapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301 through 81-8-305, Title 61, chapter 3, Title 16, cbapters 1 through 6, and Title 31, chapter 1, part 4, as amended, and in the case of conflict between tbe provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

**Section 79.** Section 30-9-301, MCA, is amended to read:

**"30-9-301. Persons who take priority over unperfected seeurity interests — right of "lien creditor".** (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of:

(a) persons entitled to priority under 30-9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that ~~he~~ *the person* gives value and receives delivery of the collateral without knowledge of tbe security interest and before it is perfected;

HeinOnline -- 1997 vol. III 3175 1997

(d) in the case of accounts, ~~and~~ general intangibles, *and investment property*, a person who is not a secured party and who is a transferee to the extent that ~~he~~ *the person* gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, ~~he~~ *the secured party* takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before ~~he~~ *the person* becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien."

**Section 80.** Section 30-9-302, MCA, is amended to read:

**"30-9-302. When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply.** (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under 30-9-305;

(b) a security interest temporarily perfected in instruments, *certificated securities*, or documents without delivery under 30-9-304 or in proceeds for a 10-day period under 30-9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered, and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in 30-9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (30-4-208)~~, in securities (30-8-321),~~ or arising under the Chapter on Sales or covered in subsection (3) of this section;

(g) an assignment for the benefit of all creditors of the transferor, and subsequent transfers by the assignee thereunder;

*(h) a security interest in investment property that is perfected without filing under [section 76 or 77].*

HeinOnline -- 1997 vol. III 3176 1997

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original dehtor.

(3) The filing of a financing statement otherwise required hy this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(h) the following statutes of this state: Title 61, chapter 3; Title 23, chapter 2, parts 5 and 6; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (part 4) apply to a security interest in that collateral created by ~~him~~ *the person* as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (30-9-103(2)).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in 30-9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter."

**Section 81.** Section 30-9-303, MCA, is amended to read:

**"30-9-303. When security interest is perfcctcd — continuity of perfection.** (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in *[section 76]*, 30-9-302, 30-9-304, 30-9-305, and 30-9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter."

**Section 82.** Section 30-9-304, MCA, is amended to read:

**"30-9-304. Perfection of security interest in instruments, documents, *proceeds of a written letter of credit,* and goods eovered by documents — perfection by permissive filing — temporary perfection without filing or transfer of possession.** (1) A security interest in chattel paper or negotiable documents may be perfected by filing. *A security interest in the right to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit.* A security interest in ınoney or instruments (other than ~~certificated securities or~~ instruments which constitute part of chattel paper) can be perfected only by the secured party's taking

possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of 30-9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document tberefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other tban one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments, ~~(other than~~ certificated securities~~)~~, or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, ~~(other than~~ a certificated security~~)~~, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchango or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange; but priority between conflicting security interests in the goods is subject to 30-9-312(3); or

(b) delivers the instrument *or certificated security* to the debtor for the purpose of ultimate sale or excbange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5), perfection depends upon compliance with applicable provisions of this chapter."

**Section 83.** Section 30-9-305, MCA, is amended to read:

"30-9-305. **When posscssion by secured party perfects sccurity interest witbout filing.** A security interest in ~~letters of credit and advices of credit (subsection 30-5-116(2)(a)),~~ geods, instruments ~~(other than certificated securities)~~, money, negotiable documents, or chattel papor may be perfected by the secured party's taking possession of the collateral. *A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit.* If such collateral otber than goods covered by a negotiable document is held by a bailee, the secured party is deemed to bave pessession from the time the bailee receives notification of the secured party's interest. A security interest is porfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party."

HeinOnline -- 1997 vol. III 3178 1997

**Section 84.** Section 30-9-306, MCA, is amended to read:

**"30-9-306. "Proceeds" — secured party's rights on disposition of collateral.** (1) "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. *Any payments or distributions made with respect to investment property collateral are proceeds.* Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "noncash proceeds".

(2) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange, or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) (a) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless:

(i) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds;

(ii) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; ~~or~~

*(iii) the original collateral was investment property and the proceeds are identifiable cash proceeds; or*

~~(iii)~~*(iv)* the security interest in the proceeds is perfected before the expiration of the 10-day period.

(b) Except as provided in this section, a security interest in proceeds can he perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedinge;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

HeinOnline -- 1997 vol. III 3179 1997

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this ~~paragraph~~ *subsection (4)*(d) is:

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of:

(A) the payments to the secured party on account of cash proceeds received by the debtor during such period; and

(B) the cash proceeds received by the debtor during such period to which the secured party is entitled under subsections (4)(a) through (4)(c).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. ~~Such~~ *The* security interest is prior to a security interest asserted under ~~paragraph~~ *subsection (5)*(a) to the extent that the transferee of the chattel paper was entitled to priority under 30-9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. ~~Such~~ *The* security interest is subordinate to a security interest asserted under ~~paragraph~~ *subsection (5)*(a).

(d) A security interest of an unpaid transferee asserted under ~~paragraph~~ *subsection (5)*(b) or *(5)*(c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods."

**Section 85.** Section 30-9-309, MCA, is amended to read:

**"30-9-309. Protection of purchasers of instruments, documents, and securities.** Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (30-3-302) or a holder to whom a negotiable document of title has been duly negotiated (30-7-501) or a ~~bona fide~~ *protected* purchaser of a security (~~30-8-302~~*[section 49]*), and ~~such~~ *the* holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to ~~such~~ *the* holders or purchasers."

HeinOnline -- 1997 vol. III 3180 1997

**Section 86.** Section 30-9-312, MCA, is amended to read:

**"30-9-312. Priorities among conflicting seeurity interests in the same collateral.** (1) The rules of priority stated in other sections of this part and in the following sections sball govern where applicable: ~~30-4-208~~ *30-4-210* with respect to the security interest of collecting banks in items being collected, accompanying documents, and proceeds; 30-9-103 on security interests related to other jurisdictions; ~~and~~ 30-9-114 on consignments*; and [section 76] on security interests in investment property*.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that ~~such~~ *the* earlier interest secures obligations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory:

(i) before tbe date of the filing made by the purchase money secured party; or

(ii) before the beginning of the 21-day period if the purchase money security interest is temperarily perfected without filing or possession (30-9-304(5)); and

(c) the bolder of the conflicting security mtorest receives notification within 5 years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing ~~such~~ *the* inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed hy otber rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral ~~shall~~ *must* he determined according to the following rules:

(a) Conflicting security interests rank according to priority in the time of filing or perfection. Priority dates from the time a filing is first made covering

HeinOnline -- 1997 vol. III 3181 1997

the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5), a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under ~~30-8-321 on securities~~ *[section 76 or 77] on investment property*, the security interest has the same priority for the purposes of subsection (5) *or [section 76(5)]* with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

**Section 87.** Section 32-1-426, MCA, is amended to read:

**"32-1-426. Deposit of securities in central depository.** (1) Notwithstanding any other provision of law, any fiduciary, as defined in 32-1-425, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in ~~30-8-102~~ *[section 22]*. When the securities are ~~so~~ deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of ~~such~~ *the* clearing corporation with any other ~~such~~ securities deposited in ~~such~~ *the* clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may he merged into one or more certificates of larger denomination. The records of ~~such~~ *the* fiduciary and the records of ~~such~~ *the* bank or trust company acting as custodian, as managing agent, or a custedian for a fiduciary ~~shall~~ *must* at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by hookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing ~~such~~ *the* securities. A bank or trust company ~~so~~ depesiting securities pursuant to this section is subject to rules which in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A hank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities ~~so~~ deposited by the bank or trust company in the clearing corporation for the account of ~~such~~ *the* fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for ~~such~~ *the* party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as ~~such~~ *the* fiduciary.

(2) This section ~~shall apply~~ *applies* to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary ~~acting on July 1, 1977, or who thereafter may act~~ regardless of the date of the agreement, instrument,

or court order by which it is appointed and regardless of whether or not ~~such~~ *the* fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of ~~such~~ *the* clearing corporation."

**Seetion 88. Repealer.** Sections 30-5-102, 30-5-103, 30-5-104, 30-5-105, 30-5-106, 30-5-107, 30-5-108, 30-5-109, 30-5-110, 30-5-111, 30-5-112, 30-5-113, 30-5-114, 30-5-115, 30-5-116, 30-5-117, 30-8-102, 30-8-103, 30-8-104, 30-8-105, 30-8-106, 30-8-107, 30-8-108, 30-8-201, 30-8-202, 30-8-203, 30-8-204, 30-8-205, 30-8-206, 30-8-207, 30-8-208, 30-8-301, 30-8-302, 30-8-303, 30-8-304, 30-8-305, 30-8-306, 30-8-307, 30-8-308, 30-8-309, 30-8-310, 30-8-311, 30-8-312, 30-8-313, 30-8-314, 30-8-315, 30-8-316, 30-8-317, 30-8-318, 30-8-319, 30-8-320, 30-8-321, 30-8-401, 30-8-402, 30-8-403, 30-8-404, 30-8-405, 30-8-406, 30-8-407, 30-8-408, 30-10-401, 30-10-402, 30-10-403, 30-10-404, 30-10-405, 30-10-406, 30-10-407, 30-10-408, 30-10-409, 30-10-410, and 30-10-411, MCA, are repealed.

**Section 89. Codifieation instructions.** (1) [Sections 6 through 21] are intended to be codified as an integral part of Title 30, chapter 5, and the provisions of Title 30, cbapter 5, apply to [sections 6 through 21].

(2) [Sections 22 through 71] are intended to be codified as an integral part of Title 30, chapter 8, and the provisions of Title 30, chapter 8, apply to [sections 22 through 71].

(3) [Sections 76 and 77] are intended to be codified as an integral part of Title 30, cbapter 9, part 1, and the provisions of Title 30, chapter 9, part 1, apply to [sections 76 and 77].

Approved May 5, 1997

# CHAPTER NO. 537

[HB 434]

AN ACT PROVIDING A TAX CREDIT FOR PLANNED GIFTS BY INDIVIDUALS AND OTHER GIFTS BY CORPORATIONS AND ESTATES MADE TO QUALIFIED CHARITABLE ENDOWMENT FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

WHEREAS, charitable endowments are permanent savings accounts, the income from which is perpetually committed to charitable purposes; and

WHEREAS, Montana-based charitable endowments can grow over time to become significant resources capable of funding many unanticipated and unmet needs of, and creating new opportunities for, Montana's citizens and their communities; and

WHEREAS, Montana's relatively weak tradition of endowed philanthropy can be demonstrated by comparing our state with the other 49 states, in that Montana ranks 44th in population and 41st in per capita income, but ranks 48th in foundation assets and 49th in foundation giving; and

WHEREAS, a planned gift is a type of charitable contribution that has the following three characteristics: first, it is composed typically of assets saved over

HeinOnline -- 1997 vol. III 3183 1997

the contrihutor's lifetime; second, it is conferred in connection with a carefully considered estate plan; and third, it transfers assets of the contrihutor to a charity prior to the contributor's death; and

WHEREAS, although planned gifts would appear to offer genuine financial potential for creating and expanding charitable endowments in Montana, in reality, planned gifts are so infrequently contributed in Montana that endowments in our state are not growing as fast as they are in other states; and

WHEREAS, planned gifts ınight be used more in funding charitable endowınents in Montana if contributors could offset a significant portion of their gifts against their Montana income tax liabilities; and

WHEREAS, over the long term, income distrihuted from endowments can help achieve community goals and objectives when current funding from state and local government budgets may be limited; and

WHEREAS, local charitable endowments currently exist in almost every Montana community, and the existence of these widespread endowments offers everyone in Montana an opportunity to contribute endowed funding for their local communities; and

WHEREAS, community-based endowments in Montana have long-term potential to benefit all Montana comınunities by developing creative solutions to help individual comınunities ıneet growing needs and by helping these communities find transitions to self-sufficiency; and

WHEREAS, earnings froın charitable endowments in Montana are distributed by volunteer boards of diverse community leaders to ıneet eınerging comınunity needs in such areas as education, arts and culture, social services, economic development, and health and the environment; and

WHEREAS, governınent cannot meet, nor should it be expected to meet, all of the needs of the state's communities because of its limited financial resources and because each community is in a better position to determine its own existing and future needs and opportunities; and

WHEREAS, tax credits provide financial incentives that encourage contributions for the establishment or expansion of charitable endowments in Montana; and

WHEREAS, the Legislature limits the tax credit created by [this act] to qualified porınanent endowments held by tax-exempt orgaıiizations or by banks or trust coınpanies on behalf of tax-exempt organizations; and

WHEREAS, for the purpose of renewing the tax credit created by [this act], it is the intent of the 55th Legislature that the state's cost of administering the tax credit may not exceed 5% of the total annual credits claimed.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Qualified endowments credit — definitions.** For tbe purposes of [section 2], the following definitions apply:

(1) "Planned gift" means an irrevocahle contribution to a permanent endowment held by a tax-exempt organization, or for a tax-exeınpt organization,

when the contribution uses any of the following techniques that are authorized under the Internal Revenue Code:

(a) charitable remainder unitrusts, as defined by 26 U.S.C. 664;

(b) charitable remainder annuity trusts, as defined by 26 U.S.C. 664;

(c) pooled income fund trusts, as defined by 26 U.S.C. 642(c)(5);

(d) charitable lead unitrusts qualifying under 26 U.S.C. 170(f)(2)(B);

(e) charitable lead annuity trusts qualifying under 26 U.S.C. 170(f)(2)(B);

(f) charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(g) deferred charitable gift annuities undertaken pursuant to 26 U.S.C. 1011(b);

(h) charitable life estate agreements qualifying under 26 U.S.C. 170(f)(3)(B);

(i) paid-up life insurance policies meeting the requirements of 26 U.S.C. 170.

(2) "Qualified endowment" means a permanent, irrevocable fund that is held by a Montana incorporated or established organization that:

(a) is a tax-exempt organization under 26 U.S.C. 501(c)(3); or

(b) is a bank or trust company, as defined in Title 32, chapter 1, part 1, that is holding the fund on behalf of a tax-exempt organization.

**Section 2. Credit for contributions to qualified endowment.** (1) A taxpayer is allowed a tax credit against the taxes imposed by 15-30-103 or 15-31-101 in an amount equal to 50% of the present value of the aggregate amount of the charitable gift portion of a planned gift made by the taxpayer during the year to any qualified endowment. The maximum credit that may be claimed by a taxpayer for contributions made from all sources in a year is $10,000. The credit allowed under this section may not exceed the taxpayer's income tax liability.

(2) The credit allowed under this section may not be claimed by an individual taxpayer if the taxpayer has included the full amount of the contribution upon which the amount of the credit was computed as a deduction under 15-30-121(1) or 15-30-136(2).

(3) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

**Section 3. Credit for contribution by corporations to qualified endowment.** A corporation is allowed a credit in an amount equal to 50% of a charitable gift against the taxes otherwise due under 15-31-101 for charitable contributions made to a qualified endowment, as defined in [section 1]. The maximum credit that may be claimed by a corporation for contributions made from all sources in a year under this section is $10,000. The credit allowed under this section may not exceed the corporate taxpayer's income tax liability. The credit allowed under this section may not be claimed by a corporation if the taxpayer has included the full amount of the contribution upon which the amount

of tbe credit was computed as a deduction under 15-31-114. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made.

**Section 4. Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined in [section 1], by a small business corporation, as defined in 15-31-201, a partnership, or a limited liability company, as defined in 35-8-102, qualifies for the credit provided in [section 3]. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is $10,000, subject to the limitations in [section 2(2)]. The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must he applied to the tax year in which the contribution is made.

**Scction 5. Beneficiaries of estates — credit for contribution to qualified endowment.** A contribution to a qualified endowment, as defined in [section 1], by an estate qualifies for the credit provided in [section 2] if the contribution is a planned gift or in [section 3] if the contribution is an outright gift to a qualified endowment. Any credit not used by the estate may be attributed to each beneficiary of the estate in the same proportion used to report the beneficiary's income from the estate for Montana income tax purposes. The maximum amount of credit that a heneficiary may claim is $10,000, suhject to the limitation in [section 2(2)], and the credit must be claimed in the year in which the contribution is made. The credit may not be carried forward or carried back.

**Section 6. Report on income tax credit to committee.** The department sball report to the revenue oversight committee at least once each year the number and type of taxpayers claiming the credit under [section 2], the total amount of the credit claimed, and the department's cost associated with administering the credit.

**Section 7. Codification instruction.** (1) [Sections 1, 2, and 5] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1, 2, and 5].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 3 and 4].

(3) [Section 6] is intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [section 6].

**Section 8. Effective date — retroactive appllcability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1996.

HeinOnline -- 1997 vol. III 3186 1997

**Section 9. Termination.** [This act] terminates December 31, 2001.

Approved May 5, 1997

# CHAPTER NO. 538

[HB 483]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE SAFE DRINKING WATER AND WASTEWATER TREATMENT REVOLVING FUNDS AND WATER SYSTEM LICENSING; FORMING AN ADVISORY COMMITTEE; AMENDING SECTIONS 37-42-102, 75-5-1101, 75-5-1102, 75-5-1103, 75-5-1104, 75-5-1105, 75-5-1106, 75-5-1107, 75-5-1111, 75-5-1112, 75-5-1113, 75-5-1121, 75-6-201, 75-6-202, 75-6-203, 75-6-204, 75-6-205, 75-6-211, 75-6-212, 75-6-221, 75-6-222, 75-6-223, AND 75-6-224, MCA; REPEALING SECTIONS 75-6-213 AND 75-6-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 37-42-102, MCA, is amended to read:

**"37-42-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Community water system" means the term as defined in 75-6-102.

(3) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

*(5) "Nontransient noncommunity water system" means a public water system, as defined in 75-6-202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.*

~~(5)~~*(6)* "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

~~(6)~~*(7)* "State waters" means the term as defined in 75-6-102.

~~(7)~~*(8)* "Wastewater treatment plant" means a facility that:

(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes;

(b) discharges an effluent directly into state waters; and

(c) is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.

HeinOnline -- 1997 vol. III 3187 1997

~~(8)~~*(9)* "Water distribution system" means that portion of the water supply system that conveys water from the water treatment plant or other supply source to the premises of the consumer and that is part of a community water system *or a nontransient noncommunity water system.*

~~(8)~~*(10)* "Water supply system" means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system *or a nontransient noncommunity water system.*

~~(10)~~*(11)* "Water treatment plant" means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use."

**Section 2.** Section 75-5-1101, MCA, is amended to read:

**"75-5-1101. Short title.** This part may be cited as tbe ~~"Wastewater Treatment~~ *"Water Pollution Control State* Revolving Fund Act"."

**Section 3.** Section 75-5-1102, MCA, is amended to read:

**"75-5-1102. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program start-up costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference te a ~~wastewater treatment works~~ project, all capital costs incurred or to be incurred by a municipality or a private ~~concern~~ *person*, including but not limited to engineering, *construction*, financing, and otber fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated tbereunder.

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

*(4) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.*

~~(4)~~*(5)* "Loan" means a loan of money from the revolving fund to a municipality or a private ~~concern~~ *person*.

~~(5)~~*(6)* "Municipality" means any *state agency*, city, town, or other ~~local government unit having authority to own and operate a sewage system and wastewater treatment works~~ *public body created pursuant to state law.*

~~(8)~~*(7)* "Private ~~concern~~" *person"* means ~~an individual or other entity eligible for a loan or loans for a pollution control project for a nonpoint source under section 319 of the federal act~~ *an individual, corporation, partnership, or other nongovernmental legal entity.*

HeinOnline -- 1997 vol. III 3188 1997

~~(7)~~*(8)* "Program" means the ~~wastewater treatment works~~ *water pollution control state* revolving *fund* ~~loan~~ program established by this part.

~~(8)~~*(9) (a)* "Project" means ~~a wastewater treatment works or part of a wastewater treatment works for~~ *an activity that is eligible for financing by the program under the federal act, including treatment works, as defined under section 1292 of the federal act (33 U.S.C. 1292), and nonpoint source pollution control under section 1329 of the federal act (33 U.S.C. 1329), and for* which a municipality or private ~~concern~~ *person* makes an application for a loan or other financial assistance.

*(b) "Project" does not include a solid waste management system, as defined in 75-10-203, except for a project that is intended specifically for the closure or postclosure care of or ground water corrective action at a landfill that:*

*(i) was in operation on [the effective date of this act] and that accepts an annual average of less than 20,000 tons of solid waste per year; or*

*(ii) was closed prior to [the effective date of this act].*

~~(8)~~*(10)* "Revolving fund" means the fund established by 75-5-1106."

**Section 4.** Section 75-5-1103, MCA, is amended to read:

**"75-5-1103. ~~Wastewater treatment works~~ *Water pollution control state* revolving *fund* ~~loan~~ program.** There is a program under which the state may provide financial assistance to municipalities and private ~~concerns~~ *persons* to finance or refinance part or all of the cost of projects. The program must be administered in accordance with this part and the federal act."

**Section 5.** Section 75-5-1104, MCA, is amended to read:

**"75-5-1104. Authorization of agreement — content.** (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in 75-5-1106;

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by 75-5-1106 on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private ~~concerns~~ *persons* in accordance with this part in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

HeinOnline -- 1997 vol. III 3189 1997

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of tbe federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to gonerally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private ~~concern~~ *person* will maintain project accounts in accordance witb gonerally accepted government accounting standards;

(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required hy the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of this part."

**Section 6.** Section 75-5-1105, MCA, is amended to read:

**"75-5-1105. Rulemaking.** The department and the department of natural resources and conservation may adopt rules to implement the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private ~~concerns~~ *persons*, if considered appropriate and necessary for the successful administration of the program."

**Section 7.** Section 75-5-1106, MCA, is amended to read:

**"75-5-1106. Revolving fund.** (1) There is established in the state treasury a separate account designated as the ~~wastewater treatment works~~ *water pollution control state* revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state *from the following sources:*

*(i) funds provided* pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of ~~wastewater treatment works and~~ *projects;*

*(ii)* grants or transfers of grants received under subchapter II of the federal act for ~~construction of wastewater treatment works~~ *projects; and*

*(iii) money transferred to the fund from the drinking water state revolving fund pursuant to 75-6-211*;

(b) the state allocation account, the net proceeds of bonds of the state issued pursuant to 75-5-1121 and other money appropriated hy the legislature;

(c) the administration account, *4% of the capitalization grant award,* ~~,~~ or the maximum amount allowed by the federal act~~, of the capitalization grant award~~ for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of honds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made as authorized by 75-5-1113 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department and the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must he credited to the revolving fund. If bonds have been issued pursuant to 75-5-1121 and are outstanding, the interest payments must be transferred to the debt service account securing the honds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

(4) The department of natural resources and conservation may estahlish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

*(5) As allowed under the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., and with the governor's permission, an amount equivalent to up to 33% of each year's drinking water state revolving fund federal capitalization grant may be transferred from the federal allocation account, established under subsection (2)(a), to the drinking water state revolving fund federal allocation account established in 75-6-211."*

**Section 8.** Section 75-5-1107, MCA, is amended to read:

**"75-5-1107. Uses of revolving fund.** Money in the revolving fund ~~may~~ *must* be used to:

(1) make loans to municipalities ~~and private concerns~~ to finance all or a portion of the cost of a project *and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects*;

(2) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(5) provide loan guarantees for similar revolving funds established by municipalities;

(6) earn interest on fund accounts; and

(7) pay reasonable administrative costs of the ~~revolving loan~~ program not to exceed 4%~~,~~ *of all federal grant awards to the fund* or the maximum amount allowed under the federal act~~, of all federal grant awards to the fund~~."

**Section 9.** Section 75-5-1111, MCA, is amended to read:

**"75-5-1111. Applications.** (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan te finance construction of a project must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimato of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

*(f) a current financial statement showing assets, liabilities, revenue, and expenses of the applicant;*

~~(f)~~*(g)* if the applicant is a municipality, a statement as to whether, at the time of application, there are any outstanding ~~bonds,~~ *loans,* notes, *bonds,* or other obligations of the municipality that were issued or incurred to finance any part of the municipality's ~~sewage~~ *project or* system *of which the project is a part* and, if so, a description of the ~~bonds,~~ *loans,* notes, *bonds,* or other obligations; ~~and~~

*(h) if the applicant is a private person, a statement as to whether, at the time of application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations; and*

~~(g)~~*(i)* any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to engineering reports, economic feasibility studies, and legal opinions.

HeinOnline -- 1997 vol. III 3192 1997

(2) Each application for a loan to refinance a project, including a purchase of outstanding obligations issued by a municipality to finance a project in whole or in part, must include:

(a) a reasonably detailed description of the project;

(b) a schedule of the cost of the project;

(c) the date on which construction of the project began;

(d) a description of the ~~bonds,~~ *loans,* notes, *bonds,* or other obligations to be refinanced and of any other *loans,* notes, bonds, or obligations issued or incurred to finance any part of the municipality's ~~sewage system~~ *project*; and

(e) any other information that the department or the department of natural resources and conservation may require.

(3) Each application for financial assistance in the form of a guaranty or the purchase of insurance for a municipal obligation must include all items required by subsection (1) and any other information the department may require."

**Section 10.** Section 75-5-1112, MCA, is amended to read:

**"75-5-1112. Evaluation of projects *and loan applications*.** ~~After consultation with the~~ *The* department of natural resources and conservation, *and* the department shall evaluate projects ~~for loans and other financial assistance and place them on a priority list or intended use plan~~ *and loan applications*. In evaluating projects *and loan applications*, the ~~department shall consider the~~ following factors *must be considered*:

*(1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;*

*(2) the financial capacity of the municipality or private person to repay the loan;*

*(3) the financial, managerial, and technical ability of the municipality or private person to properly operate and maintain the project;*

*(4) the feasibility of project completion given the total financing available;*

~~(1)~~*(5)* the ability of the municipality or private ~~concern~~ *person* to pay the costs of the project without the requested financial assistance;

~~(2)~~*(6)* the *total* amount *of loan funds* available for financial assistance in the revolving fund;

~~(2)~~*(7)* the total amount requested ~~by~~ *in* other applications that have been received or that are likely to be received;

~~(4)~~*(8)* ~~the need for and benefit to be derived from the project~~ *the ranking of the project on the priority list or intended use plan*; *and*

~~(5) in the case of an application to refinance an outstanding obligation, the benefit of refinancing as measured by a decrease in interest rates and whether the refinancing permits the construction of an additional project by the municipality; and~~

~~(6)~~*(9)* any other criteria that the department determines appropriate, considering the purposes of the federal act and the program."

**Section 11.** Section 75-5-1113, MCA, is amended to read:

**"75-5-1113. ~~Loans~~ *Conditions on loans.*** (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private ~~concern~~ *person* to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private ~~concern~~ *person* complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ~~assure~~ *ensure* sufficient ~~revenues~~ *revenue* to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than ~~20 years~~ *the term of the loan*;

(c) agreeing to maintain proper financial records in accordance with ~~recognized government~~ *generally accepted* accounting ~~procedures~~ *standards* and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements ~~for public wastewater systems~~ *and other requirements* established by the ~~board~~ *department*; and

(h) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in

HeinOnline -- 1997 vol. III 3194 1997

the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(a) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(b) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan.

(4) Each loan must be evidenced hy a bond, note, or other evidence of indebtedness of the municipality or private ~~concern~~ *person*, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans. *The department of natural resources and conservation may require that loans to private persons be further secured by a mortgage and other security interests in the project that is being financed or other forms of additional security as considered necessary, including personal guarantees and letters of credit.*

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private ~~concern~~ *person*. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the administration account. Money deposited in the administration account established in 75-6-211 must be used for the payment of administrative costs of the program. Money deposited in the special administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program."

**Section 12.** Section 75-5-1121, MCA, is amended to read:

"**75-5-1121. Authorization of bonds — appropriation of proceeds.** (1) Upon request of the department of natural resources and conservation and upon certification by the department ~~of natural resources and conservation~~ that the state has entered into a capitalization grant agreement or other agreement with the United States government pursuant to 75-6-204 and that federal capitalization grants have been made to the state for the program, the board of examiners is authorized to issue and sell bonds of the state as authorized by the legislature to provide money for the ~~revolving loan~~ program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

HeinOnline -- 1997 vol. III 3195 1997

(2) The proceeds of the bonds, other than any premium and accrued interest received or amounts to be used to pay interest on the bonds or the costs of issuing the bonds, are appropriated to the state allocation account of the ~~wastewater treatment works~~ revolving fund. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund hy the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of sections 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing tbe sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and tbe revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners deterınines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture ınust contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable tiınes, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

**Section 13.** Section 75-6-201, MCA, is amended to read:

**"75-6-201. Short title.** This part may be cited as the "~~Safe~~ Drinking Water ~~Treatment~~ *State* Revolving Fund Act"."

**Section 14.** Section 75-6-202, MCA, is amended to read:

**"75-6-202. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to:

(a) costs of servicing loans and issuing debt;

(b) program startup costs;

(c) financial, management, and legal consulting fees; and

(d) reimbursement costs for support services from other state agencies.

*(2) "Community water system" means a public water system that is owned by a private person or a municipality and that serves at least 15 service connections used by year-round residents of the area served by the system or regularly serves at least 25 year-round residents. The term does not include a public water system that is owned by the federal government.*

~~(2)~~*(3)* "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public water system, including but not limited to:

(a) engineering, financing, and other fees;

(b) interest during construction; ~~and~~

*(c) construction; and*

~~(c)~~*(d)* a reasonable allowance for contingencies to the extent permitted by the federal act and rules promulgated under the federal act.

*(4) "Department" means the department of environmental quality provided for in 2-15-3501.*

*(5) "Disadvantaged community" means one in which the service area of a public water system meets the affordability criteria established by rule adopted pursuant to this part.*

~~(3)~~*(6)* "Federal act" means the federal Safe Drinking Water Act, *42 U.S.C. 300f, et seq., as that act read on [the effective date of this act].*

~~(4) "Governmental agency" means a city, county, water and sewer district, or other local government unit having authority to own, construct, or operate a public water system.~~

~~(5) "Grant" means a grant of money from the revolving fund for project costs.~~

~~(6)~~*(7)* "Indian tribe" means an Indian tribe ~~within the state of Montana that is recognized by the secretary of the U.S. department of interior~~ *that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.*

*(8) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.*

~~(7) "Investor-owned public water system" means a public water system that is not owned by a governmental agency, an intergovernmental agency, a~~

~~nonprofit organization, an Indian tribe, or a combination of governmental entities.~~

~~(8)~~*(9)* "Loan" means a loan of money from the revolving fund for project costs.

*(10) "Municipality" means a state agency, city, town, or other public body created pursuant to state law or an Indian tribe.*

*(11) "Noncommunity water system" means a public water system that is not a community water system.*

~~(9)~~*(12)* "Nonprofit ~~organization"~~ *noncommunity water system"* means *a noncommunity water system owned by* an organization that is organized under Montana law and that qualifies as a tax-exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code.

*(13) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.*

~~(10)~~*(14)* "Program" means the ~~safe~~ drinking water ~~treatment~~ *state* revolving ~~loan~~ *fund* program established by this part.

~~(11)~~*(15)* "Project" means improvements *or activities* that are:

(a) to be undertaken for a public water system and that are of a type that will facilitate compliance with the national primary drinking water regulations applicable to the system; or

(b) to further the health protection objectives of the federal act.

~~(12)~~*(16)* "Public water system" means a system for the provision to the public of ~~piped~~ water for human consumption, *through pipes or other constructed conveyances*, if that system has at least 15 service connections or regularly serves at least 25 individuals. The term includes any collection, treatment, storage, and distribution facilities under control of an operator of a system that are used primarily in connection with a system and any collection or pretreatment storage facilities not under control of ~~the~~ *an* operator and that are used primarily in connection with a system.

~~(13)~~*(17)* "Revolving fund" means the ~~safe~~ drinking water ~~treatment~~ *state* revolving fund established by 75-6-211."

**Section 15.** Section 75-6-203, MCA, is amended to read:

**"75-6-203. ~~Safe drinking~~ *Drinking* water ~~treatment~~ *state* revolving fund program.** There is a program under which the state may provide financial assistance to ~~public~~ *community* water systems *and nonprofit noncommunity water systems*. The program must be administered in accordance with this part and the federal act."

**Section 16.** Section 75-6-204, MCA, is amended to read:

**"75-6-204. Authorization of agreement — content.** (1) The department may enter into a capitalization grant agreement or other agreement with the ~~U.S.~~ environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

HeinOnline -- 1997 vol. III 3198 1997

(2) In entering into an agreement, the director of the department may commit the state to:

(a) accept grant payments from the ~~U.S.~~ environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in 75-6-211;

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by 75-6-211 on or before the date on which each federal grant payment is made to the state;

*(c) deposit in the nonproject account for department programs authorized under section 300j-12(g)(2) of the federal act (42 U.S.C. 300j-12(g)(2)) a state match equal dollar-for-dollar to the capitalization grant deposited in the account;*

~~(c)~~*(d)* provide financial and technical assistance to a public water system in accordance with this part in an amount equal to 120% of the amount of each grant payment within a period not to exceed 1 year after receipt of a grant;

~~(d)~~*(e)* expend all funds in the revolving fund in an expeditious and timely manner;

~~(e)~~*(f)* use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

~~(f)~~*(g)* expend each grant payment in accordance with the laws and procedures applicable to commitment or expenditure of ~~revenues~~ *revenue* of the state;

~~(g)~~*(h)* use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

~~(h)~~*(i)* make ~~annual~~ *biennial* reports *and provide annual audits* to the ~~U.S.~~ environmental protection agency concerning the use of the revolving fund as required by the federal act; and

~~(i)~~*(j)* any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of this part and the federal act.

(3) ~~as~~ *As* a condition of making a loan or providing other financial assistance from the revolving fund, the department shall require that the public water system maintain project accounts in accordance with generally accepted government accounting standards."

**Section 17.** Section 75-6-205, MCA, is amended to read:

**"75-6-205. Rulemaking authority.** The ~~board~~ *department* and the ~~board~~ *department* of natural resources and conservation may adopt rules within their respective authorities established within the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and ~~grants~~ *technical assistance*;

HeinOnline -- 1997 vol. III 3199 1997

(2) governing the application of the criteria for awarding loans and ~~grants~~ *technical assistance*;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements;

(4) establishing ceilings on the amount of individual loans ~~and grants~~ to be made if considered appropriate and necessary for the successful administration of the program;

*(5) establishing affordability criteria to be used in awarding subsidies to disadvantaged communities;*

~~(5)~~*(6)* regarding other matters that may be required to ensure compliance of the program with the provisions ~~and~~ *of* the federal act and rules promulgated under the federal act, unless these matters are specifically governed by this part; and

~~(5)~~*(7)* to maintain the financial integrity of the program."

**Section 18.** Section 75-6-211, MCA, is amended to read:

**"75-6-211. Revolving fund.** (1) There is established in the state treasury a separate account designated as the ~~safe~~ drinking water ~~treatment~~ *state* revolving fund. The corpus of the fund must be available in perpetuity for providing assistance under this part. There are established within the revolving fund a federal allocation account, a state allocation account, an administration account, an investment income account, ~~and~~ a debt service account, *and a nonproject account.*

(2) There must be credited to:

(a) the federal allocation account:

*(i)* all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to ~~assist construction of or improvements to public~~ *provide loans or other assistance, as authorized under this part, to community water systems and nonprofit noncommunity* water systems; *and*

*(ii) all amounts transferred to the fund from the water pollution control state revolving fund under 75-5-1106;*

(b) the state allocation account:

*(i)* the net proceeds of bonds of the state issued pursuant to 75-6-225; ~~and~~

*(ii)* ~~other~~ money appropriated by the legislature; *and*

*(iii) other available qualifying funds*;

(c) the administration account, 4% of the federal capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; ~~and~~

(e) the debt service account, the interest portion of loan repayments; *and*

*(f) the nonproject account for department programs authorized under section 300j-12(g)(2) of the federal act (42 U.S.C. 300j-12(g)(2)), up to 10% of the capitalization grant and the state's match as described in 75-6-204.*

(3) Each loan made ~~as authorized by 75-6-225~~ *under this part* must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-6-225 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

*(5) As allowed under the federal act and with the governor's permission, the department may transfer up to 33% of each year's federal capitalization grant from the federal allocation account, established under subsection (2)(a), to the water pollution control state revolving fund federal allocation account established in 75-5-1106. The transfer of funds must be included in the intended use plan in [section 21]."*

**Section 19.** Section 75-6-212, MCA, is amended to read:

**"75-6-212. Use of revolving fund.** (1) Money in the revolving fund ~~must~~ *may* be used *to:*

*(a)* ~~for providing financial assistance that is in the form of~~ *make* loans ~~and grants to public water systems and that is of the type~~ *to community water systems and nonprofit noncommunity water systems as* provided in this part~~.~~*;*

~~(2) (a) Financial assistance may be used by a public water system only for expenditures that the U.S. environmental protection agency has determined through its regulations are appropriate. Financial assistance may be used for acquisition, from willing sellers at fair market value, of real property or interests that are integral to establishing a public water system.~~

*(b) buy or refinance the debt obligation of a municipality at an interest rate that does not exceed market rates, provided that the obligations were incurred and construction of the project began after July 1, 1993;*

*(c) guarantee or purchase insurance in order to enhance credit or reduce interest rates for obligations of municipalities that are issued to finance eligible projects;*

HeinOnline -- 1997 vol. III 3201 1997

*(d) leverage the total amount of revolving funds available by providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, the net proceeds of which are deposited in the revolving fund;*

*(e) pay reasonable administrative costs of the program, not to exceed 4% of the annual capitalization grant or the maximum amount allowed under the federal act;*

*(f) if matched by an equal amount of state funds, pay the department's costs in an amount not to exceed 10% of the annual capitalization grant for the following:*

*(i) public water system supervision programs;*

*(ii) administering or providing technical assistance through source water protection programs;*

*(iii) developing and implementing a capacity development strategy under section 300g-9 of the federal act (42 U.S.C. 300g-9); and*

*(iv) administering an operator certification program in order to meet the requirements of section 300g-8 of the federal act (42 U.S.C. 300g-8);*

*(g) pay the costs in an amount not to exceed 2% of the annual capitalization grant for the purpose of providing technical assistance to public water systems serving 10,000 or fewer persons. No less than 1.5% of the annual capitalization grant must be contracted by the department to private organizations or individuals for the purposes of this subsection.*

*(h) reimburse the expenses, as provided for in 2-18-501 through 2-18-503 and 5-2-302, of the advisory committee established pursuant to [section 21] while on official committee business.*

~~(b)~~*(2)* ~~Financial assistance~~ *Except as provided in subsection (3), money in the fund* may not be used for*:*

*(a)* expenditures related to monitoring, operation, and maintenance*;*

*(b) the acquisition of real property or any interest in real property, unless the acquisition is integral to a project authorized under this part and the purchase is from a willing seller;*

*(c) providing assistance to a public water system that:*

*(i) does not have the financial, managerial, and technical capability to ensure compliance with the requirements of the federal act; or*

*(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance; or*

*(d) any other activity prohibited from funding under the federal act.*

*(3) (a) A public water system described in subsection (2)(c) may receive assistance under this part if:*

*(i) the use of the assistance will ensure compliance; and*

*(ii) for a system that the department has determined does not have the financial, managerial, or technical capability to ensure compliance with the federal act, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations, including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures, as determined necessary by the department to ensure compliance.*

*(b) Prior to providing assistance to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance pursuant to the federal act, the department shall determine whether the provisions of subsection (2)(c)(i) apply to the system."*

**Section 20. Loan subsidy for disadvantaged communities.** (1) Notwithstanding any other provision in this part, if the program makes a loan pursuant to 75-6-221(1) to a disadvantaged community or to a community that the department expects to become a disadvantaged community as a result of a proposed project, the department may provide additional subsidization in the form of a reduced interest rate.

(2) The total annual amount of loan subsidies made by the department pursuant to suhsection (1) may not exceed 30% of the capitalization grant received by the department for each fiscal year.

**Section 21. Intendcd use plan — advisory committee.** (1) The department shall prepare an annual intended use plan for the state that meets the requirements of section 300j-12(b) of the federal act (42 U.S.C. 300j-12(h)).

(2) The intended use plan must include:

(a) a list of projects in the state that are eligible for assistance, including both the priority assigned to each project based on public health needs and on the financial needs of the project and, to the extent known, the expected funding schedule for each project; and

(b) a description of the funds to be allocated to activities under 75-6-212 and 75-6-221(2) and funds to be transferred to or received by the water pollution control state revolving fund, as allowed in 75-6-211(5), for the annual fiscal period following publication of the intended use plan.

(3) Before finalizing an intended use plan, the department shall prepare a draft document containing the information required in subsection (2) and shall provide public notice and opportunity to comment on the draft document.

(4) (a) Following the public comment period provided for in subsection (3) and any department modifications to the intended use plan resulting from the public comment, a summary of the puhlic comment and the intended use plan must be presented for review, comment, and recommendations to an advisory committee formed by the department and consisting of six individuals from the following entities appointed by their respective presiding officers, directors, or executive officials:

(i) one member from the Montana league of cities and towns;

(ii) one member from the Montana association of counties;

(iii) one member from the department of natural resources and conservation;

HeinOnline -- 1997 vol. III 3203 1997

(iv) one member from the department of environmental quality; and

(v) two members from the joint legislative subcommittee on natural resources. One member must be from the house of representatives and one from the senate, and they may not represent the same political party.

(b) The advisory committee is attached to the department for administrative purposes only.

(5) The department shall address in writing any comments and recommendations provided by the advisory committee provided for in subsection (4) before finalizing an intended use plan and prior to awarding any contracts under 75-6-212(1)(g).

**Section 22. Insurance and guarantee program.** (1) The revolving fund may be used to purchase insurance for or guarantee the timely payment of principal and interest on a debt obligation issued by a municipality if the department of natural resources and conservation determines that the guarantee or insurance would improve the credit market access of the municipality or reduce the interest rate on the municipal obligation.

(2) The department of natural resources and conservation shall adopt rules setting forth the conditions under which the program will guarantee or insure municipal obligations, including the amount of fees to be charged for the guarantee or the purchase of insurance and the amount of reserves, if any, to be established in the fund to cover any guarantee. The program may not be used to guarantee a municipal obligation for a project or municipality not meeting the requirements of 75-6-224, except to the extent that they are inconsistent with the guarantee.

**Section 23.** Section 75-6-221, MCA, is amended to read:

**"75-6-221. ~~Loan program~~ *General loan and assistance program.*** *(1)* The ~~department may provide financial assistance in the form of a loan to public water systems owned by a governmental agency, an intergovernmental agency, a nonprofit corporation, an Indian tribe, or any combination of those entities~~ *program may*, subject to the requirements in 75-6-222 through 75-6-224~~.~~, *make loans to community water systems and nonprofit noncommunity water systems that:*

*(a) will facilitate compliance with national primary drinking water regulations pursuant to the federal act; or*

*(b) will further the health protection objectives of the federal act, including but not limited to projects that involve:*

*(i) upgrading and replacing infrastructure;*

*(ii) addressing exceedances of the federal act or preventing future violations;*

*(iii) consolidating water supplies;*

*(iv) the acquisition of land, at fair market value, that is integral to the project;*

*(v) planning and designing of a project; or*

*(vi) other activities allowed under the federal act.*

*(2) In addition to loans authorized under subsection (1), the program may make loans to public water systems for one or more of the following purposes:*

*(a) to a community water system or nonprofit noncommunity water system to acquire land or a conservation easement from a willing party if the land is necessary to ensure compliance with the national primary drinking water regulations or to protect the source of water from contamination;*

*(b) to a community water system to implement local, voluntary source water protection measures in order to protect source water in areas delineated under a source water assessment program in order to facilitate compliance with the national primary drinking water regulations or otherwise significantly further the health protection objectives of the federal act;*

*(c) to a community water system to provide funding for the development and implementation of a source water quality assessment, contingency plans, and demonstration projects for partners within a delineated source water area.*

*(3) The department may:*

*(a) provide financial and technical assistance to any public water system as part of a capacity development strategy developed and implemented in accordance with the federal act;*

*(b) make expenditures from the capitalization grant to delineate and assess source water protection areas, provided that funds set aside for such expenditures must be obligated within 4 fiscal years; and*

*(c) make expenditures from the fund for the establishment and implementation of wellhead protection programs.*

*(4)* The ~~department~~ *program* may provide financial assistance ~~only in the form of a loan to an investor-owned~~ *to a* public water system according to priorities established by the department *in the department's intended use plan adopted pursuant to [section 21]*~~, based on greatest public health needs and financial needs~~. Prior to making a loan to ~~an investor-owned~~ *a* public water system, the department *of natural resources and conservation* shall determine that the system has the ability to repay the loan according to its terms and conditions and may require a dedicated source of repayment and impose additional requirements. ~~A loan to an investor-owned public water system is subject to the requirements of 75-6-222 through 75-6-224.~~

*(5) The total amount of assistance provided and expenditures made by the program under subsections (2) and (3) may not exceed 15% of the amount of the capitalization grant received by the department for that year and may not exceed 10% of that amount for any one of the activities listed under subsection (2) or (3).*"

**Section 24.** Section 75-6-222, MCA, is amended to read:

"**75-6-222. Evaluation of projects *and loan applications*.** ~~After consultation with the~~ *The department and the* department of natural resources and conservation~~, the department~~ shall evaluate projects ~~for loans and grants~~

~~and place them on a priority list or intended use plan~~ *and loan applications*. In evaluating projects *and applications*, the ~~department shall consider the~~ following factors *must be considered*:

*(1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;*

*(2) the financial capacity of the applicant;*

*(3) the financial, managerial, and technical ability of the applicant to properly operate and maintain the project;*

*(4) the total financing of the project to ensure completion;*

~~(1)~~*(5)* the viability of the public water system;

~~(2)~~*(6)* the ability of the public water system to pay the costs of the project without the requested financial assistance;

~~(3)~~*(7)* the *total* amount *of loan funds* available for financial assistance in the revolving fund;

~~(4)~~*(8)* the total amount requested by other applications that have been received or that are likely to be received;

~~(5)~~*(9)* ~~the need for and the benefit to be derived from the project~~ *the ranking of the project on the priority list in the intended use plan*; and

~~(6)~~*(10)* any other criteria that the department determines to be appropriate, considering the purposes of the program and the federal act."

**Section 25.** Section 75-6-223, MCA, is amended to read:

**"75-6-223. Applications for loans ~~and grants~~.** (1) The department shall, after consultation with the department of natural resources and conservation, establish loan ~~and grant~~ application procedures, including forms for the applications. Each application for a loan must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

*(f) a current financial statement of the system showing assets, liabilities, revenue, and expenses;*

~~(f)~~*(g)* a statement as to whether, at the time of application, there are any outstanding ~~bonds,~~ *loans,* notes, *bonds,* or other obligations payable from the revenue of the public water system and, if so, a description of the ~~bonds,~~ *loans,* notes, *bonds,* or other obligations; ~~and~~

*(h) if the applicant is a private person, a statement as to whether, at the time of the application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations; and*

~~(g)~~*(i)* any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to:

(i) engineering reports;

(ii) economic feasibility studies; and

(iii) legal opinions.

(2) Each application for a ~~grant~~ *loan subsidy* must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the ~~grant~~ *loan* to pay the cost of the project;

(e) a statement as to whether, at the time of application, there are any outstanding ~~bonds,~~ *loans,* notes, *bonds,* or other obligations payable from the revenue of the public water system and, if so, a description of the ~~bonds,~~ *loans,* notes, *bonds,* or other obligations;

(f) an explanation, *including supporting information,* as to why a ~~grant rather than a~~ loan *subsidy* is requested; ~~and~~

*(g) evidence that the applicant qualifies as a disadvantaged community; and*

~~(g)~~*(h)* any other information that the department or the department of natural resources and conservation may require."

**Section 26.** Section 75-6-224, MCA, is amended to read:

**"75-6-224. Loan conditions.** (1) Upon approval of an application by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a public water system to pay part or all of the cost of a project. The loan is subject to the applicant complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment *of a dedicated source of revenue and the establishment* and maintenance by the applicant of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the public water system or the applicant's financial authority;

HeinOnline -- 1997 vol. III 3207 1997

*(b) in the case of a system owned by a private person, in addition to establishing a dedicated source of revenue, which may include the pledge of accounts receivable, providing, as required by the department of natural resources and conservation, credit enhancements, a pledge of collateral, or other types of security, such as a corporate or personal guarantee;*

~~(b)~~*(c)* agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than ~~20 years~~ *the term of the loan*;

~~(c)~~*(d)* agreeing to maintain proper financial records in accordance with generally accepted ~~government~~ accounting standards and agreeing that all records are subject to audit;

~~(d)~~*(e)* meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

~~(e)~~*(f)* providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

~~(f)~~*(g)* submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

~~(g)~~*(h)* complying with plan, ~~and~~ specification, *and other* requirements for public water systems established by the ~~board~~ *department*; ~~and~~

~~(h)~~*(i)* providing for proper construction inspoction and project management; *and*

*(j) meeting requirements of financial, managerial, and technical capability to maintain compliance with the federal act.*

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date. *If the applicant is a disadvantaged community that has qualified and applied for a loan subsidy, the department may determine that the last installment must be received not more than 30 years after the completion date, provided that the period of the loan does not exceed the expected design life of the project.*

(3) (a) Suhject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if timely paid in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-6-225.

(b) The interest rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or

HeinOnline -- 1997 vol. III 3208 1997

variable, may be calculated according to a formula, and may differ from the rate established for any other loans.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the borrower, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private ~~concern~~ *person*. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-6-211; or

(b) in the administrative account provided for in 75-6-211. In determining into which account the administrative fees are deposited, the department shall take into consideration the needs and requirements of the programs. Money deposited in the special administrative costs account or the administration account must be used for the payment of administrative costs of the program."

**Section 27. Repealer.** Sections 75-6-213 and 75-6-215, MCA, are repealed.

**Section 28. Codification instruction.** [Sections 20 through 22] are intended to be codified as an integral part of Title 75, chapter 6, part 2, and the provisions of Title 75, chapter 6, part 2, apply to [sections 20 through 22].

**Section 29. Saving clause.** (1) [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

(2) Rules that were adopted pursuant to Title 75, chapter 5, part 11, or Title 75, chapter 6, part 2, prior to [the effective date of this act] continue in force until amended or repealed pursuant to those parts.

**Section 30. Effeetive date — applicability.** (1) [This act] is effective on passage and approval.

(2) [Section 1] applies to the licensing of nontransient noncommunity water system operators on or after July 1, 1998.

Approved May 5, 1997

HeinOnline -- 1997 vol. III 3209 1997

# CHAPTER NO. 539

[HB 524]

AN ACT GENERALLY REVISING REMEDIATION REQUIREMENTS FOR HAZARDOUS AND DELETERIOUS SUBSTANCES; PROVIDING THAT A PERSON LIABLE FOR REMEDIAL ACTION HAVE THE OPPORTUNITY TO RESPOND PRIOR TO REMEDIAL ACTION BEING INITIATED BY THE STATE; CLARIFYING THE PROCESS FOR WHEN STATE ORDERS MAY BE ISSUED; ELIMINATING THE REQUIREMENT FOR AGREEMENTS TO BE FILED IN DISTRICT COURT AS CONSENT DECREES; INCREASING ELIGIBILITY FOR SITES SUBMITTING VOLUNTARY REMEDIATION PLANS; PROVIDING FOR APPEAL OF AGENCY DECISIONS REGARDING REMEDIATION PLANS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES FOR THE JOINT SELECTION OF REMEDIAL ACTION CONTRACTORS; AMENDING SECTIONS 75-10-711, 75-10-723, 75-10-732, AND 75-10-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

It is the intent of this bill to provide potentially liable persons the opportunity to take the necessary remedial action before the state takes action and to authorize the department of environmental quality to adopt rules that allow for the joint and mutual selection of remedial action contractors by the department and the potentially liable persons responsible for taking remedial action at sites.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-10-711, MCA, is amended to read:

**"75-10-711. Remedial action — orders — penalties — judicial proceedings.** (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1) *and each person that is liable or potentially liable under 75-10-715(1) has been given the opportunity by letter to properly and expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.*

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, safety, or welfare or the environment.

HeinOnline -- 1997 vol. III 3210 1997

(3) ~~Any person liable under 75-10-715(1) must take immediate action to contain, remove, and abate the release.~~ Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the person or persons liable for the release or threatened release and:

(a) is unable to determine the identity of the liable person or persons in a manner consistent with the need to take timely remedial action; or

(b) the person or porsons determined by the department to be liable under 75-10-715(1) have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; and

(c) the written notice to each person informs the person that if subsequently found liable pursuant to 75-10-715(1), the person may be required to reimburse the fund for the state's remedial action costs and may be subject to penalties pursuant to this part.

(4) Whenever the department is authorized to act pursuant to subsection (1) ~~or has reason to believe that a release that may pose an imminent and substantial threat to the public health, safety, or welfare or the environment has occurred or is about to occur~~, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the public health, safety, or welfare or the environment.

(5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account:

(i) the nature, circumstances, extent, and gravity of the noncompliance;

(ii) with respect to the porson liable under 75-10-715(1):

(A) the person's ability to pay;

(B) any prior history of violations;

(C) the degree of culpability; and

(D) the economic benefit or savings, if any, resulting from the noncompliance; and

(iii) any other mattors as justice may require.

(b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental quality protection fund established in 75-10-704.

(6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the following actions:

(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

(b) an action to enforce an order issued under 75-10-707 or this section;

HeinOnline -- 1997 vol. III 3211 1997

(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under 75-10-707 or this section; or

(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has heen in compliance and continues in compliance with the order pending a decision of the court.

(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.

(8) Instead of issuing a notification or an order under this section, the department may hring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release.

(9) The department may take remedial action pursuant to subsection (1) at a site that is regulated under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of this part."

**Seetion 2.** Section 75-10-723, MCA, is amended to read:

**"75-10-723. Agreements *and administrative orders on consent* to perform remedial action.** (1) To expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever practicable and in the public interest, may negotiate and enter into an agreement *or an administrative order on consent* with any person, including the owner or operator of the facility from which a release emanates, to perform a remedial action if the department determines that the action will be properly done by the person. The agreement must contain terms and conditions that the department in its discretion determines to be appropriate.

(2) Whenever the department enters into an ~~agreement~~ *administrative order on consent* under this section for remedial action or for assessment or payment of natural resource damages, ~~the agreement must be filed in an appropriate district court as a consent decree and~~ *that administrative order on consent* must be available for public comment for at least 30 days.

(3) A decision of the department to enter into or not enter into agreements *or administrative orders on consent* under this section is not subject to judicial review."

**Section 3.** Section 75-10-732, MCA, is amended to read:

**"75-10-732. (Temporary) Eligibility.** (1) A facility where there has been a release or threatened release of a hazardous or deleterious substance that may present an imminent and suhstantial endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures

HeinOnline -- 1997 vol. III 3212 1997

under this part, except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:

(a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C. 9601, et seq.;

(b) a facility for which an order has been issued or consent decree has been entered into pursuant to this part;

(c) a facility that is the subject of an agency order or an action filed in district court by any state agency that addresses the release or threatened release of a hazardous or deleterious substance; or

(d) a facility where the release or threatened release of a hazardous or deleterious substance is regulated by the Montana Hazardous Waste and Underground Storage Tank Act and regulations under that act; or

(e) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent.

(2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may agree to accept and may approve an application for a voluntary cleanup plan for a facility.

(3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.

(4) If an applicant ~~that~~ *who* submits an application for a voluntary cleanup plan disagrees with the department's decision to reject the filing of the application under subsection (1) or (3)~~,~~ *or disagrees with the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736,* the applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written request for a hearing before the board of environmental review. In reviewing a department decision to reject an application under subsection (1) or (3) *or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736,* the board shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed te by the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2). (Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)"

**Section 4.** Section 75-10-736, MCA, is amended to read:

**"75-10-736. (Temporary) Approval of voluntary cleanup plan — time limits — content of notice — expiration of approval.** (1) The department shall review for completeness, including adequacy and accuracy, an application for a voluntary cleanup plan and shall provide a written completeness notice to

HeinOnline -- 1997 vol. III 3213 1997

the applicant within 30 days after receipt of ~~the~~ *an* application *for a plan that would take 24 months or less to complete and within 60 days for a plan that would take more than 24 months to complete*. The completeness notice must note all deficiencies identified in the information submitted.

(2) For a voluntary cleanup plan that is considered complete by the department pursuant to subsection (1), the department shall provide formal written notification that the voluntary cleanup plan has been approved or disapproved no more than 60 days *for a plan that would take 24 months or less to complete and within 75 days for a plan that would take more than 24 months to complete* after the department's determination that an application is complete, unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public comments, and documents or information readily available to the department. The department shall communicate with the applicant during the review period to ensure that the applicant has the opportunity to address the public comments.

(3) (a) If the department receives five applications for review of a voluntary cleanup plan in a calendar month, including applications deferred from prior months, the department may notify any additional applicants in that month that their plans must be reviewed in the order received. The 30-day period for department completeness review of deferred applications pursuant to subsection (1) must begin on the first day of the subsequent month that each plan is eligible for review.

(b) The department shall discontinue accepting voluntary cleanup applications when 15 applications are pending and are being reviewed by the department. The department shall establish a waiting list for applications and shall consider the applications in order of submittal.

(c) If the department has received multiple cleanup applications for a voluntary cleanup at the same facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint application.

(4) Consistent with the provisions of 75-10-707, the department may access the facility during review of the application and implementation of the voluntary cleanup plan to confirm information provided by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

(5) The department shall approve a voluntary cleanup plan if the department concludes that the plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the period necessary for the operation and maintenance of the approved remediation proposal, the department may not approve a voluntary remediation proposal that would take longer than ~~24~~ *60* months after department approval to complete.

(6) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. *The denial may be appealed to the board of environmental review in accordance with the provisions of 75-10-732(4).*

HeinOnline -- 1997 vol. III 3214 1997

(7) The approval of a voluntary cleanup plan by the department applies only to conditions at the facility that are known to the department at the time of department approval. If a voluntary remediation proposal is not initiated within 12 months and, except for the period necessary for the operation and maintenance of the approved remediation proposal, is not completed within ~~24~~ *60* months after approval by the department, the department's approval lapses. However, the department may grant an extension of the time limit for completion of the voluntary cleanup plan.

(8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or substantially change the scope of the approved plan, the applicant shall promptly notify the department. The department may require the applicant to submit an amendment to the approved plan to address the unforeseen conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to 75-10-732(3).

(9) Written notification by the department that a voluntary cleanup plan is not approved must state the basis for disapproval of the voluntary cleanup plan.

(10) (a) Failure of the applicant or the applicant's agents to materially comply with the voluntary cleanup plan approved by the department pursuant to this section renders the approval void.

(b) Submission of materially misleading information by the applicant or the applicant's agents in the application or during implementation of the voluntary cleanup plan renders the department approval void.

(11) Within 60 days after completion of the approved remediation proposal described in the voluntary cleanup plan approved by the department, the applicant shall provide to the department a certification from a qualified environmental professional that the plan has been fully implemented, including all documentation necessary to demonstrate the successful implementation of the plan, such as confirmation sampling, if necessary.

(12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance under this part for voluntary cleanup plans approved under this section.

(13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved by the department pursuant to this section.

(14) Immunity from liability under this section does not apply to a release that is caused by conduct that is negligent or grossly negligent or that constitutes intentional misconduct. (Terminates January 1, 2001—sec. 27, Ch. 584, L. 1995.)"

**Section 5. Rulemaking authority.** The department shall adopt, amend, or repeal rules that allow for the joint selection of remedial action contractors acceptable to the department and any person liable for remedial action under 75-10-715.

HeinOnline -- 1997 vol. III 3215 1997

**Section 6. Codifieation instruction.** [Section 5] is intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [section 5].

**Section 7. Applicability.** [This act] does not apply to any facility for which an administrative order has been issued pursuant to 75-10-711 prior to [the effective date of this act] or to any facility for which the department of environmental quality and a liable or potentially liable person have, prior to [the effective date of this act], entered into an agreement regarding the performance of remedial action for that facility.

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved May 5, 1997

# CHAPTER NO. 540

[HB 536]

AN ACT ESTABLISHING THE FAMILY EDUCATION SAVINGS ACT; ESTABLISHING A FAMILY EDUCATION SAVINGS PROGRAM OVERSIGHT COMMITTEE; ESTABLISHING PROCEDURES AUTHORIZING A PERSON TO MAKE CONTRIBUTIONS TO ACCOUNTS THAT ARE ESTABLISHED TO PAY HIGHER EDUCATION EXPENSES FOR A DESIGNATED BENEFICIARY OF AN ACCOUNT OWNER; REQUIRING THE BOARD OF REGENTS TO IMPLEMENT THE PROGRAM AND AUTHORIZING THE BOARD TO SELECT FINANCIAL INSTITUTIONS TO ACT AS DEPOSITORIES AND PROGRAM MANAGERS, USING SPECIFIED BIDDING CRITERIA; PROVIDING FOR THE FEDERAL DEFERRAL OF TAXES ON INVESTMENT EARNINGS CONTRIBUTED TO AN ACCOUNT; PROVIDING A DEDUCTION FROM STATE INCOME TAX PURPOSES OF UP TO $3,000 ANNUALLY FOR CONTRIBUTIONS TO AN ACCOUNT; REQUIRING ANNUAL REPORTING OF CONTRIBUTIONS RECEIVED TO THE INTERNAL REVENUE SERVICE AND THE ACCOUNT OWNER; REQUIRING DISTRIBUTIONS FROM AN ACCOUNT TO BE REPORTED TO THE INTERNAL REVENUE SERVICE AND THE ACCOUNT OWNER; PROVIDING A 10 PERCENT PENALTY FOR A NONQUALIFED WITHDRAWAL FROM AN ACCOUNT; AUTHORIZING A CHANGE IN DESIGNATED BENEFICIARY BY AN ACCOUNT OWNER UNDER CERTAIN CONDITIONS; AUTHORIZING THE WITHDRAWAL OF ALL OR PART OF THE BALANCE OF AN ACCOUNT PURSUANT TO BOARD OF REGENT RULES; PROHIBITING USE OF ACCOUNT INTEREST AS LOAN SECURITY; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [Sections 1 through 5 and 8 through 11] may be cited as the "Family Education Savings Act".

**Section 2. Purpose.** (1) It is the intent of the legislature to establish the Family Education Savings Act in recognition that the general welfare and well-being of the state of Montana are directly related to the educational levels

and skills of its citizens. A vital and valid public purpose of the state of Montana is served by the establishment and implementation of a program tbat will encourage and make possible the attainment of an accessible, affordable postsecondary education by the greatest number of citizens through a savings program.

(2) The legislature further intends that the board achieve this purpose most effectively through a public-private partnership using selected financial institutions to serve as depositories for individuals' postsecondary education savings accounts.

**Section 3. Definitions.** As used in [sections 1 through 5 and 8 through 11], the following definitions apply:

(1) "Account" nieans an individual trust account or savings account established under [sections 1 through 5 and 8 through 11].

(2) "Account owner" means the person designated at the time that an account is opened as having the right to withdraw money from the account before the account is disbursed to or for the benefit of tbe designated beneficiary.

(3) "Board" means the board of regents of higber education estahlished by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(4) "Committee" means the family education savings program oversight committee established in [section 6].

(5) "Designated beneficiary" means, with respect to an account, the porson designated at the time that the account is opened as the person whose higher education expenses are expected to be paid from the account or if this person is replaced in accordance with [section 5], the individual replacing the former designated beneficiary.

(6) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, trust company, mutual fund, or other similar entity that is authorized to do business in this state.

(7) "Higher education institution" means:

(a) an institution described in the Higher Education Act of 1965, 20 U.S.C. 1141(a) and 1088(a); or

(b) an area vocational educational school, as defined in section 521(3) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2471(3)(C) and (3)(D), that is located in this state.

(8) "Member of the family" means:

(a) an ancester of a person;

(b) the spouse of a porson;

(c) a lineal descendant, including a legally adopted child, of a person, of a person's spouse, or of a parent of a p:rson; or

(d) tbe spouse of any lineal descendant described in subsection (8)(c).

(9) "Nonqualified withdrawal" means a withdrawal from an account that is not:

(a) a qualified withdrawal;

(h) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

(c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is received by the designated beneficiary; or

(d) a rollover or change of designated beneficiary.

(10) "Program" means the family education savings program established pursuant to [section 4]. The program must be structured to permit the long-term accumulation of savings that can be used to finance all or a share of the costs of higher education.

(11) "Qualified higher education expenses" means tuition and fees required for enrollment or attendance of a designated beneficiary at a higher education institution.

(12) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account.

**Seetion 4. Program requirements — application — establishment of account — qualified and nonqualifed withdrawai — penalties.** (1) A person who wishes to deposit money into an account to pay the qualified higher education expenses of a designated beneficiary shall:

(a) complete an application on the form prescribed by the board that includes:

(i) the name, address, and social security number or employer identification number of the contributor;

(ii) the name, address, and social security number of the account owner if the account owner is not the contributor;

(iii) the name, address, and social security number of the designated beneficiary;

(iv) the certification relating to no excess contributions adopted by the board pursuant to [section 7]; and

(v) any other information required by the board;

(b) pay the one-time application fee established by the board;

(c) make the minimum contribution required by the board or by opening an account; and

(d) designate the type of account to be opened if more than one type of account is offered.

(2) A person shall make contributions to an opened account in cash.

HeinOnline -- 1997 vol. III 3218 1997

(3) An account owner may withdraw all or part of the halance from an account under rules prescribed by the board to enable the board or program manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may require that:

(a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting material;

(h) qualified withdrawals from an account be made only by a check payable jointly to the designated beneficiary and a higher education institution; and

(c) withdrawals not meeting certain requirements he treated as nonqualified withdrawals by the program manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek refunds of penalties directly from the board.

(4) If a nonqualified withdrawal is made from an account, an amount equal to 10% of the portion of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the Internal Revenue Code, 26 U.S.C. 529, must be withheld as a penalty and paid to the board for uso in operating and marketing the program and for state student financial aid. A nonqualified withdrawal constitutes income for Montana purposes to the extent it was previously deducted from income in calculating Montana individual income taxes.

(5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or change the basis of this penalty if the board determines that the amount of the penalty must be increased to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

(a) the penalty is greater than is required to constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529; or

(b) the penalty, when combined with other revenue generated under [sections 1 through 5 and 8 through 11], is producing more revenue than is required to cover tbe costs of operating and marketing the program and to recover any costs not previously recovered.

(7) If an account owner makes a nonqualified withdrawal and a penalty amount is not withheld pursuant to subsection (4) or the amount withheld was less than the amount required to be withheld under that subsection for nonqualified withdrawals, the account owner shall pay:

(a) the unpaid portion of the penalty to the board at the same time that the account owner files a federal and state income tax return for the taxable year of the withdrawal; or

HeinOnline -- 1997 vol. III 3219 1997

(b) if the account owner does not file a return, the unpaid portion of the penalty on the due date for federal and state income tax returns, including any authorized extensions.

(8) Each account must be maintained separately from each other account under the program.

(9) Separate records and accounting must be maintained for each account for each designated beneficiary.

(10) A contributor to, account owner of, or designated beneficiary of an account may not direct the investment of any contributions to any account or the earnings generated by the account and may not pledge the interest of an account or use an interest in an account as security for a loan.

(11) If the board terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the hoard shall select the financial institution and type of investment to which the halance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to he a qualified state tuition plan.

(12) If there is any distrihution from an account to any person or for the benefit of any person during a calendar year, the distribution must be reported to the internal revenue service and the account owner or the desiguated beneficiary to the extent required hy federal law.

(13) The financial institution shall provide statoments to each account owner at least once each year within 31 days after the 12-month period to which they relate. The statement must identify the contributions made during a preceding 12-month period, the total contrihutions made through the end of the period, the value of the account as of the end of this period, distrihutions made during this period, and any other matters that the board requires be reported to the account owner.

(14) Statements and information returns relating to accounts must he prepared and filed to the extent required by federal or stato tax law or by administrative rule.

(15) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), may, without designating a designated heneficiary, open and hecome the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

**Section 5. Changes in designated beneficiary.** (1) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures estahlished by the board.

(2) If requested by an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

HeinOnline -- 1997 vol. III 3220 1997

(3) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate:

(a) the excess contributions provisions adopted by the board pursuant to [section 7]; or

(b) the investment choice provisions of [section 4(10)].

**Section 6. Family education savings program oversight committee — membership — powers and duties.** (1) There is created a family education savings program oversight committee under the authority of the board.

(2) The committee consists of seven members appointed by the governor to staggered 4-year terms. The members must include:

(a) the commissioner of insurance or the commissioner's designee;

(b) the director of the department of commerce or the director's designee;

(c) the state treasurer or the state treasurer's designee;

(d) the presiding officer of the board or the presiding officer's designee; and

(e) three members of the general public, each of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary.

(3) The committee shall select a presiding officer and a vice presiding officer from among the committee's membership.

(4) A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once a year, with additional meetings called by the presiding officer.

(5) The committee:

(a) shall recommend financial institutions for approval by the board to act as the depositories and managers of family education savings accounts pursuant to [section 4]; and

(b) may submit proposed policies to the board to assist in the implementation and administration of [sections 1 through 5 and 8 through 11].

(6) The committee is allocated to the board for administrative purposes only, as prescribed in 2-15-121.

(7) Members of the committee must be compensated as provided in 2-15-124.

(8) The definitions in [section 3] apply to this section.

**Section 7. Board — powers and duties.** (1) The board shall:

(a) retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts;

(b) seek rulings and other guidance relating to the program from the United States department of the treasury and the internal revenue service;

HeinOnline -- 1997 vol. III 3221 1997

(c) make changes to the program as required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;

(d) charge, impose, and collect administrative fees and service charges pursuant to any agreement, contract, or transaction relating to the program;

(e) select the financial institution or institutions to act as the depository and manager of the program pursuant to [section 8];

(f) on the recommendation of the committee, adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules must address the following:

(i) procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(ii) the estahlishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(iii) requirements that persons who contribute to an account certify that to the best of their knowledge, the balance in all qualified state tuition programs, as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529, for the designated beneficiary does not exceed the lesser of:

(A) a maximum college savings amount established by the hoard; or

(B) the cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;

(iv) requirements that any excess halances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section; and

(g) adopt procedures as necessary to implement [sections 1 through 5 and 8 through 11].

(2) The definitions in [section 3] apply to this section.

**Section 8. Selection of financial institution as account depository and manager — contract — termination.** (1) The board shall implement the program through the use of one or more financial institutions to act as the depository and manager. Under the program, a person may establish accounts at tbe depository.

(2) The committee shall solicit proposals from financial institutions to act as the depositories and managers of the program. Financial institutions that submit proposals shall describe the financial instruments that will be held in accounts.

(3) On the recommendation of the committee, the board shall select as program depositories and managers the fmancial institution or institutions from among bidding financial institutions that deinonstrate the most advantageous combination, both to potential program participants and to this state, of:

(a) financial stabiiity and integrity;

(b) the safety of the investment instruments being offered, taking into account any insurance provided with respect to these instruments;

(c) the ability of the investment instruments to track estimated costs of higher education as calculated by the board and provided by the financial institution to the account holder;

(d) the ability of the financial institutions, directly or through a subcontract, to satisfy recordkeeping and reporting requirements;

(e) the financial institution's plan for promoting the program and the investment that it is willing to make to promote the program;

(f) the fees, if any, proposed to be charged to persons for maintaining accounts;

(g) the minimum initial deposit and minimum contributions that the financial institution will require and the willingness of the financial institution or its subcontractors to accept contributions through payroll deduction plans and other deposit plans; and

(h) any other benefits to this state or its residents contained in the proposal, including an account opening fee payable to the board by the account owner to cover expenses of operation of the program and any additional fee offered by the financial institution for statewide program marketing by the board.

(4) The board shall enter into a contract with a financial institution or, except as provided in subsection (5), into contracts with financial institutions to serve as depositories and program managers.

(5) The committee may select more than one financial institution and investment for the program if:

(a) the internal revenue service has provided guidance that giving a contributor a choice of two or more investment instruments under a state plan will not cause the plan to fail to qualify for favorable tax treatment under section 529 of the Internal Revenue Code, 26 U.S.C. 529; and

(b) the committee concludes that the choice of instrument vehicles is in the best interest of program participants and will not interfere with the promotion of the program.

(6) A program manager or its subcontractor shall:

(a) take action required to keep the program in compliance with its contract or the requirements of [sections 1 through 5 and 8 through 11] to manage the program so that it is treated as a qualified state tuition plan under section 529 of the Internal Revenue Code, 26 U.S.C. 529;

(b) keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare statements required by [section 4(12) through (14)] or file these statements on behalf of the board;

HeinOnline -- 1997 vol. III 3223 1997

(c) compile and total information contained in statements required to be prepared under [section 4(12) through (14)] and provide these compilations to the board;

(d) if there is more than one program manager, provide the board with the information to assist the board in determining compliance with rules adopted by the board pursuant to [section 7];

(e) provide representatives of the board, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract. At least once during the term of any contract, the board, its contractor, or the state agency responsible for examination oversight of the program manager shall conduct an examination to the extent needed to determine compliance with the contract.

(f) hold all accounts in trust for the benefit of this state and the account owner.

(7) A person may not circulate any description of the program, whether in writing or through the use of any media, unless the board or its designee first approves the description.

(8) A contract executed between the board and a financial institution pursuant to this section must be for a term of at least 3 years and not more than 7 years.

(9) If a contract executed between the board and a financial institution pursuant to this section is not renewed, at the end of the term of the nonrenewed contract:

(a) accounts previously established and held in investment instruments at the financial institution may not be terminated;

(b) additional contributions may be made to the accounts in existence at the time of nonrenewal of a contract; and

(c) new accounts may not be placed with that financial institution unless a new contract is executed.

(10) The board may terminate a contract with a financial institution at any time for good cause on the recommendation of the committee. If a contract is terminated pursuant to this subsection, the board shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment instruments as similar as possible to the original investments.

**Section 9. Higher education expenses — exemption from taxable income.** A person may in any year deposit into an individual trust or savings account up to $3,000 that is deductible for tax purposes under 15-30-111(2)(k) to pay the qualified higher education expenses for the benefit of a designated beneficiary.

**Section 10. Scholarships and financial aid provisions — exceptions.** (1) Except as provided in subsection (2), a student loan program, student grant program, or other financial assistance program established or administered by the state or a financial assistance program administered by a

HeinOnline -- 1997 vol. III 3224 1997

state-supported college or university must treat the balance in an account of which the student is a designated beneficiary as if it were an asset of the parent of the designated beneficiary and not as a scholarship or grant or as an asset of the student for determining a student's or parent's income, assets, or financial need.

(2) This section does not apply if:

(a) federal law requires all or a portion of the amount in an account to be taken into account in a different manner;

(b) federal benefits could be lost if all or a portion of the amount in an account is not taken into account in a different manner; or

(c) a specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into account.

**Section 11. Limitations.** (1) [Sections 1 through 5 and 8 through 11] may not be construed to:

(a) give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

(b) guarantee that a designated beneficiary will be admitted to a higher education institution or be allowed to continue enrollment at or graduate from a higher education institution located in this state after admission;

(c) establish state residency for a person merely because the person is a designated beneficiary; or

(d) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(2) [Sections 1 through 5 and 8 through 11] do not establish any obligation of this state or any agency or instrumentality of the state to guarantee for the benefit of any account owner, contributor to an account, or designated beneficiary:

(a) the return of any amounts contributed to an account;

(b) the rate of interest or other return on any account; or

(c) the payment of interest or other return on any account.

(3) Under rules adopted by the board, each contract, application, deposit slip, or other document that may be used in connection with a contribution to an account must clearly indicate that the account is not insured by the state and that the principal deposited or the investment return is not guaranteed by the state.

**Section 12.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, *26 U.S.C. 62,* as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation hy Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, *26 U.S.C. 852(b)(5),* as that section may he amended or renumbered, that are attributahle to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Cede of 1954 that has heen reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15); and

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation hy Montana under federal law;

(ii) exeinpt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, *26 U.S.C. 852(b)(5),* as that section may he amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(h) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for ponsion and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if hoth taxpayers are receiving pension or annuity income or if only one taxpayer is receiving ponsion or annuity income, the exclusion claimed as provided in suhsection (2)(c)(i) must

HeinOnline -- 1997 vol. III 3226 1997

be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, *26 U.S.C. 3402(k) or 3401,* as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brougbt against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account estahlished in accordance with 15-61-201 or withdrawn from an account for eligihle medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer; ~~and~~

*(k) money, not exceeding $3,000 for each taxpayer, contributed to a family education savings program account established in accordance with [section 4];*

*(l) principal withdrawn from an account for qualified higher education expenses, as defined in [section 3], for a designated beneficiary of the taxpayer; and*

~~(k)~~*(m)* the recovery during tbe tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, *26 U.S.C. 995,* for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under ~~section 44B~~ *sections 38 and 51(a)* of the Internal Revenue Code of 1954, as ~~that section~~ *those sections* may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

HeinOnline -- 1997 vol. III 3227 1997

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

**Section 13. Implementation of staggered terms.** (1) To implement the staggered-term system provided for in [section 6], the first terms of the members are as follows:

(a) one member shall serve a 1-year term;

(b) two members shall serve 2-year terms;

(c) two members shall serve 3-year terms; and

(d) two members shall serve 4-year terms.

(2) Upon expiration of the terms provided for in subsection (1), each member shall serve a 4-year term.

**Section 14. Codification instruction.** (1) [Sections 1 through 5 and 8 through 11] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 5 and 8 through 11].

(2) [Sections 6 and 7] are intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 6 and 7].

**Section 15. Effective date.** [This act] is effective July 1, 1997.

Approved May 5, 1997

HeinOnline -- 1997 vol. III 3228 1997

# CHAPTER NO. 541

[HB 546]

AN ACT AMENDING THE WATER QUALITY LAWS TO FURTHER DIRECT THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO MONITOR STATE WATERS TO ASSESS THEIR QUALITY AND TO DEVELOP TOTAL MAXIMUM DAILY LOADS FOR THOSE WATERS IDENTIFIED AS THREATENED OR IMPAIRED; AMENDING SECTION 75-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

*(4) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.*

*(b) The term does not mean new data to be obtained as a result of department efforts.*

~~(4)~~*(5)* "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(5)~~*(6)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(6)~~*(7)* "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(7)~~*(8)* "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(8)~~*(9)* "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(8)~~*(10)* "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

HeinOnline -- 1997 vol. III 3229 1997

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

*(11) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.*

~~(10)~~*(12)* "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(11)~~*(13)* "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

*(14) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.*

*(15) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.*

~~(12)~~*(16)* "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(13)~~*(17)* "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(14)~~*(18)* "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(15)~~*(19)* "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(15)~~*(20)* "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

HeinOnline -- 1997 vol. III 3230 1997

~~(17)~~*(21)* "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(18)~~*(22)* "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(18)~~*(23)* "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(20)~~*(24)* "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(21)~~*(25)* (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) A discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to 75-5-308 are not considered pollution under this chapter.

~~(22)~~*(26)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(23)~~*(27)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(24)~~*(28)* "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(25)~~*(29)* (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

HeinOnline -- 1997 vol. III 3231 1997

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

*(30) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.*

*(31) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:*

*(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or*

*(b) documented adverse pollution trends.*

*(32) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.*

~~(26)~~*(33)* "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

*(34) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.*

~~(27)~~*(35)* "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include hut are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(28)~~*(36)* "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

*(37) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under [section 3] and in the development of TMDLs under [section 4], including those groups or individuals requested by the department to participate in an advisory capacity as provided in [section 5]."*

**Section 2. Purpose.** Consistent with the policy established in 75-5-101(2) to provide a comprehensive program for the prevention, abatement, and control of water pollution, the purpose of [sections 2 through 6] is to further direct the department to monitor state waters to accurately assess their quality and, when required, to develop total maximum daily loads for those water bodies identified as threatened or impaired.

HeinOnline -- 1997 vol. III 3232 1997

**Section 3. Monitoring — water quality assessment listing.** (1) The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water hodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

(2) In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.

(3) A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 60 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the department's decision to the board.

(4) The department shall, in consultation with local conservation districts and watershed advisory groups pursuant to [section 5], review and revise the list and priority rankings of water bodies identified as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The department shall make available for public review the data and information used in making any changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this section.

(5) By October 1, 1999, the department shall develop and maintain a data management system that can be used to assess the validity and reliability of the data used in the listing and priority ranking process. The department shall make available to the public, upon request, data from its data management system. The department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the requestor.

(6) By October 1, 1999, the department shall use the data management system developod and maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient credible data to support its listing. If the department removes a water body because there is a lack of sufficient credible data to support its listing, the department shall monitor and assess that water body during the next field season or as soon as possible thereafter to determine whether it is a threatened water hody or an impaired water body.

HeinOnline -- 1997 vol. III 3233 1997

(7) In prioritizing water bodies for TMDL development, the department shall, in consultation with the statewide TMDL advisory group established pursuant to subsection (9), take into consideration the following:

(a) the beneficial uses established for a water body;

(b) the extent that natural factors over which humans have no control are contributing to any impairment;

(c) the impacts to human health and aquatic life;

(d) the degree of public interest and support;

(e) the character of the pollutant and the severity and magnitude of water quality standard noncompliance;

(f) whether the water body is an important high-quality resource in an early stage of degradation;

(g) the size of the water body not achieving standards;

(h) immediate programmatic needs such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;

(i) court orders and decisions relating to water quality;

(j) state policies and priorities, including the protection and restoration of native fish when appropriate;

(k) the availability of technology and resources to correct the problems;

(l) whether actions or voluntary programs that are likely to correct the impairment of a particular water body are currently in place; and

(m) the recreational, economic, and aesthetic importance of a particular water body.

(8) The department shall, in consultation with the statewide TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL development. The department may not rank a water body as a high priority under this section without first validating the data necessary to support the ranking.

(9) (a) The department shall establish a statewide TMDL advisory group to serve in the consultation capacity set forth in [section 5(2)(a)] and subsections (7) and (8) of this section. Fourteen members must be appointed by the director, based upon one nomination from each of the following interests:

(i) livestock-oriented agriculture;

(ii) farming-oriented agriculture;

(iii) conservation or environmental interests;

(iv) water-based recreationists;

(v) the forestry industry;

(vi) municipalities;

(vii) point source dischargers;

(viii) mining;

(ix) federal land management agencies;

(x) state trust land management agencies;

(xi) supervisors of soil and water conservation districts for counties east of the continental divide;

(xii) supervisors of soil and water conservation districts for counties west of the continental divide;

(xiii) the hydroelectric industry; and

(xiv) fishing-related businesses.

(b) If the director receives more than one nomination from a particular interest, the director shall notify the respective nominators and request that they agree on one nominee.

(10) The department shall provide public notice of meetings of the statewide TMDL advisory group and shall solicit, document, and consider public comments provided during the deliberations of the advisory group.

**Section 4. Development and implementation of total maximum daily loads.** (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under [section 3]. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources, and load allocations for nonpoint sources as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) Within 10 years from [the effective date of this act], the department shall develop TMDLs for all water bodies on the list of waters that are threatened or impaired, as that list reads on [the effective date of this act]. This provision does not apply to water bodies that are subsequently added or removed from the list according to the provisions of [section 3]. Within 1 year from [the effective date of this act], the department shall establish a schedule for completing the TMDLs within the 10-year period established by this subsection. The schedule must also

HeinOnline -- 1997 vol. III 3235 1997

provide a reasonable timeframe for TMDL development for impaired and threatened water bodies that are listed subsequent to [the effective date of this act] and are prioritized as set forth in [section 3].

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under [section 3], the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

(a) incorporate the TMDL into its current continuing planning process;

(b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and

(c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring water quality and the status of

HeinOnline -- 1997 vol. III 3236 1997

reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to [section 3]:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue their activities provided those activities are conducted in accordance with reasonable land, soil, and water conservation practices;

(d) for existing nonpoint source activities, the department shall continue to utilize educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312.

**Section 5. Watershed advisory groups.** (1) In implementing the consultation requirements under [sections 3(4) and 4(1) and (2)], the department shall request the participation of representatives of the following interest groups to work in an advisory capacity with the local conservation districts and the department:

(a) livestock-oriented agriculture;

(b) farming-oriented agriculture;

(c) conservation or environmental interests;

(d) water-based recreationists;

(e) the forestry industry;

(f) municipalities;

(g) affected or potentially affected point source dischargers;

(h) mining;

(i) existing local watershed groups;

(j) federal land management agencies;

(k) state trust land management agencies;

(l) the tourism industry;

(m) the hydroelectric industry, if applicable; and

(n) fishing-related businesses.

(2) In implementing the consultation requirements of [sections 3 and 4], the department shall:

(a) prior to consultation with the statewide TMDL advisory group pursuant to [section 2(7) and (8)], schedule meetings with appropriate local conservation districts and the watershed advisory groups at a location within their affected geographic area to review and revise the list of water bodies provided for in [section 3]; and

(b) at a meeting held pursuant to subsection (2)(a), request whether there is new information that may affect the listing or priority ranking on water bodies within the affected area and solicit comments on revising the list.

(3) Based upon the information provided pursuant to subsection (2)(b), the department shall revise the list according to [section 3].

(4) Prior to and during the development of a TMDL within a particular watershed or basin, the department shall schedule a meeting or meetings witb appropriate local conservation districts and watershed advisory groups at a location within the affected geographic area in order to solicit comments on developing the TMDL and information on sources that may be contributing to water quality impairment.

**Section 6. Nonimpairment of water rights.** Nothing in [this act] may be construed to divest, impair, or diminish any water right recognized pursuant to Title 85.

**Section 7. Codification instruction.** [Sections 2 through 6] are intended to be codified as an integral part of Title 75, chapter 5, part 7, and the provisions of Title 75, chapter 5, part 7, apply to [sections 2 through 6].

**Section 8. Effective date.** [This act] is effective on passage and approval.

Approved May 5, 1997

HeinOnline -- 1997 vol. III 3238 1997

# CHAPTER NO. 542

[HB 584]

AN ACT CREATING AN ORPHAN SHARE ACCOUNT FOR COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT SITES; ALLOCATING RESOURCE INDEMNITY TRUST INTEREST AND TAX PROCEEDS AND METAL MINES LICENSE TAX PROCEEDS TO THE ORPHAN SHARE ACCOUNT; APPROPRIATING FUNDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FOR REIMBURSEMENTS AND ORPHAN SHARE DEFENSE COSTS FROM THE ORPHAN SHARE ACCOUNT; AMENDING SECTIONS 15-37-117, 15-38-106, AND 15-38-202, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Orphan share state special revenue account.** (1) There is an orphan share account in the state special revenue fund established in 17-2-102.

(2) There must be deposited into the orphan share account:

(a) revenue allocated from the metalliferous mines license tax pursuant to 15-37-117;

(b) all penalties assessed pursuant to [Senate Bill No. 377];

(c) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(d) funds allocated from the resource indemnity ground water assessment tax proceeds provided in 15-38-106;

(e) unencumbered funds remaining in the abandoned mines state special revenue account provided for in section 19, Chapter 584, Laws of 1995, as of June 30, 1999;

(f) money expended by the orphan share account to provide orphan share defense costs later attributed to a potentially liable party under 75-10-715; and

(g) interest income earned on the account.

(3) Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to [LC 759] and to pay costs incurred by the department in defending the orphan share pursuant to [LC 759]. The funds allocated in subsections (2)(c) and (2)(d) may not be used for administrative expenses.

**Section 2.** Section 15-37-117, MCA, is amended to read:

**"15-37-117. (Temporary) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

HeinOnline -- 1997 vol. III 3239 1997

(h) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the abandoned mines state special revenue account provided for in section 19, Chapter 584, Laws of 1995, 8.5% of total collections each year;

(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;

(e) to the reclamation and development grants program state special revenue account, 4.8% of total collections each year; and

(f) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan, or, if an impact plan has not heen prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less tban 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county tbat have been affected by the development or operation of the metal mine.

(2) When an impact plan for a largo-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced tbe tax collections allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory appropriation pursuant to 17-7-502. (Terminates June 30, 1997—sec. 27, Ch. 584, L. 1995.)

**15-37-117. (Effective July 1, 1997) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) ~~to the state resource indemnity trust fund, 15.5% of total collections each year~~ *to the orphan share account established in [section 1], 8.5% of total collections each year*;

(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;

(e) to the reclamation and development grants program state special revenue account, 4.8% of total collections each year; and

(f) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory appropriation pursuant to 17-7-502."

**Section 3.** Section 15-38-106, MCA, is amended to read:

**"15-38-106. Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time *that* the statement of yield for the preceding calendar year is filed with the department.

HeinOnline -- 1997 vol. III 3241 1997

(2) The department shall, in accordance with the provisions of 15-1-501(6), deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905;

(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; ~~and~~

(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104; *and*

*(d) if there are sufficient funds remaining, at the beginning of each fiscal year, there is allocated from the proceeds of the tax $200,000 to be deposited in the orphan share account established in [section 1].*

(3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

**Section 4.** Section 15-38-202, MCA, is amended to read:

**"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

HeinOnline -- 1997 vol. III 3242 1997

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(iii) ~~beginning in fiscal year 1996,~~ $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iv) ~~beginning in fiscal year 1996,~~ $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(v) ~~beginning in fiscal year 1996,~~ $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

*(c) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund $200,000 to be deposited in the orphan share account established in [section 1].*

~~(c)~~*(d)* The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

**Section 5. Appropriation.** There is appropriated to the department of environmental quality from the orphan share account provided for in [section 1], to fund reimbursements for orphan shares at Comprehensive Environmental Cleanup and Responsibility Act sites and department costs in defending the orphan shares, $675,000 in fiscal year 1998 and $1.245 million in fiscal year 1999.

HeinOnline -- 1997 vol. III 3243 1997

**Section 6. Codification instruction.** [Section 1] is intended te be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [section 1].

**Section 7. Coordination instruction.** (1) If Senate Bill No. 7 and [this act] are both passed and approved, then Senate Bill No. 7 is void.

(2) If Senate Bill No. 377 and [this act] are both passed and approved, then [sections 1 through 4 of this act] are void. If Senate Bill No. 377 fails, then [this act] is void.

(3) If [this act], House Bill No. 546, and House Bill No. 284 are all passed and approved, then [section 1] of House Bill No. 284 is amended to read:

"NEW SECTION. **Section 1. Environmental rehabilitation and prevention account.** (1) There is an environmental rehabilitation and prevention account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) fine and penalty money received pursuant to 75-2-412, 75-2-413, 75-2-427, 75-3-407, 75-5-634, 75-6-109, 75-6-114, 75-10-417, 75-10-418, 75-10-423, 75-10-424, 75-10-542, 82-4-141, and 82-4-241;

(b) unclaimed or excess reclamation bond money received pursuant to 82-4-141 and 82-4-241; and

(c) interest earned on the account.

(3) Money in the account is available te the department of environmental quality by appropriation and must be used to pay for:

(a) reclamation of unreclaimed mine lands for which the department may not require reclamation by, or obtain costs of reclamation from, a legally responsible party;

(b) remediation of sites containing bazardous wastes or hazardous substances for which the department may not recover costs from a legally responsible party;

(c) response to an imminent threat of substantial harm to the environment, to public health, or to public safety for which no funding or insufficient funding is available pursuant to 75-1-1101; or

(d) environmental compliance education and training of nongovernmental persons.

(4) Whenever penalties and abandoned bond money deposited in the environmental rehabilitation and prevention account during a fiscal year exceed ~~$250,000~~ *$100,000*, the amount deposited in the account during tlie fiscal year in excess of ~~$250,000~~ *$100,000* must, at the end of tlie fiscal year, be transferred to the general fund."

**Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 9. Effective dates.** (1) Subject to [section 7], [sections 1 through 3, 5 through 8, and 10 and this section] are effective July 1, 1997.

(2) Subject to [section 7], [section 4] is effective July 1, 1999.

**Section 10. Termination.** [This act] terminates July 1, 2005.

Approved May 5, 1997

# CHAPTER NO. 543

[HB 591]

AN ACT REFORMING, STREAMLINING, AND SIMPLIFYING THE APPLICATION FOR THE ELDERLY HOMEOWNER PROPERTY TAX CREDIT BY PROVIDING FOR A DEDUCTION BASED ON PROPERTY TAXES LEVIED AND A STANDARD PENSION DEDUCTION; AMENDING SECTIONS 15-30-171, 15-30-172, 15-30-176, 15-30-177, AND 15-30-178, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-30-171, MCA, is amended to read:

**"15-30-171. Residential property tax credit for elderly — definitions.** As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means ~~an individual natural~~ *a* person who is eligible to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to ~~ad valorem~~ *property* taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and hoarders on contract.

(8) "Household income" means ~~$0 or~~ the amount obtained by subtracting ~~the greater of $4,000 or 50% of total retirement benefits~~ *$6,300* from gross household income~~, whichever is greater~~.

(9) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity, ~~(~~including Railroad Retirement Act benefits and veterans' disability benefits~~)~~;

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments received under federal social security except social security income paid directly to a nursing home.

(10) "Property tax ~~paid~~" *billed"* means ~~general ad valorem~~ taxes levied against the homestead, ~~exclusive of~~ *including* special assessments~~,~~ *and fees but excluding* penalties~~,~~ or interest ~~and paid~~ during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

**Section 2.** Section 15-30-172, MCA, is amended to read:

**"15-30-172. Residential property tax credit for elderly — eligibility.** (1) In order to be eligible to make a claim under 15-30-171 through 15-30-179, an individual:

(a) must have reached age 62 or older during the claim period for which relief is sought;

(b) must have resided in Montana for at least 9 months of that period; ~~and~~

(c) must have occupied one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months of the claim period*; and*

*(d) must have less than $35,000 of gross household income.*

(2) A person is not disqualified as a claimant if the person changes residences during the claim period, provided that ~~he~~ *the person* occupies one or more

dwellings in Montana as an owner, renter, or lessee for at least 6 months during the claim period."

**Section 3.** Section 15-30-176, MCA, is amended to read:

**"15-30-176. Residential property tax credit for elderly — computation of relief.** The amount of the tax credit granted under the provisions of 15-30-171 through 15-30-179 is computed as follows:

(1) In the case of a claimant who owns the homestead for which a claim is made, the credit is the amount of property tax ~~paid~~ *billed* less the deduction specified in subsection (4).

(2) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (4).

(3) In the case of a claimant who both owns and rents the homestead for which a claim is made, the credit is:

(a) the amount of property tax ~~paid~~ *billed* on the owned portion of the homestead less the deduction specified in subsection (4); plus

(b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).

(4) Property tax ~~paid~~ *billed* and rent-equivalent tax paid are reduced according to the following schedule:

| Household income | Amount of reduction |
|---|---|
| $ 0-999 | $0 |
| 1,000-1,999 | $0 |
| 2,000-2,999 | the product of .006 times the household income |
| 3,000-3,999 | the product of .016 times the household income |
| 4,000-4,999 | the product of .024 times the household income |
| 5,000-5,999 | the product of .028 times the household income |
| 6,000-6,999 | the product of .032 times the household income |
| 7,000-7,999 | the product of .035 times the household income |
| 8,000-8,999 | the product of .039 times the household income |
| 9,000-9,999 | the product of .042 times the household income |
| 10,000-10,999 | the product of .045 times the household income |
| 11,000-11,999 | the product of .048 times the household income |
| 12,000 & over | the product of .050 times the household income |

(5) ~~In no case may the~~ *The* credit granted *may not* exceed $1,000."

**Section 4.** Section 15-30-177, MCA, is amended to read:

**"15-30-177. Residential property tax credit for elderly — limitations.** (1) Only one claimant per household in a claim period under the provisions of 15-30-171 through 15-30-179 is entitled to relief.

(2) Except as provided in subsection (3), ~~no~~ *a* claim for relief may *not* be allowed for any portion of property taxes ~~paid~~ *billed* or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) Except for dwellings rented from a county or municipal housing authority, ~~no~~ *a* claim for relief may *not* be allowed on rented lands or rented dwellings that are not subject to ~~ad valorem taxation in~~ Montana *property taxes* during the claim period."

**Section 5.** Section 15-30-178, MCA, is amended to read:

**"15-30-178. Residential property tax credit for elderly — proof of claim.** A receipt showing property tax ~~paid~~ *billed* or a receipt showing gross rent paid, whichever is appropriate, must be filed with each claim. In addition, each claimant ~~must~~ *shall*, at the request of the department, supply all additional information necessary to support ~~his~~ *a* claim."

**Section 6. Retroactive applicability.** [Sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to tax years heginning after December 31, 1996.

**Section 7. Effective date.** [This act] is effective on passage and approval.

Approved May 5, 1997

# CHAPTER NO. 544

[HB 599]

AN ACT PROVIDING FOR FIRST-TIME HOME BUYER SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION OF THE ACCOUNTS; ALLOWING ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNTS; LIMITING THE PERIOD IN WHICH CONTRIBUTIONS MAY BE MADE TO THE ACCOUNT; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF PRINCIPAL AND INCOME CONTAINED WITHIN AN ACCOUNT AND AMOUNTS WITHDRAWN FOR ELIGIBLE COSTS FOR THE FIRST-TIME PURCHASE OF A SINGLE-FAMILY RESIDENCE IN MONTANA; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE COSTS; REQUIRING THAT PRINCIPAL AND INCOME IN THE ACCOUNT MUST BE USED FOR THE PURCHASE OF A SINGLE-FAMILY RESIDENCE IN MONTANA BY A FIRST-TIME HOME BUYER WITHIN A SPECIFIED PERIOD; TAXING AMOUNTS REMAINING IN THE ACCOUNT AS ORDINARY INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

HeinOnline -- 1997 vol. III 3248 1997

**Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana First-Time Home Buyer Savings Account Act".

**Section 2. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a certified public accountant or a licensed puhlic accountant licensed to practice in this state pursuant to Title 37, cbapter 50; or

(c) the account holder.

(2) "Account holder" means an individual who is a resident of this state and who establishes, individually or jointly, a first-time home buyer savings account. The account holder must also be a first-time home buyer. A married taxpayer filing separately may be an account holder if the account is established separately from the taxpayer's spouse. Married taxpayers filing jointly are considered as the account holder.

(3) "Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence in Montana by a first-time home buyer.

(4) "First-time home buyer" means an individual who has never owned or purchased under contract for deed, either individually or jointly, a single-family residence in Montana or out-of-state.

(5) "First-time home buyer savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

(6) "Single-family residence" means an owner-occupied residence in Montana, including a manufactured home, trailer, or mobile home, that is an improvement to real property or a condominium unit that is owned by or that has been purchased under contract for deed by a person, individually or jointly.

**Section 3. Establishment of aceount.** A first-time home buyer who is a resident of this state may establish a first-time home buyer savings account for the first-time home buyer, either individually or jointly.

**Section 4. Tax exemption — conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligihle costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

(2) (a) An account holder who files singly, head of household, or married filing separately may exclude as an annual contribution in 1 year up to $3,000.

HeinOnline -- 1997 vol. III 3249 1997

(b) An account holder who files jointly may exclude as annual contribution in 1 year up to $6,000.

(c) There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.

(d) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed the amount specified in subsection (2)(a) or (2)(b). An account holder who deposits more than the amount specified in subsection (2)(a) or (2)(b) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.

(5) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to the tax exemption under this section.

(6) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

(7) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.

(8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.

(9) Within 30 days of being furnished proof of the death of the account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the account holder.

**Section 5. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.** (1) An account holder may withdraw money from the first-time home buyer's savings account for any purpose other than eligible costs for the first-time purchase of a single-family

residence only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(2) If the account holder withdraws money from the account other than for eligible costs for the purchase of a single-family residence or other than on the last business day of the account administrator's business year, the account administrator shall withhold from the amount of the withdrawal and, on behalf of the account holder, pay as a penalty to the department an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(3) For the purposes of this section, "last business day of the account administrator's business year", as applied to an account administrator who is also the account holder, means the last weekday in December.

**Section 6. Administration of account.** (1) An account administrator shall administer the first-time home buyer savings account from which the payment of eligible costs for the purchase of a single-family residence is made and has a fiduciary duty to the person for whose benefit the account is administered. Except for reporting and remitting of penalties to the department, a financial institution shall administer a first-time home buyer's savings account as a regular deposit. A financial institution is not responsible for the use or applications of funds.

(2) Within 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a first-time home buyer savings account only for the purpose of paying the eligible costs of the account holder or paying the expenses of administering the account.

(4) The account holder may submit documentation of eligible costs paid by the account holder in the tax year to the account administrator, and the account administrator shall reimburse the account holder from the account holder's account for eligible costs for the first-time purchase of a single-family residence. The hurden of proving that a withdrawal from a first-time home buyer's savings account was made for eligible costs is upon the account holder and not upon the account administrator.

(5) In the case of an account administrator who is also the account holder:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account;

(c) documentation of the segregation of funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence must be maintained but is not required to be submitted to the account administrator;

HeinOnline -- 1997 vol. III 3251 1997

(d) the account administrator shall file reports as reasonably required by the department; and

(e) the account holder is required to forward the 10% penalty on funds withdrawn for other than eligible costs to the department.

**Section 7. False claims prohibited.** A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account is subject to the provisions of 15-61-205.

**Section 8.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15); and

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 352(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of ago or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

*(k) principal and income in a first-time home buyer savings account established in accordance with [section 3] or withdrawn from an account for eligible costs, as provided in [section 4(7)], for the first-time purchase of a single-family residence;* and

~~(k)~~*(l)* the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code for all periods for which the DISC election is effective.

HeinOnline -- 1997 vol. III 3253 1997

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954, as that section may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

**Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 7].

**Section 10. Effective date.** [This act] is effective January 1, 1998.

Approved May 5, 1997

# CHAPTER NO. 545

[HB 601]

AN ACT ALLOWING AN INCOME TAX CREDIT OR CORPORATE LICENSE TAX CREDIT FOR THE PRESERVATION OF HISTORIC BUILDINGS; PROVIDING THAT THE AMOUNT OF THE CREDIT IS 25 PERCENT OF THE CREDIT ALLOWED UNDER FEDERAL INCOME TAX LAWS; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

HeinOnline -- 1997 vol. III 3254 1997

**Section 1. Credit for preservation of historic buildings.** (1) (a) There is allowed as a credit against the taxes imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage of the credit allowed for qualified rehabilitation expenditures, with respect to any certified historic building located in Montana, as provided in 26 U.S.C. 47 or as that section may be renumbered or amended.

(b) The amount of the credit allowed for a tax year is 25% of the amount of the credit determined under 26 U.S.C. 47(a)(2) or as that section may be renumbered or amended.

(2) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 7 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

(3) If the credit under this section is claimed by a small business corporation, as defined in 15-31-201, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

**Section 2. Credit for preservation of historic buildings.** (1) There is allowed as a credit against the taxes imposed by 15-30-103 a percentage of the credit allowed for qualified rehabilitation expenditures with respect to any certified historic building located in Montana as provided in [section 1].

(2) The credit may not be allocated between spouses unless the property is used by a small business corporation or a partnership in which they are shareholders or partners.

**Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 2].

**Section 4. Applicability.** [Sections 1 and 2] apply to tax years beginning after December 31, 1997.

Approved May 5, 1997

# CHAPTER NO. 546

[HB 604]

AN ACT RELATING TO BREWING BEER IN MONTANA; PROVIDING THAT MALTING BARLEY MACHINERY AND EQUIPMENT ARE CLASSIFIED AS CLASS 6 PROPERTY; AUTHORIZING HOME BREWING THAT MEETS THE REQUIREMENTS OF FEDERAL LAW; AND AMENDING SECTIONS 15-6-136, 16-3-201, AND 16-6-301, MCA.

HeinOnline -- 1997 vol. III 3255 1997

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 15-6-136, MCA, is amended to read:

**"15-6-136. Class six property — description — taxable percentage.** (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for rent or lease in the ordinary course of business, provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; ~~and~~

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; and

(c) machinery and equipment used in canola seed oil processing facilities if:

(i) the operators of such facilities employ a minimum of 15 full-time employees; and

(ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989*; and*

*(d) machinery and equipment used in a malting barley facility.*

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

*(3) "Malting barley facility" means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.*

~~(3)~~*(4)* Class six property is taxed at 4% of its market value."

**Section 2.** Section 16-3-201, MCA, is amended to read:

**"16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than prescribed unlawful — *personal brewing.*** *(1)* It ~~shall be~~ *is* unlawful to manufacture, import, sell or dispose of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater than ~~herein prescribed~~ *authorized* or other than in the manner permitted by this code.

*(2) This code does not prohibit the manufacture of beer, for personal or family use and not intended for sale, that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer."*

**Section 3.** Section 16-6-301, MCA, is amended to read:

**"16-6-301. Transfer, sale, and possession of alcoholic beverages — when unlawful.** (1) Except as provided by this code, ~~no~~ *a* person *or the person's agents or employees* ~~shall~~ *may not*~~, within the state, by himself, his clerk, servant, or agent,~~:

*(a)* expose or keep *an alcoholic beverage* for sale ~~or,~~;

*(b)* directly or indirectly or upon any pretense or upon any device, sell or offer to sell *an alcoholic beverage;* or~~,~~

*(c)* in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person ~~any~~ *an* alcoholic beverage.

(2) ~~No~~ *A* person ~~shall~~ *may not* have or keep any alcoholic beverage ~~which~~ *that* has not been purchased within the state of Montana.

*(3)* ~~Nothing in this code shall~~ *This section does not* prohibit:

*(a)* ~~any~~ *a* person entering this state from ~~any other~~ *another* state or ~~from any~~ foreign country from having in ~~his~~ *the person's* possession *an amount* not to exceed 3 ~~wine~~ gallons of alcoholic beverage ~~which beverage shall have been~~ *that was* purchased in another state or foreign country~~, but no person claiming to have so entered the state shall at any time have in his possession more than 3 wine ga~~l~~l~~ons of alcoholic beverage which shall not have been purchased within the state of Montana.~~;

*(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;*

*(c)* ~~This subsection shall not apply to the department or to the keeping or having of~~ *possession of* alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of ~~such~~ *those* alcoholic beverages*;* ~~or~~

*(d)* ~~to the keeping or having of any~~ *possession of* proprietary or patent medicines or of any extracts, essences, tinctures, or preparations ~~where such having and keeping~~ *if the possession* is authorized by this code.*; or*

~~(3)~~*(e)* ~~Nothing contained in this section shall apply to the~~ possession by a sheriff or ~~his~~ bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or ~~to~~ sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, ~~no~~ *a* person *or the person's agents or employees* ~~shall, within the state, by himself, his clerk, servant, or agent~~ *may not*:

HeinOnline -- 1997 vol. III 3257 1997

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage."

Approved May 5, 1997

# CHAPTER NO. 547

[SB 187]

AN ACT REMOVING THE CONFLICT BETWEEN ARTICLE X, SECTION 10, OF THE MONTANA CONSTITUTION AND STATUTORY LAW BY AUTHORIZING THE MONTANA UNIVERSITY SYSTEM TO RETAIN INVESTMENT EARNINGS ON ALL UNIVERSITY FUNDS; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article X, section 10, of the Montana Constitution provides in part that the interest from university funds must be devoted to the maintenance and perpetuation of the respective University System institutions; and

WHEREAS, section 17-2-107, MCA, currently requires some of the investment earnings from some university funds to be credited to the state general fund.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 17-2-107, MCA, is amended to read:

**"17-2-107. Accurate accounting records and interentity loans.** (1) The department of administration shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in ~~such~~ a manner ~~as to reflect~~ *that reflects* the total cash and invested balance of each fund and each accounting entity. The department of administration shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) When the expenditure of an appropriation from a fund designated in 17-2-102(1)(a) through (1)(c) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department of administration may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) is necessary and the cash balance in the

HeinOnline -- 1997 vol. III 3258 1997

fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4), of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department of administration or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. ~~Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, other than investment earnings on student activity fees used to support student governments at units of the university system, are credited to the state general fund.~~

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department of administration or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(1)(d)(i) through (1)(d)(vi) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

HeinOnline -- 1997 vol. III 3259 1997

(7) (a) An accounting entity in a fund designated in 17-2-102(1)(a) through (1)(c) may not have a negative cash balance at fiscal yearend. The department of administration may, however, allow an accounting entity to carry a negative balance at any point during the fiscal year if the negative cash halance does not exist for more than 7 working days.

(h) (i) Except as provided in subsection (7)(b)(ii), a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department of administration may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department of administration may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed upon reimbursements from federal, private, or other governmental entity sources for disbursements made. The department of administration may approve the loans if the requesting agency can demonstrate that the tetal loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions as may be determined by the department of administration or by specific legislative authorization."

**Section 2. Effective date.** [This act] is effective July 1, 1997.

Approved May 5, 1997

# CHAPTER NO. 548

[HB 252]

AN ACT GENERALLY REVISING THE LAWS GOVERNING CONTRACTORS AND INDEPENDENT CONTRACTORS; REPEALING CERTAIN CONTRACTOR REGISTRATION REQUIREMENTS; ELIMINATING BONDING REQUIREMENTS FOR CONTRACTORS; ELIMINATING INVESTIGATORY, ENFORCEMENT, AND NOTICE AND APPEAL PROCEDURES RELATING TO CONTRACTOR REGISTRATION; PROVIDING FOR A PENALTY OF UP TO $500 FOR CERTAIN VIOLATIONS OF THE CONSTRUCTION CONTRACTOR REGISTRATION LAWS; REQUIRING THAT ANY PENALTY COLLECTED BE DEPOSITED IN THE UNINSURED EMPLOYERS' FUND; DECREASING THE FEE FOR THE ISSUANCE OF THE INITIAL 2-YEAR CERTIFICATE TO A MAXIMUM OF $70 AND THE FEE FOR THE RENEWAL OR REINSTATEMENT OF A CERTIFICATE TO A MAXIMUM OF $70; PROVIDING AN EXEMPTION FOR FIRE SUPPRESSION OR PROTECTION LICENSEES, FOR CONTRACTORS IN THE LOGGING INDUSTRY WHO BUILD FOREST ACCESS ROADS, FOR LICENSED WATER WELL CONTRACTORS, FOR ENROLLED TRIBAL

HeinOnline -- 1997 vol. III 3260 1997

MEMBERS OR TRIBALLY OWNED BUSINESSES, FOR CERTAIN PROPERTY OWNERS, FOR PROJECTS COSTING LESS THAN $2,500, AND FOR INDEPENDENT CONTRACTORS WHO HAVE NO EMPLOYEES; PROVIDING THAT AN INDEPENDENT CONTRACTOR EXEMPTION REMAINS IN EFFECT FOR 3 YEARS; PROVIDING FOR A $25 FEE FOR THE INITIAL EXEMPTION APPLICATION AND FOR EACH SUBSEQUENT RENEWAL; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 39-9-101, 39-9-102, 39-9-201, 39-9-204, 39-9-206, 39-9-207, 39-9-211, 39-9-301, 39-9-303, 39-9-401, 39-71-120, AND 39-71-401, MCA; REPEALING SECTIONS 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, 39-9-202, 39-9-203, 39-9-302, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, AND 39-9-410, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the contractor registration program affects an industry in Montana that has a high number of accidents, resulting in workers' compensation rates that are higher than other industries' and creating a situation that often results in noncompliance with the requirements of the Workers' Compensation Act and the Unemployment Insurance Law; and

WHEREAS, the contractor registration program provides needed structure to the construction industry by providing a means to distinguish, prior to an accident, those persons who qualify as independent contractors and those employers who are required to provide workers' compensation coverage for their employees; and

WHEREAS, the contractor registration law protects a contractor from the liabilities for workers' compensation and unemployment insurance obligations that exist from contracting with a contractor who is not in compliance with those laws by removing those liabilities when a contractor contracts with a registered contractor.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 39-9-101, MCA, is amended to read:

"**39-9-101. Purpose.** It is the purpose of this chapter to ensure that all *construction* contractors are competing fairly and in compliance with state laws."

**Section 2.** Section 39-9-102, MCA, is amended to read:

"**39-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "~~Contractor~~ *Construction contractor*" means a person, firm, or corporation that:

(a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or

HeinOnline -- 1997 vol. III 3261 1997

(b) in order to do work similar to that described in subsection (1)(a) upon the *construction* contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.

(2) "Department" means the department of labor and industry.

~~(3) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor intends to supervise or perform in whole or in part.~~

~~(4) "Specialty contractor" means a contractor whose operations do not fall within the definition of general contractor.~~

~~(5) "Verification" means the receipt and duplication by a political subdivision of a contractor registration card that is current on its face.~~"

**Section 3.** Section 39-9-201, MCA, is amended to read:

"**39-9-201. Registration required — ~~prohibited acts — criminal penalty~~ *application*.** (1) ~~On or before July 1, 1996, each~~ *Each construction* contractor shall register with the department.

(2) ~~It is a misdemeanor for a contractor to:~~

~~(a) advertise, offer to perform work, submit a bid, or perform work as a contractor:~~

~~(i) without being registered as required by this chapter; or~~

~~(ii) when the contractor's registration is suspended;~~

~~(b) use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required; or~~

~~(c) transfer a valid registration to an unregistered contractor to work under a registration issued to another contractor.~~

~~(3) The department may cause the criminal proceedings for a misdemeanor action under this chapter to be initiated for prosecution in the lowest court of concurrent jurisdiction in the county where the infraction occurs~~ *An applicant for registration as a construction contractor shall submit an application under oath on a form to be provided by the department that must include the following information:*

*(a) the applicant's social security number;*

*(b) proof of compliance with workers' compensation laws;*

*(c) the I.R.S. employer identification number, if any; and*

*(d) the name and address of:*

*(i) each partner if the applicant is a firm or partnership;*

*(ii) the owner if the applicant is an individual proprietorship;*

*(iii) the corporate officers and registered agent if the applicant is a corporation; or*

*(iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company.*"

**Section 4.** Section 39-9-204, MCA, is amended to read:

"**39-9-204. Certificate of registration — issuance — duration — ~~renewal — suspension~~.** (1) The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) ~~If the department approves an application, it shall issue a certificate of registration to the applicant.~~ The department shall place the expiration date on the certificate. ~~Except as provided in subsection (3), the~~ *The* certificate is valid ~~until the earliest date of:~~

~~(a) 1 year~~ *for 2 years*;

~~(b) the date the bond expires; or~~

~~(c) the date the workers' compensation or unemployment insurance expires or any applicable exemption terminates.~~

~~(3) The certificate issued under this section to an independent contractor is invalid on the date the contractor hires employees unless the contractor provides proof to the department of workers' compensation coverage for those employees.~~

~~(4) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full 1 year.~~

~~(5) If a contractor's surety bond or other security has an unsatisfied judgment against it or it is canceled, the contractor's registration is automatically suspended on the effective date of the impairment or cancellation. The department shall give notice of the suspension to the contractor.~~"

**Section 5.** Section 39-9-206, MCA, is amended to read:

"**39-9-206. Fees — education program.** (1) The department shall charge fees for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) changes of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed ~~$80~~:

*(a) $70 for the initial registration certificate; or*

*(b) $70 for the renewal or reinstatement of a registration certificate.*

HeinOnline -- 1997 vol. III 3263 1997

(4) The fees collected under this section must be deposited in the state special revenue account to the credit of the department for the administration and enforcement of this chapter.

(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry about the registration program and to educate the public regarding the hiring of building *construction* contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption may not exceed the fee charged for a certificate of registration."

**Section 6.** Section 39-9-207, MCA, is amended to read:

"**39-9-207. ~~Registration prerequisite to suit or lien claim~~ *Contractor registration* — limiting liability.** ~~(1) A person engaged in the business or acting in the capacity of a contractor may not bring or maintain an action in any court of this state for the collection of compensation for the performance of any work or for breach of contract for which registration is required under this chapter without alleging and proving that the contractor was a registered contractor and held a current and valid certificate of registration at the time the contractor entered the contract for the performance of work.~~

~~(2) For the purposes of this section, the court may not find a contractor in compliance with the registration requirements of this chapter unless:~~

~~(a) the department has on file the information required by 39-9-202; and~~

~~(b) the contractor has a current bond or other security as required by 39-9-203.~~

~~(3) In determining whether a contractor is in compliance with the registration requirements of this chapter, the court shall consider the length of time during which the contractor did not hold a valid certificate of registration.~~

~~(4) A contractor may not bring or maintain a lien claim under Title 71, chapter 3, part 5, unless the contractor is registered at the time of entering into a contract.~~

~~(5)~~ A *person* ~~contractor engaging the services of another~~ *who, pursuant to an oral or written contract, engages a construction* contractor *who is registered under this chapter on the date of the contract* is not liable as an employer *for workers' compensation coverage under 39-71-405* ~~for workers' compensation and~~, *for* unemployment insurance coverage, *or for wages and fringe benefits* for ~~the other contractor or for any employee of the other contractor~~:

*(1) the registered construction contractor;*

*(2) the employees of the registered construction contractor; or*

*(3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill a part of or all of the obligations of the oral or written contract of the registered construction contractor listed in subsection (1)* ~~if the contractor verifies with the department that the other contractor with~~

~~whom the contractor is contracting for services is registered as provided under this chapter~~."

**Section 7.** Section 39-9-211, MCA, is amended to read:

**"39-9-211. Exemptions.** This chapter does not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission *or to a rural cooperative utility operating under Title 35, chapter 18,* in construction, maintenance, or development work incidental to its own business;

(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit ~~when performed by an owner or lessee~~;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the *exclusive* legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the *construction* contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than ~~$500~~ *$2,500 a job*. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a largor or major operation, whether undertaken by the same or *a* different *construction* contractor, or in which a division of the operation is made into contracts of amounts of less than ~~$500~~ *$2,500 a job* for the purpose of evasion of this chapter or otherwise. ~~The exemption prescribed in this subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor or is qualified to engage in the business of a contractor.~~

(9) ~~except when work is performed by a registered contractor,~~ to a ~~construction or operation incidental to the construction or repair:~~ *farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;*

~~(a)~~*(10)* ~~of irrigation and drainage ditches of~~ *to* an irrigation district or reclamation district;

~~(b) of a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation; or~~

~~(c)~~*(11) to an operation* related to clearing or other work upon land in rural districts for fire prevention purposes;

~~(10)~~*(12)* to an owner who contracts for ~~a project with~~ *work to be performed by* a registered *construction* contractor, *but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property*;

~~(11)~~*(13)* to ~~a person~~ *an owner* working on the ~~person's~~ *owner's* property, whether occupied by the ~~person~~ *owner* or not, ~~and a person working on the person's residence, whether owned by the person or not,~~ but this exemption does not apply to ~~a person~~ *an owner who is* otherwise covered by this chapter who constructs an improvement on the ~~person's~~ *owner's* property with the intention and for the purpose of *promptly* selling the improved property, *unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months*;

~~(12)~~*(14)* to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon tbeir own properties;

~~(10)~~*(15)* to ~~a licensed~~ *an* architect, ~~or~~ civil or professional engineer, *or professional land surveyor, licensed in Montana and* acting solely in a professional capacity;

~~(14)~~*(16)* to an electrician or plumber, licensed in Montana, operating within the scope of the license;

~~(15)~~*(17)* to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license; ~~or~~

~~(10)~~*(18)* to a person who engages in the activities regulated as an employee of a registered *construction* contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

*(19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression or fire protection equipment;*

*(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well contractor;*

*(21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely within the exterior boundaries of an Indian reservation;*

*(22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;*

*(23) to a person working on the person's own residence, if the residence is owned by a person other than the resident; or*

HeinOnline -- 1997 vol. III 3266 1997

*(24) to an independent contractor who has no employees. However, an independent contractor may voluntarily elect to register under this chapter.*"

**Section 8.** Section 39-9-301, MCA, is amended to read:

"**39-9-301. Business practices — ~~advertising~~ — penalty.** (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a *construction* contractor under any other name unless that name also is registered under this chapter.

~~(2) Except for telephone books, all advertising, contracts, correspondence, cards, signs, posters, papers, and documents that show a contractor's name or address must show the contractor's name and address as registered under this chapter.~~

~~(3) (a) The alphabetized listing of contractors appearing in the advertising section of directories, excluding telephone books, and all advertising must show the contractor's current registration number. However, signs on motor vehicles and on-premises signs do not constitute advertising under this section.~~

~~(b) All materials used to directly solicit business from retail customers who are not businesses must show a contractor's current registration number. A contractor may not use a false or expired registration number in purchasing or offering to purchase an advertisement. Advertising by radio or television is not subject to this subsection.~~

~~(4) A contractor may not advertise that the contractor is bonded because of the bond required to be filed provided in 39-9-203.~~

~~(5)~~*(2)* A *construction* contractor may not falsify a registration number and use it in connection with a solicitation or identification as a *construction* contractor. An individual *construction* contractor, partner, associate, agent, salesperson, solicitor, officer, or employee of a *construction* contractor shall use a true name and address at all times while engaged in the business or capacity of a *construction* contractor or in activities related to a *construction* contractor.

~~(6)~~*(3)* (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than $5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) Penalties under this section do not apply to a violation that is determined to he an inadvertent error."

**Section 9.** Section 39-9-303, MCA, is amended to read:

"**39-9-303. Department to compile and update list of registered *construction* contractors — availability — fee.** (1) The department shall compile a list of all *construction* contractors registered under this chapter and update the list at least bimonthly. The list is public information and must be available to the puhlic upon request for a reasonable fee.

HeinOnline -- 1997 vol. III 3267 1997

(2) The department shall inform a person, firm, or corporation whether a *construction* contractor is registered. The department shall provide the information without charge, except for a reasonable fee for any copies made."

**Section 10.** Section 39-9-401, MCA, is amended to read:

**"39-9-401. Violation — infraction — *penalty* — *disposition*.** ~~(1)~~*(1)* It is a violation of this chapter and an infraction for any *construction* contractor to:

~~(a)~~*(a)* ~~advertise, offer to perform work, submit a bid, or~~ perform work as a *construction* contractor without being registered as required by this chapter;

~~(b)~~*(b)* ~~advertise, offer to perform work, submit a bid, or~~ perform work as a *construction* contractor when the *construction* contractor's registration is suspended; or

~~(c)~~*(c)* transfer a valid registration to an unregistered *construction* contractor or allow an unregistered *construction* contractor to work under a registration issued to another *construction* contractor.

~~(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction.~~

*(2)(a) A determination by the department of a violation of this section subjects the person who commits the violation to a penalty of up to $500, as determined by the department. A person who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedure Act. The hearing may be held by telephone or video conference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403 and 39-51-2404.*

*(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.*

*(c) A penalty collected under this section must be deposited in the uninsured employers' fund established in 39-71-502."*

**Section 11.** Section 39-71-120, MCA, is amended to read:

**"39-71-120. Independent contractor defined.** (1) An "independent contractor" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact; *and*

(b) is engaged in an independently established trade, occupation, profession, or business~~; and~~

~~(c) has received an exemption granted under 39-71-401(3)~~.

HeinOnline -- 1997 vol. III 3268 1997

(2) An individual performing services for remuneration is considered to be an employee under this chapter ~~unless the requirements of subsection (1) are met~~ *unless the requirements of subsection (1) are met.*"

**Section 12.** Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller as defined in 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person

HeinOnline -- 1997 vol. III 3269 1997

who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey performing under a license issued by the board of horseracing from the time the jockey reports to the scale room prior to a race through the time the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engagod primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of

a corporate officer who owns 20% or more of the number of shares of stock in the corporation or who owns 20% or more of the limited liability company.

(3) (a) A sole proprietor, a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Componsation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is ~~no~~ *a $25* fee for the initial application. Any subsequent application *renewal* must be accompanied hy a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) ~~The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption.~~ *The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the $25 renewal application fee must be reeeived by the department at least 30 days prior to the anniversary date of the previously approved exemption.*

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

HeinOnline -- 1997 vol. III 3271 1997

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, hy delivering the notice to the hoard of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering tbe notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(h) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees ahout the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided hy the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

**Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from tbe invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 14. Repealer.** Sections 39-3-701, 39-3-702, 39-3-703, 39-3-705, 39-3-706, 39-9-202, 39-9-203, 39-9-302, 39-9-402, 39-9-403, 39-9-404, 39-9-405, 39-9-406, 39-9-407, 39-9-408, 39-9-409, and 39-9-410, MCA, are repealed.

**Section 15. Appropriation.** There is appropriated from the state special revenue account to tbe department of labor and industry up to $315,000 for the biennium ending June 30, 1999, for the purpose of administering the construction contractor registration program.

**Section 16. Effective datc.** [This act] is effective July 1, 1997.

Approved May 7, 1997

HeinOnline -- 1997 vol. III 3272 1997

# CHAPTER NO. 549

[HB 578]

AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT IN 1999; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE DEPARTMENT OF COMMERCE; REVISING THE JOB INVESTMENT LOAN LAWS; REVISING THE CONDITIONS FOR MEMBERSHIP ON THE BOARD; TRANSFERRING A PORTION OF THE INTEREST EARNINGS TO THE SUPREME COURT TO FUND JUDGES' RETIREMENT; AUTHORIZING A GRANT OF INTEREST EARNINGS TO THE UNIVERSITY SYSTEM; AMENDING SECTIONS 2-15-1818, 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Seetion 1.** Section 2-15-1818, MCA, is amended to read:

**"2-15-1818. Montana board of science and technology development — allocation — composition — quasi-judicial powers.** (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and experience to economic development in Montana.

(4) The membership of the board must include:

(a) at least three members with knowledgo of early stago financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124.

*(6) A member of the board appointed after [the effective date of this section] may not be an officer or an employee of an entity that has received funding from the board."*

**Section 2.** Section 2-18-103, MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** (1) Parts 1 and 2 do not apply to the following positions in state government:

(a) elected officials;

(b) county assessors and their chief deputy;

(c) employees of the office of consumer counsel;

(d) judgos and employees of the judicial branch;

(e) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(f) officers or members of the militia;

(g) agency heads appointed by the governor;

(h) academic and professional administrative personnel with individual contracts under the authority of the board of regonts of higher education;

(i) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(j) teachers under the authority of the department of corrections or the department of public health and human services;

(k) investment officer, assistant investment officer, executive director, and ~~three~~ *five* professional staff positions of the board of investments;

(l) four professional staff positions under the board of oil and gas conservation;

(m) assistant director for security of the Montana state lottery;

~~(n) executive director and senior investment officer of the Montana board of science and technology development;~~

~~(o)~~*(n)* executive director and employees of the state compensation insurance fund;

~~(p)~~*(o)* state racing stewards employed by the executive secretary of the Montana board of horseracing;

~~(q)~~*(p)* executive director of the Montana wheat and barley committee;

~~(r)~~*(q)* commissioner of banking and financial institutions; and

~~(s)~~*(r)* training coordinator for county attorneys.

(2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative branch, other than the office of consumer counsel:

HeinOnline -- 1997 vol. III 3274 1997

(a) as used in parts 1 through 3 of this chapter, references to the "department of administration" or "department" apply to the legislative council established by 5-11-101, which may delegate administrative duties to the legislative services division established by 5-11-111;

(b) as used in 2-18-102, the term "governor" applies to the legislature; and

(c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined in 17-7-102."

**Section 3.** Section 17-6-201, MCA, is amended to read:

**"17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

HeinOnline -- 1997 vol. III 3275 1997

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

~~(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.~~"

**Section 4.** Section 17-6-302, MCA, is amended to read:

"**17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

(3) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

*(4) "Department" means the department of commerce provided for in 2-15-1801.*

~~(4)~~*(5)* "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.

~~(5)~~*(6)* "Financial institution" includes but is not limited to a state- or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.

~~(6)~~*(7)* "Loan participation" means loans or portions ~~thereof~~ *of loans* bought from a financial institution and does not include the purchase of debentures issued by a capital company.

~~(7)~~*(8)* "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests ~~are~~ *is* owned and controlled by residents of Montana.

~~(8)~~*(9)* "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax ~~revenues~~ *revenue* in the future to the people of Montana, either directly or indirectly.

~~(8)~~*(10)* "Montana economy" means any business activity in the state of Montana, including those ~~which~~ *that* continue existing jobs or create new jobs in Montana.

~~(10)~~*(11)* "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund."

**Section 5.** Section 17-6-305, MCA, is amended to read:

**"17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of the permanent coal tax trust fund *contained in portfolios formerly* administered by the Montana board of science and technology development *and administered by the department* pursuant to ~~17-6-308(3)~~ *part 5 of this chapter*

~~may~~ *is* ~~not be~~ included in the 25% of the trust fund allocated to the board for in-state investment under this section.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by 17-7-111."

**Section 6.** Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must he repaid from revenue realized from the exercise of the hoard's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The ~~board~~ *department* shall ~~allow~~ *manage the seed capital and research and development loan portfolios created by* the *former* Montana board of science and technology development~~, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. This authority does not extend beyond June 30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects~~. *The department shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature. The department is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios.* Until the ~~Montana board of science and technology development~~ *department* makes a loan pursuant to the provisions of ~~Title 90,~~ *part 5 of this* chapter ~~3~~, the *$915,000 in* funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As ~~seed capital and mezzanine financing~~ loans made pursuant to *part 5 of* this ~~subsection~~ *chapter* are repaid, the ~~Montana board of science and technology development~~ *department* may reinvest the principal in new loans *pursuant to part 5 of this chapter.*

HeinOnline -- 1997 vol. III 3278 1997

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

*(5) Beginning July 1, 1999, all repayments proceeds in excess of $4.395 million must be deposited in the coal severance tax permanent fund. In the fiscal year ending June 30, 1998, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system.*"

**Section 7.** Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The hoard shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. *[The board may grant up to $2 million of interest and income from investments to research and development projects at Montana public universities. The research and development projects may include grant matching fund purposes.]* This authority does not extend beyond June 30, ~~1997~~ *1999*, for seed capital project loans and beyond June 30, ~~1997~~ *1999*, for research and development projects. *Except for $915,000, all uncommitted seed capital funds must revert to the coal severance tax permanent fund. The department may use up to $75,000 each year of the seed capital funds for administrative purposes. The board of science and technology development, with the concurrence of the director of the department, may extend an additional loan to an existing seed capital portfolio company by up to $700,000. In the fiscal year ending June 30, 1998, the department shall transfer $250,000 of interest and earnings to the Montana supreme court to be used to fund the judges' retirement system.* Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing loans made pursuant to this subsection are repaid, ~~the Montana board of science and technology development may reinvest the principal in new loans~~ *the proceeds of the seed capital portion of the Montana board of science and technology development loans must be deposited in the coal severance tax permanent fund until all loans have been repaid plus the amount of 7% simple interest for the years that the loans have been outstanding. The board shall*

HeinOnline -- 1997 vol. III 3279 1997

*calculate the amount of the interest charge. The board may use up to $25,000 of the repayments for administrative costs in the fiscal year ending June 30, 1997.*

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

**Section 8.** Section 17-6-503, MCA, is amended to read:

"**17-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

~~(1) "Board" means the Montana board of science and technology development provided for in 2-15-1818.~~

~~(2)~~*(1)* "Department" means the department of commerce provided for in 2-15-1801.

*(2) "Job investment administrative account" means the account established in 17-6-509.*

~~(3)~~*(3)* "Loan review committee" means the committee that is established by the department to consider economic development loan applications for funding by the federal community development block grant program and that is responsible for reviewing and recommending to the ~~board~~ *department* the approval or denial of job investment loans subject to this part and rules implementing this part.

~~(4)~~*(4)* "Qualified business" means a business enterprise that either is or will be located in the state and that produces goods or provides services that will, as a result of receiving a job investment loan, create jobs for Montana workers."

**Section 9.** Section 17-6-509, MCA, is amended to read:

"**17-6-509. Job investment administrative account.** There is a job investment administrative account in the state special revenue fund. ~~The department shall deposit up to 20% of interest payments on job investment loans into the account. Money in the account must be used to pay the costs of administering this part, including personnel costs, operating costs, and administrative costs.~~ *Interest payments must be deposited into the coal severance tax income fund established in 17-5-703.*"

**Section 10.** Section 17-6-510, MCA, is amended to read:

"**17-6-510. Loan review committee — conflict of interest — servicing of loans.** (1) The department shall establish a loan review committee to administer this part. The committee shall accept and review loan applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~ *department* the approval or disapproval of loans. A loan may not exceed $500,000.

(2) If a member of the committee has a financial interest in a business that submits a job investment loan application, then the application must be denied.

(3) The department ~~shall~~ *may* contract for the servicing of loans.

HeinOnline -- 1997 vol. III 3280 1997

*(4) The department is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into under this part."*

**Section 11.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~90-3-301;~~ 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

**Section 12.** Section 90-8-201, MCA, is amended to read:

**"90-8-201. Certification of Montana capital companies — certification of a Montana small business investment capital company.** (1) The department shall certify one Montana small business investment capital company, and from time to time, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as the Montana small business investment capital company shall make written

HeinOnline -- 1997 vol. III 3281 1997

application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that ~~such~~ *the* investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as the qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as the Montana small business investment capital company, the applicant shall commit to:

(a) ~~utilize~~ *using* the tax credits to accumulate private capital with the intention of being designated a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) ~~target~~ *targeting* its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, ~~the Montana board of science and technology development (second stage),~~ small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities, with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) ~~consider~~ *considering* investment opportunities originating in any Montana county; and

(d) ~~adopt~~ *adopting* investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less."

**Section 13. Repealer.** Sections 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, and 90-3-901, MCA, are repealed.

HeinOnline -- 1997 vol. III 3282 1997

**Section 14. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 15. Coordination instruction.** (1) If House Bill No. 2 is vetoed, then the bracketed language in [section 7] is void.

(2) If the bracketed language in [section 7] is effective, then the $1 million for each fiscal year appropriated from the state special revenue account for university system research contained in House Bill No. 2 is void.

**Section 16. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1999.

(2) [Sections 1, 6(5), and 7 and this section] are effective on passage and approval, and [section 7] applies retroactively, within the meaning of 1-2-109, to investment payments received on or after April 1, 1997.

Approved May 7, 1997

## CHAPTER NO. 550

[SB 48]

AN ACT GENERALLY REVISING THE YOUTH COURT ACT; REPLACING THE CATEGORY OF "YOUTH IN NEED OF SUPERVISION" WITH "YOUTH IN NEED OF INTERVENTION"; INCLUDING SCHOOLS UNDER CONFIDENTIALITY DISCLOSURE EXCEPTIONS FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RECORDS; CREATING YOUTH ASSESSMENT CENTERS, YOUTH ASSESSMENTS, AND ASSESSMENT OFFICERS TO EVALUATE THE STRENGTHS AND NEEDS OF A YOUTH BROUGHT TO THE ATTENTION OF YOUTH COURT; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO LICENSE YOUTH ASSESSMENT CENTERS; DEFINING "HABITUAL TRUANCY", "RUNNING AWAY FROM HOME", "VICTIM", "YOUTH IN NEED OF INTERVENTION", AND OTHER TERMS; CHANGING THE TERM "AFTERCARE" TO "PAROLE"; ALLOWING SHORT-TERM DETENTION FOR UP TO 10 DAYS; ALLOWING THE APPOINTMENT OF JUDGES PRO TEMPORE OR SPECIAL MASTERS FOR YOUTH COURT PRELIMINARY MATTERS; ALLOWING A COUNTY ATTORNEY TO MAKE A MOTION FOR LEAVE TO FILE AN INFORMATION DIRECTLY IN DISTRICT COURT FOR CERTAIN YOUTH OFFENSES; REQUIRING A COUNTY ATTORNEY TO MAKE A MOTION FOR A LEAVE TO FILE AN INFORMATION DIRECTLY INTO DISTRICT COURT FOR A YOUTH 17 YEARS OF AGE WHO COMMITS AN OFFENSE LISTED UNDER 41-5-206; ADDING ACCOUNTABILITY AS AN OFFENSE THAT CAN BE FILED IN DISTRICT COURT; ADDING ASSESSMENT CENTERS FOR PLACEMENTS PRIOR TO ADJUDICATION AND FOR DISPOSITION; ALLOWING FINGERPRINTS OR PHOTOGRAPHS OF ANY YOUTH FOR WHICH A PETITION ALLEGING DELINQUENCY HAS BEEN FILED; PROVIDING CRITERIA FOR AN ASSESSMENT; PROVIDING FOR SPECIFIC INFORMATION GATHERING BY JUVENILE PROBATION OFFICERS; PROVIDING THE TYPES OF PLACEMENTS ALLOWED FOR ASSESSMENT; GENERALLY REORGANIZING

HeinOnline -- 1997 vol. III 3283 1997

DISPOSITION STATUTES; ALLOWING COMMITMENT TO THE DEPARTMENT OF CORRECTIONS AS A DISPOSITION FOR DELINQUENT YOUTH; GENERALLY REORGANIZING PARENTAL CONTRIBUTIONS STATUTES; ALLOWING MEDIATION AS A DISPOSITION; LIMITING THE USE OF A CONSENT ADJUSTMENT AND A CONSENT DECREE TO A SINGLE FELONY EACH AND FOR THREE OR MORE MISDEMEANORS; PROVIDING GRADUATED SANCTIONS; PROVIDING ADDITIONAL SANCTIONS; ADDING PROVISIONS THAT YOUTH MAY BE HELD RESPONSIBLE FOR CONTRIBUTING TO THE COSTS OF ADJUDICATION, DISPOSITION, SUPERVISION, AND MEDICAL COSTS OR VICTIM'S COUNSELING AND DAMAGES; ALLOWING DETENTION FOR UP TO 3 DAYS FOR A CONSENT ADJUSTMENT; PROVIDING THAT PERSONS BE ADVISED OF CERTAIN RIGHTS AND OBLIGATIONS UNDER THE ACT; CLARIFYING JURY TRIAL PROVISIONS; ALLOWING DETENTION FOR A CONSENT DECREE FOR UP TO 10 DAYS; REQUIRING THAT A YOUTH MUST ADMIT GUILT FOR CHARGES OF AN OFFENSE IN ORDER FOR A CASE TO BE DISPOSED OF BY A CONSENT DECREE; ADDING A PROVISION THAT SCHOOL REPRESENTATIVES ON YOUTH PLACEMENT COMMITTEES AND AUXILIARY TEAMS BE PERSONS WITH PERSONAL KNOWLEDGE OF THE CHILD; ALLOWING SHELTER CARE FACILITIES TO BE ALTERNATIVE EDUCATION SITES; CLARIFYING THE ARILITY OF SCHOOL DISTRICTS TO SHARE INFORMATION ACCORDING TO FEDERAL LAW; AMENDING THE MAXIMUM AGE OF COMMITMENT TO THE DEPARTMENT OF CORRECTIONS TO YOUTH UNDER 18 YEARS OF AGE; ALLOWING PUBLICATION OF INFORMATION ON CERTAIN YOUTH FOR PURPOSES OF RETURNING A YOUTH TO A FACILITY AND FOR PUBLIC SAFETY; ALLOWING DETENTION FOR YOUTH WHO ESCAPE FROM DEPARTMENT OF CORRECTIONS FACILITIES OR PROGRAMS; AMENDING THE PAROLE VIOLATION HEARINGS AND APPEAL PROCESS; AUTHORIZING THE DEPARTMENT OF CORRECTIONS TO OPERATE A PILOT PROGRAM AND TO DEVELOP RECOMMENDATIONS FOR ALLOCATION OF APPROPRIATIONS AMONG JUDICIAL DISTRICTS; AMENDING SECTIONS 7-6-501, 20-5-321, 20-7-422, 23-5-158, 41-3-205, 41-3-1101, 41-3-1102, 41-3-1103, 41-3-1104, 41-3-1114, 41-3-1122, 41-3-1132, 41-5-103, 41-5-201, 41-5-203, 41-5-204, 41-5-205, 41-5-206, 41-5-208, 41-5-301, 41-5-303, 41-5-304, 41-5-305, 41-5-306, 41-5-401, 41-5-403, 41-5-501, 41-5-511, 41-5-515, 41-5-521, 41-5-522, 41-5-523, 41-5-524, 41-5-525, 41-5-530, 41-5-533, 41-5-603, 41-5-605, 41-5-703, 41-5-802, 41-5-1004, 41-5-1008, 41-5-1104, 41-5-1105, 45-5-624, 45-5-637, 46-18-256, 46-24-207, 52-2-211, 52-5-101, 52-5-102, 52-5-103, 52-5-107, 52-5-111, 52-5-113, 52-5-126, 52-5-127, 52-5-128, 52-5-129, 53-1-201, 53-1-203, AND 53-21-506, MCA; REPEALING SECTION 41-5-310, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1.** Section 7-6-501, MCA, is amended to read:

**"7-6-501. Definitions.** As used in 7-6-502 and this section, unless the context requires otherwise, the following definitions apply:

(1) "Detention" means the holding or temporary placement of a youth in a facility other than the youth's own home for the purpose of ensuring the

HeinOnline -- 1997 vol. III 3284 1997

continued custody of the youth at any time after the youth is taken into custody and before final disposition of ~~his~~ *the youth's* case.

(2) "Juvenile detention program" means services to provide for the lawful detention or shelter care of youth. The term includes:

(a) youth evaluations ordered by the court under 41-5-523; and

(b) programs for the transportation of youth to appropriate detention facilities or shelter care facilities.

(3) "Local government" has the same meaning as provided in 7-12-1103.

(4) "Shelter care" has the same meaning as provided in 41-5-103.

(5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent youth or youth in need of ~~supervision~~ *intervention* as those terms are defined in 41-5-103."

**Section 2.** Section 20-5-321, MCA, is amended to read:

**"20-5-321. Attendance with mandatory approval — tuition and transportation.** (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and:

(i) the resident district does not provide transportation; or

(ii) the district of residence provides transportation and is not within the same county as the child's school district of choice;

(b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the school nearest the child's residence;

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school;

(d) the child has been adjudicated by a court of competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or a youth in need of ~~supervision~~ *intervention* or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the department of public health and human services and, as a result of the placement, is required to attend school outside of the child's district of residence; or

(e) the child is required to attend school outside of the district of residence as the result of a placement by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under 20-5-324(5).

(4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the school to he attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child."

**Section 3.** Section 20-7-422, MCA, is amended to read:

**"20-7-422. Out-of-state placement of children with disabilities — payment of costs.** (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with disabilities who is in need of special education and related services is adjudicated by a court of competent jurisdiction to be an abused or neglected child, as defined in 41-3-102, or a youth in need of ~~supervision~~ *intervention* or delinquent youth, as defined in 41-5-103, and is placed hy a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation."

**Section 4.** Section 23-5-158, MCA, is amended to read:

"**23-5-158. Minors not to participate — penalty — exception.** (1) Except as provided in subsection (3), a person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity. A person who violates this subsection is guilty of a misdemeanor and must be punished in accordance with 23-5-161.

(2) Except as provided in subsection (3), a person under 18 years of age may not purposely or knowingly participate in a gambling activity. A person who violates this subsection is subject to a civil penalty not to exceed $50 if the proceedings for violating this subsection are held in justice's, municipal, or city court. If the proceedings are held in youth court, the offender must be treated as an alleged youth in need of ~~supervision~~ *intervention*, as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(3) A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and prizes paid, are used to support charitable activities, scholarships or educational grants, or community service projects."

**Section 5.** Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of public health and human services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

HeinOnline -- 1997 vol. III 3287 1997

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or will be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reperter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a porson or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection *(3)*(o) must he made in writing. Disclosure under this subsection *(3)*(o) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limitod to confirmation of factual information regarding how the case was handled and if disclosure does not violate

the privacy rights of the child or the child's parent or guardian as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203; ~~or~~

(y) a member of a youth placement committee formed under the provisions of 41-5-525; *or*

*(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.*

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

**Section 6.** Section 41-3-1101, MCA, is amended to read:

**"41-3-1101. Establishment of substitute care for youth.** The legislature, in recognition of the wide and varied needs of youth in need of care,

HeinOnline -- 1997 vol. III 3289 1997

delinquent youth, and youth in need of ~~supervision~~ *intervention* of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide those facilities and services through local nonprofit corporations, counties, and the department of public health and human services."

**Section 7.** Section 41-3-1102, MCA, is amended to read:

**"41-3-1102. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a licensed youth foster home.

(4) "Operator of a youth care facility" means a person owning or operating a youth care facility into which the operator takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance the operator receives money or other consideration of value and which child is ~~neither~~ *not* the operator's son, daughter, ~~nor~~ *or* ward, except that this part does not apply when any person accepts the care and custody of a child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of the child.

(5) "Person" means any individual, partnership, voluntary association, or corporation.

(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(8) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

*(9) "Youth assessment center" has the meaning provided in 41-5-103.*

~~(9)~~*(10)* "Youth care facility" means a facility *that is* licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, ~~and~~ child-care agencies, *and youth assessment centers*.

~~(10)~~*(11)* "Youth foster home" means a youth care facility in which suhstitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

~~(11)~~*(12)* "Youth group home" means a youth care facility in which suhstitute care is provided to 7 to 12 children or youth."

**Section 8.** Section 41-3-1103, MCA, is amended to read:

**"41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, ~~and~~ child-care agencies, *and youth assessment centers* for youth in need of care, as defined in ~~41-5-103~~ *41-3-102*;

(b) exercise licensing authority over all youth foster homes, youth group homes, ~~and~~ child-care agencies, *and youth assessment centers*;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of ~~supervision~~ *intervention*, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to he placed in the facilities.

HeinOnline -- 1997 vol. III 3291 1997

Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection."

**Section 9.** Section 41-3-1104, MCA, is amended to read:

"**41-3-1104. ~~Aftercare~~ *Youth* facilities.** The department of corrections may establish, maintain, and administer youth correctional facilities, evaluation facilities, mental health facilities and services, ~~aftercare~~ *parole* programs, and ~~aftercare~~ *parole* facilities for the care, custody, and treatment of youth who have been committed to the department of corrections."

**Section 10.** Section 41-3-1114, MCA, is amended to read:

"**41-3-1114. Continuing jurisdiction of youth court.** The youth court committing a delinquent youth or a youth in need of ~~supervision~~ *intervention* to the department of corrections retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the department after notice to the youth court of original jurisdiction."

**Section 11.** Section 41-3-1122, MCA, is amended to read:

"**41-3-1122. Payment for support of youth in need of care, youth in need of ~~supervision~~ *intervention*, or delinquent youth — reimbursement by county.** (1) Whenever a youth who is a youth in need of care, a youth in need of ~~supervision~~ *intervention*, or a delinquent youth is placed by the department of public health and human services or the department of corrections in a youth care facility, the department making the placement shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department of public health and human services for *the youth's* board, clothing, personal needs, treatment, and room ~~of the youth~~.

(2) On or before the 20th of each month, the department of public health and human services or the department of corrections shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments made during the month. The county shall make reimbursement to the department within 20 days after the claim is presented.

(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

(4) If a county's level of expenditure for foster care in fiscal year 1987 ~~is~~ *was* $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

(5) A county that was state-assumed prior to 1987~~,~~ but *that* at a later date reassumes responsibility pursuant to 53-2-811~~,~~ is responsible for reimbursement of foster care expenditures up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

HeinOnline -- 1997 vol. III 3292 1997

(6) The department shall conduct or arrange for the review required under 41-3-1115, or when applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department."

**Section 12.** Section 41-3-1132, MCA, is amended to read:

**"41-3-1132. Governmental contracts with nonprofit organizations.** (1) The department of public health and human services and the department of corrections may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of ~~supervision~~ *intervention*, and delinquent youth in youth care facilities and are authorized to expend money that is appropriated or available for those purposes. The contracts must be based on the following considerations:

(a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;

(b) reasonable costs of service;

(c) appropriation level; and

(d) availability of funds.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized~~, at their own expense,~~ to provide funds, materials, facilities, and services for community-based services *at their own expense*."

**Section 13.** Section 41-5-103, MCA, is amended to read:

**"41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

*(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.*

~~(3)~~*(4)* "Commit" means to transfer to legal custody.

~~(4)~~*(5)* "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

~~(5)~~*(6)* "Court", when used without further qualification, means the youth court of the district court.

~~(6)~~*(7)* "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

~~(7)~~*(8)* "Delinquent youth" means a youth:

~~(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense~~ *who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:*

~~; or~~

~~(b)~~*(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or*

*(b)* who~~, having~~ *has* been placed on probation as a delinquent youth or a youth in need of ~~supervision, violates~~ *intervention and who has violated* any condition of probation.

~~(8)~~*(9)* "Department" means the department of corrections provided for in 2-15-2301.

~~(8)~~*(10)* "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

*(a)* the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case; *or*

*(b) contempt of court or violation of a valid court order.*

~~(10)~~*(11)* "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

*(12) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.*

~~(11)~~*(13)* "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523 *and [sections 34 through 41].*

~~(12)~~*(14)* "Foster home" means a private residence licensed by the department *of public health and human services* for placement of a youth.

~~(10)~~*(15)* ~~"Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.~~ *"Guardian" means an adult:*

*(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and*

*(b) whose status is created and defined by law.*

*(16) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.*

~~(14)~~*(17)* "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours

while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

~~(15)~~*(18)* "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest *but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.*

~~(16)~~*(19)* "Judge", when used without further qualification, means the judge of the youth court.

~~(17)~~*(20)* (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

~~(16)~~*(21)* "Necessary parties" includes the youth~~,~~ *and* the youth's parents, guardian, custodian, or spouse.

~~(19)~~*(22)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

~~(20)~~*(23)* "Probable cause hearing" means the hearing provided for in 41-5-303.

~~(21)~~*(24)* "Regional detention facility" means a youth detention facility established and maintained hy two or more counties, as authorized in 41-5-811.

~~(22)~~*(25)* "Restitution" means payments in cash to the victim or with services to tbe victim or the general community when these payments are made pursuant to ~~an informal~~ *a consent* adjustment, consent decree, or other youth court order.

*(26) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.*

~~(23)~~*(27)* "Secure detention facility" means ~~any~~ *a* public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses *or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order*; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

~~(24)~~*(28)* "Serious juvenile offender" means a youth who has committed an offense that would he considered a felony offense if committed hy an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(25)~~*(29)* "Shelter care" means the temporary suhstitute care of youth in physically unrestricting facilities.

~~(25)~~*(30)* "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1)*(a)*.

~~(27)~~*(31)* "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed ~~96 hours~~ *10 days*, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, *youth assessment center,* or shelter care facility.

~~(28)~~*(32)* "State youth correctional facility" means a residential facility used for the placement and rehahilitation of delinquent youth, such as the Pine Hills school in Miles City ~~and the Mountain View school in Helena~~.

~~(29)~~*(33)* "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, sbelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or ~~guardian~~ *guardians*.

*(34) "Victim" means:*

*(a) a person who suffers property, physical, or emotional injury as a result of an offensc committed by a youth that would be a felony offense if committed by an adult;*

*(b) an adult relative of the victim as defined in subsection (34)(a) if the victim is a minor; and*

*(c) an adult relative of a homicide victim.*

~~(30)~~*(35)* "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

*(36) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-301.*

*(37) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.*

*(38) "Youth care facility" has the meaning provided in 41-3-1102.*

~~(31)~~*(39)* "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a

youth in need of ~~supervision~~ *intervention*, or a youth in need of care and includes the youth court judge ~~and~~, probation officers, *and assessment officers*.

~~(32)~~*(40)* "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth *or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order*.

~~(33)~~*(41)* "Youth in need of care" has the meaning provided for in 41-3-102.

~~(34)~~*(42)* "Youth in need of ~~supervision~~ *intervention*" means a youth who *is adjudicated as a youth and who* commits an offense prohibited by law that~~,~~ if committed by an adult~~,~~ would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding ~~use of~~ alcoholic beverages ~~by minors~~;

(b) continues to exhibit behavior, *including running away from home or habitual truancy,* beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of ~~supervision~~ *intervention*."

**Section 14.** Section 41-5-201, MCA, is amended to read:

**"41-5-201. Youth court judge — *judges pro tempore* — *special masters*.** (1) Each judicial district in the state ~~shall~~ *must* have at least one judge of the youth court~~. His~~ *whose* duties ~~shall be~~ *are* to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district ~~shall~~ *must* be the principal consideration of the rule.

HeinOnline -- 1997 vol. III 3297 1997

*(3)(a) A youth court judge may appoint a judge pro tempore or a special master to conduct preliminary, nondispositive matters, including but not limited to hearings for probable cause or detention and taking of responses for petitions.*

*(b) A judge pro tempore or special master must be a member of the state bar of Montana."*

**Section 15.** Section 41-5-203, MCA, is amended to read:

**"41-5-203. Jurisdiction of the court.** (1) Except as provided in subsection (2) *and for cases filed in the district court under 41-5-206*, the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of ~~supervision~~ *intervention*, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or *any* ordinance of ~~any~~ *a* city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth."

**Section 16.** Section 41-5-204, MCA, is amended to read:

**"41-5-204. Venue and transfer.** (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to he a delinquent youth. ~~The~~ *Except as provided in 41-5-206, the* youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of ~~supervision~~ *intervention* or a youth in need of care. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law; or

(c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of ~~supervision~~ *intervention* or a youth in need of care, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to ~~assure~~ *ensure* a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206~~, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth~~ *and who* is to be tried in district court, the charge ~~shall~~ *must* be filed and trial held in the district court of the county where the offense occurred."

**Seetion 17.** Section 41-5-205, MCA, is amended to read:

**"41-5-205. Retention of jurisdiction — termination.** ~~Once~~ *Except for cases filed in the district court under 41-5-206, once* a court obtains jurisdiction

over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time the youth is discharged by the department; and

(3) in any event, at the time the youtb reaches ~~the age of~~ 21 years *of age*."

**Section 18.** Section 41-5-206, MCA, is amended to read:

**"41-5-206. ~~Transfer to criminal~~ *Filing in district* court prior to ~~prosecution~~ *formal proceedings in youth court.*** (1) ~~After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:~~

~~(a) (i)~~ *The county attorney may, in the county attorney's discretion, file with the district court a motion for leave to file an information in the district court if:*

*(a)* the youth charged was 12 years of age or ~~more~~ *older* at the time of the conduct alleged to be unlawful and the unlawful act would *if it had been committed by an adult* constitute:

*(i)* sexual intercourse without consent as defined in 45-5-503~~;~~;

*(ii)* deliberate bomicide as defined in 45-5-102~~;~~;

*(iii)* mitigated deliherate homicide as defined in 45-5-103~~;~~; or

*(iv)* the attempt, as defined in 45-4-103, of *or accountability, as provided in 45-2-301, for* either deliberate or mitigated deliberate bomicide ~~if the act had been committed by an adult~~; or

~~(ii)~~*(b)* the youth cbarged was 16 years of age or ~~more~~ *older* at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

~~(A)~~*(i)* negligent homicide as defined in 45-5-104;

~~(B)~~*(ii)* arson as defined in 45-6-103;

~~(C)~~*(iii)* aggravated or felony assault as defined in 45-5-202;

~~(D)~~*(iv)* robbery as defined in 45-5-401;

~~(E)~~*(v)* hurglary or aggravated burglary as defined in 45-6-204;

~~(F)~~*(vi)* aggravated kidnapping as defined in 45-5-303;

~~(G)~~*(vii)* possession of explosives as defined in 45-8-335;

~~(H)~~*(viii)* criminal sale of dangerous drugs as defined in 45-9-101;

~~(I)~~*(ix)* criminal production or manufacture of dangerous drugs as defined in 45-9-110;

HeinOnline -- 1997 vol. III 3299 1997

~~(J)~~*(x)* attempt, as defined in 45-4-103, of *or accountability, as provided in 45-2-301, for* any of the acts enumerated in subsections ~~(1)(a)(ii)(A)~~ *(1)(b)(i)* through ~~(1)(a)(ii)(I)~~ *(1)(b)(x)*;

~~(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court without a jury;~~

~~(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and~~

~~(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:~~

~~(i) the youth committed the delinquent act alleged;~~

~~(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and~~

~~(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.~~

~~(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:~~

~~(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;~~

~~(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of itself grounds for denying the transfer.~~

~~(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.~~

~~(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.~~

*(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under 41-5-206.*

*(3) The district court shall grant leave to file the information if the court finds that there is probable cause to believe that the youth has committed the alleged offense and that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court.*

HeinOnline -- 1997 vol. III 3300 1997

~~(5)~~*(4)* The ~~transfer~~ *filing of an information in district court* terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the ~~petition~~ *information*. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been ~~transferred~~ *filed in the district court* as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1105.

~~(6) Upon order of the youth court transferring the case to the district court under subsection (5), the county attorney shall file the information against the youth without unreasonable delay.~~

~~(7)~~*(5)* ~~Any~~ *An* offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1)~~,~~ upon motion of the county attorney and order of the ~~youth~~ *district* court judge.

~~(8)~~*(6)* If a youth is found guilty in district court of any of the offenses ~~transferred by the youth court~~ *enumerated in subsection (1)* and is sentenced to the state prison, the commitment must be to the department of corrections. The department shall confine the youth in whatever institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in ~~the~~ *a* state prison *facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq.*

~~(8)~~*(7)* A youth whose case is ~~transferred to~~ *filed in the* district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical~~,~~ *separation* as well as sight and sound~~,~~ separation from adults accused or convicted of criminal offenses."

**Section 19.** Section 41-5-208, MCA, is amended to read:

~~"41-5-208. Transfer to district court after prosecution — disposition in district court — limitation on jurisdiction. (1) To ensure continued compliance with the court's disposition under 41-5-523, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age, the youth court judge may transfer jurisdiction to district court and order the transfer of supervisory responsibility and the youth's case files to the department.~~

~~(2) If a youth whose case has been transferred to district court under this section violates a disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201 through 46-18-203.~~

~~(3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:~~

~~(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or~~

~~(b) be supervised by the department.~~

~~(4) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age."~~

**"41-5-208. Transfer to district court after prosecution — disposition in district court — limitation on jurisdiction.** (1) To ensure continued compliance with the court's disposition under 41-5-523 *or [section 34]*, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age, the youth court judge may transfer jurisdiction to district court and order the transfer of supervisory responsibility and the youth's case files to the department.

(2) If a youth whose case has been transferred to district court under this section violates a disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201 through 46-18-203.

(3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

(b) be supervised by the department.

(4) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age."

**Section 20.** Section 41-5-301, MCA, is amended to read:

**"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information from ~~any~~ *an* agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of ~~supervision~~ *intervention* or~~, being~~ *that the youth is* subject to a court order or consent order~~,~~ *and* has violated the terms of an order, a probation officer *or an assessment officer* shall make a preliminary inquiry into the matter.

(2) The probation officer *or assessment officer* may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency;

*(d) perform a youth assessment if:*

*(i) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses that would not be offenses if the youth were an adult in the past year;*

*(ii) the youth is alleged to be a youth in need of intervention or a delinquent youth and the youth or the youth's parent or guardian requests the youth assessment and both the youth and the parent or guardian are willing to cooperate with the assessment process; or*

*(iii) the circumstances surrounding a youth who has committed an act that would be a felony if committed by an adult indicate the need for a youth assessment and the safety of the community has been considered in determining where the youth assessment is conducted.*

*(3) A youth assessment:*

*(a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has mental health needs, or an assessment of the need for any family-based services or other services provided by the department of public health and human services or other state and local agencies. The education component of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The education component is not intended to interfere with the right to attend a nonpublic or home school that complies with 20-5-109.*

*(b) must include a summary of the family's strengths and needs as they relate to addressing the youth's behavior;*

*(c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-305 in a youth assessment center licensed by the department of public health and human services or in any other entity licensed by the department of public health and human services. The county shall provide adequate security in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county must meet licensing requirements applicable to the licensed entity in which the youth is being held.*

*(4) The assessment officer arranging the youth assessment shall work with the parent or guardian of the youth to coordinate the performance of the various parts of the assessment with any providers that may already be working with the family or providers that are chosen by the family to the extent possible to meet the goals of the Youth Court Act.*

~~(3)~~*(5)* If the probation officer *or assessment officer* determines that the facts indicate *that the youth is* a youth in need of care, the matter must he immediately referred to the department of public health and human services.

~~(4)~~*(6)* (a) The probation officer *or assessment officer* in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention, *a youth assessment center,* or shelter care, whether detention, *a youth assessment center,* or shelter care should be continued *or modified* based upon criteria set forth in 41-5-305.

HeinOnline -- 1997 vol. III 3303 1997

~~(b)~~*(b)* Once relevant information is secured, the probation officer *or assessment officer* shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

~~(5)~~*(7)* The probation officer *or assessment officer* upon determining that further action is required may:

(a) provide counseling, refer the youth and the youth's ~~parents~~ *family* to another agency providing appropriate services, or take any other action or make any ~~informal~~ *consent* adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer *or assessment officer* proceeds no further unless authorized by the county attorney; or

(c) refer the matter to the county attorney for filing a petition *in youth court* charging the youth to be a delinquent youth or a youth in need of ~~supervision~~ *intervention or for filing an information in the district court as provided in 41-5-206.*

*(8) The juvenile probation officer or assessment officer shall collect the following information regarding a youth if the youth is alleged to be a delinquent youth and if the probation officer or assessment officer determines that the matter should be referred to the county attorney for filing a petition in youth court:*

*(a) biographical data;*

*(b) a description of prior and current offenses, including criminal history;*

*(c) a listing of known or suspected associates;*

*(d) any gang or drug involvement;*

*(e) field investigation data;*

*(f) motor vehicle ownsrship and offense data, if any;*

*(g) whether the youth is a suspect in other criminal investigations;*

*(h) history of any victimization of others by the youth;*

*(i) the youth's status offense history;*

*(j) existence of active warrants;*

*(k) school, employment, and family histories;*

*(l) social and medical serviccs histories;*

*(m) prior conduct in a youth detention or correctional facility, if any.*

~~(6)~~*(9)* The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of ~~supervision~~ *intervention*. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

~~(7)~~*(10)* A petition charging a youth *who is* held in detention *or a youth assessment center* must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

~~(8)~~*(11)* If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer *or assessment officer* of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer *or assessment officer*, and make the final decision as to whether a petition is filed."

**Section 21.** Section 41-5-303, MCA, is amended to read:

**"41-5-303. Rights of youth taken into custody — questioning — hearing for probable eause — detention.** (1) When a youth is taken into custody for questioning upen a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of ~~supervision~~ *intervention*, the following requiremients must be met:

(a) The youth must be advised of ~~his~~ *the youth's* right against self-incrimination and ~~his~~ *the youth's* right to counsel.

(b) The youth may waive these rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under ~~the age of~~ 16 years *of age* and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under ~~the age of~~ 16 years *of age* and the youth and ~~his~~ *the youth's* parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If tbe parents, gnardian, or legal custodian cannot he found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) Unless a youth has been released, a hearing must he held within 24 hours after the youth is taken into custody, excluding weekends and legal holidays, to

HeinOnline -- 1997 vol. III 3305 1997

determine whether there is probable cause to believe that the youth is a delinquent youth or a youth in need of ~~supervision~~ *intervention*.

(3) The probable cause hearing required under subsection (2) may be held by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing.

(4) At the probable cause hearing, the youth must be informed of ~~his~~ *the youth's* constitutional rights and ~~his~~ *the youth's* rights under this chapter.

(5) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probahle cause hearing unless ~~he~~ *the parent, guardian, or legal custodian*:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(6) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

(7) If it is determined that there is probable cause to believe *that* the youth is a delinquent youth or is a youth in need of ~~supervision~~ *intervention*, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-305, the youth may be placed in a detention facility, *a youth assessment center,* or *a* shelter care facility as provided in 41-5-306 but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(8) If probable cause is not found or if a probable cause hearing is not held within the time specified in subsection (2), the youth must be immediately released from custody."

**Section 22.** Section 41-5-304, MCA, is amended to read:

**"41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations relating to a delinquent youth or youth in need of ~~supervision~~ *intervention* must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed ~~in which the unlawful act alleged is a felony~~.

(3) Fingerprint records and photographs may he used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation."

**Section 23.** Section 41-5-305, MCA, is amended to read:

**"41-5-305. Criteria for placement of youth in secure detention facilities, *youth assessment centers,* or shelter care facilities.** (1) A youth may not be placed in a secure detention facility unless:

(a) ~~he~~ *the youth* has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(b) ~~he~~ *the youth* is alleged to be a delinquent youth and:

(i) ~~he~~ *the youth* has escaped from a correctional facility or secure detention facility;

(ii) ~~he~~ *the youth* has violated a valid court order or ~~an aftercare~~ *a parole* agreement;

(iii) ~~his~~ *the youth's* detention is required to protect persons or property;

(iv) ~~he~~ *the youth* has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(v) there are not adequate assurances that ~~he~~ *the youth* will appear for court when required; or

(vi) ~~he~~ *the youth* meets additional criteria for secure detention estahlished hy the youth court in the judicial district that has current jurisdiction over ~~him~~ *the youth*; or

(c) ~~he~~ *the youth* has been adjudicated delinquent and is awaiting final disposition of ~~his~~ *the youth's* case.

(2) A youth may not be placed in a shelter care facility unless:

(a) the youth and ~~his~~ *the youth's* family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(h) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediato repetition of ~~his~~ *the youth's* troubling behavior;

(d) shelter care is necessary to assess the youth and ~~his~~ *the youth's* environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

HeinOnline -- 1997 vol. III 3307 1997

*(3) A youth may not be placed in a youth assessment center unless:*

*(a) the youth meets the requirements for placement in shelter care;*

*(b) the youth has not committed an act that would be a felony offense if committed by an adult;*

*(c) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's need for services;*

*(d) the youth needs to be held accountable for the youth's actions with structured programming; and*

*(e) the youth meets qualifications as outlined by the placement guidelines that are determined by the department and coordinated with the guidelines used by the youth placement committees."*

**Section 24.** Section 41-5-306, MCA, is amended to read:

**"41-5-306. Place of shelter care, *youth assessment,* or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of ~~supervision~~ *intervention* may be placed only:

~~(a) in a licensed youth foster home as defined in 41-3-1102;~~

~~(b) in a facility operated by a licensed child welfare agency;~~

~~(c) in a licensed youth group home as defined in 41-3-1102; or~~

*(a) in a licensed youth care facility as defined in 41-3-1102; or*

~~(d)~~*(b)* under home arrest, *with or without a monitoring device,* either in the youth's own home or in ~~one of the facilities described in subsections (1)(a) through (1)(c)~~ *a licensed youth care facility*, as provided in Title 46, chapter 18, part 10.

(2) A youth alleged to be a youth in need of care may be placed only ~~in the facilities listed in subsection (1)~~ *by the department of public health and human services as provided in Title 41, chapter 3,* and may not be placed in a *youth assessment center, youth detention facility, or in a* jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only:

(a) in the facilities described in subsection (1);

(b) under home arrest as provided in subsection (1);

(c) in a short-term detention center;

(d) in a youth detention facility; or

(e) in a community youth court program."

HeinOnline -- 1997 vol. III 3308 1997

**Section 25.** Section 41-5-401, MCA, is amended to read:

**"41-5-401. Consent adjustment without petition.** (1) Before ~~a petition is filed~~ *referring the matter to the county attorney and subject to the limitations in subsection (3),* the probation officer *or assessment officer* may enter into ~~an informal~~ *a consent* adjustment and give counsel and advice to the youth, *the youth's family,* and other interested parties if it appears *that*:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child, *the family,* and the public; and

(c) the youth may be a youth in need of ~~supervision~~ *intervention* and ~~if~~ the probation officer *or assessment officer* believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against ~~any~~ *a* youth must conform to the following procedures:

(a) Every consent adjustment ~~shall~~ *must* be reduced to writing and signed by the youth and ~~his~~ *the youth's* parents or the person having legal custody of the youth.

(b) If the probation officer *or assessment officer* believes the youth is a youth in need of ~~supervision~~ *intervention,* the probation officer *or assessment officer* shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

*(3) A consent adjustment without petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult.*"

**Section 26.** Section 41-5-403, MCA, is amended to read:

**"41-5-403. Disposition permitted under ~~informal~~ *consent* adjustment ~~— contributions by parents or guardians for youth's care.~~** (1) The following dispositions may be imposed by ~~informal~~ *consent* adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102~~,~~ and ~~as determined by the department~~ *pursuant to a recommendation made under 41-5-525*;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth ~~as determined by the department~~ *pursuant to a recommendation made under 41-5-525*;

HeinOnline -- 1997 vol. III 3309 1997

(d) restitution, *as provided in [section 32],* upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;

*(f) a requirement that the youth receive counseling services;*

*(g) placement in a youth assessment center for up to 10 days;*

*(h) placement of the youth in detention for up to 3 days on a space-available basis at the county's expense, which is not reimbursable under part 10 of this chapter;*

*(i) a requirement that the youth perform community service;*

*(j) a requirement that the youth participate in victim-offender mediation;*

*(k) an agreement that the youth pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;*

*(l) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's counseling or restitution for damages that result from the offense for which the youth is disposed;*

*(m) any other condition ordered by the court to accomplish the goals of the consent adjustment, including but not limited to mediation or youth assessment. Before ordering youth assessment, the court shall provide the family an estimate of the cost of youth assessment, and the court shall take into consideration the financial resources of the family before ordering parental or guardian contribution for the costs of youth assessment.*

~~(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:~~

~~(a) age of the youth;~~

~~(b) ability of the youth to pay;~~

~~(c) ability of the parents, legal guardian, or persons contributing to the youth's delinquency or need for supervision to pay;~~

~~(d) amount of damage to the victim; and~~

~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case.~~

~~(3)~~*(2)* If the youth violates ~~an aftercare~~ *a parole* agreement as provided for in 52-5-126, the youth must he returned to the court for further disposition. A youth may not he placed in a state youth correctional facility under ~~informal~~ *consent* adjustment.

~~(4)~~*(3)* If the youth is placed in substitute care, *an assessment placement, or detention* requiring payment by ~~the~~ *any state* department *or local government agency*, the court shall examine the financial ability of the youth's parents or

guardians to pay a contribution covering all or part of the costs for the *adjudication, disposition, supervision,* care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

~~(5) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.~~

~~(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.~~

~~(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:~~

~~(i) good cause not to require immediate income withholding; or~~

~~(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.~~

~~(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:~~

~~(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and~~

~~(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.~~

~~(d) An alternative arrangement must:~~

~~(i) provide sufficient security to ensure compliance with the arrangement;~~

~~(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and~~

~~(iii) if approved by the court, be entered into the record of the proceeding.~~

~~(7) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.~~

~~(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.~~"

**Section 27.** Section 41-5-501, MCA, is amended to read:

**"41-5-501. Petition — form and content.** A petition initiating proceedings under this chapter ~~shall~~ *must* be signed by the county attorney, ~~and~~ ~~shall~~ *must* he entitled "In the Matter of...., a youth", and ~~shall~~ *must* set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent *youth* or *a youth* in need of ~~supervision~~ *intervention*;

(2) the charge of an offense, which ~~shall~~ *must*:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, or other provisions of law ~~which~~ *that* the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in ~~such~~ *a* manner ~~as to enable~~ *that enables* a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as ~~can be done~~ *possible*;

(3) the name, birth date, and residence address of the youth;

(4) the names and residence addresses of *the* parents, gnardian, ~~and~~ *or* spouse of the youth and, if ~~none of~~ the parents, guardian, or spouse ~~resides~~ *do not reside* or can *not* be found within the state or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in detention, *a youth assessment center*, or shelter care and, if so, the place of detention, *a youth assessment center,* or shelter care and the time ~~he~~ *the youth* was detained or sheltored;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition ~~shall~~ *must* he furnished to the youth upon request."

**Section 28.** Section 41-5-511, MCA, is amended to read:

**"41-5-511. Right to counsel.** In all proceedings following the filing of a petition alleging *that a youth is* a delinquent youth or youth in need of ~~supervision~~ *intervention*, the youth and the parents or guardian of the youth ~~shall~~ *must* be advised by the court or, in the absence of the court, hy its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not he retained, counsel ~~shall~~ *must* be appointed for the youth if the parents *or guardian* and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor ~~his parent~~ *the youth's parents* or guardian may waive counsel after a petition has been filed if

commitment to the department for a period of more than 6 months may result from adjudication."

**Section 29.** Section 41-5-515, MCA, is amended to read:

"41-5-515. ~~Persons to be advised of rights~~ ***Rights and obligations — persons to be advised — contempt.*** *(1)* ~~Persons~~ *A person* afforded rights under this chapter ~~shall~~ *must* be advised of those rights and any other rights existing under law at the time of ~~their~~ *the person's* first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

*(2) A person must be advised of obligations, including possible assessments and related costs, that may arise under this chapter, including the possibility that the person may be required to reimburse the state or local governments for costs attributable to the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth and may be required to participate in counseling, treatment, or other support services.*

*(3) A youth's parents or guardians are obligated to assist and support the youth court in implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or guardians are subject to the court's contempt powers if they fail to do so. The youth court personnel shall assist the parents to the extent possible in implementing and enforcing interventions and consequences designed to modify the youth's behavior.*

*(4) A parent has a right to review the results of a youth assessment and to place a rebuttal, statement, or additional information in the youth's file in youth court.*"

**Seetion 30.** Section 41-5-521, MCA, is amended to read:

"**41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth or the youth's parent, guardian, or attorney nıay demand a jury trial on the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contestod offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing nıust be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing must be held to determine whether the contested offenses are supperted by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of ~~supervision~~ *intervention*. If the hearing is before a jury, the jury's function is to determine whether the youth comnıitted the contested offenses. If the hearing is before the youth court judge without a jury, tlıe judge shall make and record findings on all issues. If the allegations of the petitions are not estabłished at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

*(3) Prior to an adjudicatory hearing before a jury, the court shall conduct an omnibus hearing in accordance with 46-13-110.*

*(4) The jury trial must be conducted in accordance with Title 46, chapter 16.*

HeinOnline -- 1997 vol. III 3313 1997

~~(3)~~*(5)* An adjudicatory hearing must be recorded verbatim by whatever means the court considers appropriate.

~~(4)~~*(6)* The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

~~(5)~~*(7)* In a hearing on a petition under this section, the general public may not be excluded, except that in the court's discretion, the general public may be excluded if the petition does not allege that the youth is delinquent.

~~(6)~~*(8)* If, on the basis of a valid admission by a youtb of the allegations of the petition or after the hearing required by tbis section, a youth is found to be a delinquent youth or a youth in need of ~~supervision~~ *intervention*, the court shall scbedule a dispositional hearing under this chapter.

~~(7)~~*(9)* When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, cbapter 7, part 2, and in Rule 47, M.R.Civ.P."

**Seetion 31.** Section 41-5-522, MCA, is amended to read:

**"41-5-522. Dispositional hearing — *contributions by parents or guardians for expenses.*** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of ~~supervision~~ *intervention*, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of tbe financial ability of the youth's parents or guardians to pay a contribution for the cost of *the adjudication, disposition, supervision,* care, commitment, and treatment of the youtb as required in ~~41-5-523~~ *[section 41], including the costs of necessary medical, dental, and other health care.*

(2) Before conducting the dispositional hearing, the court shall direct that a ~~social summary~~ *youth assessment* or predisposition report be made in writing by a probation officer *or an assessment officer* concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rebabilitation or disposition of the case, *including a statement by the victim or the victim's family.* The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the ~~social summary~~ *youth assessment* or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the ~~social summary~~ *youth assessment* or predisposition report. Tbe youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the ~~social summary~~ *youth assessment* or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the ~~social summary~~ *youth assessment* or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in subsections ~~(3), (4), and (5) of~~ 41-5-521*(5) through (7)*. The court shall bear all evidence relevant to a propor disposition of the case best serving the interests of the youth, *the victim,* and the public. The evidence must include but is not limited

HeinOnline -- 1997 vol. III 3314 1997

to the ~~social summary~~ *youth assessment* and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth ~~or~~, the youth's parents or guardian, *or the public* may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

~~(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:~~

~~(a) age of the youth;~~

~~(b) ability of the youth to pay;~~

~~(c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or need for supervision to pay;~~

~~(d) amount of damage to the victim; and~~

~~(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case.~~"

**Section 32. Restitution.** (1) In determining whether restitution, as authorized by 41-5-403 and 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) the age of the youth;

(b) the ability of the youth to pay;

(c) the ability of the parents, guardian, or those that contributed to the youth's delinquency or need for supervision to pay;

(d) the amount of damage to the victim; and

(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered.

(2) Restitution paid by a youth is subject to subrogation as provided in 46-18-248.

**Section 33.** Section 41-5-523, MCA, is amended to read:

"**41-5-523. Disposition *of youth in need of intervention or youth who violate consent adjustments*~~—sentence to correctional facility—commitment to department—placement and evaluation of youth—restrictions~~.** ~~(1)~~ If a youth is found to be a ~~delinquent youth or a~~ youth in need of ~~supervision~~ *intervention or to have violated a consent adjustment*, the youth court may enter its judgment making one or more of the following dispositions:

~~(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);~~

~~(b)~~*(1)* place the youth on probation~~;~~. *The youth court shall retain jurisdiction in a disposition under this subsection.*

~~(e) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.~~

~~(d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and 46-23-506;~~

~~(e)~~*(2)* place the youth in ~~an in-state~~ *a* residence that ensures that the youth is accountable, *that* provides for rehabilitation, and *that* protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in ~~an in-state~~ *a* residence unless the department informs the judge that resources are available for placement of the youth at that residence.

~~(f)~~*(3)* commit the youth to the department~~.~~ *for the purposes of funding a private, out-of-home, residential placement subject to the conditions in [section 35].* In an order committing a youth to the department~~:~~

~~(i)~~, the court shall determine whether continuation in the youth's own home would he contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home~~;~~

~~(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.~~

~~(g)~~*(4)* order restitution *for damages that result from the offense for which the youth is disposed* by the youth or ~~the youth's parents~~ *by the person that contributed to the delinquency of the youth*;

~~(h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;~~

~~(i)~~*(5)* require the performance of community service;

~~(j)~~*(6)* require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

~~(k)~~*(7)* require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

~~(l)~~*(8)* require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

HeinOnline -- 1997 vol. III 3316 1997

~~(m)~~*(9)* order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not ohligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed hy a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection ~~(1)(f)~~ *(3) of this section*, place a youth in a residential treatment facility.

~~(n)~~*(10) subject to the provisions of [section 36],* commit the youth to a mental health facility if, hased upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102~~;. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.~~

~~(i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed or sentenced to a state youth correctional facility.~~

~~(ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

~~(o)~~*(11)* place the youth under home arrest as provided in Title 46, chapter 18, part 10~~;~~

*(12) order the youth to pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;*

*(13) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;*

*(14) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:*

*(a) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.*

*(b) The placement for evaluation must be on a space-available basis at the county's expense, which is not reimbursable under part 10 of this chapter.*

*(c) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.*

*(15) order placement of a youth in a youth assessment center for up to 10 days;*

*(16) order the youth to participate in mediation that is appropriate for the offense committed.*

HeinOnline -- 1997 vol. III 3317 1997

~~(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:~~

~~(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.~~

~~(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.~~

~~(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.~~

~~(3) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:~~

~~(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;~~

~~(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;~~

~~(c) submitting an application to a facility in which the youth may be placed; and~~

~~(d) case management of the youth.~~

~~(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.~~

~~(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.~~

~~(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.~~

~~(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.~~

~~(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.~~

~~(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.~~

~~(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.~~

~~(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.~~

~~(12)(a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.~~

~~(b) A court ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:~~

~~(i) good cause not to require immediate income withholding; or~~

~~(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.~~

~~(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:~~

~~(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and~~

~~(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.~~

~~(d) An alternative arrangement must:~~

~~(i) provide sufficient security to ensure compliance with the arrangement;~~

~~(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and~~

~~(iii) if approved by the court, be entered into the record of the proceeding.~~

~~(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).~~

~~(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.~~

~~(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.~~"

**Section 34. Disposition — delinquent youth — restrictions.** (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-523;

(b) commit the youth to the department for placement in a state youth correctional facility or in a correctional facility or a program operated by tbe department;

(c) subject to 41-5-523 (14)(a), [section 35], and [section 36], sentence a youth to one of the state youth correctional facilities establisbed under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youtb at that facility. Except as provided in subsection (2), the sentencing judge may not place limitations on the release unless recommended by the youth placement committee. The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult, unless the court finds that tbe youth presents a danger to public safety and that the placement is recommended by a mental bealth professional after evaluation of the youth.

(d) require a youth found to be a delinquent youth, as tbe result of the commission of an offense tbat would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a sex offender pursuant to Title 46, cbapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to tbe provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court

may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged.

**Seetion 35. Disposition — commitment to department — restrictions on placement.** When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment tbat could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit tbe power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used for the execution of sentences of adults convicted of crimes.

(3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent adjustment in a state youtb correctional facility.

**Section 36. Disposition — finding of mentally ill or seriously mentally Ill — rights — limitation on piacement.** (1) A youth who is found to be seriously mentally ill, as defined in 53-21-102, is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be mentally ill or seriously mentally ill, as defined in 53-21-102, may not be committed or sentenced to a state youth correctional facility.

(3) A youth who is found to be mentally ill or seriously mentally ill after placement in or sentencing to a state youtb correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

**Section 37. Disposition — commitment to department — supervision.** (1) A youth placed in a state youth correctional facility or other facility or program operated by tbe department or who signs a parole agreement under 52-5-126 must be supervised by the department.

(2) A youth who is placed in any private, out-of-home, residential placement by the youth court or the youth court's juvenile probation officer must be

HeinOnline -- 1997 vol. III 3321 1997

supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205, whether or not the youth is committed to the department for purposes of funding a private, out-of-home, residential placement. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth while in a private, out-of-home, residential placement and upon release until discharged by the department.

**Section 38. Disposition — commitment to department — transfer of records.** Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, youth assessment material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

**Section 39. Disposition — medical or psychological evaluation of youth.** (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (2). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-523(14)(a), the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed under 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-208 or 41-5-1105 or the jurisdiction of the youth court is terminated following the filing of an information in district court pursuant to 41-5-206.

**Section 40. Modification of court orders — notice to department — hearing.** (1) An order of the court may be modified at any time.

(2) In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and a subsequent hearing.

**Section 41. Contribution for costs — order for contribution — exceptions — collection.** (1) If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that a youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

HeinOnline -- 1997 vol. III 3323 1997

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

**Section 42.** Section 41-5-524, MCA, is amended to read:

**"41-5-524. Consent decree with petition.** (1) ~~At any time~~ *(a) Subject to the provisions of subsection (2),* after the filing of a petition ~~alleging that a youth is a delinquent youth or a youth in need of supervision~~ *under 41-5-501* and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section ~~shall be~~ *is* known as a "consent decree". ~~The~~ *Except as provided in subsection (1)(b), the* procedures used and dispositions permitted under this section ~~shall~~ *must* conform to the procedures and dispositions specified in 41-5-401 through 41-5-403 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

*(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's expense, which is not reimbursable under part 10 of this chapter.*

*(2) A consent decree under this section may not be used by the court unless the youth admits guilt for any charges of an offense set forth in the petition and accepts responsibility for the youth's actions.*

~~(2)~~*(3)* If the youth or ~~his~~ *the youth's* counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

~~(3)~~*(4)* If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of ~~supervision~~ *intervention* is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation

HeinOnline -- 1997 vol. III 3324 1997

services. In the event of reinstatement, the proceeding on the petition ~~shall~~ *must* be continued to conclusion as if the consent decree had never been entered.

~~(4)~~*(5)* A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again bo proceeded against in any court for the same offense alleged in the petition, and the original petition ~~shall~~ *must* be dismissed with prejudice. ~~Nothing in this~~ *This* subsection ~~precludes~~ *does not preclude* a civil suit against the youth for damages arising from ~~his~~ *the youth's* conduct.

~~(5)~~*(6)* In all cases ~~where~~ *in which* the terms of the consent decree ~~shall~~ extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report ~~which shall~~ *that must* be reviewed by the court.

*(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult."*

**Section 43.** Section 41-5-525, MCA, is amended to read:

**"41-5-525. Youth placement committees — composition.** (1) In each judicial district, the department shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth referred to the department under 41-5-403; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of the department under 41-5-523. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) The committee consists of not less than five members and must include persons wbo are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth. Members may include:

(a) two representatives of the department;

(b) a representative of the department of public health and human services;

(c) either the chief prohation officer or the youth's probation officer;

(d) a mental health professional;

(e) a representative of a school district located within the houndaries of the judicial district *who must have personal knowledge of and experience with the youth*;

(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters;

(g) a parent or guardian; and

(h) a youth services provider.

HeinOnline -- 1997 vol. III 3325 1997

(3) Committee members serve without compensation.

(4) Notwithstanding the provisions of 41-5-527, the committee may be convened by the department or the probation officer of the youth court.

*(5) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.*"

**Section 44.** Section 41-5-530, MCA, is amended to read:

"**41-5-530. Parental contributions account — allocation of proceeds.** (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, 41-5-523, ~~or~~ 41-5-524, *or [section 40] for care, custody, and treatment* must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103."

**Section 45.** Section 41-5-533, MCA, is amended to read:

"**41-5-533. Probation revocation — disposition.** (1) A youth on probation incident to an adjudication that ~~he~~ *the youth* is a delinquent youth or a youth in need of ~~supervision~~ *intervention* and ~~who violates~~ *that the youth has violated* a term of ~~such~~ probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation ~~shall~~ *must* be done by filing in the original proceeding a petition styled "petition to revoke probation".

(2) Petitions to revoke probation ~~shall~~ *must* be screened, reviewed, and prepared in the same manner and ~~shall~~ *must* contain the same information as petitions alleging delinquency or need of ~~supervision~~ *intervention*. Procedures of the Montana Youth Court Act regarding taking into custody and detention ~~shall~~ apply. The petition ~~shall~~ *must* state the terms of probation alleged to have been violated and the factual basis for ~~such~~ *the* allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult, and the hearing ~~shall~~ *must* be before the youth court without a jury. In all other respects, proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of ~~supervision~~ *intervention*. If a youth is found to have violated a term of ~~his~~ probation, the youth court may make any judgment of disposition that could have been made in the original case."

**Section 46.** Section 41-5-603, MCA, is amended to read:

"**41-5-603. Youth court and department records.** (1) Except as provided in subsection (2), all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-604.

HeinOnline -- 1997 vol. III 3326 1997

(2) Social, medical, and psychological records, *youth assessment materials,* predispositional studies, *and* supervision records of probationers~~, and any report, charge, or allegation that is not adjudicated pursuant to this chapter~~ are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203; and

(i) persons allowed access to the records *referred to* under 45-5-624(7).

(3) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

(4) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

**Section 47.** Section 41-5-605, MCA, is amended to read:

"**41-5-605. Youth court records — public record.** Except as provided in 41-5-603, all youth court records on file with the clerk of court related to a youth who is alleged or found to be a youth in need of ~~supervision~~ *intervention* or a delinquent youth are a public record until the record is sealed under 41-5-604."

**Section 48.** Section 41-5-703, MCA, is amended to read:

"**41-5-703. Powers and duties of probation officers.** (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

HeinOnline -- 1997 vol. III 3327 1997

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under ~~his~~ *the probation officer's* supervision, *including enforcement of the terms of probation or intervention*;

*(d) assist any public and private community and work projects engaged in by youth to pay fines, make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or need for supervision;*

~~(d)~~*(e)* perform any other functions designated by the court.

(2) A probation officer ~~shall~~ *does not* have ~~no~~ power to make arrests or to perform any other law enforcement functions in carrying out ~~his~~ *the probation officer's* duties except that a probation officer may take into custody any youth who violates either ~~his~~ *the youth's* probation or a lawful order of the court."

**Section 49.** Section 41-5-802, MCA, is amended to read:

**"41-5-802. Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility may be used to provide an appropriately physically restricting setting for youth alleged or adjudicated *to be a* delinquent *youth, a youth* in need of ~~supervision~~ *intervention*, or *a youth* in need of care.

(3) A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

(4) State appropriations and federal funds may be received by ~~the~~ counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(5) A shelter care facility must be furnished in a comfortable manner.

(6) A shelter care facility may be operated in conjunction with a youth detention facility.

*(7) A shelter care facility may permit a school district to use the facility as an alternative education site provided that the school district provides the educational program and personnel necessary to instruct the youth. Public schools shall follow the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making education placement decisions for youth with disabilities."*

**Section 50.** Section 41-5-1004, MCA, is amended to read:

**"41-5-1004. Distribution of grants — limitation of funding — restrictions on use.** (1) The board shall award grants on an equitable basis, giving preference to services that ~~will~~ *are to* be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

HeinOnline -- 1997 vol. III 3328 1997

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care *costs* must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Based on funding available after the board has funded block grants under subsection (2), the board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system has placed considerable financial strain on a county's resources, award grants to eligible counties to fund up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular case or cases that created the hardship expenditure for which the hardship grant is requested.

(4) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in ~~41-5-523~~ *[section 39]*."

**Section 51.** Section 41-5-1008, MCA, is amended to read:

"**41-5-1008. Rulemaking authority.** The board may adopt rules necessary to implement the provisions of ~~41-5-103(13),~~ 41-5-812~~,~~ and 41-5-1001 through 41-5-1008 *and to establish requirements for approved holdovers consistent with the definition of holdover provided in 41-5-103*."

**Section 52.** Section 41-5-1104, MCA, is amended to read:

"**41-5-1104. Disposition in extended jurisdiction prosecutions.** (1) If a youth in an extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in 41-5-1102(1)(b), the court shall:

(a) impose one or more juvenile dispositions under 41-5-523 *or [section 34]*; and

(b) impose an adult criminal sentence, the execution of which must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense. If the youth violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed as provided in 41-5-1105.

(2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is convicted of an offense not described in 41-5-1102(1)(b), the court shall adjudicate the youth delinquent and order a disposition under ~~41-5-523~~ *[section 34]*.

(3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in 41-5-1102(1)(b), the court may impose, with the youth's consent, a disposition provided under subsection (1)(b) *of this section*. If the youth does not consent to disposition under subsection (1)(b), the court shall impose a disposition as provided under subsection (2)."

HeinOnline -- 1997 vol. III 3329 1997

**Section 53.** Section 41-5-1105, MCA, is amended to read:

**"41-5-1105. Execution of adult sentence — exception — transfer to district court.** (1) If a court has imposed on a youth an adult criminal sentence stayed under 41-5-1104(1)(b) and the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may, without notice, direct that the youth he taken into immediate custody and revoke the stay. The court shall notify the youth in writing of the reasons for the revocation.

(2) (a) If the youth challenges the reasons for the revocation, the court shall hold a summary hearing at which the youth is entitled to be heard and represented by counsel.

(b) After tbe hearing, if the court finds by a preponderance of tlie evidence presented that the conditions of the stay have been violated, the court shall:

(i) order execution of the sentence imposed under 41-5-1104(1)(b); or

(ii) continue the stay and make written findings regarding the mitigating factors that justify continuing the stay.

(3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred to district court for execution of the sentence, subject to ~~41-5-206(8) and (9)~~ *41-5-206(6) and (7).*"

**Section 54.** Section 45-5-624, MCA, is amended to read:

**"45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance — interference with sentence or court order.** (1) A person under ~~the age of~~ 21 years *of age* commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating suhstance. The person need not be consuming or in possession of the intoxicating substance at tbe time of arrest to violate this subsection. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) In addition to any disposition by the youth court under 41-5-523, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance shall:

(a) for the first offense, be fined an amount not to exceed $100 and:

(i) bave the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) be ordered to perform community service if a community service program is available; and

(iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(b) for a second offense, be fined an amount not to exceed $200 and:

(i) have the person's driver's license suspended for not less than 60 days and not more than 120 days;

(ii) be ordered to perform community service if a community service program is available; and

(iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(c) for a third or subsequent offense, be fined an amount not less than $300 or more than $500 and:

(i) have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;

(ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of corrections, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance shall:

(a) for a first offense, be fined an amount not to exceed $50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, be fined an amount not to exceed $100 and:

(i) be ordered to perform community service if a community service program is available; and

(ii) have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, be fined an amount not to exceed $200 and:

(i) be ordered to perform community service if a community service program is available;

(ii) have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of corrections, which may, in

the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court he imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under ~~the age of~~ 21 *years of age* commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic heverage. A person convicted of attempt to purchase an intoxicating substance shall he fined an amount not to exceed $50 if the person was 18 years of age or older at the time the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of ~~supervision~~ *intervention* as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses committed but may not he considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs. (See compiler's comments for contingsnt termination of certain text.)"

**Section 55.** Section 45-5-637, MCA, is amended to read:

"**45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited — penalties.** (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product, as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product.

(2) A person convicted of possession or consumption of a tobacco product:

(a) shall be fined $35 for a first offense, no less than $75 or more than $100 for a second offense, and no less than $100 or more than $250 for a third or subsequent offense; or

(b) may be adjudicated on a petition alleging the person to be a youth in need of ~~supervision~~ *intervention* under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

(3) A person convicted of possession or consumption of a tobacco product may also be required to perform community service or to attend a tobacco cessation program.

(4) The fines collected under subsection (2) must he deposited to the credit of the general fund of the local government that employs the arresting officer, or

if the arresting officer is an officer of the highway patrol, the fines must be credited to the county general fund in the county in which the arrest was made."

**Section 56.** Section 46-18-256, MCA, is amended to read:

**"46-18-256. Sexually transmitted disease testing — test procedure.** (1) Following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered standard testing according to currently accepted protocol, using guidelines established by the centers for disease control, U.S. department of health and human services, to detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted diseases, as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-16-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

(a) the convicted person; and

(b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-521, finding a youth to be a delinquent youth or a youth in need of ~~supervision~~ *intervention*.

(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section."

**Section 57.** Section 46-24-207, MCA, is amended to read:

**"46-24-207. Victims and witnesses of juvenile felony offenses — consultation — notification of proceedings.** (1) The attorney general shall ensure that the services and assistance that must be provided under ~~this chapter~~ *Title 46, chapter 24,* to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under Title 41, chapter 5, part 5, the county attorney or a designee shall consult with the victim of a juvenile felony offense ~~or, in the case of a minor victim or a homicide victim, with the victim's family~~ regarding the disposition of the case, including:

(a) a dismissal of the petition filed under 41-5-501;

(b) a reduction of the charge to misdemeanor;

HeinOnline -- 1997 vol. III 3333 1997

(c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and

(d) the disposition of the youth.

(3) (a) Whenever possihle, a person described in subsection (3)(b) who provides the ~~youth court~~ *appropriate agency* with a current address and telephone numher must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-501;

(ii) the release of the youth from detention or shelter care; and

(iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of a date for the dispositional hearing under 41-5-522, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim, *as defined in 41-5-103,* of a juvenile felony offense~~, an adult relative of the victim if the victim is a minor, or an adult relative of a homicide victim~~.

(c) *The county attorney or a designee that provides the consultation regarding the disposition of a case required in subsection (2) shall give the victim the opportunity to provide the victim's current telephone number and address and shall provide the victim with the name and address of the agency or agencies responsible for operation of youth detention, correctional, or shelter care facilities that are responsible for the custody of the youth.*

*(d)* The ~~court~~ *appropriate official or agency* shall provide ~~to the department the list of people entitled to~~ *the* notification ~~under~~ *required by* this subsection (3)~~, and the department is responsible to provide the notification~~ *in the same manner as required for offenses committed by adults.*

(4) For purposes of tbis section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

**Section 58.** Section 52-2-211, MCA, is amended to read:

**"52-2-211. County interdisciplinary child information team.** (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

(a) the youth court;

(b) the county attorney;

(c) the department of public health and human services;

(d) the county superintendent of schools;

(e) the sheriff;

HeinOnline -- 1997 vol. III 3334 1997

(f) the chief of any police force;

(g) the superintendents of public school districts; and

(h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the ~~information~~ team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the ~~information~~ team will serve.

(3) *(a)* The members of the ~~information~~ team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

*(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.*

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused~~,~~ *or* neglected~~, and delinquent~~ children, *delinquent youth,* and youth in need of ~~supervision~~ *intervention*. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-603(2) may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.

*(6) The terms of the written agreement must state how the team will coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-525.*

*(7) To the extent that the county interdisciplinary child information team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The terms of the written agreement described in subsection (5) must include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or*

*information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student."*

**Section 59.** Section 52-5-101, MCA, is amended to read:

**"52-5-101. Establishment of state youth correctional facilities — prohibitions.** (1) The department of corrections, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly ~~diagnose, care for, train, educate, and rehabilitate~~ *provide custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development for* youth in need of these services. The youth must be 10 years of age or older and under ~~19~~ *18* years of age. The facilities include but are not limited to ~~the~~ state youth correctional facilities at ~~the Mountain View school in Helena and~~ the Pine Hills school in Miles City.

(2) A youth alleged or found to be a youth in need of ~~supervision~~ *intervention* may not be placed in a state youth correctional facility as defined in 41-5-103."

**Section 60.** Section 52-5-102, MCA, is amended to read:

**"52-5-102. Control and management of youth correctional facilities.** The facilities provided for in 52-5-101 shall exercise their functions under the supervision and general management of the department of corrections. Except where otherwise provided by law, the department by rules shall establish standards of care and policies of admission, transfers, discharge, and ~~aftercare~~ *parole* supervision in order to provide adequate care for children and adequate service to the courts. Policies of admission may include criteria for medical examinations required under 52-5-108. The department shall develop special programs within each facility ~~which~~ *that* are adaptable to the particular needs of its operation."

**Section 61.** Section 52-5-103, MCA, is amended to read:

**"52-5-103. Cooperative agreements for services with governing body of Indian tribe.** (1) The department of corrections may enter into agreements with the governing body of an Indian tribe within the state for residential, educational, evaluation, and ~~aftercare~~ *parole* services maintained by the department for children who have been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of Title 53, chapter 1.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11."

**Section 62.** Section 52-5-107, MCA, is amended to read:

**"52-5-107. Maximum age of commitment.** A ~~child~~ *youth* who has attained ~~the age of~~ 18 years *of age* may not be committed by any youth court to the department of corrections~~, except, however, that any person under 19 years who prior to attaining the age of 18 years came under the jurisdiction of the youth court by reason of delinquent conduct and whose adjudication of delinquency is not made until after the child reaches the age of 18 years may be committed to the department of corrections~~."

**Section 63.** Section 52-5-111, MCA, is amended to read:

"**52-5-111. Commutation of sentence to state prison *facility* and transfer of prisoner to youth correctional facility.** (1) Upon the application of a person ~~under 19 years of age~~ *who has not attained 18 years of age* who has been sentenced to ~~the~~ *a* state prison *facility* or upon the application of the youth's parents or guardian, the governor may, after consulting with the department of corrections and with the approval of the board of pardons and parole, commute the sentence by committing the person who may benefit from programs offered at a youth correctional facility to the department of corrections until the youth is ~~19~~ *18* years of age or until sooner placed or discharged.

(2) If the ~~person's~~ *youth's* behavior after being committed to the department of corrections indicates that the youth is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting with the department of corrections and with the approval of the board of pardons and parole, may revoke the commutation and return the youth to ~~the~~ *a* state prison *facility* to serve out the youth's unexpired term, and the time spent by the youth at one of the youth correctional facilities or while a refugee from one of the youth correctional facilities is not considered as a part of the youth's original sentence.

(3) Upon recommendation of the warden and with the approval of the department of corrections, a person under ~~19~~ *18* years of age who has been sentenced to ~~the~~ *a* state prison *facility* and who may benefit from programs offered at a youth correctional facility may be transferred to any youth correctional facility under the jurisdiction and control of the department of corrections.

(4) If the ~~person's~~ *youth's* behavior after transfer to a youth correctional facility indicates that the youth might be released on parole or that the youth's sentence might be commuted and the youth be discharged from custody, the superintendent of the facility, with the approval of the department of corrections, may make an appropriate recommendation to the board of pardons and parole and the governor, who may in their discretion parole the person or commute the youth's sentence.

(5) If the ~~person's~~ *youth's* behavior after transfer to a youth correctional facility indicates that the youth is not a proper person to reside in the facility, upon recommendation of the superintendent and with the approval of the department of corrections, the youth must be returned to ~~the~~ *a* state prison *facility* to serve out the unexpired term."

**Section 64.** Section 52-5-113, MCA, is amended to read:

"**52-5-113. ~~Apprehension and~~ *Publication of information to facilitate* return of youth leaving *a state* youth correctional facility *or program* without permission.** ~~A youth who has left a youth correctional facility of the department of corrections without permission may be apprehended and returned by any citizen. The term "youth correctional facility of the department" means any facility under the supervision and control of the department of corrections that has as its primary function the care, training, custody, and control of youth and specifically includes the Pine Hills school for boys and the Mountain View school for girls.~~ *The department may publish the name and picture of and the offense and other information relating to a youth who*

*has left a state youth correctional facility or program operated by the department or who is committed to the department and who presents a threat to public safety if the publication is determined by the department to be necessary to facilitate the youth's return and to protect the public.*"

**Section 65.** Section 52-5-126, MCA, is amended to read:

"**52-5-126. Youth ~~aftercare~~ *parole* agreement.** (1) A youth released by the department of corrections from one of the state youth correctional facilities to the supervision, custody, and control of the department shall, before the youth's release, sign ~~an aftercare~~ *a parole* agreement containing:

(a) a statement of the terms and conditions of the release, including a list of the acts that, if committed by the youth, may result in a return to the facility; and

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before heing returned to the facility.

(2) A youth released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign ~~an aftercare~~ *a parole* agreement that will remain in effect until the department no longer has custody of the youth."

**Seetion 66.** Section 52-5-127, MCA, is amended to read:

"**52-5-127. Control over youth released under ~~aftercare~~ *parole* agreement.** The department of corrections has control over a youth released *pursuant to a parole agreement* under 52-5-126 until the youth attains ~~the age of 19~~ *18* years *of age* unless the youth is discharged by the department before age ~~19~~ *18*. However, the youth is subject to the continuing jurisdiction of the youth courts of Montana, pursuant to 41-5-205, for acts committed by the youth while under the control of the department."

**Section 67.** Section 52-5-128, MCA, is amended to read:

"**52-5-128. Detention of youth who violates ~~aftercare~~ *parole* agreement.** A youth who violates the terms and conditions of the youth's ~~aftercare~~ *parole* agreement *or who escapes from a state youth correctional facility or program operated by the department* may be detained by the department ~~of corrections~~ or by a law officer of the state, county, or city of the state upon ~~certificates~~ *notice* in writing to the officer by the department to the effect that the youth has violated the terms and conditions of the youth's ~~aftercare~~ *parole* agreement *or has escaped from a state youth correctional facility or program operated by the department*."

**Seetion 68.** Section 52-5-129, MCA, is amended to read:

"**52-5-129. Hearing on alleged violation of ~~aftercare~~ *parole* agreement — right to appeal outcome.** (1) When it is alleged by ~~an aftercare counselor~~ *a juvenile parole officer* that a youth has violated the terms of the youth's ~~aftercare~~ *parole* agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is

HeinOnline -- 1997 vol. III 3338 1997

detained, whichever is earlier. *At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission.* The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should he returned to the youth correctional facility from which the youth was released or *whether* a different plan for ~~treatment~~ *custody and supervision of the youth* should be pursued by the department of corrections.

(2) The youth, upon advice of an attorney, may waive the right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the ~~aftercare~~ *parole* agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) opportunity to be heard in person *or by interactive video transmission* and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses *in person or by means of interactive video transmission*;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will he provided by the ~~referee~~ *hearings officer*.

(4) The department shall ~~appoint a referee, who may not be an employee of the department,~~ *provide a hearings officer* to conduct the hearing. ~~In the conduct of the hearing, the department may request the county attorney's assistance as necessary.~~ The department shall adopt rules necessary to effect a prompt and full review.

(5) If the ~~referee~~ *hearings officer* finds, by a preponderance of the evidence, that the youth did in fact commit the violation, the ~~referee~~ *hearings officer* shall make a recommendation to the department for the placement of the youth. In making this recommendation, the ~~referee~~ *hearings officer* may consider mitigating *or aggravating* circumstances. ~~Final approval rests with the department and must be made within 10 days of the referee's recommendation.~~ *The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.*

(6) The youth may appeal ~~from~~ the decision ~~at the hearing~~ *of the department director* to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the

HeinOnline -- 1997 vol. III 3339 1997

~~department's~~ *department director's* decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or the youth may abscond or be removed from the community. The department shall determine the place and manner of detention and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of the youth's ~~aftercare~~ *parole* agreement are as provided in 41-5-303, 41-5-306, 41-5-311, and 41-5-314.

(8) If the decision is made to return the youth to the youth correctional facility from which the youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility."

**Section 69.** Section 53-1-201, MCA, is amended to read:

**"53-1-201. Purpose of department of corrections.** The department of corrections shall ~~utilize~~ *use* at maximum efficiency the resources of state government in a coordinated effort to:

(1) develop and maintain comprehensive services and programs in the field of adult and youth corrections; and

(2) provide for the ~~care, protection, and mental and physical development~~ *custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development* of youth alleged to be youth in need of ~~supervision~~ *intervention* or delinquent youth who are referred or committed to the department."

**Section 70.** Section 53-1-203, MCA, is amended to read:

**"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-527 through 41-5-529 and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole.

(b) subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

HeinOnline -- 1997 vol. III 3340 1997

(c) contract with private, nonprofit Montana corporations to establish and maintain community-based prerelease centers for purposes of preparing inmates of the Montana state prison who are approaching parole eligibility or discharge for release into the community. The centers shall provide a less restrictive environment than the prison while maintaining adequate security. The centers must be operated in coordination with other department correctional programs, including the supervised release program provided for in Title 46, chapter 23, part 4. This subsection does not affect the department's authority to operate and maintain community-based prerelease centers.

(d) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(e) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and ~~aftercare~~ *parole* of persons placed in institutions;

(f) encourage the establishment of programs at the local and institutional level for the rehabilitation and education of adult felony offenders;

(g) administer all state and federal funds allocated to the department for youth in need of ~~supervision~~ *intervention* and delinquent youth, as defined in 41-5-103;

(h) collect and disseminate information relating to youth in need of ~~supervision~~ *intervention* and delinquent youth;

(i) maintain adequate data on placements that it funds in order to keep the legislature properly informed of the specific information, by category, related to youth in need of ~~supervision~~ *intervention* and delinquent youth in out-of-home care facilities;

(j) provide funding for and place youth who are alleged or adjudicated to be delinquent or in need of ~~supervision~~ *intervention* and who are referred or committed to the department;

(k) administer youth correctional facilities;

(l) provide supervision, care, and control of youth released from a state youth correctional facility; and

(m) use to maximum efficiency the resources of state government in a coordinated effort to:

(i) provide for children in need of temporary protection or correctional services; and

(ii) coordinate and apply the principles of modern institutional administration to the institutions in the department.

(2) The department and a private, nonprofit Montana corporation may not enter into a contract under subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-3-104 and 18-4-313 that limit the term of a contract do not apply to a contract authorized by subsection (1)(c).

HeinOnline -- 1997 vol. III 3341 1997

(3) The department of corrections may enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of ~~supervision~~ *intervention* and delinquent youth in youth care facilities."

**Section 71.** Section 53-21-506, MCA, is amended to read:

**"53-21-506. No commitment to Montana state hospital.** An individual ~~less than~~ *who is under* 18 years of age may not be voluntarily admitted or committed by a court to the Montana state hospital unless ~~such individual is transferred to~~ *an information has been filed in* district court pursuant to 41-5-206."

**Section 72. Designation of assessment officers — qualifications — salary — duties.** (1) The youth court judge of each judicial district may appoint and supervise the necessary assessment officers as are required to carry out the purpose and intent of this chapter. The qualifications for assessment officers must be established by the appointing judge. Assessment officers are county employees, and assessment officers' salaries must be fixed by the judge. An assessment officer may work out of the local police department or other local law enforcement office.

(2) An assessment officer shall perform the duties set out in 41-5-301 and 41-5-401.

(3) Proceedings under 41-5-301 and 41-5-401 that are held prior to adjudication satisfy the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to assessment officers. The assessment officer is responsible for ensuring that officials and authorities to whom such information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any otber party without the prior written consent of the parent of the student.

**Section 73. Intervention in delinquency pilot program — departmcnt study of youth placement costs — development of incremental scale — report to legislature — department responsibilities.** (1) The department of corrections may conduct a pilot project, the results of which may be used as the basis for developing the incremental costs scale provided for in subsection (3). As a part of the pilot project, the department may identify each judicial district as a bigh-spending district, an average-spending district, or a low-spending district for youth placements. The department may analyze each categery of district and identify the reasons for tbe spending cbaracteristics in each category of district, such as types of youth, types of crimes committed, effectiveness of programs (including but not limited to the rates of recidivism), community sentiment, availability or lack of availability of placements, length of stay in placements, and case managoment. The department may targot the high-spending districts and work with tbem in identifying and creating appropriate, lower-cost, and less restrictive placements.

(2) The department may create an account for a high-spending rural judicial district and a bigh-spending urban judicial district that is based on expenditures for fiscal year 1996 and fiscal year 1997 and may credit each with a proportion

HeinOnline -- 1997 vol. III 3342 1997

of appropriated placement funds. The proportionate share of the appropriations must be based on the types of youth, types of placements, youth population from 10 to 18 years of age, and a measure of the youth crime rate. The department may work with the regional supervisor, the chief juvenile probation officer, and the youth placement committees in the respective judicial districts to educate them regarding their allocation, to identify all potential placements and funding sources, and to consider the lowest-cost option that is in the best interests of the youth, the victim, and the safety of the community.

(3) The department may study the expenditures for placements for youth offenders for the fiscal years 1996, 1997, and 1998 and develop an incremental costs scale for the purposes of developing a system to charge each judicial district account with the costs of a placement and to credit a judicial district account for using the least restrictive placements and developing community-based programs. The proportional share allocated to each judicial district must be based on the types of youth, types of placements, youth population from 10 to 18 years of age, and a measure of the youth crime rate.

(4) If the department conducts a pilot program under this section, the department shall present a proposal to the 56th legislature that includes the following elements:

(a) The information gathered from the pilot program, as provided in subsections (2) and (3), must be used in the development of the incremental costs scale.

(b) There must be a recommendation for a method to return any balance remaining at the end of a fiscal year to the judicial districts for the explicit purposes of developing additional community programs for youth court purposes.

(c) The assumptions in subsection (5) must be incorporated as a part of the proposed incremental costs scale.

(d) There must be a recommendation and justification for whether to include the state youth correctional facilities and correctional facilities and programs operated by the department in the incremental costs scale.

(5) For purposes of a pilot program, the department shall assume that the department is responsible for:

(a) the payment of residential and treatment costs for adjudicated youth placed in an out-of-home residence or committed to the department for purposes of funding a private residential placement under 41-5-523 or [section 34];

(b) all placement costs of a youth adjudicated in youth court for an offense listed in 41-5-206;

(c) education costs as provided in 20-5-323 and Title 20, chapter 7, part 4; and

(d) treatment costs that are over and above the costs of treatment for which the:

(i) youth is qualified under the public mental health system and medicaid; and

(ii) parent or guardian has third-party coverage.

(6) If the department conducts a pilot program under this section, the department shall prepare a summary of the results of the study and report to the 56th legislature.

**Section 74. Repealer.** Section 41-5-310, MCA, is repealed.

**Section 75. Funding coordination.** For the purposes of Title 1, chapter 2, part 1, the funding for this bill is contained in __ Bill No. __ [LC 228].

**Section 76. Directions to code commissioner.** Wherever a reference to "youth in need of supervision" appears in the Montana Code Annotated or in legislation enacted by the 1997 legislature, the code commissioner is directed to change it to an appropriate reference to "youth in need of intervention".

**Section 77. Codification instruction.** (1) [Sections 32 and 34 through 41] are intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [sections 32 and 34 through 41].

(2) Section 46-24-207 is intended to be renumbered and codified as an integral part of Title 41, chapter 5, part 5.

(3) [Section 72] is intended to be codified as an integral part of Title 41, chapter 5, part 7, and the provisions of Title 41, chapter 5, part 7, apply to [section 72].

**Section 78. Coordination instruction.** (1) If House Bill No. 502 is passed and approved and if it deletes the definition of "seriously mentally ill" and substitutes "mental disorder", then:

(a) the section in House Bill No. 502 amending section 41-5-523 is void;

(b) the phrase "seriously mentally ill, as defined in 53-21-102" in this bill must be substituted with "found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1)"; and

(c) [section 36 of this act] must read as follows:

"NEW SECTION. **Section 36. Disposition — finding of suffering from mental disorder and meeting other criteria — rights — limitation on placement.** (1) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a state youth correctional facility.

(3) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127."

(2) If both Senate Bill No. 99 and this bill are passed and approved and if Senate Bill No. 99 includes a section that amends 41-5-206, then that section of

Senate Bill No. 99 amending 41-5-206 is void and the amendments to 41-5-205 in this bill are void.

(3) If Senate Bill No. 110 and this bill are both passed and approved, then the sections amending 41-5-403 and 41-5-523 in Senate Bill No. 110 are void and [section 40] of the third reading copy of this bill must read:

"NEW SECTION. **Section 40. Contribution for costs — order for contribution — exceptions — collection.** (1) If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution attributable to care, custody, and treatment as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount or an amount determined by the department of public health and human services. In either case, the amount must be based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(4) A parent's or guardian's liability for contributions begins to accrue from the date the youth is removed from the home and continues until the youth is returned to the parent or guardian, the youth becomes emancipated, or the liability is terminated by order of the court.

(5) (a) A parent or guardian who is ordered to pay a contribution for a youth under subsection (3) assigns to the state agency all rights to a child support order for that youth that are not otherwise assigned under 53-2-613. The assignment of a child support obligation:

(i) is effective for both current and accrued support;

(ii) takes effect on the date the youth is placed in substitute care; and

(iii) remains in effect for as long as the youth lawfully remains in substitute care and until all arrears that are owed prior to the termination of substitute care are paid.

(b) The assigned child support obligation is in addition to the parent's or guardian's contribution determined under subsection (3) or (9), if applicable.

HeinOnline -- 1997 vol. III 3345 1997

(c) The assigned child support obligation may be retained by the state agency with financial responsibility for the youth in an amount sufficient to reimburse the costs for the substitute care that remain after the obligation has been satisfied.

(6) (a) Except as provided in subsection (6)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the state agency and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(7) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2) or (3) or the parent or guardian may apply to the department of public health and human services for an administrative modification for the payment of a contribution required under subsection (3) as provided in Title 40, chapter 5, part 2. A modification for the payment of a contribution required under subsection (3) must be based upon the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(8) (a) If the court orders the payment of contributions under subsection (3) or the department of public health and human services orders the payment of contributions under subsection (9), the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

HeinOnline -- 1997 vol. III 3346 1997

(b) The department of public health and human services may collect and enforce a contribution order under subsection (3) and the assignment of a child support order, if applicable, by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

(9) Upon a court order for commitment to the department that does not contain an amount of a contribution or a referral by the court for the department of public health and human services to determine an amount of a contribution as provided in subsection (3), the department may refer the matter to the department of public health and human services to determine, establish, and order the youth's parent or guardian to pay the contribution provided for in subsection (3) using the procedure provided in Title 40, chapter 5, part 2, for establishing a child support order. The department of public health and human services shall provide support enforcement services for contribution orders established under subsection (3)."

(4) If Senate Bill No. 6 and [this act] are both passed and approved, then subsection (3) of 45-8-318 must be amended to read as follows:

"(3) The youth court has jurisdiction of any violation of subsection (1)(h) unless ~~a youth's case is transferred to~~ *the charge is filed in* district court, in which case the district court has jurisdiction."

(5) If House Bill No. 114 and [this act] are both passed and approved, then:

(a) [section 6(3)] of the coordination instruction in House Bill No. 114 is void; and

(b) [section 9] of the coordination instruction in House Bill No. 114 must read as follows:

"NEW SECTION. **Seetion 9. Informal disposition.** (1) After a preliminary inquiry under 41-5-301, the probation officer or assessment officer upon determining that further action is required and that referral to the county attorney is not required may:

(a) provide counseling, refer the youth and the youth's family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention; or

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer or assessment officer proceeds no further unless authorized by the county attorney.

(2) The juvenile probation officer or assessment officer shall collect the following information regarding a youth if the youth is alleged to be a delinquent youth and if the probation officer or assessment officer determines that the matter should be referred to the county attorney for filing a petition in youth court:

(a) biographical data;

(b) a description of prior and current offenses, including criminal history;

HeinOnline -- 1997 vol. III 3347 1997

(c) a listing of known or suspected associates;

(d) any gang or drug involvement;

(e) field investigation data;

(f) motor vehicle ownership and offense data, if any;

(g) whether the youth is a suspect in other criminal investigations;

(h) history of any victimization of others by the youth;

(i) the youth's status offense history;

(j) existence of active warrants;

(k) school, employment, and family histories;

(l) social and medical services histories;

(m) prior conduct in a youth detention or correctional facility, if any."

(c) [section 46(1)] of the coordination instruction in House Bill No. 114 must read as follows:

"(1) The probation officer or assessment officer may perform a youth assessment if:

(a) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses in the past year that would not be offenses if the youth were an adult;

(b) the youth is alleged to be a youth in need of intervention or a delinquent youth and the youth or the youth's parents or guardian requests the youth assessment and both the youth and the parents or guardian are willing to cooperate with the assessment process; or

(c) the circumstances surrounding a youth who has committed an act that would be a felony if committed by an adult indicate the need for a youth assessment and the safety of the community has been considered in determining where the youth assessment is conducted."

**Section 79. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 80. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 81. Effective date.** [This act] is effective July 1, 1997.

**Section 82. Termination.** [Section 73] terminates December 31, 1998.

Approved May 7, 1997

HeinOnline -- 1997 vol. III 3348 1997

# CHAPTER NO. 551

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1999; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Short title.** [This act] may be cited as "The General Appropriations Act of 1997".

**Section 2. First level expenditures.** The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 1999 biennium, are adopted as legislative intent.

**Section 3. Severability.** If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

**Section 4. Legislative audit costs.** Agencies shall reserve enough cash in each fund type to pay the costs of the legislative audit and shall, to the maximum extent allowable under federal regulations, charge audit costs to federal funds.

**Section 5. Appropriation control.** An appropriation item designated as "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2001 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide budgeting and accounting system for any item designated as "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide budgeting and accounting system for any appropriation that appears as a separato line item in [this act].

**Section 6. Program definition.** As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide budgeting and accounting system, and is identified as a major subdivision of an agency ordinally numbered with an arabic numeral.

**Section 7. Personal services funding — 2001 biennium.** (1) Except as provided in subsection (2), present law and new proposal funding budget requests for the 2001 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity for each fiscal year must be shown for each control variable in the budget request for the 2001 biennium submitted by October 30 to the legislative fiscal analyst by the office of budget and program planning.

HeinOnline -- 1997 vol. III 3349 1997

(2) The provisions of subsection (1) do not apply to the Montana university system.

**Section 8. Consumer price index changes.** If the federal government reformulates the consumer price index, each state agency that uses the consumer price index as an integral part of any contract, grant, benefit, rate, reimbursement, payment, or negotiation shall use the reformulated index unless otherwise prohibited by law.

**Section 9. Expanding technologies to reduce travel expenditures.** It is the intent of the legislature to encourage state agencies to use expanding technologies to interface with out-of-state agencies and other entities in an attempt to reduce travel expenditures by 10% each biennium. The budget director shall report semiannually in August and February to the legislative finance committee as to the efforts of the agencies to meet the intent of the legislature.

**Section 10. Reduced dues.** It is the intent of the legislature to encourage state agencies to reduce dues paid to professional organizations by 10% each biennium. The budget director shall report semiannually in August and February to the legislative finance committee as to the efforts of the agencies to meet the intent of the legislature.

**Section 11. Totals not appropriations.** The totals shown in [this act] are for informational purposes only and are not appropriations.

**Section 12. Coordination instruction.** If House Bill No. 169 is passed and approved in a form that classifies the pension fund type as not part of the state treasury for appropriation purposes, then the appropriations for the public employees' retirement board and the teachers' retirement board are void.

**Section 13. Effective date.** [This act] is effective July 1, 1997.

**Section 14. Appropriations.** The following money is appropriated for the respective fiscal years:

HeinOnline -- 1997 vol. III 3350 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| | | | | | A. GENERAL GOVERNMENT AND TRANSPORTATION | | | | | | |
| LEGISLATIVE BRANCH (1104) | | | | | | | | | | | |
| 1. Legislative Services (20) | | | | | | | | | | | |
| 2,842,268 | 969,036 | 0 | 0 | 0 | 3,811,304 | 3,376,976 | 437,698 | 0 | 0 | 0 | 3,814,674 |
| 2. Legislative Committees and Activities (21) (Biennial) | | | | | | | | | | | |
| 171,285 | 13,306 | 0 | 0 | 0 | 184,591 | 171,277 | 13,318 | 0 | 0 | 0 | 184,595 |
| 3. Fiscal Analysis and Review (27) | | | | | | | | | | | |
| 850,023 | 0 | 0 | 0 | 0 | 850,023 | 878,611 | 0 | 0 | 0 | 0 | 878,611 |
| a. Legislative Requests (Biennial) | | | | | | | | | | | |
| 5,000 | 0 | 0 | 0 | 0 | 5,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. SB 21 — Joint Committee on Postsecondary Education Policy and Budget (Restricted/Biennial) | | | | | | | | | | | |
| 20,110 | 0 | 0 | 0 | 0 | 20,110 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4. Audit and Examination (28) | | | | | | | | | | | |
| 1,513,017 | 1,239,758 | 0 | 0 | 0 | 2,752,775 | 1,548,692 | 1,196,484 | 0 | 0 | 0 | 2,745,176 |
| Total | | | | | | | | | | | |
| 5,401,703 | 2,222,100 | 0 | 0 | 0 | 7,623,803 | 5,975,556 | 1,647,500 | 0 | 0 | 0 | 7,623,056 |

It is the intent of the legislature that money appropriated in House Bill No. 1 for the operation of the 55th legislature and unexpended as a consequence of an early adjournment of the regular session of the 55th legislature be transferred at the discretion of the respective approving authorities to the legislative committees and activities program (21) for additional support of activities authorized under Title 5, chapter 11, parts 3 and 7, with priority to participation in the Pacific Northwest economic region.

Of the amount appropriated in section 15, legislative council, item 2, Chapter 593, Laws of 1995, any unexpended funds up to $415,000 are reappropriated to the legislative services program within the legislative services division. The funds reappropriated to the legislative services program are appropriated for the 1997 biennium for expenses associated with legislative branch information technology.

Item 1 includes a 10% reduction in equipment totaling $16,200 in fiscal year 1998 and $14,909 in fiscal year 1999. The agency may allocate this reduction among programs.

CONSUMER COUNSEL (1112)

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Administration Program (01) | | | | | | | | | | | |
| 0 | 1,012,977 | 0 | 0 | 0 | 1,012,977 | 0 | 1,029,735 | 0 | 0 | 0 | 1,029,735 |
| Total | | | | | | | | | | | |
| 0 | 1,012,977 | 0 | 0 | 0 | 1,012,977 | 0 | 1,029,735 | 0 | 0 | 0 | 1,029,735 |

HeinOnline -- 1997 vol. III 3351 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| JUDICIARY (2110) | | | | | | | | | | | | |
| 1. Supreme Court Operations (01) | 2,526,802 | 993,552 | 0 | 0 | 0 | 3,520,354 | 2,493,147 | 995,676 | 0 | 0 | 0 | 3,488,823 |
| a. Legislative Audit (Restricted/Biennial) | 25,390 | 0 | 0 | 0 | 0 | 25,390 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Federal Court Assessment Study (Restricted/OTO) | 36,250 | 0 | 108,725 | 0 | 0 | 144,975 | 36,250 | 0 | 108,725 | 0 | 0 | 144,975 |
| 2. Boards and Commissions (02) | 245,721 | 30,000 | 0 | 0 | 0 | 275,721 | 244,210 | 30,000 | 0 | 0 | 0 | 274,210 |
| a. Judicial Standards Commission (Restricted) | 25,000 | 0 | 0 | 0 | 0 | 25,000 | 25,000 | 0 | 0 | 0 | 0 | 25,000 |
| 3. Law Library (03) | 621,547 | 0 | 0 | 0 | 0 | 621,547 | 625,767 | 0 | 0 | 0 | 0 | 625,767 |
| 4. District Court Operations (04) | 3,265,272 | 0 | 0 | 0 | 0 | 3,265,272 | 3,264,745 | 0 | 0 | 0 | 0 | 3,264,745 |
| 5. Water Courts Supervision (05) | 0 | 595,806 | 0 | 0 | 0 | 595,806 | 0 | 594,888 | 0 | 0 | 0 | 594,888 |
| 6. Clerk of Court (06) | 226,759 | 0 | 0 | 0 | 0 | 226,759 | 224,398 | 0 | 0 | 0 | 0 | 224,398 |
| Total | 6,972,741 | 1,619,358 | 108,725 | 0 | 0 | 8,700,824 | 6,913,517 | 1,620,564 | 108,725 | 0 | 0 | 8,642,806 |

If House Bill No. 170 is not passed and approved, the appropriation in item 1 is reduced by $175,012 in fiscal year 1998 and $174,981 in fiscal year 1999.

Item 1 includes a 10% reduction in equipment totaling $11,900 in fiscal year 1998 and $6,700 in fiscal year 1999. The supreme court may allocate this reduction among programs.

The law library should develop a procedure for collecting fees for electronic access services offered by the library.

The supreme court shall certify to the legislative fiscal division by July 1, 1997, that all district courts in Montana are in compliance with 45-9-208 and 45-10-108.

It is the intent of the legislature that the supreme court administrator coordinate development of the federal grant guidelines and coordinate applications for grants by the Montana judicial districts, pursuant to 42 U.S.C. 669B.

Because House Bill No. 169 requires that the state's contribution to the judges' pension trust fund for the chief water court judge be budgeted, item 5 has been increased by $25,102 in state special revenue in each fiscal year. If House Bill No. 169 is not passed and approved in a form that requires the contribution to be budgeted, then the state special revenue amounts in item 5 are reduced by $25,102 in each fiscal year. If House Bill No. 169 is passed and approved and if House Bill No. 170 is passed and approved in a form decreasing the percentage contribution to the pension of the chief water court judge to 25.81%, then the state special revenue appropriations in item 5 are reduced by $6,436 in each fiscal year.

HeinOnline -- 1997 vol. III 3352 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| **MONTANA CHIROPRACTIC LEGAL PANEL (2115)** | | | | | | | | | | | | |
| 1. Legal Panel Operations (01) | 0 | 14,000 | 0 | 0 | 0 | 14,000 | 0 | 14,010 | 0 | 0 | 0 | 14,010 |
| Total | 0 | 14,000 | 0 | 0 | 0 | 14,000 | 0 | 14,010 | 0 | 0 | 0 | 14,010 |
| **GOVERNOR'S OFFICE (3101)** | | | | | | | | | | | | |
| 1. Executive Office Program (01) | 1,086,541 | 244,966 | 0 | 0 | 0 | 1,329,507 | 1,083,240 | 247,033 | 0 | 0 | 0 | 1,330,273 |
| a. Legislative Audit (Restricted/Biennial) | 24,702 | 0 | 0 | 0 | 0 | 24,702 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Mansion Maintenance Program (02) | 78,170 | 0 | 0 | 0 | 0 | 78,170 | 78,099 | 0 | 0 | 0 | 0 | 78,099 |
| 3. Air Transportation Program (03) | 126,488 | 16,000 | 0 | 0 | 0 | 142,488 | 128,286 | 17,000 | 0 | 0 | 0 | 145,286 |
| 4. Office of Budget and Program Planning (04) | 933,974 | 0 | 0 | 0 | 0 | 933,974 | 956,218 | 0 | 0 | 0 | 0 | 956,218 |
| a. Legislative Audit (Restricted/Biennial) | 14,632 | 0 | 0 | 0 | 0 | 14,632 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. *Wharton Econometric Forecasting Associates (Restricted)* | 22,415 | 0 | 0 | 0 | 0 | 22,415 | 22,415 | 0 | 0 | 0 | 0 | 22,415 |
| c. Montana Integrated Budget System Development (Restricted) | 50,000 | 0 | 0 | 0 | 0 | 50,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Indian Affairs (05) | 102,693 | 0 | 0 | 0 | 0 | 102,693 | 108,907 | 0 | 0 | 0 | 0 | 108,907 |
| 6. Lieutenant Governor (12) | 187,607 | 0 | 0 | 0 | 0 | 187,607 | 189,443 | 0 | 0 | 0 | 0 | 189,443 |
| 7. Citizens' Advocate Office (16) | 57,415 | 0 | 15,000 | 0 | 0 | 72,415 | 57,416 | 0 | 15,000 | 0 | 0 | 72,416 |
| 8. Mental Disabilities Board of Visitors (20) | 159,305 | 16,070 | 0 | 0 | 0 | 175,375 | 177,064 | 16,069 | 0 | 0 | 0 | 193,133 |

HeinOnline -- 1997 vol. III 3353 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| Total | 2,841,942 | 277,036 | 15,000 | 0 | 0 | 3,133,978 | 2,801,088 | 280,102 | 15,000 | 0 | 0 | 3,096,190 |

The Montana consensus council is appropriated any additional state special revenue money, up to $66,000 in fiscal year 1998 and $66,000 in fiscal year 1999, over the amount of the state special revenue appropriation for the Montana consensus council contained in item 1. Any state special revenue funds received in excess of the appropriation contained in item 1 must cause a reversion of a like amount of general fund money.

If House Bill No. 188 is passed and approved and includes at least $500,000 for the Montana integrated budget system, the amount in item 4c may not be appropriated.

The appropriation provided for the citizens' advocate office is contingent upon funds being used to achicve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The agency shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets, with explanations for any significant variances.

The citizens' advocate office will achieve the following goal by meeting the specified performance targets:

Goal:

The goal of the citizens' advocate office is to provide accessibility to state government for Montana citizens. A toll-free number is provided to the public for this purpose.

Performance Measures:

(1) The office staff answer incoming phone calls, the volume of which is beyond the control of the office. However, by maintaining efficiency in answering the toll-free calls, the office will continue to answer at least 25,000 phone calls per year.

(2) Through increased efficiency, the citizens' advocate office staff will decrease the number of busy signals received by incoming callers, which is currently at about 35%. The performance target is to reduce the number of busy signals received to 25%.

SECRETARY OF STATE (3201)

The rates approved for the office of the secretary of state are contingent upon resultant revenue being used to achieve program targets and performance measures as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these targets and performance measures, with explanations of any significant variances.

The office of the secretary of state shall achieve the following goals by meeting the specified targets and performance measures:

Goals: Increase voter registration and provide open access to the election process.

| Target | Performance Measure |
|---|---|
| Maintain the percentage of eligible but nonregistered Montanans | Have 87.5% of the eligible population registered to vote. (The eligible population will be measured after each presidential election. The performance measure is subject to revision if the legislature brings the state of Montana into compliance with the current National Voter Registration Act of 1993 and amends the current purge procedure.) |
| Train election administrators | Have representatives from 50 of the 56 counties attend the biennial workshop |

HeinOnline -- 1997 vol. III 3354 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| Establish a mechanism to monitor voter registration duplication at the state level | | | | | Have a plan set by January 1, 1998 | | | | | | | |
| Have copies of the legislation passed by the 1997 legislature and signed by the governor available for the public and state agencies | | | | | Have 70% of signed legislation available in either electronic or hard copy within 3 days of receipt by the secretary of state | | | | | | | |
| Have at least the basic information (name, office, and party) from all state, district, and legislative candidates available for the public | | | | | Have the information on the internet within three days of filing | | | | | | | |
| Have options for increasing voter turnout, including alternatives to polling place voting, such as vote-by-mail and vote-by-telephone. Also make use of the opportunities presented by the internet for increasing voter turnout | | | | | Report to the 1999 legislature | | | | | | | |
| COMMISSIONER OF POLITICAL PRACTICES (3202) | | | | | | | | | | | | |
| 1. Administration (01) | 270,856 | 0 | 0 | 0 | 0 | 270,856 | 275,405 | 0 | 0 | 0 | 0 | 275,405 |
| a. Legislative Audit (Restricted/Biennial) | 5,164 | 0 | 0 | 0 | 0 | 5,164 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 276,020 | 0 | 0 | 0 | 0 | 276,020 | 275,405 | 0 | 0 | 0 | 0 | 275,405 |
| OFFICE OF THE STATE AUDITOR (3401) | | | | | | | | | | | | |
| 1. Central Management (01) | 370,347 | 25,876 | 0 | 0 | 0 | 396,223 | 359,204 | 27,177 | 0 | 0 | 0 | 386,381 |
| a. Legislative Audit (Restricted/Biennial) | 3,615 | 0 | 0 | 0 | 0 | 3,615 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Insurance Program (03) | 1,495,590 | 522,396 | 2,500 | 0 | 0 | 2,020,486 | 1,470,513 | 522,839 | 2,500 | 0 | 0 | 1,995,852 |

HeinOnline -- 1997 vol. III 3355 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Legislative Audit (Restricted/Biennial) | 15,905 | 0 | 0 | 0 | 0 | 15,905 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. SB 112 — Viatical Settlements | 0 | 10,000 | 0 | 0 | 0 | 10,000 | 0 | 10,000 | 0 | 0 | 0 | 10,000 |
| c. SB 79 — Montana Living Trust Act | 0 | 42,715 | 0 | 0 | 0 | 42,715 | 0 | 47,740 | 0 | 0 | 0 | 47,740 |
| d. HB 166 — Actuarial Valuation (Restricted/Biennial) | 6,000 | 0 | 0 | 0 | 0 | 6,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| e. SB 378 — Implementation of Kennedy/Kassebaum Federal Changes | 0 | 63,920 | 0 | 0 | 0 | 63,920 | 0 | 88,485 | 0 | 0 | 0 | 88,485 |
| 3. Securities (04) | 382,272 | 74,977 | 0 | 0 | 0 | 457,249 | 390,067 | 77,976 | 0 | 0 | 0 | 468,043 |
| a. Legislative Audit (Restricted/Biennial) | 4,579 | 0 | 0 | 0 | 0 | 4,579 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 2,278,308 | 739,884 | 2,500 | 0 | 0 | 3,020,692 | 2,219,784 | 774,217 | 2,500 | 0 | 0 | 2,996,501 |

Item 2 includes a 10% reduction in equipment totaling $9,500 in fiscal year 1998 and $7,100 in fiscal year 1999. The department may allocate this reduction among programs.

Because of the elimination of the statutory appropriation for actuarial valuation of the police retirement fund by house bill no. 166, Item 2d appropriates $6,000 in general fund money in fiscal year 1998 as a restricted and biennial appropriation. If House Bill No. 166 is not passed and approved in a form that eliminates the statutory appropriation, then item 2d is eliminated.

The department is appropriated amounts up to $110,000 in fiscal year 1998 and $105,000 in fiscal year 1999 from the insurance fee account in the state special revenue fund for contract examinations.

The department is appropriated amounts up to $10,000 in fiscal year 1998 and $10,000 in fiscal year 1999 from the securities fee account in the state special revenue fund for contract examinations.

DEPARTMENT OF TRANSPORTATION (5401)

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. General Operations Program (01) | 0 | 12,006,826 | 409,480 | 0 | 0 | 12,416,306 | 0 | 12,266,172 | 408,275 | 16,367 | 0 | 12,690,814 |
| a. Legislative Audit (Restricted/Biennial) | 0 | 104,574 | 0 | 0 | 0 | 104,574 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Revenue Sharing — Lockheed (Restricted/Biennial) | 0 | 1,400,000 | 0 | 0 | 0 | 1,400,000 | 0 | 0 | 0 | 0 | 0 | 0 |

HeinOnline -- 1997 vol. III 3356 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| c. Highway Maps (Biennial) | 0 | 145,510 | 0 | 0 | 0 | 145,510 | 0 | 15,510 | 0 | 0 | 0 | 15,510 |
| 2. Construction Program (02) (Biennial) | 0 | 79,615,694 | 176,825,030 | 0 | 0 | 256,440,724 | 0 | 80,721,189 | 157,898,099 | 0 | 0 | 238,619,288 |
| 3. Maintenance Program (03) (Biennial) | 0 | 66,293,786 | 0 | 0 | 0 | 66,293,786 | 0 | 65,769,274 | 0 | 0 | 0 | 65,769,274 |
| a. Weed Control (Restricted/Biennial) | 0 | 802,000 | 0 | 0 | 0 | 802,000 | 0 | 802,000 | 0 | 0 | 0 | 802,000 |
| b. Environmental Requirements (Biennial) | 0 | 250,000 | 0 | 0 | 0 | 250,000 | 0 | 250,000 | 0 | 0 | 0 | 250,000 |
| c. Communications Equipment (Biennial) | 0 | 19,435 | 0 | 0 | 0 | 19,435 | 0 | 7,437 | 0 | 0 | 0 | 7,437 |
| 4. Motor Carrier Services Division (22) | 0 | 4,632,985 | 0 | 0 | 0 | 4,632,985 | 0 | 4,644,219 | 0 | 0 | 0 | 4,644,219 |
| 5. Aeronautics Program (40) | 0 | 955,271 | 75,000 | 0 | 0 | 1,030,271 | 0 | 724,701 | 75,000 | 0 | 0 | 799,701 |
| 6. Transportation Planning Division (50) | 250,000 | 1,000,935 | 5,433,921 | 0 | 0 | 6,684,856 | 250,000 | 896,454 | 5,009,635 | 0 | 0 | 6,156,089 |
| a. McCarty Farms (Restricted/Biennial/OTO) | 0 | 200,000 | 0 | 0 | 0 | 200,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Agriculture/Transportation Consultant (Restricted/Biennial) | 0 | 50,000 | 0 | 0 | 0 | 50,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Transplan 21 (Restricted/OTO) | 0 | 46,815 | 187,258 | 0 | 0 | 234,073 | 0 | 46,815 | 187,258 | 0 | 0 | 234,073 |
| d. Consultant Services (Restricted/OTO) | 0 | 88,000 | 352,000 | 0 | 0 | 440,000 | 0 | 48,000 | 192,000 | 0 | 0 | 240,000 |
| Total | 250,000 | 167,611,830 | 183,282,688 | 0 | 0 | 351,144,518 | 250,000 | 166,191,771 | 163,770,267 | 16,367 | 0 | 330,228,405 |

The department may adjust appropriations in the construction and transportation planning programs between state special and federal special revenue fund types, provided the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning, and all fund transfers of more than $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

Item 2 includes a 10% reduction in equipment totaling $290,000 in fiscal year 1998 and $180,000 in fiscal year 1999. The department may allocate this reduction among programs.

HeinOnline -- 1997 vol. III 3357 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

It is the intent of the legislature that $1,318,000 in state special revenue funds augment the department's budgeted funding level for the secondary road system program in the 1999 biennium.

The rates approved for the state motor pool are contingent upon resultant revenue being used to achieve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets with explanations for any significant variances.

Goal 1: To provide cost-efficient and reliable vehicles to state employees conducting official business.

Objective 1: To implement a test to reduce 4-door passenger vehicle costs by 25% per mile by the end of the 1999 biennium.

Performance Measure: Test vehicles that achieved a 25% cost-per-mile reduction over the standard nontest vehicles.

Objective 2: To provide a motor pool or contracted vehicle to meet the basic transportation requirements in response to all requests made a minimum of 5 working days prior to need date.

Performance Measure: Number of requests unmet due to nonavailability of a motor pool or overflow contracted vehicle that meets the user's basic transportation needs.

| Requests unmet (by class) | FY 97 | FY 98 | FY 99 |
|---|---|---|---|
| (For each of the 4 classes) | (Total) | (A-E) | (A-E) |

(A) No motor pool vehicle available that meets basic transportation needs.

(B) Specific class reserved and refusal of other class.

(C) Specific class being serviced and refusal of other class.

(D) No overflow vehicle available.

(E) Refusal for medical reasons.

Objective 3: To provide and maintain out-stationed vehicles to meet the user requirements outside the Helena area.

Performance Measures:

(1) Purchased vehicles approved by OBPP and the legislature and provided to state agencies.

| Vehicle Classes | FY 98 | FY 99 |
|---|---|---|
| (No. Vehicle authorized) | Purchased | Purchased |

(2) Annual review of all out-stationed units to determine needs.

| Vehicle Classes | FY XX Average Usage |
|---|---|
| Vehicle usage | (Within 25% of mean usage) |

HeinOnline -- 1997 vol. III 3358 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Goal 2: To maintain a preventive maintenance program to ensure vehicles are serviced, safe, and reliable.

Objective: To maintain the fleet in accordance with the motor pool preventive maintenance program standards.

Performance Measures:

(1) Review the motor pool fleet to ensure that 90% of the vehicles are meeting level I or II preventive maintenance schedules.

(2) Perform a serviceability and safety inspection on 90% of all motor pool vehicles annually.

Goal 3: To conduct a fleet functional analysis to determine if the fleet is appropriately sized and is meeting agency and user expectations and requirements.

Objective: To review the daily use and leasing vehicle maintenance programs to ensure that vehicles are being utilized, serviced, and maintained and that the mix and number of vehicles are within standards.

Performance Measures:

(1) Conduct annual statistical fleet sizing analysis to determine basic fleet requirements, maintain the fleet within 10% of suggested statistical size, and implement changes in class sizes to maintain an optimum mix of vehicle types.

(2) Conduct a customer satisfaction survey during each biennium.

(3) Respond to customer written vehicle complaints within 10 working days.

Maintain Complaint File

Date of complaint Date of response Days

DEPARTMENT OF REVENUE (5801)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Director's Office (01) | | | | | | | | | | | | |
| | 1,153,656 | 0 | 0 | 0 | 0 | 1,153,656 | 1,171,216 | 0 | 0 | 0 | 0 | 1,171,216 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | | |
| | 120,750 | 618 | 850 | 0 | 0 | 122,218 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Expert Witness Fees and Litigation Costs | | | | | | | | | | | | |
| | 75,000 | 0 | 0 | 0 | 0 | 75,000 | 75,000 | 0 | 0 | 0 | 0 | 75,000 |
| c. Department of Labor and Industry/Department of Revenue Increased Processing Costs (Restricted/OTO) | | | | | | | | | | | | |
| | 194,600 | 0 | 486,500 | 0 | 0 | 681,100 | 71,800 | 0 | 179,500 | 0 | 0 | 251,300 |
| 2. Operations Division (02) | | | | | | | | | | | | |
| | 2,520,162 | 0 | 0 | 0 | 0 | 2,520,162 | 2,527,206 | 0 | 2,277 | 0 | 0 | 2,529,483 |
| a. Support for Electronic Tax Filing (OTO) | | | | | | | | | | | | |
| | 34,970 | 0 | 0 | 0 | 0 | 34,970 | 44,703 | 0 | 0 | 0 | 0 | 44,703 |

HeinOnline -- 1997 vol. III 3359 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| b. HB 166 — Payroll Tax Administration (Restricted) | 110,849 | 0 | 0 | 0 | 0 | 110,849 | 111,186 | 0 | 0 | 0 | 0 | 111,186 |
| 3. Liquor Division (05) | 326,500 | 0 | 0 | 0 | 0 | 326,500 | 326,476 | 0 | 0 | 0 | 0 | 326,476 |
| a. SB 354 — Restaurant Beer and Wine Licensing | 0 | 33,868 | 0 | 0 | 0 | 33,868 | 0 | 13,124 | 0 | 0 | 0 | 13,124 |
| 4. Income Tax (06) | 5,152,105 | 186,342 | 0 | 0 | 0 | 5,338,447 | 5,121,646 | 187,020 | 0 | 0 | 0 | 5,308,666 |
| a. Universal Access Fund Administration | 0 | 5,000 | 0 | 0 | 0 | 5,000 | 0 | 5,000 | 0 | 0 | 0 | 5,000 |
| b. HB 166 — Payroll Tax Administration (Restricted) | 380,412 | 0 | 0 | 0 | 0 | 380,412 | 379,639 | 0 | 0 | 0 | 0 | 379,639 |
| 5. Corporation Tax (07) | 1,371,370 | 30,565 | 225,826 | 0 | 0 | 1,627,761 | 1,371,582 | 30,591 | 226,821 | 0 | 0 | 1,628,994 |
| 6. Property Valuation Division (08) | 13,720,497 | 40,000 | 0 | 0 | 0 | 13,760,497 | 13,104,141 | 40,000 | 0 | 0 | 0 | 13,144,141 |
| a. Cellular Phones (Restricted) | 10,980 | 0 | 0 | 0 | 0 | 10,980 | 10,980 | 0 | 0 | 0 | 0 | 10,980 |
| b. Geographic Information System Equipment (OTO) | 16,560 | 0 | 0 | 0 | 0 | 16,560 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 25,188,411 | 296,393 | 713,176 | 0 | 0 | 26,197,980 | 24,315,575 | 275,736 | 408,598 | 0 | 0 | 24,999,908 |

Because of de-earmarking of cigarette tax administration by House Bill No. 166, item 1a has been reduced by $386 in state special revenue in fiscal year 1998 and the general fund amount has been increased by the same amount. If House Bill No. 166 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amount in item 1a is reduced by $386 in fiscal year 1998 and the state special revenue amount is increased by the same amount.

Because of de-earmarking of payroll tax administration by House Bill No. 166, item 1a has been ceduced by $2,215 in state special revenue in fiscal year 1998 and the general fund amount has been increased by the same amount. If House Bill No. 166 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amount in item 1a is reduced by $2,215 in fiscal year 1998 and the state special revenue amount is increased by the same amount.

Item 1c is contingent upon passage and approval of House Bill No. 561.

Because of de-earmarking of payroll tax administration by House Bill No. 166, item 1c has been reduced by $194,600 in state special revenue in fiscal year 1998 and by $71,800 in state special revenue in fiscal year 1999 and general fund amounts have been increased by the same amounts. If House Bill No. 166 is not passed and approved in a form thet de-earmarks the state special revenue, then the general fund amounts in item 1c are reduced by $194,600 in fiscal year 1998 and by $71,800 in fiscal year 1999 and the state special revenue amounts are increased by the same amounts.

HeinOnline -- 1997 vol. III 3360 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Because of de-earmarking of payroll tax administration by House Bill No. 166, item 2 has been reduced by $110,849 in state special revenue in fiscal year 1998 and by $111,186 in state special revenue in fiscal year 1999 and general fund amounts in item 2b have been increased by the same amounts. If House Bill No. 166 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 2b are eliminated and the state special revenue amounts in item 2 are increased by the same amounts.

Items 2, 4, and 6 include a 10% reduction in equipment tetaling $64,000 in fiscal year 1998 and $42,000 in fiscal year 1999. The department may allocate this reduction among programs.

If House Bill No. 166 is passed and approved in a form that de-earmarks the payroll tax administration, the legislature will have appropriated $688,075 in general fund money in fiscal year 1998 and $562,625 in general fund money in fiscal year 1999 to collect the payroll tax. In addition to the amounts identified for this purpose in items 2b and 4b, item 1a contains $2,215 in general fund money in fiscal year 1998 and item 1c contains $194,800 in general fund money in fiscal year 1998 and $71,800 in general fund money in fiscal year 1999 appropriated for that purpose. It is the intent of the legislature that further legislatures line item and restrict any appropriations to the department for collection of the payroll tax.

Item 3a is contingent upon passage and approval of Senate Bill No. 354.

Because of de-earmarking of cigarette tax administration by House Bill No. 166, item 4 has been redured by $133,350 in stete special revenue in fiscal year 1998 and by $133,110 in state special revenue in fiscal year 1999 and general fund amounts have been increased by the same amounts. If House Bill No. 166 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 4 are reduced by $133,350 in fiscal year 1998 and by $133,110 in fiscal year 1999 and the state special revenue amounts are increased by the same amounts.

Because of de-earmarking of tax checkoff administration by House Bill No. 186, item 4 has been reduced by $8,400 in state special revenue in each fiscal year and general fund amounts have been increased by the same amounts. If House Bill No. 166 is not passed and approved in a form thet de-earmarks the state special revenue, then the general fund amounts in item 4 are reduced by $8,400 in each fiscal year and the state special revenue amounts are increased by the same amounts.

Because of de-earmarking of 9-1-1 emergency telephone tax administration by House Bill No. 166, item 4 has been reduced by $7,716 in state special revenue in each fiscal year and general fund amounts have been increased by the same amounts. If House Bill No. 166 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 4 are reduced by $7,716 in each fiscal year and the state special revenue amounts are increased by the same amounts.

Because of de-earmarking of payroll tax administration by House Bill No. 166, item 4 has been reduced by $380,412 in state special revenue in fiscal year 1998 and by $379,639 in state special revenue in fiscal year 1999 and general fund and state special revenue amounts in item 4c have been increased by the same amounts. If House Bill No. 166 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 4c are eliminated and the state special revenue amounts in item 4 are increased by the same amounts.

The appropriation in item 4a for universal access fund administration is contingent on the passage and approval of Senate Bill No. 89 by the 1997 legislature.

The appropriation provided for the natural resource and corporation tax division is contingent upon funds being used to achieve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress towards achievement of these performance targets with explanations for any significant variances.

The corporation tax division will achieve the following goals and objectives by meeting the specified performance measures:

Goal 1: To promote fair and consistent treatment of all taxpayers through uniform application of tax law.

Objective 1: Expand taxpayer surveys to include field audit, office audit, correspondence, customer service, and electronic filings by June 30, 1999.

HeinOnline -- 1997 vol. III 3361 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Performance Measures:

(1) Develop quality service questionnaires by June 30, 1997.

(2) Implement the use of quality service questionnaires and compile results that will be statistically valid and will provide a basis for future changes.

Objective 2: Improve audit efficiency and create a more equitable selection process by increased use of risk assessment and apportionment data analysis.

Performance Measures:

(1) By June 30, 1998, 50% of all audits selected will be made through the improved audit selection process by using oil and natural gas purchaser information data base and statistical information for producers. Corporation tax audits will be selected through the use of apportionment data analysis available on the data base.

(2) By June 30, 1999, 80% of all audits will be selected by the use of the new selection process.

Goal 2: To make conducting business with the department as simple and pleasant as possible.

Objective 1: Perform a biennial review and make recommendations to the 1999 legislature for streamlining or simplifying, or both, natural resource and corporation tax statutes.

Performance Measures:

(1) By June 30, 1998, survey all producers to determine whether the reporting and payment of oil and natural gas production taxes by the first purchaser is the most appropriate or efficient method.

(2) By June 30, 1997, establish a working group of producers, royalty owners, county and school officials, and other interested citizens to study further consolidation and simplification of the tax rate structure for oil and natural gas production.

(3) By June 30, 1998, develop a proposal to present to the 1999 legislature that addresses the issues developed by the working group.

(4) Meet with CPAs and other interested groups throughout the biennium to discuss proposals for changes in statutes or filing requirements.

Objective 2: Timely response to taxpayer request for services.

Performance Measures:

(1) Issue 95% of all refunds of overpayments within 15 working days of receipt.

(2) Issue 95% of all requests for tax certificates within 3 days of receipt.

(3) Respond to 95% of taxpayer requests for information within 5 days of receipt.

Goal 3: To continually seek greater efficiency in agency programs, helping to ensure that resources are used wisely.

Objective 1: Increase the average number of field audits completed each year of the biennium without an increase in staff.

HeinOnline -- 1997 vol. III 3362 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| | | | | | | | | | | | |

Performance Measures:

(1) Complete audits of 35 natural resource companies (includes oil, natural gas, coal, metals, and industrial minerals producers) each year of the biennium.

(2) Complete 35 corporation license tax audits each year of the biennium.

(3) Reduce by 25% the amount of time spent by audit staff in the corporation tax bureau on nonaudit activities for each year of the biennium.

(4) Achieve a 5% reduction in average hours spent on completing field audits during each year of the biennium.

Goal 4: To maintain and value a high-quality workforce.

Objective 1: Seek out job-specific additional training opportunities.

Objective 2: Expand customer feedback to address more than field audit performance.

Goal 5: To foster a positive relationship with government and citizen groups impacted by taxation policy.

Objective 1: Seek noncorporation, nonnatural resource-producing public input and input from impacted counties and schools prior to regulatory or statutory changes.

The appropriation of $10,980 in fiscal year 1998 and $10,980 in fiscal year 1999 for purchase of safety equipment for appraisers is restricted to the purchase of cellular phones and to other costs associated with use of cellular phones.

Liquor division proprietary funds necessary to maintain adequate inventories, pay freight charges, and transfer profit and taxes to appropriate accounts are appropriated to the department in amounts not to exceed $50,433,000 in fiscal year 1998 and $51,370,000 in fiscal year 1999.

DEPARTMENT OF ADMINISTRATION (6101)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | Accounting and Management Support Program (03) | | | | | | | | | | | |
| | 1,260,101 | 6,032 | 10,483 | 36,486 | 0 | 1,313,102 | 1,245,639 | 19,161 | 10,621 | 81,860 | 0 | 1,357,281 |
| | a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| | 34,611 | 0 | 0 | 0 | 0 | 34,611 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. | Architecture and Engineering Program (04) | | | | | | | | | | | |
| | 0 | 917,782 | 0 | 0 | 0 | 917,782 | 0 | 913,215 | 0 | 0 | 0 | 913,215 |
| | a. Federal Funds Capital Projects Match (Restricted/Biennial) | | | | | | | | | | | |
| | 500,000 | 0 | 0 | 0 | 0 | 500,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 3. | Procurement and Printing Division (06) | | | | | | | | | | | |
| | 445,647 | 0 | 0 | 0 | 0 | 445,647 | 445,990 | 0 | 0 | 0 | 0 | 445,990 |
| 4. | Information Services Division (07) | | | | | | | | | | | |
| | 90,000 | 0 | 0 | 0 | 0 | 90,000 | 60,000 | 0 | 0 | 0 | 0 | 60,000 |
| | a. HB 166 — Emergency Telecommunications Administration (Restricted) | | | | | | | | | | | |
| | 112,636 | 0 | 0 | 0 | 0 | 112,636 | 112,636 | 0 | 0 | 0 | 0 | 112,636 |

HeinOnline -- 1997 vol. III 3363 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| b. Public Safety Radio (Biennial) | 40,000 | 0 | 0 | 0 | 0 | 40,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. General Services Program (08) | 235,320 | 0 | 0 | 0 | 58,801 | 294,121 | 244,652 | 0 | 0 | 0 | 58,801 | 303,453 |
| a. Capitol Complex Major Maintenance | 0 | 0 | 0 | 0 | 250,000 | 250,000 | 0 | 0 | 0 | 0 | 250,000 | 250,000 |
| 6. State Personnel Division (23) | 1,017,459 | 0 | 0 | 0 | 0 | 1,017,459 | 993,389 | 0 | 0 | 0 | 0 | 993,389 |
| a. Personal Services Contingency (Biennial) | 246,554 | 0 | 0 | 0 | 4,301,803 | 4,548,357 | 2,000,000 | 0 | 0 | 0 | 4,500,000 | 6,500,000 |
| 7. State Tax Appeal Board (37) | 377,433 | 0 | 0 | 0 | 0 | 377,433 | 377,952 | 0 | 0 | 0 | 0 | 377,952 |
| Total | 4,359,761 | 923,814 | 10,483 | 36,486 | 4,610,604 | 9,941,148 | 5,480,258 | 932,376 | 10,621 | 81,860 | 4,808,801 | 11,313,916 |

Items 2 and 6 include a 10% reduction in equipment totaling $4,800 in fiscal year 1998 and $3,800 in fiscal year 1999. The department may allocate this reduction among programs.

The appropriation in item 2a may be used to match the federal special revenue appropriated in House Bill No. 5 for the construction of one regional correctional facility. If the appropriation is not expected to be expended by the end of the 1999 biennium, it may be reappropriated by the 1999 legislature.

If House Bill No. 14 is passed and approved, the appropriation in item 2a is void.

If House Bill No. 14 is not passed and approved, of the 1.3% of coal severance taxes allocated to the long-range building program fund in the debt service fund type, as provided in House Bill No. 5, 0.5% must be transferred to the general fund and 0.8% must be transferred to an account in the state special revenue fund for the purpose of the protection of works of art in the state capitol and for other cultural and aesthetic projects.

Because of the de-earmarking of emergency telecommunications administrative costs by House Bill No. 166, item 4a appropriates $112,636 in general fund money in each fiscal year as a restricted appropriation. If House Bill No. 166 is not passed and approved in a form that de-earmarks the administrative costs, then the general fund amounts in item 4a are reduced by $112,636 in each fiscal year and the state special revenue amounts are increased by the same amounts.

The appropriation from the capitol land grant fund of $250,000 for fiscal year 1998 and $250,000 for fiscal year 1999 for major maintenance repairs on buildings within the capitol complex is contingent upon availability of capitol land grant funds.

The rates approved for the mail and distribution program are contingent upon resultant revenue being used to achieve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets, with explanations for any significant variances.

The mail and distribution program will achieve the following goals by meeting the specified performance measures:

Goal 1: To develop a pricing structure that stabilizes the program cash flow and provides incentives for agencies to prepare automated mail.

HeinOnline -- 1997 vol. III 3364 1997

| | Fiscal 1999 | | | | | | Fiscal 1999 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Performance Measures:

(1) Retire all program interentity loans by the end of fiscal year 1999.

(2) Base mail processing rates on actual postage plus overhead charges that accurately reflect the processing costs.

(3) Increase the ratio of automated to nonautomated mail by 30% over the biennium through interagency coordination and agency training in mailing list management.

(4) Set deadhead mailing rates for the coming biennium to more accurately reflect agency usage and central mail handling costs.

Goal 2: To consistently achieve a high degree of customer satisfaction with the timeliness and quality of mail processing service.

Performance Measures:

(1) To increase the automation of incoming mail to improve the accuracy of delivery through interagency coordination and agency training.

(2) Achieve a 99% level of the following delivery standards based on quarterly mail test samples: incoming mail delivered same day received, deadhead mail delivered within 24 hours of receipt, and antomated outgoing mail delivered to the United States postal service the same day received unless hold requested by customer.

(3) Customer satisfaction ratings from surveys done two times per year must meet acceptable service standards.

Item 6a contains biennial appropriations that the department and the office of budget and program planning may combine and spend in either year to allocate to agencies (except for Montana university system instructional faculty and the legislative branch), subject to the process described below, for personal services if the agencies did not experience normal turnover in an amount necessary to provide full funding for personal services. The amounts may be adjusted among fund types, excluding the general fund, which may not be adjusted.

It is not the intention of the executive branch or the legislature to force vacancies among judges or in direct care positions. It is recognized that the workload of the judges is ongoing. It is recognized that the nature of direct care mandates 24-hour staff coverage, 7 days a week, in order to provide statutorily mandated services. It is further recognized that vacancies in direct care programs do not translate into empty positions, but, rather, result in an increase in overtime wages until the position is filled. Accordingly, the amounts set aside for personal services contingencies for the judiciary and for direct care programs in executive branch agencies must be partially allocated to the affected agencies by the office of budget and program planning for fiscal year 1998 and fiscal year 1999 first-day processing. Likewise, the salaries of elected officials will be restored to the full amount cited on the already-approved schedule for fiscal year 1998 and fiscal year 1999 first-day processing.

Agencies making any other requests for an allocation of these contingency funds shall document the request in the manner prescribed by the budget director to show that personal services expenditures will exceed program appropriations for personal services and the reasons for the deficit. The office of budget and program planning shall provide an annual report to the legislative finance committee showing the allocations of these personal services contingency funds.

APPELLATE DEFENDER COMMISSION (6102)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Appellate Defender (01) | | | | | | | | | | | | |
| | 155,116 | 0 | 0 | 0 | 0 | 155,116 | 161,409 | 0 | 0 | 0 | 0 | 161,409 |
| Total | | | | | | | | | | | | |
| | 155,116 | 0 | 0 | 0 | 0 | 155,116 | 161,409 | 0 | 0 | 0 | 0 | 161,409 |

HeinOnline -- 1997 vol. III 3365 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| PUBLIC EMPLOYEES' RETIREMENT BOARD (6104) | | | | | | | | | | | | |
| 1. Public Employees' Retirement Division (35) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| a. Legislative Audit (Restricted/Biennial) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Asset/Liability Study (Biennial/OTO) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. HB 170 — Guaranteed Annual Benefit Adjustment | 0 | 0 | 0 | 0 | 78,500 | 78,500 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 0 | 0 | 0 | 0 | 78,500 | 78,500 | 0 | 0 | 0 | 0 | 0 | 0 |

If House Bill No. 169 is not passed and approved in a form that classifies the pension fund type as not part of the state treasury for appropriation purposes, then the pension funds appropriated in item 1 are increased by $1,321,851 in fiscal year 1998 and by $1,304,799 in fiscal year 1999, the pension funds appropriated in item 1a are increased by $55,074 in fiscal year 1998 and designated as restricted and biennial, and the pension funds appropriated in item 1b are increased by $12,500 in each fiscal year and designated as biennial and one-time only.

The appropriation for the asset/liability study is a one-time only biennial appropriation.

Item 1c is contingent upon passage and approval of House Bill No. 170.

If House Bill No. 169 is passed and approved, the item appropriating $78,500 in pension trust money and the language making the appropriation contingent upon passage and approval of House Bill No. 170 are void.

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| TEACHERS' RETIREMENT BOARD (6105) | | | | | | | | | | | | |
| 1. Teachers' Retirement Program (01) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| a. Legislative Audit (Restricted/Biennial) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Asset/Liability Study (Biennial/OTO) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

The appropriation for the asset/liability software is a one-time only biennial appropriation.

HeinOnline -- 1997 vol. III 3366 1997

| Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

If House Bill No. 169 is not passed and approved in a form that classifies the pension fund type as not part of the state treasury for appropriation purposes, then the pension funds appropriated in item 1 are increased by $956,081 in fiscal year 1998 and by $772,361 in fiscal year 1999, the pension funds appropriated in item 1a are increased by $31,415 in fiscal year 1998 and designated as restricted and biennial, and the pension funds appropriated in item 1b are increased by $7,500 in each fiscal year and designated as biennial and one-time only.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION A | | | | | | | | | | | |
| 47,724,002 | 174,717,392 | 184,132,572 | 36,486 | 4,689,104 | 411,299,556 | 48,392,591 | 172,768,012 | 164,315,711 | 98,227 | 4,808,801 | 390,381,341 |

HeinOnline -- 1997 vol. III 3367 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| **B HEALTH AND HUMAN SERVICES** | | | | | | | | | | | | |
| **DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)** | | | | | | | | | | | | |
| 1. Child and Family Services Division (03) | 39,511,253 | 7,601,952 | 87,318,013 | 0 | 0 | 134,431,217 | 39,678,774 | 7,739,624 | 89,865,407 | 0 | 0 | 137,283,805 |
| a. Permanency Planning (OTO) | 16,250 | 0 | 8,750 | 0 | 0 | 25,000 | 165,465 | 0 | 89,096 | 0 | 0 | 254,561 |
| b. Temporary Assistance for Needy Families Block Grant Implementation | 0 | 0 | 2,787,800 | 0 | 0 | 2,787,800 | 0 | 0 | 2,537,800 | 0 | 0 | 2,537,800 |
| c. Supplemental Security Income/Welfare Reform | 100,000 | 0 | 0 | 0 | 0 | 100,000 | 100,000 | 0 | 0 | 0 | 0 | 100,000 |
| d. Head Start Collaboration Project (OTO) | 0 | 0 | 100,000 | 0 | 0 | 100,000 | 0 | 0 | 100,000 | 0 | 0 | 100,000 |
| e. Enhanced Medicaid Administration Funds (Restricted/Biennial/OTO) | 0 | 0 | 2,764,134 | 0 | 0 | 2,764,134 | 0 | 0 | 0 | 0 | 0 | 0 |
| f. HB 343 — Domestic Violence (OTO) | 0 | 126,600 | 0 | 0 | 0 | 126,600 | 0 | 126,600 | 0 | 0 | 0 | 126,600 |
| g. SB 48 — Youth Court Act | 89,197 | 0 | 24,249 | 0 | 0 | 113,446 | 94,769 | 0 | 23,692 | 0 | 0 | 118,461 |
| 2. Director's Office (04) | 395,217 | 825,492 | 677,028 | 0 | 0 | 1,897,737 | 393,580 | 885,042 | 678,953 | 0 | 0 | 1,957,575 |
| a. University of Montana Contract (Biennial) | 41,400 | 11,500 | 62,100 | 0 | 0 | 115,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Legal Staff (OTO) | 22,023 | 6,408 | 32,830 | 0 | 0 | 61,261 | 22,023 | 6,408 | 32,830 | 0 | 0 | 61,261 |
| 3. Child Support Enforcement Division (05) | 0 | 3,095,122 | 6,091,608 | 0 | 0 | 9,186,730 | 0 | 3,094,058 | 6,091,097 | 0 | 0 | 9,185,155 |
| a. Omnibus Reconciliation Act Medical and Foster Care Positions (OTO) | 0 | 44,703 | 86,776 | 0 | 0 | 131,479 | 0 | 44,703 | 86,776 | 0 | 0 | 131,479 |
| b. Families Achieving Independence in Montana Liaison Positions (OTO) | 0 | 68,645 | 137,001 | 0 | 0 | 205,646 | 0 | 68,624 | 137,022 | 0 | 0 | 205,646 |
| c. Missoula District Court (Restricted/Biennial/OTO) | 8,500 | 0 | 16,500 | 0 | 0 | 25,000 | 0 | 0 | 0 | 0 | 0 | 0 |

HeinOnline -- 1997 vol. III 3368 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| d. SB 374 — Child Support Provisions of Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 | 0 | 58,551 | 113,659 | 0 | 0 | 172,210 | 0 | 131,536 | 341,041 | 0 | 0 | 472,577 |
| 4. Health Policy and Services Division (07) | 46,187,796 | 8,758,042 | 162,537,120 | 0 | 0 | 217,482,958 | 46,953,420 | 9,163,432 | 171,340,725 | 0 | 0 | 227,457,577 |
| a. Certificate of Need (OTO) | 46,123 | 0 | 0 | 0 | 0 | 46,123 | 46,123 | 0 | 0 | 0 | 0 | 46,123 |
| b. Communicable Disease (Restricted/Biennial) | 25,000 | 0 | 0 | 0 | 0 | 25,000 | 25,000 | 0 | 0 | 0 | 0 | 25,000 |
| c. Chronic Disease Epidemiologist (OTO) | 0 | 0 | 50,550 | 0 | 0 | 50,550 | 0 | 18,620 | 27,930 | 0 | 0 | 46,550 |
| d. Data System Integration (Restricted/Biennial) | 0 | 0 | 500,000 | 0 | 0 | 500,000 | 0 | 0 | 500,000 | 0 | 0 | 500,000 |
| e. Rebate Collection Staff (OTO) | 16,300 | 0 | 16,300 | 0 | 0 | 32,600 | 14,300 | 0 | 14,300 | 0 | 0 | 28,600 |
| 5. Quality Assurance Division (08) | 1,295,416 | 216,935 | 3,028,614 | 0 | 0 | 4,540,965 | 1,291,558 | 216,964 | 3,030,636 | 0 | 0 | 4,539,158 |
| 6. Operations and Technology Division (09) | 7,493,437 | 3,447,350 | 11,780,112 | 0 | 0 | 22,720,899 | 7,272,493 | 3,276,831 | 11,577,951 | 240 | 0 | 22,127,515 |
| a. Laboratory Scientist (Restricted) | 0 | 27,671 | 0 | 0 | 0 | 27,671 | 0 | 33,562 | 0 | 0 | 0 | 33,562 |
| b. Legislative Audit (Restricted/Biennial) | 175,046 | 10,744 | 137,830 | 0 | 0 | 323,620 | 0 | 0 | 0 | 0 | 0 | 0 |
| 7. Disability Services Division (10) | 39,400,058 | 89,174 | 44,373,080 | 0 | 0 | 83,862,311 | 40,144,342 | 88,513 | 45,296,124 | 0 | 0 | 85,528,979 |
| a. Emergency Needs (OTO) | 49,762 | 0 | 117,058 | 0 | 0 | 166,820 | 47,249 | 0 | 116,354 | 0 | 0 | 163,603 |
| b. Donated Dental Services (Biennial/OTO) | 24,110 | 0 | 0 | 0 | 0 | 24,110 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Legal Costs (Restricted/Biennial/OTO) | 120,000 | 0 | 0 | 0 | 0 | 120,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8. Senior and Long-Term Care Division (22) | 41,573,782 | 2,296,428 | 109,569,874 | 0 | 0 | 153,440,083 | 41,682,135 | 2,293,249 | 114,758,529 | 0 | 0 | 158,733,913 |
| a. Expand Home- and Community-Based Waiver | 637,066 | 0 | 1,498,591 | 0 | 0 | 2,135,657 | 730,374 | 0 | 1,798,623 | 0 | 0 | 2,528,997 |

HeinOnline -- 1997 vol. III 3369 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| b. Aging Services Home- and Community-Based Services Waiver (Restricted) | 0 | 0 | 1,850,907 | 0 | 0 | 1,850,907 | 0 | 0 | 1,850,907 | 0 | 0 | 1,850,907 |
| c. Provider Rate Increase | 217,903 | 0 | 323,892 | 0 | 0 | 541,795 | 448,041 | 0 | 705,316 | 0 | 0 | 1,153,357 |
| 9. Addictive and Mental Disorders Division (33) | 44,631,387 | 21,777,564 | 39,523,518 | 0 | 0 | 105,932,470 | 45,148,278 | 21,925,428 | 41,473,389 | 0 | 0 | 108,547,094 |
| Total | 222,077,027 | 48,462,880 | 475,527,892 | 0 | 0 | 746,067,799 | 224,257,924 | 49,113,192 | 492,474,499 | 240 | 0 | 765,845,855 |

The department may add FTE instead of contracting for services if it certifios to the office of budget and program planning that FTE are more cost-effective than contracting. FTE added through this language may not be included in the 2001 biennium base budget.

The department shall prepare a unified budget for the interagency coordinating council on prevention of child abuse and neglect. The unified budget must identify services funded, expenditures by service in fiscal year 1998, and preliminary amounts budgeted for the 2001 biennium by service and fund type from the department, office of public instruction, board of crime control, and department of labor and industry. A preliminary budget must be presented to the joint oversight committee on children and families, the legislative finance committee, and the office of budget and program planning by September 1, 1998. The unified budget must bo published in the governor's budget request to the 56th legislature.

The current general fund medicaid growth rate is 5.19% for fiscal year 1998 and 1.43% for fiscal year 1999. The department may not go over 5.25% for fiscal year 1998 and 3.0% for fiscal year 1999 even if it has the money within its budget to do so.

If projected medicaid expenditures exceed appropriations in [this act] in either year of the biennium, the department shall implement 53-6-101(11) to determine priorities for the funds available. In determining those priorities, it is the intent of the legislature that the department first review and consider eligibility criteria as a means of reducing expenditures. If further reductions are necessary, the department shall then consider limiting or reducing services to remain within the appropriations.

The legislature recommends that the governor, legislative committees, and related committees of the department work together with the tribal governments of the state to develop specific recommendations that will increase economic development, income, and employment, which are beneficial to both tribal and nontribal individuals. The committee on Indian affairs shall organize and direct this statewide effort in consultetion with the office of state coordinator of Indian affairs and the department. These recommendations should include methods to reduce the department's and tha department of correction's budgetary expenditures as a result of increased employment and income and solutions to problems. Recommendations must be presented to the next legislature.

It is the intent of the legislature that the $2 million general fund across-the-board operating expense reduction each year of the 1999 biennium not come from the child and family services division, the senior and long-term care division, or the disability services division.

The legislative audit committee shall conduct a performance review and shall report on the rates of success and recidivism for the foster care, therapeutic foster care, and juvenile aftercare programs to the 56th legislature.

Benefits for TANF are set at 40.5% of the poverty rate for each year of the biennium.

The benefit rate for TANF may bo lowered from the 40.5% poverty rate to keep within any caseload growth rate in excess of the department's projections. Those projections are as follows:

HeinOnline -- 1997 vol. III 3370 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| Average Monthly Caseload | | | | | | | | | | | |
| 1997 | 9,467 | | | | | | | | | | |
| 1998 | 9,440 | | | | | | | | | | |
| 1999 | 9,407 | | | | | | | | | | |

At least four of the now FTEs added to the base budget of the child and family services division must be adult protective services workers. The legislature directs the department to continue to pursue the transfer of the adult protective services program to the senior and long-term care division and to report to the 1999 legislature on the progress of those efforts.

It is the intent of the legislature that the department provide the following information to the office of budget and program planning, the legislative finance committee, and the legislative joint oversight committee on children and families by November 1, 1998:

(1) the unduplicated total number of children in foster care in fiscal year 1998;

(2) the average number of placements per child in the foster care system during fiscal year 1998;

(3) the average cost per service per child in the foster care system in fiscal year 1998;

(4) the unduplicated total number of families served by the department's foster care prevention programs during fiscal year 1998 and the number of foster care placements prevented during fiscal year 1998;

(5) the unduplicated number of children in foster care in fiscal year 1998 who have been in foster care 2 years or longer; and

(6) the number of permanent homes found for children in foster care in fiscal year 1998.

The department shall expend the minimum federally required funds for the following child care activities: provider recruitment and education; grants and loans to child care providers to assist them in meeting state and local standards and in expanding and improving other child care operations; compliance monitoring for licensing and regulatory requirements; training and technical assistance; activities to improve compensation for child care providers; and comprehensive consumer education. The department may spend no more than $821,369 on these activities in fiscal year 1998 and no more than $864,347 in fiscal year 1999.

The department shall provide the following information for fiscal year 1998 to the 56th legislature: the total amount of funds expended on child care; the amount of funds spent on administrative costs for child care; the total amount of funds spent for resource and referral agencies; and the total amount of funds spent on direct child care services. The department shall also provide a breakdown of the types of clients served, separately identifying clients who were eligible for services as participants in the families achieving independence in Montana program (FAIM) or as recipients who were income-eligible and participated in the cost of child care on a sliding fee scale.

The department shall redesign the child care sliding fee scale for the working poor families. The amount of the copayment required by the sliding fee scale should not contain huge cliffs for families, either within the income categories for the scale or when the families' income increases enough so that they lose eligibility.

As FAIM families move from FAIM, with its required participation in work or work-related activities, into employment, the child care expenditure focus should move with them. There needs to be funding available to serve low-income families that are not or that are no longer FAIM participants.

The provider rate increase provided for child care should not be equally divided across all providers.

HeinOnline -- 1997 vol. III 3371 1997

| | Fiscal 1999 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Propri-etary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Propri-etary | Other | Total |

The department shall develop a new system of paying providers within the same provider groups to take into account differences in market rates, geography, and other economic concerns within the state and to provide access to state and federal child care funds for FAIM and working families. The department should implement such a new system at the same time that the department is implementing the new welfare reform and child block grant programs.

It is the intent of the legislature that a reasonable amount of funds appropriated for the state food bank network be used to purchase a truck body for use in the food bank network program. The department is directed to receive a minimum of three bids before purchasing the truck body.

Item 1 includes $438,867 in general fund money each year of the 1999 biennium and is contingent upon passage and approval of House Bill No. 104.

Item 1b is for the department to implement the federal temporary assistance for needy families (TANF) block grant as required by federal law and in such a manner as to avoid financial sanctions. It is the intent of the legislature that any unused federal TANF funds be reserved for future use.

Contingent upon passage and approval of Senate Bill No. 110, it is the intent of the legislature that the department collect child support payments from parents for foster care support within 2 months after a child has been removed from the home.

Item 1g is contingent upon passage and approval of Senato Bill No. 48.

It is the intent of the legislature that in fiscal year 1998 and fiscal year 1999, any unexpended portion of the department's funding appropriation, up to $9,751 for each year of the biennium, be used by the department for the purposes of funding the department advisory council and the Native American advisory council.

The legislature recognizes that parties who are not required to participate in the IV-D program are choosing to use program services. The legislature intends that these parties help defray the costs associated with provision of services. If the child support enforcement division (CSED) projects that state special revenue may be insufficient to fund appropriations, the CSED shall implement a plan to charge fees and recover costs from parties who receive CSED services.

The appropriation provided for the CSED is contingent upon funds being used to achieve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets, with explanations for any significant variances.

Goal 1: To establish paternity for 90% of Title IV-D cases.

Objective 1: To decrease the percentage of Title IV-D cases needing establishment of paternity by 2% each year.

Performance Measure: The number of Title IV-D cases for whom paternity is established by CSED.

| | FY 96 | FY 97 | FY 98 | FY 99 |
|---|---|---|---|---|
| Number of CSED Established Paternity | 4,335 | 4,000 | 4,000 | 4,000 |

HeinOnline -- 1997 vol. III 3372 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Performance Measure: The number of Title IV-D cases for whom paternity is established through voluntary hospital paternity acknowledgment.

| | FY 98 | FY 97 | FY 98 | FY 99 |
|---|---|---|---|---|
| Number of Voluntary Hospital Paternity Acknowledgments | 1,698 (est.) | 1,700 | 1,700 | 1,700 |

Goal 2: To establish financial and medical support orders for 75% of Title IV-D cases.

Objective 1: To decrease the percentage of Title IV-D cases needing orders for financial support by 3% each year.

Performance Measure: The number of orders established for financial support and medical support.

| | FY 98 | FY 97 | FY 98 | FY 99 |
|---|---|---|---|---|
| Number of CSED-Established Financial Support Orders | 2,376 | 2,400 | 2,400 | 2,400 |

Goal 3: To collect financial and medical support from both parents for 45% of Title IV-D cases.

Objective 1: To increase the percentage of Title IV-D cases with collections by 5% each year.

Performance Measure: The number of orders to withhold.

| | FY 98 | FY 97 | FY 98 | FY 99 |
|---|---|---|---|---|
| Number of CSED Orders to Withhold | 14,386 | 14,400 | 14,400 | 14,400 |

Performance Measure: The number of paying cases.

| | FY 99 | FY 97 | FY 99 | FY 99 |
|---|---|---|---|---|
| Number of Paying Cases | 12,288 | 13,929 | 15,660 | 17,400 |

Performance Measure: Total dollars collected.

| | FY 98 | FY 97 | FY 98 | FY 99 |
|---|---|---|---|---|
| Total Dollars Collected | $33.6M | $38.4M | $43.2M | $48.0M |

Objective 2: To increase the percentage of Title IV-D cases by 1% a year when health insurance coverage is obtained after being ordered.

Performance Measure: The number of cases for whom health insurance coverage is obtained.

HeinOnline -- 1997 vol. III 3373 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| | | | FY 98 | | FY 97 | | FY 98 | | FY 99 | | |
| Number of Cases With Health Insurance Coverage | | | 2,969 | | 2,970 | | 2,971 | | 2,972 | | |

Goal 4: To decrease the time for updating support orders from 1 year to 3 months.

Objective 1: To ensure that support orders are up to date.

Performance Measure: The average amount of time for updating support orders.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | FY 96 | | FY 97 | | FY 99 | | FY 99 | | |
| Average Time to Update Support Orders | | | 12 mo. | | 12 mo. | | 3 mo. | | 3 mo. | | |

Goal 5: To make the process more efficient and responsive.

Objective 1: To increase the cost/benefit ratio of dollars collected to administrative costs.

Performance Measure: Ratio of dollars collected to expenditures.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | FY 99 | | FY 97 | | FY 99 | | FY 99 | | |
| Cost/Benefit Ratio | | | $3.68 | | $4.01 | | $4.02 | | $4.03 | | |

Item 3d is contingent upon passage and approval of Senate Bill No. 374.

The legislature intends that $63,020,920 of the amount in fiscal year 1998 and $65,249,057 of the amount in fiscal year 1999 in item 4 are appropriated for hospital medicaid benefits.

If House Bill No. 538 is not passed and approved, the general fund appropriation contained in item 4 is reduced by $50,000 in fiscal year 1998 and $2,101 in fiscal year 1999 and the federal fund appropriation is reduced by $50,000 in fiscal year 1998 and increased by $13,107 in fiscal year 1999.

The health policy and services division shall ensure that in order to reduce general fund expenditures, the average 5-year pregnancy rate for Montana females 15 to 19 years of age must be reduced by 10% by the end of the 1999 biennium from the current statewide rate of 64.1 per 1,000. In addition, the department shall pursue a goal of reducing each county's teen pregnancy rate, upon which this statewide rate is based, by 10%.

It is the intent of the legislature that the implementation of the resource based relative value scale (RBRVS) physician provider rate system be phased in over the 1999 biennium. The department shall ensure that in fiscal year 1998, the reimbursement for each procedure included in the RBRVS system not decrease more than 15% or increase more than 40% compared to the reimbursement rate used in fiscal year 1997. The department shall ensure that in fiscal year 1999, the reimbursement for each procedure included in the RBRVS system not decrease more than 20% or increase more than 45% compared to the reimbursement rate used in fiscal year 1997. If the proposed minimum and maximum reimbursement parameters yield insufficient funds

HeinOnline -- 1997 vol. III 3374 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

to implement the RBRVS system, funds must be taken first from the 1.5% provider rate increase and second from the RBRVS system policy adjuster to achieve the percentages of increase or decrease.

It is the intent of the legislature that if the department collects in excess of $6.6 million dollars in fiscal year 1998 in drug rebates and in excess of $7.1 million dollars in fiscal year 1999 in drug rebates, then these excesses are appropriated to the department for any purpose consistent with the mission of the department. The appropriation is a biennial appropriation.

It is the intent of the legislature that if the department collects in excess of $1.45 million dollars in fiscal year 1998 in third party liability payments for medicaid expenses, and in excess of $1.5 million in fiscal year 1999 third party liability payments for medicaid expenses, then these excesses are appropriated to the department for any purpose consistent with the mission of the department. The appropriation is a biennial appropriation.

It is the intent of the legislature that in fiscal year 1998 and fiscal year 1999, any unexpended portion of the department's general fund appropriation, up to $500,000 for the biennium, may be awarded by the department for the purposes of providing primary and preventive health care benefits to children who are uninsured and not eligible for medicaid benefits. To qualify, the family income may he no greater than 185% of the federal poverty level. The department may contract with public or private entities for the administration and provision of these services. These funds may be allocated only to those programs that heve established a statewide network of medical providers who have agreed to accept reimbursement at a lower rate than would normally be charged for their services.

A total of $75,000 of the general fund appropriation for fiscal year 1998 and $75,000 of the general fund appropriation for fiscal year 1999 contained in item 4 for the medicaid program must be used to provide $25,000 a year for as many as three Indian reservations for the Montana initiative for the abatement of mortality in infants (MIAMI) program.

It is the intent of the legislature that the department cooperate with state agencies, organizations, retailers, consumers, and advocato groups in order to organize a coordinated redistribution program for durable medical equipment in Montana.

The department shall pay the amounts listed below for production computer processing, recovery, maintenance, and printing at the department of administration for the specific systems identified as follows unless otherwise agreed to by the departments: for TEAMS: fiscal year 1998 — $2,038,669; fiscal year 1999 — $1,648,661; for SEARCHS: fiscal year 1998 —$819,045; fiscal year 1999 — $663,493; and for CAPS: fiscal year 1998 — $680,978; fiscal year 1999 — $548,914.

The department is anthorized to expend up to $500,000 of any unexpended portion of the department's general fund appropriation each year of the 1999 biennium and up to $500,000 of any unexpended portion of the department's federal fund appropriation each year of the 1999 biennium for the purpose of evaluating and developing electronic benefits transfer capabilities. The department shall demonstrate to the legislative finance committee cost neutrality over the first 7 years of implementation for any electronic benefits transfer system prior to expending state funds or committing state resources beyond the initial development phase of the electronic benefits transfer project.

The operations and technology division is appropriated any unexpended funds from the accounting entities numbered 03203 and 03276 after required expenditures for the ARCO lawsuit.

It is the intent of the legislature that the disability services division pursue federal funding to enhance and improve services to persons with developmental disabilities. These additional federal funds may he expended by the division for services as long as these actions do not require or commit the state to additional general fund expenditures beyond the amount appropriated during the 1999 biennium by the legislature for the developmental disabilities community.

Item 6 includes a 10% reduction in equipment totaling $120,000 in fiscal year 1998 and $76,000 in fiscal year 1999. The department may allocate this reduction among programs.

Item 7c is a restricted, biennial appropriation to be used for legal costs associated with a lawsuit to move certain individuals at the eastmont human services center and the Montana developmental center to community living/services.

Item 8c includes $80,213 in fiscal year 1998 and $161,630 in fiscal year 1999 for aging services. It is the intent of the legislature that these funds be expended only to provide additional services, not for increased administrative costs.

HeinOnline -- 1997 vol. III 3375 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Propri-etary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Propri-etary | Other | Total |

The department is authorized to supplement funds appropriated to rebase nursing home rates with funds appropriated for increased nursing home bed days in order to avoid inappropriate decreases in the department's current nursing home reimbursement formula and to comply with federal law, as long as total program expenditures do not exceed the appropriation for nursing homes.

The general fund share collected from the lien and estate recoveries pursuant to Title 53, chapter 6, part 1, in excess of the first $600,000 is appropriated on a one-time basis in the amount of 50% to the medicaid home and community waiver program and 50% to the medicaid nursing home program.

It is the intent of the legislature that the department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on the status of the mental health access plan contract, including but not limited to implementation status, progress of contract expectations, results of evaluation reports, and any negotiated changes to the mental health access plan contract. The legislative finance committee shall review each report.

The appropriation provided for the Montana chemical dependency center (MCDC) is contingent upon funds being used to achieve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets, with explanations for any significant variances.

Goal 1: Through collaboration with referral sources, ensure that placement standards are met and that appropriate use of services is maintained.

Performance Measure/Target: A utilization review will be conducted on 100% of level III placement justification packets. In the case of inadequate documentation, the referring counselor must be contacted and given an opportunity to correct the deficiencies and resubmit.

| FY 96 | FY 97 Target | FY 98 Target | FY 99 |
|---|---|---|---|
| (placement compliance) | | | |
| 65% | 75% | 85% | 88% |

Goal 2: Through collaboration with referral sources, increase the number of scheduled clients admitted for treatment.

Performance Measure/Target: During the utilization review, identify potential problems that may affect the client's ability to be present for admission and problem solve with the referring counselor.

| FY 96 Base | FY 97 Target | FY 98 Target | FY 99 |
|---|---|---|---|
| (showup rate) | (showup rate) | (showup rate) | |
| 70% | 73% | 76% | 78% |

Goal 3: Increase client retention in treatment until treatment plan completion.

Performance Measure/Target: Monitor and review all discharges through the quality assurance process, identify factors of premature discharges, and develop corrective actions to improve outcome.

HeinOnline -- 1997 vol. III 3376 1997

| Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

| FY 96 | FY 97 Target | FY 98 Target | FY 99 |
|---|---|---|---|
| (completion rate) | (completion rate) | (completion rate) | |
| 63% | 66% | 69% | 71% |

Goal 4: Improve client compliance with continued care recommendations back to programs in the community.

Performance Measure/Target: Increase the number of clients that comply with discharge recommendations for continued care in the community by applying managed care principles and conducting followup to measure compliance and collect data on set outcome indicators.

| FY 96 | FY 97 Target | FY 98 Target | FY 99 |
|---|---|---|---|
| (continued care showup rate) | | | |
| 61% | 65% | 70% | 72% |
| (this is of the 63% that completed and participated in the discharge/placement process) | | | |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION B | | | | | | | | | | | |
| 222,077,027 | 68,462,880 | 475,527,892 | 0 | 0 | 746,067,799 | 224,257,924 | 49,113,192 | 492,474,499 | 240 | 0 | 765,845,855 |

HeinOnline -- 1997 vol. III 3377 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| **C. NATURAL RESOURCES AND COMMERCE** | | | | | | | | | | | | |
| **DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)** | | | | | | | | | | | | |
| 1. Administration and Finance Division (01) | 0 | 3,468,321 | 502,867 | 0 | 0 | 3,971,188 | 0 | 3,685,406 | 544,278 | 1,942 | 0 | 4,231,626 |
| a. Legislative Audit (Restricted/Biennial) | 0 | 51,943 | 9,166 | 0 | 0 | 61,109 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Legislative Contract Authority (Restricted/OTO) | 0 | 0 | 30,000 | 0 | 0 | 30,000 | 0 | 0 | 30,000 | 0 | 0 | 30,000 |
| c. Automated Licensing System (Biennial/Restricted) | 0 | 1,852,550 | 912,450 | 0 | 0 | 2,765,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Field Services Division (02) | 0 | 1,538,766 | 307,502 | 0 | 0 | 1,846,268 | 0 | 1,530,756 | 331,390 | 0 | 0 | 1,862,146 |
| a. Block Management (Restricted) | 0 | 3,301,816 | 285,090 | 0 | 0 | 3,586,906 | 0 | 3,272,843 | 296,494 | 0 | 0 | 3,569,337 |
| b. Game Damage (Restricted) | 0 | 100,000 | 0 | 0 | 0 | 100,000 | 0 | 100,000 | 0 | 0 | 0 | 100,000 |
| c. Public Wildlife Interface (Restricted/Biennial) | 0 | 65,000 | 0 | 0 | 0 | 65,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 3. Fisheries Division (03) | 0 | 3,345,623 | 2,953,400 | 0 | 0 | 6,298,823 | 0 | 3,341,862 | 2,933,367 | 0 | 0 | 6,275,229 |
| a. Legislative Contract Authority (Restricted/OTO) | 0 | 0 | 825,000 | 0 | 0 | 825,000 | 0 | 0 | 675,000 | 0 | 0 | 675,000 |
| b. Water Leasing (Biennial) | 0 | 66,000 | 0 | 0 | 0 | 66,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Department of Natural Resources and Conservation Fish Monitoring (Restricted) | 0 | 15,250 | 0 | 0 | 0 | 15,250 | 0 | 15,250 | 0 | 0 | 0 | 15,250 |
| d. Echo Lake Fish Planting (OTO) | 0 | 27,510 | 0 | 0 | 0 | 27,510 | 0 | 27,510 | 0 | 0 | 0 | 27,510 |
| 4. Law Enforcement Division (04) | 124,959 | 5,104,932 | 168,715 | 0 | 0 | 5,398,606 | 121,572 | 5,074,118 | 166,872 | 0 | 0 | 5,362,562 |
| a. Legislative Contract Authority (Restricted/OTO) | 0 | 0 | 287,000 | 0 | 0 | 287,000 | 0 | 0 | 287,000 | 0 | 0 | 287,000 |

HeinOnline -- 1997 vol. III 3378 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| b. Block Management (Restricted) | 0 | 233,091 | 0 | 0 | 0 | 233,091 | 0 | 233,373 | 0 | 0 | 0 | 233,373 |
| c. Game Farms (Biennial) | 0 | 208,000 | 0 | 0 | 0 | 208,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Wildlife Division (05) | 0 | 2,958,451 | 3,081,044 | 0 | 0 | 6,039,495 | 0 | 2,925,582 | 3,087,728 | 0 | 0 | 6,013,310 |
| a. Harvest Survey Data Processing (Restricted) | 0 | 5,000 | 15,000 | 0 | 0 | 20,000 | 0 | 5,000 | 15,000 | 0 | 0 | 20,000 |
| b. Upland Game Bird Habitat (Restricted/Biennial) | 0 | 1,000,000 | 0 | 0 | 0 | 1,000,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Predator Research (Restricted) | 0 | 29,975 | 89,925 | 0 | 0 | 119,900 | 0 | 29,975 | 89,925 | 0 | 0 | 119,900 |
| d. Legislative Contract Authority (Restricted/OTO) | 0 | 0 | 481,000 | 0 | 0 | 481,000 | 0 | 0 | 456,000 | 0 | 0 | 456,000 |
| e. Bear Management Specialist | 0 | 0 | 41,088 | 0 | 0 | 41,088 | 0 | 0 | 41,088 | 0 | 0 | 41,088 |
| f. Coyote Control Study (Restricted/OTO) | 0 | 87,455 | 0 | 0 | 0 | 87,455 | 0 | 87,455 | 0 | 0 | 0 | 87,455 |
| g. Black-Footed Ferret Reintroduction (OTO) | 0 | 18,750 | 56,250 | 0 | 0 | 75,000 | 0 | 18,750 | 56,250 | 0 | 0 | 75,000 |
| 6. Parks Division (06) | 288,917 | 4,070,161 | 484,102 | 0 | 0 | 4,843,180 | 288,250 | 4,001,700 | 490,356 | 0 | 0 | 4,780,306 |
| a. Legislative Contract Authority (Restricted/OTO) | 0 | 0 | 25,000 | 0 | 0 | 25,000 | 0 | 0 | 25,000 | 0 | 0 | 25,000 |
| 7. Conservation Education Division (08) | 2,698 | 1,481,875 | 460,477 | 0 | 0 | 1,945,050 | 2,698 | 1,454,106 | 472,371 | 0 | 0 | 1,929,175 |
| a. Legislative Contract Authority (Restricted/OTO) | 0 | 0 | 20,000 | 0 | 0 | 20,000 | 0 | 0 | 20,000 | 0 | 0 | 20,000 |
| b. Shooting Range Grants (Biennial) | 0 | 119,800 | 0 | 0 | 0 | 119,800 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8. Department Management (09) | 0 | 2,697,820 | 483,048 | 0 | 0 | 3,180,868 | 0 | 2,666,093 | 487,010 | 0 | 0 | 3,153,103 |
| a. Legislative Contract Authority (Restricted/OTO) | 0 | 0 | 135,000 | 0 | 0 | 135,000 | 0 | 0 | 135,000 | 0 | 0 | 135,000 |

HeinOnline -- 1997 vol. III 3379 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| Total | 416,574 | 31,847,889 | 11,653,124 | 0 | 0 | 43,917,587 | 412,520 | 28,469,779 | 10,640,129 | 1,942 | 0 | 39,524,370 |

The appropriations for legislative contract authority are subject to the following provisions:

(1) Legislative contract authority applies only to federal funds.

(2) Expenditures must be reported on state accounting records and kept separate from present law operations. In preparing the 2001 biennium budget for legislative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(3) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures and FTE for each project.

Item 1c was approved for development of an automated licensing system. Subsequent legislatures should examine the system carefully for costs, savings, and savings from lowering license agents' commissions. Costs to complete and operate the system in the 2001 biennium are expected to be $1,007,000 for development and $1,880,000 for operations. Savings of 3 FTE and $392,000 and additional interest earnings of $100,000 are expected to phase in toward the end of fiscal year 2000. The department shall submit up-to-date cost estimates, cost savings estimates, and any request for additional funding to the 1999 legislature.

The appropriation provided for the law enforcement division is contingent upon funds being used to achieve program performance targets set by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets, with explanations for any significant variances.

The proposed law enforcement division goals and associated performance targets for each year to the 1999 biennium are as follows:

Goal 1: Fish and Wildlife Compliance - Provide protection for fish, wildlife, and habitat resources through regulation and education ensuring equitable outdoor recreational opportunities by maintaining present level of compliance of fish and wildlife regulations.

Performance Measures/Targets:

(1) Contact at least 20% of license holders for compliance: 112,000 in fiscal year 1998 and 116,000 in fiscal year 1999.

(2) Contact 9,800 landowners in each fiscal year.

(3) 95% conviction rate in prosecutions: 3,135 convictions in fiscal year 1998 and 3,230 in fiscal year 1999.

(4) Have 11 specialized programs.

Goal 2: State Parks Compliance - Protect the state's natural, historic, cultural, and recreational resources through regulation and education, providing a safe and enjoyable experience for users.

Performance Measures/Targets:

(1) Contact 2,000 park users each fiscal year.

(2) Conduct 40 investigations each fiscal year.

HeinOnline -- 1997 vol. III 3380 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

(3) 95% conviction rate in prosecutions: 95 convictions in each fiscal year.

Goal 3: Recreational Conveyance Compliance - Protect public safety and enjoyment of boat and water recreation and snowmobile and off-highway vehicle use through education and regulation.

Performance Measures/Targets:

(1) Contact at least 40% of licensed users: 35,000 users in fiscal year 1998 and 36,800 in fiscal year 1999.

(2) Participate in at least 30 water safety programs each year.

(3) 95% conviction rate in prosecutions: 703 convictions in fiscal year 1998 and 741 in fiscal year 1999.

The department shall reduce the federal appropriation in item 5e and increase the state special revenue appropriation by a like amount if federal funds are not available. The department shall provide an evaluation of this new proposal to the 1999 natural resources and commerce appropriation subcommittee.

The legislature directs the department to document that operation and maintenance at existing state parks are adequately funded in [this act] before the department submits any capital requests to spend park fees, lodging facility use taxes, or coal severance tax revenue. The legislature directs the department to prioritize its parks capital project requests in House Bill No. 5, subject to the continuing general operations and maintenance funded in [this act].

In this biennium, the department should move toward financing the Montana outdoors magazine with 75% of earned revenue and, to that extent, reduce the money spent from hunting and fishing license fees,

Item 6 includes a 10% reduction in equipment totaling $93,000 in fiscal year 1998 and $68,000 in fiscal year 1999. The department may allocate this reduction among programs.

DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | Central Management Program (10) | | | | | | | | | | | |
| | 14,996 | 0 | 0 | 0 | 0 | 14,996 | 14,996 | 21,427 | 0 | 15,960 | 0 | 52,383 |
| 2. | Petro Tank Release Compensation Board (11) | | | | | | | | | | | |
| | 0 | 1,419,724 | 0 | 0 | 0 | 1,419,724 | 0 | 1,445,904 | 0 | 0 | 0 | 1,445,904 |
| 3. | Planning, Prevention and Assistance Division (20) | | | | | | | | | | | |
| | 945,861 | 2,247,799 | 3,068,162 | 0 | 0 | 6,261,822 | 939,043 | 2,187,022 | 3,004,794 | 0 | 0 | 6,130,859 |
| | a. Montana Major Facility Siting Act (Restricted/Biennial) | | | | | | | | | | | |
| | 0 | 1,000,000 | 0 | 0 | 0 | 1,000,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| | b. HB 546 — Water Quality Total Maximum Daily Load Program (Biennial) | | | | | | | | | | | |
| | 444,832 | 0 | 0 | 0 | 0 | 444,832 | 503,934 | 0 | 0 | 0 | 0 | 503,934 |
| 4. | Enforcement Division (30) | | | | | | | | | | | |
| | 317,958 | 272,556 | 339,911 | 0 | 0 | 930,426 | 316,103 | 258,635 | 333,493 | 0 | 0 | 908,231 |
| 5. | Remediation Division (40) | | | | | | | | | | | |
| | 0 | 2,089,887 | 7,237,381 | 0 | 0 | 9,327,268 | 0 | 1,893,108 | 7,265,766 | 0 | 0 | 9,158,874 |

HeinOnline -- 1997 vol. III 3381 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 6. Permitting and Compliance Division (50) | 786,908 | 7,064,126 | 2,445,820 | 0 | 0 | 10,296,854 | 779,442 | 7,073,025 | 2,406,707 | 0 | 0 | 10,259,174 |
| a. Montana Major Facility Siting Act (Restricted) | 0 | 249,175 | 0 | 0 | 0 | 249,175 | 0 | 244,364 | 0 | 0 | 0 | 244,364 |
| b. Reclamation Bond Forfeitures (Restricted/Biennial) | 0 | 1,040,811 | 0 | 0 | 0 | 1,040,811 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Shallow Injection Wells (Restricted) | 0 | 17,580 | 17,581 | 0 | 0 | 35,161 | 0 | 21,683 | 65,047 | 0 | 0 | 86,730 |
| Total | 2,510,555 | 15,401,658 | 13,108,856 | 0 | 0 | 31,021,069 | 2,553,518 | 13,145,169 | 13,075,807 | 15,960 | 0 | 28,790,453 |

The amount of $507,000 over the biennium in federal funding provided under 33 U.S.C. 1329 must be used to directly address total maximum daily loads.

If there is a reduction or elimination of federal funds that are appropriated to fund personal services FTE in the department, there can be no substitution of those federal funds from general fund money or state special revenue money to fund those FTE.

If House Bill No. 483 is not passed and approved, the amounts appropriated in item 3 are reduced by $123,442 in state special revenue and $842,258 in federal funds in fiscal year 1998 and by $113,482 in state special revenue and $792,478 in federal funds in fiscal year 1999.

Item 3 includes a 10% reduction in equipment totaling $38,001 in fiscal year 1998 and $17,000 in fiscal year 1999. The department may allocate this reduction among programs.

If House Bill No. 546 is not passed and approved, item 3b is void.

If Senate Bill No. 377 is not passed and approved, the state special revenue appropriations in item 5 are reduced by $76,688 in fiscal year 1998 and by $71,688 in fiscal year 1999.

DEPARTMENT OF LIVESTOCK (5603)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Centralized Services Program (01) | 69,611 | 685,787 | 38,243 | 0 | 0 | 793,642 | 71,792 | 710,376 | 39,675 | 0 | 0 | 821,844 |
| a. Legislative Audit (Restricted/Biennial) | 0 | 29,005 | 0 | 0 | 0 | 29,005 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Diagnostic Laboratory Program (03) | 135,680 | 925,113 | 0 | 0 | 0 | 1,060,793 | 136,457 | 951,435 | 0 | 0 | 0 | 1,087,892 |
| 3. Disease Control Program (04) | 0 | 611,373 | 0 | 0 | 0 | 611,373 | 0 | 588,863 | 0 | 0 | 0 | 588,863 |
| a. Bison Control (Restricted/OTO) | 0 | 445,760 | 0 | 0 | 0 | 445,760 | 0 | 444,160 | 0 | 0 | 0 | 444,160 |

HeinOnline -- 1997 vol. III 3382 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 4. Milk and Egg Program (05) | 0 | 168,184 | 33,007 | 0 | 0 | 201,191 | 0 | 169,762 | 32,778 | 0 | 0 | 202,540 |
| 5. Inspection and Control Program (06) | 0 | 2,476,342 | 0 | 0 | 0 | 2,476,342 | 0 | 2,497,164 | 0 | 0 | 0 | 2,497,164 |
| 6. Predator Control Program (08) | 0 | 434,580 | 0 | 0 | 0 | 434,580 | 0 | 334,028 | 0 | 0 | 0 | 334,028 |
| 7. Meat and Poultry Inspection Program (10) | 329,728 | 1,634 | 329,094 | 0 | 0 | 660,456 | 332,463 | 1,681 | 331,892 | 0 | 0 | 666,036 |
| 8. Milk Control Bureau (37) | 0 | 170,947 | 0 | 0 | 0 | 170,947 | 0 | 170,593 | 0 | 0 | 0 | 170,593 |
| Total | 535,019 | 5,948,725 | 400,345 | 0 | 0 | 6,884,089 | 540,712 | 5,868,062 | 404,346 | 0 | 0 | 6,813,120 |

The department shall record separately all operating expenses, equipment, and capital expenditures related to bison control for all programs in which any resources are expended for that purpose, in separate responsibility centers on the statewide budgeting and accounting system, and shall create a summary reporting center. The department shall provide an annual report, by program, to the legislative fiscal analyst and the office of budget and program planning of all direct expenditures related to bison control.

Item 1 includes a 10% reduction in equipment totaling $33,000 in fiscal year 1998 and $35,000 in fiscal year 1999. The department may allocate this reduction among programs.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Trust Land Management Division (04) | 3,225,229 | 3,400,224 | 23,284 | 0 | 0 | 6,648,736 | 3,192,105 | 3,512,594 | 22,793 | 0 | 0 | 6,727,493 |
| a. Environmental Impact Statements (Restricted) | 0 | 150,000 | 0 | 0 | 0 | 150,000 | 0 | 150,000 | 0 | 0 | 0 | 150,000 |
| b. Crow Tribe Land Exchange (Restricted) | 0 | 0 | 100,000 | 0 | 0 | 100,000 | 0 | 0 | 100,000 | 0 | 0 | 100,000 |
| c. Swan Boot Camp Maintenance (Restricted/OTO) | 0 | 50,032 | 0 | 0 | 0 | 50,032 | 0 | 66,454 | 0 | 0 | 0 | 66,454 |
| d. Water Rights Claims (Restricted/OTO) | 0 | 71,100 | 0 | 0 | 0 | 71,100 | 0 | 0 | 0 | 0 | 0 | 0 |
| e. Environmental Liability Inventories (Restricted/OTO) | 0 | 35,000 | 0 | 0 | 0 | 35,000 | 0 | 35,000 | 0 | 0 | 0 | 35,000 |
| 2. Centralized Services (21) | 1,203,963 | 604,227 | 91,856 | 0 | 0 | 1,900,046 | 1,213,665 | 636,046 | 83,016 | 959 | 0 | 1,933,686 |

HeinOnline -- 1997 vol. III 3383 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Legislative Audit (Restricted/Biennial) | 43,035 | 0 | 0 | 0 | 0 | 43,035 | 43,034 | 0 | 0 | 0 | 0 | 43,034 |
| 3. Oil and Gas Conservation Division (22) | 0 | 815,357 | 0 | 0 | 0 | 815,357 | 0 | 804,221 | 0 | 0 | 0 | 804,221 |
| a. Underground Injection Control Program | 0 | 309,257 | 0 | 0 | 0 | 309,257 | 0 | 313,282 | 0 | 0 | 0 | 313,282 |
| 4. Conservation and Resource Development Division (23) | 89,106 | 1,750,190 | 1,405,471 | 0 | 0 | 3,244,767 | 88,001 | 1,745,599 | 1,411,932 | 0 | 0 | 3,245,532 |
| 5. Water Resources Division (24) | 3,234,428 | 2,557,325 | 54,204 | 0 | 0 | 5,845,957 | 3,270,514 | 2,537,964 | 54,210 | 0 | 0 | 5,862,688 |
| a. Rocky Boy's Study (Restricted/OTO) | 220,000 | 0 | 0 | 0 | 0 | 220,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Broadwater Dam Project (Restricted/Biennial/OTO) | 0 | 520,000 | 0 | 0 | 0 | 520,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Water Project Lease Administration (Restricted) | 0 | 19,500 | 0 | 0 | 0 | 19,500 | 0 | 18,500 | 0 | 0 | 0 | 18,500 |
| d. HB 166 — Water Well Contractor Administration (Restricted/Biennial) | 0 | 16,000 | 0 | 0 | 0 | 16,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 6. Reserved Water Rights Compact Commission (25) | 201,891 | 364,618 | 0 | 0 | 0 | 566,509 | 202,365 | 360,926 | 0 | 0 | 0 | 563,291 |
| 7. Forestry Division (35) | 4,974,025 | 2,295,396 | 784,967 | 0 | 0 | 8,054,388 | 4,938,587 | 2,302,530 | 782,498 | 0 | 0 | 8,023,615 |
| a. Community Forestry (OTO) | 0 | 0 | 24,000 | 0 | 0 | 24,000 | 0 | 0 | 23,266 | 0 | 0 | 23,266 |
| b. National Fire Management Analysis System (OTO) | 6,667 | 3,333 | 0 | 0 | 0 | 10,000 | 3,333 | 6,667 | 0 | 0 | 0 | 10,000 |
| c. Federal Fire Reimbursements (Restricted) | 0 | 0 | 350,000 | 0 | 0 | 350,000 | 0 | 0 | 350,000 | 0 | 0 | 350,000 |
| Total | 13,198,343 | 12,961,560 | 2,833,781 | 0 | 0 | 28,993,684 | 12,951,604 | 12,489,784 | 2,827,715 | 959 | 0 | 28,270,062 |

Because of de-earmarking of cabin site sales fees by House Bill No. 166, item 1 has been reduced by $25,000 in state special revenue in each fiscal year and general fund amounts have been increased by the same amounts. If House Bill No. 166 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 1 are reduced by $25,000 in each fiscal year and the state special revenue amounts are increased by the same amounts.

HeinOnline -- 1997 vol. III 3384 1997

| | Fiscal 1999 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

If House Bill No. 156 is not passed and approved, items 1c through 1e are void.

Because of the addition of the state lands equalization statutory appropriation by House Bill No. 166, item 2 has been reduced by $571,117 in general fund money in fiscal year 1998 and by $500,586 in general fund money in fiscal year 1999. If House Bill No. 166 is not passed and approved in a form that adds the statutory appropriation, then the general fund amounts in item 2 are increased by $571,117 in fiscal year 1998 and by $600,586 in fiscal year 1999.

The department is appropriated up to $700,000 for the biennium from the account established in 76-14-112 for rangeland loans during the 1999 biennium.

All funds held in the state special revenue fund in accordance with 76-16-106(2) are appropriated to the department for administration of grazing district activities in an amount of up to $15,000 a year for the 1999 biennium.

The department is appropriated up to $400,000 for the biennium from the state special revenue account established in 85-1-604 for the purchase of prior liens on property held as loan security as required by 85-1-618.

The department is authorized to decrease state special revenue money in item 3a and increase federal special revenue money by a like amount if federal EPA funds become available. Any federal special revenue funds are to be spent before state special revenue funds.

The department shall reduce the appropriation in item 5a and increase the federal appropriation by a like amount if federal funds become available.

Because of the elimination of the statutory appropriation for water well contractor administrative costs by House Bill No. 166, item 5d appropriates $16,000 in state special revenue in fiscal year 1998 as a restricted and biennial appropriation. If House Bill No. 166 is not passed and approved in a form that eliminates the statutory appropriation for administrative costs, then item 5d is eliminated.

During the 1999 biennium, up to $20,000 of interest earned on the Broadwater water users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

During the 1999 biennium, up to $1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account are appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility.

Up to $20,000 each year of fines collected under the provisions of Title 85, chapter 2, and deposited in the water right appropriation account in accordance with 85-2-318 are appropriated to the department to carry out the enforcement functions required under 85-2-114.

During the 1999 biennium, up to $500,000 of funds currently in or to be deposited in the state project hydropower earnings account are appropriated for the purpose of repairing, improving, or rehabilitating department state water projects.

The appropriation provided for the Montana state nursery is contingent upon funds being used to achieve the program objectives of becoming self-supporting by 2001 and maintaining a fund balance. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of this objective.

Because of de-earmarking of forest resources stewardship fines by House Bill No. 166, item 7 has been reduced by $9,443 in state special revenue in each fiscal year and general fund amounts have been increased by the same amounts. If House Bill No. 166 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 7 are reduced by $9,443 in each fiscal year and the state special revenue amounts are increased by the same amounts.

Item 7 includes a 10% reduction in equipment totaling $102,000 in fiscal year 1998 and $93,000 in fiscal year 1999. The department may allocate this reduction among programs.

HeinOnline -- 1997 vol. III 3385 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Item 7c are those funds received from federal agencies for the use of department personnel and equipment to assist them in managing emergency incidents, such as fire suppression activities. Only those federal funds received as reimbursement of personnel expenses credited against the department's state forestry operational budget or those funds received as payment under equipment use agreements are considered federal fire reimbursement funds. All other federal funds received must be deposited in the general fund. It is the intent of the legislature that funds reimbursed for the use of department equipment be expended for the repair, maintenance, and replacement of equipment that supports the state-county cooperative fire program. The department shall report federal fire reimbursement expenditures on state accounting records, and the records must be separate from present law operations.

In determining the base amount for the general fund transfer to the air operations proprietary account to be included in the 2001 biennium executive budget request, the office of budget and program planning shall use $335,000.

For the purposes of 17-2-108, the approving authority is directed to decrease the general fund appropriation in the fire program within the forestry division by the amount of money received from fire protection assessments in excess of the appropriation and to increase the appropriation of the fire protection assessments by a like amount.

Federal funding provided to the department under 33 U.S.C. 1329 must be used to address water quality impaired streams.

DEPARTMENT OF AGRICULTURE (6201)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | Central Management Division (15) | 190,097 | 277,723 | 77,558 | 28,011 | 7,870 | 581,259 | 210,034 | 287,803 | 81,969 | 28,683 | 7,902 | 616,391 |
| | a. Legislative Audit (Restricted/Biennial) | 31,157 | 0 | 0 | 0 | 0 | 31,157 | 0 | 0 | 0 | 0 | 0 | 0 |
| | b. Program/Analyst (Restricted/OTO) | 12,613 | 25,692 | 5,139 | 2,336 | 934 | 46,714 | 10,885 | 22,172 | 4,435 | 2,016 | 806 | 40,314 |
| | c. Equipment (Restricted/OTO) | 675 | 1,375 | 275 | 125 | 50 | 2,500 | 0 | 0 | 0 | 0 | 0 | 0 |
| | d. Retirement Costs (Restricted/OTO) | 0 | 6,970 | 0 | 697 | 205 | 7,872 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. | Agricultural Sciences Division (30) | 65,346 | 4,208,963 | 438,158 | 0 | 0 | 4,712,467 | 66,011 | 4,206,374 | 489,309 | 0 | 0 | 4,761,694 |
| | a. Environmental Protection Agency Grants (Biennial/OTO) | 0 | 0 | 150,000 | 0 | 0 | 150,000 | 0 | 0 | 150,000 | 0 | 0 | 150,000 |
| 3. | Agricultural Development Division (50) | 208,179 | 3,087,500 | 72,417 | 207,893 | 62,087 | 3,638,076 | 208,227 | 3,077,163 | 72,062 | 207,561 | 61,898 | 3,626,911 |
| | a. Agricultural Finance Equipment (Restricted) | 0 | 0 | 0 | 0 | 2,098 | 2,098 | 0 | 0 | 0 | 0 | 1,598 | 1,598 |
| | b. Hail Insurance Equipment (Restricted) | 0 | 0 | 0 | 957 | 0 | 957 | 0 | 0 | 0 | 2,957 | 0 | 2,957 |
| | c. Agricultural Marketing Equipment (Restricted) | 0 | 300 | 0 | 0 | 0 | 300 | 0 | 0 | 0 | 0 | 0 | 0 |

HeinOnline -- 1997 vol. III 3386 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| d. Agricultural Council Equipment (Restricted) | 0 | 3,300 | 0 | 0 | 0 | 3,300 | 0 | 300 | 0 | 0 | 0 | 300 |
| e. Wheat and Barley Equipment (Restricted) | 0 | 9,853 | 0 | 0 | 0 | 9,853 | 0 | 15,353 | 0 | 0 | 0 | 15,353 |
| f. State Grain Laboratory Roof Repair (Restricted/Biennial) | 0 | 20,000 | 0 | 0 | 0 | 20,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 508,067 | 7,641,676 | 743,547 | 240,019 | 73,244 | 9,206,553 | 495,157 | 7,609,165 | 797,775 | 241,217 | 72,204 | 9,215,518 |

The department is authorized to make grants to state agencies, as approved by the Montana agriculture development council in accordance with Title 90, chapter 9, for growth through agriculture. The state agency that receives a grant from the Montana agriculture development council is authorized additional appropriation authority equal to the grant amount.

Item 3 includes a 10% reduction in equipment totaling $32,000 in fiscal year 1998 and $34,000 in fiscal year 1999. The department may allocate this reduction among programs.

DEPARTMENT OF COMMERCE (6501)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Weights and Measures Bureau (02) | 0 | 557,856 | 0 | 0 | 0 | 557,856 | 0 | 611,865 | 0 | 0 | 0 | 611,865 |
| 2. Banking and Financial Institutions (36) | 0 | 1,270,291 | 0 | 0 | 0 | 1,270,291 | 0 | 1,291,301 | 0 | 0 | 0 | 1,291,301 |
| 3. Professional and Occupational Licensing Bureau (39) | 0 | 4,146,678 | 0 | 0 | 0 | 4,146,678 | 0 | 4,136,621 | 0 | 0 | 0 | 4,136,621 |
| a. SB 56 — Private Cemetery Care and Maintenance | 0 | 2,112 | 0 | 0 | 0 | 2,112 | 0 | 2,112 | 0 | 0 | 0 | 2,112 |
| b. SB 259 — Licensure of Estheticians and Manicurists | 0 | 17,044 | 0 | 0 | 0 | 17,044 | 0 | 14,004 | 0 | 0 | 0 | 14,004 |
| c. HB 266 — Plumber/Electrician Licensure Compliance | 0 | 51,854 | 0 | 0 | 0 | 51,854 | 0 | 47,881 | 0 | 0 | 0 | 47,881 |
| 4. Economic Development Division (51) | 944,278 | 141,740 | 3,649,862 | 0 | 0 | 4,735,880 | 958,218 | 172,502 | 3,632,036 | 0 | 0 | 4,762,756 |
| a. Legislative Audit (Restricted/Biennial) | 4,618 | 31,249 | 11,972 | 0 | 0 | 47,839 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Montana Promotion Division (52) | 0 | 650,000 | 0 | 0 | 0 | 650,000 | 0 | 650,000 | 0 | 0 | 0 | 650,000 |
| 6. Community Development Bureau (60) | 330,706 | 652,251 | 6,841,026 | 0 | 0 | 7,823,983 | 329,805 | 653,828 | 6,846,876 | 0 | 0 | 7,830,510 |

HeinOnline -- 1997 vol. III 3387 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Coal Board — Local Impact (Biennial) | 0 | 1,051,603 | 0 | 0 | 0 | 1,051,603 | 0 | 44,750 | 0 | 0 | 0 | 44,750 |
| 7. Local Government Services Audit and Systems Bureau (62) | 358,332 | 0 | 0 | 0 | 0 | 358,332 | 353,490 | 0 | 0 | 0 | 0 | 353,490 |
| 8. Building Codes Bureau (65) | 0 | 2,368,190 | 0 | 0 | 0 | 2,368,190 | 0 | 2,233,936 | 0 | 0 | 0 | 2,233,936 |
| a. HB 388 — Elimination of City Building Codes Extended Jurisdiction | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 418,519 | 0 | 0 | 0 | 418,519 |
| b. SB 286 — Exterior Building Accessibility Inspections | 0 | 172,100 | 0 | 0 | 0 | 172,100 | 0 | 141,400 | 0 | 0 | 0 | 141,400 |
| 9. Montana Science and Technology Alliance (73) | 0 | 355,808 | 0 | 0 | 0 | 355,808 | 0 | 359,159 | 0 | 0 | 0 | 359,159 |
| 10. Housing Division (74) | 0 | 0 | 22,934,695 | 0 | 0 | 22,934,695 | 0 | 0 | 24,553,427 | 0 | 0 | 24,553,427 |
| 11. Board of Horseracing (78) | 0 | 252,743 | 0 | 0 | 0 | 252,743 | 0 | 252,249 | 0 | 0 | 0 | 252,249 |
| 12. Consumer Affairs (79) | 125,029 | 0 | 0 | 0 | 0 | 125,029 | 124,991 | 0 | 0 | 0 | 0 | 124,991 |
| a. HB 63 — Motor Vehicle Warranty Act | 0 | 41,338 | 0 | 0 | 0 | 41,338 | 0 | 38,588 | 0 | 0 | 0 | 38,588 |
| Total | 1,762,963 | 11,762,856 | 33,437,555 | 0 | 0 | 46,963,375 | 1,766,504 | 11,068,715 | 35,032,340 | 0 | 0 | 47,867,559 |

If [committee bill to eliminate the board of passenger tramway safety] is not passed and approved in a form that eliminates the board of passenger tramway safety, the department is appropriated $43,069 in fiscal year 1998 and $37,050 in fiscal year 1999 in state special revenue money.

The department is appropriated in each of the fiscal years 1998 and 1999 up to $1 million of state special revenue that is deposited in the account established in [section 17] of Senate Bill No. 83 for the purpose of processing charter applications and for the chartering, examination, and regulation of each foreign capital depository that obtains a charter under the provisions of Senate Bill No. 83.

The department is appropriated up to $471,449 in fiscal year 1998 and $474,943 in fiscal year 1999 in either state special revenue or federal special revenue authority for the purpose of funding the state's share of the certified communities program authorized in 90-1-116(2). These appropriations are contingent upon the department receiving either private or federal grant funds to be used as matching funds for local economic development efforts.

Item 3b is contingent upon passage and approval of Senate Bill No. 259.

*Item 3c is contingent upon passage and approval of House Bill No. 266.*

HeinOnline -- 1997 vol. III 3388 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

It is the intent of the legislature that $1 million from the coal board's fiscal year 1998 appropriation be used for reconstruction of the north 12 miles of highway 314.

Item 6 includes a 10% reduction in equipment totaling $43,000 in fiscal year 1998 and $28,000 in fiscal year 1999. The department may allocate this reduction among programs.

Item 8a is contingent upon passage and approval of House Bill No. 388.

Item 8b is contingent upon passage and approval of Senate Bill No. 286.

The appropriation provided for the weights and measures bureau is contingent upon funds being used to achieve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets, with explanations for any significant variances.

The proposed program goals and associated performance targets for each year of the 1999 biennium are as follows:

Goal 1: Maximize the testing, inspection, and certification of commercially used scales in Montana.

Performance Measure/Target: Test, inspect, and certify on an annual basis 90% of all licensed commercial scales.

| | FY 94 | FY 95 | FY 96 (Estimated) | FY 94-FY 96 Average |
|---|---|---|---|---|
| Scales Licensed | 6,629 | 6,756 | 6,728 | 6,704 |
| Scales Tested, Inspected, and Certified | 5,091 | 6,431 | 5,900 | 5,807 |
| Inspection % | 76.80% | 95.19% | 87.69% | 86.62% |

Goal 2: Maximize the testing, inspection, and certification of retail and wholesale petroleum pumps and meters and liquid petroleum gas (LPG) meters used throughout Montana.

Performance Measure/Target: Test, inspect, and certify 85% of all licensed retail and wholesale petroleum dispensing pumps or meters and 85% of all liquid petroleum gas meters on an annual basis.

| | FY 94 | FY 95 | FY 96 (Estimated) | FY 94-FY 96 Average |
|---|---|---|---|---|
| Pumps and Meters Licensed | 11,136 | 12,167 | 12,527 | 11,943 |
| Pumps and Meters Tested, Inspected, and Certified | 7,867 | 11,878 | 10,000 | 9,748 |
| Inspection % | 66.15% | 97.62% | 79.83% | 81.62% |
| LPG Gas Meters Licensed | 515 | 530 | 543 | 529 |

HeinOnline -- 1997 vol. III 3389 1997

| | Fiscal 1999 | | | | | | Fiscal 1999 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| LPG Gas Meters Tested, Inspected, and Certified | | | 538 | 378 | 405 | | 440 | | | | |
| Inspection % | | | 104.47% | 71.32% | 74.59% | | 83.19% | | | | |

Goal 3: Maximize the inspection and testing of prepackaged consumer goods offered for sale in Montana.

Performance Measure/Target: Inspect and test, on an annual basis, a minimum of 500 lots of prepackaged consumer goods to ensure compliance. These will include both standard and random packaged goods. Inspections and tests will be conducted according to nationally recognized statistical standards.

Goal 4: Maximize the testing for octene content of the various grades of gasoline offered for sale to the general public throughout Montana.

Performance Measure/Target: Test for octane content a minimum of 300 samples of various grades of gasoline that are offered for sale to the general public on an annual basis statewide.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION C | | | | | | | | | | | |
| 18,931,522 | 85,564,364 | 62,177,208 | 240,019 | 73,244 | 166,986,357 | 18,720,016 | 78,650,674 | 62,778,110 | 260,078 | 72,204 | 160,481,082 |

HeinOnline -- 1997 vol. III 3390 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| **D INSTITUTIONS AND PUBLIC SAFETY** | | | | | | | | | | | | |
| CRIME CONTROL DIVISION (4107) | | | | | | | | | | | | |
| 1. Justice System Support Service (01) | 720,602 | 0 | 397,064 | 0 | 0 | 1,117,666 | 725,641 | 0 | 396,604 | 0 | 0 | 1,122,245 |
| a. Crime Victims' Compensation (Biennial) | 556,000 | 0 | 150,000 | 0 | 0 | 706,000 | 556,000 | 0 | 150,000 | 0 | 0 | 706,000 |
| b. Juvenile Detention (Biennial) | 834,942 | 0 | 0 | 0 | 0 | 834,942 | 834,942 | 0 | 0 | 0 | 0 | 834,942 |
| c. Juvenile Delinquency Prevention (Biennial) | 0 | 0 | 703,500 | 0 | 0 | 703,500 | 0 | 0 | 703,500 | 0 | 0 | 703,500 |
| d. Victims' Assistance (Biennial) | 0 | 0 | 1,770,000 | 0 | 0 | 1,770,000 | 0 | 0 | 870,000 | 0 | 0 | 870,000 |
| e. Drug Education (Biennial) | 0 | 0 | 519,000 | 0 | 0 | 519,000 | 0 | 0 | 519,000 | 0 | 0 | 519,000 |
| f. Criminal History Records (Biennial) | 0 | 0 | 650,000 | 0 | 0 | 650,000 | 0 | 0 | 300,000 | 0 | 0 | 300,000 |
| g. Violence Against Women Grant (Biennial) | 0 | 0 | 1,000,000 | 0 | 0 | 1,000,000 | 0 | 0 | 1,000,000 | 0 | 0 | 1,000,000 |
| h. Drug Enforcement Grants (Biennial) | 0 | 0 | 2,640,000 | 0 | 0 | 2,640,000 | 0 | 0 | 2,640,000 | 0 | 0 | 2,640,000 |
| i. Law Enforcement Assistance Grants (Bionnial) | 0 | 0 | 200,000 | 0 | 0 | 200,000 | 0 | 0 | 200,000 | 0 | 0 | 200,000 |
| j. Substance Abuse Treatment Grants (Biennial) | 0 | 0 | 150,000 | 0 | 0 | 150,000 | 0 | 0 | 150,000 | 0 | 0 | 150,000 |
| Total | 2,111,544 | 0 | 8,179,564 | 0 | 0 | 10,291,108 | 2,116,583 | 0 | 6,929,104 | 0 | 0 | 9,045,687 |

All remaining federal pass-through grant appropriations for the 1997 biennium are authorized to continue into fiscal year 1998 and fiscal year 1999.

The board of crime control, with the cooperation of the supreme court, shall report to the 1999 legislature on district judges and justices of the peace with regard to the following:

(1) reduction of repeat offenders;

(2) reduction of crime in the district; and

HeinOnline -- 1997 vol. III 3391 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| (3) use of alternative sentencing to lower costs, as well as the effectiveness of alternative sentencing. | | | | | | | | | | | | |

The board of crime control shall annually publish and distribute to the legislature figures showing, for each county, the percentage of the total county population of juveniles engaged in all types of offenses, including but not limited to serious juvenile crime and drug crime in the current year and in each of the previous 4 years. The board of crime control shall standardize the reporting process for the county reports.

Item 1 includes a 10% reduction in equipment totaling $1,400 in fiscal year 1998 and $1,100 in fiscal year 1999. The division may allocate this reduction among programs.

DEPARTMENT OF JUSTICE (4110)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | Legal Services Division (01) | | | | | | | | | | | |
| | 1,773,949 | 190,088 | 44,134 | 0 | 0 | 2,008,171 | 1,749,484 | 190,965 | 44,134 | 0 | 0 | 1,984,583 |
| | a. Major Litigation (Restricted/Biennial) | | | | | | | | | | | |
| | 250,000 | 0 | 0 | 0 | 0 | 250,000 | 250,000 | 0 | 0 | 0 | 0 | 250,000 |
| | b. Special Prosecution | | | | | | | | | | | |
| | 0 | 33,000 | 67,000 | 0 | 0 | 100,000 | 0 | 100,000 | 0 | 0 | 0 | 100,000 |
| | c. HB 222 Implementation (Biennial) | | | | | | | | | | | |
| | 41,963 | 0 | 0 | 0 | 0 | 41,963 | 78,532 | 0 | 0 | 0 | 0 | 78,532 |
| | d. Bankruptcy Unit | | | | | | | | | | | |
| | 0 | 0 | 0 | 124,344 | 0 | 124,344 | 0 | 0 | 0 | 124,483 | 0 | 124,483 |
| 2. | Gambling Control Division (07) | | | | | | | | | | | |
| | 462,550 | 1,731,969 | 0 | 0 | 0 | 2,194,519 | 469,156 | 1,756,820 | 0 | 0 | 0 | 2,225,976 |
| | a. Private Audits (Biennial/OTO) | | | | | | | | | | | |
| | 0 | 67,000 | 0 | 0 | 0 | 67,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| | b. SB 354 — Restaurant Beer and Wine Licensing | | | | | | | | | | | |
| | 0 | 91,870 | 0 | 0 | 0 | 91,870 | 0 | 78,370 | 0 | 0 | 0 | 78,370 |
| 3. | Motor Vehicle Division (12) | | | | | | | | | | | |
| | 7,273,429 | 385,801 | 0 | 0 | 0 | 7,659,230 | 7,096,139 | 331,145 | 0 | 0 | 0 | 7,427,284 |
| | a. SB 57 — Motor Vehicle Tax | | | | | | | | | | | |
| | 80,000 | 0 | 0 | 0 | 0 | 80,000 | 30,000 | 0 | 0 | 0 | 0 | 30,000 |
| 4. | Highway Patrol Division (13) | | | | | | | | | | | |
| | 0 | 15,091,144 | 719,341 | 0 | 0 | 15,810,485 | 0 | 15,235,698 | 754,318 | 0 | 0 | 15,990,016 |
| 5. | Law Enforcement Services Division (18) | | | | | | | | | | | |
| | 2,537,711 | 349,219 | 1,138,924 | 0 | 0 | 4,025,853 | 2,546,024 | 338,197 | 1,159,326 | 0 | 0 | 4,043,547 |
| 6. | County Attorney Payroll (19) | | | | | | | | | | | |
| | 1,489,051 | 0 | 0 | 0 | 0 | 1,489,051 | 1,528,691 | 0 | 0 | 0 | 0 | 1,528,691 |

HeinOnline -- 1997 vol. III 3392 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 7. Law Enforcement Academy Division (22) | 933,336 | 0 | 17,000 | 0 | 0 | 950,336 | 936,530 | 0 | 0 | 0 | 0 | 936,530 |
| 8. Central Services Division (28) | 209,893 | 255,470 | 0 | 9,462 | 0 | 474,825 | 209,585 | 293,923 | 0 | 11,023 | 0 | 514,531 |
| a. Legislative Audit (Restricted/Biennial) | 21,965 | 26,957 | 0 | 998 | 0 | 49,920 | 0 | 0 | 0 | 0 | 0 | 0 |
| 9. Computer Service and Planning Division (29) | 1,249,246 | 412,587 | 0 | 0 | 0 | 1,661,833 | 1,252,452 | 412,587 | 0 | 0 | 0 | 1,665,039 |
| a. National Crime Information Center — 2000 (Biennial) | 0 | 42,650 | 0 | 0 | 0 | 42,650 | 0 | 42,650 | 0 | 0 | 0 | 42,650 |
| 10. Extradition and Transportation of Prisoners (30) | 164,587 | 0 | 0 | 0 | 0 | 164,587 | 162,145 | 0 | 0 | 0 | 0 | 162,145 |
| 11. Forensic Science Division (32) | 1,356,602 | 256,122 | 40,149 | 0 | 0 | 1,652,873 | 1,377,730 | 256,122 | 40,149 | 0 | 0 | 1,674,001 |
| Total | 17,844,281 | 18,933,878 | 2,026,547 | 134,804 | 0 | 38,939,510 | 17,686,468 | 19,036,476 | 1,997,928 | 135,506 | 0 | 38,856,378 |

The department is authorized to transfer the retirement contributions provided in 19-6-404 and 61-5-121(1)(a) in fiscal years 1998 and 1999 from the highway patrol retirement clearing account in the state special revenue fund to the Montana highway patrol officers' retirement pension fund. An appropriation must be established each year in the amount required to be transferred up to the amount of $700,000.

Revenue from tuition charged for participation in the DARE training program may be used to match federal dollars should they become available for the DARE program.

The department is directed to study the issue of privatization of driver licensing services and report to the 1999 legislature. The department shall negotiate with communities, alternative vendors, and other governmental agencies to achieve cost reductions and improved access to driver's license examination services for the 1999 biennium. By June 30, 1998, the department must have in place at least one privatized driver's licensing examination station.

The legislature recognizes that the costs associated with litigation in which the legal services division is required to provide representation to the state of Montana may exceed the appropriation provided. In that event, the department will need to request a supplemental appropriation from the 1999 legislature to adequately represent the state.

The amount of $20,000 in general fund money is appropriated to the department each year from the unexpended portion of House Bill No. 1, following adjournment of the 55th legislature. The funds are to be used to implement House Bill No. 222, habeas corpus reforms.

Item 1c is centingent upon passage and approval of House Bill No. 222.

The bankruptcy unit funded in item 1d is directed to charge fees commensurate with cost.

Item 2b is contingent upon passage and approval of Senate Bill No. 354.

HeinOnline -- 1997 vol. III 3393 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| Item 3 includes a 10% reduction in equipment totaling $79,149 in fiscal year 1998 and $58,853 in fiscal year 1999. The department may allocate this reduction among programs. None of the reduction is to be allocated to the highway patrol division. | | | | | | | | | | | | |
| PUBLIC SERVICE REGULATION (4201) | | | | | | | | | | | | |
| 1. Public Service Regulation Program (01) | 0 | 2,166,776 | 26,250 | 0 | 0 | 2,193,026 | 0 | 2,178,282 | 26,372 | 0 | 0 | 2,204,654 |
| a. *Legislative Audit (Restricted/Biennial)* | 0 | 16,095 | 0 | 0 | 0 | 16,095 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Professional Services (Biennial) | 0 | 50,000 | 0 | 0 | 0 | 50,000 | 0 | 50,000 | 0 | 0 | 0 | 50,000 |
| c. SB 89 — Interim Universal Access Program | 0 | 250,000 | 0 | 0 | 0 | 250,000 | 0 | 500,000 | 0 | 0 | 0 | 500,000 |
| Total | 0 | 2,482,871 | 26,250 | 0 | 0 | 2,509,121 | 0 | 2,728,282 | 26,372 | 0 | 0 | 2,754,654 |
| Item 1 includes a 10% reduction in equipment totaling $3,000 in fiscal year 1998 and $3,000 in fiscal year 1999. The department may allocate this reduction among programs. | | | | | | | | | | | | |
| DEPARTMENT OF CORRECTIONS (6401) | | | | | | | | | | | | |
| 1. Administration and Support Services (01) | 10,019,115 | 1,389 | 0 | 42,854 | 0 | 10,063,358 | 10,978,335 | 3,094 | 0 | 51,842 | 0 | 11,033,271 |
| a. Legislative Audit (Restricted/Biennial) | 81,422 | 3,001 | 0 | 5,950 | 0 | 90,373 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Corrections Automation Plan (Biennial) | 86,660 | 0 | 0 | 0 | 0 | 86,660 | 55,460 | 0 | 0 | 0 | 0 | 55,460 |
| c. Legislative Oversight Committee — HJR 19 | 25,000 | 0 | 0 | 0 | 0 | 25,000 | 25,000 | 0 | 0 | 0 | 0 | 25,000 |
| 2. Community Corrections (02) | 24,521,533 | 133,422 | 283,653 | 0 | 0 | 24,938,608 | 26,549,830 | 135,385 | 283,007 | 0 | 0 | 26,968,222 |
| 3. Secure Facilities (03) | 37,379,897 | 1,198,492 | 222,691 | 0 | 0 | 38,801,080 | 42,456,862 | 1,196,555 | 220,546 | 0 | 0 | 43,873,962 |
| a. Montana State Prison Maintenance (Restricted/Biennial) | 300,000 | 0 | 0 | 0 | 0 | 300,000 | 300,000 | 0 | 0 | 0 | 0 | 300,000 |
| b. Forklift for Food (Restricted/OTO) | 3,000 | 0 | 0 | 0 | 0 | 3,000 | 0 | 0 | 0 | 0 | 0 | 0 |

HeinOnline -- 1997 vol. III 3394 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 4. Montana Correctional Enterprises (04) | 776,961 | 0 | 0 | 346,199 | 0 | 1,123,160 | 842,172 | 0 | 0 | 340,028 | 0 | 1,182,200 |
| Total | 73,193,589 | 1,336,303 | 506,344 | 395,003 | 0 | 75,431,239 | 81,207,659 | 1,335,033 | 503,553 | 391,869 | 0 | 83,438,115 |

The legislature has not appropriated funds to house inmates in a private correctional facility in accordance with House Bill No. 83. However, it is the intent of the legislature that the department issue a request for proposals and enter into a contract with a private vendor during the 1999 biennium for the construction of a correctional facility of approximately 500 beds and the housing of inmates in the facility.

If House Bill No. 14 is not passed and approved, the department may issue a request for proposals and enter into a contract with a private vendor during the 1999 biennium for the construction of a correctional facility of approximately 700 beds and the houring of inmates in the facility.

The appropriation in item 1c is for costs associated with the legislative corrections oversight committee established in House Joint Resolution No. 19.

Item 2 includes $494,892 in general fund money each year of the 1999 biennium and is contingent upon passage and approval of House Bill No. 104.

Item 3 includes a 10% reduction in equipment totaling $146,000 in fiscal year 1998 and $120,000 in fiscal year 1999. The department may allocate this reduction among programs.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Job Service Division (01) | 416,228 | 5,244,043 | 21,388,534 | 39,698 | 0 | 27,088,494 | 416,645 | 4,746,301 | 21,608,260 | 39,856 | 0 | 26,811,062 |
| a. Legislative Audit (Restricted/Biennial) | 809 | 20,366 | 44,463 | 170 | 0 | 65,808 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Community Services (Biennial) | 25,000 | 46,412 | 1,708,744 | 0 | 0 | 1,780,156 | 25,000 | 45,908 | 1,708,668 | 0 | 0 | 1,779,576 |
| 2. Unemployment Insurance Division (02) | 4,154 | 341,581 | 4,806,044 | 0 | 0 | 5,151,779 | 4,152 | 347,049 | 4,937,954 | 0 | 0 | 5,289,155 |
| a. Legislative Audit (Restricted/Biennial) | 0 | 1,228 | 18,456 | 0 | 0 | 19,684 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Department of Revenue Reorganization (OTO) | 21,653 | 0 | 0 | 0 | 0 | 21,653 | 21,831 | 0 | 0 | 0 | 0 | 21,831 |
| 3. Legal/Centralized Services Division (03) | 0 | 609,241 | 423,661 | 118,101 | 0 | 1,151,003 | 0 | 698,674 | 452,883 | 129,185 | 0 | 1,280,742 |
| a. Legislative Audit (Restricted/Biennial) | 0 | 2,752 | 1,532 | 426 | 0 | 4,710 | 0 | 0 | 0 | 0 | 0 | 0 |
| 4. Employment Relations Division (04) | 271,079 | 4,018,824 | 360,938 | 721,805 | 0 | 5,372,646 | 261,455 | 3,829,924 | 356,419 | 714,874 | 0 | 5,162,672 |

HeinOnline -- 1997 vol. III 3395 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Legislative Audit (Restricted/Biennial) | 53 | 16,836 | 1,256 | 2,399 | 0 | 20,544 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. SB 67 — Workers' Compensation Fraud | 0 | 0 | 0 | 84,583 | 0 | 84,583 | 0 | 0 | 0 | 57,760 | 0 | 57,760 |
| c. SB 62 — Vocational Rehabilitation (Restricted) | 0 | 100,000 | 0 | 0 | 0 | 100,000 | 0 | 100,000 | 0 | 0 | 0 | 100,000 |
| d. SB 290 — Workers' Compensation Regulation Advisory Council | 0 | 21,600 | 0 | 0 | 0 | 21,600 | 0 | 21,600 | 0 | 0 | 0 | 21,600 |
| 5. Human Rights Commission (08) | 437,439 | 1,920 | 162,041 | 0 | 0 | 601,400 | 439,851 | 2,000 | 162,917 | 0 | 0 | 604,768 |
| a. Legislative Audit (Restricted/Biennial) | 2,186 | 80 | 792 | 0 | 0 | 3,058 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Additional Full-Time Employees (OTO) | 103,419 | 0 | 38,251 | 0 | 0 | 141,670 | 77,994 | 0 | 28,847 | 0 | 0 | 106,841 |
| 6. Workers' Compensation Court (09) | 0 | 359,061 | 0 | 0 | 0 | 359,061 | 0 | 370,577 | 0 | 0 | 0 | 370,577 |
| a. Legislative Audit (Restricted/Biennial) | 0 | 1,147 | 0 | 0 | 0 | 1,147 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 1,282,020 | 10,785,091 | 28,954,713 | 967,172 | 0 | 41,988,996 | 1,246,928 | 10,162,033 | 29,255,948 | 941,675 | 0 | 41,606,584 |

The appropriation provided for the wage and hour unit of the labor standards bureau is contingent upon funds being used to achieve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division ou progress toward achievement of these performance targets, with explanations for any significant variances.

Goal: The goal of the wage and hour unit is to provide a forum for the prevention and resolution of workplace disputes involving wages and their payment in Montana.

(1) Objective/output measure: For the biennium, wage and hour compliance specialists will improve by 2% each year the percentage of determinations issued within 55 days of the receipt of the wage complaint.

Baseline measures for this objective will be established by the percentage of determinations issued by compliance staff in fiscal year July 1, 1996, to June 30, 1997.

Outcome measure: Fewer complaints from customers about how long it takes to process a claim.

Baseline measures for this outcome will be established by the number of written and verbal complaints received in fiscal year July 1, 1996, to June 30, 1997.

HeinOnline -- 1997 vol. III 3396 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Quality measure: Fewer clerical mistakes on determinatious issued and less amended determinations issued.

Baseline measures will be established by the number of amended determinations thet were issued in fiscal year July 1, 1996, to June 30, 1997.

(2) Objective/output measure: For fiscal year 1998 and fiscal year 1999, the wage and hour unit will handle 90% of the cases filed in that year without need of an administrative hearing.

Baseline measures for this objective will be established by the percentage of cases requiring an administrative hearing in fiscal year July 1, 1996, to June 30, 1997.

Outcome measure: Fewer verbal and written customer complaints regarding the length of time that a claim can linger without closure.

Baseline measures for this outcome will be established through the number of complaints in fiscal year July 1, 1996, to June 30, 1997.

Quality measure: Determinations issued by compliance specialists more complete and comprehensive to customers.

Baseline measures will be established through a survey of customers when a decision is issued in fiscal year July 1, 1996, to June 30, 1997.

Item 2 includes a 10% reduction in equipment totaling $56,000 in fiscal year 1998 and $53,000 in fiscal year 1999. The department may allocate this reduction among programs.

If Senate Bill No. 349 is not passed and approved, the appropriation in item 4 is decreased by $184,859 in state special revenue and $1,738 in proprietary funds in fiscal year 1998 and increased by $6,346 in state special revenue in fiscal year 1999.

The appropriation in item 4h is contingent upon passage and approval of Senate Bill No. 67.

The appropriation in item 4d is contingent upon passage and approval of Senate Bill No. 290.

It is legislative intent that the centralized services functions of the department be provided to the department's programs. Because 67% of the department's funding is from federal funds and pursuant to 17-3-111, it is also legislative intent that the rates charged by the centralized functions of the department be the rates agreed upon by the United States department of labor federal negotiator. The rate, as submitted for fiscal year 1998, is 7.73% of the programs' actual personal services costs incurred; and the estimated rate for fiscal year 1999 may not exceed 8.65% of the programs' actual personal services costs incurred.

It is legislative intent that the input/output control operations functions continue to provide the services to department users. Charge per hour to the users must be $39 an hour or less for the 1999 hiennium. This rate must be analyzed throughout the hiennium, and particular consideration must be given to the time spent providing this function to the customers and to the cash balance of the fund.

It is legislative intent that the Montana career information system (MCIS) maintain a fee structure to cover the costs of software development and dissemination. The MCIS rates for the 1999 biennium are the rates determined by the state occupational information coordinating council. For fiscal year 1998, the rates are to be no more than $1,500 for larger schools, with discounts available for smaller schools. If the national software fee to the MCIS increases and if the state occupational information coordinating council reviews the increase and sets new rates, it is legislative intent that the fee increase be concomitant with the national career information system increase.

DEPARTMENT OF MILITARY AFFAIRS (6701)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Operations Support (01) | | | | | | | | | | | | |
| 300,334 | 0 | 31,101 | 0 | 0 | 331,435 | 300,472 | 620 | 35,938 | 0 | 0 | 337,030 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | | |
| 7,402 | 0 | 0 | 0 | 0 | 7,402 | 0 | 0 | 0 | 0 | 0 | 0 |

HeinOnline -- 1997 vol. III 3397 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 2. Army National Guard Program (12) | 910,844 | 25,271 | 2,679,438 | 0 | 0 | 3,615,553 | 917,245 | 49,103 | 2,715,088 | 0 | 0 | 3,681,436 |
| a. Legislative Audit (Restricted/Biennial) | 7,204 | 0 | 0 | 0 | 0 | 7,204 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Paint Maintenance — State Armories (Restricted/OTO) | 42,750 | 0 | 0 | 0 | 0 | 42,750 | 32,500 | 0 | 0 | 0 | 0 | 32,500 |
| 3. Air National Guard Program (13) | 194,712 | 0 | 1,612,273 | 0 | 0 | 1,806,985 | 200,107 | 0 | 1,631,785 | 0 | 0 | 1,831,891 |
| 4. Disaster and Emergency Services (21) | 242,944 | 23,000 | 1,331,044 | 0 | 0 | 1,596,988 | 241,095 | 23,000 | 1,340,986 | 0 | 0 | 1,605,081 |
| a. Legislative Audit (Restricted/Biennial) | 1,850 | 0 | 12,954 | 0 | 0 | 14,804 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Overtime Emergencies (Restricted/OTO) | 10,000 | 0 | 0 | 0 | 0 | 10,000 | 10,000 | 0 | 0 | 0 | 0 | 10,000 |
| 5. Veterans' Affairs Program (31) | 609,595 | 74,073 | 0 | 0 | 0 | 683,668 | 611,952 | 74,083 | 0 | 0 | 0 | 686,035 |
| a. Legislative Audit (Restricted/Biennial) | 7,402 | 0 | 0 | 0 | 0 | 7,402 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Eastern Montana Veterans' Cemetery (Restricted) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 36,796 | 0 | 0 | 0 | 36,796 |
| Total | 2,335,037 | 122,344 | 5,666,810 | 0 | 0 | 8,124,191 | 2,313,371 | 183,602 | 5,723,796 | 0 | 0 | 8,220,769 |

Item 2 includes a 10% reduction in equipment totaling $3,000 in fiscal year 1998 and $3,000 in fiscal year 1999. The department may allocate this reduction among programs.

The appropriation provided for the Montana air national guard is contingent upon funds being used to achieve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets, with explanations for any significant variances.

Program Mission Statement: The Montana Air National Guard (ANG) is to ensure ANG facilities can support the unit flying and training program, governor's call for emergency response, maintain real property facilities, and implement programs which improve the functionality of the installation.

Program Goals:

Goal 1: Provide reliable facilities and utilities to meet readiness requirements and satisfy installation needs.

HeinOnline -- 1997 vol. III 3398 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Performance Measure/Target:

(1) All outside agency-directed inspections, audits, or staff assistance visits rated satisfactory or higher.

(a) No mission cancels attributed to facilities or airfield management.

Goal 2: Conduct all activities in compliance with environmental, fire, and safety laws and directives.

Performance Measure/Target:

(1) No notices of violation of environmental, fire, or safety laws or directives.

(a) All environmental and safety inspections, assistance visits, and audits rated satisfactory or higher.

Goal 3: Operate, maintain, repair, aud construct ANG real property and real property installed equipment to accomplish the mission most economically.

Performance Measure/Target:

(1) Facility maintenance annual assessments by ANG civil engineering technical services all rated satisfactory or higher.

(a) Unit repair and maintenance costs to be 1.5% of construction cost.

(b) Energy conservation programs in place to ensure that utility costs do not exceed design data criteria and facility energy budget.

(c) Total state share of the federal operating maintenance agreement not to exceed 0.0065% of replacement cost of facilities.

Goal 4: Provide management of contract services, e.g., refuse disposal, pest control, minor construction, design, and grounds maintenance.

Performance Measure/Target:

(1) Self-assessment of AF Forms 332 to show 100% project completion as estimated to customer.

(a) Contract services not to exceed 25% of repair and maintenance budget.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION D | | | | | | | | | | | |
| 96,766,470 | 33,660,488 | 45,360,228 | 1,496,979 | 0 | 177,284,165 | 104,571,009 | 33,445,427 | 44,436,701 | 1,469,050 | 0 | 183,922,187 |

HeinOnline -- 1997 vol. III 3399 1997

| | Fiscal 1999 | | | | | | Fiscal 1999 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| | | | | | E. EDUCATION | | | | | | |
| OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501) | | | | | | | | | | | |
| 1. OPI Administration (06) | | | | | | | | | | | |
| 3,552,630 | 386,814 | 5,805,738 | 0 | 0 | 9,745,181 | 3,560,386 | 385,528 | 5,795,320 | 0 | 0 | 9,741,233 |
| a. Education Program Representatives' Salary Adjustment (Restricted) | | | | | | | | | | | |
| 28,000 | 0 | 0 | 0 | 0 | 28,000 | 30,000 | 0 | 0 | 0 | 0 | 30,000 |
| b. Industrial Education Support Staff (Restricted) | | | | | | | | | | | |
| 25,641 | 0 | 0 | 0 | 0 | 25,641 | 22,642 | 0 | 0 | 0 | 0 | 22,642 |
| c. Building Expansion (Restricted) | | | | | | | | | | | |
| 184,183 | 0 | 0 | 0 | 0 | 184,183 | 178,333 | 0 | 0 | 0 | 0 | 178,333 |
| d. Improving Montana Schools (Restricted/Biennial) | | | | | | | | | | | |
| 175,000 | 0 | 0 | 0 | 0 | 175,000 | 175,000 | 0 | 0 | 0 | 0 | 175,000 |
| 2. Distribution to Public Schools (09) | | | | | | | | | | | |
| 10,963,648 | 1,000,000 | 0 | 0 | 0 | 11,963,648 | 11,063,648 | 1,000,000 | 0 | 0 | 0 | 12,063,648 |
| a. Timber Harvest for Technology (Restricted) | | | | | | | | | | | |
| 1,505,000 | 0 | 0 | 0 | 0 | 1,505,000 | 2,795,000 | 0 | 0 | 0 | 0 | 2,795,000 |
| b. K-12 Base Aid (Biennial) | | | | | | | | | | | |
| 397,615,083 | 0 | 0 | 0 | 0 | 397,615,083 | 405,493,083 | 0 | 0 | 0 | 0 | 405,493,083 |
| c. In-State Treatment (Biennial) | | | | | | | | | | | |
| 974,896 | 0 | 0 | 0 | 0 | 974,896 | 974,896 | 0 | 0 | 0 | 0 | 974,896 |
| d. Adult Basic Education (Biennial) | | | | | | | | | | | |
| 250,000 | 0 | 0 | 0 | 0 | 250,000 | 250,000 | 0 | 0 | 0 | 0 | 250,000 |
| e. Secondary Vocational Education (Biennial) | | | | | | | | | | | |
| 650,000 | 0 | 0 | 0 | 0 | 650,000 | 650,000 | 0 | 0 | 0 | 0 | 650,000 |
| f. Gifted and Talented (Biennial) | | | | | | | | | | | |
| 150,000 | 0 | 0 | 0 | 0 | 150,000 | 150,000 | 0 | 0 | 0 | 0 | 150,000 |
| g. Special Education (Biennial) | | | | | | | | | | | |
| 32,487,154 | 0 | 0 | 0 | 0 | 32,487,154 | 32,473,365 | 0 | 0 | 0 | 0 | 32,473,365 |
| b. School District Federal Aid (Biennial) | | | | | | | | | | | |
| 0 | 0 | 65,459,652 | 0 | 0 | 65,459,652 | 0 | 0 | 65,459,652 | 0 | 0 | 65,459,652 |
| Total | | | | | | | | | | | |
| 448,561,235 | 1,386,814 | 71,265,390 | 0 | 0 | 521,213,438 | 457,816,351 | 1,385,528 | 71,254,972 | 0 | 0 | 530,456,852 |

HeinOnline -- 1997 vol. III 3400 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Because of de-earmarking of resources and assessments by House Bill No. 166, item 1 has been reduced by $525 in state special revenue in each fiscal year and general fund amounts have been increased by the same amounts. If House Bill No. 166 is not passed and approved in a form that de-earmarks the state special revenue, then the general fund amounts in item 1 are reduced by $525 in each fiscal year and the state special revenue amounts are increased by the same amounts.

Item 1a is for increases in salaries and benefits paid to office of public instruction education program representatives in the event that a classification review, performed under the direction of the department of administration personnel division, finds that the increases are appropriate.

It is the intent of the legislature that the office of public instruction fill the vocational/technology, trades, and industrial education specialist and vocational/agriculture education specialist positions at a salary above entry level. The legislature has included funding for these positions at a level sufficient to pay the additional salaries for fiscal years 1998 and 1999.

Additionally, it is the intent of the legislature that the office of public instruction have the option of contracting with the departments of agriculture and education within the college of agriculture at Montana state university-Bozeman for the duties and responsibilities of the vocational/agriculture education specialist.

Item 1c is for the lease and occupation costs associated with the office of public instruction's building located at 1227 11th avenue.

The office of public instruction shall prepare and submit to the office of budget and program planning and legislative fiscal division revised goals and objectives for the improving Montana schools program commensurate with the amount appropriated. The appropriation provided for in item 1d is contingent upon funds being used to achieve program performance targets as outlined in the budget for the 1999 biennium. The office of public instruction shall provids semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets, with explanations for any significant variances.

Goal I: Promote challenging academic standards and effective delivery systems for teaching and learning for K-12 education to meet the challenges of today and tomorrow.

Objective 1: By October 1, 1998, with assistance and advice from educators, parents, and the public, the office of public instruction will review the 1989 program area standards and will recommend revisions to the model learner goals associated with the Montana accreditation standards. Model learner goals to integrate instructional technology across the curriculum will be recommended. Technology will be used as the primary tool to maintain effective communication with educators and the public across Montana.

Objective 2: By January 1999, an increased number of Montana schools will link their educational reform efforts with workforce development and ecouomic development by engaging community members, business, labor, parents, and schools in designing a comprehensive, integrated system of education and workforce preparation that reflects local needs and that is available to all students.

Performance measures:

Revised learner goals are integrated into locally developed curriculum models in all program areas over the 4 years, fiscal years 1998 through 2001.

Long term - local assessments are developed to measure student performance and district progress toward achieving model learner goals. Assessment data will assist in the establishment of indicators and benchmarks for the Montana education profile.

Long term - effectiveness will be measured by the number of schools demonstrating an increased number of students who are proficient in core academic subjects.

The number of sustained, intensive professioual development opportunities for educators is increased by 30% by fiscal year 2001. Baseline data will be collected for the 1997-98 school year.

By fiscal year 2001, 30% of the school districts in Montana will have adopted state-of-the-art models for the improvement of curriculum, assessment, instruction, and integrated technology. Baseline data will be collected for the 1997-98 school year.

HeinOnline -- 1997 vol. III 3401 1997

| | | Fiscal 1998 | | | | | Fiscal 1999 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Propri-etary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Propri-etary | Other | Total |

The number of schools that integrate school-to-work opportunities into existing educational reform initiatives and existing vocational education programs is increased by 30% by fiscal year 2001. Baseline data will be collected in the 1997-98 school year.

The number of students with significant involvement in school-to-work programs is increased. Baseline data will be collected in the 1997-98 school year.

The office of public instruction will identify model curricula and training in applied academics and work-based learning and will increase access to these models to improve its programs and increase workplace experiences linked to the classroom.

The number of students who have opportunities to integrate academic and occupational learning through school-to-work, applied learning opportunities, vocational education, or work-based learning will increase by 30% by fiscal year 2001. Baseline data will be collected in the 1997-98 school year.

Goal II: Provide the public with a means of assessing the quality and achievements of the K-12 education system in Montana.

Objective 1: By February 1999, the office of public instruction will develop and disseminate a Montana education profile to the Montana public. The profile will be developed with assistance and advice from educators, parents, and the public and will contain indicators and measures of the effectiveness of Montana's K-12 system in the areas of students, staff, academic achievement, finance, and educational programs. Technology will be used as the primary tool to maintain effective communication with educators and the public across Montana.

Objective 2: During fiscal years 1999 and 2000, the office of public instruction will provide technical assistance to districts and communities to assist with the development of local profiles of school and program effectiveness. Technology will provide the primary means of communication.

Performance measures:

The first Montana educational profile will be completed by February 1999. The profile will report the status and achievements of schools or districts in peer groupings and provide a state and national context for comparison.

By July 2000, 20% of Montana's 469 school districts will voluntarily participate in a pilot project to develop, publish, and distribute local school profiles. All districts will complete, publish, and distribute local profiles by July 2001.

A survey of state and local policymakers, educators, and community members will indicate that the education profile is accessible, meaningful, and valuable as a tool for school improvement at the local level.

A survey will indicate that the public is able to identify and draw conclusions from the indicators of educational quality and perceive that it can be actively engaged in the school improvement process.

Goal III: Promote the effective use of technology resources for expanding K-12 educational opportunities.

Objective 1: By July 1, 1999, the office of public instruction will have increased the use of electronic communication technologies to disseminate information on school improvement, professional development opportunities, and education-related data.

Performance measures:

By July 1997, the office of public instruction will add two additional toll-free lines to the MSTNET bulletin board system. By October 1997, user logins via the toll-free lines will increase by 600 calls each day, thereby doubling the number of logins to the bulletin board system.

HeinOnline -- 1997 vol. III 3402 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

In the 1997-98 school year, baseline survey data will be gathered to measure the integration of technology into the classroom. In subsequent years, survey data will measure the advances in this area.

By January 1999, user participation in educational conferences on METNET will increase by 50%. The 1996-97 school year will provide baseline data.

Goal IV: Improve access to and management of information and data related to K-12 education.

Objective 1: By October 1998, the office of public instruction will expand and improve data collection and management, electronic transmission of data, analysis procedures, and dissemination processes. Improved data collection and management procedures will ensure the accuracy and timeliness of data necessary for reporting indicators and measures to the Montana public.

Objective 3: By January 1999, the data identified for the first statewide Montana education profile will be produced by the office of public instruction in a timely, accurate, comparable, and cost-effective manner.

Objective 3: The process developed by the office of public instruction for gathering and managing education data will decrease processing time and increase access to elementary and secondary school data for educational decisionmaking.

Performance measures:

By July 1998, common definitions, standards, and procedures will be identified and disseminated to ensure accuracy of data collections and cost-effective data-gathering decisions.

Processing time will improve for data currently collected by districts and the office of public instruction. The 1996-97 school year will serve as a baseline for comparison.

Education-related data and information will be available to the public in a variety of standard formats (both electronic and printed) and in a variety of locations, including the METNET bulletin board system, libraries, and schools.

Surveys will indicate that policymakers, educators, and the general public recognize that the data provided assists in public decisions.

The office of public instruction may distribute amounts required from the appropriation in item 2c to public school districts for the purpose of providing education costs in day-treatment services.

Items 2b-h are biennial appropriations.

Item 2a is for school technology as provided in 20-9-534. The amount expended may not exceed the amount paid into the general fund under the provisions of 20-9-343(3)(a)(ii).

If House Bill No. 104 fails, item 2g is increased by $933,759 each year.

BOARD OF PUBLIC EDUCATION (5101)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | Administration (01) | | | | | | | | | | | |
| | 120,121 | 10,036 | 0 | 0 | 0 | 130,157 | 120,178 | 10,379 | 0 | 0 | 0 | 130,557 |
| | a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| | 1,507 | 0 | 0 | 0 | 0 | 1,507 | 0 | 0 | 0 | 0 | 0 | 0 |

HeinOnline -- 1997 vol. III 3403 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| 2. Advisory Council (03) | 0 | 164,486 | 0 | 0 | 0 | 164,486 | 0 | 164,506 | 0 | 0 | 0 | 164,506 |
| a. Legislative Audit (Restricted/Biennial) | 0 | 1,506 | 0 | 0 | 0 | 1,506 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 121,628 | 176,028 | 0 | 0 | 0 | 297,656 | 120,178 | 174,885 | 0 | 0 | 0 | 295,063 |

SCHOOL FOR THE DEAF AND BLIND (5113)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Administration Program (01) | 220,203 | 0 | 0 | 0 | 0 | 220,203 | 217,867 | 387 | 0 | 0 | 0 | 218,254 |
| a. Legislative Audit (Restricted/Biennial) | 24,960 | 0 | 0 | 0 | 0 | 24,960 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. General Services Program (02) | 278,032 | 0 | 0 | 0 | 0 | 278,032 | 278,910 | 0 | 0 | 0 | 0 | 278,910 |
| 3. Student Services (03) | 908,184 | 0 | 30,682 | 0 | 0 | 938,866 | 857,343 | 0 | 30,682 | 0 | 0 | 888,025 |
| 4. Education (04) | 1,567,989 | 220,189 | 51,374 | 0 | 0 | 1,839,552 | 1,554,555 | 220,189 | 51,374 | 0 | 0 | 1,826,118 |
| a. Salary Adjustment (Restricted/Biennial) | 73,846 | 0 | 0 | 0 | 0 | 73,846 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 3,073,214 | 220,189 | 82,056 | 0 | 0 | 3,375,459 | 2,908,675 | 220,576 | 82,056 | 0 | 0 | 3,211,307 |

Item 4a is a biennial appropriation and must be used to make progress in providing salary increases for Montana school for the deaf and blind teachers and specialists based upon a market ratio concept similar to the one adopted for classified state employees.

MONTANA ARTS COUNCIL (5114)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. Promotion of the Arts (01) | 169,912 | 116,978 | 0 | 0 | 0 | 286,890 | 168,932 | 121,391 | 0 | 0 | 0 | 290,323 |
| a. Legislative Audit (Restricted/Biennial) | 17,214 | 0 | 0 | 0 | 0 | 17,214 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Federal Funds (Biennial) | 0 | 0 | 436,900 | 0 | 0 | 436,900 | 0 | 0 | 437,955 | 0 | 0 | 437,955 |

HeinOnline -- 1997 vol. III 3404 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| c. Federal Grant Match (Restricted) | 50,000 | 0 | 0 | 0 | 0 | 50,000 | 50,000 | 0 | 0 | 0 | 0 | 50,000 |
| Total | 237,126 | 116,978 | 436,900 | 0 | 0 | 791,004 | 218,932 | 121,391 | 437,955 | 0 | 0 | 778,278 |

All funds in item 1b are biennial appropriations.

The $50,000 general fund appropriation each year in item 1c is restricted to the purpose of providing matching funds for federal grants.

MONTANA STATE LIBRARY COMMISSION (5115)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. State Library Operations (01) | 1,187,609 | 168,422 | 342,124 | 0 | 0 | 1,698,155 | 1,466,032 | 172,779 | 417,349 | 0 | 0 | 2,056,159 |
| a. Legislative Audit (Restricted/Biennial) | 18,247 | 0 | 0 | 0 | 0 | 18,247 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Coal Severance Tax (OTO) | 0 | 33,000 | 0 | 0 | 0 | 33,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| c. Grants (Biennial) | 251,138 | 0 | 580,000 | 0 | 0 | 831,138 | 0 | 0 | 580,000 | 0 | 0 | 580,000 |
| d. Montana Talking Book Library (Restricted/OTO) | 71,700 | 0 | 0 | 0 | 0 | 71,700 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Natural Resource Information System (07) | | | | | | | | | | | | |
| a. Performance-Based Budget (Biennial) | 48,795 | 669,490 | 220,094 | 0 | 0 | 938,379 | 48,800 | 561,108 | 119,655 | 0 | 0 | 729,563 |
| Total | 1,577,489 | 870,912 | 1,142,218 | 0 | 0 | 3,590,619 | 1,514,832 | 733,887 | 1,117,004 | 0 | 0 | 3,365,722 |

Item 1 includes biennial appropriations of $251,138 in general fund money and $1,160,000 in federal funds for grants to local libraries.

Item 1 includes a 10% reduction in equipment totaling $25,000 in fiscal year 1998 and $16,001 in fiscal year 1999. The commission may allocate this reduction among programs.

Item 2a is a biennial appropriation.

Item 2a includes $500,000 for legislative contract authority, subject to the following provisions:

(1) Legislative contract authority applies only to state special revenue funds received from the Montana university system, federal funds, and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from present law operations.

HeinOnline -- 1997 vol. III 3405 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Propri-etary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Propri-etary | Other | Total |

(3) A report must be submitted by the Montana state library commission to the legislative fiscal division following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

The appropriation provided for the natural resources information services program is contingent upon funds being used to achieve program performance targets as outlined by the legislature in the general appropriations act for the 1999 biennium. The department shall provide semiannual reports to the office of budget and program planning and the legislative fiscal division on progress toward achievement of these performance targets, with explanations for any significant variances.

Goal: The natural resources information system (NRIS) works to ensure equitable access to natural resource information for all of Montana's citizens, governments, businesses, and industries by using new and emerging information technologies. Specifically, NRIS personnel will work to improve access to natural resource information by developing state-of-the-art tools to make information easier to use and will work to increase the value of existing natural resource information by facilitating and participating in collaborative information-sharing projects. Objectives of the NRIS are as follows:

Objective 1: Operate the Montana natural heritage program (MTNHP), an inventory of Montana's biological resources that emphasizes rare or endangered plant and animal species and biological communities.

Performance Measure/Target:

Provide timely and effective service to requests for information on Montana's natural heritage. The MTNHP will complete 1,500 requests for information each year through direct contacts, self-service, and distributed technology means.

| FY 96 | FY 97 Target | FY 98 Target |
|---|---|---|
| 1,407 | 1,500 | 1,500 |

Performance Measure/Target:

Continue development and maintenance of the biological and conservation data system* and annually update at least 25% of the records in the four primary data bases, thereby ensuring that the most current and accurate data is provided to requestors. (* - ca. 30 data bases, 2,000 fields, 25,000 to 27,000 records)

| FY 96 | FY 97 Target | FY 98 Target |
|---|---|---|
| 6,010 | 6,500 | 6,500 |

Objective 2: Operate the Montana water information system (WIS) and the NRIS geographic information systems (GIS). The WIS is the starting point for locating water resources information in Montana, such as data on surface water, ground water, water quality, riparian areas, water rights, climate data, etc. The GIS provides technical and data acquisition assistance for statewide GIS projects and to agencies developing in-house GIS capability. The NRIS inventories available GIS data and coordinates GIS data standards and the sharing of this information throughout the state.

Performance Measure/Target:

Provide timely and effective response to requests for information and services related to Montana's natural resources. The NRIS will fill 1,821 requests for natural resource information and services each year through direct contacts, self-service, and distributed technology means.

HeinOnline -- 1997 vol. III 3406 1997

| | | Fiscal 1999 | | | | | | Fiscal 1999 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| | | | FY 96 | FY 97 Target | | FY 98 Target | | | | | |
| | | | 1,735 | 1,821 | | 1,821 | | | | | |

Performance Measure/Target:

The NRIS will improve delivery of natural resource information by providing at least 60 data bases accessible via the internet. Additionally, the NRIS will further improve delivery by creating tools to allow users to retrieve the data as well as use the data online to create information products.

| | | | FY 96 | FY 97 Target | | FY 98 Target | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | 7 | 30 | | 30 | | | | | |
| MONTANA HISTORICAL SOCIETY (5117) | | | | | | | | | | | |
| 1. Administration Program (01) | | | | | | | | | | | |
| 576,589 | 180,844 | 50,819 | 7,998 | 0 | 816,250 | 580,796 | 172,005 | 53,503 | 6,130 | 0 | 812,434 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 21,036 | 0 | 0 | 0 | 0 | 21,036 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. Library Program (02) | | | | | | | | | | | |
| 497,809 | 4,523 | 0 | 53,910 | 0 | 556,242 | 499,342 | 4,522 | 0 | 50,507 | 0 | 554,371 |
| 3. Museum Program (03) | | | | | | | | | | | |
| 240,081 | 18,607 | 6,627 | 13,359 | 0 | 278,674 | 236,283 | 18,759 | 0 | 13,350 | 0 | 268,392 |
| 4. Publications (04) | | | | | | | | | | | |
| 53,399 | 0 | 0 | 676,796 | 0 | 730,195 | 53,401 | 0 | 0 | 676,745 | 0 | 730,146 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 0 | 0 | 0 | 923 | 0 | 923 | 0 | 0 | 0 | 0 | 0 | 0 |
| 5. Historical Sites Preservation (06) | | | | | | | | | | | |
| 60,675 | 0 | 606,768 | 0 | 0 | 667,443 | 61,369 | 0 | 607,246 | 0 | 0 | 668,615 |
| a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| 694 | 0 | 5,320 | 0 | 0 | 6,014 | 0 | 0 | 0 | 0 | 0 | 0 |
| b. Purchase of Nevada City and Virginia City (Restricted/OTO) | | | | | | | | | | | |
| 0 | 0 | 0 | 0 | 3,837,500 | 3,837,500 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | | | | | | | | | | | |
| 1,450,283 | 203,974 | 669,534 | 752,986 | 3,837,500 | 6,914,277 | 1,431,191 | 195,286 | 660,749 | 746,732 | 0 | 3,033,958 |

HeinOnline -- 1997 vol. III 3407 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

Item 1 includes $65,494 in fiscal year 1998 and $65,337 in fiscal year 1999, and item 3 includes $9,506 in fiscal year 1998 and $9,663 in fiscal year 1999 of lodging facility use tax granted from the Montana promotion program under the department of commerce. This appropriation is to provide tours of the capitol and the original governor's mansion and rehabilitation of the original governor's mansion.

Item 1 includes a 10% reduction in equipment totaling $7,800 in fiscal year 1998 and $5,300 in fiscal year 1999. The agency may allocate this reduction among programs.

Item 5b is contingent upon the failure of House Bill No. 14. The amount of $3,837,500 in cultural and aesthetics trust fund money is appropriated to the Montana historical society for the acquisition, renovation, and preservation of real and personal property owned by Bovey restorations, inc., and the historic landmark society of Montana in the communities known as Virginia City and Nevada City. If House Bill No. 14 is passed and approved, item 5b is void.

MONTANA UNIVERSITY SYSTEM (5100)

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | OCHE and Educational Units | | | | | | | | | | | |
| | 92,752,786 | 118,164,956 | 9,272,730 | 0 | 0 | 220,190,472 | 92,998,186 | 126,449,262 | 9,390,552 | 0 | 0 | 228,838,000 |
| | a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| | 403,927 | 0 | 6,885 | 0 | 0 | 410,812 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. | Distance Learning | | | | | | | | | | | |
| | 60,000 | 0 | 0 | 0 | 0 | 60,000 | 0 | 0 | 0 | 0 | 0 | 0 |
| 3. | Community Colleges | | | | | | | | | | | |
| | 4,597,875 | 0 | 0 | 0 | 0 | 4,597,875 | 4,597,875 | 0 | 0 | 0 | 0 | 4,597,875 |
| | a. Legislative Audit (Restricted/Biennial) | | | | | | | | | | | |
| | 32,640 | 0 | 0 | 0 | 0 | 32,640 | 0 | 0 | 0 | 0 | 0 | 0 |
| | b. Summitnet Costs (Restricted) | | | | | | | | | | | |
| | 12,750 | 0 | 0 | 0 | 0 | 12,750 | 12,750 | 0 | 0 | 0 | 0 | 12,750 |
| 4. | Rural Residency | | | | | | | | | | | |
| | 200,000 | 0 | 0 | 0 | 0 | 200,000 | 200,000 | 0 | 0 | 0 | 0 | 200,000 |
| 5. | Agricultural Experiment Station | | | | | | | | | | | |
| | 8,020,013 | 0 | 1,879,473 | 941,695 | 0 | 10,841,181 | 8,242,889 | 0 | 1,879,473 | 936,821 | 0 | 11,059,183 |
| 6. | Montana Extension Service | | | | | | | | | | | |
| | 3,381,182 | 0 | 2,294,568 | 0 | 0 | 5,675,750 | 3,552,540 | 0 | 2,294,568 | 0 | 0 | 5,847,108 |
| 7. | Forestry and Conservation Experiment Station | | | | | | | | | | | |
| | 798,257 | 0 | 0 | 0 | 0 | 798,257 | 820,062 | 0 | 0 | 0 | 0 | 820,062 |
| 8. | Bureau of Mines and Geology | | | | | | | | | | | |
| | 1,373,472 | 666,000 | 0 | 59,000 | 0 | 2,098,472 | 1,398,302 | 666,000 | 0 | 59,000 | 0 | 2,123,302 |
| 9. | Fire Services Training School | | | | | | | | | | | |
| | 270,561 | 0 | 0 | 0 | 0 | 270,561 | 273,848 | 0 | 0 | 0 | 0 | 273,848 |

HeinOnline -- 1997 vol. III 3408 1997

| | Fiscal 1998 | | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |
| a. Legislative Audit (Restricted/Biennial) | 3,335 | 0 | 0 | 0 | 0 | 3,335 | 0 | 0 | 0 | 0 | 0 | 0 |
| 10. University System Research | 0 | 1,000,000 | 0 | 0 | 0 | 1,000,000 | 0 | 1,000,000 | 0 | 0 | 0 | 1,000,000 |
| Total | 111,906,798 | 119,830,956 | 13,453,656 | 1,000,695 | 0 | 246,192,105 | 112,096,452 | 128,115,262 | 13,564,593 | 995,821 | 0 | 254,772,128 |

Item 1 is a biennial lump-sum appropriation.

The money and FTE for the school-to-work program in item 1 are contingent on continued federal funding.

Included in state special revenue appropriations in item 1 is $16,499,000 in fiscal year 1998 and $16,800,000 in fiscal year 1999 from revenue generated under the provisions of 20-25-423. Revenue received by the university system under the provisions of 20-25-423 that exceeds $16,499,000 in fiscal year 1998 and $16,800,000 in fiscal year 1999 is appropriated to the board of regents, to a maximum of $35,299,000 for the biennium. If revenue received under the provisions of 20-25-423 is less than $16,499,000 in fiscal year 1998 and $16,800,000 in fiscal year 1999, it is the intent of the legislature that the commissioner of higher education reduce the university system expenditures by corresponding amounts.

Item 1 includes $338,920 in each year of the biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvement through the state building energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $181,660; Montana state university-northern, $97,000; Montana state university-Billings, $56,000; and western Montana college of the university of Montana, $4,260.

Total audit costs are estimated to be $581,652 for the university system for the biennium. Each unit shall pay a percentage of these costs from funds other than those appropriated in item 1a.

University system units are defined in 17-7-102(17). For all university system units, except the office of the commissioner of higher education, all funds (other than plant funds appropriated in [long-range planning bill] relating to long-range building and current unrestricted operating funds) are appropriated contingent on approval of the comprehensive program budget by the board of regents by October 1 of each year. For all university system units except the community colleges, the agricultural experiment station, the forest and conservation experiment station, the cooperative extension service, the bureau of mines and geology, the fire services training school, and the distance learning and rural physician residency programs, all funds, other than funds appropriated in [long-range planning bill] for long-range building programs, are appropriated as a lump sum for the biennium contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The board of regents shall allocate the appropriations to the individual units according to board policy. The budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Requests for transfer and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst prior to approval by the board of regents. All movement of funds between the current unrestricted subfund and the designated subfund accounts must be clearly identified in the state budgeting and accounting system.

All university system units, except the office of the commissioner of higher education, shall account for exponditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classifications structure, along with the college and university business administration (CUBA) system, as a minimum standard for achieving consistency.

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide electronically to the office of budget and program planning and to the legislative fiscal analyst: (1) at fiscal yearend, the actual personal services data, which must tie to the actual expenditures as recorded on SBAS; and (2) by November 1 and at fiscal yearend, the budgeted personal services data, which must tie to the operating plan for expenditure of funds appropriated in [this act] and in the pay plan as approved by the board of regents. The personal services data described in subsections (1) and (2) must include but is not limited to the following for each position number: program number, responsibility center,

HeinOnline -- 1997 vol. III 3409 1997

| | Fiscal 1998 | | | | | Fiscal 1999 | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Other | Total |

budgeted and actual salary and benefits, fund type, FTE position title and position type, longevity dates and increments, years of service, benefit factors, workers' compensation code, final ending hourly salary (actuals only), class code, and allocation percentage.

The distance learning appropriation of $60,000 in item 2 is for payment to the western governors' association for development of a virtual university.

The general fund appropriation in item 1 includes $929,300 from a reduction in GABA, $398,700 resulting from legislative action on House Bill No. 561, and $672,000 from the ending fund balance.

The general fund appropriation for the community colleges is the state share, which is 51% of the budget amount per full-time equivalent student, as determined by the legislature for the community colleges in fiscal year 1998 and fiscal year 1999. The total unrestricted budgets for the community colleges must be approved by the board of regents.

Total audit costs are estimated to be $64,000 for the community colleges for the biennium. The general fund appropriation for each community college provides 51% of the total audit cost. The remaining 49% of these costs must be paid from funds other than those appropriated in item 3a. Audit costs for the biennium may not exceed $20,000 each for Dawson and Miles community colleges and $24,000 for Flathead Valley community college.

Total Summitnet costs are estimated to be $25,000 each year for the community colleges. The general fund appropriation for the community colleges provides 51% of the total Summitnet costs. The remaining 49% of these costs must be paid from funds other than those appropriated in item 3b. Summitnet costs for each year may not exceed $8,000 each for Dawson and Miles community colleges and $9,000 for Flathead Valley community college.

It is the intent of the legislature that, if Senate Bill No. 21 is passed and approved, the joint committee on postsecondary education policy and budget consider as one of its top study priorities the restructuring and reform within or among the agricultural experiment station, the Montana extension service, the fire services training school, the bureau of mines and geology, and the forestry and conservation experiment station.

The appropriation in item 10 is state special revenue from interest and income repaid from investments administered by the board of science and technology development in research and development projects at Montana public universities. This appropriation is contingent upon passage and approval of House Bill No. 578.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION E | | | | | | | | | | | |
| 566,927,773 | 122,805,851 | 87,049,754 | 1,753,681 | 3,837,500 | 782,374,558 | 576,106,612 | 130,946,815 | 87,117,329 | 1,742,553 | 0 | 795,913,308 |
| TOTAL STATE FUNDING | | | | | | | | | | | |
| 952,426,794 | 465,210,974 | 854,247,654 | 3,527,165 | 8,599,848 | 2,284,012,435 | 972,048,151 | 464,922,119 | 851,122,350 | 3,570,148 | 4,881,005 | 2,296,543,773 |

HeinOnline -- 1997 vol. III 3410 1997

**Section 15. Rates.** Internal service fund type fees and charges established by the legislature for the 1999 biennium in compliance with 17-8-101(6)(b) are as follows:

| SECRETARY OF STATE (3201) | 1999 Biennium |
|---|---|
| 1. Administrative Rules of Montana Fees | |
| a. Administrative Rules of Montana | $350.00/set |
| b. Quarterly updates of ARM | $250.00/year |
| c. Extra titles | $50.00/book |
| d. Quarterly updates of extra titles | $50.00/year/title |
| e. Montana Administrative Register | $300.00 |
| f. Agency filing fee for pages for Register publication | $35.00/page |
| 2. Records Management Fees (based on 2-6-203, MCA) | |
| a. **16MM Microfilm** Less than 250,000 | $30.00 |
| Nontypical extreme weight & size | $36.75 |
| 8 ½ x 11"; 8 ½ x 14" paperwork | $25.00 |
| 8 ½ x 11"; 11 x 14" computer printeut | $22.05 |
| Extreme size & weight variance | $27.50 |
| Cards - fixed weight & color | $15.00 |
| Cards - mixed weight & color | $25.00 |
| b. **35MM Microfilm** L (per 12 x 12") aerial photes | $65.00 |
| 16 x 20" bound books | $60.00 |
| 24 x 34" newspapers | $110.00 |
| 24 x 34" bound newspapers | $130.00 |
| 48 x 48" blueprints/maps | $275.00 |
| c. **105MM Microfilm** 8 1/2 x 11" paperwork | $65.00 |
| 8 ½ x 11"; 11 x 14" computer printeut | $73.50 |
| Cards (per 1000) | $73.50 |
| Minimum filming charge | $37.50 |
| d. **Film Processing** 16mm, 100 foot roll | $3.45 |
| 16mm, 215 foot roll | $6.76 |
| 35mm, 100 foot roll | $6.05 |
| 16mm, 3M cartridges | $4.50 |
| e. **Film Inspecting** 100 foot roll inspection | $3.50 |
| 215 foot roil inspection | $4.98 |
| film splicing | $0.75 |
| 3M cartridge loading | $2.25 |
| f. **Duplication** 16mm, 100 foot rell | $6.48 |
| 16mm, 215 foot roll | $12.41 |
| 35mm, 100 foot roll | $8.77 |
| 105mm, microfiche or jackets | $0.15 |

| | |
|---|---|
| Reader/printer copies | $0.50 |
| Photocopies/own labor | $0.10 |
| Photocopies/our labor | $0.50 |
| 16mm, 100 foot roll | $9.45 |
| 35mm, 100 foot roll | $13.85 |
| g. **Jacket Loading** 16mm, 5 channel jacket | $0.30 |
| Agency's own jacket | $0.275 |
| 35mm, 1 & 2 channel jacket | $0.30 |
| Loading 16mm aperture card | $0.25 |
| Jacket title | $0.25 |
| Jacket notching | $0.05 |
| h. **Miscellaneous** Fiche title | $0.25 |
| Indexing and document prep/hour | $14.00 |
| Camera rental/day | $95.00 |
| i. **Supplies** NMI reader bulbs | $10.75 |
| 16mm, 100 foot roll film | $6.68 |
| 16mm, 215 foot roll film | $12.95 |
| 35mm, 100 foot roll film | $12.95 |
| j. **Records Center Services** Storage by | |
| square foot/month | $0.19 |
| Storage by cubic foot | $0.2950 |
| Retrievals | $1.00 |
| Emergency retrievals | $5.00 |
| Large retrievals, delivery, interfiling | $16.00 |
| Records disposal/hour | $16.00 |
| Shredding confidential records/hour | $21.95 |
| k. **Records Center Boxes** | |
| Records storage box: standard size A | $1.34 |
| Drawings & map storage boxes size C | $1.34 |

| DEPARTMENT OF JUSTICE (4110) | Fiscal Year 1998 | Fiscal Year 1999 |
|---|---|---|
| 1. Agency Legal Services (06) (total) | | |
| a. Attorney (per hour) | $62 | $62 |
| b. Investigator/Paralegal (per hour) | $35 | $35 |

DEPARTMENT OF TRANSPORTATION (5401)

1. State Motor Pool (06)

Actual lease/rental rates, normally defined as the rate charged per mile of vehicle usage, could not be precisely calculated hy the department due to various factors, including an unanticipated increase in vehicle purchase costs and undetermined costs associated with an intornal loan through the board of investments to finance an expanded vehicle fleet. As such, the legislature defined rates as the following:

"The stato motor pool may charge rates necessary to estahlish and maintain a 60-day working capital reserve te oporate the program."

2. Equipment Program (06)

The equipment program's rate structure includes both assigned time rates and usage rates for 121 classes of equipment used by the maintenance and construction programs within the department. Due to the enterprise-like nature of this program's operations and the large number of individual rates, the legislature defines rates as the following:

"The equipment program may charge rates necessary to establish and maintain a 60-day working capital reserve to operate the program."

3. Yellowstone Airport (06)

| | | |
|---|---|---|
| a. Landing Fees, Scheduled Air Carriers | $0.50/1000 lbs | $0.50/1000 lbs |
| b. Landing Fees, 11,000-31,250 lbs | $25.00 | $25.00 |
| c. Landing Fees >31,250 lbs | $0.90/1000 lbs | $0.90/1000 lbs |
| d. Fuel Flowage Fees (0015) | $0.06/gallon | $0.00/gallon |
| e. Building Leases, Car Rental (per month) | $1.55/sq. ft | $1.55/sq. ft |
| f. Building Leases, FBOs & Tours (per month) | $1.42725/sq. ft | $1.42725/sq. ft |
| g. Building Leases, Airlines (per month) | $1.8908/sq. ft | $1.8908/sq. ft |
| h. Building Leases, U/G Storage (per month) | $0.03/sq. ft | $0.03/sq.ft |
| i. Building Leases, Hangar Ground (per year) | $0.05/sq. ft | $0.05/sq. ft |
| j. Tax Transfer (total) | $18,000 | $18,000 |
| k. Sales Receipts, Car Rental | 10% of gross | 10% of gross |
| l. Sales Receipts, Cafe/Gift Shop | 5% of gross | 5% of gross |
| m. Non-Aero Sales, Nevada Testing (per year) | Prior Yr + CPI-U | Prior Yr + CPI-U |
| n. Non-Aero, City of WYS (per year) | $9,600 | $9,600 |
| o. Non-Aero, Energy West | Prior Yr + CPI-U | Prior Yr + CPI-U |

DEPARTMENT OF ADMINISTRATION (6101)

1. Accounting and Management Support (06)

| | | |
|---|---|---|
| a. Debt Collection | 12% of collections | 15% of collections |
| b. Network Support per Computer | $547 | $548 |
| c. Programming per Hour | 18 | 18 |
| d. Computer Maintenance per Computer | 128 | 128 |
| e. Mailer Warrants-Postage Paid | 0.5431 | 0.5928 |
| f. Mailer Warrants-No Postage | 0.2271 | 0.2768 |
| g. Nonmailers | 0.2050 | 0.2547 |
| h. External/SRS/Payroll | 0.1891 | 0.2388 |
| i. External/University | 0.1836 | 0.2333 |
| j. Emergency Warrants | 3.2047 | 3.3447 |
| k. Duplicate Warrants | 8.6931 | 8.9788 |
| l. Direct Deposits | 0.1388 | 0.1870 |

2. General Services Program (06) (per square foot)

| | | |
|---|---|---|
| a. Office Rental Rate | $4.616 | $4.789 |
| b. Warehouse Rental Rate | 2.22 | 2.22 |

3. Professional Development Center

| | | |
|---|---|---|
| a. Workshops | $44.17/hr | $45.43/hr |

4. Information Services Division

The rates for the services provided by the information services division (ISD) approved by the legislature are the fiscal year 1996 rates adjusted by the following percentages:

| | | |
|---|---|---|
| a. Microfilm Service (COM) | 5% | 5% |
| b. Computer Processing Services | -33% | -46% |
| c. Data Network Services | 47% | 47% |
| d. Systems Develop Services | 5% | 5% |
| e. Operational Support (Data Entry) | 6% | 6% |
| f. Misc. Info. Systems (Laser Print) | 0% | 0% |
| g. Video Conferences | 0% | 0% |
| h. Telephone Equipment | -27% | -27% |
| i. Long Distance Charge | -10% | -10% |

5. Because certain programs or functions are enterprise-like in nature, must maintain a business approach in their operations, and may have large numbers of individual rates for the various products sold or services previded, for the following programs or functions, the legislature defines "rates and fees" to mean a specific working capital reserve balance.

| Program | Amount of Reserve |
|---|---|
| Publications & Graphics | 60-day working capital reserve |
| Central Stores | 60-day working capital reserve |
| Natural Gas Procurement | break-even (no reserve) |
| Statewide Fueling Network | 60-day working capital reserve |
| Surplus Property Program | 60-day working capital reserve |
| Mail Program | 60-day working capital reserve |

6. Because the per-unit costs of the services that certain programs and functions provide to agencies of state government are likely to fluctuate or are otherwise more difficult to estimate than are the total costs of the services to be provided, for the following programs and functions, the legislature defines "rates and fees" to mean the total dollar amount allocated to agencies of state government in the fixed cost or other portion of the agency budget. The following shows the total amount allocated. The allocation to each agency is as included in the agency budgets appropriated in the general appropriation act or in the rate determination for those programs or functions funded with proprietary funds. The allocation for the legal services unit is included exclusively in the Department of Administration.

| Program or Function | Total Amount Allocated in Agency Budgets | |
|---|---|---|
| Legal Services Unit | Fiscal Year 1998: $106,601<br>Fiscal Year 1999: $109,800 | |
| Deadhead Mail | Fiscal Year 1998: $157,157;<br>Fiscal Year 1999: $157,157 | |
| Payroll | Fiscal Year 1998: $595,182;<br>Fiscal Year 1999: $987,107 | |
| Risk Management | | |
| a. General Liability | $3,652,229 | $3,834,842 |
| b. Auto Liability | 1,185,160 | 1,244,419 |
| c. Property | 1,104,121 | 1,104,121 |

| | | |
|---|---|---|
| d. Airport/Aircraft | 126,254 | 126,254 |
| e. All Other Lines | 171,118 | 173,922 |

7. Because state employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of these premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to meet the requirements of 2-18-812(1) to maintain state employee group benefit plans on an actuarially sound basis, the legislature defines "rates and fees" for state employee benefit programs to mean the state contribution toward employee group benefits defined in 2-18-703 and the employee contribution toward employee group benefits necessary to meet the requirements of 2-18-812(1).

DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)

| | | |
|---|---|---|
| 1. Administration and Finance (06) (% markup) | | |
| a. Warehouse Overhead | 6% | 6% |
| b. Office Supply Overhead | 15% | 15% |
| 2. Vehicle Account Rates Per Mile | | |
| a. Sedans | $0.19 | $0.20 |
| b. Suburban - 4X4 (New) | 0.37 | 0.37 |
| c. Van 1/2 Ton | 0.25 | 0.26 |
| d. Van 1/2 Ton Window | 0.22 | 0.22 |
| e. Pickup 1/2T 2X4 V8 | 0.31 | 0.31 |
| f. Pickup 1/2T 4X4 V8 | 0.23 | 0.24 |
| g. Pickup 3/4T 4X4 V8 | 0.23 | 0.23 |
| h. Pickup 1/2T 4X4 6 Cyl | 0.27 | 0.28 |
| i. Bronco 4X4 6 Cyl | 0.26 | 0.27 |
| j. Pickup 1/2T 4X4 Smalls | 0.17 | 0.18 |
| k. Pickup 3/4T 4X4 HD | 0.29 | 0.31 |
| l. Pickup 3/4T 4X4 HD XC | 0.50 | 0.57 |
| m. Pickup 3/4T 4X4 460 | 0.40 | 0.41 |
| n. Pickup 3/4T 4X4 MD | 0.26 | 0.27 |
| o. Pickup 3/4T 4X4 MD XC | 0.32 | 0.33 |
| p. Pickup 3/4T 4X4 LD XC | 0.31 | 0.32 |
| q. 2 Place Sgl Eng-Aircraft (per hour) | 49.94 | 51.98 |
| r. 4 Place Twin Eng-Aircraft (per hour) | 213.76 | 235.14 |
| s. 3 Place Rotor Craft (per hour) | 121.51 | 115.43 |
| t. Turbine Helicopter (per hour) | 225.82 | 248.40 |
| 3. Parks - Capitol Grounds Maintenance | $0.3446/sq. ft. | $0.3446/sq. ft. |
| 4. Duplicating - Number of copies (includes paper) | | |
| a. 1 to 20 | $.040 | $.041 |
| b. 21 to 100 | .025 | .026 |
| c. 101 to 1000 | .020 | .021 |
| d. 1001 to 5000 | .015 | .015 |
| 5. Bindery | | |
| a. Collating Machine (per sheet) | $.005 | $.005 |

| | | |
|---|---|---|
| b. Stapling Hand (per set) | .015 | .015 |
| c. Saddle Stitch (per set) | .030 | .030 |
| d. Folding (per sheet) | .005 | .005 |
| e. Punching - 3 hole (per sheet) | .001 | .001 |
| f. Cutting (per min) | .550 | .550 |

6. Reprographics

| | Line Neg. | Stripped Neg. | Halftone | Stripped Halftone |
|---|---|---|---|---|
| a. 10x12 | $7.00 | $9.00 | $10.00 | $10.00 |
| b. 11x14 | 8.00 | 10.00 | 11.00 | 11.00 |

7. PMTs

| | Positive | Halftone | Clear Film |
|---|---|---|---|
| a. 10x12 | $6.50 | $8.00 | $6.50 |
| b. 11x14 | 7.50 | 9.00 | 8.00 |

8. Metal Plates $9.00

DEPARTMENT OF ENVIRONMENTAL QUALITY (5301) (admin. formula negotiated with fed. govt.)

1. Central Management (06)

| | | |
|---|---|---|
| a. Expenses Against Personal Services | 19.5% | 19.5% |

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

1. Air Operations Program (00)

| | | |
|---|---|---|
| a. Major Fee "A" Fixed Wing (per hour) | $85 | $90 |
| b. Major Fee "B" Jet Rangers (per hour) | 325 | 335 |
| c. Major Fee "C" Hueys (per hour) | 800 | 825 |

DEPARTMENT OF COMMERCE (6501)

1. Professional and Occupational Licensing (06)

| | | |
|---|---|---|
| a. House Bill No. 2 Programs Recharge Rate | 33.68% | 33.38% |

2. Local Government Services Bureau (06)

| | | |
|---|---|---|
| a. Major Fee-Report Filing Fees | Varies from $0 to $800, depending upon revenue | |
| b. Minor Fee-CPA Roster Fee | $50 | $50 |
| c. Defalcation Audit Revenue (total) | $65,000 | $65,000 |
| d. LOA Administrators Recharge | 1.77% | 1.78% |

3. Health Facility Authority

a. Fees - Single Project and Private Placement Financing Programs (one borrower):

| Loan Amount | Fee |
|---|---|
| Up to $1,000,000 | 0.50% of the principal amount |
| $1,000,000 - $5,000,000 | $5,000 plus 0.25% of the principal amount in excess of $1 million. |
| Greater than $5,000,000 | $15,090 plus 0.1% of the principal in excess of $5 million |

b. Pooled Loan and Master Loan Programs (multiple borrowers):

| | |
|---|---|
| Up to $5,000,000 | 0.625% of the principal amount |
| $5,000,001 - $10,000,000 | $31,250 plus 0.3125% of the principal amount in excess of $5 million |

| | |
|---|---|
| Greater than $10,000,000 | $46,875 plus 0.125% of the principal amount in excess of $10 million |

c. Annual Fees - All Financing Programs

0.15% of the principal amount of the bonds, notes, or loan amounts outstanding on each anniversary date

4. Housing Division

| | |
|---|---|
| a. Reservation Fees Single Family | - 1/2 of 1% of loan amount reserved. |
| b. Reservation Fees Low-Income Tax Credit Program | - 4 1/2% of the tax credit reserved. |
| c. Compliance Monitoring Fees LITC | - $5 per unit |
| d. Extension Fees | - 1/4 of 1% of loan amount. |
| e. Late Fees | - 1/2 of 1% of loan amount. |
| f. Pre-1980 Single Family Programs | - 1 1/2 % spread between mortgage interest rate and bond yield. No limit on investment earnings. |
| g. Post-1980 Single Family Programs | - 1 1/8% spread between mortgage interest rate and bond yield. Investment earnings limited to bond yield. |
| h. Post-1986 Multifamily Programs | - 1 1/2% spread between mortgage interest rate and bond yield. Investment earnings limited to bond yield. |
| i. Pre-1980 Multifamily Programs | - 1 1/2% spread between mortgage interest rate and bond yield. No limit on investment earnings. |

5. Board of Investments (06)

For purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investments as follows:

| | | |
|---|---|---|
| a. BOI Administration Charge (total) | $1,838,885 | $1,830,000 |
| b. Bond Fees/Revenue (total) | 310,938 | 307,489 |
| C. HB 188 — Proprietary Funds | | 26,420 |

6. Director's Office/Management Services (06)

| | | |
|---|---|---|
| a. Federal Programs IDC Rate | 9.68% | 9.63% |
| b. State Programs IDC Rate | 9.68% | 9.63% |

DEPARTMENT OF CORRECTIONS (6401)

1. Montana Corrections Enterprises

| | | |
|---|---|---|
| a. Laundry Rate to MSP | $0.37/lb | $0.37/lb |
| b. Laundry Rate to MSH | 0.36/lb | 0.36/lb |
| c. Laundry Rate to MDC | 0.46/lb | 0.46/lb |

DEPARTMENT OF LABOR AND INDUSTRY (6602)

1. Centralized Services Division (06) (totals)

| | | |
|---|---|---|
| a. Cost Allocation Plan | 7.73% | 8.65% |

Applied against actual personal services costs incurred

2. Information Services Bureau (06)

| | | |
|---|---|---|
| a. Input/Output Function | ≤ $39/hr | ≤ $39/hr |

HeinOnline -- 1997 vol. III 3417 1997

| | | |
|---|---|---|
| 3. Career Information System (06) | | |
| a. User Fees-MCIS License Revenue (total) | $1,500 | $1,500 |
| $1,500 larger schools - discounts for smaller | | |
| OFFICE OF PUBLIC INSTRUCTION (3501) | | |
| 1. OPI Indirect Cost Pool (06) | | |
| a. Indirect Cost Draws | 17% | 17% |

MONTANA UNIVERSITY SYSTEM (5100)

1. Because certain programs or functions are enterprise-like in nature, must maintain a business approach in their operations, and may have large numbers of individual rates for the various products sold or services provided for the following programs or functions, the legislature defines "rates and fees" to mean those rates or fees necessary to maintain a fiscal year ending fund balance in the defined range.

| Program | Ending Fund Balance Range |
|---|---|
| University System Flexible Benefits | $0 to $100,000 |
| University System Group Insurance | 1,000,000 to 2,000,000 |

Approved May 9, 1997

# CHAPTER NO. 552

[SB 374]

AN ACT IMPLEMENTING THE CHILD SUPPORT PROVISIONS OF THE FEDERAL PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996; CREATING AN ADVISORY BOARD TO ADVISE THE DEPARTMENT; INSTITUTING AUTOMATED, MASS CASE PROCESSING TECHNIQUES FOR CHILD SUPPORT, INCLUDING A CENTRAL CASE REGISTRY, A CENTRALIZED UNIT FOR TRACKING AND DISBURSING CHILD SUPPORT COLLECTIONS, AND A DIRECTORY OF NEW HIRES; RESTRUCTURING EXISTING CHILD SUPPORT PROCEDURES BY INCLUDING REVISED INCOME-WITHHOLDING PROCEDURES, REVISED PATERNITY ESTABLISHMENT PROCESSES, AVAILABILITY OF SOCIAL SECURITY NUMBERS, EXPANDED ACCESS TO PUBLIC AND PRIVATE SOURCES OF INFORMATION FOR LOCATE PURPOSES, AVAILABILITY OF OTHER AUTOMATED LOCATE SOURCES, WORK REQUIREMENTS FOR PABENTS OWING SUPPORT, ENHANCED INTERSTATE ENFORCEMENT PROCEDURES INVOLVING INTERSTATE LIENS AND SUBPOENAS, AND EXPANDED LICENSE SUSPENSION PROCEDURES TO INCLUDE RECREATIONAL LICENSES; PROVIDING THAT ADMINISTRATIVE ORDERS HAVE FULL FORCE AND EFFECT WITHOUT FILING THEM WITH THE DISTRICT COURT; REVISING ADMINISTRATIVE REGISTRATION PROCEDURES; GENERALLY REVISING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO MAKE CHANGES REQUIRED BY THE FEDERAL ACT; AMENDING SECTIONS 19-2-1004, 19-18-612, 19-19-504, 19-20-706, 19-21-212, 25-13-608, 37-1-307, 40-1-107, 40-4-105, 40-4-204, 40-4-206, 40-5-103, 40-5-149, 40-5-151, 40-5-161, 40-5-162, 40-5-163, 40-5-164, 40-5-173, 40-5-188, 40-5-189, 40-5-194, 40-5-195, 40-5-196, 40-5-201, 40-5-203, 40-5-206, 40-5-210, 40-5-225, 40-5-226, 40-5-227, 40-5-232, 40-5-233, 40-5-235, 40-5-236, 40-5-237, 40-5-263, 40-5-264, 40-5-271, 40-5-273, 40-5-274, 40-5-302, 40-5-303, 40-5-304, 40-5-305, 40-5-306,

HeinOnline -- 1997 vol. III 3418 1997

40-5-307, 40-5-308, 40-5-309, 40-5-310, 40-5-312, 40-5-313, 40-5-314, 40-5-315, 40-5-403, 40-5-404, 40-5-412, 40-5-413, 40-5-414, 40-5-421, 40-5-423, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-6-102, 40-6-105, 40-6-111, 40-6-115, 40-6-116, 40-6-117, 50-15-210, 50-15-223, 50-15-403, 53-2-613, 61-5-107, 87-1-102, AND 87-1-108, MCA; AND PROVIDING EFFECTIVE DATES, CONTINGENT TERMINATION DATES, AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] grants the department of public health and human services authority to adopt rules to implement [sections 1 through 15]. The rules should address routine procedural and operational matters and supplementary information necessary for the efficient and effective operation of the child support information and processing unit. The department should weigh the need for the information against the personal intrusiveness of the requested information and the difficulty of obtaining the information and should adopt rules that minimize the personal intrusiveness of the requested information and that minimize the costs to the department, employers, and employees in response to any difficulties in obtaining the information.

*Be it enacted by the Legislature of the State of Montana:*

**Section 1. Definitions.** As used in [sections 1 through 11], unless the context requires otherwise, the following definitions apply:

[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to [section 9] with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]

(4) "Employer" means a person, firm, corporation, association, governmental entity, or labor organization that engages an employee for compensation and withholds federal or state tax liabilities from the employee's compensation.

(5) "Foreign support order" means a support order entered or last modified by a court or administrative agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign jurisdiction.

(6) "Income withholding" generally means procedures for directing a payor to withhold from an obligor's income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become due. Specifically:

HeinOnline -- 1997 vol. III 3419 1997

(a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5, part 4; and

(b) when preceded by "non IV-D", income withholding means those cases in which an immediate income-withholding order is issued under 40-5-315 after January 1, 1994.

(7) "Interstate case" means a case referred to the department by, or from the department to, another IV-D agency.

[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]

(9) "Obligee" means the payee under a support order or a person or agency entitled to receive support payments.

(10) "Obliger" means a person who is obligated to pay support under a support order.

(11) "Payor" means:

(a) an employer or person engaged in a trade or business in this state who engages an employee for compensation; or

(b) when used in context with income withholding, means a person, firm, corporation, association, employer, trustee, political subdivision, state agency, or agent paying income to an obliger on a periodic basis.

[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]

(13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

(a) is for the benefit of a child or a state agency;

(b) provides for monetary support, health care, arrearages, or reimbursement;

(c) may include related costs and fees, interest, and similar other relief; and

(d) may include an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded.

(14) "IV-D" or "IV-D case" means a case in which the department is providing services under the provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D case also includes a case in which the department is collecting a support debt assigned to this or another state under Title IV-D.

**Section 2. Child support information and processing unit.** (1) The department shall establish and maintain a centralized child support case registry and payment processing unit. The purpose of this unit is to facilitate mass case processing by utilizing computer technology to identify parents and their income

and to initiate automated procedures to collect child support as it becomes due and payable.

(2) The case registry must include a data base of information concerning child support orders, all cases receiving IV-D services, and all district court and administrative cases with support orders entered or modified after October 1, 1998.

(3) The case registry must use automated systems to obtain information from federal, state, and local data bases with regard to the location of obligors and their income and assets. This information must be shared with the courts of this state and, upon request, may be shared with child support enforcement agencies of this and other states for the purpose of establishing paternity and establishing and enforcing child support obligations.

(4) To assist creditors, credit managers, and others who need timely verification of the existence of child support liens in IV-D cases, the case registry must include a directory of liens, which must include liens against an obligor's real and personal property filed by the department with other agencies and lien registries. Information in the lien registry may be made available through automated systems, which may include voice response units.

(5) Each IV-D case with a child support order must be electronically monitored so that when a timely payment of support is not made, enforcement action may be taken. To accomplish this purpose, payments due under a child support order must be paid to the department for processing and disbursement.

(6) In either a IV-D income-withholding case in this state or a state non IV-D case, if immediate income withholding is authorized after January 1, 1994, an employer or other payor of income shall pay all support withheld from an obligor's income to one centralized location as specified by the department.

(7) To facilitate automated disbursement of support payments, automated enforcement actions, and service of notice when required, an obligor or obligee must be directed to provide, and update as necessary, information sufficient to locate the obligor and obligee and to locate the obligor's income and assets.

[(8) An employer or labor organization shall report a newly hired or rehired employee. Information reported by an employer must be electronically compared to the information data base to align an obligor who owes a duty of support with a source of income. When a match is revealed in a IV-D case, a notice will, if appropriate to the case, be promptly transmitted to the employer directing the employer to commence withholding for the payment of the obligor's support obligation.]

(9) The department may enter into contracts or cooperative agreements with any porson, business, firm, corporation, or state agency to establish, operate, or maintain the case registry and payment processing unit or any function or service afforded by the unit, provided that:

(a) the department is ultimately responsible for operation of the case registry and payment processing unit, including any function or service afforded by the unit;

HeinOnline -- 1997 vol. III 3421 1997

(b) there is a board to act in an advisory capacity to the case registry and processing unit. The board shall advise the department in the policy, direction, control, and management of the case registry and processing unit and in determining forms, data processing needs, terms of contracts and cooperative agreements, and other similar technical requirements. Board members who are not employed by the department shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503. Except for members who represent the department, appointed board members shall serve for a term of 2 years. The board consists of five members as follows:

(i) a district court judge nominated by the district court judges' association;

(ii) a clerk of court nominated by the association of clerks of the district courts;

(iii) the supreme court administrator or designee;

(iv) two members, appointed by the department director, one from the child support enforcement division and one from the operations and tecbnology division; and

(v) a representative of a county data processing unit, nominated by the association of clerks of the district courts; and

(c) the costs charged to the department under tbe contract or cooperative agreement may not exceed the actual costs that the department would have incurred without the contract or cooperative agreement.

(10) The department may adopt rules to implement [sections 1 through 15]. Rules must be drafted, adopted, and applied in a manner tbat:

(a) minimizes the personal intrusiveness on the employer or employee of any requested information;

(b) minimizes the costs to the department and any employer or employee with respect to obtaining and submitting any requested information; and

(c) maximizes the confidentiality and security of any employer or employee information that tbe department gathers under [sections 1 through 15].

**Section 3. Case registry — abstracts — information required — mandatory updating.** (1) There must be registered in the case registry an abstract of:

(a) each case, including interstate cases, receiving IV-D services provided by the department;

(b) each support order entered and each modification of an existing support order made in this state after October 1, 1998; and

(c) each subsequent order or action establishing, modifying, adjusting, granting relief from, terminating, or otherwise affecting a support order in a registered case.

(2) Each abstract must include:

(a) the name, sex, [social security number, other] identification numbers, if any, date of birth, driver's license number, telephone number, and residential and mailing addresses of the parents;

(b) the child's name, date of birth, sex, [social security number, if any,] and residential address if different from that of the child's custodian;

(c) the name and location of the obligee if the obligee is a person or agency other than the child's parent;

(d) the name, address, and telephone number of the obliger's employer or of another payor of income to the obliger;

(e) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage, or if the child is not covered, information as to the availability of coverage for the child through the obliger's and obligee's employers; and

(f) any other information that the department considers relevant and requires by rule.

(3) The abstract of a support order must include:

(a) the amount of the support payment and supplemental support payments, if any, for each child and the amount of spousal maintenance if ordered in the same case;

(b) the specific day or dates the payment is due;

(c) the inclusive dates of the support obligation;

(d) the terms of any condition that may affect the amount of the payment, the due date, or the obligation to pay support;

(e) each subsequent judgment for support arrears and the amounts of any interest, late payment penalties, and fees included in the judgment;

(f) any specific child support lien imposed against real or personal property of the obligor;

(g) the terms of any medical and health coverage provision for the child; and

(h) the name and county of the judicial district or the name and address of the agency where the record of the case is located and the cause number or case identification number for the case.

(4) (a) For each IV-D case with a support order registered in the case registry, there must be a record of the date and the amount of support payments made by the obligor, dates and amounts of support collected from other sources, dates of distribution of support payments, names and locations of persons or agencies to whom support payments and collections were distributed, and the balance of support owed by the obligor.

(b) Except as provided in subsection (5), the department need not maintain payment records in a non IV-D case.

HeinOnline -- 1997 vol. III 3423 1997

(5) A copy of each non IV-D income-withholding order must be included in the case registry. For each registered income-withholding order, there must be a record of payments received by the department from the payor under the income-withholding order, the date and amount of each payment, the date the department distributed the payment, and the person or agency to whom the payment was distributed.

(6) The statistical report required by the department under 50-15-302 may be combined with and made a part of the abstract of support order form.

(7) (a) Each support order entered or modified in this state after October 1, 1998, must include a requirement that the obligor and obligee update, as necessary, the information included in the abstract under subsection (2).

(b) The order must also provide that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the obligor or obligee, the court or agency taking the enforcement action may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address or employer address reported to the case registry.

(c) If the support order does not include the provisions required by subsections (7)(a) and (7)(b) or if the support order was entered or last modified in this state before October 1, 1998, the department may give written notice of the provisions to the obligor and obligee. Upon receipt of the notice, the provisions have the same force and effect on the obligor and obligee as if included in the support order.

**Section 4. Registration procedures.** (1) In a court case, before a decree, judgment, or order may be docketed, the parties to the action or their attorneys shall prepare, on a form prescribed by the department, the abstract of a support order required under [section 3(3)] and deliver it to the clerk of court whenever:

(a) a support order is entered or an existing order is modified after October 1, 1998;

(b) in an existing case not included under subsection (1)(a), the department has filed a notice of IV-D services and a support order is established, modified, adjusted, terminated, or otherwise affected or relief is granted from the support order; and

(c) in each case with a previously registered abstract, there is an action subsequent to registration that establishes, modifies, adjusts, terminates, grants relief from, or otherwise affects the support order in a registered case.

(2) The clerk of court shall deliver a completed abstract and copy of a non IV-D income-withholding order to the department within 5 working days of the receipt of an abstract or issuance of the non IV-D income-withholding order.

(3) (a) The department shall prepare and register abstracts of administrative support orders established by the department.

(b) For a foreign support order involving IV-D services from the department, the department shall attempt to acquire the information necessary for completion of the abstract from the person, court, or agency requesting IV-D

services, and to the extent the information is provided, the department shall enter the information into the registry.

(4) As an alternative to the preparation and delivery of abstracts and non IV-D income-withholding orders to the department, the department may enter into cooperative agreements with district courts, clerks of court, or other appropriate agencies of this and other states to gather and transmit the information through electronic information networking systems.

**Seetion 5. Centralized payment center — mandatory payments to eenter.** (1) Payments due under a support order must be paid through the department for processing and distrihution to the person or agency entitled to receive the payment wbenever:

(a) the case is receiving IV-D services; or

(b) the support obligation is payahle through non IV-D income withholding.

(2) A support order entered or modified in this stato after October 1, 1998, that excludes the obligor from paying support through income withholding must provide that:

(a) if the case is or later becomes a IV-D case or if support becomes payahle through IV-D or non IV-D income withholding, support payments must he paid through the department; and

(b) a payment that is not made to the department does not constitute payment of support or credit toward satisfaction of the support obligation unless the payment is verified by the department to its satisfaction.

(3) (a) If a support order does not include the provisions required by subsection (2) or directs payment of support to a payee other than the department, the department may give written notice to the obligor and obligee directing or redirecting payments to the department. After receipt of the notice, payment otber than as directed does not constitute payment of support or credit toward satisfaction of the support obligation.

(b) An obligor who redirects payments to the department is not liable to the obligee or answerable to the court for not making payments as directed by the court.

(c) While support is required to be paid through the department, the notice directing or redirecting payments to the department may not be superseded by any subsequent order of a court or agency directing the obligor to make payments other than to the department.

(4) After the obligor has been ordered or directed to make payments to the department under this section, the obligor shall make the payments to the department and is not entitled to credit against a support obligation for payment made to a person or agency other than the department.

(5) (a) When the obliger is paying support through IV-D or non IV-D income withholding, the income-withholding order must direct the payor to make the payments through the department.

HeinOnline -- 1997 vol. III 3425 1997

(b) If a payor is directed by the income-withholding order to make payments to a payee other than the department, the department may redirect the payments to the department by written order to the employer or payor. The order supersedes any prior, inconsistent court or agency order.

(c) For as long as income withholding is appropriate to the case, the directive to the payor to make payments to the department may not be superseded by any subsequent order of a court or agency directing payments to any other payee.

(6) Payments of support that are received by the department in interstate cases or as the result of a writ of execution, warrant for distraint, state and federal tax offset, or similar enforcement remedy must be processed through the case management and payment processing unit.

(7) (a) If, through a private collection action, an obligee obtains a payment of support that must be processed and distributed through the case management and payment processing unit, the obligee shall forward the payment to the department within 5 working days of the receipt of the payment.

(b) If the department takes an enforcement action against the obligor because the obligee failed to timely forward a payment of support under subsection (7)(a), the obligee is liable in a civil action to the obligor for the amount that should have been forwarded to the department.

(8) (a) Payments made to the department under this section must he by cash, personal or business check, money order, automatic bank account withdrawal, certified funds, electronic funds transfer services, or any other means acceptable to the department.

(b) Payments may not be credited to the obligor's child support obligation until actually received by the department.

(c) The withholding of income by a payor or employer under an order to withhold issued under Title 40, chapter 5, part 3 or 4, is not alone sufficient for credit against an obligor's support obligation. Payments withheld from an obligor's income that are not actually received by the department may not be credited to the obligor's child support obligation. The payor or employer is liable to the obligor in a civil action initiated by the obligor for the amount withheld but not paid to the department.

(d) A check presented to the department as payment, whether by the ohligor, the obligor's employer, or another payor on the obligor's behalf, that is dishonored by the issuing bank may not be credited to the obligor's child support obligation.

(e) A payment made out to or delivered to any other person or agency other than to the department may not be credited to the obligor's support obligation.

(9) An uncredited payment under this section is considered as still owed by the obligor and may be collected using any remedy available under law.

**Section 6. Distribution of payments.** (1) Support payments processed through the case processing unit must be promptly disbursed unless one of the following circumstances or a similar circumstance prevents prompt distribution:

(a) the location of the obligee is unknown;

(b) the support debt is in litigation or, in an income-withholding case, the income-withholding action is contested; or

(c) tbe department receives a payment that does not include sufficient information to identify the case or the obligee.

(2) A disbursement must comply with department rules for distribution in IV-D cases.

(3) If the department is unable to make a distribution because the obligee's location is unknown, the department shall return the payment to the obligor.

(4) If a payment properly distributed under this section is later determined by a court or by department decision to be refundable to the obligor for any reason, except for when the department is the obligoe, the department need not pay the refund or recover the refunded amount from the obligoe or from any person or agency to whom the amount was distributed.

(5) If the department distributes a support payment in error or if a distribution is made to a person, obligee, or agency not entitled to retain the distributed amount, the department may obtain restitution by means of a setoff against future payments, including arrears payments, received on behalf of the person, obligee, or agency. A setoff against future payments of current support is limited to 10% of the payment.

**Section 7. Monitor payments — enforcement.** The department shall monitor all IV-D cases in the case registry and payment processing unit to promptly identify failures to make timely payment of support. If payment is not timely made, the department may:

(1) determine why a timely payment was not received and take any action the department considers appropriate if there is an order to withhold income issued to a current payor;

(2) promptly transmit an income-withbolding order to the obligor's payor if the obligor is not currently subject to income withholding; or

(3) promptly transmit an income-withholding order upon receipt of information identifying a payor if a payor was formerly unknown; and

(4) take any additional enforcement action the department considers appropriate in all cases with an identified delinquency.

**Section 8. Certification of records.** (1) Copies, including optically scanned copies, of support payment records, abstracts, and any supporting documents maintained by the case registry and payment processing unit, when certified by a designated employee of the department, must, without further proof or foundation, be admitted into evidence in any legal proceedings.

(2) Support payment records for a case maintained in the case registry and payment processing unit constitute prima facie evidence of the amount of support paid and arrearages that have accrued since the department began to process and monitor support payments through the unit.

(3) Copies of judicial orders and other documents on file with a clerk of court, when transmitted to the department by the clerk by facsimile or other electronic

HeinOnline -- 1997 vol. III 3427 1997

means, are rebuttably presumed to be true and correct copies of the original documents and may be offered into evidence, without authentication or verification, in a department proceeding under [sections 1 through 11]. A person contesting the authenticity of the document may rebut the presumption with a certified copy of the original document.

**Section 9. Directory of new hires — employer reporting requirements.** (1) (a) An employer doing business in the state shall report to the department the hiring or rehiring of an employee to whom the employer anticipates paying income.

(b) An employer shall report the hiring or rehiring of an employee by submitting a copy of the employee's completed W-4 form or, at the option of the employer, its informational equivalent or any other format agreed to by the department. The report must include the employee's name, date of hire, social security number, and residential and mailing addresses, and the name, address, and federal identification number of the employer. The report may include the employee's date of birth.

(c) If an employer provides health or medical insurance coverage for an employee and the coverage may be extended to the employee's children, the employer may, along with the date the employee becomes eligible for coverage, provide that information as part of the new hire report under subsection (1)(b).

(2) Transmission of the reports must be hy first-class mail, electronic or magnetic transmission, including facsimile transmission, or any other format agreed to by the department. Written reports must be submitted within 20 days of the employee's date of hire or rehire. Reports transmitted electronically or magnetically may he made by two transmissions monthly, if necessary, not less than 12 or more than 16 days apart.

(3) An employer who has employees in two or more states and who transmits new hire reports electronically or magnetically may comply with this section by designating one of the states in which there is an employee and transmitting the report of new hires to that state. A multistate employer who elects to report to only one state shall give written notice of the state to which the employer will transmit new reports. As required by 42 U.S.C. 653a(b)(1)(B), this notice must be transmitted to the secretary of the federal department of health and human services.

(4) An employer providing reports is not liable to the employee for the disclosure or any subsequent use by the processing center of the information.

**Section 10. Information and records — diselosure.** Information in the case registry and payment processing unit that contains the social security number, residential address, income sources, and employers of an obligee or obligor [and the employce W-4 forms or similar forms transmitted to the department] is private and confidential and may be disclosed only to:

(1) courts, tribunals, and administrative agencies in this and any agency of another state having jurisdiction over child support, custody, visitation, and welfare pursuant to 42 U.S.C. 651, et seq.;

(2) public assistance and medicaid agencies and the revenue, workers' compensation, and employment security programs of this or any other state for

HeinOnline -- 1997 vol. III 3428 1997

the purpose of determining eligibility, continued eligibility, or fraud by programs operated by those agencies and programs;

(3) the obligor or obligee who is the subject of the information;

(4) the state vital statistics agency for the purposes of 50-15-302; and

(5) the department of revenue.

**Section 11. Automated access to financial records — confidentiality — no liability — definitions.** (1) For the purposes of this section, unless the context otherwise indicates, the following definitions apply:

(a) "Account" means a savings, checking, deposit and withdrawal, demand deposit, money market, profit and loss, or time deposit account opened by a depositor in a financial institution.

(b) "Depositor" means a person, share account holder, sole proprietor, or joint owner of an account in a financial institution in this state.

(c) "Financial institution" means:

(i) a depository institution, as defined in section 3(c) of the Federal Depesit Insurance Act, 12 U.S.C. 1813(c);

(ii) an institution-affiliated party, as defined in the Federal Depesit Insurance Act, 12 U.S.C. 1813(u);

(iii) any state credit union, as defined in 32-3-102, or federal credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752, including an institution-affiliated party of such a credit union, as defined in section 206(r) of the act, 12 U.S.C. 1786(r); and

(iv) any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in the state.

(d) "Obligor" means a person who owes a debt for child, spousal, or medical support as determined by the department or as specified by order of a tribunal of competent jurisdiction, the amount of which exceeds $500 or a total of 3 months debt, whichever is less.

(2) (a) Upon written request from the department, a financial institution shall run a data match of the department's list of obligors with the financial institution's depositors and provide the information in a computer or other reasonable format accessible by the financial institution. The department may not request the information referred to in this subsection from a financial institution more than once in each calendar quarter.

(b) The information on an obligor found to be a depositor at a financial institution must include the obligor's full name, social security number or other taxpayer identification number, and account number. If normally kept by the financial institution, the information must also include the mailing address, employment address, and any other information that identifies the obligor.

(c) The financial institution shall provide the requested information within 30 days of the request from the department.

HeinOnline -- 1997 vol. III 3429 1997

(3) The department shall run a computer match of all obligors with the information from the financial institution required in subsection (2). If there is a match between an obligor and a depositor, the financial institution shall, upon request of the department, provide additional information within 30 days, including but not limited to:

(a) verification of the obligor's full name and social security number;

(b) the financial institution's account number;

(c) the nature of the account or accounts held by the obligor;

(d) the funds available in the account less any preexisting encumbrance held by the financial institution; and

(e) any taxes, penalties, interest, or other costs to be legally imposed on the account if the account is accessed prior to a maturity date.

(4) The amounts available in an ohligor's account do not include amounts available pursuant to overdraft coverago offered by the financial institution.

(5) The financial institution shall honor a subsequent appropriate lien from the department sent to the financial institution.

(6) (a) A financial institution receiving a data request, data match, or lien from the department may not provide notice to an obligor identified in the information submitted to the department. Failure to provide notice does not constitute a violation of the financial institution's duty of good faith to its customers.

(b) A notice given hy a financial institution to an obligor identified by the department subjects the financial institution to the contempt authority of the department under 40-5-226.

(7) The department shall pay a financial institution a reasonable fee for providing the information required in subsection (2), not to exceed the actual documented costs incurred by the financial institution.

(8) Information requested by the department and provided by a financial institution under this section is confidential and may be used only for IV-D purposes. Use of information for any other purpose without the authorization of the department subjects the user to a civil penalty of not more than $500 per name per use.

(9) A financial institution is not liable to a person for:

(a) a disclosure of information to the department under this section;

(b) encumbering or surrendering assets held by the financial institution in response to a notice of lien or levy issued by the department; or

(c) any other action under this section taken in good faith to comply with the requirements of this section as long as the action is reasonable.

**Section 12. Order to seek employment.** (1) In a proceeding under this chapter to enforce a support order, if an obligor claims inability to pay support because of unemployment or underemployment, tlie department may order the

obligor to seek suitable employment and make progress reports on that activity to the department unless the obligor proves hy a preponderance of the evidence that:

(a) the obligor is engaged in diligent, hona fide efforts to seek suitable employment; or

(h) the ohligor, due to illness, injury, or other incapacity, does not have the ability to seek employment or to engage in work if employment is offered to the obligor.

(2) The seek-work order must direct the obligor to:

(a) seek employment within a specified amount of time;

(b) file a weekly report with the department showing at least five new attempts by the obligor to find employment; and

(c) include in the report filed under subsection (2)(b) the name, address, and telephone number of the employers with whom the obligor sought employment and the name of the individuals the ohliger contacted to inquire about or apply for employment.

(3) The order is effective for 6 months or until the ohligor finds work, whichever occurs first.

(4) Failure to report or otherwise comply with a seek-work order, absent good cause, is evidence of willful nonpayment of child support for which the ohligor may be determined to have committed the offense of nonsupport under 45-5-621 or may he held in civil contempt under Title 40, chapter 5, part 6. The department may enforce the order as provided in 40-5-226.

(5) For the purpose of this section, "suitable employment" is employment commensurate with the ohligor's education, training, professional or occupational qualifications, job skills, work history, and the availability of employment opportunities in the community, or in the absence of commensurate employment availahle within a reasonahle range of the obligor's area of residence, suitable employment is any employment that the obligor is capable of performing.

**Section 13. Income-withholding orders of another state — employer compliance — employer immunity — penalties for noncompliance.** (1) An income-withholding order issued in another state may be sent to the person or entity defined as the ohliger's employer under the income-withholding laws of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

(2) (a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor and, if the employer elects under subsection (3) to forward the funds to the department for distribution, to the department.

(b) The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a trihunal of this state. An employer may contact the department of public health and human services to determine whether the withholding order was issued hy the appropriate authority.

HeinOnline -- 1997 vol. III 3431 1997

(3) Except as provided by subsections (4) and (5), the employer shall withhold the funds and either distribute the funds as directed in the income-withholding order or forward the funds to the department to be distributed by the department by complying with the terms of the order that specify:

(a) the duration and the amount of periodic payments of current child support, stated as a sum certain;

(b) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(c) medical support, whether in the form of periodic cash payment, stated as a sum certain, or by ordering the obliger to provide health insurance coverage for the child under a policy available through the obligor's employment;

(d) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(e) the amount of poriodic payments of arrears and interest on arrears, stated as suins certain.

(4) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(a) the employer's fee for processing an income-withholding order;

(b) the maximum amount permitted to be withheld from the obligor's income; and

(c) the times within which the employer must implement the income-withholding order and forward the child support payment.

(5) An obligor's employer who receives multiple income-withholding orders with respect to the earnings of the obligor satisfies the terms of the multiple orders if the employer complies with the law of the state of the obliger's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

(6) An employer who complies with an income-withholding order issued in another state in accordance with this section is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

(7) An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

(8) (a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Choice of law under 40-5-187 applies to the contest.

(b) The obligor shall give notice of the contest to:

(i) a support enforcement agency providing services to the obligee;

(ii) each employer that has directly received an income-withholding order; and

(iii) the person or agency designated to receive payments in the income-withholding order or, if a person or agency is not designated, to the obligee.

**Section 14. Execution or withholding for support obligation.** (1) Benefits in the retirement systems provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in [section 13].

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(4) The execution or income-withholding order may only provide for payment as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

HeinOnline -- 1997 vol. III 3433 1997

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

**Section 15. Execution or withholding for support obligation.** (1) Benefits in the retirement system are subject to execution and income withholding for the payment of a participant's suppert obligation.

(2) For purposes of this section:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by tbe department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withbholding order issued in another state as provided in [section 13].

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to this chapter.

(d) "Support obligation" has the ineaning provided in 40-5-403 for support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the retirement system.

(4) The execution or income-withholding order may only provide for payment as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited te the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

HeinOnline -- 1997 vol. III 3434 1997

**Section 16.** Section 19-2-1004, MCA, is amended to read:

**"19-2-1004. Exemption from taxes and legal process.** Except as provided in 19-2-907 *and [section 14]*, the right of a person to any benefit or payment from the retirement systems and the money in the pension trust funds is not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for:

(a) a benefit or annuity received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or

(3) assignable except as specifically provided in this chapter."

**Section 17.** Section 19-18-612, MCA, is amended to read:

**"19-18-612. Protection of benefits from legal process and taxation — nonassignability.** (1) ~~Any~~ *Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child,* payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum ~~so~~ assigned.

(2) The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

**Section 18.** Section 19-19-504, MCA, is amended to read:

**"19-19-504. Protection of benefits from legal proeess and taxation.** (1) ~~The~~ *Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child, the* benefits provided for in this part are not subject to execution, garnishment, attachment, or the operation of bankruptcy, insolvency, or other process of law and are unassignable except as specifically provided in 19-19-505.

(2) The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) of benefits received under this part is exempt from state, county, and municipal taxation."

**Section 19.** Section 19-20-706, MCA, is amended to read:

**"19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305 *and [section 15]*, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

HeinOnline -- 1997 vol. III 3435 1997

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(h) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

**Section 20.** Section 19-21-212, MCA, is amended to read:

**"19-21-212. Exemption from taxation, legal process, and assessments.** ~~All~~ *Except for execution or withholding for the payment of child support or for the payment of spousal support for a spouse or former spouse who is the custodial parent of the child,* contracts, benefits, and contributions under the optional retirement program and the earnings ~~thereon~~ *on the contributions* are:

(1) except for a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii), exempt from any state, county, or municipal tax;

(2) not subject to execution, garnishment, attachment, or other process;

(3) not covered or assessable by an insurance guaranty association; and

(4) unassignable except as specifically provided in the contracts."

**Section 21.** Section 25-13-608, MCA, is amended to read:

**"25-13-608. Property exempt without limitation — exceptions.** (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, *except as provided in subsection (2)*;

(e) benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

(f) maintenance and child support; and

(g) a burial plot for the judgment debtor and ~~his~~ *the debtor's* family.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f), *and disability*

*benefits* are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child."

**Section 22.** Section 37-1-307, MCA, is amended to read:

**"37-1-307. Board authority.** (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants.

*(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act."*

**Section 23.** Section 40-1-107, MCA, is amended to read:

**"40-1-107. Form of application, license, marriage certificate, and consent.** (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, *social security number,* and date and place of birth of each party to the proposed marriage;

HeinOnline -- 1997 vol. III 3437 1997

(b) if either party was previously married, the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

*(3) The license, certificate, or consent may not contain the social security number, and the department shall keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.*"

**Section 24.** Section 40-4-105, MCA, is amended to read:

"**40-4-105. Procedure — commencement — pleadings — abolition of existing defenses.** (1) The verified petition in a proceeding for dissolution of marriage or legal separation ~~shall~~ *must* allege that the marriage is irretrievably broken and ~~shall~~ *must* set forth:

(a) the age, occupation, and residence of each party and ~~his~~ *the party's* length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days ~~next~~ preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and

may within 20 days after the date of service file a verified response. ~~No~~ *A* decree may *not* be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

*(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act."*

**Section 25.** Section 40-4-204, MCA, is amended to read:

**"40-4-204. Child support — orders to address health insurance — withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the

HeinOnline -- 1997 vol. III 3439 1997

guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

*(d) Child support obligations established under this section are subject to the registration and processing provisions of [sections 1 through 11].*

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obliger's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay poriod. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obliger may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

*(d) If an obligor is exempted from paying support through income withholding, the support order must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be*

*paid through the department of public health and human services as provided in [section 5].*

(6) *(a)* ~~For the purposes of income withholding under subsection (5), each~~ *Each* district court judgment, decree, or order that *establishes paternity or* establishes or modifies a child support obligation must include a provision requiring the ~~parent obligated to pay support to inform~~ *parties to promptly file with* the court and~~, if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following~~ *to update, as necessary, information on*:

*(i) the party's identity, residential and mailing addresses, telephone number, [social security number,] and driver's license number;*

~~(a)~~*(ii)* the name, ~~and~~ address, *and telephone number* of the ~~parent's current~~ *party's* employer; *and*

~~(b) whether the parent has access to health insurance through an employer or other group; and~~

~~(c) if insurance coverage is available, the health insurance policy information.~~

*(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.*

*(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.*

*(c) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.*

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support *obligation* to be paid, *without need for further order of the court,* to:

HeinOnline -- 1997 vol. III 3441 1997

(i) the legal custodian of the minor child;

(ii) ~~(A) any other~~ *to a* person, organization, or agency ~~having legal~~ *to which the legal custodian voluntarily or involuntarily relinquished* physical custody of the ~~minor~~ child ~~under a legal assignment of rights~~; or

~~(B) the court for the benefit of the minor child;~~

(iii) any other person, *organization,* or agency ~~designated as caretaker of the minor child by agreement of the legal custodian~~ *entitled by law, assignment, or similar reason to receive or collect the child support obligation*~~; or~~

~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child support~~.

*(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.*

~~(b)~~*(c)* A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

*(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-406, 41-5-403, or 41-5-523, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613."*

**Section 26.** Section 40-4-206, MCA, is amended to read:

**"40-4-206. Payment of maintenance or support to court — handling fee of clerk.** (1) ~~Upon~~ *Except as provided in subsection (4), upon* its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records *of payments received by the clerk* listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. The clerk may charge the payor a handling fee of $2 a payment, which must be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general fund unless the county bas a district court fund. If the county has a district court fund, the amount must be paid into ~~such~~ *that* fund.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

*(4) When the department of public health and human services is providing services under Title IV-D of the Social Security Act or when income withholding*

*is in effect in an order issued or modified after October 1, 1998, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment."*

**Section 27.** Section 40-5-103, MCA, is amended to read:

"**40-5-103. Definitions.** (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support":

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) includes an unsatisfied obligation to provide support.

(4) "Governor" includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

(7) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income of the obligor.

(8) "Initiating state" means a state ~~in~~ *from* which a proceeding *is forwarded or in which a proceeding is filed for forwarding to a responding state* pursuant to this part or a law *or procedure* substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, *or a law or procedure substantially similar to either of those acts*, or *pursuant to* a proceeding initiated by the department of public health and human services under 40-5-263 ~~is filed for forwarding to a responding state~~.

(9) "Initiating tribunal" means the authorized tribunal in an initiating state.

(10) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(13) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of support or a support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee; or

(c) an individual seeking a judgment determining parentage of that individual's child.

(14) "Obligor" means an individual or the estate of a decedent:

(a) who owes or is alleged to owe a duty of support;

(b) who is alleged but has not been adjudicated to be a parent of a child; or

(c) who is liable under a support order.

(15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(16) "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.

(17) "Registering tribunal" means a tribunal in which a support order is registered.

(18) "Responding state" means a state ~~to~~ *in* which a proceeding is *filed or to which a proceeding is* forwarded *for filing from an initiating state* under this part or a law *or procedure* substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, *or a law or procedure substantially similar to either of those acts,* or *under* a proceeding initiated by the department of public health and human services under 40-5-263.

(19) "Responding tribunal" means the authorized tribunal in a responding state.

(20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(21) "State" means a state of the United States, the District of Columbia, ~~the Commonwealth of~~ Puerto Rico, *the Virgin Islands,* or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe ~~and includes a~~ *or a* foreign jurisdiction that has *enacted a law or* established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part, *the Uniform*

*Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.*

(22) (a) "Support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

(ii) establishment or modification of child support;

(iii) a determination of parentage; or

(iv) to locate obligors or their assets.

(b) Support enforcement agency includes:

(i) in cases brought under ~~title~~ *Title* IV-D of the Social Security Act, the department of public health and human services; and

(ii) in all other cases, the prosecuting attorney.

(23) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, that:

(a) is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision;

(b) provides for monetary support, health care, arrearages, or reimbursement; and

(c) may include related costs and fees, interest, income withholding, attorney fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage."

**Section 28.** Section 40-5-149, MCA, is amended to read:

**"40-5-149. Continuing, exclusive jurisdiction.** (1) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(a) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) until ~~each individual party has~~ *all of the parties who are individuals have* filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to *this part or* a law substantially similar to this part.

(3) If a child support order of this state is modified by a tribunal of another state pursuant to *this part or* a law substantially similar to this part, a tribunal

of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only:

(a) enforce the order that was modified as to amounts accruing before the modification;

(b) enforce nonmodifiable aspects of that order; and

(c) provide other appropriate relief for violations of that order that occurred before the effective date of the modification.

(4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to *this part or* a law substantially similar to this part.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state."

**Section 29.** Section 40-5-151, MCA, is amended to read:

**"40-5-151. Recognition of child support orders.** *(1) If a proceeding is brought under this part and only one tribunal has issued a child support order, the order of that tribunal controls and must be recognized.*

~~(1)~~*(2)* If a proceeding is brought under this part and ~~one~~ *two* or more child support orders have been issued ~~in~~ *by tribunals of* this *state* or another state with regard to ~~an~~ *the same* obligor and ~~a~~ child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

~~(a) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.~~

~~(b)~~*(a)* If ~~two or more tribunals have issued child support orders for the same obligor and child and~~ only one of the tribunals would have continuing, exclusive jurisdiction under this part, the order of that tribunal *controls and* must be recognized.

~~(c)~~*(b)* If ~~two or more tribunals have issued child support orders for the same obligor and child and~~ more than one of the tribunals would have continuing, exclusive jurisdiction under this part, an order issued by a tribunal in the current home state of the child *controls and* must be recognized. However, if an order has not been issued in the current home state of the child, the order most recently issued *controls and* must be recognized.

~~(d)~~*(c)* If ~~two or more tribunals have issued child support orders for the same obligor and child and~~ none of the tribunals would have continuing, exclusive jurisdiction under this part, the tribunal of this state ~~may~~ *having jurisdiction*

*over the parties shall* issue a child support order, which *controls and* must be recognized.

*(3) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be recognized under subsection (2). The request must be accompanied by a certified copy of each support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.*

~~(2)~~*(4)* The tribunal that ~~has~~ issued ~~an~~ *the controlling* order ~~recognized~~ under ~~subsection~~ *subsections* (1) *through (3)* is the tribunal ~~having~~ *that has* continuing, exclusive jurisdiction *under 40-5-149.*

*(5) A tribunal of this state that determines, by order, the identity of the controlling order under subsection (2)(a) or (2)(b) or that issues a new controlling child support order under subsection (2)(c) shall state in that order the basis upon which the tribunal made its determination.*

*(6) Within 30 days after issuance of the order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order."*

**Section 30.** Section 40-5-161, MCA, is amended to read:

**"40-5-161. Duties of initiating tribunal.** (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) The department of public health and human services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 5. In all other cases, the district court is the initiating tribunal.

*(3) If a responding state has not enacted the Uniform Interstate Family Support Act or another law or procedure substantially similar to that act, a tribunal of this state may issue a certificate or other documents and make findings required by the law or procedure of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state."*

**Section 31.** Section 40-5-162, MCA, is amended to read:

**"40-5-162. Duties and powers of responding tribunal.** (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158(4), it shall cause the

HeinOnline -- 1997 vol. III 3447 1997

petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by use of civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obliger to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obliger to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon a party's compliance with visitation provisions.

(5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order ~~by first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any.

(6) The department of public health and human services is the responding tribunal for reeeipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal."

**Section 32.** Section 40-5-163, MCA, is amended to read:

**"40-5-163. Inappropriate tribunal.** If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading

HeinOnline -- 1997 vol. III 3448 1997

and accompanying documents to an appropriate trihunal in this state or another state and notify the petitioner ~~by first-class mail~~ where and when the pleading was sent."

**Section 33.** Section 40-5-164, MCA, is amended to read:

"**40-5-164. Duties of support enforcement agency.** (1) A support enforcement agency of this state, upon application, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or anotber state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly send a copy of the notice ~~by first-class mail~~ to the petitioner;

(e) after receipt of a written communication from the respondent or the respondent's attorney, promptly send a copy of the communication ~~by first-class mail~~ to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of public healtb and human services is the support enforcement agency for this state as provided in Title 40, cbapter 5, parts 2, 4, and 5. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is tbe support enforcement agency."

**Seetion 34.** Section 40-5-173, MCA, is amended to read:

"**40-5-173. Costs and fees.** (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state. Atterney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the

HeinOnline -- 1997 vol. III 3449 1997

attorney's own name. Payment of current support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under ~~40-5-184 through 40-5-195 or 40-5-271~~ *40-5-184 through 40-5-195*, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

(4) The standardized schedule of fees established by the department of public health and human services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2)."

**Section 35.** Section 40-5-188, MCA, is amended to read:

"**40-5-188. Notice of registration of order.** (1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. ~~Notice must be given by first-class or certified mail or by any means of personal service authorized by the law of this state.~~ The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after ~~the date of mailing or personal service of the~~ *the date of mailing or personal service of the* notice;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner:

(i) will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(ii) precludes further contest of that order with respect to any matter that could have been asserted; and

(d) of the amount of any alleged arrearages.

(3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to ~~Title 40, chapter 5, part 4~~ *the income-withholding laws of this state*."

**Section 36.** Section 40-5-189, MCA, is amended to read:

"**40-5-189. Procedure to contest validity or enforcement of registered order.** (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may, pursuant to 40-5-190, seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.

HeinOnline -- 1997 vol. III 3450 1997

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed hy operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties ~~by first class mail~~ of the date, time, and place of the hearing."

**Section 37.** Section 40-5-194, MCA, is amended to read:

"**40-5-194. Modification of ehild support order of another state.** (1) After a child support order issued in another state has been registered in this state, the ~~appropriate~~ responding tribunal of this state may modify that order only if *subsection (5) does not apply, and*~~,~~ after notice and hearing, it finds that:

(a) the following requirements are met:

(i) the child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) ~~an individual party or~~ the child *or a party who is an individual* is subject to the personal jurisdiction of the tribunal *of this state* and all of the ~~individual~~ parties *who are individuals* have filed ~~in the issuing tribunal a~~ written ~~consent providing that the appropriate~~ *consents in the issuing tribunal for a* tribunal of this state ~~may~~ *to* modify the support order and ~~that this state may~~ assume continuing, exclusive jurisdiction over the order. *However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this part, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.*

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may *not* modify ~~only~~ *any aspect of* a child support order *that may not be modified under the laws of the issuing state.* ~~A tribunal may not modify provisions, such as custody, visitation, or other provisions not related to support~~ *If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be recognized under 40-5-151 establishes the aspects of the support order that are nonmodifiable.*

(4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state has continuing, exclusive jurisdiction.

*(5) (a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and modify the issuing state's child support order in a proceeding to register that order.*

HeinOnline -- 1997 vol. III 3451 1997

*(b) A tribunal of this state exercising jurisdiction under subsection (5)(a) shall apply the provisions of 40-5-103, 40-5-143 through 40-5-152, 40-5-181, and 40-5-184 through 40-5-195 to the enforcement or modification proceeding. The remaining sections of this part do not apply.*

~~(5)~~*(6)* Within 30 days after issuance of a modified child support order, the ~~tribunal issuing~~ *party obtaining* the modification shall file a certified copy of the order:

(a) with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order; and

(b) in each tribunal in which the ~~modifying tribunal~~ *party* knows that *the* earlier order has been registered.

*(7) A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction."*

**Section 38.** Section 40-5-195, MCA, is amended to read:

**"40-5-195. Recognition of order modified in another state.** A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to *this part or* a law substantially similar to this part. Except as otherwise provided in this part, the tribunal of this state shall, upon request:

(1) enforce the order that was modified only as to amounts accruing before the modification;

(2) enforce only nonmodifiable aspects of that order;

(3) provide other appropriate relief only for violations of the order that occurred before the effective date of the modification; and

(4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement."

**Section 39.** Section 40-5-196, MCA, is amended to read:

**"40-5-196. Proceeding to determine parentage.** (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this part or a law *or procedure* substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, ~~or~~ the Revised Uniform Reciprocal Enforcement of Support Act, *or a law or procedure substantially similar to either of those acts* to determine whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the rules of this state on choice of law.

(3) A proceeding to determine parentage directed to:

HeinOnline -- 1997 vol. III 3452 1997

(a) the department of puhlic health and human services from an initiating state pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and

(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1."

**Section 40.** Section 40-5-201, MCA, is amended to read:

"**40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a person who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; any person under 19 years of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) tbe department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of *the Uniform Reciprocal Enforcement of Support Act,* the *Revised* Uniform Reciprocal Enforcement of Support Act, *the Uniform Interstate Family Support Act,* or ~~under~~ Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its ternis when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearing examiner" means tbe hearings officer appointed by tbe department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. *The genetic markers may be identified from a person's blood or tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks.* Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order; or

(b) a support order for spousal maintenance ~~if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is~~ *of* the custodial parent.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child; and

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

HeinOnline -- 1997 vol. III 3454 1997

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated under the act."

**Section 41.** Section 40-5-203, MCA, is amended to read:

**"40-5-203. Child support enforcement services.** (1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule the terms and conditions by which services are provided under this section.

(3) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department ~~may~~ *shall* continue to provide services after public assistance is no longer being paid, *subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under this section,* without requiring an application, *application fee, or other request for services.* ~~An obligee's acceptance~~ *Acceptance* of continued services constitutes ~~the obligee's~~ agreement to the terms and conditions set fer applicants by the department under this section.

*(4) Services under this section, including information requests, are available to obligors, obligees, and residents of other states on the same terms as residents of this state.*

~~(4)~~*(5)* The department may terminate services under this section if it:

(a) receives a written request ~~from the obligee~~ for termination of services *from the person to whom services are being provided*;

(b) receives notice that the child is receiving public assistance; or

(c) determines that ~~an obligee~~ *the person receiving services* has violated any term or condition set by the department for an applicant under this section.

*(6) For purposes of credit rating reports by the department, the department shall indicate if the withholding is for delinquent support or for regular monthly support obligations."*

**Section 42.** Section 40-5-206, MCA, is amended to read:

**"40-5-206. Central unit for information and administration — cooperation enjoined — availability of records.** (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) ~~If services are provided to a child under this part, the~~ *During or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate*

*an obligor, or a contested case, the* department *or other IV-D agency* may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee, including:

(a) name;

(b) residential and mailing addresses;

(c) date of birth;

~~(d) social security number;~~

*(d) social security number;*

~~(e)~~*(e)* wages or other income;

~~(f)~~*(f)* number of dependents claimed for state and federal income tax withholding purposes;

~~(g)~~*(g)* name and address of employer;

*(h) state and local tax and revenue records;*

*(i) penal corrections records;*

~~(h)~~*(j)* address, location, and description of any real property *or titled personal property*; and

~~(i)~~*(k)* any other asset in which the obligor or obligee may have an interest, including *its location and* the extent, nature, and value of the interest.

*(3) Upon service of an administrative subpoena from the department or another IV-D agency during or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, public utilities, cable television companies, and financial institutions shall, with regard to an obligor or obligee, provide the department or the requesting IV-D agency with the name and address of the obligor or obligee, the name and address of the obligor's or obligee's employer, and any information on the obligor's or obligee's assets and liabilities contained in customer records.*

~~(3)~~*(4)* Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly. ~~The~~ *Absent a specific statutory prohibition to the contrary and subject to subsection (6), the* department may release information obtained from nonconfidential public and private sources, including information regarding support orders, judgments, and payment records.

~~(4)~~*(5)* ~~Use~~ *Absent a specific statutory prohibition or rule to the contrary and subject to subsection (6), use* or disclosure of information obtained by the department from confidential sources ~~of and~~ *or any* information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys and courts having jurisdiction in support and abandonment proceedings and agencies in other states engaged in the enforcement of support of minor children under the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act.

*(6) The department may not disclose information regarding the whereabouts of a party to another party if:*

*(a) the department received notice that a protective order with respect to the party has been entered against the other party; or*

*(b) the department has reason to believe that the release of information may result in physical or emotional harm to the party.*

*(7) A person [, public entity,] or private entity that discloses information to the department in compliance with this section is not liable to the obligor or obligee for negligent disclosure.*

*(8) An entity failing to comply with this section is subject to the contempt authority of the department under 40-5-226."*

**Section 43.** Section 40-5-210, MCA, is amended to read:

**"40-5-210. Standardized fee schedule — rules.** (1) The department may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

(a) a flat dollar amount; or

(b) an amount based on a sliding fee schedule tbat is based on the applicant's income level.

(2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for paternity blood testing may he recovered from the parent, whether the alleged father or the mother, denying paternity of the alleged father. The total amount of the paternity blood testing fee may not exceed the actual costs of the paternity hlood tests. *A bill for a paternity blood test is admissible in evidence without third-party foundation testimony.*

(3) The department may charge a handling fee for each payment of support collected on behalf of any obligee who is not a recipient of public assistance. The department may withhold the fee from the support payment before distribution to the ohligee.

(4) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee.

(5) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

HeinOnline -- 1997 vol. III 3457 1997

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

(b) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order whenever the department:

(i) is a prevailing party in the action; or

(ii) is not a party but incurs expenses and costs related to the action.

(6) The department may collect the fees awarded under this section by one of the following means:

(a) if the fee is owed by an obligor, the fee may be:

(i) collected through any remedy available to the department for the collection of child support arrearages; or

(ii) deducted from any payments made by the obligor before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any current or past-due support due to the obligee.

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support or the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obliger must receive full credit for the payment as if the withholding of fees did not occur.

(7) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(8) The department may adopt rules necessary to implement fee schedules under this section.

(9) The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected."

**Section 44.** Section 40-5-225, MCA, is amended to read:

**"40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure.** ~~(1) (a) In the absence of a support order, the department may serve an obligor with a notice of financial responsibility alleging a child's need for support and the amount of the need and requiring the obligor to appear and show cause at a hearing held by the department why the obligor should not be finally ordered to pay the amount alleged in the notice.~~

~~(b) The notice must state:~~

~~(i) the names of the obligee and child;~~

~~(ii) the amount of current and future support to be paid each month for the child;~~

~~(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;~~

~~(iv) that the obligor is entitled to a fair hearing under 40-5-226.~~

~~(2) If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's monthly support responsibility must be based on the greater of:~~

~~(a) the amount of public assistance payable under Title 53, chapter 4; or~~

~~(b) the alleged need.~~

~~(3) If the obligor objects to the notice, the obligor shall file a written answer with the department within 20 days from the date of service or refusal of service. If the department receives a timely answer, it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall order the obligor to pay the amount stated in the notice.~~

*(1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for the support of the child. The support order must include a medical support order as required by 40-5-208.*

*(2) An action to establish a support order must be commenced by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:*

*(a) of the names of the child, the obligee, and if different than the obligee, the child's guardian or caretaker relative;*

*(b) of the dollar amount of the support obligation to be paid each month for the child;*

*(c) that in addition to child support, the parent or parents may be ordered to provide for the child's medical support needs;*

*(d) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;*

*(e) that if a party does not timely file a request for hearing, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;*

*(f) that if a party does request a hearing, the other parties may refuse to participate in the proceedings, however, the child support and medical support*

HeinOnline -- 1997 vol. III 3459 1997

*order will be determined using the information available to the department or provided at the hearing;*

*(g) that a party's refusal to participate is a consent to entry of a child support and medical support order consistent with the department's determination; and*

*(h) that the parties are entitled to a fair hearing under 40-5-226.*

~~(4) (a)~~*(3)* If a support action is pending in district court and a temporary or permanent support obligation has not been ordered *or if a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence,* the department may ~~issue to the obligor a notice of temporary support obligation~~ *enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court. The temporary support order must include a medical support order as required by 40-5-208.*

~~(b) The notice must contain:~~

~~(i) the names of the child and the person or agency having the custodial care of the child;~~

~~(ii) an amount for temporary monthly support determined as provided in subsection (2);~~

~~(iii) a statement that the obligor may request a hearing at which the obligor may show that a different support amount is appropriate or that establishment of a support obligation is inappropriate under the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.~~

~~(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice or the order for a temporary support order will be entered in the amount stated in the notice; and~~

~~(v) a statement that the temporary support order will terminate upon the entry of a district court support order. If the district court order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the district court order for the same period, but excess amounts may not be refunded. If the district court determines that a periodic support obligation is not proper, any amount paid under the temporary support order must be refunded to the obligor.~~

*(4) An action to establish a temporary support order must be commenced by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:*

*(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and*

*(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall*

HeinOnline -- 1997 vol. III 3460 1997

*refund to the obligor any improper amounts paid under the temporary support order, plus any costs the obligee incurs in recove· ·g the amount to be refunded.*

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without tbe marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice *of temporary support obligation* under this section if the parties subsequently separate.

(6) ~~Any~~ *A* notice of financial responsibility and the notice of temporary support ohligation ~~must~~ *may* be served *by certified mail or* in the same manner prescribed for the service of a summons in civil action in accordance with the Montana Rules of Civil Procedure.

*(7) If prior to service of a notice under this section, the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:*

*(a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child were otherwise eligible for assistance; or*

*(b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.*

*(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for hearing with the department:*

*(i) within 20 days from the date of service of a notice of financial responsibility; and*

*(ii) within 10 days from the date of service of a notice of temporary support obligation.*

*(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.*

*(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.*

HeinOnline -- 1997 vol. III 3461 1997

*(9) A child support and medical support order under subsection (1) continues until the child attains 18 years of age or the child's graduation from high school, whichever occurs later, but not later than the child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary order is superseded by a final order, judgment, or decree."*

**Section 45.** Section 40-5-226, MCA, is amended to read:

**"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must ~~be scheduled within 20 days~~ *initially be by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing.*

(3) The hearings officer shall determine the liability and responsibility, if any, of the ~~obligor~~ *parent or parents* under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) *(a)* ~~If~~ *Except as provided in subsection (4)(b), if* the ~~obligor fails~~ *parent or parents fail* to appear at the hearing or ~~fails~~ to timely *file a* request *for* a hearing, the hearings officer, upon a showing of valid service, shall enter a *default* decision and order declaring the amount stated in the notice to be final.

*(b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear for the hearing or participate in the proceedings, the hearing officer shall determine child support and medical support orders based on the notice, information available to the department, and evidence provided at the hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support orders consistent with the hearing officer's determination. However, the default order may not be for more than the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.*

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the

HeinOnline -- 1997 vol. III 3462 1997

amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may he used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

*(6) In a hearing to enforce a support order or to establish paternity under this chapter, the department shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit participation of an obligee who is a party to the proceedings or who is called as a witness to testify.*

~~(6)~~*(7) (a)* ~~Within 20 days of the hearing, the~~ *Within 60 days after the hearing has been concluded, any post-hearing briefs are received, and all the evidence submitted, except for good cause, the* hearings officer shall enter a final decision and order. The determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act. *A copy of the final decision must be delivered or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.*

*(b) A child support obligation established under this section is subject to the registration and processing provisions of [sections 1 through 11].*

~~(7)~~*(8)* A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

~~(8)~~*(9)* A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearings officer.

~~(9)~~*(10)* A *child* support ~~debt or a support responsibility~~ *obligation* determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure. *When issuing a support order, the department shall consider whether any of the exceptions to immediate income withholding found at 40-5-411 apply, and, if an*

HeinOnline -- 1997 vol. III 3463 1997

*exception is applicable, the department shall include the exception in the support order.*

~~(10)~~*(11) (a)* Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearings officer.

*(b) If an obligor is excepted from paying support through income withholding, the support order must include a requirement that whenever a party to the case is receiving IV-D services, support payments must be paid through the department as provided in [section 5].*

~~(11)~~*(12) (a)* ~~For the purposes of income withholding provided for in subsection (10), whenever~~ *If* the department establishes *paternity* or *establishes or* modifies a child support obligation, the department's order must include a provision requiring ~~the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information.~~ *each party other than the department to promptly file with the department and to update, as necessary, information on:*

*(i) identity of the party;*

*[(ii) social security number;]*

*(iii) residential and mailing addresses;*

*(iv) telephone number;*

*(v) driver's license number;*

*(vi) name, address, and telephone number of employer; and*

*(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the obligor's and obligee's employer.*

*(b) The order must further direct that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the department.*

*(c) The department shall keep the information provided under subsection (12)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.*

HeinOnline -- 1997 vol. III 3464 1997

~~(12)~~*(13)* The hearings officer may:

(a) compel obedience to the hearings officer's orders, judgments, and process and to ~~any~~ *subpoenas and* orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence; ~~and~~

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

*(f) compel the production of information requested by the department or IV-D agency of another state under 40-5-443.*

~~(13)~~*(14)* A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject te a discovery order issued by the hearings officer fails to comply with discovery requests; ~~or~~

*(e) a person or entity compelled by administrative subpoena from the department or another IV-D agency to produce financial information or other information needed to establish paternity or to establish, modify, or enforce a support order fails to do so;*

~~(e)~~*(f)* a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

*(g) a payor or labor union fails to provide information to the department or another IV-D agency when requested under 40-5-443[; or]*

*[(h) a financial institution uses information provided by the department pursuant to [section 11] for any other purpose without the authorization of the department].*

~~(14)~~*(15)* ~~An~~ *Before initiating a contempt proceeding, the department shall give the alleged contemnor notice by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the law and to cure the alleged infraction. In order to initiate a contempt proceeding, an* affidavit of the facts constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there is cause to believe that a contempt has been

committed. If cause is found, the hearings officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than $500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

~~(15)~~*(16)* At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than $500 for each count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

~~(15)~~*(17)* An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

~~(17)~~*(18)* The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected."

**Section 46.** Section 40-5-227, MCA, is amended to read:

**"40-5-227. Filing and docketing of final orders — orders effective as district court decrees.** (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. ~~The~~ *Upon the request of the department, the* order~~, if approved,~~ must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings. *A final administrative order of the department is effective and enforceable without filing and docketing the order in the district court. Contempt of court proceedings and writs of execution based on the administrative order may not be requested from the district court unless the administrative order is first docketed with the district court. The administrative order may not operate as a judgment lien, unless the order is first docketed with the district court or a lien is otherwise perfected under the laws of this state, including 40-5-248.*

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for a modification is that set forth in 40-4-208.

HeinOnline -- 1997 vol. III 3466 1997

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-247."

**Section 47.** Section 40-5-232, MCA, is amended to read:

**"40-5-232. Establishment of paternity — notice of ~~paternity determination~~ *parental responsibility* — contents.** (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In ~~any~~ *a* proceeding under 40-5-231 through 40-5-237, if ~~a person acknowledges paternity of a child in writing and the acknowledgment is filed with the department,~~ *an alleged father consents in writing to entry of an order declaring the alleged father to be the legal father of a child,* the department may enter an order establishing legal paternity. As a part of ~~a voluntary acknowledgment~~ *a consent to entry of an order declaring paternity*, the department shall provide information to the ~~parents~~ *parents* regarding the rights and responsibilities of ~~acknowledging~~ *an alleged father consenting to entry of an order declaring* paternity. ~~An acknowledgment~~ *A consent to entry of an order declaring paternity* is binding on a parent who executes it, whether or not the parent is a minor.

(4) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(5) The department sball commence proceedings to establish paternity by serving on an alleged father a notice of ~~paternity determination~~ *parental responsibility*. The department may not serve the notice unless it has:

(a) a sworn statement ~~from the child's mother~~ claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(6) Service on the alleged father of the notice of ~~paternity determination~~ *parental responsibility* must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

HeinOnline -- 1997 vol. III 3467 1997

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against the alleged father without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) the alleged father is subject to compulsory paternity blood testing;

(ii) a paternity blood test may result in a presumption of paternity; and

(iii) upon receipt of the paternity blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

(7) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of ~~paternity determination~~ *parental responsibility*.

(8) When there is more than one alleged father of a child, the department may serve a notice of ~~paternity determination~~ *parental responsibility* on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child."

**Section 48.** Section 40-5-233, MCA, is amended to read:

**"40-5-233. Establishment of paternity — administrative hearing — subpoena — compulsory blood testing.** ~~(1) When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.~~

*(1) (a) Paternity blood testing may be requested by the alleged father, the mother, or the child through the child's custodian and may be made in conjunction with or in addition to a notice the department issues under 40-5-232. The request must be in writing and must be supported by a sworn statement of the requester that includes:*

*(i) an allegation of paternity and sufficient facts to establish a reasonable probability that the alleged father engaged in an act with the child's mother during the probable time of the child's conception that could have resulted in the child's conception; or*

*(ii) a denial of paternity and sufficient facts to establish a reasonable probability of the nonexistence of contact between the alleged father and the child's mother that could have resulted in the child's conception.*

*(b) If the department determines after a review of a sworn statement that there are sufficient facts to establish a reasonable probability of paternity or nonpaternity as claimed by the requesting party, the department shall issue a subpoena ordering the alleged father, the mother, or the child through the child's custodian to submit to blood testing.*

*(c) A pending request for blood testing under this section does not prevent the department from issuing a notice of parental responsibility under 40-5-232.*

*(d) Denial of a request for paternity blood testing under this subsection (1) is not a finding of nonpaternity and does not prevent the issuance of a notice under 40-5-232. A denial does not affect the completion of any pending action initiated under 40-5-232.*

*(2) (a) The department may order an alleged father to appear for an administrative hearing when:*

*(i) the department determines that the sworn statement provided in subsection (1) does not contain sufficient facts to issue a blood test subpoena and that additional examination of witnesses or evidence is necessary; or*

*(ii) the department receives a timely filed written denial of paternity in response to a notice under 40-5-232.*

*(b) The hearing must initially be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing.*

*(c) The department may issue a subpoena ordering the alleged father to submit to paternity blood testing if the testimony and other supplementary evidence demonstrate a reasonable probability:*

*(i) that the alleged father engaged in an act with the child's mother during the probable time of the child's conception that could have resulted in the child's conception; or*

*(ii) when the alleged father's paternity is presumed under 40-6-105, of the nonexistence of contact between the alleged father and the child's mother that could have resulted in the child's conception.*

*(d) For the purposes of this subsection (2), a reasonable probability of an act during the possible time of conception may be established by affidavit of the child's mother without need for the mother to appear at the hearing.*

*(3) Previous paternity actions under this part that did not result in a subpoena for paternity blood testing do not prevent the department from recommencing a paternity action if the department believes it can establish any of the factors listed in subsection (2)(c) or (2)(d).*

~~(2)~~*(4)* When there is reasonable cause to suggest that a blood test sample of a person submitting to a blood test was not the sample of the alleged father,

mother, or child, an additional hearing may be held. The scope of the hearing is limited to questions involving the blood drawing or the chain of custody at the blood drawing site. The ~~hearing~~ *hearings* officer may order retesting of any party.

~~(3)~~*(5)* If the department does not receive a timely *filed* written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity blood testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

~~(4)~~*(6)* If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity blood test. ~~As provided in subsection (1), reasonable~~ *Reasonable* cause may be established by affidavit of the child's mother."

**Section 49.** Section 40-5-235, MCA, is amended to read:

**"40-5-235. Effcet of order establishing paternity — birth records — relief frem order.** (1) An administrative order of the department declaring the paternity of a child~~, docketed as provided in 40-5-227,~~ establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of ~~the~~ *a* child *born in this state*, the department shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a ~~voluntary acknowledgment of~~ *consent to entry of an order declaring* paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the timeframes provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7."

**Section 50.** Section 40-5-236, MCA, is amended to read:

**"40-5-236. Referral of paternity issue to district court — record — partics — exclusion of other matters — fees.** (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood

HeinOnline -- 1997 vol. III 3470 1997

test results. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of ~~paternity determination~~ *parental responsibility* and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110."

**Section 51.** Section 40-5-237, MCA, is amended to read:

**"40-5-237. District court paternity proceedings — objection to tests — additional tests — expert's report — admissibility of evidence.** (1) In a matter referred to the district court, if an alleged father objects to the procedures for or the results of a paternity blood test, the alleged father shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity blood test *upon the alleged father's advance payment for additional testing* if a written objection is timely filed or at the request of the department. *The alleged father's advance payment must be returned to the alleged father if the test does not produce evidence of the alleged father's paternity.* An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

HeinOnline -- 1997 vol. III 3471 1997

(2) If an objection to the paternity blood test is not timely filed, the paternity blood test expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional foundation testimony or other proof of authenticity and accuracy if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources. This subsection does not limit the right of a party to contest the identity of persons submitting to testing.

(3) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

(4) When a paternity blood test excludes an alleged father from possible paternity, the test is conclusive evidence of nonpaternity of the alleged father for all purposes in the district court."

**Section 52.** Section 40-5-263, MCA, is amended to read:

"**40-5-263. Central clearinghouse — interstate enforcement services — powers and duties of the department.** (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act, *Uniform Reciprocal Enforcement of Support Act,* or the Uniform Interstate Family Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under *the Uniform Reciprocal Enforcement of Support Act,* the Revised Uniform Reciprocal Enforcement of Support Act, or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obliger resides, has property, or derives income in this state, the department may*:* ~~establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter~~

*(a) proceed under Title 40, chapter 5, part 1; or*

*(b) pursue any other remedy available to it to establish or enforce a support order.*

(4) If necessary, the department shall establish the paternity of the child.

HeinOnline -- 1997 vol. III 3472 1997

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or the director's designee may certify any interstate petition, application, and referral, including a potition under part 1 of this chapter.

*(7) A lien created by operation of law or issued by order of a court or IV-D agency in another state to enforce a support order may, at the request of the other IV-D agency, be registered with the department. Upon registration, the lien applies to any of the obligor's real and personal property located in this state with the same force and effect as a lien established under 40-5-248. At the request of the other IV-D agency, a registered lien may be enforeed by the department using any remedy available to enforce a support lien under 40-5-248."*

**Seetion 53.** Section 40-5-264, MCA, is amended to read:

**"40-5-264. Cooperative agreements.** (1) The department may enter into cooperative agreements with any person, firm, corporation, association, political subdivision, *Indian tribe or tribal organization as defined in 25 U.S.C. 450b,* or department of this state as a cooporating contractor to provide enforcement services.

(2) A cooperating contractor:

(a) shall act as an independent support enforcement contracter if the cooperating contractor provides enforcement services; and

(b) may pursue any remedy available te the department, as limited by the terms of the cooperative agreement.

(3) The department may refer an enforcement case to a cooperating contractor in the county where the obligor resides."

**Section 54.** Section 40-5-271, MCA, is amended to read:

**"40-5-271. Registration of support orders.** (1) The department ~~shall establish and maintain a support order registry.~~

~~(2) The registry must contain the support orders issued by the department.~~

~~(3) In a IV-D case, the department shall, upon the request of the obligor or the obligee, or may register a support order of a district court of this state or a support order of a court or administrative agency of another state with jurisdiction to enter the order. A certified copy of the order to be registered must accompany the written request for registration.~~

~~(4) Upon registration, the support order must be treated in the same manner and have the same effect as a support order issued by the department, and an abstract of the order may be filed under the provisions of 40-5-227. Review of the order under 40-5-272 is available only when the department is providing child support enforcement services for the order.~~ *may, for the purpose of review and modification proceedings under 40-5-272 and 40-5-273, register support orders issued by a district court of this state or by a court or administrative agency of another state. Registration of the order under this section does not confer jurisdiction for any purpose other than for the review and modification process.*

*(2) When the department conducts review and modification proceedings, the department shall give the parties notice by personal service or certified mail and opportunity to contest registration of the order. A party seeking to vacate the registered order has the burden of proving that the court or agency issuing the order:*

*(a) did not have jurisdiction to enter the order;*

*(b) did not have personal jurisdiction over the party; or*

*(c) did not give the party reasonable notice and opportunity to be heard before the order was entered.*

*(3) (a) As an alternative to any other registration process or remedy available for the enforcement of a support order issued by a court or agency in another state, the department may register the support order under this subsection (3).*

*(b) Registration under this subsection (3) is only for the purpose of enforcement and does not confer jurisdiction for any other purpose such as visitation, custody, or paternity disputes.*

*(c) If an order is registered for enforcement under this subsection (3), the department shall notify the parties to the order of the registration. A copy of the registered order must be included with the notice. The notice must inform the parties:*

*(i) of the amount of any alleged arrearage as of the date of the notice;*

*(ii) that a party may request a hearing to vacate the registration or to assert defense to any alleged arrearage for any reason set out in subsection (3)(e);*

*(iii) that a hearing to contest the validity or enforcement of the order must be requested within 20 days after service of the notice; and*

*(iv) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and will preclude further contest of the order with respect to any matter that could have been asserted at the hearing.*

HeinOnline -- 1997 vol. III 3474 1997

*(d) A party seeking to contest the validity or enforcement of a registered order shall request a hearing within 20 days after service of the notice of registration. If a party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law. If a party timely requests a hearing to contest the validity or enforcement of the order, the department shall schedule the matter for hearing.*

*(e) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:*

*(i) the court or agency issuing the order did not have subject matter jurisdiction to enter the order or lacked personal jurisdiction over the contesting party;*

*(ii) the court or agency issuing the order did not give the party reasonable notice and opportunity to be heard before the order was entered;*

*(iii) the order was obtained by fraud;*

*(iv) the issuing court or agency has stayed enforcement of the order pending appeal;*

*(v) the order has been vacated, suspended, or modified by a later order;*

*(vi) there is a defense under the law of this state to the remedy sought; or*

*(vii) the statute of limitations precludes enforcement of some or all of the arrearages.*

*(f) If the contesting party does not establish a defense under subsection (3)(e) to the validity or enforcement of the order, the department shall issue an order confirming the order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of the registration. A confirmed order is enforceable as of the date of confirmation in the same manner as an order issued by the department or a district court of this state.*

*(g) In a proceeding for arrears, the statute of limitations under the laws of this state or of the issuing state, whichever is longer, applies.*

*(h) Hearings under this subsection (3) are subject to the provisions of the Montana Administrative Procedure Act and must initially be conducted by teleconferencing methods. At the request of a party, the hearings officer shall, at the close of a teleconference hearing, grant a de novo in-person hearing."*

**Section 55.** Section 40-5-273, MCA, is amended to read:

**"40-5-273. Administrative review of child support orders — modifying orders.** (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative hearing, and a hearings officer must be appointed by the department. Unless the hearings officer determines under rules of the department that an in-person hearing is necessary, the hearing must be conducted by telephone conference. The order scheduling the hearing must be served on the obligor and the obligee at least 60 days before the hearing. The order must include the following information as an exception to 2-4-601:

HeinOnline -- 1997 vol. III 3475 1997

(a) the date and time for the hearing and, if appropriate, tho place for the hearing;

(b) a statement of the purpose, objectives, and possible consequences of the review;

(c) a statement of the right of the ohligor and the obligee to request the hearings officer to issue subpoenas compelling tbe appearance of witnesses and the production of documents for the hearing; and

(d) a requirement that the obligor and the obligee provide the hearings officer with telephone numbers at wbich they and their witnesses may he contacted for the hearing.

(2) The hearings officer may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must he personally served with the order scheduling the hearing. Tlie hearings officer may also issue subpoenas ordering the department or other parties to produce inforiiiation in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the hearings officer must be provided to the department and other parties prior to the hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the hearings officer under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the hearing or fails to be at the numher provided when telephoned for the hearing, the failure is considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered to mean that the party does net oppose the modification.

(c) If the department is the applicant and if either the ohliger or the obligee, or both, fails to provide a telephone number for the hearing or fails to be at tbe number provided when telephoned for the hearing, the failure is considered an admission that the party or parties do not oppose the modification.

(4) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 10 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be availahle for the hearing when telephoned.

(5) A provision of law iiiay not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the hearings officer shall, to ensure tlie equitable determination of a support obligation, during a review hearing:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the hearing; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the hearings officer may allow the counsel to present that party's case.

(7) The hearings officer shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. If the hearings officer determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the hearings officer determines, after the review hearing, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order must ~~prospectively~~ modify the underlying support order from the date of service of the order scheduling the hearing *and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obligor for any support amount overpayment found to have been paid since the date that the amount required for support decreased. If the case is a IV-D case, the department shall, on request of the obligor, enforce the obligee's repayment of the overpaid amount using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.*

(8) The hearings officer shall make a written determination whether health insurance is available to the child of the obligor through the obligor's employment or other group insurance. If the hearings officer determines health insurance is available to the child of the obliger, the hearings officer shall issue a modifying order that requires the obliger to obtain and keep health insurance for the child. If the hearings officer determines that health insurance is not available to the child of the obliger, ~~he~~ *the hearings officer* shall issue a modifying order containing the notices provided in subsection (9). An order to provide health insurance is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of ~~his~~ *the obligor's* current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance;

(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) Orders entered under this section are final agency decisions, subject to judicial review pursuant to the Montana Administrative Procedure Act. All orders entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d)."

**Section 56.** Section 40-5-274, MCA, is amended to read:

**"40-5-274. Child support payments to follow the child.** (1) A support order issued or modified under this part must contain a provision requiring the child support *obligation* to be paid to:

(a) the legal custodian of the minor child;

(b) ~~(i) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights~~ *a person, organization, or agency to which the legal custodian voluntarily or involuntarily relinquishes physical custody of the child*; or

~~(ii) the court for the benefit of the minor child;~~

(c) ~~any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or~~ *to any other person, organization, or agency entitled by law, assignment, or similar reason to receive or collect the child support obligation.*

~~(d) any assignee or other person, organization, or agency authorized to receive or collect child support.~~

*(2) If the department is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.*

~~(2)~~*(3)* An order that omits the provision required by subsection (1) is subject to the requirements of subsection (1) without need for an amendment to the order or for any further action by the department."

**Section 57.** Section 40-5-302, MCA, is amended to read:

**"40-5-302. Purpose — *applicability.*** *(1)* The purpose of this part is to provide a direct method of deducting money from a person's income for the payment of child support ~~if that person has been delinquent in the payment of court-ordered child support~~.

HeinOnline -- 1997 vol. III 3478 1997

*(2) Income withholding under this part is available without amendment of the support order even though the support order did not provide for withholding or provided for other payment arrangements."*

**Section 58.** Section 40-5-303, MCA, is amended to read:

**"40-5-303. Petition for income deduction — who may initiate.** *(1) If an obligor is exempted from immediate income withholding under 40-5-315 or is not otherwise subject to an income-withholding order, the obligor's income may be withheld for the payment of child support if the obligor becomes delinquent in the payment of support, a person or entity referred to in subsection (2) notifies the obligor that income withholding will be initiated if the delinquent amount is not paid within 8 days of the date of the notice, and the obligor does not pay the delinquent amount within that time. Notification that income withholding will be initiated if a delinquency is not paid within 8 days of the date of the notice is not necessary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by 40-5-305.*

*(2)* ~~A petition for an income deduction~~ *Income withholding* for the payment of ~~delinquent~~ child support ~~payments~~ may be ~~made~~ *initiated* by:

~~(1)~~*(a)* the person named as the recipient of the child support payments in the child support order;

~~(2)~~*(b)* the child or the guardian of the child named in the child support order; or

~~(3)~~*(c)* the department of public health and human services.

*(3) (a) At the request of an initiating party who has determined that an obligor is delinquent, the district court shall issue an order for income deductions for immediate service upon the obligor's payor or payors. The order is limited to current support unless modified to include arrears as provided in 40-5-308.*

*(b) At the same time an income deduction order is issued, the requesting party shall notify the obligor as provided in 40-5-305 that income deductions have been initiated.*

*(4) Deductions under this section for current support may be terminated only if:*

*(a) the district court determines after a hearing that the obligor was not delinquent when the deduction order was issued;*

*(b) the obligation to pay support has terminated and all delinquencies are paid in full; or*

*(c) the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.*

*(5) As used in this part, the following definitions apply:*

*(a) "Employer" includes a payor.*

HeinOnline -- 1997 vol. III 3479 1997

*(b) (i) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability benefits, payments under a pension or retirement program, interest and earnings, and wages.*

*(ii) Income does not include:*

*(A) an amount, other than creditor claims, required by law to be withheld, including federal, state, and local taxes and social security; or*

*(B) an amount exempted from judgment, execution, or attachment by federal or state law.*

*(c) "Payor" means any entity that pays income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, or state agency or an agent of any one of them, subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure."*

**Section 59.** Section 40-5-304, MCA, is amended to read:

**"40-5-304. When child support payments considered delinquent.** (1) Nonpayment of child support required by ~~any~~ *a district court or administrative* order ~~of a district court~~ or by a similar order of a court of another jurisdiction becomes delinquent under this part ~~when the amount owed is equal to 3 months of child support payments~~ *8 working days after the last day of the month in which the payment is due.*

(2) Child support payments may be considered delinquent under this part only in reference to a court *or administrative* order setting child support payments.

(3) ~~In the case of support orders not subject to immediate income withholding under 40-5-315, including cases in which the court or administrative authority has made a finding of good cause or alternative arrangement, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to be delinquent in the payment of support due under a support order in an amount equal to at least 3 months' support payments.~~ Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part. ~~For the purposes of this section, "alternative arrangement" has the meaning provided in 40-5-315(3)(b).~~"

**Section 60.** Section 40-5-305, MCA, is amended to read:

**"40-5-305. Notice.** ~~On petition for income deductions for payment of delinquent child support, the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not discharged within 15 days, the court will order an income deduction for the payment of the delinquent child support and for the payment of current child support as it becomes due and payable. The notice shall also state that the obligor may contest the allegation that child support payments are delinquent.~~

*(1) A party initiating income deductions under this part shall serve the obligor with notice if:*

*(a) an order for immediate income deductions is issued because of a delinquency;*

*(b) additional delinquencies accrued subsequent to the issuance of an income-deduction order and the requesting party proposes to add those delinquencies to an existing order for income deductions;*

*(c) immediate withholding under 40-5-315 or delinquency withholding under 40-5-303 has commenced for current support and there are delinquencies due for a period prior to issuance of the income-deduction order that the requesting party proposes to add to the deduction order; or*

*(d) the obligation to pay current support has terminated and there are support arrears still owing for the period prior to termination.*

*(2) The notice must contain a statement:*

*(a) of the amount subject to withholding, including a computation showing the period and total amount of the delinquency as of the date of the notice;*

*(b) that withholding applies to all current and subsequent payors;*

*(c) of the procedures to follow if the obligor desires to contest income withholding on the grounds that the initiation of withholding or the modification of an existing order for deductions is improper or that the amount to be deducted is in error due to a mistake of fact; and*

*(d) of the period of time within which the obligor is required to file a request for hearing and that failure to file the hearing request within the time limit will result in an income-deduction order being served upon the payor for the amount stated in the notice.*

*(3) The notice must be served upon the obligor personally or by certified mail."*

**Section 61.** Section 40-5-306, MCA, is amended to read:

**"40-5-306. Discharge of delinquency.** ~~If~~ *(1) In a case in which only arrears are owed, if* the obligor pays the total amount of child support ~~due and payable~~ *in arrears* within ~~the~~ 15 days *after service of the notice* specified in 40-5-305, ~~no~~ *an* order for deduction may *not* issue. This discharge of delinquency does not affect or otherwise limit any action as a result of any subsequent delinquencies.

*(2) If there is a current support obligation, payment of arrears after service of the notice required under 40-5-305 or after service of the income-deduction order on the payor does not prevent the issuance or continuance of an income-deduction order for the payment of current support."*

**Section 62.** Section 40-5-307, MCA, is amended to read:

**"40-5-307. Delinquency of child support denied — hearing.** If, *within 15 days after service of a notice under 40-5-305,* the obligor responds to the notice and denies that ~~child support payments are delinquent~~ *income withholding initiated because of a delinquency is proper or denies that the amount or arrearages stated in the notice is owing,* the district court shall hold a hearing to determine whether ~~or not there is a deficiency in child support payments~~

~~sufficient to be delinquent under 40-5-304~~ *income withholding will take place or continue.*"

**Section 63.** Section 40-5-308, MCA, is amended to read:

"**40-5-308. Order for deduetion from income for child support payments.** (1) ~~If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support.~~ *The court may authorize the requesting party to continue an immediate income-deduction order issued because of a delinquency, may modify an existing deduction order, or may authorize issuance of an income-deduction order if:*

*(a) the obligor fails to timely respond to the notice provided under 40-5-305;*

*(b) the obligor fails to appear at a scheduled hearing;*

*(c) the court determines that the obligor is delinquent in the payment of support; or*

*(d) the court determines there are new or additional delinquencies to be added to an existing deduction order.*

(2) The order must state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment of child support;

(c) the amount to be deducted from the ~~wages or salary of the obligor each pay period~~ *obligor's income* and the amount, if any, allowed to the ~~employer~~ *payor* under 40-5-309(2) as a fee for bandling the deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

(e) the name and address of the ~~clerk of court~~ *person or entity* to whom tbe deduction is to he paid by the ~~employer~~ *payor.*"

**Seetion 64.** Section 40-5-309, MCA, is amended to read:

"**40-5-309. Amount to be deducted from income.** (1) (a) The amount of money to he deducted each pay period from the obligor's income is:

(i) (A) the amount of money necessary to pay current installments of child support as they hecome due and payable; plus

(B) the amount of money that, when deducted in equal amounts each pay period, will pay off all outstanding child support payments delinquent within 2 years; or

(ii) not less than 25% of the obligor's disposable earnings.

HeinOnline -- 1997 vol. III 3482 1997

(b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay period must be sufficient to pay all installments due in a 12-month period under tho order to withhold.

(2) The district court may allow a fee ~~of~~ not to exceed $5 per deduction, which the ~~employer~~ *payor* may deduct from the obligor's ~~wages or salary~~ *income* for the expense of administering the deduction.

(3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(4) Except as provided in 40-5-315, the child support income deduction must cease when there is no past-due child support owing, unless the district court orders continued income deductions for payment of child support installments as they become due and payable."

**Section 65.** Section 40-5-310, MCA, is amended to read:

**"40-5-310. Priority of income deduction.** An order for the deduction of income for the payment of ~~delinquent~~ child support payments takes precedence over any:

(1) assignment of ~~wages or salary~~ *income*;

(2) voluntary deductions from the obligor's ~~wages or salary~~ *income*; and

(3) other court-ordered garnishment of ~~wages or salary~~ *income*."

**Section 66.** Section 40-5-312, MCA, is amended to read:

**"40-5-312. Dutics of ~~employers~~ *payors*.** (1) ~~An employer~~ *A payor* who has been served with an order for deduction under this part shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The ~~employer~~ *payor* shall, within ~~10~~ 7 working days of the date the obligor is paid, promptly pay the deducted amount as directed by the order. The ~~employer~~ *payor* shall include with the payment a statement indicating the date the amount was deducted from the obligor's ~~wages or salary~~ *income*.

(2) Whenever ~~an employer~~ *a payor* receives more than one ~~wage~~ deduction order from the same district court, the ~~employer~~ *payor* may combine all amounts deducted into a single payment for that month, with the portion that is attributable to each obligor separately designated.

(3) Whenever there is more than one deduction order against a single obligor the ~~employer~~ *payor* shall:

(a) honor all ~~wage~~ deduction orders to the extent that the total amount deducted from the obligor's ~~wages or salary~~ *income* does not exceed the limits set in 40-5-309; and

(b) comply with the orders in tbe sequence in which they were served upon the ~~employer~~ *payor* except for ~~income withholding~~ *income-withholding* orders issued by the department of public health and human services. Under 40-5-423,

HeinOnline -- 1997 vol. III 3483 1997

orders issued by the department have priority over all other orders without regard to the sequence in which they were served.

(4) The ~~employer~~ *payor* shall promptly notify the clerk of the district court that issued the deduction order of the termination of the obligor's employment and provide the obligor's last-known address and the name and address of the obligor's new ~~employer~~ *payor*, if known."

**Section 67.** Section 40-5-313, MCA, is amended to read:

**"40-5-313. Obligor rights protected — penalties.** (1) An employer may not discharge, discipline, or refuse to hire a person because:

(a) the person has a child support obligation;

(b) a withholding order has been issued for the person's ~~wages or salary~~ *income*; or

(c) proceedings have been initiated under this part.

(2) An employer who violates the provisions of this section may be fined not more than $100."

**Section 68.** Section 40-5-314, MCA, is amended to read:

**"40-5-314. Civil liability for failure to comply with wage deduction order.** (1) ~~An employer~~ *A payor* who *purposely and* knowingly fails to deduct support money from the obligor's ~~wages or salary~~ *income* and remit the money ~~to the district court~~ when ordered to do so under this part is liable to the obligee of the support order for any amount up to the accumulated amount the ~~employer~~ *payor* should have deducted and remitted.

(2) ~~An employer~~ *A payor* who complies with a deduction order under this part is not liable to the obligor or to any other person claiming rights derived from the obligor for wrongful deductions."

**Section 69.** Section 40-5-315, MCA, is amended to read:

**"40-5-315. Immediate income deductions.** (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the ~~salaries and wages~~ *income* of a person obligated to pay child support by an order of a district court issued after October 1, 1991, ~~are~~ *is* subject to an immediate deduction order ~~under 40-5-308~~ on the effective date of the order~~, regardless of whether there is a delinquency~~.

(2) An obligor's ~~salaries and wages are~~ *income is* not subject to deduction under this section in any case in which the district court finds:

(a) that there is good cause not to require immediate deduction; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction must, at a minimum, be based on:

(i) a written determination and explanation by the district court as to why implementation of immediate deductions is not in the best interests of the child; and

(ii) in cases involving the modification of support orders, proof of timely payment of previously ordered support.

(b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of public health and human services~~,~~ and that has been approved and entered into the record by the district court that issued or modified the support order.

(4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any further action by the district court, shall issue the order for income deductions ~~provided for by 40-5-308~~ for service upon the obligor's ~~employer~~ *payor*. The deduction order must direct the ~~employer~~ *payor* to promptly deliver the amount deducted to the ~~clerk of court~~ *department of public health and human services as provided in [section 5]* for distribution to the obligee.

(5) ~~Wage deductions~~ *Deductions* under this section may be terminated only when:

(a) the obligation to pay support has terminated and all arrearages are paid in full;

(b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or

(c) the department *of public health and human services* has suporseded the deduction order under authority of Title 40, chapter 5, part 4.

(6) If ~~a delinquency occurs~~ *a delinquency occurs* subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.

(7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or other law, the support order is subject to immediate orders to deduct income under this section.

(b) Withholding income under this section must be imposed when an obligor has ~~wages or salaries~~ *income* derived from within this state and the support order was issued in another state.

(8) This section applies only to support orders that are not being enforced by the department *of public health and human services* under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section."

HeinOnline -- 1997 vol. III 3485 1997

**Section 70.** Section 40-5-403, MCA, is amended to read:

**"40-5-403. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement signed by the ohliger and ohligee, and signed by the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

*(3) "Employer" includes a payor.*

~~(3)~~*(4)* "Income" means any form of periodic payment to a person, *regardless of source,* including *commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and* earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

~~(4)~~*(5)* "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

~~(5)~~*(6)* "Obligor" means a person who owes a duty to make payments under a support order.

~~(6)~~*(7)* "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

~~(7)~~*(8)* "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is ~~awarded under the same order~~ *collected under this chapter*; and

(c) an order requiring payment of interest due on unpaid judgments for child support."

**Section 71.** Section 40-5-404, MCA, is amended to read:

"**40-5-404. Other remedies available.** *(1) (a)* The remedies provided in this part are in addition to and not in substitution for any other remedy that may otherwise be available to the department, and the department may simultaneously pursue other remedies to enforce a support obligation or to collect support arrearages.

*(b) If the department is enforcing a support order of another state, an Indian tribe, or a foreign country under this part, the department may proceed under Title 40, chapter 5, part 1.*

*(2) (a) The department may enforce a support order of another state, an Indian tribe, or a foreign country under this part without registration of the support order under 40-5-180, 40-5-271, or any other law providing for registration of support orders.*

*(b) If the department is enforcing an order under subsection (2)(a), in addition to those defenses available under this part, a party may contest the validity of the support order by proving any defense contained in 40-5-190.*"

**Section 72.** Section 40-5-412, MCA, is amended to read:

"**40-5-412. Delinquency income withholding.** (1) *(a)* In the case of support orders not subject to immediate income withholding under 40-5-411, including cases in which the court or administrative authority has made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor is subject to withholding under this part beginning on the ~~date on which the obligor is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's support payment~~ *day the obligor becomes delinquent in the payment of support.* ~~Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.~~

*(b) For purposes of this section, an obligor becomes delinquent 8 working days after the last day of the month in which the payment is due.*

*(c) Agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.*

*(2) (a) If the department determines that an obligor is delinquent, the department may notify the obligor that income withholding will be initiated if the delinquent amount is not received within 8 days of the date of the notice. If the obligor does not pay the delinquent amount within that time, the department may immediately send an order to withhold income to any payor. Notification that income withholding will be initiated if the delinquent amount is not received within 8 days of the date of the notice is not neccssary if such a notice was given for a prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by subsection (2)(b). The order must be limited to current support unless modified to include arrears as provided in 40-5-413.*

HeinOnline -- 1997 vol. III 3487 1997

*(b) At the same time an order to withhold income is sent to a payor, the department shall notify the obligor as provided in 40-5-413 that income withholding has been initiated.*

~~(2)~~*(3)* Notwithstanding the provisions of subsection (1), income withholding must be initiated, without regard to whether there is ~~an arrearage~~ *a delinquency*, on the earlier of:

(a) the date the obligor requests that withholding begin; or

(b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

~~(3)~~*(4)* To accomplish the purpose of subsection (1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor ~~who does not owe unpaid child support equal to or in excess of 1 month's support payment~~ to pay all support through the department, notwithstanding a court order directing payments to be made to the obligee or clerk of court.

~~(4)~~*(5)* The only basis for contesting withholding under this section is a mistake of fact, which includes a mistake:

(a) concerning the obligor's identity;

(b) concerning the existence of the support obligation;

(c) concerning the amount of support to be paid;

(d) in the determination that the ~~delinquent support amounts owed are equal to or greater than 1 month's support payment~~ *obligor is delinquent in the payment of support*;

(e) in computation of delinquent support amounts owed; or

(f) in the allegation that the obligor is in default of an alternative agreement.

*(6) A mistake of fact under subsection (5) does not include mistakes relating to issues of paternity or establishment of custody and visitation."*

**Section 73.** Section 40-5-413, MCA, is amended to read:

**"40-5-413. Notice of ~~intent to withhold~~ income *withholding*.** (1) ~~Prior to service of an initial order or a modification of an existing order on the payor under 40-5-415, the~~ *The* department shall serve ~~upon~~ the obligor *with* a notice ~~of the intended action when~~ *if*:

(a) income withholding is initiated ~~under 40-5-412~~ because of a delinquency;

(b) additional arrearages ~~have~~ accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrearages to ~~the~~ *an existing* withholding order; or

(c) immediate withholding *or delinquency withholding* has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department propeses to add to the withholding order.

(2) The notice must contain a statement:

(a) of the amount ~~to be withheld~~ *subject to withholding*, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) ~~of the obligor's right to a hearing under 40-5-414 to contest the initiation of income withholding or modification of an existing order on the ground that the intended action is not proper because of mistake of fact, as provided in 40-5-412(4)~~ *of the procedures to follow if the obligor desires to contest income withholding on the grounds that the initiation of withholding or the modification of an existing withholding order is improper or that the amount to be withheld is in error due to a mistake of fact, as provided in 40-5-412*;

(d) of the period of time within which the obligor ~~must~~ *is required to file a* request *for* a hearing and that failure to *file a* request ~~the hearing~~ within the time limit will result in income withholding orders being served upon the payor for the amount stated in the notice; and

(e) in those cases in which withholding is being initiated at the request of an obligee without regard to whether there is an arrearage as provided in 40-5-412~~(2)~~*(3)*, a statement that the obligor can require the obligee to appear and show proof that the obligor is not meeting the terms of the alternative arrangement.

(3) The notice must be served upon the obligor personally or by certified mail."

**Section 74.** Section 40-5-414, MCA, is amended to read:

"**40-5-414. Hearing.** (1) *(a)* To contest the withholding of income initiated ~~under 40-5-412~~ because of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of being served with notice of ~~intent to withhold~~ income *withholding* under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

*(b) The obligor shall include with the hearing request a statement of one or more of the grounds for contesting income withholding provided in 40-5-412. If the hearing request fails to include that statement, the hearings officer may deny the hearing for failure to state an issue upon which a hearing may be granted.*

(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(3) The ~~administrative~~ hearing must *initially* be held by teleconferencing methods ~~unless the obligor or the department expressly requests an in-person hearing before the hearings examiner~~ *and is subject to the Montana*

HeinOnline -- 1997 vol. III 3489 1997

*Administrative Procedure Act. At the request of a party, the hearings officer shall grant a de novo in-person hearing.*

(4) If the obligor ~~requests~~ *files a timely request for* a hearing: ~~within the 10-day period:~~

~~(a)~~*(a) that includes a statement showing a probable mistake of fact,* the initiation of delinquency income withholding by the department and the modification of an existing withholding order ~~must~~ *may* be stayed *upon written request of the obligor* until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. However, ~~in a proceeding to initiate income withholding,~~ if the obliger is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is not stayed. In a proceeding to modify an existing order, income withholding under the existing order to withhold is not stayed.

~~(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.~~

*(b) unless good cause is found, the department shall, within 60 days of receipt of a request for a hearing, conduct a hearing. Unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided to the department concerning a notice of intent to withhold income, the department shall inform the obligor whether income withholding must take place.*

(5) The department ~~shall issue an order to~~ *may continue an order to* withhold income *issued because of a delinquency* ~~or~~, ~~a modified~~ *may modify an existing* order to withhold *income, or may issue an order to withhold income* ~~in accordance with 40-5-415~~ if:

(a) the obliger fails to file a *timely* written request for hearing ~~with the department within the specified 10-day period~~ *that includes the statement showing a mistake of fact*;

(b) the obligor fails to appear at a scheduled hearing;

(c) the hearings examiner determines from the evidence that the obligor ~~owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum~~ *is delinquent in the payment of support*;

(d) there is an existing order to withhold and if the hearings examiner determines from the evidence that the obligor owes new or additional amounts in arrears; or

(e) in cases in which income withholding is being initiated at the request of an obligee without regard to whether there is an arrearage, the hearings examiner determines from the evidence that the obligor did not meet the terms of the alternative arrangement.

(6) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date on which the obligor ~~was served with the notice of intent to withhold income~~ *became*

HeinOnline -- 1997 vol. III 3490 1997

*delinquent.* When ~~the department is enforcing a current support obligation~~ *income withholding is initiated because of a delinquency*, payment of the arrearage after service of the notice *or after service of an order to withhold on a payor* is not a basis for not initiating *or continuing* income withholding. *Whenever the notice of income withholding is issued because an arrearage has accrued or additional income is being withheld to satisfy additional arrearages, unless good cause is found, within 60 days after a hearing is held, any post-hearing briefs are received, and all evidence has been provided, the department shall inform the obligor whether income withholding must take place.*

~~(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.~~

~~(8)~~*(7)* If the obligor fails to request a hearing within 10 days *after service of the notice of income withholding* or fails to appear at a scheduled hearing or if the hearings examiner determines that the obligor owes ~~a combination of unpaid support equal to or in excess of 1 month's support obligation~~ *unpaid support* or determines that a modification of an existing order is proper, the department shall ~~proceed with the intended action~~ *issue an order to withhold income* in accordance with 40-5-415."

**Section 75.** Section 40-5-421, MCA, is amended to read:

**"40-5-421. Duties of payor.** (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after ~~14 days from the~~ service of the order. The payor shall, within ~~10~~ 7 working days of the date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department. The payor shall include with the payment a statement indicating the date the amount was withheld from the obligor's income.

(2) Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion ~~thereof which~~ *of the withholding that* is attributable to each obligor separately designated.

(3) Whenever there is more than one order for withholding against a single obligor, the payor ~~must~~ *shall* comply with the orders in the sequence in which they were served upon the payor and ~~must~~ *shall* honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416.

(4) The payor ~~must~~ *shall* promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor."

**Section 76.** Section 40-5-423, MCA, is amended to read:

**"40-5-423. Priority of income withholding.** An order to withhold and deliver income under this part takes priority over any:

HeinOnline -- 1997 vol. III 3491 1997

(1) wage or income deduction order under any other state law *and any income-withholding order issued in another state and sent to a payor in this state*;

(2) voluntary or involuntary assignment of wages;

(3) other voluntary deductions from the obligor's income;

(4) levies, writs of execution, or garnishments of the obligor's income; and

(5) any other claims by creditors."

**Section 77.** Section 40-5-443, MCA, is amended to read:

"**40-5-443. Payors to provide information — exemption from liability.** (1) For the purposes of this part, upon written request by the department *or by another IV-D agency*, a payor or former payor and any labor union of which the obliger or obligee is or may have been a member shall provide the ~~department~~ *requester* with the following information, if known, regarding the obliger or obligee:

(a) last-known residential address;

~~(b) social security number;~~

*(b) social security number;*

~~(c)~~*(c)* dates of employment or union membership;

~~(d)~~*(d)* amounts of wages, salaries, commissions, contract proceeds, and other earnings or amounts paid;

~~(e)~~*(e)* whether health insurance coverage is or was available through the payor or union and, if so:

(i) the name of the insurer or health care provider;

(ii) the policy numbers or other identifiers; and

(iii) the persons covered; and

~~(f)~~*(f)* names, telephone numbers, and addresses of current and former employers, payors, and unions.

(2) A payor or *labor* union that discloses information ~~to the department~~ in compliance with this section is exempt from any liability to the obliger or obligee that may result from the disclosure.

*(3) Failure to disclose information in compliance with this section subjects the payor or labor union to the sanctions provided in 40-5-226.*

*(4) The requester shall keep the information provided under subsection (1) confidential except for purposes of Title IV-D of the Social Security Act.*"

**Section 78.** Section 40-5-701, MCA, is amended to read:

"**40-5-701. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate services from an agency of another state under the provisions of the *Uniform Interstate Family Support Act, the Revised* Uniform Reciprocal Enforcement of Support Act, *the Uniform Reciprocal Enforcement of Support Act,* or ~~under~~ Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of public health and human services.

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, *the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act,* or ~~under~~ Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, *permit,* or *any other* authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, ~~or~~ profession, *recreational activity,* or any other privilege that is subject to susponsion, revocation, forfeiture, ~~or~~ termination, *or a declaration of ineligibility to purchase* by the licensing authority prior to its date of expiration.

HeinOnline -- 1997 vol. III 3493 1997

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obliger" means a person who owes a duty of support *or who is subject to a subpoena or warrant in a paternity or child support proceeding.*

(9) "Order suspending a license" means an order issued by a suppert enforcement entity to suspend a license. The order must contain the name of the obligor~~,~~, the type of license~~, and, if known, the social security number of the obligor~~, *and, if known, the social security number of the obligor.*

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

*(11) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under sections 87-2-505, 87-2-507, 87-2-508, or 87-2-510.*

*(12) "Subpoena" means a writ or order issued by a district court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.*

~~(11)~~*(13)* "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the custodial parent.

~~(12)~~*(14)* "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

~~(13)~~*(15)* "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support

obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department.

*(16) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.*

*(17) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by the district court relating to the appearance of a party in a paternity or child support proceeding.*"

**Section 79.** Section 40-5-702, MCA, is amended to read:

"**40-5-702. Notice of intent to suspend license.** (1) Upon the petition of an obligee alleging the existence of a delinquency *or upon the failure of an obligor to comply with a subpoena or warrant*, a support enforcement entity may issue a notice of intent to suspend a license.

(2) The notice must be served upon the obliger personally or by certified mail and may:

(a) in a IV-D case, be incorporated into any notice served under Title 17, chapter 4, part 1, or Title 40, chapter 5, part 2 or 4;

(b) in all other cases, be combined with any other enforcement proceeding.

(3) The notice must state that the obliger's license will be suspended 60 days after service unless within that time the obligor:

(a) pays the entire support debt stated in the notice;

(b) enters into a payment plan approved by the support enforcement entity; ~~or~~

*(c) complies with the subpoena or warrant; or*

~~(c)~~*(d)* appears and shows cause in a hearing before the support enforcement entity under 40-5-703 that suspension of a license is not appropriate.

(4) In a IV-D case, the notice must advise the obligor that hearings conducted under 40-5-703 are subject to the contested case provisions of the Montana Administrative Procedure Act."

**Section 80.** Section 40-5-703, MCA, is amended to read:

"**40-5-703. Hearing — order suspending license.** (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a

hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. The support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

(3) The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not a delinquency exists, ~~and~~ whether or not the obligor has entered into a payment plan, *and whether or not the obligor failed to comply with a subpoena or warrant.*

(4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not entered into a payment plan *or that the obligor failed to comply with a subpoena or warrant,* the support enforcement entity shall issue an order suspending the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support enforcement entity shall send a copy of the order suspending a license to ~~the licensing authority and~~ the ohligor *and shall notify the licensing authority in writing of the suspension. Notification to the licensing authority is not required if the support enforcement entity has previously suspended the license of the obligor and the suspension is still in effect.*

(6) The determinations of the department under this section are a final agency decision and are subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

(7) A determination made by the support enforcement entity under this part is independent of any proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license."

**Section 81.** Section 40-5-704, MCA, is amended to read:

**"40-5-704. Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of ~~an order suspending a license~~ *the notice of suspension of the license under 40-5-703(5),* a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the ~~order~~ *notice*;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; ~~and~~

*(d) making good faith efforts to deny recreational activity licenses for the next applicable license year; and*

~~(d)~~*(e)* if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under 40-5-703 suspending a license *and the notice of suspension given under 40-5-703(5)* must be processed by the licensing authority without an additional review or hearing involving the licensing authority concerning suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be implemented by the licensing authority and continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

(4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, *recreational activity,* or other licensed activity while the obligor's license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with this part.

(7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

(8) To the extent that inconsistencies exist between this part and the procedural requirements for suspension of a license issued by the department, this part supersedes those requirements."

**Section 82.** Section 40-5-709, MCA, is amended to read:

**"40-5-709. Nondisciplinary suspension for failure to pay child support.** Notwithstanding any other provision of this title, the ~~department~~ *support enforcement entity* has the authority to suspend a license *or privilege to obtain a license* under this part without any action by the licensing authority. The licensing authority shall, upon receipt of ~~an order issued by~~ *notice of suspension of the license under 40-5-703(5) from* the support enforcement entity, suspend the license *or privilege to obtain a license* of the named individual. The suspension must be nondisciplinary for professional or occupational licenses, and the provisions of 2-4-631 do not apply."

HeinOnline -- 1997 vol. III 3497 1997

**Section 83.** Section 40-5-710, MCA, is amended to read:

**"40-5-710. Stay of suspension of license — payment plan — hardship.** (1) An obligor may at the time of the hearing conducted under 40-5-703 or, *except for a recreational activity license,* at any time after the hearing, petition the support enforcement entity for an order staying suspension of the license.

(2) The support enforcement entity shall consider the obligor's petition for a stay separately from any determination on whether suspension of a license is appropriate.

(3) The support enforcement entity may stay suspension of a license upon a showing that suspension or continued suspension of a license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

(4) A stay terminates upon:

(a) termination of the circumstances upon which a hardship is based;

(b) failure by the obligor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing authority has been notified of an order suspending a license, the support enforcement entity shall *notify the licensing authority of any stay or reinstatement unless the support enforcement entity has suspended the license of the obligor for another delinquency or for failure to comply with a subpoena or warrant and the suspension for the other delinquency or failure to comply with a subpoena or warrant is still in effect. The support enforcement entity shall* send a copy of any order staying or reinstating suspension of the license to the ~~licensing authority and the~~ obligor.

(6) (a) Upon receipt of ~~an order~~ *a notice* staying or reinstating suspension of the license, the licensing authority shall:

(i) enter the information on appropriate records;

(ii) report the action as appropriate; and

(iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license."

**Section 84.** Section 40-5-711, MCA, is amended to read:

**"40-5-711. Termination of order to suspend license.** (1) ~~When~~ *Except as provided in subsection (3), when* the support enforcement entity determines that the support debt or support obligation is paid in full *or the obligor has complied with the subpoena or warrant,* it shall terminate the order suspending

the license. The support enforcement entity shall send a copy of the order terminating the suspension of the license to the ~~licensing authority and the~~ obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency *or failure to comply with a subpoena or warrant.*

*(3) A suspension of a recreational activity license is effective for the license year. The suspension does not terminate if the support enforcement entity determines that the support debt or support obligation is paid in full or the obligor has complied with the subpoena or warrant."*

**Section 85.** Section 40-6-102, MCA, is amended to read:

**"40-6-102. Definitions.** As used in this part, the following definitions apply:

(1) "Blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. *The genetic markers may be identified from a person's blood or a tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks.* A blood test may include but is not limited to the human leukocyte antigen test and DNA probe technology.

(2) "Parent and child relationship" means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

(3) "Support judgment" or "support order" means an order, whether temporary or final, that provides for the periodic payment of an amount of money expressed in dollars for the support of a child, including medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child."

**Section 86.** Section 40-6-105, MCA, is amended to read:

**"40-6-105. Presumption of paternity.** (1) A person is presumed to be the natural father of a child if any of the following occur:

(a) the person and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, the person and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, the person and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although tbe attempted marriage is or could he declared invalid, and:

(i) the child's mother and the child's alleged father have acknowledged the alleged father's paternity of the child in writing in accordance with subsection (1)(e) and the acknowledgment is filed with the department of public health and human services ~~or with the district court for the county where the person resides or for any county where the child support enforcement division of the department of public health and human services maintains a regional office~~;

(ii) with the person's consent, the person is named as the child's father on the child's birth certificate; or

(iii) the person is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, the person receives the child into the person's home and openly represents the child to be the person's natural child;

(e) the child's mother and the child's alleged father acknowledge the alleged father's paternity of the child in a paternity acknowledgment form that is provided by the department of public health and human services ~~and filed with the department or with the district court of the county where the person resides or for any county where the child support enforcement division of the department of public health and human services maintains a regional office~~. The department of public health and human services ~~or the district court~~ shall accept and file the completed form. As a part of a voluntary acknowledgment process, the department of public health and human services shall ~~provide~~ *make written and oral* information *available* to the parents regarding the rights and respensibilities of acknowledging paternity. If another person is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted. *The presumption of paternity is created when the acknowledgment is filed with the department.*

(f) the scientific evidence resulting from a hlood test, whether ordered by a court or administrative agency of competent jurisdiction or agreed to hy the parties, shows a 95% or higher statistical probability of paternity~~.~~;

*(g) the person is presumed to be the child's natural father under the laws of the state or Indian territory in which the child was born.*

(2) An acknowledgment is binding on a parent who executes it, whether or not tho parent is a minor.

(3) ~~A~~ *Except for presumptions of paternity that are conclusive or irrebuttable under subsections (1)(g) and (5), a* presumption under this section may be rebutted:

*(a)* in an appropriate action by a preponderance of the evidence; *or*

*(b) by scientific evidence resulting from a blood test that excludes the person as the child's natural parent.*

(4) *(a)* A presumption of paternity established under this section is a sufficient basis for establishing a support order.

*(b) If a presumption is later rebutted or set aside and the person is under an order to pay support for the child, the person may only be relieved of support installments that accrued from the date of the order declaring the presumption to be rebutted.*

*(5) (a) An acknowledgment of paternity under subsection (1)(e) may be rescinded by a signatory at any time within 60 days after it was signed by filing a notice of withdrawal with the department of public health and human services. The notice of withdrawal must include an affidavit attesting that a copy of the notice was provided to any parent who signed the acknowledgment form.*

*(b) Without need for ratification by court or administrative proceedings, an acknowledgment of paternity under subsection (1)(e) becomes, as a matter of law, an irrebuttable presumption of paternity on the earlier of the date:*

*(i) the acknowledgment is not timely rescinded as provided in subsection (5)(a); or*

*(ii) a court or administrative judgment, decree, or order is entered that establishes paternity or a support order, when that proceeding includes the signatory.*

*(c) An irrebuttable presumption of paternity under this subsection (5) has the same force and effect as a district court judgment adjudicating paternity and may only be set aside for fraud, duress, or material mistake of fact. The burden of proof is on the person seeking to set the presumption aside. Except for good cause, legal responsibilities arising from the paternity acknowledgment may not be stayed pending the outcome of an action to set aside the presumption."*

**Section 87.** Section 40-6-111, MCA, is amended to read:

**"40-6-111. Pretrial proceedings.** (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing ~~shall~~ *must* be held. The court may order that the hearing be held before a referee. The public ~~shall~~ *must* be barred from the hearing. A record of the proceeding ~~shall~~ *must* be kept.

(2) Upon refusal of any witness, including a party, te testify under oath or produce evidence, the court may order ~~him~~ *the witness* to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that ~~his~~ *the* testimony or evidence might tend to incriminate ~~him~~ *the witness*, the court may grant ~~him~~ *the witness* immunity from all criminal liability on account of the testimony or evidence ~~he~~ *the witness* is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence ~~he~~ *that the witness* is required to produce, except for perjury committed in ~~his~~ *the* testimony. The refusal of a

HeinOnline -- 1997 vol. III 3501 1997

witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

*(3) Upon motion, a temporary support order may be issued at any time during a paternity action when there is clear and convincing evidence of paternity in the form of blood test results or other evidence. The temporary support order must be established according to the uniform child support guidelines adopted under 40-5-209."*

**Section 88.** Section 40-6-115, MCA, is amended to read:

**"40-6-115. Civil action.** (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified person at any time or by an identified person at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by the alleged father with respect to a person who is not subject to the jurisdiction of the court concerning sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of the alleged father's paternity of the child. A person who is identified and is subject to the jurisdiction of the court must be made a defendant in the action.

(4) If a blood test has been initially ordered under this part and a party objects to the blood test results, the objection must be filed within 20 days after service of the blood test results. If an objection is filed, *and upon the alleged father's advance payment for additional testing,* the court shall order an additional blood test. If no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. This subsection does not limit the right of a party to contest the identity of persons submitting to testing.

(5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood test, the district court shall enter an order declaring the alleged father the legal father of the child. The district court may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of blood testing.

*(6) Bills for pregnancy, childbirth, and paternity blood testing are admissible as evidence without third-party foundation testimony and are prima facie evidence of the amounts incurred."*

**Section 89.** Section 40-6-116, MCA, is amended to read:

**"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

HeinOnline -- 1997 vol. III 3502 1997

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the

department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

*(d) Child support obligations established under this section are subject to the registration and processing provisions of [sections 1 through 11].*

(7) The judgment or order, whether temporary or final, concerning child support and each modification of a judgment or order for child support must include a medical support order as defined in 40-5-804.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

*(c) If an obligor is excepted from paying support through income withholding, the support order must include as part of the order a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in [section 5].*

(9) *(a)* ~~For the purposes of income withholding as provided in subsection (8), whenever~~ *If* the district court establishes *paternity or establishes* or modifies a child support obligation, the judgment, decree, or order must include a provision

requiring the ~~parent obligated to pay support to inform~~ *parties to promptly file with* the court and~~, if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following~~ *to update, as necessary, information on*:

*(i) identity of the party;*

*[(ii) social security number;]*

*(iii) residential and mailing addresses;*

*(iv) telephone number;*

*(v) driver's license number;*

~~(a)~~*(vi)* ~~the~~ name, ~~and~~ address, *and telephone number* of the ~~parent's current~~ *party's* employer; *and*

~~(b) whether the parent has access to health insurance through an employer or other group; and~~

~~(c) if insurance coverage is available, the health insurance policy information.~~

*(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.*

*(b) The order must further direct that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider the due process requirements for notice and service of process to be met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.*

(10) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

*[(11) The social security number of a person subject to a paternity determination under this part must be recorded in the records relating to the matter. The recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]*"

**Section 90.** Section 40-6-117, MCA, is amended to read:

**"40-6-117. Enforcement of judgment or order.** (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may, *except as provided in 40-6-116(8) and [section 5],* order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(4) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support *obligation* to be paid, *without need for further order of the court,* to:

(i) the legal custodian of the minor child;

(ii) ~~(A) any other~~ *a* person, organization, or agency ~~having legal~~ *to which the legal custodian voluntarily or involuntarily relinquishes actual* physical custody of the ~~minor~~ child ~~or collecting child support on behalf of the minor child under a legal assignment of rights~~; or

~~(B) the court for the benefit of the minor child;~~

(iii) any other person, *organization,* or agency ~~designated as caretaker of the minor child by agreement of the legal custodian; or~~

~~(iv) any assignee or other person, organization, or agency authorized to receive or collect child support~~ *entitled by law, assignment, or similar reason to receive or collect the child support obligation.*

*(b) If the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.*

~~(b)~~*(c)* A judgment, decree, or order that omits the provision required by subsection (4)(a) is subject to the requirements of subsection (4)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

**Section 91.** Section 50-15-210, MCA, is amended to read:

**"50-15-210. Paternity acknowledgment.** (1) Upon the birth of a child to a mother unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of paternity pursuant to 40-6-105;

(b) provide written information, furnished by the department of public health and human services, describing the rights and responsibilities of paternity, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department of public health and human services shall establish the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use forms prescribed by the department *of public health and human services* for the acknowledgment of paternity.

*(4) If the child is born in this state, the department of public health and human services shall file an acknowledgment received under 40-6-105 or this section with the child's certificate of birth. If the child was not born in this state or if an acknowledgment received under 40-6-105 or this section cannot be filed with the child's certificate of birth, the department shall file the acknowledgment in an acknowledgment registry created and maintained for that purpose."*

**Section 92.** Section 50-15-223, MCA, is amended to read:

**"50-15-223. Certifieates of birth following adoption, legitimation, or determination or aeknowledgment of paternity.** (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, *court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction* has determined the paternity of the person *and information necessary to identify the original certificate of birth is provided*; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment may not be subject to inspection, except upon order of a district court, as provided by rule, or as otherwise provided by state law.

HeinOnline -- 1997 vol. III 3507 1997

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued hefore the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except upon order of a district court or as provided by rule adopted by tbe department.

(5) Upon written request of hoth parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child horn outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of hirtb have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed witb the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of hirth must he prepared on a form prescribed hy the department.

(7) When a new certificate of birth is establisbed by the department, the department may direct tbat all copies of tbe original certificate of birth in tbe custody of any other custodian of vital records in this state either be sealed from inspection or be forwardod to tbe department for sealing from inspection.

(8) (a) The department shall, upen request of tlie adopting parents, prepare and register a certificate of birth in this state for a person born in a foreign country who is not a citizen of tbe United States and who was adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court tbat reflects entry of an order of adoption, proof of tbe date and place of the child's birtb, and a request for tbe establishment of a certificate of birth from the court, tbe adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birtb. A statement must be included on the certificate indicating tbat it is not evidence of United States citizenship for the child for wbom it is issued.

(d) After registration of tlie certificate of birtli in the new name of the adopted person, tlie department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as providod by rule, or as otherwise provided by stato law.

(9) The department may promulgate rules necessary to implement this section."

HeinOnline -- 1997 vol. III 3508 1997

**Section 93.** Section 50-15-403, MCA, is amended to read:

**"50-15-403. Preparation and filing of death or fetal death certificate.** (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, *including the deceased's social security number, if any,* or, in the case of a fetal death, on the parents that is required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe, file the death or fetal death certificate with the local registrar in the registration area where the death occurred."

**Section 94.** Section 53-2-613, MCA, is amended to read:

**"53-2-613. Application for assistanee — assignment of support rights.** (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application must be submitted, in the manner and form prescribed by the department of public health and human services, and must contain information required by the department of public health and human services.

(2) A person by signing an application for public assistance assigns to the state, to the department of puhlic health and human services, and to the county welfare department all rights that the applicant may have to support and medical payments from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient; *and*

*(d) does not apply to support that accrued before the applicant received public assistance.*

*(4) If a person who is the legal custodian and child support obligee under a support order relinquishes physical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate*

HeinOnline -- 1997 vol. III 3509 1997

*when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.*

~~(4)~~*(5)* Whenever a child support or spousal support obligation is assigned to the department of public health and human services pursuant to this section, the following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimhurse public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of puhlic assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into witbout the participation of the department are void with respect to the state, the department, and tbe county welfare department.

*(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."*

**Section 95.** Section 61-5-107, MCA, is amended to read:

**"61-5-107. Application for license, instructlon permlt, or motorcycle endorsement.** (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Eacli application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

HeinOnline -- 1997 vol. III 3510 1997

(2) Each application must state the full name, date of birth, sex, ~~and~~ residence address of the applicant, *and if the application is for a commercial vehicle operator's license, social security number*, must briefly describe the applicant, and must state whether:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

*(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.*

~~(3)~~*(4)* When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

**Section 96.** Section 87-1-102, MCA, is amended to read:

**"87-1-102. Penalties.** (1) A person who purposely, knowingly, or negligently violates a provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than $50 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than $500 or more than $2,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall

HeinOnline -- 1997 vol. III 3511 1997

surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than $300 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than $200 or more than $600 or imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than $100 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than $500 or more than $2,000.

(3) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county jail for not more than 60 days, or both.

(4) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken

HeinOnline -- 1997 vol. III 3512 1997

for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county jail for not more than 60 days, or both.

(5) Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

*(6) If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days."*

**Section 97.** Section 87-1-108, MCA, is amended to read:

**"87-1-108. Suspeusion of privileges for failure to comply with citation or sentence.** (1) A person who fails to comply with the terms of a court citation, *the terms of an administrative suspension,* or fails to fulfill the obligations of any court-imposed sentence for a wildlife violation under this title, resulting in the issuance of a warrant for ~~his~~ *the person's* arrest, shall surrender any current hunting, fishing, and trapping licenses to the department, and ~~his~~ *the person's* privileges to hunt, fish, and trap and to hold a valid license to hunt, fish, or trap are suspended until the terms of the court citation or sentence are satisfied.

(2) A person who loses ~~his~~ *the person's* privileges under this section *or through an administrative process* must be notified by the department *or by the administrative authority* in person or by mail. A person who hunts, fishes, traps, purchases licenses, or refuses to surrender any current hunting, fishing, or trapping license in violation of this section is guilty of a misdemeanor and subject to the penalties prescribed in 87-1-102."

**Section 98. Report to legislature.** The department of public health and human services shall report to the regular session of the 56th legislature on progress toward resolving child support issues between the state, federal, and tribal governments.

**Section 99. Codification instruction.** (1) [Sections 1 through 11] are intended to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to [sections 1 through 11].

(2) [Section 12] is intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [section 12].

(3) [Section 13] is intended to be codified as an integral part of Title 40, chapter 5, part 1, and the provisions of Title 40, cbapter 5, part 1, apply to [section 13].

(4) [Section 14] is intended to be codified as an integral part of Title 19, chapter 2, part 9, and the provisions of Title 19, chapter 2, apply to [section 14].

HeinOnline -- 1997 vol. III 3513 1997

(5) [Section 15] is intended to be codified as an integral part of Title 19, chapter 20, part 3, and the provisions of Title 19, chapter 20, apply to [section 15].

**Section 100. Coordination instruction.** If House Bill No. 168 is passed and approved and if it includes the words "or upon a showing that the party's case was substantially prejudiced by the lack of an in-person hearing" or similar language in amendments to the following MCA sections, then that language is stricken from those sections:

17-4-105(4)(c)

40-5-189(1)

40-5-226(2)

40-5-414(3)

40-5-703(2)

40-5-824(5).

**Section 101. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 102. Two-thirds vote required.** Because 40-5-206 limits governmental liability by including a provision that a public entity that discloses certain information is not liable for negligent disclosure, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage of that provision. If the required vote is not obtained, the bracketed phrase contained in 40-5-206 is void.

**Section 103. Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1997.

(2) [Sections 1, 9, 10, and 13] are effective October 1, 1997.

(3) [Sections 2 through 8] are effective October 1, 1998.

**Section 104. Contingent termination — request for federal exemptions.** (1) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

HeinOnline -- 1997 vol. III 3514 1997

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9];

(b) [section 11];

(c) [sections 22 through 24];

(d) [section 93];

(e) [section 95];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

(a) [section 9];

(b) [section 11];

(c) [sections 22 through 24];

(d) [section 93];

(e) [section 95];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].

(5) (a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a).

(6) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate July 1, 1999.

(7) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement.

Approved May 12, 1997

HeinOnline -- 1997 vol. III 3515 1997

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HeinOnline -- 1997 vol. III 3516 1997

# RESOLUTIONS

## Passed by the

# FIFTY-FIFTH LEGISLATURE
# IN REGULAR SESSION

**Held at Helena, the Seat of Government**
**January 6, 1997, through April 23, 1997**

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**COMPILED BY MONTANA**
**LEGISLATIVE SERVICES DIVISION**

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HeinOnline -- 1997 vol. III 3517 1997

HeinOnline -- 1997 vol. III 3518 1997

# Senate Joint Resolutions

## SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

JOINT RULES OF THE MONTANA SENATE
AND HOUSE OF REPRESENTATIVES

CHAPTER 10

Administration

**10-10. Time of meeting.** Each house may order its time of meeting.

**10-20. Legislative day — duration.** (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for tbe day or at the time the house convenes for tbe following legislative day, whichever is earlier.

**10-30. Schedules.** The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

**10-40. Adjournment — recess — mceting place.** A house may not, without the consent of the otber, adjourn or recess for more tban 3 days or to any place otber than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

**10-50. Access of press.** Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from pbotographing, televising, or recording a legislative meeting or hearing.

**10-60. Conflict of interest.** A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose tbe fact to the house to which tbe member belongs.

**10-70. Telephone calls.** (1) Long-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for

HeinOnline -- 1997 vol. III 3519 1997

use of state telephones by their staff, including aides and interns, and may not authorize others to use state phones.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

**10-80. Joint employees.** The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

**10-85. Harassment prohibited.** (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or te the presiding officer if the offended party is tlie party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee, the violation must be reported to the employee's supervisor or, if the offender is the supervisor, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate.

(4) If the offended party is a supervisor, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee, the employee is subject to discipline or discharge.

**10-90. Legislative interns.** Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

**10-100. Legislative Serviccs Division.** (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

**10-110. Compensation of legislative employees.** The Legislature by joint resolution shall prescribe the compensation of the employees of each house.

**10-120. Engrossing and enrolling staff — duties.** (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

HeinOnline -- 1997 vol. III 3520 1997

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it bas heen received, unless further time is granted in writing by the presiding officer of the house in which the bill originatcd; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to tbe sponsor of the bill or amendment. The sponsor shall sign the clerical form to acknowledge notification of the clerical correction. The signed form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chair may be tlie principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chair is the principal sponsor for the purpose of this section.

**10-13[illegible]. Bills.** (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) introduced in duplicate; and

(d) for the original copy, covered with a cover page of a substantial material.

HeinOnline -- 1997 vol. III 3521 1997

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to he deleted, and new matter must he underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

**10-140. Voting.** (1) A hill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken hy ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

**10-150. Recording and publication of voting.** (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken hy ayes and noes and the names entered on the journal.

(2) Roll call votes must be taken hy ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence; or

(d) indefinitely postpone.

(3) A roll call vote must be taken on nonsuhstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society.

**10-160. Journal.** Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

HeinOnline -- 1997 vol. III 3522 1997

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

**10-170. Journals — authentication — availability.** (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives by the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30

Committees

**30-10. Committee chair.** Except as provided in Joint Rule 30-50, the chair of the Senate committee is the chair of all joint committees.

**30-20. Voting in joint committees.** (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee must agree before any action may be taken, unless otherwise specified by individual house rules.

**30-30. Conference committees.** (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

**30-40. Conference committee — enrolling.** A conference committee report shall give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

**30-50. Committee consideration of appropriation bills.** (1) All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately.

HeinOnline -- 1997 vol. III 3523 1997

(2) Meetings of the joint committee must be held upon call of the chair of the House Committee on Appropriations, who is chair of the joint committee.

(3) The committee chair of the Senate Committee on Finance and Claims or of the House Committee on Appropriations may be a voting member in the joint subcommittees if:

(a) either house has fewer memhers on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote.

**30-60. Estimation of revenue.** The Revenue Oversight Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature.

CHAPTER 40

Legislation

**40-10. Amendment to state constitution.** A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

**40-20. Appropriation bills.** (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Committee on Appropriations.

**40-30. Effeetive dates.** (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed therein (sections 1-2-201 and 1-2-202, MCA).

**40-40. Bili requests and introduetion — limits and proeedures.** (1) Prior to a regular session, a person entitled to serve in that session, hereafter referred to as a "member", is entitled to request bill drafting services from the Legislative Services Division, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

HeinOnline -- 1997 vol. III 3524 1997

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least five of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) The staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent bill requests of that member must receive a lower drafting priority than all other bills of members not in excess of five per member. A bill requested pursuant to subsection (5) must receive a lower drafting priority than all bills requested by members, unless the requesting member assigns that request to the member's five-request priority. A legislator draft must receive priority at each step of the drafting process. A legislator draft must be delivered to the Legislative Services Division by the 20th legislative day or the request is canceled. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by:

(a) the President of the Senate, the minority leader of the Senate, the Speaker of the House, and the minority leader of the House; or

(b) the House and the Senate.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form. The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them in duplicate to the requesting members. The original bill cover must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it in duplicate to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. In each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(5) Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced

HeinOnline -- 1997 vol. III 3525 1997

bill and may not be placed on a bill whose subject matter was requested by an agency or statutory or interim committee prior to the convening of the session. A bill draft request submitted at the request of an agency or committee prior to December 23 must be requested by an individual member by December 23 or the request is placed on hold. After December 23, an agency or committee bill must be requested by an individual member. An agency or statutory or interim committee bill request must be preintroduced or the request is canceled. Preintroduction must occur no later than 5 p.m. on the fifth working day prior to the convening of a legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form. The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office.

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may appear on the face of the preintroduced bill, or signatures may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

**40-50. Schedules for drafting requests and bill introduction.** The following schedules must be followed for submission of drafting requests and introduction of bills and resolutions.

| | Request Deadline 5:00 P.M. Legislative Day |
|---|---|
| • General Bills and Resolutions | 10 |
| • Revenue Bills | 17 |
| • Committee Bills and Resolutions | 36 |
| • Committee Revenue Bills | 62 |
| • Committee Bills implementing provisions of a general appropriation act | 75 |
| • Bills and Resolutions must be introduced within 2 legislative days after delivery. | |
| • Appropriation Bills | No Deadline |
| • Interim study resolutions | 75 |
| • Resolutions to express confirmation of appointments | No Deadline |

HeinOnline -- 1997 vol. III 3526 1997

| | |
|---|---|
| • Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules | No Deadline |

**40-60. Joint resolutions.** (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request, but not require, a legislative entity to conduct an interim study;

(c) adopt, amend, or repeal the joint rules;

(d) set salaries and other terms of employment for legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; or

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(3) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

**40-65. Appropriation required for bills requesting interim studies.** A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

**40-70. Bills with same purpose — vetoes.** (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

**40-80. Reproduction of full statute required.** A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

HeinOnline -- 1997 vol. III 3527 1997

**40-90. Bills — original purpose.** A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

**40-100. Fiscal notes.** (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each hill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) Unless the chief sponsor directs otherwise, the Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), the Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director tbat additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director has 8 days to prepare the estimate unless further time is granted by the presiding officer, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and tbe chief sponsor of the bill.

(5) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request tbe chief spensor's signature. The chief sponsor has 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

HeinOnline -- 1997 vol. III 3528 1997

(6) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) tbe chief sponsor.

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.

**40-110. Sponsor's fiscal note.** (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

**40-120. Substitute bills.** (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the suhstitute bill must be printed and reproduced.

HeinOnline -- 1997 vol. III 3529 1997

**40-130. Reading of bills.** Prior to passage, a bill must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title.

**40-140. Second reading — bill reproduction.** (1) If tbe majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

**40-150. Engrossing.** (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed. Committee of the Whole amendments must be included in the engrossed bill. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of tbe Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specifiod number of copies of the amendments to be printed.

**40-160. Enrolling.** (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer sball sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

HeinOnline -- 1997 vol. III 3530 1997

(4) A bill that has passed both houses of the Legislature by tbe 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed hy the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must he filed with the Secretary of State. Signed copies with chapter numhers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

**40-170. Amendment by second house.** (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the hill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has heen cast.

**40-180. Final action on a bill.** (1) When a bill heing heard by the second house has received its third reading or has been rejected, the second house must transmit it as soon as possible to the original house with notice of the second house's action.

(2) A hill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

**40-190. Transmittal of bills between houses.** (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

HeinOnline -- 1997 vol. III 3531 1997

**40-200. Transmittal deadlines.** (1) (a) A bill or amendment transmitted after tbe deadline established in this subsection (1) may be considered by the receiving bouse only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, or amendments considered by joint committee, must be transmitted from one bouse to the other on or before tbe 45th legislative day.

(ii) Amendments, except to appropriation bills and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills originating in tbe Senate must be transmitted to the House on or before the 71st legislative day.

(ii) House amendments to Senate revenue bills must be transmitted by the House to the Senate on or before the 82nd legislative day.

(iii) Revenue bills originating in the House must be transmitted to the Senate on or before the 71st legislative day.

(iv) Senate amendments to House revenue bills must be transmitted by the Senate to the House on or before the 82nd legislative day.

(v) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted no later than the 60th legislative day.

(b) Amendments to the resolutions must be transmitted to the house of origin no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

**40-210. Governor's veto.** (1) Except as provided in 40-65 and 40-180, eacb bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of tbe State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

HeinOnline -- 1997 vol. III 3532 1997

(d) referendum measures of the Legislaturo.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may he polled on a bill that it approved hy two-thirds of the members present or it may he reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

**40-220. Response to Governor's veto.** (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

**40-230. Governor's reecommendations for amendment.** (1) The Governor may return any hill to the Legislature with recommendations for amendment.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is suhject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and tbe originating house's approval or disapproval of the Governor's recommendations.

(b) If hoth houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

HeinOnline -- 1997 vol. III 3533 1997

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

**60-10. Suspension of joint rule — change in rules.** (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

**60-20. Reference to Mason's Manual.** Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

**60-30. Publication and distribution of joint rules.** (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

HeinOnline -- 1997 vol. III 3534 1997

CHAPTER 70

Statement of Legislative Intent

**70-10. Definition.** (1) For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill must express the common understanding of those components of the Legislature voting on the bill.

(2) This statement differs from a purpose clause, which is used in general to describe the broad overall objectives of a bill. A statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

**70-20. Limitation.** A statement of intent may not accompany any bill that does not statutorily require one unless a committee (standing committee, Committee of the Whole, or conference committee) agrees by a two-thirds vote to attach the statement.

**70-30. Statement of intent to accompany bill — when — how.** A statement of intent must accompany a bill as follows:

(1) A statement of intent is required for a bill delegating new rulemaking or licensing authority.

(2) A statement of intent must be included with the introduced bill for a bill requiring one. If a bill is found to require a statement of intent at any time in the legislative process, a statement of intent may be added under the procedure for amending a bill.

(3) A statement of intent must be included as a part of the bill between the title and the enacting clause under tbe heading "Statement of Intent".

**70-40. Modification.** Any committee considering a bill may recommend amendment of a previous statement of intent or recommend inclusion of a statement of intent. The statement of intent must be reflected in the history of the hill.

**70-50. Conference committee on statement of intent oniy.** (1) If the second house concurs in a bill without amendments but amends or supersedes a previous statement of intent, the bill may not be enrolled until both houses have agreed on a statement of intent. If the statement of intent is attached to a bill that does not statutorily require one, the conference committee can delete the statement in its entirety.

(2) A new statement of intent written by the second house must be processed in tbe same manner as a second house amendment.

(3) A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

Adopted January 18, 1997

HeinOnline -- 1997 vol. III 3535 1997

# SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE STUDY THE CHALLENGES CONFRONTING AND OPPORTUNITIES EMERGING FOR FAMILY FARMING AND RANCHING IN MONTANA; AND REQUIRING THE COMMITTEE TO REPORT ITS FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS.

WHEREAS, the tradition of family farming and ranching in Montana is increasingly threatened by factors not associated with agriculture; and

WHEREAS, tbe escalating cost of agricultural land is a barrier to new family farming and ranchbing operations and to tbe continuance of long-established family farming and ranchbing operations; and

WHEREAS, the promotion and preservation of family farming and ranchbing extends beyond romantic and noble ideals to the economic bedrock of Montana; and

WHEREAS, there exists a strong interdependence and economic synergy among Montana's family farms and ranches, commercial agricultural entities, financial institutions, main street businesses, state and local governments, including schools and universities, and others; and

WHEREAS, an exploration of the challenges facing family farming and ranching in Montana may lead to the identification of a range of opportunities for establishing new and preserving existing family farms and ranches in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to conduct a focused study of family farming and ranching in Montana witb the broad purposes of:

(1) developing an understanding of and an appreciation for tbe economic, environmental, cultural, and social importance of family farming and ranching;

(2) discerning the economic factors confronting the establisbment, continuation, and enhancement of family farming and ranchmg in Montana; and

(3) identifying challenges and opportunities related to the establisbment, continuation, and enhancement of family farms and ranchbes in Montana.

BE IT FURTHER RESOLVED, that the committee maintain as its primary focus:

(1) the factors of escalating agricultural land values and the barriers and destabilizing influences to family farming and ranchbing that result from escalating land values;

(2) options for mitigating the barriers and destabilizing influences of escalating agricultural land values, including:

HeinOnline -- 1997 vol. III 3536 1997

(a) alternatives to current tax provisions and land use regulations;

(b) the potential for greater use of conservation easements; and

(c) establishing or enhancing private, public, or joint private-public approaches to minimize debt service costs associated with establishing, continuing, or enhancing family farms and ranches in Montana; and

(3) options for enhancing the economic stability and vitality of family farms and ranches in Montana, including:

(a) the roles and functions of the state agricultural experiment stations and other services available or potentially available through the Montana University System; and

(b) public policies affecting family farm and ranch economics, especially federal agricultural policies, and opportunities for adding value to and exporting Montana's agricultural products.

BE IT FURTHER RESOLVED, that the committee:

(1) may request assistance from:

(a) the personnel of agencies of state and local governments, including the Montana University System;

(b) private entities that are integrally associated with or affected by family farming and ranching in Montana; and

(c) other persons who may have relevant information about or insights to family farming and ranching in Montana; and

(2) shall prepare a report of its findings, conclusions, options for further consideration, and recommendations, including legislation if advisable, to the Governor and the 56th Legislature.

Adopted March 6, 1997

# SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING ADDITIONAL PERFORMANCE MEASURES AND ASSESSMENT OF OUTCOMES FOR ADULTS IN CERTAIN JOB TRAINING PARTNERSHIP ACT PROGRAMS; AND ENCOURAGING THE TARGETING OF CERTAIN AVAILABLE JOB TRAINING PARTNERSHIP ACT FUNDS TO AT-RISK YOUTH AND YOUTH WHO HAVE COMMITTED OFFENSES.

WHEREAS, the state receives funds under the Job Training Partnership Act (JTPA) to operate adult and youth job training programs throughout Montana; and

WHEREAS, currently, assessment of the efficacy of certain JTPA-funded job training programs is conducted only once, at 13 weeks following completion of the programs; and

HeinOnline -- 1997 vol. III 3537 1997

WHEREAS, verification of employment consists only of contacts with current employers and employees; and

WHEREAS, job placements for participants in certain JTPA-funded training programs have not been compiled over sufficient durations to measure outcomes over longer terms; and

WHEREAS, youth job training and education services for at-risk youth and juvenile offenders are limited throughout the state; and

WHEREAS, the Youth Justice Advisory Council, reestablished by Executive Order No. 5-95, is responsible for promoting juvenile justice coordination and performance; and

WHEREAS, a 39% increase is projected in youth JTPA Title IIB funding.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 55th Legislature encourage the Governor and the Private Industry Councils to establish additional followup measures to identify long-term outcomes of adults participating in JTPA Title IIA programs. Additional followup should be conducted on 10% of the participants who are placed in employment by JTPA operators and should require followup at 13 weeks and at 26 weeks to more accurately determine, at a minimum, the actual duration of employment, type of occupation, employer, and week-by-week earning history. To the extent possible, employment data should be verified against available employment records, including records maintained on the unemployment insurance and workers' compensation insurance. These outcomes of the JTPA-funded job training programs should be compared to federal performance standards and verified against original placement data. This information should be included in the annual performance report of the state Job Training Bureau, Department of Labor and Industry, to the Governor.

BE IT FURTHER RESOLVED, that the 55th Legislature encourage the use of certain JTPA youth funds to be targeted to serve at-risk youth and juvenile offenders. Funding transfers between JTPA programs for at-risk youth and juvenile offenders should be completed at the federally established maximum levels to address geographic areas of the state where additional or supplemental juvenile programs are needed. Areas served should be determined by the Private Industry Councils, based on recommendations from the Youth Justice Advisory Council. The Private Industry Councils should have performance standards to address the needs of youth at risk and juvenile offenders, as identified by the Youth Justice Advisory Council. Any increases in JTPA Title IIB funding should target those areas.

Adopted April 7, 1997

# SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS AND THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN

HeinOnline -- 1997 vol. III 3538 1997

SERVICES TO PROVIDE ANNUAL SCREENING MAMMOGRAMS FOR WOMEN WHO QUALIFY FOR MEDICARE.

WHEREAS, breast cancer is second only to lung cancer as a cause of cancer death among all women and the second cause of cancer death for women who are 55 to 74 years of age; and

WHEREAS, 78% of women with breast cancer are over 50 years of age; and

WHEREAS, breast cancer mortality declined 5% between 1989 and 1993 and increased mammography is cited as one of the reasons for the decline in the death rate; and

WHEREAS, in 1990, Medicare, the federal health insurance program for the elderly and disabled, began covering screening mammograms every 2 years for women beneficiaries over 65 years of age; and

WHEREAS, Montana insurance provisions and Medicaid coverage allow baseline mammograms for women who are 35 years of age and under 40 years of age, a mammogram every 2 years for women who are 40 years of age and under 50 years of age, and a mammogram each year for women who are 50 years of age or older; and

WHEREAS, women who are 65 years of age or older who are Medicare beneficiaries should have coverage for annual mammograms to allow for early detection and subsequent treatment of breast cancer to prevent premature deaths from breast cancer.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States should change coverage requirements for Medicare to allow women over 65 years of age to receive annual mammogram screening.

BE IT FURTHER RESOLVED, that copies of this resolution will be sent by the Secretary of State, to the Montana Congressional Delegation, to the Secretary of the United States Department of Health and Human Services, and to the Administrator of the Health Care Financing Administration.

Adopted April 5, 1997

## SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO ACT IN A TIMELY FASHION TO REAUTHORIZE THE FEDERAL SURFACE TRANSPORTATION PROGRAM AND TO CONTINUE TO RECOGNIZE THE NATIONAL INTEREST IN THE INVESTMENT IN HIGHWAYS THAT SERVE AND CROSS RURAL WESTERN STATES.

WHEREAS, Montana's economy and the quality of life of its citizens benefit greatly from federal transportation and highway infrastructure investments; and

HeinOnline -- 1997 vol. III 3539 1997

WHEREAS, the nation's highways are a linked, interconnected system, with the nation as a whole benefiting from federal highway infrastructure investments in rural western states, such as Montana, where our Interstate and National Highway Systems provide a bridge for the safe and efficient movement of people and goods across this vast region; and

WHEREAS, the benefits to the nation and the states from the Federal-Aid Highway Program investments include:

(1) improved mobility to support our economy and our competitive international position;

(2) access to the nation's agricultural production, its manufactured goods, and its national parks and monuments;

(3) access and mobility for our national and civil defense forces; and

(4) social progress and quality of life for our citizens; and

WHEREAS, federal highway investments are supported entirely by the fees assessed every day on the users of the nation's highways; and

WHEREAS, the Federal Highway Trust Fund could substantially increase investments in highway infrastructure without any increase in fees te the users of the highway system; and

WHEREAS to continue the benefits of transportation and highway infrastructure investments, the Federal Surface Transportation Program must be reauthorized by the United States Congress before the program expires on Octoher 1, 1997.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress is urged to act promptly to reauthorize the Federal Surface Transportation Program and that this reauthorization should include:

(1) full investment of all Federal Highway Trust Fund balances, interest, and revenue in much-needed transportation and highway infrastructure;

(2) a high level of support for the nation's most important highways, our Interstate System and National Highway System routes;

(3) fair treatment of western, rural states in the distribution of Federal-Aid Highway Program funds between states, including recognition that the western states have vast highway systems that benefit the entire nation and few people to support them;

(4) regulatory reduction and program streamlining to improve the timeliness and cost-effectiveness of highway project delivery; and

(5) respect for the uniqueness of each state's approach to managing its transportation system. Solutions in small, densely populated eastern states may not make sense in the west. One size does not fit all, so the federal government should refrain from mandating solutions.

HeinOnline -- 1997 vol. III 3540 1997

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Director of the Montana Department of Transportation, the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and each member of the Montana Congressional Delegation.

Adopted April 5, 1997

# SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF LAND COMMISSIONERS TO LEASE THE OLD REGISTRAR OF MOTOR VEHICLES OFFICE TO THE POWELL COUNTY MUSEUM AND ARTS FOUNDATION FOR THE PURPOSE OF ENHANCEMENT OF THE MONTANA TERRITORIAL PRISON MUSEUM OR FOR OTHER COMMUNITY PURPOSES.

WHEREAS, the Powell County Museum and Arts Foundation bas since 1980 maintained the Montana Territorial Prison, more commonly known as the old Montana State Prison, in Deer Lodge in Powell County, Montana, as a museum and regional tourist attraction, expending substantial sums of money in the upkeep of the prison; and

WHEREAS, the old Registrar of Motor Vehicles Office, formerly the office of the warden of the Montana Territorial Prison, also located in Deer Lodge, is now empty and could be used to enhance the museum and regional tourist attraction or could be used for other appropriate community purposes; and

WHEREAS, the Powell County Museum and Arts Foundation would like to lease the old Registrar of Motor Vehicles Office from tbe state; and

WHEREAS, use of the old Registrar of Motor Vehicles Office to enhance the Montana Territorial Prison museum or for other appropriate community purposes would fulfill a substantial governmnent purpose by contributing to the community life of Deer Lodge and Powell County and by providing for the care and upkeep of the old Registrar of Moter Vehicles Office.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Board of Land Commissioners be urged to transfer the interest of the State of Montana in the old Registrar of Motor Vehicles Office by a lease to the Powell County Museum and Arts Foundation or its successor to be used to enhance tbe Montana Territorial Prison museum or for other appropriate community purposes.

(2) That the terms of the lease for the old Registrar of Motor Vehicles Office be added to the 99-year lease of the Montana Territorial Prison to the Powell County Museum and Arts Foundation entered into pursuant to Chapter 480, Laws of 1993.

HeinOnline -- 1997 vol. III 3541 1997

(3) That the Board of Land Commissioners be urged to establish appropriate conditions to protect the interests of the state on the transfer of the property, including a provision for reversion should the property cease to be used to enhance the Montana Territorial Prison or for another appropriate community purpose, and that the commitment to expend sums of money and the dedication of the property for public use for the benefit of the people of Deer Lodge or Powell County be considered by the Board of Land Commissioners as part or all of the consideration necessary to constitute full market value if it is determined that the state cannot transfer the property without obtaining full market value for the property.

(4) That the Secretary of State send a copy of this resolution to the Board of Land Commissioners.

Adopted April 5, 1997

## SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING JEFFERSON HIGH SCHOOL FOR BEING THE FIRST MONTANA SCHOOL SELECTED TO PARTICIPATE IN THE AMERICAN HIGH SCHOOL THEATRE FESTIVAL.

WHEREAS, Montana's public schools educate the entire child with extracurricular activities comprising an integral component of the educational system; and

WHEREAS, Jefferson High School has long been recognized for its entertaining and innovative theater productions; and

WHEREAS, a panel of collegiate theater professionals annually selects 20 high schools to participate in the American High School Theatre Festival; and

WHEREAS, Jefferson High School has been selected as the first school from Montana to ever be selected to participate in the American High School Theatre Festival and will appear on the United States team at the world's largest theater festival, the Fringe, in Edinburgh, Scotland.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That all Montanans congratulate Jefferson High School and take pride in the accomplishments of the students, teachers, and parents who have supported the Jefferson High School theater program.

Adopted April 5, 1997

## SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE EFFORTS OF THE GOVERNOR TO DEVELOP A PROPOSAL THAT

HeinOnline -- 1997 vol. III 3542 1997

INCLUDES FEDERAL PROPERTIES WITHIN MONTANA THAT CAN BE PRESENTED TO THE FEDERAL GOVERNMENT AS A SOLUTION TO THE LAND EXCHANGE REQUIREMENTS OF THE CROWN BUTTE AGREEMENT AND REQUESTING FEDERAL COMPENSATION FOR THE LOSS OF TAX REVENUE THAT WOULD HAVE ACCRUED TO THE STATE OF MONTANA AND ITS LOCAL GOVERNMENTS AS A RESULT OF THE CROWN BUTTE PROJECT.

WHEREAS, the United States of America, Crown Butte Resources, Inc., and Crown Butte Mines, Greater Yellowstone Coalition, Northwest Wyoming Resource Council, Sierra Club, Gallatin Wildlife Association, Wyoming Wildlife Federation, Montana Wildlife Federation, Wyoming Outdoor Council, and Beartooth Alliance entered into an agreement August 12, 1996; and

WHEREAS, the negotiation of this agreement did not include the State of Montana or individual Montana private property owners as parties; and

WHEREAS, Montana is willing to assist the federal government in finding suitable federal assets within the state that can be exchanged in whole or in part for assets owned by Crown Butte Resources, Inc., as required by the agreement; and

WHEREAS, Montana is willing to develop a process that will meet the performance requirements of the agreement and avoid future litigation regarding the assets exchanged; and

WHEREAS, Montanans jealously guard their constitutional rights to know and to participate through public involvement, and Montana is willing to develop a process that will meet the performance requirements of the agreement and avoid future litigation regarding the assets exchanged; and

WHEREAS, land with environmental, historic, or recreational value should be protected for the public's enjoyment; and

WHEREAS, Montana has a responsibility to stimulate economic prosperity for the citizens of the state; and

WHEREAS, as a result of this agreement, state and local jurisdictions in Montana will be deprived of significant levels of tax revenue that would have been received if the project were developed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature supports the efforts of the Governor to find federal properties within the state that can be exchanged with Crown Butte Resources, Inc., in order to satisfy the requirements of the agreement and at the same time provide public information concerning ongoing negotiations, protection for sensitive lands, and economic opportunity for Montanans.

BE IT FURTHER RESOLVED, that copies of this resolution will be sent by the Secretary of State to the Montana Congressional Delegation, the President of the United States, and Crown Butte Resources, Inc.

HeinOnline -- 1997 vol. III 3543 1997

BE IT FURTHER RESOLVED, that the federal government should compensate state and local jurisdictions in Montana for the loss of tax revenue that these jurisdictions would have received if the Crown Butte project were developed.

Adopted April 12, 1997

# SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO APPOINT AN INTERIM COMMITTEE TO STUDY THE EFFECTS OF AND POSSIBLE REMEDIES TO TELEMARKETING FRAUD; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 56TH LEGISLATURE.

WHEREAS, telemarketing fraud is an increasing problem in this state and throughout the country, with serious financial consequences for Montana citizens; and

WHEREAS, the perpetrators of telemarketing fraud prey on senior citizens, as well as others, using sophisticated methods of deception; and

WHEREAS, other states have enacted laws designed to deter and prosecute abuses by telemarketing firms and have met with mixed success; and

WHEREAS, federal laws and regulations aimed at protecting consumers from telemarketing fraud may be inadequate to the task of preventing and punishing this type of crime; and

WHEREAS, members of the Montana Legislature have introduced bills in this and previous sessions to counter telemarketing fraud, but none have been passed into law.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee to:

(1) identify the types, frequency, and consequences of telemarketing fraud that are occurring in Montana;

(2) consider the pace of technological change and the constitutional protection afforded to free speech and interstate commerce and the effects these conditional elements may have on available methods of countering telemarketing fraud;

(3) examine and evaluate the methods adopted in other states to curb and punish telemarketing fraud;

(4) consider the value and effectiveness of federal laws and regulations with respect to various types of telemarketing;

HeinOnline -- 1997 vol. III 3544 1997

(5) explore practical methods of deterring and prosecuting telemarketing fraud; and

(6) analyze the feasibility of legislation that would effectively enforce restrictions on telemarketing in Montana.

BE IT FURTHER RESOLVED, that the interim committee seek and welcome information and other constructive input from the Department of Commerce, the Department of Justice, the Public Service Commission, telecommunications companies, senior citizens' groups, federal agencies, and other interested persons in the process of evaluation and before reaching conclusions and making recommendations for future legislative action.

BE IT FURTHER RESOLVED, that the committee report its findings, conclusions, and recommendations to the 56th Legislature.

Adopted April 9, 1997

## SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING AND CELEBRATING THE CONTRIBUTIONS OF CHET BLAYLOCK TO MONTANA AND AUTHORIZING THE PERMANENT PLACEMENT OF A SENATE MEMORIAL IN THE CAPITOL.

WHEREAS, in a time in search of heroes and inspiration, public service is often overlooked; and

WHEREAS, Chet Blaylock made a lifetime commitment to public service and idealism, serving Montana as a veteran, teacher, 1972 Constitutional Convention delegate, legislator, and mentor; and

WHEREAS, while adamant about his vision for Montana and outspoken in his pursuit of that vision, Chet's feet never wandered from the ethical high road; and

WHEREAS, in both his personal and professional life, Chet led by example, instilling values and teaching through a constant commitment to the appropriate; and

WHEREAS, Chet's ready wit, which was never mean-spirited, and infectious smile were a constant reminder of the good in all Montanans; and

WHEREAS, Chet never shirked a commitment or a duty, even when the personal sacrifice was readily apparent; and

WHEREAS, Chet made the ultimate sacrifice, doing what he had done throughout his life, speaking to the people whom he cared about in the place that he loved, sharing his concerns about today and his vision for tomorrow; and

WHEREAS, Chet's passing has left a personal void that his memory can partially fill by instilling a sense of personal values and pride in all Montanans and encouraging all Montanans to work for a better place, while maintaining personal integrity and ethical conduct.

HeinOnline -- 1997 vol. III 3545 1997

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montanans celebrate the life and mourn the death of Chet Blaylock by following his tutelage and adhering to the standards that he established.

BE IT FURTHER RESOLVED, that a permanent Senate memorial be authorized for placement in the Capitel, that the first person to be honored by the plaque on the memorial be Chet Blaylock, and that in the future the names of Senators wbose careers are marked by distinguished service to the people of Montana be referred for inclusion on the memorial to the Senate Legislative Administration Committee for recommendation to the Senate.

Adopted April 11, 1997

## SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO STUDY THE NEED FOR AND METHOD OF PROVIDING A PROGRAM FOR THE VOLUNTARY REGISTRATION OR CERTIFICATION OF HOME COMPANIONS; AND REQUIRING A REPORT TO THE 56TH LEGISLATURE.

WHEREAS, the number of elderly persons in Montana will increase dramatically in the next several decades because of the attractiveness of Montana as a place to retire and because of the aging of the "baby boomers"; and

WHEREAS, there has been a rapid increase in tbe types of home care services available in the homes of persons who need those services; and

WHEREAS, there is a licensing requirement for home health agencies providing certain types of skilled care by licensed medical professionals, but there are no state requirements for individuals providing unskilled assistance to elderly persons or persons with disabilities in their homes; and

WHEREAS, there is potential for abuse of elderly persons or persons with disabilities by unqualified workers; and

WHEREAS, Montana should promote quality in home care programs but should also recognize the inherently flexible nature of unskilled assistance and companionship to elderly persons and persons with disabilities; and

WHEREAS, the creation of a voluntary registration or certification program to ensure that persons who provide assistance and companionship in a home are sufficiently skilled and screened would be of great benefit to elderly persons or persons with disabilities who want to remain in tbeir own homes or who want a measure of increased confidence that a person hired to assist them with activities of daily living possesses the expected skills and character.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1997 vol. III 3546 1997

That the Department of Public Health and Human Services be requested to study the benefits and costs associated with developing a voluntary registration or certification program for unlicensed individuals providing care and assistance to elderly persons or persons with disabilities in their homes. The Department may conduct the study by convening a group of affected and interested persons. Issues to be addressed in the study should include:

(1) a definition of home companion, which may include individuals who provide services, such as help with activities of daily living, respite care, or companionship;

(2) the level of training necessary for voluntary registration or certification of home companions;

(3) the necessity for a background investigation as a prerequisite to voluntary registration or certification of home companions and the type of background investigation, if any, to be required;

(4) the appropriate method of ensuring that home companions meet prerequisites for voluntary registration or certification;

(5) the personal and agency costs associated with a voluntary registration or certification program for home companions; and

(6) the type of services that may be offered by a person representing to the public that the person is a registered or certified home companion.

BE IT FURTHER RESOLVED, that the Department be requested to report the findings of the study to the 56th Legislature in the manner provided by section 5-11-210, MCA, and to include in the report options for legislative consideration regarding the need for and method of voluntary registration or certification of home companions.

Adopted April 16, 1997

HeinOnline -- 1997 vol. III 3547 1997

# Senate Resolutions

## SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING RULES TO GOVERN THE PROCEEDINGS OF THE SENATE.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted.

RULES OF THE MONTANA SENATE

CHAPTER 1

Administration

**S10-10. Officers of the Senate.** The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

**S10-20. Term of office.** The term of office for the officers and employees of the Senate established by law shall be until the succeeding Legislature is organized. Nothing in this rule shall be construed to mean the staff will be full-time employees during an interim.

**S10-30. President pro tempore and other officers.** (1) The Senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and shall be the judga of the elections, returns, and qualifications of the Senators.

**S10-40. Voting by presiding officer.** Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

**S10-50. Presiding officer and duties.** (1) The presiding officer of the Senate shall be the President of the Senate who sball be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator wbo is named is vested during such time with all the powers of the President.

(4) The President shall have general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

HeinOnline -- 1997 vol. III 3548 1997

(5) The President shall issue cards to the media to allow floor access, and reporters holding such passes shall be subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

**S10-60. Succession.** (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for two or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act when the President is absent, the President may do so, or the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate shall have the powers of the President and supersede the powers of the President pro tempore.

**S10-70. President-elect.** The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, shall have the responsibility and authority to assume the duties of President of the Senate.

**S10-80. Legislative Administration Committee duties.** (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

HeinOnline -- 1997 vol. III 3549 1997

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension and/or retention of such employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

**S10-90. Senate employees.** (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) A standing committee chair shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by their respective whip.

**S10-100. Secretary of the Senate and duties.** The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

**S10-110. Sergeant-at-Arms duties.** Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

HeinOnline -- 1997 vol. III 3550 1997

(5) perform such duties as required by other rules and the Senate.

**S10-120. Legislative aides.** Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

**S10-130. Senate journal.** (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide such information as may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal shall be reproduced and distributed.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

## CHAPTER 2

## Decorum

**S20-10. Questions of order.** The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other

HeinOnline -- 1997 vol. III 3551 1997

Senators. No Senator may speak more than once on an appeal without the consent of a majority of the Senate.

**S20-20. Questions of privilege.** Questions of privilege in order of precedence are those:

(1) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(2) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

**S20-30. Recognition by chair.** A Senator desiring to speak shall rise and address the presiding officer, and once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at tbe same time, the presiding officer shall name the order of the speakers.

**S20-40. Senators ealled to order.** When a Senator has been called to order, the Senator shall sit down until the presiding officer detormines whether the Senator is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the Secretary of the Senate.

**S20-50. Communications to Senate.** A communication to the Senate shall be addressed to the President and sball bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

**S20-60. Floor privileges.** (1) When the Senato is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited members of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

**S20-70. Distribution of materials on floor.** No materials may be distrihuted on the Senators' desks in the chamber unless such material bears the signature of the bearer and a Senator and has been approved by the President.

## CHAPTER 3

## Committees

**S30-10. Committee appointments.** (1) The Senate shall elect a Committee on Committees consisting of five members. If the Senate is evenly divided

between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

**S30-20. Standing committees.** The standing committees of the Senate are as follows:

(1) Agriculture, Livestock, and Irrigation

(2) Bills and Journal

(3) Business and Industry

(4) Education and Cultural Resources

(5) Ethics

(6) Finance and Claims

(7) Fish and Game

(8) Highways and Transportation

(9) Judiciary

(10) Labor and Employment Relations

(11) Legislative Administration

(12) Local Government

(13) Natural Resources

(14) Public Health, Welfare, and Safety

(15) Rules

(16) State Administration

(17) Taxation

**S30-30. Members of Select Committee on Long-Range Planning.** Members of the Select Committee on Long-Range Planning may participate and vote as members of the Committee on Finance and Claims on issues considered by them as members of the select committee.

**S30-40. Ex officio members.** Each floor leader is an ex officio member of all committees in order to establish a quorum.

HeinOnline -- 1997 vol. III 3553 1997

**S30-50. Chair's duties.** (1) The chair of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and authenticating committee reports and minutes by signing them. Committee minutes must comply with 2-3-212, MCA, and must contain a summary of the witness testimony, a summary of the discussion by the committee, and the action taken by the committee.

(2) After adjournment of the session, the chair shall turn the original and two complete copies of the minutes over to the Secretary of the Senate who shall deliver them unbound to the Legislative Services Division librarian who will arrange to have them copied in an archivable format. A copy will be provided to the Legislative Services Division and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a copy of the minutes of the Committee on Finance and Claims. After copying, the original minutes will be delivered to the Montana Historical Society.

**S30-60. Committee reports to Senate.** (1) Reports of standing committees shall be read on Order of Business No. 2, and no debate may be had on any report unless a minority report has been submitted.

(2) Committee reports may recommend approval, disapproval, or placement on consent calendar, with or without amendment. They may not be reported to the Senate without recommendation.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make such motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary.

(4) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

**S30-70. Pairs.** Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for such voting shall be reflected in the committee minutes.

**S30-80. Committee hearings.** (1) No bill or reselution shall be considered or become a law unless referred to a committee and returned therefrom.

(2) A bill may be rereferred at any time before its passage.

**S30-90. Notice of committee hearings — exceptions.** (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the 3rd legislative day;

(b) less than 7 legislative days before the transmittal deadline applicable to the subject of the hearing; or

HeinOnline -- 1997 vol. III 3554 1997

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.

(2) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(3) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

**S30-100. Majority/minority reports.** If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the Senate.

**S30-110. Consent calendar eligibility.** (1) To be eligible for the consent calendar, legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended).

(2) A motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report.

(3) Appropriations or revenue bills may not be recommended for the consent calendar.

**S30-120. Reconsideration in committee.** Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

**S30-130. Committee requested legislation.** (1) At least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee.

(3) When a committee has proposed an amendment, the chair is the principal sponsor.

**S30-140. Ethics Committee.** The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee. The Rules Committee shall recommend procedures to the Senate for the referral of matters to the Ethics Committee.

## CHAPTER 4

## Legislation

**S40-10. Types of legislation.** The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Services Division and signed by a Senator. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may:

HeinOnline -- 1997 vol. III 3555 1997

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for legislative employees; and

(e) accomplish other legislative duties required by law; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments;

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

**S40-20. Introduction.** (1) Upon receiving a bill or resolution in duplicate from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Services Division shall be responsible for ensuring the preintroduction intent from each Senator and presenting such legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

**S40-30. Additional sponsors.** (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

**S40-40. Reading limitations.** (1) Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) No bill or resolution shall have more than one reading on the same day except the last legislative day.

(3) No amendment may be offered on third reading.

**S40-50. Rules for questions requiring other than a majority vote.** (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

HeinOnline -- 1997 vol. III 3556 1997

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill shall again be placed on third reading in the Senate to determine if the required number of votes has been cast.

**S40-60. Scheduling for second reading.** (1) All bills and resolutions, except those recommended for the consent calendar, that have been reported by a committee, accepted by the Senate, and reproduced shall be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) Legislation shall be arranged on the agenda in numerical order unless bills are grouped as companion bills or are placed in order otherwise by the Senate or Committee of the Whole.

**S40-70. Consent calendar procedure.** (1) Legislation reported by committee for placement on the consent calendar shall be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Legislation shall be immediately posted (as soon as it is received as a third reading version) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the President of the Senate will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

(3) Any three Senators may submit written objections to the Secretary of the Senate, and the legislation must then be removed from the consent calendar and added to the regular second reading agenda.

(4) Consent calendar legislation must be added to the end of the third reading agenda and clearly identified as "consent calendar" and voted on individually.

(5) Consent calendar legislation passed on third reading will then be transmitted to the House of Representatives.

## CHAPTER 5

## Floor Action

**S50-10. Attendance.** Unless excused, Senators shall be present at every sitting of the Senate and shall vote on questions put before the Senate.

**S50-20. Orders of business.** After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

HeinOnline -- 1997 vol. III 3557 1997

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of hills and consent calendar bills;

(10) unfinisbed business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of husiness requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

**S50-30. Limitations on debate.** No Senator may speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

**S50-40. Procedure upon offering a motion.** (1) When a motion is offered it shall be restated by the presiding officer. If requested by the presiding officer or a Senator, it shall be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be witbdrawn by the Senator offering it at any time before it is amended or voted upon.

**S50-50. Precedence of motions.** (1) When a question is under debate only the following privileged and subsidiary motions shall be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

HeinOnline -- 1997 vol. III 3558 1997

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) of this section have precedence in the order listed.

(3) A question may he indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration.

(4) No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

**S50-60. Nondebatable motions.** The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on tbe table;

(7) for tho previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

**S50-70. Amending motions.** No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

**S50-80. Previous question.** (1) Except as provided in subsection (2) of this rule, the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other suhsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

HeinOnline -- 1997 vol. III 3559 1997

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

**S50-90. Reconsideration.** (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question.

(2) A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there shall be no further action until the succeeding legislative day.

**S50-100. Dividing a question.** A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

**S50-110. Conference committee reports.** When a conference committee report is filed with the Secretary of the Senate, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

**S50-120. Second reading.** (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in Committee of the Whole shall be read by a summary of its title. Proposed amendments shall be considered; then the bill shall be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation shall remain on second reading.

**S50-130. Committee of the Whole amendments.** (1) All Committee of the Whole amendments shall be prepared, stipulating the date and time of

HeinOnline -- 1997 vol. III 3560 1997

preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, shall be printed in the journal, along with the name of the sponsor and the vote on each.

**S50-140. Motions in Committee of the Whole.** (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

**S50-150. Committee of the Whole — generally.** (1) The committee may not appoint subcommittees.

(2) The committee may not punish its members for misconduct, but may report disorder to the Senate.

**S50-160. Voting on second reading.** (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

**S50-170. Third reading procedure.** (1) All legislation passing second reading shall be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other

HeinOnline -- 1997 vol. III 3561 1997

appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

**S50-180. Senate voting.** (1) A roll call vote shall be taken on tbe request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators shall be called alphabetically, unless an electronic voting system is used. A Senator may not vote or change a vote after the decision is announced from the cbair. A Senator may not explain a vote until after the decision is announced from the chair.

**S50-190. Pairs.** (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator ageinst. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it shall bind the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

**S50-200. Call of the Senate.** (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of such Senators present shall direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator shall not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

**S50-210. House amendments to Senate legislation.** (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce tbe amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

HeinOnline -- 1997 vol. III 3562 1997

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

## CHAPTER 6

### Rules

**S60-10. Senate rules.** (1) A motion to amend or adopt a rule of the Senate shall be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may he suspended temporarily by a two-thirds vote.

**S60-20. Mason's Manual of Legislative Procedure.** Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate in all cases not covered by these rules.

**S60-30. Quorum.** A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in such manner and under such penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

## CHAPTER 7

### Nominations from the Governor

**S70-10. Nominations.** (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any such office, the Governor shall appoint some fit person to dischargo the duties thereof until the next meeting of the Senate, when the Governor shall nominate a person to fill such office.

**S70-20. Introduction and first reading of nominations.** (1) Nominations received from the Governor are:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee.

(2) The above procedure constitutes introduction and first reading of the nominations.

HeinOnline -- 1997 vol. III 3563 1997

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

**S70-30. Committee process.** (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request for a simple resolution to include the nominees specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on tho resolution after appropriate public notice has been made.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator must request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report shall include an amendment deleting that nominee.

(b) When a nominee has been separated at tlie request of a Senator, the committee chair slialL submit a bill draft request for a simple resolution to include only the nominee so separated. When the resolution has been prepared and introduced, tlie committee shall take executive action on the resolution. When a hearing on tlie separated nomination was held prior to the coinmittee's preliminary standing committee report, no additional hearing need be held before the committee takes action on the separate resolution. After the coinmittee's executive action, the committee chair slialL issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with tlie preliminary standing committee report and shall issue a final standing committee report to bo distributed to each Senator stating the coinmittee's recommendation concerning the nominee.

(6) The Secretary will read tlie reports under Order of Business No. 2, reports of standing committees.

(7) Thereafter, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

HeinOnline -- 1997 vol. III 3564 1997

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

(2) a motion to lift a call of the Senate (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature); and

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators).

Adopted January 16, 1997

# SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Commerce, in accordance with the provision of sections 2-15-111 and 2-15-1801, MCA:

Dr. Peter Blouke, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate for the Regnlar Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 10, 1997

HeinOnline -- 1997 vol. III 3565 1997

# SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Administration, in accordance with the provision of sections 2-15-111 and 2-15-1001, MCA:

Ms. Lois Menzies, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate for the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 3, 1997

# SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below desiguated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Agriculture in accordance with the provision of sections 2-15-111 and 2-15-3001, MCA:

Mr. Ralph Peck, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate for the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 3, 1997

HeinOnline -- 1997 vol. III 3566 1997

# SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, helow designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As members of the Pacific Northwest Electric Power and Conservation Planning Council, in accordance with section 90-4-402, MCA:

Mr. John N. Etchart, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. Stan Grace, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate for the Regular Session of the 55th Legislature of the State of Montana does herehy concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 5, 1997

# SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Environmental Quality, in accordance with the provisions of sections 2-15-111 and 2-15-3501, MCA:

Mr. Mark Simonich, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination

HeinOnline -- 1997 vol. III 3567 1997

and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 17, 1997

## SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Commissioner of the Department of Labor and Industry, in accordance with the provisions of sections 2-15-111 and 2-15-1701, MCA:

Ms. Pat Haffey, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does bereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 19, 1997

## SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Fish, Wildlife, and Parks, in accordance with the provisions of sections 2-15-111 and 2-15-3401, MCA:

Mr. Patrick Graham, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

HeinOnline -- 1997 vol. III 3568 1997

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 17, 1997

## SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below desiguated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Transportation, in accordance with the provisions of sections 2-15-111 and 2-15-2501, MCA:

Mr. Marvin W. Dye, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 27, 1997

## SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, helow designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Revenue, in accordance with the provisions of sections 2-15-111 and 2-15-1302, MCA:

Ms. Mary Bryson, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

HeinOnline -- 1997 vol. III 3569 1997

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 25, 1997

## SENATE RESOLUTION NO. 12

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Natural Resources and Conservation, in accordance with the provisions of sections 2-15-111 and 2-15-3301, MCA:

Mr. Arthur R. "Bud" Clinch, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 25, 1997

## SENATE RESOLUTION NO. 13

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Military Affairs, in accordance with the provisions of sections 2-15-111 and 2-15-1201, MCA:

HeinOnline -- 1997 vol. III 3570 1997

Major General John Prendergast, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of tho State of Montana does herehy concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 20, 1997

## SENATE RESOLUTION NO. 14

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Corrections, in accordance with the provisions of sections 2-15-111 and 2-15-2301, MCA:

Mr. Rick Day, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to tbe Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 12, 1997

## SENATE RESOLUTION NO. 15

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION OF APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 13, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination of an appointment, below designated, that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

HeinOnline -- 1997 vol. III 3571 1997

As Director of the Department of Public Health and Human Services, in accordance with the provisions of sections 2-15-111 and 2-15-2201, MCA:

Ms. Laurie Ekanger, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 25, 1997

## SENATE RESOLUTION NO. 16

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE KENNETH ROGER NEILL AS DISTRICT JUDGE, EIGHTH JUDICIAL DISTRICT, GREAT FALLS, MONTANA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

Kenneth Roger Neill, as District Judge, Eighth Judicial District, Great Falls, Montana, to replace the late District Judge Robert P. Goff.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 55tb Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted February 19, 1997

## SENATE RESOLUTION NO. 17

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 6, 1997, TO THE SENATE.

HeinOnline -- 1997 vol. III 3572 1997

WHEREAS, the Governor of the State of Montana has made the nominations of appointments below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Alternative Health Care Board, in accordance with section 2-15-1840, MCA:

Dr. Michael Bergkamp, Helena, Montana, appointed for a term ending September 1, 2000.

Ms. Dolly Browder, Missoula, Montana, appointed for a term ending September 1, 1997.

Dr. Kathleen Stevens, Billings, Mentana, appointed for a term ending September 1, 1999.

Dr. Nancy Dunne, Missoula, Montana, appointed for a term ending September 1, 1997.

Dr. Thomas Rasmussen, Helena, Montana, appointed for a term ending September 1, 1998.

(2) As members of the Board of Architects, in accordance with section 2-15-1871, MCA:

Ms. Pamela Hill, Bozeman, Montana, appointed for a term ending March 27, 1998.

Mr. Thomas Geelan, Havre, Montana, appointed for a term ending March 27, 1998.

Mr. Eugene Vogl, Billings, Montana, appointed for a term ending March 27, 1999.

(3) As members of the Board of Athletics, in accordance with section 2-15-1882, MCA:

Mr. John Kinna, Bozeman, Montana, appointed for a term ending April 25, 1999.

Mr. Gary Langley, Helena, Montana, appointed for a term ending April 25, 1998.

Mr. Andrew Vandolah, Conrad, Montana, appointed for a term ending April 25, 1997.

(4) As members of the State Banking Board, in accordance with section 2-15-1803, MCA:

Mr. Douglass Morton, Kalispell, Montana, appointed for a term ending July 1, 1998.

Ms. Shirley Gierke, Miles City, Montana, appointed for a term ending July 1, 1998.

Mr. Loren Tucker, Virginia City, Montana, appointed for a term ending July 1, 1999.

HeinOnline -- 1997 vol. III 3573 1997

Mr. Robert Baxter, Thompson Falls, Montana, appointed for a term ending July 1, 1999.

(5) As members of the Board of Barbers, in accordance with section 2-15-1856, MCA:

Mr. Max Demars, Big Timber, Montana, appointed for a term ending July 1, 1998.

Ms. Monica Eisenzimer, Columbia Falls, Montana, appointed for a term ending July 1, 1999.

Ms. Adeline Fisher, Butte, Montana, appointed for a term ending July 1, 1999.

(6) As a member of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Dr. Patrick Montgomery, Missoula, Montana, appointed for a term ending July 1, 1999.

(7) As members of the Board of Clinical Lahoratory Science Practitioners, in accordance with section 2-15-1863, MCA:

Ms. Eileen Flynn, Townsend, Montana, appointed for a term ending April 16, 1999.

Mr. David Walker, Kalispell, Montana, appointed for a term ending April 16, 1997.

Ms. JoAnn Schneider, Clancy, Montana, appointed for a term ending April 16, 1999.

(8) As members of the Board of Cosmetologists, in accordance with section 2-15-1857, MCA:

Mr. Dick Meyers, Billings, Montana, appointed for a term ending July 1, 1999.

Ms. Verna Dupuis, Bozeman, Montana, appointed for a term ending July 1, 1997.

Mr. Wendell Peterson, Missoula, Montana, appointed for a term ending July 1, 2000.

(9) As members of the Board of County Printing, in accordance with section 2-15-1811, MCA:

Mr. Roy Aafedt, Great Falls, Montana, appointed for a term ending April 1, 1997.

Ms. Nancy Clark, Ryegate, Montana, appointed for a term ending April 1, 1997.

Ms. Fern Hart, Missoula, Montana, appointed for a term ending April 1, 1997.

Mr. Verle Rademacher, White Sulphur Springs, Montana, appointed for a term ending April 1, 1997.

Mr. Curtiss Starr, Malta, Montana, appointed for a term ending April 1, 1997.

HeinOnline -- 1997 vol. III 3574 1997

(10) As members of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Dr. Thad Langford, Bozeman, Montana, appointed for a term ending March 29, 2000.

Dr. Wayne Hansen, Billings, Montana, appointed for a term ending March 29, 2001.

Mr. Henry Stisb, Dillon, Montana, appointed for a term ending March 29, 1997.

(11) As members of the State Electrical Board, in accordance with section 2-15-1874, MCA:

Mr. Charles Sweet, Kalispell, Montana, appointed for a term ending July 1, 2000.

Mr. Gene Kolstad, Billings, Montana, appointed for a term ending July 1, 2001.

(12) As members of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Mr. Roger Perkins, Laurel, Montana, appointed for a term ending December 31, 2000.

Mr. Joe Gerbase, Billings, Montana, appointed for a term ending December 31, 2000.

Mr. Russell Hudson, Libby, Montana, appointed for a term ending December 31, 2000.

Mr. Daniel Dennehy, Butte, Montana, appointed for a term ending December 31, 1998.

Ms. Cindy Younkin, Bozeman, Montana, appointed for a term ending December 31, 1998.

Mr. Paul Hanson, Glendive, Montana, appointed for a term ending December 31, 1998.

Dr. Garon Smitb, Missoula, Montana, appointed for a term ending December 31, 2000.

(13) As members of the Fisb, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Dr. Dale Tasb, Dillon, Montana, appointed for a term ending January 1, 1999.

Ms. Darlyne Dascher, Fort Peck, Montana, appointed for a term ending January 1, 1999.

(14) As a member of the Board of Funeral Service, in accordance with section 2-15-1853, MCA:

HeinOnline -- 1997 vol. III 3575 1997

Mr. John Michelotti, Billings, Montana, appointed for a term ending July 1, 2000.

(15) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Mr. Keith Arntzen, Hilger, Montana, appointed for a term ending April 18, 1998.

(16) As members of the Montana Health Facility Authority, in accordance with section 2-15-1815, MCA:

Mr. Sidney Brubaker, Terry, Montana, appointed for a term ending January 1, 1999.

Ms. Dalyse Flynn, Townsend, Montana, appointed for a term ending January 1, 1999.

Mr. Greg Hanson, Missoula, Montana, appointed for a term ending January 1, 1999.

(17) As members of the Board of Hearing Aid Disponsers, in accordance with section 2-15-1850, MCA:

Mr. Dudley Anderson, Missoula, Montana, appointed for a term ending July 1, 1997.

Ms. Kristy Foss, Billings, Montana, appointed for a term ending July 1, 1998.

Mr. Edward G. Van Tighem, Great Falls, Montana, appointed for a term ending July 1, 1999.

Ms. Lee Micken, Bozeman, Montana, appointed for a term ending July 1, 1999.

(18) As members of the Preservation Review Board, in accordance with section 2-15-1512, MCA:

Mr. Chris King, Winnett, Montana, appointed for a term ending October 1, 1999.

Mr. David Johns, Butte, Montana, appointed for a term ending October 1, 1999.

Mr. Donald Wetzel, Billings, Montana, appointed for a term ending October 1, 1999.

Mr. Dennis Deppmeier, Billings, Montana, appointed for a term ending October 1, 2000.

Mr. Kirk Michels, Livingston, Montana, appointed for a term ending October 1, 2000.

Mr. Steve Aaberg, Lewistown, Montana, appointed for a term ending October 1, 2000.

HeinOnline -- 1997 vol. III 3576 1997

(19) As members of the Montana Historical Society Board of Trustees, in accordance with section 22-3-104, MCA:

Mr. John Burke, Butte, Montana, appointed for a term ending July 1, 2000.

Mr. Jack Hayne, Dupuyer, Montana, appointed for a term ending July 1, 2000.

Ms. Ana Breden, Scobey, Montana, appointed for a term ending July 1, 2000.

Ms. Jean Birch, Great Falls, Montana, appointed for a term ending July 1, 2001.

Mrs. Anne Hibbard, Helena, Montana, appointed for a term ending July 1, 2001.

Ms. Virginia Lucht, Bigfork, Montana, appointed for a term ending July 1, 2001.

(20) As members of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Mr. H. Allen Shumate, Helena, Montana, appointed for a term ending January 20, 1998.

Mr. Joe Erickson, Cascade, Montana, appointed for a term ending January 20, 1998.

Dr. Skip Score, Helena, Montana, appointed for a term ending January 20, 1999.

(21) As a member of the Board of Housing, in accordance with section 2-15-1814, MCA:

Ms. Waneeta Farris, Forsyth, Montana, appointed for a term ending January 1, 1999.

(22) As members of the Board of Landscape Architects, in accordance with section 2-15-1872, MCA:

Ms. Pati Jo O'Reilly, Shelby, Montana, appointed for a term ending July 1, 1997.

Mr. Jim Foley, Billings, Montana, appointed for a term ending July 1, 2000.

(23) As members of the State Library Commission, in accordance with section 22-1-101, MCA:

Ms. Mary Doggett, White Sulphur Springs, Montana, appointed for a term ending May 22, 1998.

Mr. Harold Stearns, Helena, Montana, appointed for a term ending May 22, 1999.

Ms. Dorothy Laird, Whitefish, Montana, appointed for a term ending May 22, 1999.

(24) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

HeinOnline -- 1997 vol. III 3577 1997

Mr. John Paugh, Bozeman, Montana, appointed for a term ending March 1, 2001.

Mr. Lee Cornwell, Glasgow, Montana, appointed for a term ending March 1, 2001.

(25) As memhers of the Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Dr. Lawrence McEvoy, Clancy, Montana, appointed for a term ending Septemher 1, 1999.

Dr. Faust Alvarez, Helena, Montana, appointed for a term ending September 1, 1999.

Ms. Debbie Barrett, Dillon, Montana, appointed for a term ending September 1, 1997.

Dr. Terence Calderwood, Missoula, Montana, appointed for a term ending September 1, 2000.

(26) As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Ms. Kathy Doeden, Miles City, Montana, appointed for a term ending February 1, 2000.

Mr. Monte Dolack, Missoula, Montana, appointed for a term ending February 1, 2000.

Mr. Jack Hines, Big Timber, Montana, appointed for a term ending Fehruary 1, 2000.

Ms. Marilyn Olson, Sidney, Montana, appointed for a term ending February 1, 2000.

(27) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1845, MCA:

Ms. Donna K. Jennings, Missoula, Montana, appointed for a term ending May 28, 2000.

Mr. Ray Hoffman, Butte, Montana, appointed for a term ending May 28, 1998.

Ms. Tina Vauthier, Billings, Montana, appointed for a term ending May 28, 2001.

(28) As members of the Board of Nursing, in accordance with section 2-15-1844, MCA:

Ms. Terry Buhre, Lewistown, Montana, appointed for a term ending July 1, 1999.

Ms. Nancy Heyer, Missoula, Montana, appointed for a term ending July 1, 1999.

HeinOnline -- 1997 vol. III 3578 1997

Ms. Nancy Walker, Great Falls, Montana, appointed for a term ending July 1, 2000.

Ms. Jean Ballantyne, Billings, Montana, appointed for a term ending July 1, 2000.

(29) As members of the Board of Occupational Therapy Practice, in accordance with section 2-15-1859, MCA:

Ms. Barbara Tamietti, Stockett, Montana, appointed for a term ending December 31, 1998.

Ms. Lynn Davis Benson, Billings, Montana, appointed for a term ending December 31, 1998.

Ms. Diana Margaret Leonard, Great Falls, Montana, appointed for a term ending December 31, 1999.

Ms. Linda Botten, Great Falls, Montana, appointed for a term ending December 31, 2000.

(30) As members of the Board of Optometry, in accordance with section 2-15-1846, MCA:

Dr. Larry Obie, Havre, Montana, appointed for a term ending April 4, 1999.

Dr. Douglas McBride, Billings, Montana, appointed for a term ending April 3, 2000.

Ms. Charliene Staffanson, Deer Lodge, Montana, appointed for a term ending April 3, 1999.

(31) As members of the Board of Passenger Tramway Safety, in accordance with section 2-15-1896, MCA:

Mr. Bill Flechsenhar, Cascade, Montana, appointed for a term ending January 1, 2000.

Mr. Scott Bowen, Big Sky, Montana, appointed for a term ending January 1, 2000.

(32) As a member of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Jim Rice, Helena, Montana, appointed for a term ending January 1, 2000.

(33) As members of the Board of Pharmacy, in accordance with section 2-15-1843, MCA:

Mr. Wayne Hedman, Hamilton, Montana, appointed for a term ending July 1, 2000.

Mr. John Poush, Billings, Montana, appointed for a term ending July 1, 2001.

(34) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

HeinOnline -- 1997 vol. III 3579 1997

Ms. Cheryl Glasser, Glendive, Montana, appointed for a term ending July 1, 1998.

Mr. Jeffrey S. Pallister, Great Falls, Montana, appointed for a term ending July 1, 1999.

(35) As members of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Donald Kent, Bozeman, Montana, appointed for a term ending May 4, 1999.

Mr. Elmer LaZure, Helena, Montana, appointed for a term ending May 4, 1999.

Ms. Jo Hawkins, Helena, Montana, appointed for a term ending May 4, 1999.

Mr. Robert Nault, Havre, Montana, appointed for a term ending May 4, 1999.

Mr. Timothy Coleman, Belgrade, Montana, appointed for a term ending May 4, 2000.

Mr. Terry Campbell, Helena, Montana, appointed for a term ending May 4, 1999.

(36) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1891, MCA:

Mr. Gary Gray, Great Falls, Montana, appointed for a term ending August 1, 1998.

Ms. Mary Luntsford, Kalispell, Montana, appointed for a term ending August 1, 1998.

(37) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1873, MCA:

Mr. David Bowman, Ennis, Montana, appointed for a term ending July 1, 1999.

Mr. David Gibson, Bozeman, Montana, appointed for a term ending July 1, 1999.

Mr. James Shockley, Victor, Montana, appointed for a term ending July 1, 1999.

Dr. Fred Walter, Butte, Montana, appointed for a term ending July 1, 1999.

(38) As a member of the Board of Psychologists, in accordance with section 2-15-1851, MCA:

Mrs. JoAnn Witt, Carter, Montana, appointed for a term ending September 1, 2000.

(39) As members of the Board of Public Accountants, in accordance with section 2-15-1866, MCA:

Ms. Ellen Solem, Chinook, Montana, appointed for a term ending July 1, 2000.

HeinOnline -- 1997 vol. III 3580 1997

Mr. Robert Wolfe, Conrad, Montana, appointed for a term ending July 1, 2001.

(40) As members of the Board of Public Education, in accordance with section 2-15-1507, MCA:

Mr. Storrs Bishop, Ennis, Montana, appointed for a term ending February 1, 2003.

Mr. Kirk J. Miller, Havre, Montana, appointed for a term ending February 1, 2002.

(41) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1848, MCA:

Dr. Daniel Alzheimer, Helena, Montana, appointed for a term ending July 1, 1998.

Mr. Jim Winter, Great Falls, Montana, appointed for a term ending July 1, 1998.

Dr. Dennis Yutani, Glasgow, Montana, appointed for a term ending July 1, 1999.

Ms. Debbie Sanford, Lewistown, Montana, appointed for a term ending July 1, 1999.

Mr. Alan Sevier, Glendive, Montana, appointed for a term ending July 1, 1999.

Ms. Cynthia Smith Finch, Billings, Montana, appointed for a term ending July 1, 1999.

(42) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1868, MCA:

Ms. Cheryl Van Every, Sidney, Montana, appointed for a term ending May 1, 1998.

Ms. Janet Davis, Billings, Montana, appointed for a term ending May 1, 1998.

Mr. Roger Jacobson, Kalispell, Montana, appointed for a term ending May 1, 1999.

(43) As members of the Board of Realty Regulation, in accordance with section 2-15-1867, MCA:

Mr. John Beagle, Sidney, Montana, appointed for a term ending May 9, 1999.

Ms. Laura Odegaard, Billings, Montana, appointed for a term ending May 9, 2000.

Ms. Shelly Noe, Absarokee, Montana, appointed for a term ending May 9, 1999.

(44) As members of the Board of Regents of Higher Education, in accordance with section 2-15-1505, MCA:

Mr. Michael Green, Malta, Montana, appointed for a term ending June 1, 1997.

HeinOnline -- 1997 vol. III 3581 1997

Ms. Margie Thompson, Butte, Montana, appointed for a term ending February 3, 2003.

(45) As members of tbe Board of Respiratory Care Practitioners, in accordance with section 2-15-1860, MCA:

Dr. Richard Blevins, Great Falls, Montana, appointed for a term ending January 1, 2000.

Mr. Rich Lundy, Billings, Montana, appointed for a term ending January 1, 2000.

(46) As members of the Board of Sanitarians, in accordance with section 2-15-1861, MCA:

Ms. Melissa Tuemmler, Ulm, Montana, appointed for a term ending July 1, 1998.

Mr. John Shea, Missoula, Montana, appointed for a term ending July 1, 1999.

(47) As members of the Montana Board of Science and Technology Development, in accordance with section 2-15-1818, MCA:

Dr. Rebecca Mahurnin, Bozeman, Montana, appointed for a term ending January 1, 1999.

Mr. Dolph Harris, Sidney, Montana, appointed for a term ending January 1, 1999.

Dr. Larry Gianchetta, Missoula, Montana, appointed for a term ending January 1, 1999.

Ms. Susan Riplett, Billings, Montana, appointed for a term ending January 1, 1999.

(48) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1849, MCA:

Mr. Norman Peters, Townsend, Montana, appointed for a term ending December 31, 1998.

Ms. Lynn Harris, Miles City, Montana, appointed for a term ending December 31, 1999.

Ms. Linda Solem, Kalispell, Montana, appointed for a term ending December 31, 1999.

(49) As a member of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

Mr. Mike Becker, Helena, Montana, appointed for a term ending January 1, 1999.

(50) As a member of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

HeinOnline -- 1997 vol. III 3582 1997

Mr. Tom Horn, Cohagen, Montana, appointed for a term ending April 28, 1999.

(51) As a memher of the State Tax Appeals Board, in accordance with section 15-2-101, MCA:

Ms. Linda Vaughey, Helena, Montana, appointed for a term ending March 1, 2001.

(52) As memhers of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Mr. Ruben McKinney, Havre, Montana, appointed for a term ending May 18, 2000.

Ms. Barbara Ellestad, Gallatin Gateway, Montana, appointed for a term ending May 18, 1998.

Mr. Thaddeus Mayer, Missoula, Montana, appointed for a term ending May 18, 2001.

(53) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1852, MCA:

Dr. Deborah Yarborough, Kalispell, Montana, appointed for a term ending July 31, 2000.

Ms. Mary Hinebaugh, Rosehud, Montana, appointed for a term ending July 31, 2000.

Dr. Kenneth Brown, Billings, Montana, appointed for a term ending July 31, 2001.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 18, 1997

## SENATE RESOLUTION NO. 18

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REVISING CERTAIN SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the senate rules be amended as follows:

**"S30-60. Committee reports to Senate.** (1) Reports of standing committees shall be read on Order of Business No. 2, and no dehate may be had on any report unless a minority report has been suhmitted.

HeinOnline -- 1997 vol. III 3583 1997

(2) Committee reports may recommend approval or disapproval, with or without amendment. They may not be reported to the Senate without recommendation.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make such motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary.

(4) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken."

**"S30-140. Ethics Committee.** (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee. The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senator during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law by a Senator while acting in the capacity of Senator.

(3) If there is a recommendation from the Ethics Committee, the recommendation is made to the Senate."

**"S40-40. Reading limitations.** (1) Every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) No bill or resolution shall have more than one reading on the same day except the last legislative day.

(3) No amendment may be offered on third reading."

**"S40-60. Scheduling for second reading.** (1) All bills and resolutions that have been reported by a committee, accepted by the Senate, and reproduced shall be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

HeinOnline -- 1997 vol. III 3584 1997

(3) Legislation shall be arranged on the agenda in numerical order unless bills are grouped as companion bills or are placed in order otherwise by the Senate or Committee of the Whole."

**"S50-20. Orders of business.** After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess."

**"S50-160. Voting on second reading.** (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote te accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) Except as provided in subsection (3), if a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(3) If a motion under subsection (2) fails on a tie vote, the bill remains on second reading."

Adopted April 17, 1997

HeinOnline -- 1997 vol. III 3585 1997

# SENATE RESOLUTION NO. 19

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 1, 1997, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, designated below, that have been submitted to the Senate by the Governor:

(1) As members of the Board of County Printing, in accordance with section 2-15-1811, MCA:

Mr. Roy Aafedt, Great Falls, Montana, appointed for a term ending April 1, 1999.

Ms. Nancy Clark, Ryegate, Montana, appointed for a term ending April 1, 1999.

Ms. Fern Hart, Missoula, Montana, appointed for a term ending April 1, 1999.

Mr. Verle Rademacher, White Sulphur Springs, Montana, appointed for a term ending April 1, 1999.

Mr. Curtis Starr, Malta, Montana, appointed for a term ending April 1, 1999.

(2) As members of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Dr. Sheldon Ivers, Great Falls, Montana, appointed for a term ending March 29, 2002.

Ms. Nancy Rupert, Billings, Montana, appointed for a term ending March 29, 2002.

Mr. Henry Stish, Dillon, Montana, appointed for a term ending March 29, 2002.

Mr. Clifford Christenot, Libby, Montana, appointed for a term ending March 29, 2002.

(3) As members of tbe Board of Housing, in accordance with section 2-15-1814, MCA:

Mr. Thomas Welch, Dillon, Montana, appointed for a term ending January 1, 2001.

Ms. Rhonda Carpenter, Great Falls, Montana, appointed for a term ending January 1, 2001.

Mr. Robert Savage, Sidney, Montana, appointed for a term ending January 1, 2001.

Mr. William Oser, Billings, Montana, appointed for a term ending January 1, 2001.

HeinOnline -- 1997 vol. III 3586 1997

(4) As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Mr. Robert Morrison, Billings, Montana, appointed for a term ending February 1, 2002.

Ms. Connie Clarke, Miles City, Montana, appointed for a term ending February 1, 2002.

Ms. Carol Brenden, Scobey, Montana, appointed for a term ending February 1, 2002.

Mr. John Dudis, Kalispell, Montana, appointed for a term ending February 1, 2002.

Ms. Carol Novotne, Ft. Harrison, Montana, appointed for a term ending February 1, 2002.

(5) As a member of the Board of Optometry, in accordance with section 2-15-1846, MCA:

Dr. Cynthia Kinna Johnson, Bozeman, Montana, appointed for a term ending April 3, 2001.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 25, 1997

## SENATE RESOLUTION NO. 20

A RESOLUTION OF THE SENATE OF THE 55TH LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 17, 1997, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments designated below, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Mr. William Metz, Laurel, Montana, appointed for a term ending January 1, 2001.

Mr. Byron Bayers, Twin Bridges, Montana, appointed for a term ending January 1, 2001.

HeinOnline -- 1997 vol. III 3587 1997

Mr. Fred Booth, Fort Benton, Montana, appointed for a term ending January 1, 2001.

Mr. Douglas Freeman, Hardin, Montana, appointed for a term ending January 1, 2001.

Mr. Ron Mercer, Helena, Montana, appointed for a term ending January 1, 2001.

(2) As a memher of the Board of Architects, in accordance with section 2-15-1871, MCA:

Mr. John Peterson, Kalispell, Montana, appointed for a term ending March 27, 2000.

(3) As members of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Ms. Patti Mitchell, Dillon, Montana, appointed for a term ending January 1, 2000.

Dr. Karlene Berish, Billings, Montana, appointed for a term ending January 1, 2000.

(4) As members of the Montana Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Alan Evans, Roundup, Montana, appointed for a term ending January 1, 2001.

Mr. Gerald Feda, Glasgow, Montana, appointed for a term ending January 1, 2001.

Mr. Rogor Knapp, Hysham, Montana, appointed for a term ending January 1, 2001.

Mr. James Royan, Missoula, Montana, appointed for a term ending January 1, 2001.

Mr. John Sutton, Butte, Montana, appointed for a term ending January 1, 1999.

(5) As members of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Mr. Charles Decker, Libby, Montana, appointed for a term ending January 1, 2001.

Mr. Stanley Meyer, Great Falls, Montana, appointed for a term ending January 1, 2001.

Mr. David Simpson, Hardin, Montana, appointed for a term ending January 1, 2001.

(6) As members of the Hard-rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

HeinOnline -- 1997 vol. III 3588 1997

Ms. Tammy Johnson, Whitehall, Montana, appointed for a term ending January 1, 2001.

Ms. Carol Kienenberger, Dodson, Montana, appointed for a term ending January 1, 2001.

Mr. Roger Kordner, Lincoln, Montana, appointed for a term ending January 1, 2001.

(7) As members of the Montana Health Facility Authority, in accordance with section 2-15-1815, MCA:

Ms. Joyce Asay, Forsyth, Montana, appointed for a term ending January 1, 2001.

Ms. Gayle Carpenter, Helena, Montana, appointed for a term ending January 1, 2001.

Dr. Amos Little, Helena, Montana, appointed for a term ending January 1, 2001.

Mr. Michael Varone, Helena, Montana, appointed for a term ending January 1, 2001.

(8) As a member of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1850, MCA:

Dr. Steven Butler, Billings, Montana, appointed for a term ending July 1, 1997.

(9) As a member of the Board of Trustees of the Historical Society of Montana, in accordance with section 22-3-104, MCA:

Mr. Ed Henrich, Anaconda, Montana, appointed for a term ending July 1, 1999.

(10) As members of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Dr. James Scott, Great Falls, Montana, appointed for a term ending January 20, 2000.

Ms. Isabelle Devlin, Terry, Montana, appointed for a term ending January 20, 2000.

(11) As members of the Commission for Human Rights, in accordance with section 2-15-1706, MCA:

Ms. Gloria "Patt" Etchart, Glasgow, Montana, appointed for a term ending January 1, 2001.

Ms. Evelyn Stevenson, Pablo, Montana, appointed for a term ending January 1, 2001.

Ms. S. Jane Lopp, Kalispell, Montana, appointed for a term ending January 1, 2001.

HeinOnline -- 1997 vol. III 3589 1997

(12) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Mr. Dick Anderson, Helena, Montana, appointed for a term ending Fehruary 1, 2001.

Mr. James Cowan, Seeley Lake, Montana, appointed for a term ending February 1, 2001.

Mr. Troy McGee, Sr., Helena, Montana, appointed for a term ending Fehruary 1, 2001.

Mr. Bill Price, Lewistown, Montana, appointed for a term ending February 1, 2001.

Mr. Warren Vaughn, Billings, Montana, appointed for a term ending February 1, 2001.

(13) As a member of the Judicial Nomination Commission, in accordance with section 3-1-1001, MCA:

Mr. David Bliss, Conrad, Montana, appointed for a term ending January 1, 2001.

(14) As members of the Board of Lahor Appeals, in accordance with section 2-15-1704, MCA:

Ms. Carol Vega, Butte, Montana, appointed for a term ending January 1, 2001.

Mr. Joseph Thares, Helena, Montana, appointed for a term ending January 1, 2001.

(15) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Mr. George Hammond, Hardin, Montana, appointed for a term ending March 1, 2003.

Ms. Meg Smith, Glen, Montana, appointed for a term ending March 1, 2003.

(16) As members of the Board of Milk Control, in accordance with section 2-15-3105, MCA:

Mr. Jesse Russell Gleason, Fairfield, Montana, appointed for a term ending January 1, 2001.

Mrs. Dixie Hertel, Moore, Montana, appointed for a term ending January 1, 2001.

Mr. Milton "Swede" Olson, Whitewater, Montana, appointed for a term ending January 1, 2001.

(17) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Mr. Gary Weer, Deer Lodge, Montana, appointed for a term ending January 1, 2001.

HeinOnline -- 1997 vol. III 3590 1997

Ms. Roxanne Wilson, Busby, Montana, appointed for a term ending January 1, 2001.

(18) As members of the Board of Passenger Tramway Safety, in accordance with section 2-15-1896, MCA:

Ms. Sherry Lersbak, Troy, Montana, appointed for a term ending January 1, 2001.

Mr. Randy Schilling, Polaris, Montana, appointed for a term ending January 1, 2001.

Mr. John Kattell, Missoula, Montana, appointed for a term ending January 1, 1999.

(19) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Leo Perkins, Deer Lodge, Montana, appointed for a term ending January 1, 2001.

Mr. Brad Talcott, Great Falls, Montana, appointed for a term ending January 1, 2001.

Mr. Thomas Schneider, Helena, Montana, appointed for a term ending January 1, 2001.

Mr. Tom Foley, Helena, Montana, appointed for a term ending January 1, 1999.

Mr. Lloyd Doney, East Helena, Montana, appointed for a term ending January 1, 1999.

(20) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

Dr. B. John Heetderks, Belgrade, Montana, appointed for a term ending July 1, 2000.

Ms. Christine Jensen, Clinton, Montana, appointed for a term ending July 1, 2000.

(21) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1891, MCA:

Ms. Mariann Calnan, Great Falls, Montana, appointed for a term ending August 1, 1999.

Mr. Michael Ames, Colstrip, Montana, appointed for a term ending August 1, 1998.

Mr. Gary Boyer, Great Falls, Montana, appointed for a term ending August 1, 1999.

(22) As a member of the Board of Psychologists, in accordance with section 2-15-1851, MCA:

HeinOnline -- 1997 vol. III 3591 1997

Dr. Dawn Birk, Miles City, Montana, appointed for a term ending September 1, 2001.

(23) As members of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

Mr. Dick Heineman, Wibaux, Montana, appointed for a term ending January 1, 2001.

Ms. Gloria Paladichuk, Helena, Montana, appointed for a term ending January 1, 2001.

(24) As a member of the Board of Public Education, in accordance with section 2-15-1507, MCA:

Mr. Bob Brown, Whitefish, Montana, appointed for a term ending February 1, 2004.

(25) As a member of the Board of Regents of Higher Education, in accordance with section 2-15-1505, MCA:

Mr. Ed Jasmin, Bigfork, Montana, appointed for a term ending February 1, 2004.

(26) As members of the Board of Respiratory Care Practitioners, in accordance with section 2-15-1860, MCA:

Ms. Jennifer Graupmann, Great Falls, Montana, appointed for a term ending February 1, 2001.

Ms. Iris Bungay, Cut Bank, Montana, appointed for a term ending February 1, 2001.

Ms. Linda Davis, Townsend, Montana, appointed for a term ending January 1, 2001.

(27) As members of the Montana Board of Science and Technology Development, in accordance with section 2-15-1818, MCA:

Mr. Doug Lair, Big Timber, Montana, appointed for a term ending January 1, 2001.

Mr. Haven Holsapple, Hamilton, Montana, appointed for a term ending January 1, 2001.

Mr. Monte Giese, Great Falls, Montana, appointed for a term ending January 1, 2001.

Mr. Will Brooke, Bozeman, Montana, appointed for a term ending January 1, 2001.

Mr. Loren Smith, Great Falls, Montana, appointed for a term ending January 1, 2001.

(28) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1854, MCA:

HeinOnline -- 1997 vol. III 3592 1997

Mr. James Armstrong, Fort Harrison, Montana, appointed for a term ending January 1, 2001.

Mr. Ervin Booth, Roundup, Montana, appointed for a term ending January 1, 2001.

Ms. Mary Meis, Shelby, Montana, appointed for a term ending January 1, 2001.

Mr. Patrick Wolberd, Billings, Montana, appointed for a term ending January 1, 2001.

(29) As a member of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

Ms. Laurie Shadoan, Bozeman, Montana, appointed for a term ending April 28, 1999.

(30) As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Mr. Gregory Thornquist, Helena, Montana, appointed for a term ending January 1, 2003.

(31) As members of the Transportation Commission, in accordance with section 2-15-2502, MCA:

Mr. Robert KcKenna, Helena, Montana, appointed for a term ending January 1, 2001.

Ms. Patricia Abelin, Bozeman, Montana, appointed for a term ending January 1, 2001.

Mr. Thorm Forseth, Billings, Montana, appointed for a term ending January 1, 2001.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 55th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 25, 1997

HeinOnline -- 1997 vol. III 3593 1997

# House Joint Resolutions

## HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 1998-99 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING THE JUNE 30, 1996, GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 1997-98 AND 1998-99.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail for all operating funds the proposed expenditures and estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, section 5-18-107(5), MCA, requires the Revenue Oversight Committee to estimate the amount of revenue projected to be available for legislative appropriation and to introduce legislation setting forth the Committee's current revenue estimate for the biennium; and

WHEREAS, section 5-12-302(7), MCA, requires the Legislative Fiscal Analyst to assist the Revenue Oversight Committee in its revenue estimating duties; and

WHEREAS, because of the complexity of the myriad variables involved in revenue forecasting and the diversity of sources from which state revenue is obtained, it is increasingly difficult to project revenue in order to prepare a balanced budget for the ensuing biennium; and

WHEREAS, the revenue estimates contained in this resolution provide the basis for a comprehensive analysis of the state's financial condition; and

WHEREAS, it is in the best interests of the state that revenue forecasts be discussed and arrived at in public hearings at which all interested parties may attend and participate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1997 vol. III 3594 1997

That the state general fund revenue for fiscal years 1997, 1998, and 1999 be estimated to be $992,450,000, $1,036,805,000, and $1,067,051,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accept for budget purposes the unreserved fund balance of $30,145,000 for the general fund, prepared according to generally accepted accounting principles as published in the audited state financial statements as of June 30, 1996.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use the revenue estimates (and the underlying assumptions) contained in this resolution as the official revenue estimates for fiscal years 1997-98 and 1998-99.

## GENERAL FUND REVENUE

The projections for total general fund revenue during the 1998-99 biennium are based on an assumption of a continuation of Montana law as it existed on January 1, 1997.

The revenue estimates contained in the following tables are based on the assumptions stated previously in this resolution and those listed in the following tables.

## ECONOMIC ASSUMPTIONS

### Revenue Oversight Committee

| Year | Assumption | 1996 | 1997 | 1996 | 1999 |
|---|---|---|---|---|---|
| Montana Population & Employment | | | | | |
| CY | Population July 1 (Millions) | 0.886 | 0.901 | 0.917 | 0.934 |
| CY | Nonfarm Employment (Thousands) | 358.300 | 366.000 | 373.900 | 382.000 |
| Montana Income | | | | | |
| CY | Total Personal Income (Millions) | $16,551.630 | $17,349.705 | $18,189.688 | $19,098.768 |
| CY | Net Farm Income (Millions) | $503.363 | $514.746 | $536.271 | $536.039 |
| CY | Wage & Salary Income (Millions) | $8,092.569 | $8,482.358 | $8,897.264 | $9,336.430 |
| Individual Income Tax | | | | | |
| CY | Wage & Salary Growth (Percent Change) | 5.14% | 4.82% | 4.89% | 4.94% |
| CY | Interest/Dividend Growth (Percent Change) | 4.43% | 4.26% | 2.94% | 2.31% |
| CY | Net Business Income (Percent Change) | 3.80% | 3.60% | 2.50% | 1.60% |
| CY | Capital Gains/Losses Income (Percent Change) | 5.00% | 5.00% | 5.00% | 5.00% |
| CY | Rent/Royalty/Partnership Income (Percent Change) | 5.00% | 5.00% | 5.00% | 5.00% |
| CY | Taxable Pension/Social Security (Percent Change) | 8.00% | 8.00% | 8.00% | 8.00% |
| CY | All Other Income (Percent Change) | 811.38% | 89.06% | 47.21% | 32.27% |
| FY | Individual Income Tax Audits (Millions) | $10.318 | $11.238 | $12.199 | $12.541 |
| Corporate Income Tax | | | | | |
| CY | US Corporate Profits Before Taxes (Billions) | $644.900 | $676.500 | $766.300 | $721.000 |
| CY | MT Corporate Taxable Income (Millions) | $853.735 | $871.958 | $892.151 | $912.941 |
| FY | Corporate Income Tax Audits (Millions) | $7.972 | $8.222 | $8.447 | $8.214 |
| Inflation & Interest Rates | | | | | |
| CY | Consumer Price Index (Percent Change) | 2.89% | 2.68% | 2.73% | 2.72% |
| CY | Short-Term Interest Rate (Percent) | 5.20% | 5.04% | 4.91% | 4.90% |

HeinOnline -- 1997 vol. III 3595 1997

| Year | Assumption | 1996 | 1997 | 1998 | 1999 |
|---|---|---|---|---|---|
| CY | Long-Term Interest Rate (Percent) | 7.38% | 6.61% | 6.35% | 6.31% |
| FY | Short-Term Interest Rate (Percent) | 5.47% | 5.12% | 4.98% | 4.91% |
| FY | Long-Term Interest Rate (Percent) | 7.45% | 7.00% | 6.48% | 6.33% |
| FY | TCA Average Yield (Percent) | 5.49% | 5.51% | 5.31% | 5.31% |
| FY | TCA Average Balance w/Trans (Millions) | $296.929 | $275.296 | $272.851 | $265.363 |
| FY | TRANS Issue Size (Millions) | $101.200 | $59.500 | $59.500 | $59.500 |
| FY | Permanent Trust Gains/Losses (Millions) | $0.363 | $0.363 | $0.363 | $0.363 |
| FY | Treasure State Endowment Gains/Losses (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| FY | Common School Trust Gains/Losses (Millions) | $0.196 | $0.173 | $0.185 | $0.179 |
| FY | Resource Indemnity Trust Gains/Losses (Millions) | $0.235 | $0.235 | $0.235 | $0.235 |
| FY | Parks Trust Gains/Losses (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| FY | Arts Trust Gains/Losses (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| Natural Resource Tax | | | | | |
| CY | Severance Tax Oil Production (Million Barrels) | 15.339 | 14.843 | 14.405 | 14.070 |
| CY | Montana Oil Price (Per Barrel) | $18.035 | $17.649 | $17.625 | $18.244 |
| CY | Severance Tax Coal Production (Million Tons) | 32.352 | 35.499 | 35.707 | 35.692 |
| CY | Montana Coal Price (CSP/Ton) | $7.356 | $7.340 | $7.217 | $7.073 |
| CY | Severance Tax Natural Gas Production (MMCF) | 54.436 | 54.480 | 54.712 | 54.902 |
| CY | Montana Natural Gas Price (Per MCF) | $1.393 | $1.183 | $1.098 | $1.167 |
| CY | Copper Production (Million lbs.) | 102.144 | 90.261 | 98.521 | 98.521 |
| CY | Silver Production (Million ozs.) | 1.385 | 1.411 | 1.451 | 1.451 |
| CY | Gold Production (Million ozs.) | 0.298 | 0.304 | 0.375 | 0.375 |
| CY | Lead Production (Million lbs.) | 10.250 | 10.250 | 10.250 | 10.250 |
| CY | Zinc Production (Million lbs.) | 25.500 | 25.500 | 25.500 | 25.500 |
| CY | Molybdenum Production (Million lbs.) | 10.021 | 10.617 | 9.170 | 9.170 |
| CY | Palladium Production (Million ozs.) | 0.211 | 0.307 | 0.368 | 0.368 |
| CY | Platinum Production (Million ozs.) | 0.064 | 0.093 | 0.112 | 0.112 |
| CY | Nickel Production (Million lbs.) | 0.000 | 0.000 | 0.000 | 0.000 |
| CY | Rhodium Production (Million ozs.) | 0.000 | 0.000 | 0.000 | 0.000 |
| CY | Copper Price (Per lb.) | $0.900 | $0.900 | $0.000 | $0.900 |
| CY | Silver Price (Per oz.) | $5.000 | $5.000 | $5.000 | $5.000 |
| CY | Gold Price (Per oz.) | $380.000 | $380.000 | $380.000 | $380.000 |
| CY | Lead Price (Per lb.) | $0.300 | $0.300 | $0.300 | $0.300 |
| CY | Zinc Price (Per lb.) | $0.450 | $0.450 | $0.450 | $0.450 |
| CY | Molybdenum Price (Per lb.) | $2.500 | $2.500 | $2.500 | $2.500 |
| CY | Palladium Price (Per oz.) | $150.000 | $150.000 | $150.000 | $150.000 |
| CY | Platinum Price (Per oz.) | $425.000 | $425.000 | $425.000 | $425.000 |
| CY | Nickel Price (Per lb.) | $3.000 | $3.000 | $3.000 | $3.900 |
| CY | Rhodium Price (Per oz.) | $725.900 | $725.000 | $725.000 | $725.000 |
| CY | Total Metal Value (Millions) | $310.718 | $330.500 | $378.596 | $378.596 |
| FY | Total Federal Forest Receipts (Millions) | $42.223 | $33.136 | $28.000 | $28.000 |
| Property Value | | | | | |
| FY | Total Statewide Taxable Valuation (Millions) | $1,813.439 | $1,855.995 | $2,231.245 | $2,252.484 |

| Year | Assumption | 1996 | 1997 | 1998 | 1999 |
|---|---|---|---|---|---|
| FY | Net/Gross Proceeds Taxable Valuation (Millions) | $13.252 | $16.753 | $13.781 | $14.460 |
| FY | All Other Taxable Valuation (Millions) | $1,800.187 | $1,839.242 | $2,217.464 | $2,238.024 |
| FY | Statewide Vehicle Value (Millions) | $2,745.651 | $2,973.540 | $3,187.635 | $3,415.551 |
| SB 417 Reimbursement Deduction | | $2.777 | $7.338 | $12.544 | $14.685 |

SB 417 Reimbursement: Taxing jurisdictions experiencing a class eight market value increase in excess of 3.4% from tax year 1995 to tax year 1996 were assumed to increase at that rate for tax years 1997, 1998, and 1999. Taxing jurisdictions experiencing a class eight market value change of 3.4% or loss from tax year 1995 to tax year 1996 were assumed to increase at the projected average rate of 3.4% for tax years 1997, 1998, and 1999.

| | | | | | |
|---|---|---|---|---|---|
| Consumption Tax | | | | | |
| FY | Liquor Unit Sales (Millions) | $5.528 | $5.052 | $5.052 | $5.052 |
| FY | Liquor Cost Per Unit | $9.506 | $10.495 | $10.721 | $10.972 |
| FY | Liquor Net Sales (Millions) | $40.644 | $37.454 | $38.263 | $39.158 |
| FY | Liquor Operations Budget (Millions) | $3.033 | $1.607 | $1.624 | $1.640 |
| FY | Beer Barrels (Millions) | 0.774 | 0.784 | 0.793 | 0.802 |
| FY | Wine Liters (Millions) | 5.334 | 5.341 | 5.348 | 5.355 |
| FY | Cigarette Packs (Millions) | 75.979 | 73.448 | 71.001 | 68.636 |
| FY | Tobacco Value (Millions) | $12.636 | $13.613 | $14.651 | $15.754 |
| FY | Gallons of Gasoline (Millions) | 488.855 | 493.744 | 498.681 | 503.668 |
| FY | Gallons of Diesel (Millions) | 257.207 | 259.779 | 262.377 | 265.001 |
| FY | Video Machine Net Income (Millions) | $213.565 | $222.301 | $231.432 | $241.245 |
| FY | Total Lottery Sales (Millions) | $31.761 | $30.795 | $29.858 | $28.949 |
| FY | Insurance Premiums Growth (Percent Change) | 7.60% | 4.88% | 4.82% | 4.77% |
| FY | Insurance Premiums Tax Credit (Millions) | $3.357 | $2.524 | $1.995 | $1.793 |
| FY | Police & Firemen Retirement (Millions) | $9.866 | $10.140 | $10.415 | $10.698 |
| FY | Telephone Taxable Income (Millions) | $261.607 | $294.736 | $301.722 | $308.872 |
| FY | Kilowatt Hours Produced (Millions) | 18,322.356 | 19,817.529 | 21,318.646 | 21,239.246 |
| Other | | | | | |
| FY | Medicaid Reimbursements (Millions) | $13.035 | $13.397 | $13.759 | $14.134 |
| FY | Montana Development Center Debt Service (Millions) | $0.000 | $1.090 | $1.092 | $1.001 |

## Current Law
## General Fund Revenue Estimates
## (In Millions of Dollars)

| Source of Revenue | Actual FY 1996 | Estimated FY 1997 | Estimated FY 1998 | Estimated FY 1999 |
|---|---|---|---|---|
| Individual Income Tax | $350.161 | $368.736 | $386.824 | $405.315 |
| Corporation Income Tax | 59.337 | 61.350 | 63.010 | 6[illegible] 377 |
| Long-Range Bond Excess | 52.369 | 51.951 | 53.687 | 60.414 |
| TCA Interest Earnings | 16.294 | 15.162 | 14.490 | 14.101 |
| Permanent Trust Interest Earnings | 41.532 | 41.969 | 42.611 | 43.218 |
| Coal Severance Tax | 9.714 | 10.006 | 10.403 | 10.240 |
| Oil Severance Tax | 9.730 | 10.175 | 9.745 | 9.645 |
| Metalliferous Mines Tax | 4.026 | 3.038 | 3.235 | 3.703 |

HeinOnline -- 1997 vol. III 3597 1997

| Source of Revenue | Actual FY 1996 | Estimated FY 1997 | Estimated FY 1998 | Estimated FY 1999 |
|---|---|---|---|---|
| Natural Gas Severance Tax | 0.936 | 0.877 | 0.778 | 0.776 |
| Electrical Energy Tax | 3.520 | 3.635 | 3.910 | 3.895 |
| Telephone License Tax | 5.712 | 5.305 | 5.431 | 5.560 |
| Railroad Car Tax | 0.780 | 6.224 | 2.003 | 2.003 |
| Insurance Premiums Tax | 26.133 | 28.438 | 30.612 | 32.525 |
| Institution Reimbursements | 16.142 | 15.471 | 15.803 | 16.193 |
| Video Gaming Tax | 10.666 | 11.115 | 11.572 | 12.062 |
| Inheritance Tax | 15.404 | 14.510 | 15.000 | 15.500 |
| Liquor Excise Tax | 7.203 | 6.636 | 6.779 | 6.938 |
| Liquor Profits | 6.300 | 6.322 | 5.455 | 5.604 |
| Beer Tax | 1.356 | 1.372 | 1.389 | 1.405 |
| Wine Tax | 0.846 | 0.835 | 0.836 | 0.837 |
| Driver's License Fee | 2.574 | 3.171 | 3.218 | 3.270 |
| Vehicle Fee | 4.805 | 5.204 | 5.578 | 5.977 |
| Motor Vehicle License Fee | 9.801 | 9.841 | 9.814 | 9.820 |
| Contractor's Gross Receipts Tax | 1.621 | 1.507 | 1.565 | 1.520 |
| All Other Revenue | 27.298 | 30.379 | 28.184 | 27.559 |
| 40-Mill Property Tax | 81.754 | 76.971 | 84.890 | 85.057 |
| 55-Mill Property Tax | 122.929 | 129.812 | 148.447 | 151.624 |
| 1.5-Mill Property Tax | 0.000 | 1.101 | 1.267 | 1.296 |
| Lottory Profit | 7.859 | 7.736 | 7.266 | 6.838 |
| Common School Interest & Income | 42.032 | 42.493 | 42.238 | 43.998 |
| US Federal Royalty | 24.959 | 21.099 | 20.765 | 21.480 |
| Total General Fund Revenue | $963.193 | $992.450 | $1,036.805 | $1,067.051 |

Adopted April 2, 1997

# HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO CONTINUE TO INVESTIGATE EXORBITANT DRUG PRICES THAT ARE BEING CHARGED TO CUSTOMERS IN THE UNITED STATES.

WHEREAS, the ever-increasing cost of prescription drugs is causing a hardship for low-income seniors and low-income persons of all ages; and

WHEREAS, the problem is not caused by local pharmacists who at this time are engagad in a class action suit to correct this injustice; and

WHEREAS, some of the cost of research and development of prescription drugs is funded through the National Institutes of Health and paid for by tax dollars; and

WHEREAS, the prescription drugs manufactured hy these United States companies can be purchased in Canada or Mexico for one-half to one-third of the cost in the United States; and

WHEREAS, most seniors are reliant on Medicare, whicb does not pay for most prescription drugs; many Americans' health insurance does not cover prescription drugs; and altogether, consumers purchase three-quarters of all prescription drugs out of pocket;

WHEREAS, many seniors live on fixed incomes, and incomes bave not kept pace with the prices of prescription drugs that from 1980 to 1991 outpaced the general inflation rate 3 to 1; and

WHEREAS, certain consumers have no recourse other than to use drugs regulated by the federal Orphan Drug Act, and the prices of these drugs are not subject to market pressures.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress continue its investigation into the reasons for the exorbitant drug prices charged to customers who have no otber alternatives and enact legislation to remedy tbis situation.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, tbe President of the United States Senate, and each memher of the Montana Congressional Delegation.

Adopted March 6, 1997

## HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF STATE PROPERTY MANAGEMENT; AND PROVIDING FOR A REPORT OF FINDINGS TO THE GOVERNOR AND 56TH LEGISLATURE.

WHEREAS, the state owns numerous buildings that are not under the control of a professional property manager; and

WHEREAS, these buildings have maintenance and capital improvement needs that may not be recognized by the occupants; and

WHEREAS, these properties are significant assets to the state and require proper care; and

WHEREAS, it is difficult for state agencies to follow statutory requirements to colocate with other agencies in other cities because of existing property management practices and space availability issues; and

WHEREAS, aging state buildings may be depreciated and in need of sale, containment, or demolition, and changes in government service delivery may cause some stato buildings to be declared surplus; and

HeinOnline -- 1997 vol. III 3599 1997

WHEREAS, the Legislature has not studied these real property issues; and

WHEREAS, to best serve the puhlic, the Legislature should conduct a thorough study of state property management practices and should explore alternative ways to address state property management issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the need for changing maintenance policies for state-owned buildings not managed by a professional facility manager;

(2) the desirability of colocating agencies in facilities outside of Helena and methods to promote and ensure that colocation is accomplished; and

(3) the disposition of surplus and depreciated real property.

BE IT FURTHER RESOLVED, that the Legislative Council be encouraged to accept any funding that may be available from the Executive Branch of state government for the purposes of the interim committee.

BE IF FURTHER RESOLVED, that the interim committee report its study findings to the Governor and the 56th Legislature in time for budget recommendations to the 56th Legislature.

Adopted April 14, 1997

# HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE PERMANENT PLACEMENT OF A PLAQUE IN THE CAPITOL COMMEMORATING THE SERVICE OF WOMEN IN THE MONTANA LEGISLATURE.

WHEREAS, the 1995 Legislature passed Senate Joint Resolution No. 24, celebrating the 100th year of women elected to state legislatures; and

WHEREAS, in 1917, Emma Ingalls and Maggie Smith Hathaway became the first women to serve in the Montana Legislature; and

WHEREAS, the Montana Legislature proudly recognizes the service of women to the state; and

WHEREAS, section 5-11-115, MCA, requires the approval of the Legislature for the permanent display of busts, statues, and memorials.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1997 vol. III 3600 1997

That the Legislature of the State of Montana approve the permanent placement and display of a plaque in the capitol commemorating the service of women in the Montana Legislature.

Adopted March 21, 1997

# HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING FULL MEMBERSHIP IN THE UNITED NATIONS FOR THE REPUBLIC OF CHINA ON TAIWAN.

WHEREAS, China has been a divided nation since 1949, and the Republic of China on Taiwan and the People's Republic of China on the Chinese mainland have exercised exclusive jurisdiction over separate parts of China; and

WHEREAS, the Republic of China on Taiwan acknowledges that two equal and distinct political entities exist within the divided China; and

WHEREAS, the Republic of China on Taiwan is currently the 14th largest trading nation in the world; its gross national product is the 20th largest in the world; its annual per capita income exceeds $16,000; its foreign exchange reserves exceed $100 billion; and it has become the seventh largest outbound investor in the world; and

WHEREAS, the 21 million people on Taiwan enjoy a democratic form of government that includes free and open elections at the local and national levels, and the policies of the Republic of China on Taiwan conform to those of other democratic nations; and

WHEREAS, the Republic of China on Taiwan has joined other nations in responding to international disasters and crises, has undertaken programs of assistance for less developed nations, and has in other ways accepted regional and global responsibilities; and

WHEREAS, the Republic of China on Taiwan has joined several important multilateral organizations in recent years, including the Asia Pacific Economic Council and the Asian Development Bank, and its admission into these organizations has been supported by the United States; and

WHEREAS, the Repuhlic of China on Taiwan has launched a campaign to pursue a seat in the United Nations without prejudice to the current position of the People's Republic of China in the United Nations; and

WHEREAS, membership of the Republic of China on Taiwan in the United Nations conforms to the United Nations' principle of universality and would contribute to the peace and stability of the Pacific region and, therefore, to the interests of the United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Republic of China on Taiwan deserves to be allowed full membership in the United Nations.

HeinOnline -- 1997 vol. III 3601 1997

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the President of the Senate and the Speaker of the House of Representatives of the United States Congress, the Governor of Montana, and the Montana Congressional Delegation.

Adopted April 7, 1997

## HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE 1995 AND 1996 UNIVERSITY OF MONTANA GRIZZLY FOOTBALL TEAMS FOR THEIR OUTSTANDING SEASONS.

WHEREAS, the University of Montana at Missoula has developed an outstanding winning tradition; and

WHEREAS, the Montana Grizzlies feature a large numher of graduates of Montana high schools and, therefore, provide role models for young Montanans and instill pride in all Montanans; and

WHEREAS, the Montana Grizzlies captured hack-to-hack Big Sky Conference championships in 1995 and 1996; and

WHEREAS, the 1995 Montana Grizzlies, led by Walter Payton Award winner Dave Dickenson of Great Falls, capped an excellent season by defeating Marshall University 22-20 to win the national championship; and

WHEREAS, the 1996 Montana Grizzlies had a perfect regular season of 14-0 and again advanced to the national championship game; and

WHEREAS, throughout the successful campaigns, the Grizzlies displayed excellent sportsmanship and personified the ideal of student athletes by achieving both academically and athletically; and

WHEREAS, the Montana Grizzlies have become a source of pride and inspiration for all Montanans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the congratulations of all Montanans be extended to the Montana Grizzly football team, former Coach Don Read, Coach Mick Dennehy, and the entire coaching staff for their outstanding seasons and for bringing recoguition and honor to the State of Montana.

Adopted April 5, 1997

## HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF LABOR AND INDUSTRY TO UNDERTAKE AN EXPLORATION AND ANALYSIS OF DIFFERENT APPROACHES TO AN

HeinOnline -- 1997 vol. III 3602 1997

INTEGRATED DISPUTE SETTLEMENT PROCESS FOR EMPLOYMENT-RELATED ISSUES.

WHEREAS, most private sector employers in Montana have 10 or fewer employees and do not maintain personnel officers or in-house legal staff; and

WHEREAS, Montana's employment statutes constitute a complex body of law that often necessitates the application of specialized skills and knowledge; and

WHEREAS, employment-related disputes are currently heard in many different forums, such as the Board of Personnel Appeals for wage and hour issues, the Board of Labor Appeals for unemployment insurance issues, the Workers' Compensation Court for workers' compensation issues, the Human Rights Commission for discrimination issues, and District Courts for the resolution of wrongful discharge conflicts; and

WHEREAS, the same set of facts are often salient in more than one dispute resolution forum at the same time; and

WHEREAS, litigation in multiple forums costs time and money to employers and employees alike; and

WHEREAS, it may be both advantageous and efficient to allow a single, integrated process to assist in the resolution of employment-related disputes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Labor and Industry:

(1) explore, investigate, and report to the 56th Legislature optional approaches to an integrated dispute resolution process for employment-related issues; and

(2) invite the participation and involvement of interested, knowledgeable persons, including employers and employees from the private and public sectors, in the department's process of identifying and analyzing options.

Adopted March 13, 1997

## HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ENACT LEGISLATION TO ALLOW DISABLED MILITARY RETIREES CONCURRENT RECEIPT OF FULL LONGEVITY RETIREMENT BENEFITS AND SERVICE-CONNECTED DISABILITY COMPENSATION.

WHEREAS, thousands of American military personnel have dedicated their careers to protect the rights that we all enjoy; and

WHEREAS, military personnel endure hardships, privation, the threat of disability and death, and long separation from their families in service to their country; and

HeinOnline -- 1997 vol. III 3603 1997

WHEREAS, career military personnel earn retirement benefits based on their respective number of years of service and rank at retirement; and

WHEREAS, service-connected disability compensation serves a different purpose from longevity retirement pay and is intended to compensate for pain, suffering, disfigurement, and impaired earning ability because of the disability; and

WHEREAS, retired, disabled military personnel endure a reduction in longevity retirement pay for any service-connected disability compensation that they receive; and

WHEREAS, the offset of retirement benefits by service-connected disability compensation presents an economic hardship to disabled military retirees, often reducing them to a poverty-level existence; and

WHEREAS, similarly situated federal civil service retirees do not face a reduction in civil service retirement benefits if they receive compensation for a service-connected disability; and

WHEREAS, it is fundamentally unfair to require disabled military retirees essentially to fund their own disability compensation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature, on behalf of all Montanans, urge Congress to enact legislation to eliminate this inequity and to allow disabled military retirees concurrent receipt of full longevity retirement benefits and service-connected disability compensation.

BE IT FURTHER RESOLVED, that the Secretary of Stato transmit a copy of this resolution to the President of the United States, the Speaker of the U.S. House of Representatives, the Majority Leader of the U.S. Senate, and the members of Montana's Congressional Delegation.

Adopted April 5, 1997

## HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO AMEND PRESIDENT CLINTON'S UNILATERAL ACTION IN DESIGNATING THE GRAND STAIRCASE—ESCALANTE NATIONAL MONUMENT; URGING CONGRESS TO REQUIRE NEGOTIATION WITH THE STATES AND A STRONGER CONSIDERATION OF THE SOCIAL AND ECONOMIC CONSEQUENCES IN THE DESIGNATION OF NATIONAL MONUMENTS AND WILDERNESS AREAS; AND REQUIRING THE SECRETARY OF STATE TO TRANSMIT COPIES OF THE GRAND STAIRCASE—ESCALANTE NATIONAL MONUMENT RESOLUTION.

WHEREAS, on September 18, 1996, President Clinton declared 1.7 million acres in southern Utah as the Grand Staircase—Escalante National Monument; and

HeinOnline -- 1997 vol. III 3604 1997

WHEREAS, the President abused the purpose of the 90-year-old Antiquities Act of 1906, which allows the President to act without Congressional approval, by significantly overreaching in the number of acres designated; and

WHEREAS, the President ignored repeated requests to work through the legislative processes already in place under the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976 to determine areas appropriate for designation as wilderness and national areas and national monuments; and

WHEREAS, the President ignored repeated requests from Utah's leaders to negotiate a compromise; and

WHEREAS, the President failed to adequately consider the social implications of national monument designation, including the fact that 200,000 acres of Utah's school trust lands lie within the designated areas and will be rendered useless, resulting in a potential loss of billions of dollars for the education of Utah's schoolchildren; and

WHEREAS, the President failed to consider the social implications of substantial numbers of citizens being displaced from their homes, places of employment, and way of life as a result of the loss of economic development that will follow the designation; and

WHEREAS, the President failed to adequately consider the economic implications of national monument designation, including the potential tax revenue loss to the federal and state governments and to the school trust fund of billions of dollars from mineral and petroleum exploration and development and related jobs; and

WHEREAS, the President failed to adequately consider the environmental implications of national monument designation, such as that the 62 billion tons of coal deposits in the Kaiparowits Coal Basin are an extremely efficient, low-sulfur, clean-burning coal and that given the vast reserves of clean-burning coal available, it is not environmentally or economically sound to continue to "waste" clean-burning coal reserves; and

WHEREAS, to ignore large, domestic deposits of our cleanest-burning coal only increases our dependence on foreign energy sources and reduces our energy and national security; and

WHEREAS, the President failed to consider alternative plans that would result in a more sound environmental protection policy; and

WHEREAS, the declaration of nearly 2 million acres as a national monument does nothing to preserve a wilderness area; instead, the area will likely become clogged with roads and tourist buses; and

WHEREAS, an alternative proposal would allow 350,000 acres to be designated as true "wilderness" areas to preserve their natural beauty, while other areas could be designated as a national monument and still others reserved for mineral activity, which makes sense socially, economically, and environmentally; and

HeinOnline -- 1997 vol. III 3605 1997

WHEREAS, the creation of the Grand Staircase—Escalante National Monument presents significant negative social, economic, and environmental consequences for not only Utah's citizens, but all Americans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana support policies that balance the social, economic, and environmental needs of people and communities with the needs of environmental preservation in federal decisionmaking processes.

BE IT FURTHER RESOLVED, that the State of Montana urge Congress to amend the President's unilateral action to require negotiation with the states and a strongor consideration of the social and economic consequences, including takings, in whole or in part, in the designation of national monuments and wilderness areas.

BE IT FURTHER RESOLVED, that this resolution be referred to as the Grand Staircase—Escalante National Monument Resolution.

BE IT FURTHER RESOLVED, that the Secretary of State transmit a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President Pro Tempore of the United States Senate, the Governor of the State of Utah, the Council of State Governments-West, and to each member of Montana's Congressional Delegation and state Legislature.

Adopted April 14, 1997

## HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE MONITOR AND STUDY FEDERAL MANDATES; AND REQUIRING A REPORT OF THE COMMITTEE'S FINDINGS AND CONCLUSIONS TO THE 56TH LEGISLATURE.

WHEREAS, the 10th amendment to the United States Constitution states, "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people"; and

WHEREAS, the number of federal mandates imposed upon the states hy the United States Congress has increased alarmingly in recent years; and

WHEREAS, the members of the Legislature of Montana desire to personally protect state sovereignty from federal encroachment as well as communicate with the Montana delegation to the United States Congress concerning this critical problem so that Montana's representatives may be completely cognizant of the effect that the actions of the federal government have at the state legislative level and may be more sensitive to federal usurpation of state authority.

HeinOnline -- 1997 vol. III 3606 1997

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to monitor and study the activities of Congress and the federal government, including court rulings, with regard to any law, regulation, or other action that may require the State of Montana to comply with any federal mandate.

BE IT FURTHER RESOLVED, that the committee compile and report its findings and conclusions, including identifying options for further consideration by the Legislature, to the 56th Legislature.

Adopted April 9, 1997

# HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE HONOR AND VALOR OF MONTANA'S 163RD INFANTRY REGIMENT, MONTANA ARMY NATIONAL GUARD.

WHEREAS, the official reports emanating from General Douglas MacArtbur's beadquarters in the Southwest Pacific area and the War Department during World War II recognized the 163rd Infantry Regiment as being instrumental in three key Pacific campaigns: the Papuan Campaign (1943); the New Guinea Campaign (1944); and the Southern Philippine Campaign (1945); and

WHEREAS, in each of these campaigns the 163rd had one or more major battle victories and successful subordinate operations; and

WHEREAS, in the Papuan Campaign, as an organization of the 41st Infantry Division, tbe 163rd Infantry joined with Australian veterans to win the Battle of Sanananda, the final bloody struggle of the Buna-Gona Operation, which was recorded as the first land defeat of Japanese forces during World War II; and

WHEREAS, in the New Guinea Campaign, Montana's Regiment seized the key Aitape Airfield from Japanese forces with minor casualties and then stormed Wakde Island, under point-blank automatic fire, and defenses of the Toem Foreshore across from Wakde Island reducing and eliminating further Japanese resistance; and

WHEREAS, tbe 163rd provided reinforcements in the last great battle for New Guinea—the Battle of Biak Island, where they besieged and overran key terrain held by stubborn Japanese defenders called the Ibdi Pocket, a labyrinth of jagged coral ridges and thick jungle; and

WHEREAS, the 163rd's final combat actions occurred in the Southern Philippine Campaign, where operations began with a hard-won victory in the major Battle of Zamboanga on Mindanao Island, and subsequently the Regiment mounted a combat operation to seize the critical Sulu Archipelago and fought and won the bloody Battle of Jolo; and

HeinOnline -- 1997 vol. III 3607 1997

WHEREAS, in the Regiment's final combat operation of World War II, the 3rd Battalion, 163rd Infantry Regiment was called upon to reinforce the United States 24th Infantry Division and greatly assisted in capturing the city of Calinan located in the abaca jungles of Mindanao; and

WHEREAS, when World War II ended, the 163rd Infantry Regiment was training for the invasion of Japan and actually served as occupational forces from the end of hostilities to December 1945; and

WHEREAS, in some of the most arduous combat against an implacable foe, and from the outbreak of hostilities the personnel of the 163rd Infantry Regiment demonstrated the finest attributes of the American soldier, in their devotion to training, in the association and cooperation with the free people of the great Pacific world to the south, and in the deep resolve to establish the rule of law amongst nations of the earth; and

WHEREAS, the hearts of all the people of Montana, while vibrant with affection for the Regiment, were burdened by the losses of fathers, sons, and brothers, and are fully committed to world peace.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature tenders to every officer, every enlisted soldier, and the families of the soldiers of the 163rd Infantry Regiment, Montana National Guard, the deepest gratitude of the whole body of our citizens for the great victories that they won, purchased with the blood of many of their bravest soldiers, hopeful that the Regiment will accept this expression as evidence of the continuing respect and the esteem that this state has for the 163rd, and that sustains and inspires us to dedicate each day to aid our citizens in the armed forces today.

Adopted April 5, 1997

# HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE HONOR AND LINEAGE OF THE 120TH FIGHTER WING, MONTANA AIR NATIONAL GUARD.

WHEREAS, the Montana Air National Guard lineage begins with the 404th Fighter Squadron, of the 371st Fighter Group, established July 15, 1943, which supported the World War II European Theater, winning six combat streamers; and

WHEREAS, the 404th Fighter Squadron was inactivated upon its return to the United States, in September 1945, and redesignated the 186th Fighter Squadron, Montana Air National Guard on September 18, 1946; and

WHEREAS, the 186th was mobilized and flew the P-51 Mustang aircraft for the Korean Crisis; and

WHEREAS, the 186th was reorganized as part of the 120th Fighter Group, Montana Air National Guard, on April 16, 1956; and

HeinOnline -- 1997 vol. III 3608 1997

WHEREAS, the Montana Air National Guard has consistently been among the first Air National Guard units to receive new aircraft beginning with the P-51 Mustang in tlie 1940s, the F-86 Sabrejet in November of 1953, tbe F89-C Scorpion in August 1955, the F89-H rocket and missile aircraft in 1959, the F89-J with its nuclear-tipped Genie Air-To-Air missile in September 1966, the F-102A Delta Dagger in late 1966, the F-106A Delta Dart in 1972, and on July 1, 1987, the F-16 Fighting Falcon becamo the official aircraft of the unit; and

WHEREAS, the Montana Air National Guard has earned numerous prestigious awards including the William Tell Weapons Competition, against both active Air Force and Air Guard units, tbe Hughes Trophy, the Winston P. Wilson award, and the Spatz award; and

WHEREAS, the unit's mission expanded, in 1984, when assigned the operation of an alert detachment stationed at Davis-Monthan AFB, Tucson, Arizona, from protecting 650 miles of our northern border to include an additional 450 miles of our southern border; and

WHEREAS, the Montana Air National Guard has continued to serve as a part of the United States Air Force and as a military force supporting the State of Montana and the communities of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That 1997 be recognized as a year of commemoration for the 120th Fighter Wing, Montana Air National Guard.

Adopted April 5, 1997

## HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO ENACT LEGISLATION TO REVISE THE PROCESS BY WHICH NEW DRUGS, BIOLOGICAL PRODUCTS, AND MEDICAL DEVICES ARE APPROVED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION.

WHEREAS, improving patient access to quality health care is a paramount national goal; and

WHEREAS, the key to improved health care, especially for persons with serious unmet medical needs, is the rapid approval of safe and effective new drugs, biological products, and medical devices; and

WHEREAS, minimizing the delay between discovery and eventual approval of a new drug, biological product, or medical device derived from research conductod by innovative pharmaceutical and biotechnology companies could improve the lives of millions of Americans; and

WHEREAS, current limitations on the dissemination of information about pharmaceutical products reduce the availability of information to physicians, other health care professionals, and patients and unfairly restrict the right of free

HeinOnline -- 1997 vol. III 3609 1997

speech guaranteed by the first amendment to tbe United States Constitution; and

WHEREAS, the current rules and practices governing tbe review of new drugs, biological products, and medical devices by the United States Food and Drug Administration can delay approvals and are usually unnecessarily expensive.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

Tbat the Legislature respectfully urge the Congress of the United States to address this important issue by enacting comprehensive legislation to facilitate the rapid review and approval of innovative new drugs, biological products, and medical devices, without compromising patient safety or product effectiveness.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by tbe Secretary of State to the President of the United States, the Speaker of the United States House of Representatives, tbe President of tbe United States Senate, and to each member of the United States Senate and the House of Representatives.

Adopted March 19, 1997

# HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF CORRECTIONAL STANDARDS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 56TH LEGISLATURE.

WHEREAS, it is the intent of tbe Legislature of the State of Montana to examine minimum standards for correctional facilities; and

WHEREAS, uniform and agreed-upon minimum standards for correctional facilities, consistent with fundamental civil and constitutional rights, will restore public confidence in the correctional system by ensuring tbat those standards are set in a manner that provides for public safety, crime prevention, and reformation and punisbment of offenders; and

WHEREAS, an interim committee provides an opportunity to develop these standards over a period of time that allows for study and debate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee must be assigned to study and to make recommendations for minimum standards for correctional facilities, including county jails, state prisons, regional prison facilities, and juvenile detention facilities and for private facilities if autborized hy law.

(2) Tbat the committee shall review legislation from past legislative sessions and any standards that may have been developed in the past by any state or federal agency or private organization, including the standards developed by the

HeinOnline -- 1997 vol. III 3610 1997

Montana Sheriffs and Peace Officers Association and the Montana Association of Counties and current state and local building codes.

(3) That the committee shall review state, local, and federal law and regulations, current state and local building codes, and court decisions that have a bearing on the development of minimum standards for correctional facilities.

(4) That the committee shall review methods by which to ensure compliance with minimum statewide standards and current state and local building codes, review any impediments to agencies in complying with those codes and minimum standards, and make recommendations accordingly.

(5) That the minimum standards must include the minimal services that must be provided to fulfill constitutional mandates.

(6) That the minimum standards must be set in a manner that provides for public safety, crime prevention, and reformation and punishment of offenders and that complies with current state and local building codes.

(7) That the committee is authorized to secure information or assistance of any type from any governmental agency, board, or commission or from any independent organization. Any state agency, board, or commission shall supply information upon request of the committee.

(8) That the committee shall submit to the 56th Legislature a report of its findings and conclusions and include a complete set of proposed minimum standards and copies of proposed legislation.

Adopted March 20, 1997

# HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE LOYOLA SACRED HEART HIGH SCHOOL SPEECH AND DEBATE TEAM FOR ITS 14TH CONSECUTIVE STATE CHAMPIONSHIP.

WHEREAS, extracurricular activities are an integral component of a student's educational experience; and

WHEREAS, speech and debate require a tremendous commitment of time and energy as well as physical and mental effort; and

WHEREAS, since 1983, the Loyola Sacred Heart High School speech and debate team has developed an outstanding winning tradition; and

WHEREAS, in January 1997, the Loyola Sacred Heart High School speech and debate team won its 14th consecutive state championship; and

WHEREAS, this 14th state championship is the most consecutive state championships won by a Montana high school in any extracurricular activity; and

WHEREAS, all Montanans should be proud of the accomplishments of these outstanding young people.

HeinOnline -- 1997 vol. III 3611 1997

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the congratulations of all Montanans be extended to each member of the Loyola Sacred Heart High School speech and debate team and to the coaches, Matt Stergios and Chuck Hansberry, for their outstanding achievements and their dedication to excellence.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the Loyola Sacred Heart High School speech and debate team and to the principal of Loyola Sacred Heart High School.

Adopted April 5, 1997

## HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE 130TH ANNIVERSARY OF MONTANA'S MILITARY EXPERIENCE AND RECOGNIZING ALL PERSONS WHO HAVE IN THE PAST BEEN IN OR WHO ARE CURRENTLY IN SERVICE TO THE NATION AND STATE.

WHEREAS, on July 14, 1867, Montana Territorial Governor Green Clay Smith issued General Order No. 1 in Virginia City, officially authorizing the organization of Montana volunteer forces and formally naming them the First Regiment of Montana Volunteers; and

WHEREAS, the Montana volunteers, including a volunteer cavalry regiment, were initially the Montana Territorial Volunteers and were mustered by Territorial Secretary Thomas Meagher while serving as Acting Governor in 1867 during Governor Smith's absence; and

WHEREAS, on July 27, 1877, Montana Territorial Governor Benjamin F. Potts issued a proclamation that authorized activation of volunteers, called the Montana Territorial Volunteer Militia; and

WHEREAS, in 1885, House Bill No. 20 passed, authorizing the organization of a national guard for the territory, and the First Montana Infantry, National Guard, mustered its first company in Virginia City; and

WHEREAS, because the need for a State Militia was recognized, the Montana Infantry Regiment was reorganized as the Montana National Guard, effected under the Territorial Legislative Act entitled "An Act to Organize and Regulate the Militia, Approved March 10, 1887"; and

WHEREAS, on May 2, 1898, Montana was authorized to raise volunteers for a regiment of infantry, the 1st Montana Infantry Regiment volunteered as United States Volunteers, and under the command of Colonel Harry C. Kessler, the regiment served in the Spanish-American War and subsequently the Philippine Insurrection, in 1898-99, in which it participated in seven major battles as part of the overall command of Major General Arthur MacArthur; and

WHEREAS, the 2nd Montana Infantry, as successor to the 1st, participated in the Mexican Border Conflict in 1916, and under the command of Colonel

HeinOnline -- 1997 vol. III 3612 1997

"Dynamite" Dan J. Donohue, its mission was to protect border towns and U.S. holdings along the Arizona border; and

WHEREAS, the 2nd Montana Infantry, on August 5, 1917, was redesignated as the 163rd Infantry Regiment, 41st Infantry Division, and went on to fight in World War I along with many fellow Montanans who volunteered or were conscripted to serve, and according to Joseph Kinsey Howard, "In World War I, more Montana boys marched away in proportion to population than any other state and more than any other state, proportionately, would never march anywhere again...."; and

WHEREAS, the 163rd Infantry Regiment, 41st Infantry Division, responded to the call of 1 year of duty on September 16, 1940, which turned into 5 years of military service during World War II, and of the regiment, Joseph Kinsey Howard said, "In World War II as in World War I, Montanans were quick to enlist, and they were healthy.... on the home front Montana also had the record of oversubscribing in 8 World War II Savings Bond drives"; and

WHEREAS, Montana men and women have proudly served the nation and state in the forgotten Korean Conflict, Vietnam War, and the Cold War; and

WHEREAS, in 1991, the Montana National Guard served the nation as represented by the 103rd Public Affairs Detachment in Southwest Asia during Desert Shield/Desert Storm, along with other Montanans serving in the active and reserve components; and

WHEREAS, in 1996, the 103rd Public Affairs Team served in peace enforcement duties as a part of Operation Joint Endeavor, along with active and reserve component service members from Montana; and

WHEREAS, the fine tradition of service to Montana and the United States is ably demonstrated by the nearly 100,000 Montana veterans who have participated in all branches of the service during the past 130 years, and veterans continue to contribute their strength to Montana by providing leadership in business, government, and industry and continue to add value to Montana; and

WHEREAS, the Montana Military Museum, located at Fort William Henry Harrison, has as a goal to tell the story of Montana's military experience.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature recognize the many Montanans who have served in the past and who currently serve to make Montana and the United States a better place.

BE IT FURTHER RESOLVED, that the Legislature declare that 1997-99 be recognized as the Commemorative Years of the Montana Veteran and encourago that expressions of recognition be afforded to veterans.

Adopted April 5, 1997

HeinOnline -- 1997 vol. III 3613 1997

# HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF COMBINING SCHOOL ELECTIONS; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 56TH LEGISLATURE.

WHEREAS, section 20-20-105, MCA, establishes the first Tuesday in April of each year as the regular school election day and also provides for special school elections at any time determined necessary by the local school trustees; and

WHEREAS, Title 20, chapter 20, MCA, establishes procedures for conducting school elections that are distinct from those provided in Title 13, MCA, for other jurisdictions; and

WHEREAS, school districts and other jurisdictions hold required annual elections at the same time to share and reduce the costs of elections; and

WHEREAS, school districts, legislative districts, and other jurisdictions have boundaries, election dates, and election timelines that do not coincide; and

WHEREAS, Montana citizens would like to see a decrease in the number of school elections held by school trustees to reconsider bond or levy propositions that were defeated at elections held earlier in the year; and

WHEREAS, a majority of citizens believe that schools should be allowed to consider propositions with fiscal impacts only one time each calendar year; and

WHEREAS, costs could be saved if all school elections were held annually, either at the general election in November or at an established annual primary election in June; and

WHEREAS, school trustees would be more knowledgeable in preparing budgets if trustee elections occurred prior to the enactment of budgets.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That an appropriate interim committee be assigned to study:

(a) the current dates and the procedures used for school elections within the state;

(b) the procedural concerns with limiting or moving school elections, including but not limited to the effects on school budgeting procedures, overlapping precinct and school district boundary concerns, differences between election procedures provided for in Title 13, MCA, and Title 20, MCA, and collective bargaining issues; and

(c) the possibility of having school elections conducted by local election administrators and of moving school elections to coincide with state and local elections held on the general election day on the first Tuesday after the first Monday of November or establishing an annual primary date for all elections.

HeinOnline -- 1997 vol. III 3614 1997

(2) That the interim committee conduct the study in consultation with interested parties involved in or affected by the election process, including but not limited to representatives of school districts, county election administrators, clerk and recorders, and rural fire and park districts and irrigation districts; and representatives of the Secretary of State, the Office of Public Instruction, and the Board of Public Education; and representatives of affected school organizations.

BE IT FURTHER RESOLVED, that the interim committee report the findings of the study to the 56th Legislature and present options for legislative consideration if the committee determines that options are necessary.

Adopted April 14, 1997

# HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONSENTING TO THE CONSTRUCTION OF A CHAPEL AT THE INSTITUTION OF THE MONTANA WOMEN'S CORRECTIONAL SYSTEM IN BILLINGS AND A CHURCH AT THE MONTANA DEVELOPMENTAL CENTER IN BOULDER AND THE MOVING OF A CHURCH STRUCTURE FROM THE GALEN CAMPUS TO THE WARM SPRINGS CAMPUS.

WHEREAS, section 18-2-102, MCA, requires legislative consent for construction projects in excess of $50,000; and

WHEREAS, section 18-2-102, MCA, authorizes use of a joint resolution to express legislative consent when an appropriation is not required; and

WHEREAS, the Department of Corrections wishes to allow the construction of an interfaith chapel for worship and related activities at the institution of the Women's Correctional System in Billings through private funds for which a legislative appropriation is not required; and

WHEREAS, a small, dedicated chapel is included in current expansion plans to be funded through a statewide effort by a network of churches, civic and service groups, and individual Montana volunteers and through grants from national and state sources; and

WHEREAS, the project at the Montana Developmental Center in Boulder will include a church building on the north campus to be constructed by using funds raised in a nationwide effort; and

WHEREAS, the building will enable the residents of the Montana Developmental Center and the community of Boulder to have a place for worship and church-related activities and will provide office space for the chaplain; and

WHEREAS, a group of women from around Montana built a church at Galen many years ago and have consented to having the structure moved 6 miles to the Warm Springs Campus, and funds that will he raised through a nationwide effort will finance moving the structure and preparing a foundation, wiring, and plumbing for it; and

HeinOnline -- 1997 vol. III 3615 1997

WHEREAS, this building will allow for a dedicated space for religious worship and activities for the chaplain and the residents of the Montana State Hospital.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and the House of Representatives of the State of Montana consent to the construction projects for:

(1) a chapel at the institution of the Women's Correctional System in Billings;

(2) a church at the Montana Developmental Center in Boulder; and

(3) preparing a foundation, wiring, and plumbing for the facility church structure moved from Galen to Warm Springs.

Adopted April 11, 1997

## HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO REAFFIRM ITS POWER OVER INTERNATIONAL AGREEMENTS THAT CONCERN THE USE AND MANAGEMENT OF LAND AND RESOURCES BELONGING TO THE UNITED STATES, THE INDIVIDUAL STATES, AND THE PEOPLE.

WHEREAS, the federal government is the sole negotiater of treaties and international agreements for the United States; and

WHEREAS, the federal government has signed various agreements with foreign countries and other international organizations; and

WHEREAS, many of these treaties and agreements may potentially jeopardize the sovereign right of the people of the United States to regulate domestic decisions regarding the use of public lands, environmental protection, and natural resources; and

WHEREAS, some federal and international proposals conflict with private property rights; and

WHEREAS, the western states depend on the reasonable multiple use of public and private land to sustain their economies and the livelihood of their citizens; and

WHEREAS, prohibiting specific uses on nonfederal lands could cause significant negative impact on the value of nonfederal property and on local economies; and

WHEREAS, the power to plan or zone private land is a power reserved to the sovereign states and to the people of the states; and

WHEREAS, the enormity of some of the proposed plans, such as the Rocky Mountain Heritage Corridor and the Mississippi River Valley Heritage Corridor, demonstrates an excessive federal involvement.

HeinOnline -- 1997 vol. III 3616 1997

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That this body request our Congressional Delegation to aggressively work to reaffirm the power of Congress under Article IV of the United States Constitution over international agreements that concern the use and management of land and resources belonging to the United States, the individual states, and the people.

BE IT FURTHER RESOLVED, that we oppose all programs, such as world heritage areas, biosphere reserves, and the American heritage areas, that usurp the sovereign rights of the people of the United States and the State of Montana.

BE IT FURTHER RESOLVED, that we request Congress to fulfill its obligation to the nation by carefully reading all documents that pertain to treaties and agreements and by fully examining and debating the issues that arise from changing the use of lands owned by the United States.

Adopted April 14, 1997

# HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO SUBMIT TO THE STATES FOR RATIFICATION A BALANCED BUDGET AMENDMENT TO THE UNITED STATES CONSTITUTION.

WHEREAS, with each passing year this nation becomes deeper in debt as federal government expenditures repeatedly exceed available revenue, so that the federal public debt is now approximately $4.9 trillion, or $19,000 for each man, woman, and child; and

WHEREAS, the annual federal budget has not been balanced since 1969, demonstrating an unwillingness or inability of both the Legislative and Executive branches of federal government; and

WHEREAS, knowledgeable planning, fiscal prudence, and plain geod sense require that the federal budget should not be manipulated to present the appearance of being in balance while, in fact, federal indebtedness continues to grow; and

WHEREAS, believing that fiscal irresponsibility at the federal level, resulting in a lower standard of living and endangering economic opportunity now and for the next generation, is the greatest threat that faces our nation; and

WHEREAS, Thomas Jefferson recognized the importance of a balanced budget when he wrote, "The question whether one generation has the right to bind another by the deficit it imposes is a question of such consequence as to place it among the fundamental principles of government. We should consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves"; and

WHEREAS, the principal functions of the United States Constitution include promoting the broadest principles of a gevernment of, by, and for the people; setting forth the most fundamental responsibilities of government; and

HeinOnline -- 1997 vol. III 3617 1997

enumerating and limiting the powers of the government to protect the basic rights of the people; and

WHEREAS, the federal government's unlimited ability to borrow involves decisions of such magnitude, with such potentially profound consequences for the nation and its people, today and in the future, that it is an appropriate subject for limitation by the United States Constitution; and

WHEREAS, the United States Constitution vests the ultimate responsibility to approve or disapprove of amendments to the United States Constitution with the people of the several states, as represented by their elected legislatures; and

WHEREAS, opposition by a small minority within Congress and, on occasion, by the President has repeatedly thwarted the will of the people of the United States that a balanced budget amendment to the United States Constitution should be submitted to the states for ratification while large majorities of both houses of Congress already have prepared, considered, and voted for an amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana requests the members of the Congress of the United States to expeditiously pass, and to propose to the legislatures of the several states for ratification, an amendment to the United States Constitution requiring, in the absence of a national emergency, that the total of all federal appropriations made by the Congress for any fiscal year not exceed the total of all estimated federal revenue for that fiscal year; and

BE IT FURTHER RESOLVED, that the legislatures of each of the several states comprising the United States be urged to apply to the Congress requesting the proposal for ratification of a balanced budget amendment to the United States Constitution; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of Montana's Congressional delegation, and the presiding officers of each house of the legislatures of each of the other states.

Adopted April 9, 1997

## HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE GOVERNOR FOR HIS STANCE ON FEDERAL BISON MANAGEMENT AND URGING HIM TO REMAIN FIRM IN HIS DEMAND THAT THE PRESIDENT OF THE UNITED STATES DIRECT THE UNITED STATES SECRETARIES OF AGRICULTURE AND THE INTERIOR TO RESOLVE THEIR DIFFERENCES OVER BISON MANAGEMENT IN A WAY THAT WILL NOT EXPOSE MONTANA CITIZENS OR THE AGRICULTURE INDUSTRY TO HARM.

HeinOnline -- 1997 vol. III 3618 1997

WHEREAS, agriculture is Montana's largest industry, and beef livestock is Montana's largest cash crop; and

WHEREAS, bison in Yellowstone National Park are the responsibility of the federal government; and

WHEREAS, brucellosis is a disease that causes undulant fever in humans and that causes cattle to abort; and

WHEREAS, the federal government has stated that brucellosis can be transmitted from bison to cattle; and

WHEREAS, the Montana livestock industry has spent $30 million to eradicate brucellosis in Montana and to obtain a brucellosis-free status and, after a 40-year industry battle to eradicate brucellosis nationwide, the Legislature is alarmed that the federal government has abdicated its responsibility to combat the disease in a herd owned by the people of the United States; and

WHEREAS, numbers of park bison have grown beyond the natural carrying capacity of Yellowstone National Park; and

WHEREAS, overgrazing inside Yellowstone National Park has resulted in increased winter migration of bison into Montana; and

WHEREAS, the federal government has stated that if infected bison enter the state, Montana stands to lose its brucellosis-free status; and

WHEREAS, the federal government is exposing the citizens of Montana and their livestock to brucellosis infection by its failure to adequately manage diseased bison in Yellowstone National Park; and

WHEREAS, the only proposals presented to the Governor by the federal agencies have been inadequate to resolve the problem, and the Legislature has grave doubts about the intent, purpose, and implications of previously prepared federal proposals.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the federal government be actively responsible for bison management within the boundaries of Yellowstone National Park and that whatever management program the federal government adopts does not expose the citizens of Montana or their livestock to brucellosis infection.

BE IT FURTHER RESOLVED, that the Legislature supports the Governor's efforts to address the problem and urges the Governor not to relent in his demand that the President of the United States require a federal solution to protect America's bison in a responsible manner that will not harm the health or property of the citizens of Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the United States Secretary of Agriculture, the United States Secretary of the Interior, and the members of Montana's Congressional Delegation.

Adopted April 15, 1997

HeinOnline -- 1997 vol. III 3619 1997

# HOUSE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING FEDERAL LAW ENFORCEMENT OFFICERS TO MORE FULLY COOPERATE WITH COUNTY SHERIFFS.

WHEREAS, Montana is one of the several sovereign states that together form the United States of America; and

WHEREAS, the several states banded together under the United States Constitution to form the federal government and empowered it to serve the states in certain, limited ways; and

WHEREAS, since its inception, the federal government has assumed increasingly greater powers over the affairs of, and within, the states; and

WHEREAS, as the Montana Attorney General has stated in an amicus brief in *Printz v. United States*, before the United States Supreme Court, the states are not intended to be "mere administrative subdivisions of the federal government contrary to the sovereign powers reserved to [the states] by the Tenth Amendment"; and

WHEREAS, the exercise of the power of the federal government to send federal law enforcement officers into this state for enforcement of the laws has been considerably expanded relatively recently; and

WHEREAS, there have been occasions when federal law enforcement officers have conducted significant law enforcement operations in Montana without the knowledge and participation of the elected County Sheriffs; and

WHEREAS, the regular involvement of the elected County Sheriffs in federal law enforcement operations will ensure local knowledge of conditions and personalities, ensure that federal law enforcement operations will be conducted so as to minimize alienation of the local public, enhance safety of law enforcement personnel, and ensure that instances of federal abuse of the rights of Montana citizens will be minimized.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That federal law enforcement officers conducting or planning arrests, searches, and seizures in Montana be requested to inform the County Sheriff of the county in which the operations are planned in advance of the operations.

(2) That federal law enforcement officers conducting or planning arrests, searches, and seizures in Montana be requested to invite the County Sheriff or a representative of the County Sheriff of the county in which the operations are planned or conducted to participate in the operation.

(3) That the Department of Justice, Division of Crime Control, be requested to keep an operations log of federal arrests, searches, and seizures in Montana reported by County Sheriffs, including reported information about the oporations for which the County Sheriffs have been given advance knowledge and an invitation to participate.

HeinOnline -- 1997 vol. III 3620 1997

(4) That the Secretary of State be requested to send a copy of this resolution to the U.S. Attorney for Montana and to the directors of each federal law enforcement agency having jurisdiction in Montana, including but not limited to the U.S. Department of Justice; Federal Bureau of Investigation; Drug Enforcement Administration; U.S. Secret Service; U.S. Marshals Service; U.S. Fish and Wildlife Service; Bureau of Alcohol, Tobacco, and Firearms; U.S. Forest Service; Bureau of Land Management; Bureau of Indian Affairs; U.S. Customs Service; Immigration and Naturalization Service; U.S. Postal Inspection Service; Defense Investigation Service; Department of Energy Inspector General; Department of Education Inspector General; Federal Protective Service; General Services Administration Inspector General; Department of Health and Human Services Inspector General; Department of Housing and Urban Development Inspector General; Internal Revenue Service; Department of Labor Inspector General; Department of Transportation Inspector General; and Veterans Affairs Security and Law Enforcement.

Adopted April 14, 1997

# HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE MISSOULA BIG SKY HIGH SCHOOL BOYS BASKETBALL TEAM ON WINNING THE 1997 CLASS AA STATE CHAMPIONSHIP.

WHEREAS, the Missoula Big Sky High School boys basketball team won its first Class AA state championship on March 1, 1997; and

WHEREAS, the Big Sky Eagles' win was earned over the top-ranked team in the conference; and

WHEREAS, the Eagles have an outstanding record of 17 wins and 4 losses for the season and 10 wins and 2 losses in conference play; and

WHEREAS, the commitment and hard work exemplified by the Big Sky team members and coaching staff provide a model for youth and instill pride in all Montanans; and

WHEREAS, it is fitting that the Big Sky team be recognized for their outstanding performance.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the congratulations of all Montanans be extended to the Missoula Big Sky High School boys basketball team and their coaching staff for bringing recognition and honor to Big Sky High School and the State of Montana.

Adopted April 9, 1997

HeinOnline -- 1997 vol. III 3621 1997

# HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE HELENA CAPITAL HIGH BRUIN FOOTBALL TEAM ON WINNING THE MONTANA STATE AA HIGH SCHOOL FOOTBALL CHAMPIONSHIP.

WHEREAS, citizens of the city of Helena and the State of Montana have every reason to be extremely proud of the student athletes and coaching staff of the Capital High Bruin football team; and

WHEREAS, on November 23, 1996, the Capital High Bruin football team won its fourth state AA championship in the school's 23-year history by defeating C.M. Russell High School; and

WHEREAS, not only did the Bruin football team members dominate on the field, compiling a perfect 12-0 record for the season, but they also excelled in the classroom, with 20 of the athletes earning academic all-state honors; and

WHEREAS, throughout the season, the Bruin football team demonstrated exceptional teamwork, with both the offense and the defense contributing to the success of the team; and

WHEREAS, the Legislature is pleased to recognize the efforts and achievements of the football team and Bruin coaching staff, an outstanding group of students, athletes, and citizens of the State of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the congratulations of all Montanans be extended to the Helena Capital High Bruin football team and the entire coaching staff for the team's academic achievements, for the team's and staff's exceptional 1996 season, and for winning the Montana state AA high school football championship.

Adopted April 9, 1997

# HOUSE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE HARDIN HIGH SCHOOL BULLDOGS BASKETBALL TEAM ON WINNING THE MONTANA STATE CLASS A HIGH SCHOOL BOYS BASKETBALL CHAMPIONSHIP.

WHEREAS, through participation in extracurricular sports activities, students learn self-discipline, build self-confidence, and develop skills to handle competitive situations; and

WHEREAS, team sports provide valuable lessons in teamwork, sportsmanship, and hard work; and

WHEREAS, when a sports team excels, it is a source of pride for the athletes, their parents, and their community; and

HeinOnline -- 1997 vol. III 3622 1997

WHEREAS, on March 1, 1997, the Hardin High School Bulldogs defeated Beaverhead County High School for the state Class A high school hoys hasketball championship; and

WHEREAS, this was the second boys basketball championship won by Hardin High School since entering the Class A division in 1956; and

WHEREAS, the Legislature is pleased to recognize the efforts and achievements of the Bulldogs basketball team and coaching staff for their outstanding performance.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the congratulations of all Montanans be extended to the Hardin High School Bulldogs basketball team and to Coach John Whiteman and his staff for their hard work and perseverance in winning tbe Montana state Class A high school boys basketball championship.

Adopted April 12, 1997

HeinOnline -- 1997 vol. III 3623 1997

# House Resolutions

## HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING RULES GOVERNING THE HOUSE OF REPRESENTATIVES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA
HOUSE OF REPRESENTATIVES

CHAPTER 1

Administration

**H10-10. House officers.** (1) House officers include a Speaker, a Speaker pro tempore, majority and minority floor leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

**H10-20. Speaker's duties.** (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall appoint and may remove the members of all standing and select committees not otherwise specified by law or rule. For the Rules Committee, the Speaker shall determine the total number of members and the party division, but each party shall appoint its own members.

HeinOnline -- 1997 vol. III 3624 1997

(5) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(6) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(7) The Speaker is the chief officer of the House, with authority for all House employees. The Speaker may seek the advice and counsel of the Legislative Administration Committee regarding employees.

(8) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

**H10-30. Speaker-elect.** During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

**H10-40. Speaker pro tempore duties.** The Speaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

**H10-50. Legislative Administration Committee duties.** (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the House, subject to the approval of the Speaker.

(4) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

**H10-60. Employees.** (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff.

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority floor leaders may each appoint a private secretary.

HeinOnline -- 1997 vol. III 3625 1997

**H10-70. Chief Clerk's duties.** The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

(1) supervise all House employees;

(2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and deliver them, unbound, to the Legislative Services Division librarian, who shall arrange to have them copied in an archivahle format. A copy will be provided to the Legislative Services Division and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a copy of the minutes from the appropriation committee and subcommittees. After copying, the original minutes will be delivered to the Montana Historical Society.

**H10-80. Sergeant-at-Arms duties.** The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-80;

(8) enforce parking regulations applicahle to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

**H10-90. Legislative aides.** (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

HeinOnline -- 1997 vol. III 3626 1997

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

**H10-100. Legislative interns.** A legislative intern is a person designated under Title 5, chapter 6, MCA.

**H10-110. House journal.** (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

**H10-120. Votes recorded and public.** Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must he recorded and made public (Montana Constitution, Art. V, Sec. 11).

HeinOnline -- 1997 vol. III 3627 1997

**H10-130. Duration of legislative day.** A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

## CHAPTER 2

### Decorum

**H20-10. Addressing the House — recognition.** (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, "For what purpose does the member rise?" or "For what purpose does the member seek recognition?" and may then decide if recognition is to be granted. There is no appeal from the Speaker's or presiding officer's decision.

**H20-20. Questions of order and privilege.** (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, "Shall the decision of the chairman be sustained?".

(2) Respenses to parliamentary inquiries and decisions of recognition may not be appealed.

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatable motion is offered and tbe vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

**H20-30. Limits on lohbying.** Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

**H20-40. Admittance to the House floor.** (1) The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for tbe conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

**H20-50. Dilatory motions or questions.** The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or

obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

**H20-60. Opening and order of business.** The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

**H20-70. Lobbying by employees.** (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

**H20-80. Papers distribnted on desks.** A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

**H20-90. Violation of rules.** (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority floor leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

HeinOnline -- 1997 vol. III 3629 1997

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

## CHAPTER 3

### Committees

**H30-10. House standing committees — appointments.** (1) The Speaker shall determine the total number of members and the party division and shall appoint the members to the following standing committees: Agriculture; Appropriations; Business and Labor; Education; Ethics; Fish, Wildlife, and Parks; Transportation; Human Services; Judiciary; Legislative Administration; Local Government; Natural Resources; Rules; State Administration; State/Federal Relations; and Taxation.

(2) The Speaker shall appoint the chairman, vice chairman, and minority vice chairman of each standing committee while retaining the authority to remove and replace any chairman, vice chairman, or minority vice chairman at any time. The appointment or removal of a minority vice chairman requires the consent of the minority leader. The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(3) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive legislation in the same manner as a standing committee and are subject to the rules of standing committees.

**H30-20. Chairman's duties.** The principal duties of the chairman of standing or select committees are to:

(1) preside over meetings of the committee and to put all questions;

(2) maintain order and decide all questions of order subject to appeal to the committee;

(3) supervise and direct staff of the committee;

(4) have the committee secretary keep the official record of the minutes;

(5) sign reports of the committee and submit them promptly to the Chief Clerk;

(6) appoint subcommittees to perform on a formal or an informal basis; and

(7) inform the Speaker of committee activity.

**H30-30. Quorum — officers as members.** (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact

HeinOnline -- 1997 vol. III 3630 1997

business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, majority leader, and minority leader are ex-officio, nonvoting members of all House committees. They may count toward establishing a quorum.

**H30-40. Meetings.**

(1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or other matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 48 hours notice to members of committees and the general public. However, a meeting may be held upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the transcribed minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons, other than legislators, appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes;

(f) references to the recording log, sufficient to serve as an index to the original recording; and

(g) testimony and exhibits submitted in writing.

**H30-50. Proceduros.** (1) The chairman sball notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not hear referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) The committee shall act on each bill in its pessession:

(a) by reporting the bill out of the committee:

(i) with the recommendation that it be referred to another committee;

(ii) favorably as to passage; or

(iii) unfavorably; or

(b) by tabling the measure in committee.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(6) In reperting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting.

(10) A motion to take a bill from the table may be adopted by the affirmative vote of a majority of the members present at any meeting of the committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and further formal action of the committee.

HeinOnline -- 1997 vol. III 3632 1997

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourths of all members of the committee te vote in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman shall decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form or through the vice chairman or minority vice chairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conductod in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one hill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure should be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

**H30-60. Public testimony.** (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor or a legislator, offering testimony shall complete a "Witness Form" and submit it to the committee secretary.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, hut all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by the chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshal. The chairman shall maintain that limit.

HeinOnline -- 1997 vol. III 3633 1997

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated.

## CHAPTER 4

### Legislation

**H40-10. Introduction deadlines.** (1) Except as provided in subsection (2), if a representative accepts drafted legislation from the Legislative Services Division after the deadline for introduction, the representative may not introduce that legislation after 48 hours from the time the bill was accepted from the Legislative Services Division.

(2) No bill or resolution may be introduced any later than 5 p.m. 5 legislative days prior to the appropriate transmittal deadline.

**H40-20. House resolutions.** (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

**H40-30. Cosponsors.** (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the copies.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

**H40-40. Introduction — receipt.** (1) During a session, proposed House legislation may be introduced in the House by submitting it in duplicate, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. In each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

HeinOnline -- 1997 vol. III 3634 1997

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

**H40-50. First reading.** Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. All legislation received hy tlie House may be referred to a committee prior to being read across the rostrum.

**H40-60. One reading per day.** Except on the final legislative day, legislation may receive no more tban one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

**H40-70. Referral.** (1) The Speaker shall refer to a House committee all properly introduced House legislation and transmitted Senate legislation.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee.

**H40-80. Rereferral.** (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less tban three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

**H40-90. Legislation withdrawn from committee.** Legislation may be witbdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

**H40-100. Standing committee reports.** (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across tbe rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of tlie members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, witb any amendments recommended by the committee.

**H40-110. Consent calendar procedure.** (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

HeinOnline -- 1997 vol. III 3635 1997

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may he placed on the consent calendar by agreement hetween the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day hefore consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any representative suhmits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

**H40-120. Legislation requiring other than a majority vote.** Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

**H40-130. Amending House second and third reading agendas.** (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

**H40-140. Second reading.** (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

HeinOnline -- 1997 vol. III 3636 1997

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, except on a tie vote, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise.

**H40-150. Amendments in the Committee of the Whole.** (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and the sponsor agree, amendments must be printed and placed on the members' desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

**H40-160. Motions in the Committee of the Whole.** (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) reconsider;

HeinOnline -- 1997 vol. III 3637 1997

(e) pass consideration;

(f) call for cloture;

(g) rise, rise and report, or rise and report progress and beg leave to sit again; and

(h) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(d) through (1)(g) are nondebatable but may be amended. Once a motion under subsection (1)(b) or (1)(c) is made, a contrary motion is not in order.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

**H40-170. Limits on debate in the Committee of the Whole.** (1) A representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority floor leader, a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

**H40-180. Special provisions for debate on the general appropriations bill.** (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present their portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may he entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not he debated at that time.

HeinOnline -- 1997 vol. III 3638 1997

This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

**H40-190. Engrossing.** (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading has been correctly engrossed, it may be placed on third reading on the following legislative day. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day.

**H40-200. Third reading.** (1) All bills, joint resolutions, and Senate amendments to House bills and resolutions passing second reading must be placed on third reading.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

**H40-210. Senate legislation in the House.** Senate legislation properly transmitted to the House must be treated as House legislation.

**H40-220. Senate amendments to House legislation.** (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

**H40-230. Conference committee reports.** (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading,

HeinOnline -- 1997 vol. III 3639 1997

shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

**H40-240. Enrolling.** (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation within 1 day of receipt.

(4) After the legislation has heen reported correctly enrolled but before it is signed, any representative may examine the legislation.

**H40-250. Governor's amendments.** (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

**H40-260. Governor's veto.** (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

## CHAPTER 5

## Floor Actions

**H50-10. Attendance.** (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by his party leader. This excused absence is not a leave with cause from a call of the House.

**H50-20. Quorum.** (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

HeinOnline -- 1997 vol. III 3640 1997

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

**H50-30. Call of the House without a quorum.** (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

**H50-40. Call of the House with a quorum.** (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

**H50-50. Leave with cause.** (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

**H50-60. Motions.** (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

HeinOnline -- 1997 vol. III 3641 1997

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

**H50-70. Limits on debate of debatable motions.** (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

**H50-80. Nondebatable motions.** (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain;

(j) to suspend the rules;

(k) all incidental motions, such as motions relating to voting or of a general procedural nature; and

(l) to appeal a call to order.

**H50-90. Questions.** A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-40.

**H50-100. Amending motions — limitations.** (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

**H50-110. Substitute motions.** (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

HeinOnline -- 1997 vol. III 3642 1997

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee; and

(i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) No more than one substitute motion is in order at any one time.

**H50-120. Withdrawing motions.** A representative who proposes a motion may withdraw it before it is voted on or amended.

**H50-130. Dividing a question.** A representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can he separated and if at least one suhstantive question remains after one substantive question is removed.

**H50-140. Previous question.** (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on whicb debate was ended may close.

**H50-150. Questions requiring other than a majority vote.** The following questions require the vote specified for each condition:

100 House Members

(1) a motion to override the Governor's veto (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of the Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt (two-thirds);

(5) a motion to temporarily suspend a joint rule governing the procedure for handling hills (two-thirds).

HeinOnline -- 1997 vol. III 3643 1997

Members Present and Voting

(1) a call of the House with a quorum (one-third);

(2) a motion to lift a call of the House (two-thirds);

(3) a motion to rerefer a bill from one committee to another pursuant to Rule 40-80(1) (three-fifths);

(4) a motion to withdraw a bill from a committee (three-fifths);

(5) a motion to add legislation to the second or third reading agenda (three-fifths);

(6) a motion to remove legislation from its normal progress through the House as provided under these rules and reassign it unless otherwise specifically provided by these rules (three-fifths);

(7) a motion to change a vote (unanimous);

(8) a motion to call for cloture (two-thirds).

Members Voting

(1) a motion to amend or suspend rules (two-thirds);

(2) a motion to overturn an adverse committee report (three-fifths);

(3) a motion to record a voto (one representative);

(4) a motion to spread a vote on the journal (two representatives);

(5) an appeal of the ruling of the presiding officer (three representatives);

(6) a motion to speak more than once on a debatable motion (unanimous vote);

(7) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee (15 representatives).

Entire Legislature

(1) a motion to approve a bill propesing to amend the Montana Constitution (two-thirds of the entire Legislature).

**H50-160. Reconsideration.** (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substituto motion, must be dispesed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

HeinOnline -- 1997 vol. III 3644 1997

(5) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

**H50-170. Renewing procedural motions.** The House may renew a procedural motion if further House business has intervened.

**H50-180. Tabling.** (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

**H50-190. Voting.** (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions tbat are not required to be recorded in tbe journal. If a representative rises and objects, the House shall record the vote.

(3) Tbe House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member bas disclosed a conflict of interest to the House.

**H50-200. Changing a vote.** (1) A representative may move to change the representative's vote within 1 legislative day of tbe vote. The motion is nondebatable. All of the members present and voting sball consent to the change.

(2) The representative making the motion sball first specify the bill number, the question, and the original vote tally. A vote may not be cbanged lf it would affect the outcome of legislation.

(3) A vote chaiige must be entered into the journal as a notation that tbe member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected withcut a vote.

**H50-210. Absentee votes.** (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee voto autborization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

HeinOnline -- 1997 vol. III 3645 1997

**H50-220. Recess.** The House may stand at ease or recess under any order of business hy order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

**H50-230. Adjournment for a legislative day.** (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

**H50-240. Adjournment sine die.** A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

## CHAPTER 6

### Motions

**H60-10. Proposal for consideration.** (1) Every question presented to the House or a committee inust he suhmitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

**H60-20. Nondebatable motions.** The following motions, in addition to any other motion specifically designated, must he decided without debate:

(1) to adjourn;

(2) for a call of the House;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) to table or to take from the table;

(6) to call for the previous question or for cloture;

(7) to amend a nondehatable motion;

(8) to divide a question;

(9) to postpone consideration to a day certain;

(10) to suspend the rules; and

(11) all incidental motions, such as motions relating to voting or of a general procedural nature.

**H60-30. Motlons allowed during debate.** (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer or rerefer; and

(i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

**H60-40. Motions to adjourn or recess.** (1) A motion to adjourn or recess is always in order, except:

(a) when the House is voting on another motion;

(b) when the previous question has been ordered and before the final vote;

(c) when a member entitled to the floor has not yielded for that purpose; or

(d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) The vote by which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

**H60-50. Motion to table.** (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) The vote by which a motion to table is carried or fails cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

**H60-60. Motion to postpone.** A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

**H60-70. Motion to refer.** When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

**H60-80. Terms of debate on motion to refer or rerefer.** (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

HeinOnline -- 1997 vol. III 3647 1997

(2) A motion to refer or rerefer with instructions is fully debatable.

**H60-100. Moving the previous question after a motion to table.** (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

**H60-110. Standard motions.** The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House bills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was ( ) with a vote tally of ____for and ____ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

## CHAPTER 7

## Rules

**H70-10. House rules.** (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

**H70-20. Tenure of rules.** Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

**H70-30. Suspension of rules.** The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

HeinOnline -- 1997 vol. III 3648 1997

**H70-40. Supplementary rules.** Mason's Manual of Legislative Procedure (1989) governs House proceedings in all cases not covered by House rules.

**H70-50. Interpreting rules.** The Speaker shall interpret all questions on House rules, subject to appeal by any fifteen representatives to the House Rules Committee. The decision of the House Rules Committee may be appealed to the House by any representative.

**H70-60. Joint rules superseded.** A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Adopted January 15, 1997

HeinOnline -- 1997 vol. III 3650 1997

# BALLOT ISSUES

HeinOnline -- 1997 vol. III 3651 1997

HeinOnline -- 1997 vol. III 3652 1997

# CONSTITUTIONAL INITIATIVE NO. 123

By Constitutional Initiative No. 123, the people propesed to allow lawsuits for civil damages against those who commit unlawful threats or intimidation, and prohibit the filing of false liens against property. This initiative would allow any individual or organization to hring a lawsuit against persons who engage in unlawful threats or intimidation that cause injury or harm. It would also prohibit the filing of "nonconsensual common-law liens," defined as claims against real or personal property that are:

not allowed by state or federal law,

not consented to by the property owner,

not imposed by a court, or

not commonly used in commercial transactions.

It would allow individuals or organizations against whose property such liens are filed to recover court costs and damages against the person who filed the lien.

Constitutional Initiative No. 123 was approved by the following vote at the General Election held Novemher 8, 1996:

☐ FOR: 200,682

☐ AGAINST: 180,295

The text of Initiative No. 123 follows:

*Be it enacted by the People of the State of Montana:*

**Section 1. Short titie.** [Sections 1 through 4] may be cited as the "Montana Anti-Intimidation Act of 1996".

**Section 2. Findings — purposc.** (1) [Sections 1 through 4] seek to address the growing problem of harassing and threatening behavior being undertaken by extremist individuals and groups in Montana. Numerous public officials and their families, voters, juries, individuals, and organizations have been targeted for intimidation and harassment by extremists. One of the principal tools of intimidation used by extremists is a false lien filed upon the property of an individual or organization.

(2) The purpose of [sections 1 tbrough 4] is to restrain these extremist activities by providing a civil remedy for anyone injured or barmed as a result of acts of intimidation, precluding the filing of false liens and establishing a procedure for removing an existing false lien.

**Section 3. Civil action.** (1) A public official, family member of a public official, juror, voter, individual or organization that is injured, harmed or otherwise aggrieved by the acts of another person in violation of 45-7-102, 45-7-209 or 45-5-203 has a civil cause of action against the person causing the harm.

HeinOnline -- 1997 vol. III 3653 1997

(2) An individual or organization who is attempting to exercise a legally protected right and who is injured, harassed or aggrieved by a threat or intimidation has a civil cause of action against the person engaging in the threatening or intimidating behavior.

(3) A conviction for violation of 45-7-102, 45-7-209 or 45-5-203 is not a condition precedent for a civil action under this section.

**Section 4. Liens.** (1) As used in this section, the following definitions apply:

(a) "Lien" means an encumbrance on property as security for the payment of a debt.

(b) "Nonconsensual common-law lien" means a lien that:

(i) is not provided for by a specific state or federal statute;

(ii) does not depend upon the consent of the owner of the property affected for its existence;

(iii) is not an equitable or constructive lien imposed by a court; and

(iv) is not of a type commonly used in legitimate commercial transactions.

(c) "Person" means an individual, group of individuals or any organization of individuals.

(2) A person may not file a nonconsensual common-law lien upon the real or personal property of an individual or organization.

(3) (a) If a nonconsensual common-law lien is filed against the real or personal property of an individual or organization, the individual or organization may petition the district court in the county in which the affected property is located to remove the nonconsensual common-law lien. If the district court determines that the lien in question is a nonconsensual common-law lien the district court shall enter an order directing the appropriate public official to remove the nonconsensual common-law lien.

(b) The legislature may provide other methods of removing nonconsensual common-law liens.

(4) The person filing the nonconsensual common-law lien is liable for the costs of removing the nonconsensual common-law lien, including reasonable attorney fees, court costs, and actual damages sustained by the aggrieved individual or organization as a result of the nonconsensual common-law lien.

**Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 27, Chapter 1, and the provisions of Title 27, Chapter 1, apply to [sections 1 through 4].

**Section 6. Effective date — applicability.** If approved by the electorate, this act is effective January 1, 1997, and applies to nonconsensual common-law liens filed before or after January 1, 1997.

HeinOnline -- 1997 vol. III 3654 1997

# CONSTITUTIONAL INITIATIVE NO. 125

By Constitutional Initiative No. 125, the people proposed to prohibit direct corporate spending on ballot issues, except by non-profit corporations not controlled by for-profit companies, and setting voluntary spending limits for ballot issues. Current law prohibits corporations from making direct contributions to political candidates or to political committees that support or oppose candidates or political parties. This initiative would prohibit direct corporate contributions or expenditures toward the support or defeat of ballot issues. It would allow contributions by non-profit corporations that do not: engage in business activities, allow for-profit corporations as members, or accept more than 5% of their revenue from for-profit corporations. The initiative also would set a voluntary spending limit for ballot issue committees of $150,000 per year and allow them to advertise compliance with that limit.

Constitutional Initiative No. 125 was approved by the following vote at the General Election held November 8, 1996:

☐ FOR: 201,186

☐ AGAINST: 183,114

The text of Initiative No. 125 follows:

*Be it enacted by the People of the State of Montana:*

**Section 1.** Section 13-35-227, MCA, is amended to read:

**"13-35-227. Prohibited contributions from corporations.** (1) (a) A Except as provided in subsection (4), a corporation may not make a contribution or an expenditure in connection with a candidate, a ballot issue, or a political committee which supports or opposes a candidate, a ballot issue, or a political party.

(b) For purposes of this section, "corporation" refers to for-profit and nonprofit corporations.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or a member of the corporation.

(4) The provisions of subsection (1) prohibiting corporate contributions to or expenditures in connection with a ballot issue do not apply to a nonprofit corporation formed for the purpose, among others, of promoting political ideas, and that:

(a) does not engage in business activities;

(b) has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;

(c) does not accept foreign or domestic for-profit corporations as members; and

(d) does not accept in the aggregate more than 5% annually of its total revenue from foreign or domestic for-profit corporations.

~~(4)~~(5) A person who violates this section is subject to the civil penalty provisions of 13-37-128."

**Section 2. Voluntary spending limits.** (1) (a) Beginning January 1, 1997, the following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices, . . . . . is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101(12)(h), who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during a calendar year:

(a) all loans made or received by the committee;

(b) all committee expenditures made by check or cash; and

(c) the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed $150,000.

(4) Beginning January 1, 1997, any political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of $5,000 to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner.

**Section 3. Codification instruction.** Section 2 is intended to be codified as an integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37 apply to section 2.

**Section 4. Severability.** If a part of this amendment is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

HeinOnline -- 1997 vol. III 3656 1997

# INDEX TO

# APPROPRIATIONS

HeinOnline -- 1997 vol. III 3657 1997

HeinOnline -- 1997 vol. III 3658 1997

# INDEX TO APPROPRIATIONS


Administration, Department of
- budget amendment, Ch. 387
- capital projects, Ch. 469, Ch. 471
- general appropriation, Ch. 551
- information technology projects, general obligation bond proceeds for, Ch. 447

Agricultural Experiment Station, general appropriation, Ch. 551

Agriculture, Department of
- capital projects, Ch. 469
- general appropriation, Ch. 551

Appellate Defender Commission, general appropriation, Ch. 551

Budget amendment, Ch. 387

Budget and Program Planning, Office of
- information technology projects, general obligation bond proceeds for, Ch. 447
- state employee pay plan and benefit adjustments, Ch. 417

Capital projects, Ch. 469, Ch. 471

Carryover restrictions clarified, Ch. 532

Coal Board, general appropriation, Ch. 551

Commerce, Department of
- fort peck interpretive center grant, Ch. 469
- general appropriation, Ch. 551
- local government infrastructure project grants, treasure state endowment account interest earnings for, Ch. 55
- professional and occupational licensure boards, compliance and enforcement positions, Ch. 492

Consumer counsel
- general appropriation, Ch. 551
- state employee pay plan and benefit adjustments, Ch. 417
- telecommunications committee, Ch. 349

Cooperative Extension Service, general appropriation, Ch. 551

Corrections, Department of
- budget amendment, Ch. 387
- capital projects, Ch. 469, Ch. 471
- general appropriation, Ch. 551
- information technology projects, general obligation bond proceeds for, Ch. 447
- supplemental, Ch. 269

Crime Control, Division of — general appropriation, Ch. 551

Cultural and aesthetic project grants, Ch. 470

Deaf and Blind, Montana School for the
- general appropriation, Ch. 551


HeinOnline -- 1997 vol. III 3659 1997

Deaf and Blind, Montana School for the (Continued)
supplemental, Ch. 269
Environmental Quality, Department of
budget amendment, Ch. 387
general appropriation, Ch. 551
oil overcharge money, Ch. 526
orphan shares, for reimbursements at comprehensive environmental cleanup and responsibility act sites and for defense costs, Ch. 542
state building energy conservation program bond proceeds, Ch. 81
supplemental, Ch. 269
Fire Services Training School, general appropriation, Ch. 551
Fish, Wildlife, and Parks — Department of
budget amendment, Ch. 387
capital projects, Ch. 469
general appropriation, Ch. 551
Forestry and Conservation Experiment Station, general appropriation, Ch. 551
General Appropriations Act of 1997, Ch. 551
Governor, general appropriation, Ch. 551
Historical Society
budget amendment, Ch. 387
cultural and aesthetic project grants, Ch. 470
general appropriation, Ch. 551
virginia city and nevada city assets — purchase, renovation, and preservation, Ch. 469, Ch. 471, Ch. 551
Horseracing, Board of — general appropriation, Ch. 551
Information technology projects, general obligation bond proceeds for, Ch. 447
Judicial Branch
general appropriation, Ch. 551
state employee pay plan and benefit adjustments, Ch. 417
Justice, Department of
general appropriation, Ch. 551
natural resource damage litigation in clark fork river basin, Ch. 154
Labor and Industry, Department of
apprenticeship instrnction programs, Ch. 357
budget amendment, Ch. 387
capital projects, Ch. 469
contractor registration program, Ch. 548
general appropriation, Ch. 551
information technology projects, general obligation bond proceeds for, Ch. 447
Legislative Branch
feed bill, Ch. 1
general appropriation, Ch. 551
property tax committee, Ch. 463
state employee pay plan and benefit adjustments, Ch. 417
Legislative Fiscal Division, transportation funding and expenditure study committee, Cb. 493

Legislative Services Division
electric utility industry restructuring transition advisory committee, Ch. 505
feed hill, Ch. 1
gaming study commission, Ch. 494
public employees' retirement system, committee designated for development and implementation of new or modified system, Ch. 191
state management systems, legislative oversight committee on, Ch. 391
veterans' needs, committee on, Ch. 14

Livestock, Department of
budget amendment, Ch. 387
general appropriation, Ch. 551
supplemental, Ch. 269

Military Affairs, Department of
budget amendment, Ch. 387
capital projects, Ch. 469
general appropriation, Ch. 551
supplemental, Ch. 269

Mines and Geology, Bureau of — general appropriation, Ch. 551

Montana Arts Council
cultural and aesthetic project grants, Ch. 470
general appropriation, Ch. 551

Montana Chiropractic Legal Panel, general appropriation, Cb. 551

Natural Resources and Conservation, Department of
capital projects, Ch. 469
general appropriation, Ch. 551
reclamation and development grants program grants, Ch. 108
renewable resource grant and loan program grants and loans, Ch. 80, Ch. 434
supplemental, Ch. 269

Oil overcharge money, Ch. 81, Ch. 526

Political practices, commissioner of — general appropriation, Ch. 551

Public Education, Board of — general appropriation, Ch. 551

Public Employees' Retirement Board, general appropriation, Ch. 551

Public Health and Human Services, Department of
budget amendment, Ch. 387
capital projects, Ch. 469
general appropriation, Ch. 551
health care advisory council, Ch. 517
oil overcharge money, Ch. 526

Public Service Regulation, Department of
budget amendment, Ch. 387
general appropriation, Ch. 551

Reappropriation, Ch. 81, Ch. 526

Regents of Higher Education, Board of — financial assistance for enrolled resident nonbeneficiary students in tribally controlled community colleges, line item appropriation for, Ch. 362

Reserved Water Rights Compact Commission, general appropriation, Ch. 551

HeinOnline -- 1997 vol. III 3661 1997

Revenue, Department of
carryover appropriation, Ch. 463
general appropriation, Ch. 551
information technology projects, general obligation bond proceeds for, Ch. 447
supplemental, Ch. 269
Reversion of funds, Ch. 108, Ch. 269, Ch. 362, Ch. 387, Ch. 470, Ch. 551
Revision and clarification of laws governing, Ch. 532
Schools, direct state aid and guaranteed tax base aid, Ch. 437
Secretary of state, general appropriation, Ch. 551
State auditor, general appropriation, Ch. 551
State Library Commission
budget amendment, Ch. 387
general appropriation, Ch. 551
State Tax Appeal Board, general appropriation, Ch. 551
Statutory
adoption services account, Ch. 480
enhanced 9-1-1 fees, clarification, Ch. 448
game animal meat seized from violators, sale proceeds, Ch. 523
Montana heritage preservation and development account, Ch. 469
oil and natural gas production tax and local government severance tax payment distributions, Ch. 466
revision and clarification of statutes containing and revision of statutory appropriation of certain funds, Ch. 422, Ch. 532
state lands historic right-of-way account, Ch. 461
wild buffalo or bison disease control program, excess revenue, Ch. 523
Superintendent of public instruction
budget amendment, Ch. 387
general appropriation, Ch. 551
schools — technology acquisition, textbooks, library materials, building maintenance, and state advances and reimhursements for facilities, Ch. 437
Supplemental, Ch. 269
Teachers' Retirement Board, general appropriation, Ch. 551
Transportation, Department of
budget amendment, Ch. 387
capital projects, Ch. 469
general appropriation, Ch. 551
Unexpended, specific uses for involuntarily terminated state employees, Ch. 361
University system
capital projects, Ch. 469, Ch. 471
general appropriation, Ch. 551
information technology projects, general obligation bond proceeds for, Ch. 447
state employee pay plan and benefit adjustments, Ch. 417
Veterans' Affairs, Board of — eastern Montana state veterans' cemetery site selection, Ch. 109

HeinOnline -- 1997 vol. III 3662 1997

# GENERAL INDEX

HeinOnline -- 1997 vol. III 3663 1997

HeinOnline -- 1997 vol. III 3664 1997

# GENERAL INDEX

## A


ABORTION
Partial-birth abortion, offense of — creation and exception, Ch. 314

ADMINISTRATION, DEPARTMENT OF
Accounting duties, unnecessary — elimination, Ch. 48
Appropriations, Ch. 387, Ch. 447, Ch. 469, Ch. 471, Ch. 551
Capitol complex improvements, inventory requirements, Ch. 476
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Protective services professionals, separate pay plan for — study authorized, Ch. 363
State debt collection service, provisions revised, Ch. 17
State employees, alternative compensation system — development, Ch. 417
State sick-pay plan, administration requirement eliminated, Ch. 339
State travel reimbursement provisions revised, Ch. 439

ADMINISTRATIVE RULES
Bills delegating rulemaking authority, inclusion of statement of legislative intent — requirement eliminated, Ch. 11
Bill sponsors of bills that become law, notice that initial rulemaking implementing the bill has begun, Ch. 340
Notice provisions clarified, Ch. 152
Objection to rule by majority of Administrative Code Committee members, adoption and effective date provisions, Ch. 335
Petitions for rulemaking, decisions to be in writing and hearings not required, Ch. 110
Public participation in rulemaking, provisions expanded and clarified, Ch. 489
Repeal of ARM 24.11.831, Ch. 491
Standards for determining when authority exists to adopt and for stating the reasonable necessity for, Ch. 152
Statutes delegating rulemaking authority, specific guidelines to be provided, Ch. 11

ADOPTION
Revision and clarification of laws governing, Ch. 480

AERONAUTICS
Aircraft, purchase year considered model year for purposes of calculating fee in lieu of tax when, Ch. 402

AERONAUTICS, BOARD OF
Appeintments to, SR 20

AGING AND AGED PERSONS
Homeowner property tax credit, application simplified, Ch. 543

AGING AND AGED PERSONS (Continued)

Mammograms for women who qualify for medicare, congress and united states department of health and human services urged to provide annually, SJR 8
Reverse annuity mortgage loan program, modification, Ch. 39

AGRICULTURAL COMMODITIES
Standards, storage, and merchandising — revision of certain provisions, Ch. 76

AGRICULTURAL EXPERIMENT STATION
Appropriation, Ch. 551

AGRICULTURE
County roads, operation of farm vehicles with flag vehicle — provisions revised, Ch. 283
Fuel tanks, fire and safety requirements amended, Ch. 201
Implements and machinery, wholesale value clarified for property tax purposes, Ch. 299
Interim committee requested for study of challenges confronting and opportunities emerging for family farming and ranching in Montana, SJR 4

AGRICULTURE, DEPARTMENT OF
Appropriations, Ch. 469, Ch. 551
Environmental Quality Council, compliance and enforcement information to be reported to, Ch. 38
Quarantine and Pest Management Act, Ch. 7
Seed potato stock, contagious disease control and prevention — authority and responsibility clarified, Ch. 59

AIDS (ACQUIRED IMMUNODEFICIENCY SYNDROME)
Communicable diseases — AIDS, HIV-related conditions, and HIV infection to be treated in same manner and informed consent provision revised, Ch. 524
Health care provider redefined to allow out-of-state provider to order HIV test for insurance companies, Ch. 197

AIR QUALITY
Permit provision revised, Ch. 273
Sulfur dioxide, setting uniform state ambient standards, Ch. 33

ALCOHOLIC BEVERAGES
Beer brewers or importers, clarification that certain actions constitute establishing or maintaining resale price of products by wholesale distributors, Ch. 130
Gaming and gambling in conjunction with license prohibited when, Ch. 465
Hard cider, sale authorized, Ch. 399
Home brewing, requirements for and tax classification for malting barley machinery and equipment, Ch. 546
Licenses and license administration, revision and clarification of provisions, Ch. 528
Resort retail all-beverages licenses, clarification of certain provisions, Ch. 371
Restaurant beer and wine license, establishment, Ch. 465
Workforce Drug and Alcohol Testing Act, Ch. 521

HeinOnline -- 1997 vol. III 3666 1997

ALFALFA LEAF-CUTTING BEE COMMITTEE
Elimination, Ch. 4

ALFALFA LEAF-CUTTING BEES
Alfalfa Seed Committee, authority to administer alfalfa leaf-cutting bee management act, Ch. 4

ALFALFA SEED COMMITTEE
Authority to administer alfalfa leaf-cutting bee management act and membership expanded, Ch. 4

ALTERNATIVE HEALTH CARE BOARD
Appointments to, SR 17

AMERICAN INDIAN HERITAGE DAY
Designation, Ch. 202

ANIMAL SHELTERS, HUMANE SOCIETIES, AND PET SHOPS
Sale or adoption of cat or dog, information to be provided and spay or neuter requirements, Ch. 426

ANTI-INTIMIDATION ACT OF 1996, Initiative No.123(Appendix)

ANTIQUITIES
Bannack, historic sites at — competitive bidding process may be bypassed in restoration and preservation when, Ch. 57
Montana Heritage Preservation and Development Commission, establishment, Ch. 469
Tax credit for preservation of historic buildings, Ch. 545
University system land transactions, compliance with laws, Ch. 425
Virginia City and Nevada City assets — appropriations for purchase, renovation, and preservation, Ch. 469, Ch. 471, Ch. 551

APPELLATE DEFENDER COMMISSION
Appropriation, Ch. 551

APPELLATE PROCEDURE
Death penalty, review — clarification of standards, Ch. 302
Justice's or city court, appeal from
revocation of suspended sentence, procedure clarified, Ch. 149
trial de novo may not be by jury if defendant elected jury trial in lower court, Ch. 129

APPRENTICESHIP AND APPRENTICES
Instruction programs, funding, Ch. 357

APPROPRIATIONS, See INDEX TO APPROPRIATIONS, printed separately in this volume

ARBITRATION
Contracts, special notice provision eliminated, Ch. 19
Teachers, appeal of employment termination when, Ch. 438

ARCHITECTS, BOARD OF
Appointments to, SR 17, SR 20

HeinOnline -- 1997 vol. III 3667 1997

ARMS, RIGHT TO KEEP AND BEAR
Establishment of individual licensure, revision of reference to federal gun-free school zones act, Ch. 29

ARTS AND CULTURE
Cultural and aesthetic grant awards and appropriations, Ch. 469, Ch. 470
Jefferson High School honored for being first Montana school selected to participate in American High School Theatre Festival, SJR 12
Land Commissioners, Board of — lease of old registrar of motor vehicles office to powell county museum and arts foundation for purpose of enhancement of Montana territorial prison museum or other community purposes urged, SJR 10

ASSOCIATIONS
Ballot issues, contributions prohibited, Ch. 294

ASSUMED BUSINESS NAME REGISTRATION
Documents, original filed by facsimile — requirements revised, Ch. 290

ATHLETICS, BOARD OF
Appointments to, SR 17

ATTORNEY GENERAL
Bankruptcy proceedings, representation of state's interest — duty extended for 2 years, Ch. 82

**B**

BAIL
Partner or family member assault offenders, not allowed when, Ch. 484
Revision of provisions generally, Ch. 456

BALLOT ISSUES, See also ELECTIONS
Committees and arguments for, provisions revised, Ch. 47
Corporations, partnerships, associations, cooperatives, and other organizations — contributions prohibited, Initiative No.125(Appendix); Ch. 294
Criminal laws, principles of — revising to include public safety and restitution, constitutional amendment for, Ch. 313
University system 6-mill levy, for continuation, Ch. 277
Voter information pamphlets, voluntary spending limit statement, Initiative No.125(Appendix)

BANKING BOARD, STATE
Appointments to, SR 17
Branch banks, powers and duties revised, Ch. 117

BANKRUPTCY
Attorney general, representation of state's interest — duty extended for 2 years, Ch. 82

BANKS AND TRUST COMPANIES
Administrative fees, payment modified, Ch. 117
"Bank records" and "electronic storage" defined and certain electronically stored information required to be treated as original record, Ch. 237

BANKS AND TRUST COMPANIES (Continued)

Branch banks, revision of provisions generally, Ch. 117
Consolidation or merger provisions revised, Ch. 117
Corporate license tax payments, distribution changed, Ch. 369
Examination fees for trust companies, elimination, Ch. 117
Foreign capital depositories, compliance with certain federal banking laws mandated, Ch. 382
Holding companies
acquisition of financial institutions by companies not located in this state, provisions revised, Ch. 117
review of books and affairs by department of commerce authorized, Ch. 148
Local government, demand deposits distributed ratably among banks — requirement eliminated, Ch. 229

BARBERING AND BARBERS
Revision of laws generally, Ch. 481

BARBERS, BOARD OF
Appointments to, SR 17

BIRTH
Hospital stay following childbirth, minimum — insurance coverage required, Ch. 183

BLAYLOCK, CHET
Resolution commemorating and celebrating contributions of and authorizing permanent placement of senate memorial in the capitol, SJR 15

BOATS AND BOATING
Purchase year considered model year for purposes of calculating fee in lieu of tax when, Ch. 402

BONDS AND BOND ISSUES
Bond Validating Act, application extended, Ch. 31
Coal severance tax bonds, issuance for renewable resource projects, Ch. 80
Information technology projects, general obligation bonds — issuance and appropriation of proceeds, Ch. 447
Long-range building program bonds, issuance for capital projects, Ch. 455, Ch. 469, Ch. 471
Municipal bond requirements revised, Ch. 459
Municipal finance consolidation, bonding limit increased, Ch. 483
School bond elections, time specified for ballot availability and notice requirements revised, Ch. 144
School districts, for joint construction of facilities, Ch. 397
State building energy conservation program bonds, authorization and appropriation of proceeds, Ch. 81
State correctional services contracted to private entity, revenue bonds for, Ch. 477

BUDGET AND BUDGETING
Budget comparisons and determining budget performance, procedures and standards provided, Ch. 74
Municipal budget laws, revision generally, Ch. 458
State budgeting laws, revision generally, Ch. 347

BUDGET AND BUDGETING (Continued)

State grain laboratory revenue, exemption from budget amendment requirements, Ch. 76
State Prevention Programs, Interagency Coordinating Council for — preparation of unified prevention budget required, Ch. 173

BUDGET AND PROGRAM PLANNING, OFFICE OF
Appropriations, Ch. 417, Ch. 447
Budget director
debt collection, report of cancellation and write-off of accounts receivable — requirement eliminated, Ch. 17
reports to, number reduced, Ch. 347
Revenue estimates for fiscal years 1997-98 and 1998-99, HJR 2

BUILDING AND LOAN ASSOCIATIONS
Corporate license tax payments, distribution changed, Ch. 369

BUILDINGS AND BUILDING REGULATIONS, See also CAPITOL AND OTHER STATE BUILDINGS
Appliances, below-grade liquefied petroleum gas-burning — installation permissible, Ch. 140
Codes, defining and revising terms, Ch. 488
County building construction, repair, or maintenance — bidding requirements, amount revised, Ch. 203
Disabilities, persons with — inspection of construction of public building or alteration of primary function areas for accessibility and disclaimer on permits and certificates of occupancy, Ch. 331
Inspection fees, allocation, Ch. 357
Pesticides, application or use — notice to be posted, Ch. 454
Plumbing and electrical installation inspections, proof of licensure required for persons involved with plumbing and electrical work and reporting of license violations, Ch. 379
School buildings, weapons in — offense of possession or allowing possession by minor, Ch. 435

BUSINESS LICENSING
One-stop business licensing pilot project, implementation, Ch. 366

C

CAMPING AND CAMPGROUNDS
Revision of provisions generally, Ch. 350

CANALS, DITCHES, AND FLUMES
Ditch company officers or managers, workers' compensation exemption, Ch. 386

CAPITOL AND OTHER STATE BUILDINGS
Blaylock, Chet — placement of senate memorial in the capitol, SJR 15
Interim study of state property management, request for, HJR 4
Lease with option to purchase, revision of laws governing, Ch. 455
Long-range building program
bonds, issuance authorized, Ch. 455, Ch. 469, Ch. 471
budget amendment provisions, Ch. 347

HeinOnline -- 1997 vol. III 3670 1997

CAPITOL AND OTHER STATE BUILDINGS (Continued)

Naming of certain buildings and establishing certain permanent displays, legislative approval required, Ch. 476
Space in capitol building, allocation provisions revised, Ch. 20
State building energy conservation program, bond issue to fund and approval of projects, Ch. 81
Women in the legislature, authorizing permanent placement of plaque in capitol commemorating service of, HJR 6

CAPITOL COMPLEX ADVISORY COUNCIL
Creation, Ch. 476

CAPITOL COMPLEX MASTER PLAN ACT, Ch. 476

CEMETERIES
Eastern Montana State Veterans' Cemetery, siting, Ch. 109
Perpetually Maintained Cemeteries Act, Ch. 52

CHAPTER NUMBER TO BILL NUMBER TABLE, See TABLE OF CHAPTER NUMBER TO BILL NUMBER, printed separately in this volume

CHARITIES
Game animal meat seized from illegally taken animals donated directly to food banks or charitable institutions, Ch. 523

CHEMICAL DEPENDENCY
Counselors, certification duties and responsibilities transferred, Ch. 507
Dentists, protocol required for referral to rehabilitation program, Ch. 358
Rehabilitation facility accredited by commission on accreditation of rehabilitation facilities, licensing eligibility as rehabilitation or treatment facility for, Ch. 188

CHILD ABUSE AND NEGLECT
Children's trust fund account, uses revised, Ch. 405
Endowment for children fund, creation and use, Ch. 405
Foster care licensing requirement, limitation, Ch. 514
Protective services provisions, revision, Ch. 514
Revision of laws generally, Ch. 516
Social workers, requirements before requesting temporary investigative authority, Ch. 501

CHILD-CARE ADVISORY COUNCIL
Elimination, Ch. 171

CHILD CUSTODY
Dissolution of marriage, custody and visitation provisions — revision generally, Ch. 343
Summons to contain temporary restraining order preventing disposal of marital property without court order or consent of other party when, Ch. 255
Visitation, department of public health and human services may not be ordered to supervise, Ch. 514

CHILDREN AND FAMILIES, JOINT OVERSIGHT COMMITTEE ON
Performance evaluation at conclusion of each interim required, Ch. 257

HeinOnline -- 1997 vol. III 3671 1997

CHILD SUPPORT
Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, provisions to implement, Ch. 552
Insurance coverage not te be modified, temporary restraining order requested to provide, Ch. 255
Lien, buyer for value of obligor's motor vehicle or other item for which certificate of ownership is issued and who buys in good falth and without knowledge of lien takes proporty free of lien, Ch. 432
Paternity claims received by Child Support Enforcement Division, division to promptly take steps to locate and notify alleged father of claim, Ch. 398
Prisoners, nioney received by — garnishment for, Ch. 475
Revision of laws generally, Ch. 482
Summons to contain temporary restraining order preventing disposal of marital property without court order or consent of other party when, Ch. 255
Temporary family support order to ensure payment of periodic marital estate liabilities out of parties' income or marital assets during pendency of proceedings, Ch. 256

CHIROPRACTIC AND CHIROPRACTORS
Parking permits for disabled persons, certification by chiropractor allowed, Ch. 280

CHIROPRACTORS, BOARD OF
Appointments to, SR 17, SR 20

CHURCHES
Chapel at Women's Correctional System in Billings and church at Montana Developmental Center in Boulder, consent for construction and for moving of church structure from galen campus to warm springs campus, HJR 24

CIGARETTES
Littering with lighted matehes, cigarettes, and other burning material and dumping ashtray prohibited and penalty provided, Ch. 67
Youth access to tobacco products control, provisions revised, Ch. 518

CITIES AND TOWNS, See also LOCAL GOVERNMENT
Annexation
hearing allowed to be held in conjunction with hearing on zoning of proposed annexation, Ch. 217
revision of laws generally, Ch. 485
Building codes, duties expanded, Ch. 488
Fire protection services, third-class cities or tewns allowed to contract for or consolidate services, Ch. 96
Fire service areas, indebtedness — amount allowed, Ch. 459
Recordkeeping requirements, regulation, Ch. 459
Sterage tanks, aboveground — installation allowed when, Ch. 116

CITY-COUNTY CONSOLIDATED GOVERNMENTS
Gasoline taxes, disbursements to, Ch. 239

CITY COURTS
Appeal of revocation of suspended sentence, procedure clarified, Ch. 149

HeinOnline -- 1997 vol. III 3672 1997

CITY COURTS (Continued)

Day care facilities, licensing enforcement action may be initiated in, Ch. 222
Misdemeanor criminal cases, defendants limited to one jury trial, Ch. 129

CITY FINANCE
Bond requirements revised, time period increased for installment contracts, and indebtedness for repair and rehabilitation of certain facilities allowed, Ch. 459
Budget laws, revision generally, Ch. 458

CITY OFFICERS
Residence provision revised, Ch. 459

CIVIL PROCEDURE
Human Rights, Commission for — adoption of rules of civil procedure required, Ch. 467

CLERK OF THE DISTRICT COURT
Fees, deposit requirement revised, Ch. 287
Meetings of peers held within state, reimbursement for transportation expenses and per diem for attendance, Ch. 215
Mining, trusts for unlocatable owners — allowing substitution of department of revenue as trustee, Ch. 126

CLINICAL LABORATORIES
Tumors, repert requirements and release of tumor registry information, Ch. 101

CLINICAL LABORATORY SCIENCE PRACTITIONERS, BOARD OF
Appointments to, SR 17

COAL, See MINES AND MINING; TAXATION, MINERALS

COAL BOARD
Appointments to, SR 20
Appropriation, Ch. 551
Local gevernmental units, clarification of authority to assist in providing services necessitated by a significant decline in coal mining or in consumption of coal by coal-using energy complexes and elimination of authority to make loans to, Cb. 204

COAL TRUST FUNDS
Bond fund, appropriation for coal severance tax bond principal and interest payments on renewable resource projects, Cb. 80
Cultural trust fund, appropriation from and allocation of coal severance taxes revised, Ch. 469
Permanent fund
loans to enhance economic development and create jobs — revision of authority for size, providing period in which to assess creation of jobs, and extending peried for measuring jobs to calculate interest rate reductions, Ch. 98
natural resource damage litigation in clark fork river basin, recovery in — amount to be depesited to fund, Ch. 154

CODE COMMISSIONER BILL, Ch. 42

CODE SECTIONS AFFECTED, See TABLE OF CODE SECTIONS AFFECTED, printed separately in this volume

HeinOnline -- 1997 vol. III 3673 1997

COLLECTIVE BARGAINING
Teachers, employment termination — provisions revised, Ch. 438

COMMERCE, DEPARTMENT OF
Apprenticeship instruction programs, funding allocated from specific fees collected by department, Ch. 357
Appropriations, Ch. 55, Ch. 469, Ch. 492, Ch. 551
Banks and trust companies
branch banks, certain powers and duties transferred to, Ch. 117
holding companies, review of books and affairs authorized, Ch. 148
Boiler inspection program, substitute funding, Ch. 385
Building codes, certification — provisions revised, Ch. 488
Chemical dependency counselors, certification duties and responsibilities transferred to, Ch. 507
Foreign capital depositories, establishment as regulating authority, Ch. 382
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Motor vehicle warranty laws, funding for administration, Ch. 199
Plumbing and electrical installation inspections, proof of licensure required for persons involved with plumbing and electrical work and reporting of license violations, Ch. 379
Postsecondary educational institution licensing and permitting, elimination, Ch. 364
Prisoners filing complaints against certain professionals prohibited, Ch. 475
Recreational vehicle construction standards, responsibility for adoption eliminated, Ch. 240
Science and Technology Development, Montana Board of — elimination and transfer of portfolios, Ch. 549

COMMUNITY COLLEGE DISTRICTS AND TRUSTEES
Budget, date for submission changed, Ch. 243
Tribally controlled community colleges, financial assistance for enrolled resident nonbeneficiary students, Ch. 362

CONDOMINIUMS
Unit ownership, recording clarified, Ch. 279

CONSERVATION DISTRICTS
Flathead Basin Commission, appointments by specific boards of supervisors, Ch. 451
Loan program, conservation practice — revision of provisions generally, Ch. 141

CONSTITUTION OF MONTANA, AMENDMENT
Criminal laws, principles of — revising to include public safety and restitution, Ch. 313

CONSTITUTION OF UNITED STATES
Balanced budget amendment, congress urged to submit to states, HJR 26

CONSTRUCTION BLASTING AND CONSTRUCTION BLASTERS
Experience requirements revised, Ch. 100

HeinOnline -- 1997 vol. III 3674 1997

CONSUMER COUNSEL
Appropriations, Ch. 349, Ch. 417, Ch. 551
CONSUMER LOAN BUSINESSES
Revision of loan provisions generally, Ch. 374
CONTRACTORS
Registration provisions, revision generally, Ch. 548
CONTRACTS
Arbitration, special notice provision eliminated, Ch. 19
Marriages that are prohibited, contractual relationship entered for purpose of achieving to be void, Ch. 424
Private correctional facilities, for — requirements, Ch. 511
State liability for interest and attorney fees in judgment involving, Ch. 508
COOPERATIVE ASSOCIATIONS
Documents, original filed by facsimile — requirements revised, Ch. 290
Securities, offer or sale to members or to establish membership in — registration exemption, Ch. 395
COOPERATIVE EXTENSION SERVICE
Appropriation, Ch. 551
Teachers' Retirement System, qualification of extension service in, Ch. 408
COOPERATIVES
Ballot issues, contributions prohibited, Ch. 294
CORPORATIONS, See also TAXATION, CORPORATIONS
Annual report, types of information related to value of property owned — requirements revised, Ch. 139
Ballot issues, contributions prohibited, Ch. 294
Documents, original filed by facsimile — requirements revised, Ch. 290
Regional correctional facilities, agreements for or purchase of facility owned by state, Ch. 224
Revision of provisions generally, Ch. 268
Workers' compensation, stock ownership requirements necessary for exemption from — modification, Ch. 386
CORRECTIONAL FACILITIES
Chapel at Women's Correctional System in Billings, consent for construction, HJR 24
Civil proceedings, prisoner complaints — payment of filing fee or submission of copy of trust fund account statement, Ch. 475
Clarification of statutes relating to, Ch. 189
Community corrections programs and facilities, provisions revised, Ch. 322
Deadly weapon, possession by prisoner — offense revised, Ch. 168
Employment of prisoner, limited release for purposes of, Ch. 189
Financial transactions of inmates limited and disclosure and monitoring of their accounts in financial institutions, Ch. 316
Habeas corpus, writs of — use by prisoners clarified and issuance limited, Ch. 475
Inquest for convicted prisoner whose death is caused by terminal illness or death sentence to be discretionary rather than mandatory, Ch. 478

HeinOnline -- 1997 vol. III 3675 1997

CORRECTIONAL FACILITIES (Continued)

Interim study requested of correctional standards, HJR 19 appropriation for, Ch. 551
Labor by inmates, increase in value of construction project that may be performed by and exemption from certain title 18 provisions, Ch. 513
Land Commissioners, Board of — lease of old registrar of motor vehicles office to powell county museum and arts foundation for purpose of enbancement of Montana territorial prison museum or other community purposes urged, SJR 10
Money received by prisoner — garnishment for crime victims restitution, child support, and costs of imprisonment, Ch. 475
Names of facilities, clarification and application of certain statutes to those facilities, Ch. 189
Policy of state, establishment, Ch. 474
Prison industries training programs, clarification of laws, Ch. 189
Private correctional facilities, regulation and requirements, Ch. 511
Private entity, state services contracted te — funding, Ch. 477
Probation, parole, and clemency, See PROBATION, PAROLE, AND CLEMENCY
Regional correctional facilities, provisions revised, Ch. 224
State prison, construction projects performed by inmate labor — approval by legislature, Ch. 513
Tort damages to persons injured on premises of institution while serving sentence, governmental liability abolished, Ch. 337
Work programs for inmates — revision, clarification, and consolidation of laws, Ch. 315

CORRECTIONS, DEPARTMENT OF
Appropriations, Ch. 269, Ch. 387, Ch. 447, Ch. 469, Ch. 471, Ch. 551
Delinquent youth, commitment to department allowed, Ch. 550
Food grown or produced at prison, surplus — donation to certain entities, Ch. 315
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Powers, clarification of statutes relating te, Ch. 189
Private correctional facilities, regulation and requirements, Ch. 511
Protective services professionals, separate pay plan for — study authorized, Ch. 363
Regional correctional facilities, agreements with corporations for, Ch. 224
State Prevention Programs, Interagency Coordinating Council for — membership to include department director, Ch. 173
Teachers employed by, state employee classification and compensation provisions — removal of exempt status, Ch. 339
Youth court and probation foster care placements, certification of appropriations for, Ch. 189

COSMETOLOGISTS, BOARD OF
Appointments to, SR 17

COSMETOLOGY AND COSMETOLOGISTS
Manicuring, teachers of — licensure provided, Ch. 305

HeinOnline -- 1997 vol. III 3676 1997

COUNTIES, See also LOCAL GOVERNMENT
Adult literacy funding for persons 16 years old or older and not attending school, Ch. 264
Building codes, duties expanded, Ch. 488
Building construction, repair, or maintenance — bidding requirements, amount revised, Ch. 203
Health, city-county boards of — funding agreement provisions extended to all classes of counties, Ch. 83
Inventory of county tools, machinery, and equipment — required frequency revised, Ch. 128
Lease revenues, deposit and use provisions revised, Ch. 78
License money, retention provisions revised, Ch. 214
Recordkeeping requirements, regulation, Ch. 459

COUNTY ATTORNEY
Juveniles, designation as extended jurisdiction juveniles — authorization for, Ch. 498
Qualifications revised, Ch. 160
Youth offenses, motion for leave to file information directly in district court when, Ch. 550

COUNTY CLERK AND RECORDER
Justices of the peace, qualifications of substitutes — written documentation filed with, Ch. 150
Meetings of peers held within state, reimbursement for transportation expenses and per diem for attendance, Ch. 215
Utilities, underground facility information — filing requirement eliminated, Ch. 179

COUNTY COMMISSIONERS, BOARD OF
School districts, transfer of territory — duties eliminated, Ch. 403

COUNTY FINANCE
Borrowing without approval of electorate based upon county's taxable valuation, amount increased, Ch. 227
Lease revenue to be deposited in general fund when, Ch. 78
License money, retention provisions revised, Ch. 214
Predator control, fee money for — allocation revised, Ch. 214
Rural special improvement maintenance district funds, deposit requirements, Ch. 175

COUNTY OFFICERS
Appointees, term of office for certain appointees to fill vacant elected positions — clarification, Ch. 226
Meetings of peers held within state, reimbursement for transportation expenses and per diem for attendance, Ch. 215
Taking office, date changed and oath requirements revised, Ch. 421

COUNTY PRINTING, BOARD OF
Appointments to, SR 17, SR 19

COUNTY ROADS AND BRIDGES
Construction, repair, or maintenance — bidding requirements, amount revised, Ch. 203

HeinOnline -- 1997 vol. III 3677 1997

COUNTY ROADS AND BRIDGES (Continued)

Exchange of roadways between Transportation Commission and local government allowed when, Ch. 178
Farm vehicles, operation without flag vehicles when, Ch. 283
Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited and penalty provided, Ch. 67

COUNTY SHERIFF
Federal law enforcement officers requested to more fully cooperate with county sheriffs, HJR 28

COUNTY SUPERINTENDENT OF SCHOOLS
County equalization money, calculation of apportionment — duty eliminated, Ch. 22
Emergencies, school days lost because of — determination that reasonable effort has been made to make up, requirement eliminated, Ch. 430
Teachers, collective bargaining agreement dispute decisions — jurisdiction removed, Ch. 438

COUNTY TREASURER
Meetings of peers held within state, reimbursement for transportation expenses and per diem for attendance, Ch. 215
Rural special improvement maintenance districts, payment for administration and deposit requirements for funds, Ch. 175

CRANES
Crane and hoist operators, revision of laws gonerally, Ch. 481

CREDIT TRANSACTIONS
Credit card indebtedness, credit disability insurance for — coverage to provide for minimum payments, finance charges, and premium payments and other charges through term of a disability, Ch. 530
Minors, credit cards or similar loan advance access devices issued to — consent for and collection of debt, Ch. 21
Retail installment sales
delinquency fee changed, Ch. 266
finance charges, computation changed, Ch. 267

CREDIT UNIONS
Revision of laws generally, Ch. 365

CRIME CONTROL, DIVISION OF
Appropriation, Ch. 551

CRIMES
Abortion, partial-birth — offense of, creation and exception, Ch. 314
Assault
felony assault, penalty revised, Ch. 245
peace officer or judicial officer, on — offense created and removing from offense of felony assault, Ch. 433
Criminal defamation proceeding, truth an absolute defense — clarification, Ch. 230
Deadly weapon, possession by prisoner — offense revised, Ch. 168
Endangering the welfare of children, offense to include prohibiting a person from contacting a child less than 16 years of age for certain purposes, Ch. 333

CRIMES (Continued)

Escape, offense of — redefined, Ch. 26
Fish and wildlife code not to supersede criminal code and statute of limitations for offenses provided, Ch. 161
Highway workers, reckless endangerment of — offense created, Ch. 473
Intoxicating substance, unlawful attempt to purchase or possession of — person under 21 years of age need not be consuming or in possession at time of arrest to commit offense, provision deleted, Ch. 182
Negligent vehicular assault resulting in serious bodily injury to another, penalty increased, Ch. 317
Process, person serving — penalty for obstruction, Ch. 69
School buildings, weapons in — offense of possession or allowing possession by minor, Ch. 435
Sex offenders, chemical treatment (castration) provisions, Ch. 334, Ch. 341
Sexual and violent offenders, identification and registration provisions revised, Ch. 375
Sexual intercourse without consent, death sentence imposed for person twice convicted of — when, Ch. 312
Sexually violent prodator designation, provision for, Ch. 375
Sexual offenses, victims of — law enforcement agencies to pay for investigative medical examinations — obligation clarified, Ch. 186
Street Terrorism Enforcement and Prevention Act, Ch. 285
Surreptitious visual observation or recordation in a place of residence, offense established and exceptions, Ch. 303
Surreptitious visual recordation in certain rooms in a business establisbment, offense established, Ch. 62
Tattooing of minor without parental consent, Ch. 155

CRIME VICTIMS AND WITNESSES
Partner or family member assault victim, privilege from disclosure or discussions with shelter workers and volunteers, Ch. 484
Prisoners, money received by — garnishment for restitution, Ch. 475
Restitution for victims
principles of criminal laws revised to include, constitutional amendment to provide, Ch. 313
provisions clarified, Ch. 181
Revision of provisions generally, Ch. 186
Voter registration and mailing lists, deletion of addresses of victims of certain criminal offenses, Ch. 233

CRIMINAL PROCEDURE
Escapes and escapees, local gevernment allowed to recover costs, Ch. 26
Former prosecution in another jurisdiction, bar against a subsequent prosecution after — clarification, Ch. 162
Human Rights, Commission for — adoption of appropriate rules of code of criminal procedure required, Ch. 467
Inquest for convicted prisoner whose death is caused by terminal illness or death sentence to be discretionary rather than mandatory, Ch. 478
Postconviction proceedings, provisions revised, Ch. 302, Ch. 378
Surety's appearance to excuse defendant's failure to appear, time extended, Ch. 456

HeinOnline -- 1997 vol. III 3679 1997

CRIMINAL PROCEDURE (Continued)

Two-way electronic audio-video communication to be allowed for entering pleas and sentencing in misdemeanor criminal cases when, Ch. 163

CROWN BUTTE AGREEMENT

Land exchange requirements, supporting efforts of governor to find federal properties within state to exchange and requesting federal compensation for loss of tax revenue that would have accrued as a result of crown butte project, SJR 13

D

DAMAGES

Correctional institutions, tort damages to persons injured on premises while serving sentence — governmental liability abolished, Ch. 337

Motor vehicles, replacement value used as measure of damages — modification, Ch. 71

Punitive, jury verdict required to be unanimous as to liability and amount, Ch. 328

DAY CARE

Child-care resource and referral and child-care improvement grant program, establishment, Ch. 318

Facilities, licensing enforcement actions may be initiated in justice's, city, or municipal courts as well as district court, Ch. 222

DEAF AND BLIND, MONTANA SCHOOL FOR THE

Appropriations, Ch. 269, Ch. 551

DEATH

Certificates, revision and clarification of provisions, Ch. 118

Fetal, Infant, and Child Mortality Prevention Act, Ch. 519

Inquest for convicted prisoner whose death is caused by terminal illness or death sentence to be discretionary rather than mandatory, Ch. 478

Sudden infant death syndrome, reporting of death by and providing for a sudden infant death syndrome cause of death when, Ch. 351

DEATH PENALTY

Appellate review, clarification of standards, Ch. 302

Federal standards, adoption, Ch. 378

Hanging as means of execution, elimination, Ch. 92

Inquest for convicted prisoner whose death is caused by death sentence to be discretionary rather than mandatory, Ch. 478

Sexual intercourse without consent, imposed for person twice convicted of — when, Ch. 312

DEBTOR-CREDITOR RELATIONSHIPS

Student loans, default — suspension of state-issued licenses, Ch. 446

DEFAMATION

Criminal defamation proceeding, truth an absolute defense — clarification, Ch. 230

DEFERRED COMPENSATION

Investment options available, number and kind increased, Ch. 37

DENTISTRY AND DENTISTS
Charitable purposes, care or assistance provided for — limits on liability, Ch. 359
Deceased or disabled dentist's practice, twelve-month period for disposition by personal representative and restrictions, Ch. 151
Impairment caused by habitual intemperance, drug use, mental illness, or chronic physical illness — protocol required for referral to rehabilitation program, Ch. 358
Revision of laws generally, Ch. 481
Tumors, report requirements and release of tumor registry information, Ch. 101

DENTISTRY, BOARD OF
Appointments to, SR 17, SR 19
Impaired dentists, notification of failure to cooperate with rehabilitation program and evaluation to determine impairment, Ch. 358

DEVELOPMENTAL DISABILITIES
Church at Montana Developmental Center in Boulder, consent for construction, HJR 24

DEVELOPMENTAL DISABILITIES, REGIONAL ADVISORY COUNCILS FOR
Elimination, Ch. 171

DISABILITIES, PERSONS WITH
Community homes for, fishing without license allowed for supervised residents, Ch. 77
Handicapped persons, references to — changed to persons with disabilities, Ch. 472
Inspection of construction of public building or alteration of primary function areas for accessibility and disclaimer on building permits and certificates of occupancy, Ch. 331
Military retirees, congress urged to enact legislation allowing concurrent receipt of full longevity retirement benefits and service-connected disability compensation, HJR 12
Parking permits for, certification by chiropractor allowed, Ch. 280
Service animals, hearing or guide dogs redefined as and access to public places and housing accommodations allowed, Ch. 394
Telecommunications services, provisions revised, Ch. 396

DISCRIMINATION
Abuse victims, discrimination in all lines of insurance prohibited, Ch. 304
Housing for older persons, exception to prohibition because of age and familial status — clarification, Ch. 194
Human Rights, Commission for — revision of provisions generally, Ch. 467

DISSOLUTION OF MARRIAGE
Child custody and visitation provisions, revision generally, Ch. 343
Disclosure of assets and liabilities subject to equitable division to be mandatory, Ch. 326
Insurance coverage not to be modified, temporary restraining order requested to provide, Ch. 255

HeinOnline -- 1997 vol. III 3681 1997

DISSOLUTION OF MARRIAGE (Continued)

Summons to contain temporary restraining order preventing disposal of marital property without court order or consent of other party when, Ch. 255
Temporary family support order to ensure payment of periodic marital estate liabilities out of parties' income or marital assets during pendency of proceedings, Ch. 256

DISTRICT COURTS
Appeals
justice's or city court, from — trial de novo may not be by jury if defendant elected jury trial in justice's or city court, Ch. 129
school districts, transfer of territory, Ch. 403
Court reporters — base salary increased, funding for, and allowing solicitation of bids for work performed by, Ch. 384
District Judge, Eighth Judicial District — appointment, SR 16
Human Rights, Commission for — procedures revised, Ch. 467
Youth offenses
motion for leave to file information directly in district court and accountability added as offense that can be filed, Ch. 550
transfer to, provisions revised, Ch. 498

DOGS
Guide or hearing dogs redefined as service animals and access to public places and housing accommodations allowed, Ch. 394
Police dog, definition expanded to include dogs trained for search and rescue and used in conjunction with official law enforcement efforts, Ch. 63

DOMESTIC VIOLENCE, See also PARTNER OR FAMILY MEMBER ASSAULT
Insurance, unfair discrimination against victims of abuse prohibited, Ch. 304
Revision of laws generally, Ch. 484

DRUGS AND CONTROLLED SUBSTANCES AND DEVICES
Congress urged to enact legislation to revise process by which new drugs, biological products, and medical devices are approved by the united states food and drug administration, HJR 18
Dangerous drugs
ephedrine, inclusion in schedule IV list, Ch. 103
scheduling and schedules, revision, Ch. 113
Prices, congress urged to continue investigation of exorbitant prices being charged to customers, HJR 3
Workforce Drug and Alcohol Testing Act, Ch. 521

E

EFFECTIVE DATES, SPECIAL, See TABLES OF EFFECTIVE DATES, printed separately in this volume

ELECTIONS, See also BALLOT ISSUES; SCHOOL ELECTIONS
Absentee ballots, secrecy provisions provided, Ch. 242
Campaign finance, voluntary spending limit statement, Initiative No.125(Appendix)
Campaign practices, noncompliance — notification of officials before certain ballot certification deadlines, Ch. 25

ELECTIONS (Continued)

Crime victims, deletion of addresses from voter registration and mailing lists, Ch. 233
Death of candidate for office of governor or lieutenant governor shortly before election, procedures, Ch. 85
Election materials, disposal provisions clarified, Ch. 97
Hospital districts, to exempt from property tax limitation, Ch. 300
Intimidation and harrassment of electors by extremists, remedy, Initiative No.123(Appendix)
Mail ballot elections
applicability to certain elections clarified, Ch. 234
county water or sewer district boundary changes allowed to be held by, Ch. 459
elector addresses, correction in conjunction with, Ch. 338
revision and clarification of provisions generally, Ch. 146
National Voter Registration Act, provisions for implementation, Ch. 246
Political committees
expenditures described for purpose of voluntary spending limits, Ch. 294
voluntary spending limit statement, Initiative No.125(Appendix)
Presidential preference primary, nomination methods provided and petition signature requirement revised, Ch. 5
Registered electors in state, secretary of state required to compile and maintain list of, Ch. 309
Resort area districts, process for creation, Ch. 327
Transportation districts, for enlarging, Ch. 177
Youth Voting Act, students participating in — casting ballots at location other than regular polling place allowed, Ch. 142

ELECTRICAL BOARD, STATE
Appointments to, SR 17
Inspectors' employing agencies, reporting of licensing violations to board, Ch. 379

ELECTRICIANS
Inspection fees for inspection of installations, allocation, Ch. 357

ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND CUSTOMER CHOICE ACT, Ch. 505

ELECTRONIC FUNDS TRANSFER
Taxes, payment by — signature alternatives provided, Ch. 6

EMERGENCIES AND EMERGENCY POWERS
Motor vehicles, emergency — lighting, clarification of use, Ch. 431
Requests for assistance by political subdivisions, fire districts, fire service areas, or fire companies in unincorporated areas that have not concluded mutual aid agreements — provisions for, Ch. 46
School days lost because of emergencies, determination by officials that reasonable effort has been made to make up — requirement eliminated, Ch. 430
School districts, earthquake emergency plans — requirements eliminated for certain districts, Ch. 423

EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL
Elimination, Ch. 171

EMOTIONALLY DISTURBED CHILDREN, ADVISORY COUNCIL ON
Elimination, Ch. 171

ENERGY
State building energy conservation program, bond issue to fund and approval of projects, Ch. 81

ENGINEERS AND LAND SURVEYORS
Local government engineering and traffic investigations, provisions for, Ch. 206

ENVIRONMENTAL PROTECTION
Remediation projects, specific procurement statutes regarding state buildings and construction not applicable, Ch. 392
University system land transactions, compliance with laws, Ch. 425
Voluntary Environmental Audit Act, Ch. 534

ENVIRONMENTAL QUALITY COUNCIL
Compliance and enforcement information, reports by specific departments required, Ch. 38
Waste tire study, Ch. 373

ENVIRONMENTAL QUALITY, DEPARTMENT OF
Appropriations, Ch. 81, Ch. 269, Ch. 387, Ch. 526, Ch. 542, Ch. 551
Environmental Quality Council, compliance and enforcement information to be reported to, Ch. 38
Hazardous and deleterious substances, remedial action contractors — rulemaking for joint selection, Ch. 539
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Laboratory licensing, radioactive substances, vector-born illness, and pesticide registration — responsibilities transferred from, Ch. 73
Laws administered by, revision generally, Ch. 273
Metal mine reclamation and opencut mining reclamation, civil penalty actions — discretion granted in instituting, Ch. 271
Metal mine reclamation, recovery of civil penalties or injunctive relief — venue specified for actions brought by, Ch. 535
Water quality, state waters to be monitored and total maximum daily loads for those identified as threatened or impaired to be developed, Ch. 541

ENVIRONMENTAL REVIEW, BOARD OF
Appointments to, SR 17

ESTATES AND PROBATE, See also TAXATION, ESTATES
Beneficiaries, tax credit for qualified endowment contributions, Ch. 537
Child support, priority for decedent's children in probate, Ch. 482
Dentists, deceased or disabled — twelve-month period for disposition of practice by personal representative and restrictions, Ch. 151
Institutions, state — recovery of resident's cost of care, Ch. 190
Life insurance not considered part of estate, amount increased, Ch. 253
Revision of provisions generally, Ch. 279

HeinOnline -- 1997 vol. III 3684 1997

ESTHETICS AND ESTHETICIANS
Licensure provisions, Ch. 305

EVIDENCE
Human Rights, Commission for — adoption of rules of evidence required, Ch. 467

EXAMINERS, BOARD OF
Construction contracts, negotiated — approval requirement eliminated, Ch. 249

F

FACILITY SITING
Federal energy regulatory commission jurisdiction, facilities subject to — fee provision revised, Ch. 273
Revision of Major Facility Siting Act, Ch. 329

FAMILY EDUCATION SAVINGS ACT, Ch. 540

FAMILY EDUCATION SAVINGS PROGRAM OVERSIGHT COMMITTEE
Establishment, Ch. 540

FAMILY LAW MEDIATION
Summons to contain temporary restraining order preventing disposal of marital property without court order or consent of other party when, Ch. 255

FAMILY SERVICES ADVISORY COUNCILS, STATE AND LOCAL
Elimination, Ch. 171

FEDERAL MANDATES
Request for interim committee to monitor and study, HJR 14

FETAL, INFANT, AND CHILD MORTALITY PREVENTION ACT, Ch. 519

FIDUCIARIES
Revision of provisions generally, Ch. 279

FIREARMS, See WEAPONS

FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM
Benefits
actuarial funding mechanisms for minimum adjustments, direct reimbursement of supplemental payments eliminated, and contributions increased, Ch. 445
increase and revision of provisions generally, Ch. 457
Postretirement adjustments and minimum benefits, replacement for current members electing annual adjustment and for new members, Ch. 287
Public Employees' Retirement System, firefighter's transfer from — not required when, Ch. 254
Salary redefined for use in calculation of certain benefits, Ch. 287

FIRES AND FIRE PROTECTION
Cities and towns, third-class — allowing contracts for or consolidation of services, Ch. 96
Farm and ranch fuel tanks, fire and safety requirements amended, Ch. 201

HeinOnline -- 1997 vol. III 3685 1997

FIRES AND FIRE PROTECTION (Continued)

Fire districts, fire service areas, or fire companies — requests for assistance with emergencies and immunity provided, Ch. 46
Fire protection equipment installers and fire suppression system installers contractor registration, exemption, Ch. 548
revision of laws generally, Ch. 481
Fire service areas, indebtedness — amount allowed, Ch. 459
Storage tanks, aboveground — installation allowed in small communities, Ch. 116

FIRE SERVICES TRAINING SCHOOL
Appropriation, Ch. 551

FIRST-TIME HOME BUYER SAVINGS ACCOUNT ACT, Ch. 544

FISH AND WILDLIFE
Angler educational events and activities, free fishing day for participants, Ch. 275
Bison management, support for gevernor and urging him to remain firm in demand that federal government resolve differences in a way that will not expose Montana citizens or agriculture industry to harm, HJR 27
Crimestoppers Board expanded to include state parks-related crimes, Ch. 393
Criminal code, fish and wildlife code not to supersede and statute of limitations provided for offenses, Ch. 161
Fish importation, introduction, or transplantation — intentional violations, penalty increased, Ch. 344
Harassment of anglers and game bird hunters prohibited, Ch. 453
License agents, provisions revised, Ch. 187
Licenses
fishing licenses
legion of valor members participating in convention in Montana in august, 1997, 4-day free fishing pormits, Ch. 66
long-term care facilities, nursing care facilities, porsonal care facilities, and community homes for persons with disahilities — supervised residents, fishing without license allowed, Ch. 77
temporary, for residents, Ch. 336
nonresident deer licenses, separation from nonresident big game combination licenses for purpose of deer management and fee for separated license, Ch. 355
nonresident elk combination license without deer tag, fee for, Ch. 355
revision of certain provisions, Ch. 187
Mountain lion and bobcat chase seasons, allowing and regulation, Ch. 43
Reserved Water Rights Compact Between United States Fish and Wildlife Service and State of Montana, ratification, Ch. 137
Safety instruction, proof of competency — adoption of rules for, Ch. 187
Seized game animal meat from illegally taken animals, sale proceeds to department of public health and human services for grants to food banks or meat donated directly to food banks or charitable institutions, Ch. 523

FISH, WILDLIFE, AND PARKS COMMISSION, See also FISH AND WILDLIFE
Appointments to, SR 17, SR 20
Deer management, separation of nonresident deer licenses from nonresident big game combination licenses for purpose of, Ch. 355

HeinOnline -- 1997 vol. III 3686 1997

FISH, WILDLIFE, AND PARKS — DEPARTMENT OF, See also FISH AND WILDLIFE
Appropriations, Ch. 387, Ch. 469, Ch. 551
Bannack, historic sites at — competitive bidding process may be bypassed in restoration and preservation when, Ch. 57
Capitol complex improvements, inventory requirements, Ch. 476
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Lands and waters, interests in — conveyance through direct sales rather than bidding process allowed when, Ch. 184
School districts, firearms safety education course — development, Ch. 138

FLATHEAD BASIN COMMISSION
Membership revised, Ch. 451

FOOD AND NUTRITION, STATE ADVISORY COUNCIL ON
Elimination, Ch. 171

FOOD BANKS
Sale proceeds from game animal meat seized from illegally taken animals and excess revenue from wild buffalo or bison disease control program appropriated to department of public health and human services for grants to Montana food bank network or meat donated directly to food banks or charitable institutions, Ch. 523

FOOD ESTABLISHMENTS
Registered guests, deregulation of establishments serving food only to, Ch. 412
Restaurant beer and wine license, establishment, Ch. 465

FOREIGN CAPITAL DEPOSITORY ACT, Ch. 382

FORESTRY AND CONSERVATION EXPERIMENT STATION
Appropriation, Ch. 551

FORESTS AND FORESTRY
Fire protection, resource protection, fire protection services, and timber slash and debris control — rulemaking authority transferred, Ch. 27
Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited and penalty provided, Ch. 67
Logging industry contractors, exemption from contractor registration provisions, Ch. 548
Logging trucks, revision of certain requirements, Ch. 431
Log loader defined as special mobile equipment for registration purposes, Ch. 159
Property tax, classification clarified and definitions revised, Ch. 297

FUNERAL SERVICE, BOARD OF
Appointment to, SR 17
Membership expanded, Ch. 52

HeinOnline -- 1997 vol. III 3687 1997

## G

GAMBLING
Alcoholic beverage license, gaming and gambling in conjunction with — prohibited when, Ch. 465
Credit gambling prohibition, revision, Ch. 252
Illegal gambling activity, device, or enterprise — including offers to obtain and common schemes in the offense of obtaining anything of value by fraud or operation of, Ch. 252
Interim commission to study socioeconomic impacts, Ch. 494
Sports tab game sellers, licensing required, Ch. 13
Video gambling machines, sale and importation — regulation of business practices relating to, Ch. 354

GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM, Ch. 223

GAME WARDENS' RETIREMENT SYSTEM
Death benefits, adjustment, Ch. 287
Guaranteed annual benefit adjustment, establishment, Ch. 287
Peace officers, expansion to include, Ch. 223
Postretirement adjustments and minimum benefits, replacement for current members electing annual adjustment and for new members, Ch. 287
Service-connected injury or illness, qualification of periods of absence from covered employment because of, Ch. 370

GAS, See OIL AND GAS

GAY MARRIAGES PROHIBITED, Ch. 424

GENERAL APPROPRIATIONS ACT OF 1997, Ch. 551

GOVERNMENT ACCOUNTABILITY ACT, Ch. 502

GOVERNOR
Appointments by, SR 3, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 12, SR 13, SR 14, SR 15, SR 16, SR 17, SR 19, SR 20
Appropriation, Ch. 551
Bison management, support for governor and urging him to remain firm in demand that federal government resolve differences in a way that will not expose Montana citizens or agriculture industry to harm, HJR 27
Crown Butte Agreement, land exchange requirements — supporting efforts of governor to find federal properties within state to exchange and requesting federal compensation for loss of tax revenue that would have accrued as a result of crown butte project, SJR 13
Death of candidate for office of governor shortly before election, procedures, Ch. 85
Executive clemency, requirements revised, Ch. 92
Inheritance tax matters, inclusion in biennial report by department of revenue — requirement eliminated, Ch. 61
Western Governors' University, creation and participation authorized, Ch. 205

GRAZING DISTRICTS
Montana Grass Conservation Advisory Committee, establishment, Ch. 244

HeinOnline -- 1997 vol. III 3688 1997

GUARDIANS AND GUARDIANSHIP
Minors
credit cards or similar loan advance access devices issued to, consent for, Ch. 21
limitation by court of powers and duties of guardian, clarification, Ch. 279
school buildings, weapons in — offense of possession or allowing possession by, Ch. 435
GUEST RANCHES
Licensing requirements, Ch. 412

H

HABEAS CORPUS, WRIT OF
Prisoners testifying in civil proceedings, use clarified and issuance limited, Ch. 475
HAIL INSURANCE, BOARD OF
Appointment to, SR 17
HANDICAPPED PERSONS, See DISABILITIES, PERSONS WITH
HABD-ROCK MINING IMPACT BOARD
Appointments to, SR 20
HAZARDOUS WASTES
Comprehensive Environmental Cleanup and Responsibility Act
orphan share account created for sites, Ch. 542
revision of laws generally, Ch. 415
Fees for registration of hazardous waste generators and for reissuance or modification of management facility permits, deposit requirements, Ch. 84
Mixed funding pilot program, termination extended, Ch. 415
Montana Hazardous Waste and Underground Storage Tank Act, separation into two acts, Ch. 112
Montana Underground Storage Tank Act, Ch. 112
Orphan share fund account, creation, Ch. 415
Petroleum storage tank releases, compensation — funding and cost reimbursement provisions revised, Ch. 115
Remedial action upon release of hazardous substance
liability for persons who make voluntary contributions to specific remediation account, clarification, Ch. 86
requirements, revision generally, Ch. 539
Underground storage tanks, certain underground pipos eliminated from definition of, Ch. 156
HEALTH CARE
Congress urged to enact legislation to revise process by which new drugs, biological products, and medical devices are approved by the united states food and drug administration, HJR 18
Mammograms for women who qualify for medicare, congress and united states department of health and human services urged to provide annually, SJR 8

HeinOnline -- 1997 vol. III 3689 1997

HEALTH CARE ADVISORY COUNCIL
Terms for members revised and termination provision for council extended, Ch. 517

HEALTH CARE FACILITIES
Certificate of need statutes, general revision, Ch. 93
County hospital or rest home employees, membership in public employees' retirement system, Ch. 208
Federal Hill-Burton Act, repeal of planning and monitoring provisions that had implemented federal provisions that have been repealed, Ch. 8
Licensing only hospitals within state on basis of accreditation by joint commission on accreditation of health care organizations, provision for, Ch. 99
Medical assistance facilities to provide inpatient care to persons for more than 96 hours in certain cases, Ch. 99
Rehabilitation facility accredited by commission on accreditation of rehabilitation facilities, licensing eligibility as rehabilitation or treatment facility for chemical dependency, Ch. 188
Tumors, report requirements and release of tumor registry information, Ch. 101
Workers' compensation payments for hospital reimbursements, revision, Ch. 308

HEALTH CARE PROVIDERS
AIDS Prevention Act, health care provider redefined to allow out-of-state provider to order HIV test for insurance companies, Ch. 197
Montana Medical Legal Panel, pretrial review fund — assessment to fund, Ch. 133
Telecommunications services, discounts authorized when, Ch. 349

HEALTH COORDINATING COUNCIL, STATEWIDE
Appointment by Department of Public Health and Human Services, Ch. 93
Elimination, Ch. 171

HEALTH FACILITY AUTHORITY
Appointments to, SR 17, SR 20
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Revision of provisions generally, Ch. 479
State correctional services contracted to private entity, administration of program, Ch. 477

HEALTH INSURANCE, See INSURANCE, DISABILITY

HEALTH, LOCAL BOARDS AND DEPARTMENTS
City-county boards, funding agreement provisions extended to all classes of counties, Ch. 83
Local government multijurisdictional service districts, health department functions added to services provided, Ch. 114

HEALTH MAINTENANCE ORGANIZATIONS
Breast cancer, coverago provided for postmastectomy care and reconstructive surgery following mastectomy and requiring written informed consent for patients receiving treatment for, Ch. 410

HEALTH MAINTENANCE ORGANIZATIONS (Continued)

Childbirth, minimum hospital stay following — coverage required, Ch. 183
Health carriers and managed care organizations prohibited from interfering with certain medical communications made by health care providers in a managed care setting, Ch. 527
Obstetricians and gynecologists, inclusion as primary care physicians and coverage for services by advanced practice registered nurse in collaboration with, Ch. 198
Point-of-service option benefit plan to be offered to purchasers of health care services agreement, Ch. 165
Premium increase restrictions, financial statement filing requirement, and insolvency protection required, Ch. 413
Underwriting on or after issue date of policy, certificate, or subscriber contract prohibited except under certain conditions, Ch. 53

HEALTH SERVICE CORPORATIONS
Underwriting on or after issue date of policy, certificate, or subscriber contract prohibited except under certain conditions, Ch. 53
Uniform health benefit plans, exclusion of applicability of mandated insurance benefit provisions and freedom of choice of practitioner provisions, Ch. 504

HEARING AID DISPENSERS
Revision of laws generally, Ch. 481

HEARING AID DISPENSERS, BOARD OF
Appointments to, SR 17, SR 20

HIGHER EDUCATION
Western Governors' University, governor authorized to create and participate in, Ch. 205

HIGHER EDUCATION, COMMISSIONER OF
Montana educational telecommunications network (METNET) fees, deposit requirement changed, Ch. 243

HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM
Postretirement adjustments and minimum benefits, replacement for current members electing annual adjustment and for new members, Ch. 287
Service credits, purchase — payment of full actuarial cost required, Ch. 287

HIGHWAYS
Construction areas, traffic regulations revised, Ch. 473
Exchange of roadways between Transportation Commission and local government allowed when, Ch. 178
Federal funds, disposition revised, Ch. 239
Federal surface transportation program, congress urged to reauthorize and to continue to recognize the national interest in investment in highways that serve and cross rural western states, SJR 9
Inmate labor, use for removal of litter authorized, Ch. 315
Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited and penalty provided, Ch. 67
Montana Highway 3 between Billings and Great Falls, establishment, Ch. 342
Motorist information signs, placement of not more than four business signs on one specific information sign allowed, Ch. 281

HeinOnline -- 1997 vol. III 3691 1997

HIGHWAYS (Continued)

Old Forts Trail, establishment from fort benton through havre into saskatchewan, Ch. 321
Transportation Funding and Expenditure Study Committee, establishment and duties, Ch. 493
Utility relocation, construction requiring — cost responsibilities clarified, Ch. 324

HISTORICAL SOCIETY
Appropriations, Ch. 387, Ch. 469, Ch. 470, Ch. 471, Ch. 551
Board of trustees, appointments to, SR 17, SR 20
Hours for public visitation, society allowed to set, Ch. 3

HOISTING ENGINES
Crane and hoist operators, revision of laws generally, Ch. 481

HOME COMPANIONS
Department of Public Health and Human Services requested to study need for and method of providing program for voluntary registration or certification of, SJR 16

HORSERACING
Definition of "immediate family" changed and reallocating distribution of funds derived from wagers on races, Ch. 18

HORSERACING, BOARD OF
Appointments to, SR 17, SR 20
Appropriation, Ch. 551

HOSPITAL DISTRICTS
Property tax limitation law, exemption if authorized by electorate and liniting number of mills that may be levied, Ch. 300

HOUSE BILL TO CHAPTER NUMBER TABLE, See TABLE OF HOUSE BILL TO CHAPTER NUMBER, printed separately in this volume

HOUSING
First-Time Home Buyer Savings Account Act, Ch. 544
Low-income housing units, funding, Ch. 483
Older persons, for — clarification of exception to prohibition against discrimination because of age and familial status, Ch. 194
Service animals, hearing or guide dogs redefined as and access to housing accommodations allowed, Ch. 394
Surreptitious visual observation or recordation in a place of residence, criminal offense established and exceptions, Ch. 303

HOUSING, BOARD OF
Appointments to, SR 17, SR 19
Reverse annuity mortgage loan program, age and property eligibility criteria — greater flexibility in establishing, Ch. 39

HUMAN RIGHTS, COMMISSION FOR
Appointments te, SR 20
Revision of provisions generally, Ch. 467

HeinOnline -- 1997 vol. III 3692 1997

I

INDIAN AFFAIRS, STATE COORDINATOR OF
State Prevention Programs, Interagency Coordinating Council for — membership to include, Ch. 173

INDIANS
American Indian Heritage Day, designation, Ch. 202
Contractor registration, exemption, Ch. 548
Driving under the influence of alcohol or drug convictions from tribal courts, recognition for purpose of determining number of prior convictions, Ch. 525
Families achieving independence in Montana (FAIM) financial assistance program, requirements, Ch. 486
Renewable resource grant and loan program, participation allowed, Ch. 436
Tribal colleges
community colleges, tribally controlled — financial assistance for enrolled resident nonbeneficiary students, Ch. 362
telecommunications services, discounts authorized when, Ch. 349
Water rights
adjudication proceedings, suspension — period extended during negetiations of federal indian and non-indian reserved water rights, Ch. 44
cbippewa cree tribe of the rocky boy's indian reservation and state of Montana, water rights ccmpact, Ch. 265
interim agreements, negotiation allowed, Ch. 497
reservation not synonymous with federal and indian reserved wator rights under federal law, Ch. 497
Wild buffalo or bison, transfer to qualified tribal entities when, Ch. 523

INSTITUTIONS
Chapel at Women's Correctional System in Billings and church at Montana Developmental Center in Boulder, consent for construction and for moving of church structure from galen campus to warm springs campus, HJR 24
Inmate labor
use for removal of graffiti and litter authorized, Ch. 315
value increased of construction project that may be performed by and exemption from certain title 18 provisions, Ch. 513
Resident's cost of care, liability — revision of provisions generally, Ch. 190

INSURANCE
Abuse victims, unfair discrimination against — prohibited, Ch. 304
Dissolution of marriage or child support, temporary restraining order requested to provide insurance coverage not be modified, Ch. 255
Fraud, insurance and securities education and prevention program established, Ch. 390
Information and privacy protection — definition of insurance-support organization revised, allowing review of information compiled for use, order for correction, amendment, or deletion of erroneous information, and requiring personal information to be accurato, Ch. 258

INSURANCE (Continued)

Local government group self-insurance programs, investment in direct obligations of united states allowed, Ch. 131
Motor vehicles, See MOTOR VEHICLES AND TRAFFIC REGULATIONS
Revision of laws generally, Ch. 416, Ch. 531

INSURANCE, DISABILITY
AIDS Prevention Act, health care provider redefined to allow out-of-state provider to order HIV test for insurance companies, Ch. 197
Breast cancer, coverage provided for postmastectomy care and reconstructive surgery following mastectomy and requiring written informed consent for patients receiving treatment for, Ch. 410
Childbirth, minimum hospital stay following — coverage required, Ch. 183
Child support, health insurance provisions changed, Ch. 482
Claim forms, uniformity provided, Ch. 531
Comprehensive health association plan, portability plan provision to comply with public law 104-191, Ch. 416
Health carriers and managed care organizations prohibited from interfering with certain medical communications made by health care providers in a managed care setting, Ch. 527
Long-term care insurance, See LONG-TERM CARE
Managed care plans, regulation of carriers who offer, Ch. 413
Medicaid, medical savings accounts — high-deductible coverage provided, Ch. 380
Obstetricians and gynecologists, inclusion as primary care physicians and coverage for services by advanced practice registered nurse in collaboration with, Ch. 198
Public employees, revision of group insurance provisions, Ch. 282
Renewability guaranteed for individual and group insurance coverage, Ch. 416
Small employer health insurance
mammography examinations, coverage for, Ch. 410
revision of provisions generally, Ch. 416
Small employer health reinsurance program, board of directors' provisions and authority of commissioner of insurance revised, Ch. 15
State and local gevernment entities, cooperative purchasing for employee group benefits, Ch. 147
State employees, involuntary termination — funding for health insurance benefits, Ch. 361
Tax deduction for cost of premiums for taxpayer, dependents, parents, and grandparents, Ch. 383
Uniform health benefit plans, exclusion of applicability of mandated insurance benefit provisions and freedom of choice of practitioner provisions, Ch. 504

INSURANCE, LIFE
Annuities, rules prescribing information to be delivered to prospective annuitants at time of sale, Ch. 260
Credit card indebtedness, credit disability insurance for — coverage to provide for minimum payments, finance charges, and premium payments and other charges through term of a disability, Ch. 530
Estate, insurance not considered part of — amount increased, Ch. 253

HeinOnline -- 1997 vol. III 3694 1997

INSURANCE, LIFE (Continued)

Viatical Settlement Act, Ch. 298

INSURANCE PRODUCERS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS
Nonresident producers' license renewal fees, deposit and use clarified, Ch. 70
Place of business, producer allowed to maintain more than one, Ch. 261
Surety bail bonds, persons who execute only bail bonds — exemption from insurance producer continuing education requirements, Ch. 456
Workers' compensation state fund board of directors, membership to include licensed producer, Ch. 276

INSURERS, FARM MUTUAL
Revision of provisions generally, Ch. 158

INSURERS ORGANIZATION AND REGULATION GENERALLY
Mortgage loans, assets invested in — amount limited, Ch. 94
Underwriting on or after issue date of policy, certificate, or subscriber contract prohibited except under certain conditions, Ch. 53

INTERIM STUDIES
Correctional standards, HJR 19
appropriation for, Ch. 551
Family farming and ranching in Montana, challenges confronting and opportunities emerging for, SJR 4
Federal mandates, monitoring and study of, HJR 14
Gambling, socioeconomic impacts, Ch. 494
Highways state special revenue account revenue and expenditures and transportation infrastructure needs, Ch. 493
Natural gas suppliers, tax revenue analysis by revenue oversight committee, Ch. 506
Property tax, Ch. 463
School elections, combining, HJR 23
State property management, HJR 4
Telemarketing fraud, effects of and possible remedies to, SJR 14
Waste tire issues, by environmental quality council, Ch. 373

INTERLOCAL COOPERATION
Multijurisdictional service districts
health services and health department functions added to services provided, Ch. 114
human health and environment, protection programs — provision for, Ch. 459
School district joint bonding authority, interlocal agreement provisions clarified to include reference to, Ch. 397

INTERNATIONAL RELATIONS
International agreements that concern use and management of land and resources belonging to United States, individual states, and the people — congress urged to reaffirm its pewer over, HJR 25

INTIMIDATION
Montana Anti-Intimidation Act of 1996, Initiative No.123(Appendix)

INVESTMENTS, BOARD OF
Appointments to, SR 20

HeinOnline -- 1997 vol. III 3695 1997

INVESTMENTS, BOARD OF (Continued)

Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Loans to state agencies, terms and conditions clarified, Ch. 483
Municipal finance consolidation, bonding limit increased, Ch. 483
Petroleum Tank Release Compensation Board, loans to — authorization, Ch. 115
Real property held as investment, sale — modification of authority, Ch. 32
Schools, obligation of funds to acquire real property or construct facility authorized when and term of obligation increased, Ch. 499

IRRIGATION DISTRICTS
Small tracts of land within boundaries of certain urbanized districts and not being served by district works, elimination from assessments when, Ch. 306

J

JOB INVESTMENT PROGRAM
Loan provisions revised, Ch. 549

JUDGES AND JUSTICES, See also specific court
Retired judges, contract for group health insurance to provide continued participation when, Ch. 282

JUDGES' RETIREMENT SYSTEM
Death benefits, adjustment, Ch. 287
Job investment loans, allocation from interest and earnings to fund, Ch. 549
Postretirement adjustments and minimum benefits, replacement for current members electing annual adjustment and for new members, Ch. 287
Salary redefined for use in calculation of certain benefits, Ch. 287

JUDICIAL BRANCH
Appropriations, Ch. 417, Ch. 551

JUDICIAL NOMINATION COMMISSION
Appointment to, SR 20

JUDICIAL OFFICERS
Assault on peace officer or judicial officer, criminal offense created, Ch. 433

JURIES AND JURORS
Civil actions, public expenses of impaneling — court may assess if party's case is frivolous or maintained for harassment purposes, Ch. 356
Illness or injury, person chronically incapacitated by — permanent exclusion from jury duty, Ch. 345
Intimidation and harassment of jurors by extremists, remedy, Initiative No.123(Appendix)
Misdemeanor criminal cases filed in justice's or city court, defendants limited to one jury trial, Ch. 129
Punitive damages, verdict required to be unanimous as to liability and amount, Ch. 328

JUSTICE, DEPARTMENT OF
Appropriations, Ch. 154, Ch. 551
Gambling, duties and responsibilities, See GAMBLING

HeinOnline -- 1997 vol. III 3696 1997

JUSTICE, DEPARTMENT OF (Continued)

Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Motor vehicles and traffic regulations, duties, See MOTOR VEHICLES AND TRAFFIC REGULATIONS
Protective services professionals, separate pay plan for — study authorized, Ch. 363
Workers' compensation fraud, filing of joint biennial budget for fraud office and fraud investigation and prosecution for uninsured employers' fund, Ch. 276

JUSTICES' COURTS
Appeal of revocation of suspended sentence, procedure clarified, Ch. 149
Day care facilities, licensing enforcement action may be initiated in, Ch. 222
Justice of the peace, qualification of suhstitutes clarified, Ch. 150
Misdemeanor criminal cases, defendants limited to one jury trial, Ch. 129

K

KOREAN VETERANS' MEMORIAL
Designation as official state memorial, Ch. 319

L

LABOR AND EMPLOYMENT, See also WAGES AND SALARIES
Employer taxes — reengineering, restructuring, and combining reporting and remittance of, Ch. 491
Inmate labor, construction projects performed by — exemptions from certain requirements, Ch. 513
Job Training Partnership Act programs, encouraging additional performance measures and assessment of outcomes for adults and targeting funds to at-risk youth and youth who bave committed offenses, SJR 5
Workforce Drug and Alcohol Testing Act, Ch. 521

LABOR AND INDUSTRY, DEPARTMENT OF
Appropriations, Ch. 357, Ch. 387, Ch. 447, Ch. 469, Ch. 548, Ch. 551
Human Rights, Commission for — transfer to, Ch. 467
Integrated dispute settlement process for employment-related issues, exploration and analysis requested, HJR 10
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Metallic and nonmetallic noncoal mine inspections prohibited as long as federal laws are implemented and enforced by federal government, Ch. 307
Workers' compensation fraud office, filing of joint biennial budget for, Ch. 276
Workers' compensation regulatory functions, revision, Ch. 310

LABOR APPEALS, BOARD OF
Appointments to, SR 20

LAKES
Island parks on state-owned or state-leased island property, establishment, Ch. 449

HeinOnline -- 1997 vol. III 3697 1997

LAND COMMISSIONERS, BOARD OF
Forest fire protection, forest resource protection, fire protection services, and timber slash and debris control — rulemaking authority transferred from, Ch. 27
Lease of old registrar of motor vehicles office to Powell County Museum and Arts Foundation for purpose of enhancement of Montana Territorial Prison Museum or other community purposes urged, SJR 10
School sites, sale or lease of state land for — acreage increased, Ch. 79

LANDLORD AND TENANT
Rental agreement, landlord's waiver of claimed hreach — clarification, Ch. 132
Revision of provisions generally, Ch. 401

LANDSCAPE ARCHITECTS, BOARD OF
Appointments to, SR 17

LAW
Montana Code Annotated, revision and clarification generally, Ch. 42

LAW ENFORCEMENT
Federal law enforcement officers requested to more fully cooperate with county sheriffs, HJR 28
Police dog, definition expanded to include dogs trained for search and rescue and used in conjunction with official law enforcement efforts, Ch. 63
School buildings, weapons in — offense of possession or allowing possession by minor, exception, Ch. 435
School districts, firearms safety education course — development, Ch. 138

LEGISLATIVE AUDIT COMMITTEE
Motor vehicles and trucks having manufacturer's rated capacity of 1 ton or less — analysis of alternative methods of classification, valuation, and taxation, Ch. 496

LEGISLATIVE AUDITOR
Public entities and private foundations or organizations supporting the university system, authority to access certain transactions between — clarification, Ch. 377

LEGISLATIVE BRANCH
Appropriations, Ch. 1, Ch. 417, Ch. 551
Leave and overtime provisions for legislative employees, clarification of authority to establish, Ch. 2
Pay plan, implementation, Ch. 417

LEGISLATIVE COUNCIL
Public Employees' Retirement System, committee designated for development and implementation of new or modified system, Ch. 191
Telemarketing fraud, request for interim committee to study effects of and possible remedies to, SJR 14

LEGISLATIVE FINANCE COMMITTEE
Budgetary matters for ensuing legislative session, preparation of recommendations required, Ch. 347
Workers' compensation state fund, budget review, Ch. 276

HeinOnline -- 1997 vol. III 3698 1997

LEGISLATIVE FISCAL DIVISION
Appropriation, Ch. 493
LEGISLATIVE SERVICES DIVISION
Appropriations, Ch. 1, Ch. 14, Ch. 191, Ch. 391, Ch. 494, Ch. 505
LEGISLATURE
Administrative rules
bills delegating rulemaking authority, inclusion of statement of legislative intent — requirement eliminated, Ch. 11
notice to bill sponsors of bills that become law that initial rulemaking implementing the bill has begun, Ch. 340
objection to rule by majority of administrative code committee members, adoption and effective date provisions, Ch. 335
statutes delegating rulemaking authority, specific guidelines to be provided, Ch. 11
Appropriations, See INDEX TO APPROPRIATIONS, printed separately in this volume
Blaylock, Chet — commemorating and celebrating contributions of and authorizing permanent placement of senato memorial in the capitol, SJR 15
Buildings, See CAPITOL AND OTHER STATE BUILDINGS
Governor's appointments, senate concurrenco, SR 3, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 12, SR 13, SR 14, SR 15, SR 16, SR 17, SR 19, SR 20
Inheritance tax matters, inclusion in biennial report by department of revenue — requirement eliminated, Ch. 61
Inmate labor, construction projects performed by — approval, Ch. 513
Interim studies, See INTERIM STUDIES
Intern program to accommodate academic year structure within university system, Ch. 104
Rules to govern proceedings
house of representatives, HR 1
joint rules, SJR 1
senate, SR 1
revisions, SR 18
State Management Systems, Legislative Oversight Committee on — establishment, Ch. 391
Women in, authorizing permanent placement of plaque in capitol commemorating service of, HJR 6
LETTERS OF CREDIT
Replacement of former laws with updated laws, Ch. 536
LEWIS AND CLARK BICENTENNIAL COMMISSION
Establishment, Ch. 428
LIBRARIES
Telecommunications services, discounts authorized when, Ch. 349

HeinOnline -- 1997 vol. III 3699 1997

LIENS
Child support lien, buyer for value of obligor's motor vehicle or other item for which certificate of ownership is issued and who buys in good faith and without knowledge of lien takes property free of lien, Ch. 432
Motor vehicles, electronic filing and perfection — pilot program established for, Ch. 90
Nonconsensual common-law liens, civil remedy, Initiative No.123(Appendix)
Self-sufficiency trusts, exemption, Ch. 262

LIEUTENANT GOVERNOR
Death of candidate for office of lieutenant governor shortly before election, procedures, Ch. 85

LIMITED LIABILITY COMPANIES
Documents, original filed by facsimile — requirements revised, Ch. 290
Revision of provisions generally, Ch. 268
Workers' compensation, stock ownership requirements necessary for exemption from — modification, Ch. 386

LIMITED PARTNERSHIPS
Documents, original filed by facsimile — requirements revised, Ch. 290
Revision of provisions gonerally, Ch. 268

LIVESTOCK
Bison management, support for governor and urging him to remain firm in demand that federal government resolve differences in a way that will not expose Montana citizens or agriculture industry to harm, HJR 27
Stock inspectors, spocially qualified deputy — training, certification, and appointment authorized, Ch. 376
Travel permits, application extended for certain permits, Ch. 376

LIVESTOCK, BOARD OF
Appointments to, SR 17, SR 20

LIVESTOCK, DEPARTMENT OF
Appropriations, Ch. 269, Ch. 387, Ch. 551
Brucellosis vaccination, providing regulation through administrative rulemaking authority hy susponding present statutes, Ch. 54
Wild buffalo or bison disease control program, sale or transfer of animals allowed, Ch. 523

LIVING TRUST ACT, Ch. 348

LOCAL GOVERNMENT, See also CITIES AND TOWNS; COUNTIES
Audits of entities receiving federal financial assistance in excess of $25,000, requirement eliminated, Ch. 91
Budget adoption for government using alternative accounting method, date changed, Ch. 176
Charges for services, prohibiting fund cash balances greater than necessary to finance services for more than two years, Ch. 270
Coal Board, clarification of authority to assist in providing services necessitated by a significant decline in coal mining or in consumption of coal by coal-using energy complexes and elimination of authority to make loans to, Ch. 204

LOCAL GOVERNMENT (Continued)

Demand deposits distributed ratably among banks, requirement eliminated, Ch. 229
Employee group benefits, cooperative purchasing of benefit services and insurance products — procedures, Ch. 147
Government Accountability Act, Ch. 502
Group self-insurance programs, investment in direct obligations of united states allowed, Ch. 131
Infrastructure project grants, Ch. 55
Multijurisdictional service districts
health services and health department functions added to services provided, Ch. 114
human health and environment, protection programs — provision for, Ch. 459
Pesticide application, regulation of notification, Ch. 180
Records Committee — issue of disposal of record submitted to committee when and retention and disposition schedule for categories of records and school records to be establisbed, Ch. 323
Regional correctional facilities, long-term contracts or lease or lease-purchase option for, Ch. 224
Roadways, exchange between transportation commission and local government allowed when, Cb. 178

LONG-RANGE BUILDING PROGRAM
Bonds, issuance authorized, Ch. 455, Ch. 469, Ch. 471
Budget amendment provisions, Ch. 347

LONG-TERM CARE
Fishing without license allowed for supervised residents of facilities, Ch. 77
Insurance
contracts, regulation, Ch. 416
income tax deduction for premiums
for taxpayer, dependents, parents, and grandparents, Ch. 383
revision, Ch. 111
partnerships between individuals, private health insurers, commissioner of insurance, and department of public health and human services, Cb. 195
Licensed practical nurse may act in charge-nurse capacity in facility when, Ch. 136

M

MALPRACTICE, MEDICAL
Revision of provisions generally and addition of podiatrists to Montana Medical Legal Panel Act, Ch. 133

MANICURING
Teachers of, licensure provisions, Ch. 305

MANUFACTURED HOMES
Defining, titling, and tax provisions, Ch. 200

MARRIAGE
Same sex marriages prohibited, Ch. 424

HeinOnline -- 1997 vol. III 3701 1997

MAYORS
Authority to call out militia or to call out citizens in case of riot and extraterritorial enforcement powers for health and quarantine ordinances, elimination, Ch. 485

MEDICAID, See PUBLIC ASSISTANCE

MEDICAL EXAMINERS, BOARD OF
Appointments to, SR 17

MENTAL ILLNESS OR INCAPACITY
Certificate of need statutes for certain facilities, general revision, Ch. 93
Community mental health centers, certain counselors allowed to take examination for licensing as professional counselors, Ch. 278
Definitions revised and expanded, commitment provisions revised, and clinical and administrative use of photographs of patients allowed at mental health facilities, Ch. 490
Dentists, protocol required for referral to rehabilitation program, Ch. 358

MILITARY AFFAIRS
Disabled military retirees, congress urged to enact legislation allowing concurrent receipt of full longevity retirement benefits and service-connected disability compensation, HJR 12
Federal activities, engagement in — immunity from liability, Ch. 87
Federal laws, regulations, forms, precedents, and usages, including uniform code of military justice — adoption, Ch. 10
Mayor's authority to call out militia, elimination, Ch. 485
Military experience of Montana, commemorating 130th anniversary and recognizing all persons who have in past been in or who are currently in service, HJR 22
Motor vehicle license plates and registration for persons claiming Montana residency and who are on active military duty, purchase for cost of registration alone — provision eliminated, Ch. 509
National guard
120th fighter wing, Montana air national guard — commemoration of honor and lineage of, HJR 17
163rd infantry regiment, Montana army national guard — commemoration of honor and valor of, HJR 16
retirement due to age, requirements to conform to federal requirements, Ch. 9
university system tuition and fees, waiver
national guard education benefit program, pursuant to, Ch. 418
spouse or children of guard members killed or dying in the line of duty while serving on state active duty, for, Ch. 41

MILITARY AFFAIRS, DEPARTMENT OF
Appropriations, Ch. 269, Ch. 387, Ch. 469, Ch. 551
Disaster and Emergency Services, Division of — mutual aid agreements, encouraged to require, Ch. 46

MILK CONTROL, BOARD OF
Appointments to, SR 20

HeinOnline -- 1997 vol. III 3702 1997

MINES AND GEOLOGY, BUREAU OF
Appropriations, Ch. 551

MINES AND MINING, See also TAXATION, MINERALS
Abandoned mine reclamation projects, specific procurement statutes regarding state buildings and construction not applicable, Ch. 392
Coal Board, clarification of authority to assist local governmental units in providing services necessitated by a significant decline in coal mining or in consumption of coal by coal-using energy complexes and elimination of authority to make loans to, Cb. 204
Coal invoice provisions repealed, Ch. 24
Inspection of metallic and nonmetallic noncoal mines by Department of Labor and Industry prohibited as long as federal laws are implemented and enforced by federal government, Ch. 307
Lessees of oil, gas or other lease — request for assignment or release of more than one lease to be treated as single request for recording purposes, Ch. 228
Metal mine reclamation
civil penalty provisions revised, Ch. 271, Cb. 273
small miner and recreational miner provisions revised and exemptions for recreational and bobby miners revised, Ch. 272
venue specified for third party actions to enforce compliance and for departmental actions for recovery of civil penalties or injunctive relief, Ch. 535
Opencut mining, reclamation — civil penalty provisions revised, Ch. 271, Ch. 273
Strip and underground mine reclamation
revision of provisions generally, Ch. 196
rulemaking by department of environmental quality, elimination of specific provision, Ch. 273
Trusts for unlocatable owners, allowing substitution of department of revenue as trustee, Ch. 126

MINORS, See also CHILD headings
Credit cards or similar loan advance access devices issued to, consent for and collection of debt, Ch. 21
Day care, See DAY CARE
Driving under the influence, alcohol concentration of 0.02 or more — penalties changed, Ch. 520
Endangering the welfare of children, offense to include prohibiting a person from contacting a child less than 16 years of age for certain purposes, Ch. 333
Fetal, Infant, and Child Mortality Prevention Act, Ch. 519
Foster care providers, exemption from wage and hour and workers' compensation requirements, Ch. 515
Intoxicating substance, unlawful attempt to purchase or possession of — person under 21 years of age need not be consuming or in possession at time of arrest to commit offense, provision deleted, Ch. 182
Job Training Partnership Act programs, encouraging additional performance measures and assessment of outcomes for adults and targeting funds to at-risk youth and youth who have committed offenses, SJR 5

HeinOnline -- 1997 vol. III 3703 1997

MINORS (Continued)

Mental disorders, commitment statutes clarified, Ch. 490
School buildings, weapons in — offense of possession or allowing possession by minor, Ch. 435
Street Terrorism Enforcement and Prevention Act, Ch. 285
Sudden infant death syndrome, reporting of death by and providing for a sudden infant death syndrome cause of death when, Ch. 351
Tattooing without parental consent, criminal provision, Ch. 155
Tobacco Products Act, Youth Access to — provisions revised, Ch. 518

MINT AND MINT OIL PRODUCTION
Montana Mint Committee, composition revised, Ch. 102

MOBILE HOMES, HOUSETRAILERS, AND TRAILER COURTS
Revision of trailer court provisions generally, Ch. 350
Tax provisions revised, Ch. 200

MONTANA ANTI-INTIMIDATION ACT OF 1996, Imitiative No.123(Appendix)

MONTANA ARTS COUNCIL
Appointments to, SR 17, SR 19
Appropriations, Ch. 470, Ch. 551

MONTANA CHIROPRACTIC LEGAL PANEL
Appropriation, Ch. 551

MONTANA FIRST-TIME HOME BUYER SAVINGS ACCOUNT ACT, Ch. 544

MONTANA FOREIGN CAPITAL DEPOSITORY ACT, Ch. 382

MONTANA GRASS CONSERVATION ADVISORY COMMITTEE
Establishment, Ch. 244

MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION
Establishment, Ch. 469

MONTANA INITIATIVE FOR THE ABATEMENT OF MORTALITY IN INFANTS PROJECT (MIAMI) ADVISORY COUNCIL
Elimination, Ch. 171

MONTANA LIVING TRUST ACT, Ch. 348

MONTANA QUARANTINE AND PEST MANAGEMENT ACT, Ch. 7

MONTANA STATE LIBRARY
Water information system within natural resource information system, operation formalized, Ch. 45

MONTANA STREET TERRORISM ENFORCEMENT AND PREVENTION ACT, Ch. 285

MONTANA UNDERGROUND STORAGE TANK ACT, Ch. 112

MORTGAGES
Consumer loan licensees, return of release of mortgage taken as security — time limitation, Ch. 374
Insurers, assets invested in mortgage loans — amount limited, Ch. 94
Reverse annuity mortgage loan program, modification, Ch. 39

HeinOnline -- 1997 vol. III 3704 1997

MORTICIANS, FUNERAL DIRECTORS, AND CREMATORY FACILITIES
Funeral plan trusts, credit unions allowed to hold, Ch. 365
MOSQUITO CONTROL DISTRICTS
Departmental responsibilities transferred to Department of Public Health and Human Services, Ch. 73
MOTOR CARRIERS
Gross vehicle weight provisions, revision generally, Ch. 232
MOTOR VEHICLES AND TRAFFIC REGULATIONS
Buses, fee in lieu of tax — imposition, Ch. 496
Campers
classification and taxation revised, Ch. 121
purchase year considered model year for purposes of calculating fee in lieu of tax when, Ch. 402
Child safety restraint system provisions, revision, Ch. 431
Child support lien, buyer for value of obligor's motor vehicle or other item for which certificate of ownership is issued and who buys in good faith and without knowledgo of lien takes property free of lien, Ch. 432
Classification, revision generally, Ch. 496
Commercial motor vehicles
driver's licenses
examination, scheduling requirements, Ch. 164
suspension provisions revised, Ch. 105
licensing and operation, provisions revised, Ch. 105
Construction zone and work zone, speed regulations and penalties, Ch. 473
Damages, replacement value used as measure of — modification, Ch. 71
Dealers
revision and clarification of laws, Ch. 221
used motor vehicles, license applicants — building for recordkeeping and sales, distance from display lot, Ch. 220
Disabled persons, parking permits for — certification by chiropractor allowed, Ch. 280
Drivers' licenses
commercial driver's license
examination, scheduling requirements, Ch. 164
suspension provisions revised, Ch. 105
youth who is delinquent or in need of supervision, confiscation, Ch. 185
Driving under the influence of alcohol or drugs
commercial motor vehicle implied consent and 0.04 alcohol concentration statutes, procedural aspects revised, Ch. 105
ignition interlock devices, requirements, Ch. 107
penalty laws, revision and recodification, Ch. 512, Ch. 520, Ch. 525
person under age 21 who has alcohol concentration of 0.02 or more, penalties changed, Ch. 520
tests used to detect, estimate, and measure alcohol or drugs — revision generally, Ch. 88
Equipment provisions, revision generally, Ch. 431
Farm vehicles, operation on county road with flag vehicle — provisions revised, Ch. 283

HeinOnline -- 1997 vol. III 3705 1997

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)

Glass broker — definition revised and revision of prohibited practices for persons engaged in sale, repair, or replacement of automobile glass, Ch. 207
Gross vehicle weight provisions, revision generally, Cb. 232
Highway workers, reckless endangerment — offense created and fines doubled for violations in highway work zones, Ch. 473
Insurance
body repair shops, insurer's designation of specific shop prohibited, Ch. 292
commercial motor vehicle accident reports, release to insurers, Ch. 105
insurer's liability, clarification and limitation, Ch. 495
revision of mandatory provisions generally, Ch. 452
subrogation rights, establishment, Ch. 263
Intersection, rule of right-of-way clarified, Ch. 106
Left turn into parking lot or roadway across double yellow lines allowed under certain conditions, Ch. 119
License plates
collegiate, continued use and display when bearing name of institution tbat has been renamed, Ch. 462
mihitary personnel claiming Montana residency and who are on active duty, purchase of license plates and registration for cost of registration alone — provision eliminated, Ch. 509
Liens, electronic filing and perfection — pilot program established for, Ch. 90
Logging trucks, certain requirements revised, Ch. 431
Log loader defined as special mobile equipment for registration purposes, Ch. 159
Manufacturers and distributors, revision and clarification of laws, Ch. 221
Military personnel claiming Montana residency and who are on active duty, purcbase of license plates and registration for cost of registration alone — provision eliminated, Ch. 509
Motorcycles
operators carrying children who are not wearing helmets, penalties provided, Ch. 431
purchase year considered nıodel year for purposes of calculating fee in lieu of tax when, Clı. 402
Motor homes, purcliase year considered model year for purposes of calculating fee in lieu of tax when, Ch. 402
Negligent vehicular assault resulting in serious bodily injury to another, penalty increased, Clı. 317
Off-highway vehicles, purchase year considered model year for purposes of calculating fee in lieu of tax when, Ch. 402
Overtaking vehicle on left, procedures clarified, Ch. 119
Pole trailers, fee in lieu of tax — imposition wlıen, Ch. 121
"Public safety worker" defined for purposes of traffic control at an incident, Ch. 431
Quadricycles
definition revised, Ch. 431
fee in lieu of tax, imposition, Ch. 496
Recreational vehicles
construction standards, revision of provisions generally, Clı. 240

HeinOnline -- 1997 vol. III 3706 1997

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)
Recreational vehicles (Continued)
inspection fees, allocation, Ch. 357
Sale by person on real property in which person does not have legal interest, regulation, Ch. 231
Sales tax on new vehicles, reallocation of proceeds, Ch. 199
Seatbelt requirements revised, Ch. 431
Special mobile equipment
log loader defined as, for registration purposes, Ch. 159
property tax, subject to — clarification, Ch. 496
Speed limit
construction zone and work zone, regulations and penalties, Ch. 473
local government engineering and traffic investigations, provisions for, Ch. 206
Street rods, provisions for, Ch. 431
Taxation, revision generally, Ch. 496
Tow trucks to provide rear lights for towed vehicles at all times, Ch. 431
Trailers and semitrailers
classification and taxation revised, Ch. 121
fee in lieu of tax, imposition, Ch. 121
length of 61 feet allowed for semitrailer and trailer or two semitrailers in combination, Ch. 58
registration period changed when registered through proportional registration agreement, Ch. 72
Travel trailers, purchase year considered model year for purposes of calculating fee in lieu of tax when, Ch. 402
Trucks having manufacturer's rated capacity of more than 1 ton, fee in lieu of tax — imposition, Ch. 496
Truck toppers, classification and taxation revised, Cb. 121
Truck tractors, fee in lieu of tax — imposition, Ch. 496
Valuation, revision generally, Ch. 496
Warranty on new vehicles, funding for administration of provisions, Ch. 199
Wrecking facilities and graveyards, administrative enforcement for violations allowed and license suspension or denial or revocation allowed when, Cb. 213

MUNICIPAL COURTS
Day care facilities, licensing enforcement action may be initiated in, Ch. 222

MUSEUMS
Land Commissioners, Board of — lease of old registrar of motor vehicles office to powell county museum and arts foundation for purpose of enhancement of Montana territorial prison museum or other community purposes urged, SJR 10

## N

NAMES
Change of name, petition to proceed on sealed-record basis when probable cause shown tbat safety of petitioner is at risk, Ch. 169

NATIONAL GUARD, See MILITARY AFFAIRS

NATURAL GAS UTILITY RESTRUCTURING AND CUSTOMER CHOICE ACT, Ch. 506

NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF
Appropriations, Ch. 80, Ch. 108, Ch. 269, Ch. 434, Ch. 469, Ch. 551
Environmental Quality Council, compliance and enforcement information to be reported to, Ch. 38
Forest fire protection, forest resource protection, fire protection services, and timber slash and debris control — rulemaking authority transferred to and responsibilities clarified, Ch. 27
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Montana Grass Conservation Advisory Committee, support, Ch. 244
State lands historic right-of-way deeds, provisions for, Ch. 461
State trust land, facility or structure installed or constructed by person other than lessee without permission of department — penalty provided, Ch. 460
Treasure state endowment program loans, administration by, Ch. 55
Water law revisions, See WATER USE

NATUROPATHY AND NATUROPATHIC PHYSICIANS
Revision of laws generally, Ch. 481

NEWS MEDIA
Capitol Building, location of press room — flexibility allowed, Ch. 20

9-1-1 EMERGENCY TELEPHONE SYSTEM
Enhanced 9-1-1 services, provisions for, Ch. 448

NONPROFIT CORPORATIONS
Ballot issues, contribution prohibition — exemption removed, Ch. 294
Campaign contributions, Initiative No.125(Appendix)
Documents, original filed by facsimile — requirements revised, Ch. 290

NOTARIES PUBLIC
Prohibition on notarizing notary's own signature, Ch. 64

NURSING AND NURSES
Advanced practice registered nurses
nurse practitioner or clinical nurse specialist, workers' compensation services as treating or primary care provider allowed, Ch. 404
obstetrician or gynecologist, in collaboration with — coverage of services in health benefit plans, Ch. 198
Long-term care facilities, licensed practical nurse may act in charge-nurse capacity when, Ch. 136

NURSING, BOARD OF
Appointments to, SR 17

NURSING HOME ADMINISTRATORS, BOARD OF
Appointments to, SR 17

NURSING HOMES
County rest home employees, membership in public employees' retirement system, Ch. 208
Fishing without license allowed for supervised residents, Ch. 77

HeinOnline -- 1997 vol. III 3708 1997

## O

OCCUPATIONAL THERAPY PRACTICE, BOARD OF
Appointments to, SR 17

OIL AND GAS, See also TAXATION, MINERALS
Lessees of oil, gas or other lease — request for assignment or release of more than one lease to he treated as single request for recording purposes, Ch. 228
Oil overcharge money, appropriation, Ch. 81, Ch. 526
State land leases, provisions revised, Ch. 34

OPEN MEETING LAW
Health Facility Authority meetings, inclusion, Ch. 479

OPTOMETRY, BOARD OF
Appointments to, SR 17, SR 19

OUTFITTING AND GUIDING FACILITIES
Licensing requirements, Ch. 412

## P

PAINT LABELING
Repeal of provisions, Ch. 24

PARDONS AND PAROLE, BOARD OF
Appointments to, SR 20
Structure and authority revised, Ch. 420

PARENT AND CHILD
Credit cards or similar loan advance access devices issued to minors, consent for, Ch. 21
Paternity
administrative process and presumptions revised, Ch. 482
claims received hy child support enforcement division, division to promptly take steps to locate and notify alleged father of claim, Ch. 398
School buildings, weapons in — offense of possession or allowing possession hy minor, Ch. 435
Tattooing of minor without parental consent, criminal provision, Ch. 155

PARKS AND RECREATION
Fish and Wildlife Crimestoppers Board expanded to include state parks-related crimes, Ch. 393
Fishing, temporary license for residents — proceeds for recreational facilities, Ch. 336
Grand Staircase-Escalanto National Monument Resolution, HJR 13
Inmate lahor, use for removal of littor authorized, Ch. 315
Island parks, establishment, Ch. 449
Property tax, beneficial use — recreational leases exempt from, Ch. 49

PARTNER OR FAMILY MEMBER ASSAULT, See also DOMESTIC VIOLENCE
Felony assault offenders, provisions regarding, Ch. 245
Insurance, unfair discrimination against victims of abuse prohibited, Ch. 304
Revision of laws generally, Ch. 484

HeinOnline -- 1997 vol. III 3709 1997

PARTNER OR FAMILY MEMBER ASSAULT (Continued)
Victims, right to deletion of addresses from voter registration and mailing lists, Ch. 233
PARTNERSHIPS
Ballot issues, contributions prohibited, Ch. 294
Documents, original filed by facsimile — requirements revised, Ch. 290
Limited liability partnerships
unemployment insurance taxes, unpaid — partners subject to penalties for, Ch. 60
workers' compensation provisions, inclusion in, Ch. 172
PASSENGER TRAMWAY SAFETY, BOARD OF
Appointments to, SR 17, SR 20
Elimination, Ch. 346
PAWNBROKERS AND JUNK DEALERS
Administrative warrant for surrender of stolen property, issuance clarified, Ch. 12
PEACE OFFICERS
Assault on peace officer or judicial officer, criminal offense created, Ch. 433
Certification of officer who leaves full-time or part-time employment and goes on active reserve status or returns to employment, Ch. 68
Game Wardens' Retirement System expanded to include, Ch. 223
Partner or family member assault
arrest of primary aggressor allowed, Ch. 484
victims, information to — regarding right to deletion of addresses from voter registration and mailing lists, Ch. 233
PERPETUALLY MAINTAINED CEMETERIES ACT, Ch. 52
PERSONAL CARE FACILITIES
Fishing without license allowed for supervised residents, Ch. 77
PERSONNEL APPEALS, BOARD OF
Appointments to, SR 17, SR 20
PESTS AND PESTICIDES
Local governments, regulation of notification of pesticide applications, Ch. 180
Public buildings, notice to be posted of application or use of pesticides, Ch. 454
Quarantine and Pest Management Act, Ch. 7
Registration, departmental responsibilities transferred to department of public health and human services, Ch. 73
PETROLEUM TANK RELEASE COMPENSATION BOARD
Loans to, authorization, Ch. 115
PET SHOPS, HUMANE SOCIETIES, AND ANIMAL SHELTERS
Sale or adoption of cat or dog, information to be provided and spay or neuter requirements, Ch. 426
PHARMACY, BOARD OF
Appointments to, SR 17
Dangerous drug scheduling and schedules, revision, Ch. 113

HeinOnline -- 1997 vol. III 3710 1997

PHYSICAL THERAPY AND PHYSICAL THERAPISTS
Revision of laws generally, Ch. 481

PHYSICAL THERAPY EXAMINERS, BOARD OF
Appointments to, SR 17, SR 20

PHYSICIANS AND SURGEONS
Obstetricians and gynecologists, inclusion in health benefit plans as primary care physicians, Ch. 198
Rural physicians, maximum amount of educational debt payment increased, Ch. 89
Tumors, report requirements and release of tumor registry information, Ch. 101

PLANNING BOARDS
Joint or consolidated city-county planning boards, membership requirements revised, Ch. 274

PLUMBERS, BOARD OF
Appointments to, SR 17
Inspectors' employing agencies, reporting of licensing violations to board, Ch. 379

PLUMBING AND PLUMBERS
Permit fees for enforcement of state plumbing code, allocation, Ch. 357

PODIATRY AND PODIATRISTS
Montana Medical Legal Panel Act, addition to and contribution by, Ch. 133

POLICE
Police dog, definition expanded to include dogs trained for search and rescue and used in conjunction with official law enforcement efforts, Ch. 63

POLICE OFFICERS' RETIREMENT SYSTEM, STATE PLAN
Benefits — actuarial funding mechanisms for minimum adjustments, direct reimbursement of supplemental payments eliminated, and contributions increased, Ch. 445
Postretirement adjustments and minimum benefits, replacement for current members electing annual adjustment and for new members, Ch. 287
Vesting requirements for members reduced, employer and state contributions increased, and unfunded mandate law superseded, Ch. 250

POLITICAL PRACTICES, COMMISSIONER OF
Appropriation, Ch. 551
Campaign practices, noncompliance — notification of certain officials before certain ballot certification deadlines, Ch. 25
Salary and benefit provisions, revision, Ch. 417

POSTSECONDARY EDUCATIONAL INSTITUTIONS
Licensing and permitting, elimination, Ch. 364
Workers' compensation coverage for students, clarification, Ch. 500

POSTSECONDARY EDUCATION POLICY AND BUDGET, JOINT COMMITTEE ON
Appropriation, Ch. 551
Termination date extended, Ch. 225

HeinOnline -- 1997 vol. III 3711 1997

PREDATORS AND PREDATOR CONTROL
County fee money for, allocation revised, Ch. 214
PRESERVATION REVIEW BOARD
Appointments to, SR 17
PRISONS AND PRISONERS, See CORRECTIONAL FACILITIES
PRIVATE INVESTIGATORS AND SECURITY PATROL OFFICERS
Private security guards, temporary — provision for, Ch. 360
Revision of laws generally, Ch. 481
PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS, BOARD OF
Appointments te, SR 17, SR 20
PROBATION AND PAROLE OFFICERS
Cost-of-living adjustments, coordination with other county officials, Ch. 381
Presentence investigation reports, availability required, Ch. 189
PROBATION, PAROLE, AND CLEMENCY
Executive clemency, requirements revised, Ch. 92
Medical parole te prisoners who are physically incapacitated, authority revised, Ch. 420
Probation supervisory fees, spocification in allocation of payments made by offender, Ch. 186
PROFESSIONAL AND OCCUPATIONAL LICENSING AND REGULATION,
See also specific profession or occupation
Boards, compliance and enforcement positions — funding, Ch. 492
Licensing
out-of-state persons, reciprocity agreements allowed, Ch. 210
programs without boards, uniform regulation, Ch. 481
renewal periods, annual — departmental rules to provide for variation from, Ch. 492
Prisoners filing complaints against certain professionals prohibited, Ch. 475
Revision of laws generally, Ch. 481, Ch. 492
PROFESSIONAL COUNSELING AND PROFESSIONAL COUNSELORS
Certain counselors allowed to take examination for license as professional counselor, Ch. 278
PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS, BOARD OF
Appointments te, SR 17
PROPERTY, PERSONAL
Owner's immunity from damage caused by use of property unlawfully taken, Ch. 400
Uniform Unclaimed Property Act, adoption, Ch. 124
PROPERTY, REAL
Consumer loan licensees, return of request for reconveyanco of deed of trust or trust indenture taken as security — time limitation, Ch. 374
Homestead exemption, amount increased, Ch. 30

PROPERTY, REAL (Continued)

Investments, Board of — sale of real property held as investment, modification of authority, Ch. 32
Motor vehicles, sale by person on real property in which person does not have legal interest — regulation, Ch. 231
Owner's immunity from damage caused by criminal misuse by another without owner's knowledge, Ch. 400

PSYCHOLOGISTS, BOARD OF
Appointments to, SR 17, SR 20

PUBLIC ACCOMMODATIONS
Revision of provisions generally and clarification regarding "bed and breakfast", Ch. 350
Service animals, hearing or guide dogs redefined as and access to public places allowed, Ch. 394
Surreptitious visual recordation in certain rooms in a business establishment, criminal offense established, Ch. 62

PUBLIC ACCOUNTANTS, BOARD OF
Appointments to, SR 17

PUBLIC ASSISTANCE
Families achieving independence in Montana (FAIM) financial assistance program to replace aid to families with dependent children program and revision of laws generally, Ch. 486
Food stamp program
amendment of provisions, Ch. 486
unemployment benefits, deduction from to repay overissuance, Ch. 60
Jobs program, replacement with employment and training program, Ch. 486
Medicaid
FAIM financial assistance recipients, eligibility maintained, Ch. 486
long-term care insurance partnerships between individuals, private health insurers, commissioner of insurance, and department of public health and human services, Ch. 195
medical savings accounts, pilot preject for use of — creation, Ch. 380
Participants, exemption from wage and hour requirements and workers' compensation coverage required, Ch. 515
Pathways assistance for single-parent and two-parent families, maximum period established, Ch. 486
Revision of laws generally, Ch. 486

PUBLIC ASSISTANCE, BOARD OF
Appointments to, SR 17, SR 20

PUBLIC CONTRACTS
Bannack, historic sites at — competitive bidding process may be bypassed by department of fish, wildlife, and parks in restoration and preservation when, Ch. 57
Construction cost authorization not requiring legislative consent increased, cost limit for projects subject to advertising and bidding increased, approval of negetiated contracts eliminated, and cost of projects increased for which security may be waived, Ch. 249

HeinOnline -- 1997 vol. III 3713 1997

PUBLIC CONTRACTS (Continued)

Construction projects performed by inmate labor — exemption from construction, bidding, bonding, and contract requirements, Ch. 513
Legal review requirement eliminated, Ch. 522
Prevailing wage laws, provisions revised, Ch. 522
Procurement, state
environmental remediation and abandoned mine reclamation projects, provisions not applicable to, Ch. 392
revision of laws generally, Ch. 443
State buildings, lease-purchase provisions exempt from state construction contract requirements, Ch. 455

PUBLIC EDUCATION, BOARD OF
Appointments to, SR 17, SR 20
Appropriation, Ch. 551
Transportation policy violations, penalties revised, Ch. 427

PUBLIC EMPLOYEE RETIREMENT SYSTEMS, COMMITTEE ON
Sunset provision extended, Ch. 192

PUBLIC EMPLOYEES' RETIREMENT BOARD
Appropriation, Ch. 551
Guaranteed annual benefit adjustment for certain benefit recipients, Ch. 287
Laws administered by, revision generally, Ch. 370
Personnel, authorization for hiring, Ch. 532

PUBLIC EMPLOYEES' RETIREMENT SYSTEM
County hospital or rest home employees, membership in system, Ch. 208
Federal tax laws governing qualification of system supersede conflicting state statutes, Ch. 370
Firefighters, transfer to firefighters' unified retirement system not required when, Ch. 254
Game Wardens' and Peace Officers' Retirement System, provisions for transfers to, Ch. 223
Guaranteed annual benefit adjustment, establishment, Ch. 287
Postretirement adjustments and minimum benefits, replacement for current members electing annual adjustment and for new members, Ch. 287
Replacement or modification of current system, committee to develop and implement, Ch. 191
Service credits, purchase — payment of full actuarial cost required and purchase for benefit calculation allowed, Ch. 287
State employees, involuntary termination — purchase of service years, Ch. 361
Teachers' Retirement System, transfer of service from — provisions revised, Ch. 442

PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Advisory councils associated with, revision and elimination, Ch. 171
Appropriations, Ch. 387, Ch. 469, Ch. 517, Ch. 526, Ch. 551
Chemical dependency counselors, certification duties and responsibilities transferred from, Ch. 507
Child custody, visitation — department may not be ordered to supervise, Ch. 514

HeinOnline -- 1997 vol. III 3714 1997

PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF (Continued)
Day care facilities — licensing enforcement actions may be initiated in justice's, city, or municipal courts as well as district court, Ch. 222
Death certificates, rule requiring completion of medical certification within time set by, Ch. 118
Game animal meat seized from illegally taken animals, sale proceeds and excess revenue from wild buffalo or bison disease control program appropriated to department for grants to Montana food bank network or meat donated directly to food banks or charitable institutions, Ch. 523
Guest ranches and outfitting and guiding facilities, licensing requirements, Ch. 412
Health Coordinating Council, Statewide — appointment, Ch. 93
Home companions, department requested to study need for and method of providing program for voluntary registration or certification of, SJR 16
Hospitals within state, licensing only on basis of accreditation by joint commission on accreditation of health care organizations, Ch. 99
Institutional resident's cost of care, liability — revision of provisions generally, Ch. 190
Laboratory licensing, radioactive substances, vector-born illness, and pesticide registration — responsibilities transferred to, Ch. 73
Long-term care insurance partnerships between individuals, private health insurers, commissioner of insurance, and department, Ch. 195
Protective services professionals, separate pay plan for — study authorized, Ch. 363
Public accommodations, campgrounds, and trailer courts — rulemaking authority authorized, Ch. 350
Public assistance, duties, See PUBLIC ASSISTANCE
Self-sufficiency truste, exemption from liens imposed by, Ch. 262
State laboratory, location and fees — clarification, Ch. 73
Youth assessment centers, licensing, Ch. 550
Youth court records, schools included under confidentiality disclosure exceptions, Ch. 550

PUBLIC OFFICERS OR EMPLOYEES
Employee group benefits, cooperative purchasing by state and local government agencies of benefit services and insurance products — procedures, Ch. 147
Federal activities, engagement in — immunity from liability, Ch. 87
Group insurance provisions, revision generally, Ch. 282
Intimidation and harassment by extremists, remedy, Initiative No.123(Appendix)
Salary and expense payments for elected officials, clarification of certain statutes, Ch. 417
School districts, cash compensation in lieu of accumulation of vacation leave — allowing, Ch. 143
State employees
definitions related to permanent, temporary, and seasonal positions revised, exempt employee provisions clarified, short-term worker provisions, administration requirement for sick-pay plan eliminated, and exempt status for teachers removed, Ch. 339

HeinOnline -- 1997 vol. III 3715 1997

PUBLIC OFFICERS OR EMPLOYEES (Continued)
State employees (Continued)
involuntary termination — funding for job retraining, relocation expenses, health insurance, and purchase of service years, Ch. 361
pay and benefit adjustments and increase in state contribution to group benefit program, development of alternative compensation system, and incentive awards program extended and revised, Ch. 417
protective services professionals, separate pay plan for — study authorized, Ch. 363
travel reimbursement provisions revised, Ch. 439

PUBLIC RECORDS
Local Government Records Committee, issue of disposal of record submitted to committee when and retention and disposition schedule for categories of records and school records to be established, Ch. 323

PUBLIC SERVICE COMMISSION
Telecommunications services, duties, See TELECOMMUNICATIONS
Utilities, duties, See UTILITIES

PUBLIC SERVICE REGULATION, DEPARTMENT OF
Appropriations, Ch. 387, Ch. 551

Q

QUARANTINE AND PEST MANAGEMENT ACT, Ch. 7

R

RADIOACTIVE SUBSTANCES
Departmental responsibilities transferred to Department of Public Health and Human Services, Ch. 73

RADIOLOGIC TECHNOLOGISTS, BOARD OF
Appointments to, SR 17

RAILROADS
Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited and penalty provided, Ch. 67
Property tax, average levy applied to railroad cars — clarification, Ch. 16
Revision and clarification of laws generally and elimination of archaic requirements, Ch. 235

REAL ESTATE APPRAISAL AND APPRAISERS
Revision of laws generally, Ch. 481

REAL ESTATE APPRAISERS, BOARD OF
Appointments to, SR 17

REAL ESTATE BROKERS AND SALESPERSONS
Exemption from licensing provisions for person performing acts respecting certain right-of-way transfers, condemnations, or governmental or tribal permits, Ch. 251

REALTY REGULATION, BOARD OF
Appointments to, SR 17

RECLAMATION AND DEVELOPMENT GRANTS PROGRAM
Appropriations for, Ch. 108

RECREATION, See PARKS AND RECREATION

REGENTS OF HIGHER EDUCATION, BOARD OF
Actions directly impacting specific communities or areas, exemption from hearing provisions, Ch. 487
Appointments to, SR 17, SR 20
Community college budgets, date changed for submission to, Ch. 243
Family education savings program, implementation, Ch. 540
National guard education benefit program, tuition waivers provided pursuant to, Ch. 418
National guard members killed or dying in the line of duty while serving on state active duty, tuition and fees waived for spouse or children of, Ch. 41
Rural physicians, maximum amount of educational debt payment increased, Ch. 89
Tribally controlled community colleges, financial assistance for enrolled resident nonbeneficiary students, Ch. 362

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM
Additional grant and loan conditions provided, Ch. 436
Appropriations for grants and loans, Ch. 434
Emergency loan cap increased, Ch. 50
Projects and loans — approval, authorization, and appropriations, Ch. 80
Tribal governments, participation allowed, Ch. 436
Water users' associations, loans to — alternative fair market security assurance provided, Ch. 332

REPUBLIC OF CHINA ON TAIWAN
Support for full membership in the United Nations, HJR 7

RESERVED WATER RIGHTS COMPACT COMMISSION
Appropriation, Ch. 551

RESIDENCE
Rules for determining, revision, Ch. 367

RESOLUTIONS
Bison management, support for governor and urging him to remain firm in demand that federal government resolve differences in a way that will not expose Montana citizens or agriculture industry to harm, HJR 27
Blaylock, Chet — commemorating and celebrating contributions of and authorizing permanent placement of senate memorial in the capitol, SJR 15
Chapel at Women's Correctional System in Billings and church at Montana Developmental Center in Boulder, consent for construction and for moving of church structure from galen campus to warm springs campus, HJR 24
Constitution of the United States, balanced budget amendment — congress urged to submit to states, HJR 26
Correctional standards, interim study requested, HJR 19
Crown Butte Agreement, land exchange requirements — supperting efforts of gevernor to find federal properties within state to exchange and

HeinOnline -- 1997 vol. III 3717 1997

RESOLUTIONS (Continued)

requesting federal compensation for loss of tax revenue that would have accrued as a result of crown butte project, SJR 13
Disabled military retirees, congress urged to enact legislation allowing concurrent receipt of full longevity retirement benefits and service-connected disahility compensation, HJR 12
Drug prices, congress urged to continue investigation of exorbitant prices being charged to customers, HJR 3
Family farming and ranching in Montana, challenges confronting and opportunities emerging for — interim study requested, SJR 4
Federal law enforcement officers requested to more fully cooperate with county sheriffs, HJR 28
Federal mandates, request for interim committee to monitor and study, HJR 14
Federal surface transportation program, congress urged to reauthorize and to continue to recognize the national interest in investment in highways that serve and cross rural western states, SJR 9
Governor's appointments, senate concurrence, SR 3, SR 4, SR 5, SR 6, SR 7, SR 8, SR 9, SR 10, SR 11, SR 12, SR 13, SR 14, SR 15, SR 16, SR 17, SR 19, SR 20
Grand Staircase-Escalante National Monument Resolution, HJR 13
Hardin High School Bulldogs basketball team, congratulations on winning Montana stato class A high school boys basketball championship, HJR 31
Health care — congress urged to enact legislation to revise process by which new drugs, biological products, and medical devices are approved by the united states food and drug administration, HJR 18
Helena Capital High Bruin football team, congratulations on winning Montana state AA high schooi football championship, HJR 30
Home companions, department of public health and human services requested to study need for and method of providing program for voluntary registration or certification of, SJR 16
International agreements that concern use and management of land and resources belonging to United States, individual states, and the people — congress urged to reaffirm its power over, HJR 25
Jefferson High School honored for being first Montana school selected to participate in American High School Theatre Festival, SJR 12
Job Training Partnership Act programs, encouraging additional porformance measures and assessment of outcomes for adults and targeting funds to at-risk youth and youth who have committed offenses, SJR 5
Labor and Industry, Department of — integrated dispute settlement process for employment-related issues, exploration and analysis requested, HJR 10
Land Commissioners, Board of — lease of old registrar of motor vehicles office to powell county museum and arts foundation for purpose of enhancement of Montana territorial prison museum or other community purposes urged, SJR 10

HeinOnline -- 1997 vol. III 3718 1997

RESOLUTIONS (Continued)

Legislature
rules to govern proceedings
house of representatives, HR 1
joint rules, SJR 1
senate, SR 1
revisions, SR 18
women in, authorizing permanent placement of plaque in capitol commemorating service of, HJR 6
Loyola Sacred Heart High School speech and debate team, congratulations for 14th consecutive state championship, HJR 21
Mammograms for women who qualify for medicare, congress and united states department of health and human services urged to provide annually, SJR 8
Military experience of Montana, commemorating 130th anniversary and recognizing all persons who have in past been in or who are currently in service, HJR 22
Missoula Big Sky High School boys basketball team, congratulations on winning 1997 class AA state championship, HJR 29
120th Fighter Wing, Montana Air National Guard — commemoration of honor and lineage of, HJR 17
163rd Infantry Regiment, Montana Army National Guard — commemoration of honor and valor of, HJR 16
Republic of China on Taiwan, support for full membership in the united nations, HJR 7
Revenue estimates for fiscal years 1997-98 and 1998-99, HJR 2
School elections, combining — interim study requested, HJR 23
State property management, interim study requested, HJR 4
Telemarketing fraud, request for interim committee to study effects of and possible remedies te, SJR 14
University of Montana Grizzly football teams, congratulations for outstanding 1995 and 1996 seasons, HJR 8

RESORT AREA DISTRICTS
Creation, authorization, Ch. 327

RESPIRATORY CARE PRACTITIONERS, BOARD OF
Appointments te, SR 17, SR 20

RETIREMENT SYSTEMS GENERALLY
Administration, conformance to constitutional revisions and limitation of administrative expenses, Ch. 532

REVENUE, DEPARTMENT OF
Appropriations, Ch. 269, Ch. 447, Ch. 551
Employer taxes — reengineering, restructuring, and combining reporting and remittance of, Ch. 491
Inheritance tax matters, inclusion in hiennial report to governor and legislature — requirement eliminated, Ch. 61
Mining, trusts for unlocatable owners — allowing substitution of department as trustee, Ch. 126
One-stop business licensing pilot project, administration, Ch. 366
Taxation provisions and revisions, See TAXATION headings

HeinOnline -- 1997 vol. III 3719 1997

REVENUE ESTIMATES FOR FISCAL YEARS 1997-98 AND 1998-99, HJR 2
REVENUE OVERSIGHT COMMITTEE
Natural gas suppliers, tax revenue analysis, Ch. 506
RIVERS AND STREAMS, See also WATER USE
Island parks on state-owned or state-leased island property, establishment, Ch. 449
RURAL SPECIAL IMPROVEMENT DISTRICTS
Bond or warrant principal and interest payments, reserve account money allowed to be used for, Ch. 459
Maintenance fund and maintenance districts, administration provisions revised, Ch. 175

S

SANITARIANS, BOARD OF
Appointments to, SR 17
SCHOOL DISTRICTS AND TRUSTEES, See also SCHOOL FINANCE
Adult education programs operated by, approval requirement eliminated, Ch. 430
Architectural services, provisions clarified, Ch. 153
Bus transpertation contracts, copies to superintendent of public instruction — requirement eliminated, Ch. 22
County high school districts, outdated references and procedures eliminated, Ch. 219
County Transportation Committee, notification of operation of unapproved route outside district boundaries, Ch. 427
Earthquake emergency plans, requirements eliminated for certain districts, Ch. 423
Emergency in district, trustees authorized to declare and other provisions revised, Ch. 430
Firearms safety education course, establishment and maintenance encouraged, Ch. 138
High school boundary commission, duties relating to creation of districts eliminated, Ch. 219
High school district boundary changes, time limitations revised, Ch. 22, Ch. 403
Joint construction of facilities, joint bonding authority authorized, Ch. 397
K-12 districts, dissolution if creation or continuation results in loss of federal funding, Ch. 95
New districts, moratorium on creation — implementation, Ch. 219
Pupil-instruction time, determining — greater flexibility provided, Ch. 430
State land, sale or lease for school sito — acreage increased, Ch. 79
Student assessment data, disclosure to interested parties — requirements, Ch. 311
Transfer of territory between districts, provisions revised, Ch. 403
Vacation leave, cash compensation in lieu of accumulation of — allowing, Ch. 143

SCHOOL DISTRICTS AND TRUSTEES (Continued)

Weapons in school buildings — pormission granted for possession, carrying, or storage, Cb. 435

SCHOOL ELECTIONS
Bond elections, time specified for ballot availability and notice requirements revised, Ch. 144
Interim study of combining school elections, request for, HJR 23

SCHOOL FINANCE
Appropriation for direct state aid and guaranteed tax base aid, Ch. 437
Budgeting laws, revision generally, Ch. 22
Building reserve fund, capitalization in amount equal to 5 years of levy revenue and use of loan proceeds limited, Ch. 23
Entitlement, basic and per-ANB
consolidation or annexation of districts, calculation provision, Ch. 212
increase, Ch. 437
Out-of-state treatment facility, students placed in — responsibility for payment of costs transferred, Ch. 529
Preliminary budget, requirement that trustees prepare and adopt — elimination, Ch. 211
Revision of laws generally, Ch. 22
Technology acquisition fund, budget requirement eliminated, Ch. 22

SCHOOL LANDS
Resource development, increase in amount allowed te fund, Ch. 247

SCHOOLS
American Indian Heritage Day, designation, Ch. 202
County adult literacy programs, funding for persons 16 years of age or older and not attending school, Ch. 264
Fire drills, provisions revised and renamed "disaster" drills, Ch. 423
Hardin High School Bulldogs basketball team, congratulations on winning Montana state class A high school boys basketball championship, HJR 31
Helena Capital High Bruin football team, congratulations on winning Montana state AA high school football championship, HJR 30
Investments, Board of — authorization to obligate funds to acquire proporty or construct facilities and term of obligation increased, Ch. 499
Jefferson High School honored for being first Montana school selected to participate in American High School Theatre Festival, SJR 12
Kindergarten variances for required hours of instruction, approval requirement eliminated, Ch. 430
Loyola Sacred Heart High School speech and debate team, congratulations for 14th consecutive state championship, HJR 21
Missoula Big Sky High School boys basketball team, congratulations on winning 1997 class AA state championship, HJR 29
Pledge of allegiance, recitation required, Ch. 320
Public Health and Human Services, Department of — records, confidentiality disclosure exceptions, Ch. 550
Pupil-instruction-related days and pupil-instruction time, provisions revised, Ch. 430

HeinOnline -- 1997 vol. III 3721 1997

SCHOOLS (Continued)

Records
permanent and special education, local agencies and accredited schools to adopt policy for transfer, Ch. 157
retention schedules to he estahlished, Ch. 323
Special education tuition payments in excess of regular tuition costs for out-of-district pupil, allowing use for program in which pupil is enrolled, Ch. 389
State land, sale or lease for sites — acreage increased, Ch. 79
Student assessment data, disclosure to interested parties — requirements, Ch. 311
Telecommunications services, discounts authorized when, Ch. 349
Weapons in, offense of possession or allowing pessession by minor, Ch. 435
Workers' compensation coverage for students, clarification, Ch. 500
Youth court, notification to school officials when student who for second or subsequent time admits or is adjudicated as having violated a statute, Ch. 450
Youth placement committees and auxiliary teams, representatives to have personal knowledge of child, Ch. 550
Youth Voting Act, students participating in — casting ballots at location other than regular polling place allowed, Ch. 142

SCHOOL TRANSPORTATION
Bus depreciation reserve fund balance, transfer allowed only when district sells all of its buses, Ch. 238
Contracts, copies to superintendent of public instruction — requirement eliminated, Ch. 22
Violation of provisions, penalties revised and county transportation committee to be notified of operation of unapproved route outside district boundaries, Ch. 427

SCIENCE AND TECHNOLOGY DEVELOPMENT, MONTANA BOARD OF
Appointments to, SR 17, SR 20
Elimination of board and transfer of portfolios, Ch. 549

SEARCH AND RESCUE
Police dog, definition expanded to include dogs trained for search and rescue and used in conjunction with official law enforcement efforts, Ch. 63

SECRETARY OF STATE
Appropriation, Ch. 551
Campaign practices, noncompliance — notification before certain ballot certification deadlines, Ch. 25
Corporations, annual reports — types of information related to value of property owned, requirements revised, Ch. 139
Electronic filing system, statewide — development and implementation, Ch. 291
Facsimile filings, original of certain documents not required to be received and filed within 5 days of receipt and filing of facsimile, Ch. 290
Fees for filing and copying services, requirements revised, Ch. 406
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
National Voter Registration Act, provisions for implementation, Ch. 246

HeinOnline -- 1997 vol. III 3722 1997

SECRETARY OF STATE (Continued)

Proprietary funds, transfer to general fund at end of fiscal year — requirement eliminated, Ch. 406
Registered electors in state, secretary of state required to compile and maintain list of, Ch. 309

SECURED TRANSACTIONS
Documents, original filed by facsimile — requirements revised, Ch. 290

SECURITIES AND SECURITIES REGULATION
Cooperative associations, offer or sale te members or to establish membership in — registration exemption, Ch. 395
Fraud, insurance and securities education and prevention program established, Ch. 390
Investment securities, replacement of former laws with updated laws, Ch. 536
Private securities litigation laws revised, requirements for fraud actions established, sanctions for abusive litigation provided, and safe harbor for forward-looking statements created, Ch. 468
Revision of laws generally, Ch. 533

SENATE BILL TO CHAPTER NUMBER TABLE, See TABLE OF SENATE BILL TO CHAPTER NUMBER, printed separately in this volume

SENTENCING AND SENTENCES
Death penalty cases, time limit for hearing, Ch. 378
Home arrest law, revision, Ch. 322
Intermediate sentencing options, revision and clarification, Ch. 322
Juveniles, extended jurisdiction — felony sentences authorized, Ch. 498
Policy of state, establishment, Ch. 474
Presentence investigations, qualifications of persons conducting and reports required to be available to probation and parole officers, Ch. 189
Psychosexual evaluation of certain offenders required, Ch. 189
Restitution to victims, provisions clarified, Ch. 181
Suspended sentence, appeal of revocation by justice's or city court — procedure clarified, Ch. 149
Two-way electronic audio-video communication to be allowed in misdemeanor criminal cases when, Ch. 163

SESSION LAW TABLES, See TABLE OF SESSION LAWS AFFECTED and TABLE OF SESSION LAW TO CODE, printed separately in this volume

SEWAGE DISPOSAL AND SEWER SYSTEMS
County water and/or sewer district boundary changes, vote allowed to be held by mail ballot, Ch. 459
Elections for certain water and sewer projects, clarifying availability of special elections for, Ch. 234

SHERIFFS' RETIREMENT SYSTEM
Guaranteed annual benefit adjustment, establishment, Ch. 287
Postretirement adjustments and minimum benefits, replacement for current members electing annual adjustment and for new members, Ch. 287
Reduction of years required for vesting in, certain benefits increased, involuntary retirement benefit repealed, and superseding unfunded mandate law, Ch. 248

HeinOnline -- 1997 vol. III 3723 1997

SHOPLIFTING
Small claims court, claims for civil penalties to be assigned and brought in, Ch. 135

SMALL CLAIMS COURT, DISTRICT COURT
Procedure to conform to procedure in justice's court and repeal of district court provisions, Ch. 241
Shoplifting, claims for civil penalties to be assigned and brought in, Ch. 135

SMALL CLAIMS COURT, JUSTICES' COURTS
Procedure in district court to conform to procedure in justice's court, Ch. 241
Shoplifting, claims for civil penalties to be assigned and brought in, Ch. 135

SNOWMOBILES
Purchase year considered model year for purposes of calculating fee in lieu of tax when, Ch. 402

SOCIAL SECURITY
Child support, implementation of federal personal responsibility and work opportunity reconciliation act of 1996 to include availability of social security numbers, Ch. 552
Mammograms for women who qualify for medicare, congress and united states department of health and human services urged to provide annually, SJR 8
Registered electors, secretary of state may not be provided with social security numbers of, Ch. 309

SOCIAL WORKERS
Child abuse and neglect cases, requirements before requesting temporary investigative authority, Ch. 501

SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS, BOARD OF
Appointments to, SR 20

SOLID WASTE MANAGEMENT
Container site, definition modified, Ch. 372
Waste tire disposal provisions, Ch. 373

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF
Appointments to, SR 17

STATE AUDITOR
Accounting duties, unnecessary — elimination, Ch. 48
Appropriation, Ch. 551
Living trusts, regulation, Ch. 348
Supreme court, quarterly settlements — requirement eliminated, Ch. 28

STATE DEBT COLLECTION SERVICE
Revision of provisions generally, Ch. 17

STATE EMPLOYEES, See PUBLIC OFFICERS OR EMPLOYEES

STATE FINANCE
Accounting laws revised, Ch. 48
Revision and clarification of laws generally, Ch. 532
Warrants, duplicate — requirements revised, Ch. 48

HeinOnline -- 1997 vol. III 3724 1997

STATE GOVERNMENT
Agency actions directly impacting specific communities or areas, hearings to be held in impacted community or area, Ch. 487
Charges for services, prohibiting fund cash balances greater than necessary to finance services for more than two years, Ch. 270
Contracts, judgments involving — liability for interest and attorney fees, Ch. 508
Electronic information provided to the public, means expanded, Ch. 440
Employee group benefits, cooperative purchasing of benefit services and insurance products — procedures, Ch. 147
Federal activities, engagement in — immunity from liability, Ch. 87
Government Accountability Act, Ch. 502
Loans to state agencies by Board of Investments, terms and conditions clarified, Ch. 483
Property management, interim study requested, HJR 4

STATE INFORMATION TECHNOLOGY ADVISORY COUNCIL
Membership and duties expanded, Ch. 56

STATE LANDS
Facility or structure installed or constructed on state trust land by person other than lessee without permission of Department of Natural Resources and Conservation, penalty provided, Ch. 460
Histeric right-of-way deeds, provisions for, Ch. 461
Island parks on state-owned or state-leased island property, establishment, Ch. 449
Oil and gas leases, provisions revised, Ch. 34
School lands, resource development — funding increased, Ch. 247
School sites, sale or lease of land for — acreage increased, Ch. 79

STATE LIBRARY COMMISSION
Appointments to, SR 17
Appropriations, Ch. 387, Ch. 551

STATE MANAGEMENT SYSTEMS, LEGISLATIVE OVERSIGHT COMMITTEE ON
Establishment, Ch. 391

STATE PREVENTION PROGRAMS, INTERAGENCY COORDINATING COUNCIL FOR
Composition and duties revised, Ch. 173

STATE TAX APPEAL BOARD
Appointments to, SR 17, SR 20
Appropriation, Ch. 551

STATE TREASURER
Accounting duties, unnecessary — elimination, Ch. 48
Clark Fork River Basin, appropriation for natural resource damage litigation — contract for redeposit provision, Ch. 154

STREET LIGHTING DISTRICTS
Revision of provisions generally, Ch. 127

HeinOnline -- 1997 vol. III 3725 1997

STREETS AND ALLEYS
Exchange of roadways between Transportation Commission and local government allowed when, Ch. 178
Littering with lighted matehes, cigarettes, and other burning material and dumping ashtray prohibited and penalty provided, Ch. 67
Old Forts Trail, establishment from fort benton through havre into saskatchewan, Ch. 321
STREET TERRORISM ENFORCEMENT AND PREVENTION ACT, Ch. 285
SUBDIVISIONS
Parcel of 1 acre or more with existing well and septic system, exemption from review of development plans, Ch. 289
Review of certain parcel divisions, clarification, Ch. 503
SUPERINTENDENT OF PUBLIC INSTRUCTION
Appropriations, Ch. 387, Ch. 437, Ch. 551
Approval of kindergarten variances for required hours of instruction, pupil-instruction-related days, and adult education programs operated by district — elimination, Ch. 430
Bus transportation contracts, copies to — requirement eliminated, Ch. 22
Emergencies, school days lost because of — determination that reasonable effort has been mado te make up, requirement eliminated, Ch. 430
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Records transfer agreements, reciprocal — authorization for, Ch. 157
School trustees, administration of funds authorized by, Ch. 22
Student assessment data, disclosure te interested parties — requirements, Ch. 311
Teachers, employment termination decisions not covered by collective bargaining agreement — appeals and disputes, jurisdiction removed, Ch. 438
Teachers' Retirement Board membership, removal, Ch. 388
SUPREME COURT
Administrative functions revised, Ch. 28
Job investment loans, allocation from interest and earnings to fund judges' retirement system, Ch. 549

T

TABLES
Tbe following is a list of supplementary tables printed separately in this volume:
CHAPTER NUMBER TO BILL NUMBER
CODE SECTIONS AFFECTED
EFFECTIVE DATES BY CHAPTER NUMBER and BY EFFECTIVE DATE
HOUSE BILL TO CHAPTER NUMBER
SENATE BILL TO CHAPTER NUMBER
SESSION LAWS AFFECTED
SESSION LAW TO CODE

HeinOnline -- 1997 vol. III 3726 1997

TAXATION, CORPORATIONS
Bank and building and loan association payments, distribution changed, Ch. 369
Common trust funds, exemption from license and income taxes, Ch. 368
Credits
historic buildings, preservation, Ch. 545
qualified endowment contributions, Ch. 537
recycling of material, termination date extended, Ch. 411
Inorganic fertilizer produced as byproduct, expenditures for — deduction, Ch. 218
Periods of limitation reduced and penalty on delinquent returns revised, Ch. 51
Small business corporations, filing fees eliminated, Ch. 65
TAXATION, ESTATES
Estate tax, apportionment rule — deviations allowed, Ch. 279
Inheritance tax
biennial report to governor and legislature, inclusion of inheritance tax matters — requirement eliminated, Ch. 61
closely held business property, exemption when, Ch. 288
stepchildren, exemption extended, Ch. 464
TAXATION, GASOLINE AND VEHICLE FUELS
Alcohol production tax incentive, extension and limitation on maximum amount payable te producer, Ch. 510
Disposition of gasoline taxes revised, Ch. 239
Improperly imported fuel, seizure — provisions for, Ch. 236
Liquefied petroleum gas, provisions revised, Ch. 125
TAXATION, GENERAL PROVISIONS
Appoal proceedings, electronic recording as record of proceedings allowed when, Ch. 134
Cement dealer's license tax, repeal, Ch. 65
Electronic funds transfer, payment by — signature alternatives provided, Cb. 6
Medical care savings accounts, allowing account holders to administor tbeir own accounts and providing definitions and exceptions, Ch. 296
Quarterly payment by employers subject to cbangsd payment schodule, uniformity in all statutes provided, Ch. 123
Remittance requirement for new employers with less than 12 months' experience, threshold provided, Ch. 123
TAXATION, INDIVIDUAL INCOME
Credits
historic buildings, preservation, Ch. 545
qualified endowment contributions, Ch. 537
recycling of material, termination date extended, Ch. 411
Deductions
family education savings program accounts, contributions to, Ch. 540
health care and long-term care insurance premium payments, Ch. 383
inorganic fertilizer produced as byproduct, expenditures for, Ch. 218
long-term care insurance premiums, revision, Ch. 111

HeinOnline -- 1997 vol. III 3727 1997

TAXATION, INDIVIDUAL INCOME (Continued)
Deductions (Continued)
parents of children who work and file their own returns, for, Ch. 123
First-time home huyer savings accounts, exclusion from adjusted gross income of principal and income contained within, Ch. 544
Withholding, coordination of administration so that all reports and remittances inust be made to department of revenue, Ch. 491
TAXATION, MINERALS
Coal severance tax funds, use revised, Ch. 469, See also COAL TRUST FUNDS
Mines, metal — license tax
allocation revised, Ch. 120
orphan sbare (fund) account, proceeds to, Cb. 415, Ch. 542
Oil and gas severance taxes, local government — deficiency assessment and overpayment provisions revised, Ch. 295
Oil and natural gas production tax
distribution clarified, Ch. 466
overpayment provisions revised, Ch. 295
Resource indemnity trust and ground water assessment tax
allocation, revision and clarification, Cb. 444
mines, metal — license tax te be distributed in same manner as, Ch. 120
resource indemnity trust fund, allocation of earnings — revision, Ch. 444
Resource indemnity trust, interest and tax proceeds — allocation to orphan share (fund) account, Ch. 415, Ch. 542
TAXATION, PROPERTY
Agricultural implements and machinery, wholesale value clarified, Ch. 299
Appeals of valuation reviews and estimated and revised assessments of property, time period established, Ch. 36
Assessment, refusal to furnish information — notification of taxpayer by certified mail of departmental assessment, requirement eliminated, Ch. 35
Community services buildings and land, exemption provisions revised, Ch. 166
Disabled veteran or surviving spouse, exemption revised, Ch. 301
Elderly homeowner property tax credit, providing for deduction based on property taxes levied and a standard pension deduction, Ch. 543
Forest land, classification clarified and definitions revised, Ch. 297
Hospital districts, proporty tax limitation law — exemption if authorized by electorato and limiting number of mills that may be levied, Ch. 300
Interim Property Tax Committee, provision for and funding, Ch. 463
Land splits, procedures, Ch. 414
Limitations implementing Initiative No. 105, exceptions changod and providing inethod for voters of taxing unit to authorize a tax increase, Ch. 463
Malting barley machinery and equipment, classification as class 6 property, Ch. 546
Manufactured and mobile homes, provisions for and revisions, Ch. 200
1997 statutory deadlines relating to, extension, Ch. 463
Ownership records, change of — when, Ch. 414
Personal property, class six property intended for rental or lease — provisions revised, Ch. 409

TAXATION, PROPERTY (Continued)

Railroad car companies, average levy applied to railroad cars — clarification, Ch. 16
Rates for class 3 and 4 property, adjustment to compensate for increased valuation of taxable property, Ch. 463
Reappraisal cycle for class 3, 4, and 10 property, phasein, Ch. 463
Recreational leases exempt from beneficial use property tax, Ch. 49
Refusal to furnish information, notification of taxpayer by certified mail of departmental assessment — requirement eliminated, Ch. 35
Rural electric cooperative properties removed from class 7 property and included in class 9 property, Ch. 505
Tax sale proceedings, notice requirements clarified, Ch. 407
University system 6-mill levy, continuation, Ch. 277
Water right transfers, process established for acknowledgment in realty transfer transactions, Ch. 167

TAXATION, SALES
Lodging facility use tax proceeds, allocation revised, Ch. 469
Motor vehicles, new — reallocation of proceeds, Ch. 199

TEACHERS
Administrative pesitions, serving in — salary reduction when assigned to teaching position, Ch. 438
Employment termination provisions revised, Ch. 438
Pledge of allegiance, requirements and exceptions, Ch. 320
State employee classification, compensation, and benefit provisions — exempt status, removal, Cb. 339
Student teachers, supervision — teachers to receive compensation from college or university, Ch. 243
Teachers' Retirement Board, appointees to include classroom teacher, Ch. 388
Tenure
revision of laws generally, Ch. 438
"same salary" defined for purposes of, Ch. 259

TEACHERS' RETIREMENT BOARD
Appropriation, Ch. 551
Family law orders affecting benefits distribution, review and approval, Ch. 442
Membership revised, Ch. 388

TEACHERS' RETIREMENT SYSTEM
Cooperative Extension Service, qualification of service, Ch. 408
Revision of provisions generally, Ch. 442
Transfer of service from, provisions revised, Ch. 370
University system optional retirement program, supplemental employer contribution rate — adjustment to amortize past service liabilities of members participating in, Ch. 419

TELECOMMUNICATIONS
Committee on Telecommunications Services for the Handicapped, name changed and membership revised, Ch. 396
Disabled persons, services for — provisions revised, Ch. 396
Providers, unauthorized change in customer's choice prohibited, Ch. 325

HeinOnline -- 1997 vol. III 3729 1997

TELECOMMUNICATIONS (Continued)

Regulations revised in response to federal telecommunications act of 1996, Ch. 349

TELEMARKETING FRAUD
Interim committee to study effects of and possible remedies to, request for, SJR 14

TELEPHONE AND TELEGRAPH
Low-income assistance program, amount of assistance increased, Ch. 349

TELEVISION DISTRICTS
Exemption from tax payment, request to be subject to review and approval by board of trustees, Ch. 216

TERRORISM
Street Terrorism Enforcement and Prevention Act, Ch. 285

TOBACCO PRODUCTS
Youth access to, provisions revised, Ch. 518

TORTS
Correctional institutions, tort damages to persons injured on premises while serving sentence — governmental liability abolished, Ch. 337
Joint and several liability limited to certain actions, Ch. 429
Liability, revision of principles governing and determination when multiple persons are at fault, Ch. 293
Release or covenant not to sue, provisions for effect of, Ch. 293, Ch. 429
Several liability provided for most actions, Ch. 429
Venue, revision of general statutes, Ch. 352

TRADE REGULATION AND COMPETITION
Trademarks, original documents filed by facsimile — requirements revised, Ch. 290

TRAMWAYS
Inspoction fees, allocation, Ch. 357

TRANSPORTATION
Federal surface transportation program, congress urged to reauthorize and to continue to recognize the national interest in investment in highways that serve and cross rural western states, SJR 9
Local technical assistance transportation program, correction of incorrect designation, Ch. 239

TRANSPORTATION COMMISSION
Appointments to, SR 20
Exchange of roadways between Commission and local government allowed when, Ch. 178
Local government engineering and traffic investigations, provisions for, Ch. 206

TRANSPORTATION, DEPARTMENT OF
Appropriations, Ch. 387, Ch. 469, Ch. 551
Gasoline and vehicle fuels, duties, See TAXATION, GASOLINE AND VEHICLE FUELS
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551

TRANSPORTATION, DEPARTMENT OF (Continued)
Motor vehicles, duties and responsibilities, See MOTOR VEHICLES AND TRAFFIC REGULATIONS
Protective services professionals, separate pay plan for — study authorized, Ch. 363
Utility relocation, highway construction requiring — cost responsibilities clarified, Ch. 324
TRANSPORTATION DISTRICTS, URBAN
Enlarging, election and petition provisions, Ch. 177
TRANSPORTATION FUNDING AND EXPENDITURE STUDY COMMITTEE
Establishment, Ch. 493
TREASURE STATE ENDOWMENT PROGRAM
Loans, administration by department of natural resources and conservation, Ch. 55
Local government infrastructure project grants, account interest earnings for, Ch. 55
TRUSTS AND TRUSTEES
Common trust funds, exemption from corporation license and income taxes, Ch. 368
Funeral plan trusts, credit unions allowed to hold, Ch. 365
Living Trust Act, Ch. 348
Revision of provisions generally, Ch. 279
Self-sufficiency trusts, exemption from liens impesed by department of public health and human services, Ch. 262

U

UNDERGROUND STORAGE TANK ACT, Ch. 112
UNEMPLOYMENT INSURANCE
Benefits — voluntary withholding of taxes from, deductions to repay overissuance of food stamp coupons, and disqualification criteria changed, Ch. 60
Limited liability partnerships to be subject to penalties for unpaid taxes, Ch. 60
Tax administration, coordination of administration so that all reports and remittances must be made to department of revenue, Ch. 491
UNIFORM UNCLAIMED PROPERTY ACT, Ch. 124
UNIVERSITY OF MONTANA-MISSOULA
Grizzly football teams, congratulations for outstanding 1995 and 1996 seasons, HJR 8
UNIVERSITY SYSTEM
Appropriations, Ch. 417, Ch. 447, Ch. 469, Ch. 471, Ch. 551
Guaranteed student loans, default or failure to enter repayment agreement — suspension of state-issued licenses, Ch. 446
Internal service fund type fees and charges established by legislature for 1999 biennium, Ch. 551
Investment earnings on university funds, conflict between constitutional and statutory provisions removed, Ch. 547

HeinOnline -- 1997 vol. III 3731 1997

UNIVERSITY SYSTEM (Continued)

Land transactions, procedures revised, Ch. 425
Legislative intern program to accommodate academic year structure within, Ch. 104
License plates, collegiate — continued use and display when hearing name of institution that has been renamed, Ch. 462
National guard education benefit program, tuition waivers provided pursuant to, Ch. 418
National guard members killed or dying in the line of duty while serving on state active duty, tuition and fees waived for spouse or children of, Ch. 41
Public entities and private foundations or organizations supporting the university system, authority of legislative auditor to access certain transactions between — clarification, Ch. 377
Research and development projects, funding, Ch. 549
Revision of provisions generally, Ch. 243
6-mill levy, continuation, Ch. 277
Student loan provisions revised, Ch. 243

UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM
Teachers' Retirement System, supplemental employer contribution rate — adjustment to amortize past service liabilities of members participating in, Ch. 419

UTILITIES
Electric Utility Industry Restructuring and Customer Choice Act, Ch. 505
Excavations near underground utilities, regulations revised, Ch. 179
Highway construction requiring utility relocation, cost responsibilities clarified, Ch. 324
Natural Gas Utility Restructuring and Custemer Choice Act, Ch. 506

UTILITIES, RURAL COOPERATIVE
Annual fee, elimination, Ch. 65
Property tax, removal from class 7 property and included in class 9 property, Ch. 505

V

VENUE
Revision of general statutes, Ch. 352

VETERANS
Eastern Montana State Veterans' Cemetery, siting, Ch. 109
Korean Veterans' Memorial, designation as official state memorial, Ch. 319
Legion of Valor members participating in convention in Montana in August, 1997 — 4-day free fishing permits, Ch. 66
120th Fighter Wing, Montana Air National Guard — commemoration of honor and lineage of, HJR 17
163rd Infantry Regiment, Montana Army National Guard — commemoration of honor and valor of, HJR 16
Property tax exemption for disabled veteran or surviving spouse, revision, Ch. 301

VETERANS' AFFAIRS, BOARD OF
Appointments to, SR 17

VETERANS' AFFAIRS, BOARD OF (Continued)

Eastern Montana State Veterans' Cemetery, siting, Ch. 109

VETERANS' NEEDS, COMMITTEE ON
Establishment, Ch. 14

VETERINARY MEDICINE AND VETERINARIANS
Veterinary medical students exempt from licensing and employees of veterinarian allowed to perform certain veterinary functions, Ch. 75

VETERINARY MEDICINE, BOARD OF
Appointments to, SR 17
Employees of veterinarian allowed to perform certain veterinary functions, rules for, Ch. 75

VIATICAL SETTLEMENT ACT, Ch. 298

VIRGINIA CITY, NEVADA CITY, AND OTHER HISTORIC PROPERTIES
Purchase, renovation, and preservation — funding, Ch. 469, Ch. 471, Ch. 551

VOLUNTARY ENVIRONMENTAL AUDIT ACT, Ch. 534

W

WAGES AND SALARIES
Construction projects performed by inmate labor, exemption from certain requirements, Ch. 513
Crime victims, wage loss benefits limited, Ch. 186
Elected officials, salary and expense payments — clarification of certain statutes, Ch. 417
Employee separated for cause or laid off from employment, payment of all unpaid wages immediately upon separation — exception from requirement, Ch. 209
Employer taxes — reengineering, restructuring, and combining reporting and remittance of, Ch. 491
Foster care providers, exemption from requirements, Ch. 515
Overtime compensation exclusions for salespersons, parts persons, and mechanics employed by business primarily engaged in selling replacement parts to wholesaler or ultimate purchaser, Ch. 193
Prevailing wage laws, provisions revised, Ch. 522
Public assistance participants, exemption from requirements, Ch. 515
State employees, Ch. 363, Ch. 417
Teacher tenure, "same salary" defined for purposes of, Ch. 259

WATER QUALITY
Nitrate measurements, clarification, Ch. 40
State waters, department of environmental quality to monitor and to develop tetal maximum daily loads for those identified as threatened or impaired, Ch. 541
Wastewater treatment revolving fund, revision of laws generally, Ch. 538

WATER SUPPLY, PUBLIC
Safe drinking water treatment revolving fund, revision of laws generally, Ch. 538

HeinOnline -- 1997 vol. III 3733 1997

WATER USE
Adjudication of rights
federal indian and non-indian reserved water rights, period extended for suspension of proceedings during negotiations of, Ch. 44
issuance of permits and chango authorizations prior to completion of adjudication in source of supply and priority required for issues certified to district court by department, Ch. 497
revision of laws generally, Ch. 174
Clark Fork River Basin, appropriation for natural resource damage litigation, Ch. 154
Realty transfer transactions, process established for acknowledgment of water right transfers, Ch. 167
Reservation of rights not synonymous with federal and indian reserved water rights under federal law, Ch. 497
Reservation of water, subordination to certificate of water right, Ch. 330
Reserved water rights compacts, ratification
chippewa cree tribe of the rocky boy's indian reservation and state of Montana, Ch. 265
united states bureau of land management and state of Montana, Ch. 170
united states fish and wildlife service and state of Montana, Ch. 137
Tribal governments, negotiation of interim agreements with, Ch. 497
Upper Clark Fork Basin Steering Committee, cempesition revised, Ch. 353
Upper Clark Fork River Basin — basin closure, water leasing, and temporary change statutes revised, Ch. 353
Upper Missouri River basin closure, additional exception to, Ch. 441
Water information system within natural resource information system at Montana State Library, operation formalized, Ch. 45
Water users' associations, renewahle resource loan provisions revised, Ch. 332
Yellowstone Basin, water reservations extended until perfected, Ch. 145

WATER WELL CONTRACTORS
Contractor registration, exemption, Ch. 548

WEAPONS
Arms, right to keep and bear — establishment of individual licensure, revision of reference to federal gun-free school zones act, Ch. 29
School buildings, in — offense of possession or allowing pessession by minor, Ch. 435
School districts, firearms safety education course — establishment and maintenance encouraged, Ch. 138

WEEDS AND WEED CONTROL
Quarantine and Pest Management Act, Ch. 7

WORKERS' COMPENSATION
Administration fund, revision gonerally, Ch. 385
Child foster care providers, exemption from requirements, Ch. 515
Corporations, limited liability companies, or ditch companies — stock ownership and other requirements necessary for exemption, modification, Ch. 386

HeinOnline -- 1997 vol. III 3734 1997

WORKERS' COMPENSATION (Continued)

Disputes relating to wages paid for in property other than money, relating to subrogation, and relating to payment of compensation to beneficiaries — jurisdiction transferred to workers' compensation court and mediation required, Ch. 172
FAIM project recipients, coverage requirement removed, Ch. 486
Fraud office, biennial budget — state fund, department of justice, and department of labor and industry to file, Ch. 276
Hospital reimbursements, payments for — revision, Ch. 308
Labor and Industry, Department of — regulatory functions revised, Ch. 310
Limited liability partnerships, inclusion, Ch. 172
Nurse practitioner or clinical nurse specialist allowed to provide services as treating or primary care provider, Ch. 404
Old fund liability tax
termination when, Ch. 276
wages paid to domestics if they earn less than $1,000 annually, conformance to federal law, Ch. 123
withholding and employers' share, coordination of administration so that all reports and remittances must be made to department of revenue, Ch. 491
Plan No. 2, insurance of liability — deposit requirements eliminated, Ch. 310
Plan No. 3, state fund
board of directors
appointments to, SR 17, SR 20
membership revised, Ch. 276
revision of provisions generally, Ch. 276
Public assistance participants, coverage requirements, Ch. 515
Rehabilitation benefits, payment process clarified, Ch. 122
Revision of provisions generally, Ch. 276
Students participating in work-based learning activities, coverage requirements clarified, Ch. 500
Subsequent injury fund — assessment procedures revised, runoff of claims, and transfer and distribution of funds held in, Ch. 284
Underinsured employers' fund
elimination and transfer of funds, Ch. 310
surplus funds, transfer to uninsured employers' fund, Ch. 172
Underinsured employers' provisions, elimination, Ch. 172
Uninsured employers' fund
administration clarified, Ch. 310
contractor registration penalties, deposit, Ch. 548
fraud investigation and prosecution, provision for, Ch. 276
underinsured employers' fund surplus funds, transfer to, Ch. 172

WORKERS' COMPENSATION REGULATION ADVISORY COUNCIL
Formation, Ch. 385

WORKFORCE DRUG AND ALCOHOL TESTING ACT, Ch. 521

HeinOnline -- 1997 vol. III 3735 1997

## Y

YOUTH COURT
Corrections, Department of — certification of appropriations for youth court and probation foster care placements, Ch. 189
Deadly weapon, possession by youth in detention facility — offense of, Ch. 168
Driver's license of youth who is delinquent or in need of supervision, confiscation, Ch. 185
Extended jurisdiction prosecution of juvemiles, provisions revised, Ch. 498
Job Training Partnership Act programs, encouraging additional performance measures and assessment of outeomes for adults and targeting funds to at-risk youth and youth who bave committed offenses, SJR 5
Revision and recodification of Youth Court Act, Ch. 286, Ch. 550
Schools, notification wben student who for second or subsequent time admits or is adjudicated as having violated a statute, Ch. 450

HeinOnline -- 1997 vol. III 3736 1997

# TABLE

# OF

# CODE SECTIONS AFFECTED

HeinOnline -- 1997 vol. III 3737 1997

HeinOnline -- 1997 vol. III 3738 1997

# CODE SECTIONS AFFECTED

This table was compiled before the codification process was completed. It does not reflect all changes made to sections amended by more than one chapter, certain sections affected by short form amendments, such as directions to revise names of agencies, or changes made by coordination instructions. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(b).

A final version of this list will be available at the Montana Legislative Branch website during the 1997-98 interim (http://www.mt.gov/leg/branch/branch.htm), or you may call for information at (406)444-3064. The final version is anticipated to be completed by September 1.

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 1-1-207 | amended | Ch. 189 | SB 109 |
| 1-1-215 | amended | Ch. 367 | HB 521 |
| 1-1-516 | enacted | Ch. 319 | HB 72 |
| 1-2-112 | amended | Ch. 246 | SB 361 |
| 1-5-416 | amended | Ch. 64 | HB 239 |
| 1-11-101 | amended | Ch. 42 | SB 36 |
| 2-1-212 | amended | Ch. 42 | SB 36 |
| 2-2-104 | amended | Ch. 243 | SB 313 |
| 2-2-121 | amended | Ch. 42 | SB 36 |
| 2-2-136 | amended | Ch. 42 | SB 36 |
| 2-3-111 | amended | Ch. 487 | HB 376 |
| 2-4-102 | amended | Ch. 349 | SB 89 |
| | amended | Ch. 489 | HB 389 |
| 2-4-302 | amended | Ch. 152 | SB 197 |
| | amended | Ch. 340 | HB 199 |
| | amended | Ch. 489 | HB 389 |
| 2-4-303 | amended | Ch. 489 | HB 389 |
| 2-4-305 | amended | Ch. 152 | SB 197 |
| | amended | Ch. 335 | SB 271 |
| | amended | Ch. 489 | HB 389 |
| 2-4-306 | amended | Ch. 335 | SB 271 |
| | amended | Ch. 489 | HB 389 |
| 2-4-313 | amended | Ch. 42 | SB 36 |
| 2-4-315 | amended | Ch. 110 | HB 42 |
| 2-4-622 | amended | Ch. 42 | SB 36 |
| 2-6-103 | amended | Ch. 406 | SB 87 |
| 2-6-104 | amended | Ch. 480 | HB 163 |
| 2-6-109 | amended | Ch. 364 | HB 58 |
| | amended | Ch. 370 | SB 124 |
| 2-6-403 | amended | Ch. 323 | HB 190 |
| 2-7-503 | amended | Ch. 91 | HB 64 |
| | amended | Ch. 458 | HB 508 |
| 2-7-517 | amended | Ch. 42 | SB 36 |
| 2-8-113 | amended | Ch. 42 | SB 36 |
| 2-9-108 | amended | Ch. 337 | HB 68 |
| 2-9-202 | amended | Ch. 532 | HB 169 |
| 2-9-317 | amended | Ch. 508 | HB 534 |
| 2-11-101 | enacted | Ch. 502 | SB 308 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 2-11-102 | enacted | Ch. 502 | SB 308 |
| 2-11-103 | enacted | Ch. 502 | SB 308 |
| 2-11-104 | enacted | Ch. 502 | SB 308 |
| 2-15-150 | enacted | Ch. 428 | HB 568 |
| 2-15-203 | enacted | Ch. 205 | SB 264 |
| 2-15-213 | amended | Ch. 451 | HB 285 |
| 2-15-225 | amended | Ch. 173 | SB 92 |
| 2-15-231 | renumbered 2-15-2206 | Ch. 42 | SB 36 |
| 2-15-401 | amended | Ch. 291 | HB 468 |
| 2-15-404 | enacted | Ch. 291 | HB 468 |
| 2-15-1009 | amended | Ch. 532 | HB 169 |
| 2-15-1010 | amended | Ch. 388 | SB 28 |
| 2-15-1019 | amended | Ch. 276 | SB 67 |
| 2-15-1520 | amended | Ch. 243 | SB 313 |
| 2-15-1706 | amended | Ch. 467 | SB 350 |
| 2-15-1709 | enacted | Ch. 385 | SB 290 |
| 2-15-1818 | amended | Ch. 549 | HB 578 |
| | repealed 7/1/99 | Ch. 549 | HB 578 |
| 2-15-1842 | amended | Ch. 481 | HB 164 |
| 2-15-1850 | amended | Ch. 481 | HB 164 |
| 2-15-1853 | amended | Ch. 52 | SB 56 |
| 2-15-1896 | repealed | Ch. 346 | HB 594 |
| 2-15-2015 | amended | Ch. 276 | SB 67 |
| 2-15-2204 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 171 | SB 298 |
| 2-15-2205 | amended | Ch. 472 | HB 53 |
| 2-15-2206 | formerly 2-15-231 | Ch. 42 | SB 36 |
| 2-15-2210 | repealed | Ch. 171 | SB 298 |
| 2-15-2212 | amended | Ch. 396 | HB 207 |
| | amended | Ch. 472 | HB 53 |
| 2-15-2213 | repealed | Ch. 171 | SB 298 |
| 2-15-2215 | repealed | Ch. 171 | SB 298 |
| 2-15-2302 | amended | Ch. 420 | HB 135 |
| 2-15-3004 | amended | Ch. 4 | HB 57 |
| 2-15-3005 | repealed | Ch. 4 | HB 57 |
| 2-15-3006 | amended | Ch. 102 | HB 392 |
| 2-15-3404 | amended | Ch. 393 | HB 151 |
| 2-16-117 | amended | Ch. 3 | HB 30 |
| 2-16-405 | amended | Ch. 417 | HB 13 |
| 2-16-501 | amended | Ch. 490 | HB 502 |
| 2-16-503 | amended | Ch. 490 | HB 502 |
| 2-17-101 | amended | Ch. 20 | SB 13 |
| 2-17-103 | amended | Ch. 20 | SB 13 |
| 2-17-105 | amended | Ch. 422 | HB 166 |
| 2-17-108 | amended | Ch. 20 | SB 13 |
| 2-17-109 | renumbered 2-17-810 | Ch. 476 | HB 123 |
| 2-17-111 | renumbered 2-17-811 | Ch. 476 | HB 123 |
| 2-17-113 | renumbered 2-17-816 | Ch. 476 | HB 123 |
| 2-17-131 | renumbered 2-17-817 | Ch. 476 | HB 123 |
| 2-17-321 | amended | Ch. 440 | HB 75 |
| 2-17-322 | amended | Ch. 440 | HB 75 |
| 2-17-323 | amended | Ch. 440 | HB 75 |
| 2-17-502 | amended | Ch. 56 | HB 22 |
| 2-17-801 | enacted | Ch. 476 | HB 123 |
| 2-17-802 | enacted | Ch. 476 | HB 123 |
| 2-17-803 | enacted | Ch. 476 | HB 123 |
| 2-17-804 | enacted | Ch. 476 | HB 123 |

HeinOnline -- 1997 vol. III 3740 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 2-17-805 | formerly 5-11-115 | Ch. 476 | HB 123 |
| 2-17-806 | enacted | Ch. 476 | HB 123 |
| 2-17-807 | enacted | Ch. 476 | HB 123 |
| 2-17-810 | formerly 2-17-109 | Ch. 476 | HB 123 |
| 2-17-811 | formerly 2-17-111 | Ch. 476 | HB 123 |
| 2-17-812 | enacted | Ch. 476 | HB 123 |
| 2-17-816 | formerly 2-17-113 | Ch. 476 | HB 123 |
| 2-17-817 | formerly 2-17-131 | Ch. 476 | HB 123 |
| 2-17-825 | formerly 5-11-116 | Ch. 476 | HB 123 |
| 2-18-101 | amended | Ch. 339 | HB 172 |
| 2-18-102 | amended | Ch. 339 | HB 172 |
| 2-18-103 | amended | Ch. 339 | HB 172 |
| | amended | Ch. 417 | HB 13 |
| | amended | Ch. 549 | HB 578 |
| 2-18-104 | amended | Ch. 339 | HB 172 |
| 2-18-111 | amended | Ch. 339 | HB 172 |
| 2-18-203 | amended | Ch. 42 | SB 36 |
| 2-18-301 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 417 | HB 13 |
| 2-18-303 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 417 | HB 13 |
| 2-18-304 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 339 | HB 172 |
| | amended | Ch. 417 | HB 13 |
| 2-18-312 | amended | Ch. 417 | HB 13 |
| 2-18-313 | amended | Ch. 417 | HB 13 |
| 2-18-314 | repealed | Ch. 42 | SB 36 |
| | repealed | Ch. 417 | HB 13 |
| 2-18-315 | amended | Ch. 417 | HB 13 |
| 2-18-501 | amended | Ch. 439 | HB 74 |
| 2-18-502 | amended | Ch. 439 | HB 74 |
| 2-18-503 | amended | Ch. 439 | HB 74 |
| 2-18-601 | amended | Ch. 339 | HB 172 |
| 2-18-603 | amended | Ch. 339 | HB 172 |
| 2-18-605 | repealed | Ch. 339 | HB 172 |
| 2-18-606 | amended | Ch. 2 | SB 18 |
| | amended | Ch. 480 | HB 163 |
| 2-18-611 | amended | Ch. 339 | HB 172 |
| 2-18-617 | amended | Ch. 143 | HB 470 |
| 2-18-618 | amended | Ch. 339 | HB 172 |
| 2-18-703 | amended | Ch. 417 | HB 13 |
| 2-18-704 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 282 | SB 316 |
| 2-18-711 | enacted | Ch. 147 | SB 66 |
| 2-18-812 | amended | Ch. 532 | HB 169 |
| 2-18-1102 | amended | Ch. 417 | HB 13 |
| 2-18-1103 | amended | Ch. 417 | HB 13 |
| 2-18-1105 | amended | Ch. 417 | HB 13 |
| 2-18-1106 | amended | Ch. 417 | HB 13 |
| 2-18-1202 | amended | Ch. 42 | SB 36 |
| 2-18-1203 | amended | Ch. 361 | HB 567 |
| 2-89-201 | repealed | Ch. 42 | SB 36 |
| 2-89-202 | repealed | Ch. 42 | SB 36 |
| 2-89-205 | repealed | Ch. 42 | SB 36 |
| 2-89-206 | repealed | Ch. 42 | SB 36 |
| 2-89-208 | repealed | Ch. 42 | SB 36 |
| 2-89-209 | repealed | Ch. 42 | SB 36 |

HeinOnline -- 1997 vol. III 3741 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 3-2-404 | amended | Ch. 287 | HB 170 |
| 3-2-405 | repealed | Ch. 28 | HB 141 |
| | amended | Ch. 42 | SB 36 |
| | amended | Ch. 287 | HB 170 |
| 3-2-603 | amended | Ch. 28 | HB 141 |
| 3-2-604 | amended | Ch. 28 | HB 141 |
| 3-5-516 | repealed | Ch. 42 | SB 36 |
| 3-5-602 | amended | Ch. 384 | SB 280 |
| 3-7-501 | amended | Ch. 174 | SB 108 |
| 3-10-231 | amended | Ch. 150 | SB 158 |
| 3-12-101 | amended | Ch. 241 | SB 277 |
| 3-12-106 | repealed | Ch. 241 | SB 277 |
| 3-12-107 | enacted | Ch. 241 | SB 277 |
| 3-15-205 | amended | Ch. 356 | HB 251 |
| 3-15-313 | amended | Ch. 345 | HB 479 |
| 3-15-402 | amended | Ch. 345 | HB 479 |
| 5-2-301 | amended | Ch. 417 | HB 13 |
| 5-2-503 | amended | Ch. 20 | SB 13 |
| 5-2-504 | amended | Ch. 42 | SB 36 |
| 5-4-103 | enacted | Ch. 11 | SB 30 |
| 5-4-307 | amended | Ch. 42 | SB 36 |
| 5-4-308 | amended | Ch. 42 | SB 36 |
| 5-4-401 | repealed | Ch. 11 | SB 30 |
| 5-4-402 | repealed | Ch. 11 | SB 30 |
| 5-4-403 | repealed | Ch. 11 | SB 30 |
| 5-4-404 | repealed | Ch. 11 | SB 30 |
| 5-5-214 | amended | Ch. 42 | SB 36 |
| 5-5-217 | amended | Ch. 42 | SB 36 |
| 5-6-103 | amended | Ch. 104 | SB 38 |
| 5-11-115 | amended and renumbered 2-17-805 | Ch. 476 | HB 123 |
| 5-11-116 | renumbered 2-17-825 | Ch. 476 | HB 123 |
| 5-11-203 | amended | Ch. 42 | SB 36 |
| 5-11-210 | amended | Ch. 42 | SB 36 |
| 5-11-212 | amended | Ch. 42 | SB 36 |
| 5-11-213 | amended | Ch. 42 | SB 36 |
| 5-12-205 | amended | Ch. 347 | SB 19 |
| 5-12-303 | amended | Ch. 347 | SB 19 |
| 5-13-304 | amended | Ch. 377 | HB 193 |
| 5-17-205 | amended | Ch. 42 | SB 36 |
| 5-18-107 | amended | Ch. 42 | SB 36 |
| 5-20-201 | enacted | Ch. 225 | SB 21 |
| 5-20-202 | enacted | Ch. 225 | SB 21 |
| 5-20-203 | enacted | Ch. 225 | SB 21 |
| 5-20-204 | enacted | Ch. 225 | SB 21 |
| 5-20-205 | enacted | Ch. 225 | SB 21 |
| 5-20-206 | enacted | Ch. 225 | SB 21 |
| 5-20-207 | enacted | Ch. 225 | SB 21 |
| 5-20-208 | enacted | Ch. 225 | SB 21 |
| 5-22-101 | amended | Ch. 42 | SB 36 |
| 5-22-102 | amended | Ch. 257 | SB 94 |
| 5-23-101 | enacted | Ch. 391 | HB 89 |
| 5-23-102 | enacted | Ch. 391 | HB 89 |
| 5-23-103 | enacted | Ch. 391 | HB 89 |
| 5-23-104 | enacted | Ch. 391 | HB 89 |
| 5-23-105 | enacted | Ch. 391 | HB 89 |
| 5-23-106 | enacted | Ch. 391 | HB 89 |
| 5-23-107 | enacted | Ch. 391 | HB 89 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 5-23-108 | enacted | Ch. 391 | HB 89 |
| 5-23-109 | enacted | Ch. 391 | HB 89 |
| 7-1-114 | amended | Ch. 42 | SB 36 |
| 7-1-2111 | amended | Ch. 121 | SB 26 |
| | amended | Ch. 466 | SB 386 |
| | amended | Ch. 496 | SB 57 |
| 7-2-2218 | amended | Ch. 42 | SB 36 |
| 7-2-2219 | amended | Ch. 42 | SB 36 |
| 7-2-4303 | amended | Ch. 485 | HB 369 |
| 7-2-4311 | amended | Ch. 485 | HB 369 |
| 7-2-4312 | amended | Ch. 485 | HB 369 |
| 7-2-4313 | amended | Ch. 485 | HB 369 |
| 7-2-4314 | amended | Ch. 485 | HB 369 |
| 7-2-4321 | repealed | Ch. 485 | HB 369 |
| 7-2-4322 | repealed | Ch. 485 | HB 369 |
| 7-2-4323 | repealed | Ch. 485 | HB 369 |
| 7-2-4324 | repealed | Ch. 485 | HB 369 |
| 7-2-4325 | amended | Ch. 485 | HB 369 |
| 7-2-4502 | amended | Ch. 485 | HB 369 |
| 7-3-4101 | amended | Ch. 485 | HB 369 |
| 7-3-4371 | repealed | Ch. 458 | HB 508 |
| 7-3-4372 | repealed | Ch. 458 | HB 508 |
| 7-3-4373 | repealed | Ch. 458 | HB 508 |
| 7-4-2105 | amended | Ch. 421 | HB 140 |
| 7-4-2106 | amended | Ch. 42 | SB 36 |
| 7-4-2205 | amended | Ch. 421 | HB 140 |
| 7-4-2206 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 226 | SB 25 |
| 7-4-2701 | amended | Ch. 160 | SB 138 |
| 7-4-2702 | amended | Ch. 160 | SB 138 |
| 7-4-4111 | amended | Ch. 459 | HB 518 |
| 7-4-4303 | amended | Ch. 485 | HB 369 |
| 7-4-4304 | repealed | Ch. 485 | HB 369 |
| 7-4-4306 | amended | Ch. 485 | HB 369 |
| 7-5-140 | enacted | Ch. 459 | HB 518 |
| 7-5-2109 | amended | Ch. 67 | HB 290 |
| 7-5-2112 | enacted | Ch. 67 | HB 290 |
| 7-5-2142 | amended | Ch. 215 | HB 318 |
| 7-5-2143 | amended | Ch. 215 | HB 318 |
| 7-5-2144 | amended | Ch. 215 | HB 318 |
| 7-5-2145 | amended | Ch. 215 | HB 318 |
| 7-5-2301 | amended | Ch. 203 | HB 316 |
| 7-5-4104 | amended | Ch. 67 | HB 290 |
| 7-5-4113 | enacted | Ch. 67 | HB 290 |
| 7-5-4302 | amended | Ch. 459 | HB 518 |
| 7-5-4306 | amended | Ch. 459 | HB 518 |
| 7-6-202 | amended | Ch. 131 | HB 330 |
| 7-6-205 | amended | Ch. 229 | SB 159 |
| 7-6-501 | amended | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 7-6-604 | amended | Ch. 176 | HB 319 |
| 7-6-1501 | formerly 7-6-4461 | | |
| 7-6-1502 | formerly 7-6-4462 | | |
| 7-6-1503 | formerly 7-6-4463 | | |
| 7-6-1504 | formerly 7-6-4464 | | |
| 7-6-1505 | formerly 7-6-4465 | | |
| 7-6-1506 | formerly 7-6-4466 | | |

HeinOnline -- 1997 vol. III 3743 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 7-6-1507 | formerly 7-6-4467 | | |
| 7-6-1508 | formerly 7-6-4468 | | |
| 7-6-1509 | formerly 7-6-4469 | | |
| 7-6-1531 | enacted | Ch. 327 | SB 191 |
| 7-6-1532 | enacted | Ch. 327 | SB 191 |
| 7-6-1533 | enacted | Ch. 327 | SB 191 |
| 7-6-1534 | enacted | Ch. 327 | SB 191 |
| 7-6-1535 | enacted | Ch. 327 | SB 191 |
| 7-6-1536 | enacted | Ch. 327 | SB 191 |
| 7-6-1537 | enacted | Ch. 327 | SB 191 |
| 7-6-1538 | enacted | Ch. 327 | SB 191 |
| 7-6-1539 | enacted | Ch. 327 | SB 191 |
| 7-6-1540 | enacted | Ch. 327 | SB 191 |
| 7-6-1541 | enacted | Ch. 327 | SB 191 |
| 7-6-1542 | enacted | Ch. 327 | SB 191 |
| 7-6-1543 | enacted | Ch. 327 | SB 191 |
| 7-6-1544 | enacted | Ch. 327 | SB 191 |
| 7-6-1545 | enacted | Ch. 327 | SB 191 |
| 7-6-1546 | enacted | Ch. 327 | SB 191 |
| 7-6-1547 | enacted | Ch. 327 | SB 191 |
| 7-6-1548 | enacted | Ch. 327 | SB 191 |
| 7-6-1549 | enacted | Ch. 327 | SB 191 |
| 7-6-1550 | enacted | Ch. 327 | SB 191 |
| 7-6-2514 | amended | Ch. 463 | SB 195 |
| 7-6-2531 | amended | Ch. 42 | SB 36 |
| 7-6-2701 | amended | Ch. 219 | HB 560 |
| 7-6-2802 | repealed | Ch. 219 | HB 560 |
| 7-6-4102 | repealed | Ch. 458 | HB 508 |
| 7-6-4103 | repealed | Ch. 458 | HB 508 |
| 7-6-4104 | amended | Ch. 458 | HB 508 |
| 7-6-4105 | repealed | Ch. 458 | HB 508 |
| 7-6-4106 | repealed | Ch. 458 | HB 508 |
| 7-6-4107 | repealed | Ch. 458 | HB 508 |
| 7-6-4108 | repealed | Ch. 458 | HB 508 |
| 7-6-4109 | repealed | Ch. 458 | HB 508 |
| 7-6-4110 | repealed | Ch. 458 | HB 508 |
| 7-6-4111 | repealed | Ch. 458 | HB 508 |
| 7-6-4112 | repealed | Ch. 458 | HB 508 |
| 7-6-4113 | repealed | Ch. 458 | HB 508 |
| 7-6-4119 | repealed | Ch. 458 | HB 508 |
| 7-6-4120 | repealed | Ch. 458 | HB 508 |
| 7-6-4121 | amended | Ch. 458 | HB 508 |
| 7-6-4122 | repealed | Ch. 458 | HB 508 |
| 7-6-4123 | amended | Ch. 458 | HB 508 |
| 7-6-4124 | amended | Ch. 458 | HB 508 |
| 7-6-4131 | repealed | Ch. 458 | HB 508 |
| 7-6-4132 | repealed | Ch. 458 | HB 508 |
| 7-6-4133 | repealed | Ch. 458 | HB 508 |
| 7-6-4134 | amended | Ch. 458 | HB 508 |
| 7-6-4135 | amended | Ch. 458 | HB 508 |
| 7-6-4140 | enacted | Ch. 458 | HB 508 |
| 7-6-4141 | enacted | Ch. 458 | HB 508 |
| 7-6-4202 | amended | Ch. 458 | HB 508 |
| 7-6-4204 | repealed | Ch. 458 | HB 508 |
| 7-6-4205 | amended | Ch. 458 | HB 508 |
| 7-6-4207 | enacted | Ch. 458 | HB 508 |
| 7-6-4208 | enacted | Ch. 458 | HB 508 |

HeinOnline -- 1997 vol. III 3744 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 7-6-4209 | enacted | Ch. 458 | HB 508 |
| 7-6-4221 | repealed | Ch. 458 | HB 508 |
| 7-6-4222 | repealed | Ch. 458 | HB 508 |
| 7-6-4223 | repealed | Ch. 458 | HB 508 |
| 7-6-4224 | repealed | Ch. 458 | HB 508 |
| 7-6-4225 | repealed | Ch. 458 | HB 508 |
| 7-6-4226 | repealed | Ch. 458 | HB 508 |
| 7-6-4227 | repealed | Ch. 458 | HB 508 |
| 7-6-4228 | repealed | Ch. 458 | HB 508 |
| 7-6-4229 | repealed | Ch. 458 | HB 508 |
| 7-6-4230 | repealed | Ch. 458 | HB 508 |
| 7-6-4231 | repealed | Ch. 458 | HB 508 |
| 7-6-4233 | repealed | Ch. 458 | HB 508 |
| 7-6-4234 | amended | Ch. 458 | HB 508 |
| 7-6-4235 | repealed | Ch. 458 | HB 508 |
| 7-6-4236 | repealed | Ch. 458 | HB 508 |
| 7-6-4237 | amended | Ch. 458 | HB 508 |
| 7-6-4239 | repealed | Ch. 458 | HB 508 |
| 7-6-4240 | amended | Ch. 458 | HB 508 |
| 7-6-4241 | repealed | Ch. 458 | HB 508 |
| 7-6-4251 | repealed | Ch. 458 | HB 508 |
| 7-6-4252 | repealed | Ch. 458 | HB 508 |
| 7-6-4253 | repealed | Ch. 458 | HB 508 |
| 7-6-4254 | repealed | Ch. 458 | HB 508 |
| 7-6-4255 | repealed | Ch. 458 | HB 508 |
| 7-6-4260 | enacted | Ch. 458 | HB 508 |
| 7-6-4261 | enacted | Ch. 458 | HB 508 |
| 7-6-4262 | enacted | Ch. 458 | HB 508 |
| 7-6-4263 | enacted | Ch. 458 | HB 508 |
| 7-6-4264 | enacted | Ch. 458 | HB 508 |
| 7-6-4265 | enacted | Ch. 458 | HB 508 |
| 7-6-4266 | enacted | Ch. 458 | HB 508 |
| 7-6-4267 | enacted | Ch. 458 | HB 508 |
| 7-6-4270 | enacted | Ch. 458 | HB 508 |
| 7-6-4271 | enacted | Ch. 458 | HB 508 |
| 7-6-4272 | enacted | Ch. 458 | HB 508 |
| 7-6-4461 | renumbered 7-6-1501 | | |
| 7-6-4462 | renumbered 7-6-1502 | | |
| 7-6-4463 | renumbered 7-6-1503 | | |
| 7-6-4464 | renumbered 7-6-1504 | | |
| 7-6-4465 | renumbered 7-6-1505 | | |
| | amended | Ch. 327 | SB 191 |
| 7-6-4466 | renumbered 7-6-1506 | | |
| 7-6-4467 | renumbered 7-6-1507 | | |
| 7-6-4468 | renumbered 7-6-1508 | | |
| 7-6-4469 | renumbered 7-6-1509 | | |
| | amended | Ch. 327 | SB 191 |
| 7-7-2101 | amended | Ch. 227 | SB 27 |
| | amended | Ch. 466 | SB 386 |
| 7-7-2203 | amended | Ch. 219 | HB 560 |
| | amended | Ch. 466 | SB 386 |
| 7-7-2209 | amended | Ch. 459 | HB 518 |
| 7-7-2223 | amended | Ch. 234 | SB 180 |
| 7-7-2227 | amended | Ch. 234 | SB 180 |
| 7-7-2229 | amended | Ch. 234 | SB 180 |
| 7-7-2237 | amended | Ch. 234 | SB 180 |
| 7-7-2402 | amended | Ch. 227 | SB 27 |

HeinOnline -- 1997 vol. III 3745 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 7-7-4208 | amended | Ch. 459 | HB 518 |
| 7-7-4226 | amended | Ch. 234 | SB 180 |
| 7-7-4227 | amended | Ch. 234 | SB 180 |
| 7-7-4235 | amended | Ch. 234 | SB 180 |
| 7-7-4251 | amended | Ch. 459 | HB 518 |
| 7-7-4426 | amended | Ch. 234 | SB 180 |
| 7-7-4427 | amended | Ch. 234 | SB 180 |
| 7-7-4602 | amended | Ch. 42 | SB 36 |
| 7-7-4626 | amended | Ch. 459 | HB 518 |
| 7-8-2111 | amended | Ch. 128 | HB 201 |
| 7-8-2232 | amended | Ch. 78 | SB 121 |
| 7-11-104 | amended | Ch. 397 | HB 263 |
| 7-11-1102 | amended | Ch. 114 | HB 205 |
| | amended | Ch. 459 | HB 518 |
| 7-12-2161 | amended | Ch. 175 | HB 317 |
| 7-12-2171 | amended | Ch. 459 | HB 518 |
| 7-12-4169 | amended | Ch. 459 | HB 518 |
| 7-12-4203 | amended | Ch. 459 | HB 518 |
| 7-12-4303 | amended | Ch. 127 | HB 197 |
| 7-12-4311 | amended | Ch. 127 | HB 197 |
| 7-12-4342 | amended | Ch. 127 | HB 197 |
| 7-12-4354 | amended | Ch. 127 | HB 197 |
| 7-13-2208 | amended | Ch. 234 | SB 180 |
| | amended | Ch. 459 | HB 518 |
| 7-13-2231 | amended | Ch. 234 | SB 180 |
| 7-13-2323 | amended | Ch. 234 | SB 180 |
| 7-13-2341 | amended | Ch. 234 | SB 180 |
| 7-13-2529 | amended | Ch. 216 | HB 377 |
| 7-13-4311 | amended | Ch. 42 | SB 36 |
| 7-13-4502 | amended | Ch. 200 | HB 532 |
| 7-14-111 | amended | Ch. 472 | HB 53 |
| 7-14-203 | amended | Ch. 177 | HB 322 |
| 7-14-204 | amended | Ch. 177 | HB 322 |
| 7-14-207 | amended | Ch. 177 | HB 322 |
| 7-14-208 | amended | Ch. 177 | HB 322 |
| 7-14-209 | amended | Ch. 177 | HB 322 |
| 7-14-210 | amended | Ch. 177 | HB 322 |
| 7-14-241 | amended | Ch. 177 | HB 322 |
| 7-14-2524 | amended | Ch. 219 | HB 560 |
| | amended | Ch. 466 | SB 386 |
| 7-14-2525 | amended | Ch. 466 | SB 386 |
| 7-14-2526 | amended | Ch. 459 | HB 518 |
| 7-14-4736 | amended | Ch. 42 | SB 36 |
| 7-15-4207 | amended | Ch. 472 | HB 53 |
| 7-15-4286 | amended | Ch. 422 | HB 166 |
| 7-15-4292 | amended | Ch. 422 | HB 166 |
| 7-15-4431 | amended | Ch. 472 | HB 53 |
| 7-16-2105 | amended | Ch. 42 | SB 36 |
| 7-16-2327 | amended | Ch. 466 | SB 386 |
| 7-16-4104 | amended | Ch. 459 | HB 518 |
| 7-16-4222 | amended | Ch. 42 | SB 36 |
| 7-21-2105 | amended | Ch. 214 | HB 278 |
| 7-22-2403 | amended | Ch. 73 | SB 14 |
| 7-22-2409 | amended | Ch. 73 | SB 14 |
| 7-22-2418 | amended | Ch. 73 | SB 14 |
| 7-23-4201 | enacted | Ch. 426 | HB 435 |
| 7-23-4202 | enacted | Ch. 426 | HB 435 |

HeinOnline -- 1997 vol. III 3746 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 7-23-4203 | enacted | Ch. 426 | HB 435 |
| 7-32-240 | enacted | Ch. 68 | HB 292 |
| 7-32-2244 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 286 | HB 114 |
| 7-33-2108 | amended | Ch. 46 | SB 77 |
| 7-33-2202 | amended | Ch. 46 | SB 77 |
| 7-33-2208 | amended | Ch. 46 | SB 77 |
| 7-33-2313 | amended | Ch. 46 | SB 77 |
| 7-33-2404 | amended | Ch. 459 | HB 518 |
| 7-33-2405 | amended | Ch. 46 | SB 77 |
| 7-33-4101 | amended | Ch. 96 | HB 211 |
| 7-33-4112 | amended | Ch. 46 | SB 77 |
| 7-34-2102 | amended | Ch. 93 | HB 108 |
| 7-34-2201 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 93 | HB 108 |
| 10-1-104 | amended | Ch. 10 | SB 24 |
| 10-1-111 | enacted | Ch. 87 | SB 103 |
| 10-1-121 | enacted | Ch. 418 | HB 17 |
| 10-1-203 | amended | Ch. 9 | HB 48 |
| 10-1-304 | amended | Ch. 9 | HB 48 |
| 10-2-416 | amended | Ch. 42 | SB 36 |
| 10-2-601 | amended | Ch. 109 | HB 18 |
| 10-2-602 | amended | Ch. 109 | HB 18 |
| 10-2-603 | amended | Ch. 109 | HB 18 |
| 10-3-202 | amended | Ch. 46 | SB 77 |
| 10-3-207 | amended | Ch. 42 | SB 36 |
| 10-3-209 | enacted | Ch. 46 | SB 77 |
| 10-3-312 | amended | Ch. 422 | HB 166 |
| 10-3-501 | amended | Ch. 42 | SB 36 |
| 10-3-504 | amended | Ch. 42 | SB 36 |
| 10-4-101 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 448 | HB 210 |
| 10-4-102 | amended | Ch. 448 | HB 210 |
| 10-4-103 | amended | Ch. 448 | HB 210 |
| 10-4-111 | amended | Ch. 448 | HB 210 |
| 10-4-112 | amended | Ch. 448 | HB 210 |
| 10-4-113 | amended | Ch. 448 | HB 210 |
| 10-4-125 | enacted | Ch. 448 | HB 210 |
| 10-4-126 | enacted | Ch. 448 | HB 210 |
| 10-4-201 | amended | Ch. 448 | HB 210 |
| 10-4-202 | amended | Ch. 448 | HB 210 |
| 10-4-301 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 422 | HB 166 |
| | amended | Ch. 448 | HB 210 |
| 10-4-302 | amended | Ch. 422 | HB 166 |
| | amended | Ch. 448 | HB 210 |
| 10-4-303 | amended | Ch. 448 | HB 210 |
| 10-4-311 | enacted | Ch. 448 | HB 210 |
| 10-4-312 | enacted | Ch. 448 | HB 210 |
| 13-1-101 | amended | Ch. 246 | SB 361 |
| 13-1-203 | amended | Ch. 246 | SB 361 |
| 13-1-204 | amended | Ch. 246 | SB 361 |
| 13-1-303 | amended | Ch. 97 | HB 227 |
| 13-2-114 | amended | Ch. 309 | SB 344 |
| 13-2-115 | amended | Ch. 233 | SB 167 |
| | amended | Ch. 309 | SB 344 |
| 13-2-122 | amended | Ch. 233 | SB 167 |

HeinOnline -- 1997 vol. III 3747 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 13-2-123 | enacted and amended | Ch. 309 | SB 344 |
| 13-2-203 | amended | Ch. 246 | SB 361 |
| 13-2-207 | amended | Ch. 246 | SB 361 |
| 13-2-219 | enacted | Ch. 246 | SB 361 |
| 13-2-220 | enacted | Ch. 246 | SB 361 |
| 13-2-221 | enacted | Ch. 246 | SB 361 |
| 13-2-222 | enacted | Ch. 246 | SB 361 |
| 13-2-401 | repealed | Ch. 246 | SB 361 |
| 13-2-402 | amended | Ch. 246 | SB 361 |
| 13-2-403 | amended | Ch. 246 | SB 361 |
| 13-2-512 | amended | Ch. 246 | SB 361 |
| 13-3-201 | amended | Ch. 472 | HB 53 |
| 13-3-202 | amended | Ch. 472 | HB 53 |
| 13-3-203 | amended | Ch. 472 | HB 53 |
| 13-3-205 | amended | Ch. 472 | HB 53 |
| 13-3-207 | amended | Ch. 472 | HB 53 |
| 13-3-213 | amended | Ch. 472 | HB 53 |
| 13-10-201 | amended | Ch. 5 | HB 26 |
| 13-10-327 | amended | Ch. 85 | HB 182 |
| 13-10-328 | amended | Ch. 85 | HB 182 |
| 13-10-404 | amended | Ch. 5 | HB 26 |
| 13-12-204 | amended | Ch. 85 | HB 182 |
| 13-13-201 | amended | Ch. 242 | SB 311 |
| 13-13-204 | amended | Ch. 85 | HB 182 |
| 13-13-211 | amended | Ch. 472 | HB 53 |
| 13-13-212 | amended | Ch. 85 | HB 182 |
| 13-13-214 | amended | Ch. 242 | SB 311 |
| 13-13-221 | amended | Ch. 242 | SB 311 |
| 13-13-225 | amended | Ch. 242 | SB 311 |
| 13-13-229 | amended | Ch. 242 | SB 311 |
| 13-13-231 | amended | Ch. 242 | SB 311 |
| 13-13-232 | amended | Ch. 242 | SB 311 |
| 13-13-241 | amended | Ch. 242 | SB 311 |
| 13-13-276 | amended | Ch. 42 | SB 36 |
| 13-13-278 | amended | Ch. 42 | SB 36 |
| 13-13-279 | repealed | Ch. 42 | SB 36 |
| 13-15-106 | enacted | Ch. 85 | HB 182 |
| 13-15-201 | amended | Ch. 242 | SB 311 |
| 13-19-102 | amended | Ch. 146 | HB 550 |
| 13-19-104 | amended | Ch. 146 | HB 550 |
| 13-19-106 | amended | Ch. 338 | HB 76 |
| 13-19-206 | amended | Ch. 338 | HB 76 |
| 13-19-311 | amended | Ch. 338 | HB 76 |
| 13-19-313 | amended | Ch. 246 | SB 361 |
| 13-22-104 | amended | Ch. 142 | HB 439 |
| 13-22-106 | amended | Ch. 142 | HB 439 |
| 13-25-101 | amended | Ch. 85 | HB 182 |
| 13-25-106 | amended | Ch. 42 | SB 36 |
| 13-27-202 | amended | Ch. 42 | SB 36 |
| 13-27-402 | amended | Ch. 47 | SB 76 |
| 13-27-403 | amended | Ch. 47 | SB 76 |
| 13-27-406 | amended | Ch. 47 | SB 76 |
| 13-27-407 | amended | Ch. 47 | SB 76 |
| 13-35-227 | amended | Ch. 294 | HB 575 |
| 13-35-236 | enacted | Ch. 294 | HB 575 |
| 13-37-106 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 417 | HB 13 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 13-37-126 | amended | Ch. 25 | HB 85 |
| 13-37-128 | amended | Ch. 42 | SB 36 |
| 13-37-130 | amended | Ch. 42 | SB 36 |
| 13-37-250 | amended | Ch. 294 | HB 575 |
| 15-1-101 | amended | Ch. 49 | HB 70 |
| | amended | Ch. 200 | HB 532 |
| 15-1-111 | repealed 7/1/2008 | Ch. 422 | HB 166 |
| 15-1-116 | enacted | Ch. 200 | HB 532 |
| 15-1-117 | enacted | Ch. 200 | HB 532 |
| 15-1-205 | amended | Ch. 61 | HB 148 |
| 15-1-208 | formerly 15-30-211 | Ch. 6 | SB 47 |
| 15-1-211 | amended | Ch. 123 | SB 119 |
| 15-1-230 | enacted | Ch. 537 | HB 434 |
| 15-1-302 | amended | Ch. 491 | HB 561 |
| 15-1-303 | amended | Ch. 35 | HB 87 |
| | amended | Ch. 36 | HB 88 |
| 15-1-501 | amended | Ch. 48 | HB 23 |
| | amended | Ch. 382 | SB 83 |
| | amended | Ch. 422 | HB 166 |
| | amended | Ch. 466 | SB 386 |
| 15-1-521 | amended | Ch. 42 | SB 36 |
| 15-1-704 | amended | Ch. 42 | SB 36 |
| 15-2-301 | amended | Ch. 134 | HB 441 |
| 15-2-302 | amended | Ch. 491 | HB 561 |
| 15-6-134 | amended | Ch. 200 | HB 532 |
| | amended | Ch. 463 | SB 195 |
| 15-6-136 | amended | Ch. 409 | SB 300 |
| | amended | Ch. 546 | HB 604 |
| 15-6-137 | amended | Ch. 505 | SB 390 |
| 15-6-138 | amended | Ch. 121 | SB 26 |
| | amended | Ch. 496 | SB 57 |
| 15-6-141 | amended | Ch. 505 | SB 390 |
| 15-6-143 | amended | Ch. 297 | SB 100 |
| 15-6-201 | amended | Ch. 121 | SB 26 |
| | amended | Ch. 472 | HB 53 |
| | amended | Ch. 496 | SB 57 |
| 15-6-209 | amended | Ch. 166 | HB 381 |
| 15-6-211 | amended | Ch. 301 | SB 213 |
| 15-6-212 | repealed | Ch. 42 | SB 36 |
| 15-7-102 | amended | Ch. 414 | SB 372 |
| | amended | Ch. 463 | SB 195 |
| 15-7-108 | enacted | Ch. 414 | SB 372 |
| 15-7-111 | amended | Ch. 463 | SB 195 |
| 15-7-303 | amended | Ch. 42 | SB 36 |
| 15-7-305 | amended | Ch. 167 | HB 506 |
| 15-7-308 | amended | Ch. 167 | HB 506 |
| 15-8-104 | amended | Ch. 42 | SB 36 |
| 15-8-111 | amended | Ch. 299 | SB 127 |
| | amended | Ch. 496 | SB 57 |
| 15-8-201 | amended | Ch. 200 | HB 532 |
| | amended | Ch. 414 | SB 372 |
| | amended | Ch. 496 | SB 57 |
| 15-8-202 | amended | Ch. 496 | SB 57 |
| 15-8-205 | amended | Ch. 200 | HB 532 |
| 15-8-601 | amended | Ch. 36 | HB 88 |
| 15-10-101 | repealed | Ch. 123 | SB 119 |
| 15-10-102 | repealed | Ch. 123 | SB 119 |

HeinOnline -- 1997 vol. III 3749 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 15-10-104 | repealed | Ch. 123 | SB 119 |
| 15-10-305 | amended | Ch. 414 | SB 372 |
| 15-10-401 | amended | Ch. 463 | SB 195 |
| 15-10-402 | amended | Ch. 463 | SB 195 |
| 15-10-411 | repealed | Ch. 463 | SB 195 |
| 15-10-412 | amended | Ch. 300 | SB 134 |
| | amended | Ch. 463 | SB 195 |
| 15-15-103 | amended | Ch. 134 | HB 441 |
| 15-16-102 | amended | Ch. 42 | SB 36 |
| 15-16-119 | amended | Ch. 42 | SB 36 |
| 15-16-202 | amended | Ch. 200 | HB 532 |
| | amended | Ch. 496 | SB 57 |
| 15-16-802 | repealed | Ch. 42 | SB 36 |
| 15-16-803 | repealed | Ch. 42 | SB 36 |
| 15-18-413 | amended | Ch. 407 | SB 130 |
| 15-23-101 | amended | Ch. 42 | SB 36 |
| 15-23-211 | amended | Ch. 16 | SB 20 |
| 15-23-703 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 42 | SB 36 |
| 15-23-706 | amended | Ch. 42 | SB 36 |
| 15-23-707 | amended | Ch. 42 | SB 36 |
| 15-24-101 | repealed | Ch. 496 | SB 57 |
| 15-24-102 | amended | Ch. 123 | SB 119 |
| | repealed | Ch. 496 | SB 57 |
| 15-24-103 | repealed | Ch. 496 | SB 57 |
| 15-24-104 | repealed | Ch. 496 | SB 57 |
| 15-24-105 | repealed | Ch. 496 | SB 57 |
| 15-24-201 | amended | Ch. 200 | HB 532 |
| 15-24-202 | amended | Ch. 200 | HB 532 |
| 15-24-203 | amended | Ch. 200 | HB 532 |
| 15-24-204 | amended | Ch. 200 | HB 532 |
| 15-24-205 | amended | Ch. 200 | HB 532 |
| 15-24-206 | amended | Ch. 200 | HB 532 |
| 15-24-208 | amended | Ch. 200 | HB 532 |
| 15-24-209 | amended | Ch. 200 | HB 532 |
| 15-24-210 | amended | Ch. 200 | HB 532 |
| 15-24-1203 | amended | Ch. 49 | HB 70 |
| 15-24-2501 | repealed | Ch. 496 | SB 57 |
| 15-30-101 | amended | Ch. 42 | SB 36 |
| 15-30-111 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 123 | SB 119 |
| | amended | Ch. 540 | HB 536 |
| | amended | Ch. 544 | HB 599 |
| 15-30-114 | amended | Ch. 472 | HB 53 |
| 15-30-115 | amended | Ch. 472 | HB 53 |
| 15-30-117 | amended | Ch. 42 | SB 36 |
| 15-30-121 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 218 | HB 480 |
| | amended | Ch. 383 | SB 151 |
| 15-30-153 | amended | Ch. 422 | HB 166 |
| 15-30-162 | amended | Ch. 42 | SB 36 |
| 15-30-165 | enacted | Ch. 537 | HB 434 |
| 15-30-166 | enacted | Ch. 537 | HB 434 |
| 15-30-167 | enacted | Ch. 537 | HB 434 |
| 15-30-171 | amended | Ch. 543 | HB 591 |
| 15-30-172 | amended | Ch. 543 | HB 591 |
| 15-30-176 | amended | Ch. 543 | HB 591 |

HeinOnline -- 1997 vol. III 3750 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 15-30-177 | amended | Ch. 543 | HB 591 |
| 15-30-178 | amended | Ch. 543 | HB 591 |
| 15-30-180 | enacted | Ch. 545 | HB 601 |
| 15-30-201 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 491 | HB 561 |
| 15-30-202 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 491 | HB 561 |
| 15-30-203 | amended | Ch. 491 | HB 561 |
| 15-30-204 | amended | Ch. 491 | HB 561 |
| 15-30-207 | amended | Ch. 491 | HB 561 |
| 15-30-208 | amended | Ch. 491 | HB 561 |
| 15-30-209 | amended | Ch. 491 | HB 561 |
| 15-30-211 | amended and renumbered 15-1-208 | Ch. 6 | SB 47 |
| | amended and renumbered 16-11-110 | Ch. 6 | SB 47 |
| 15-30-249 | enacted | Ch. 491 | HB 561 |
| 15-30-250 | enacted | Ch. 491 | HB 561 |
| 15-30-251 | enacted | Ch. 491 | HB 561 |
| 15-30-255 | enacted | Ch. 491 | HB 561 |
| 15-30-256 | enacted | Ch. 491 | HB 561 |
| 15-30-257 | enacted | Ch. 491 | HB 561 |
| 15-31-101 | amended | Ch. 382 | SB 83 |
| 15-31-102 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 368 | HB 596 |
| | amended | Ch. 382 | SB 83 |
| 15-31-111 | amended | Ch. 51 | HB 82 |
| 15-31-131 | amended | Ch. 42 | SB 36 |
| 15-31-141 | amended | Ch. 369 | HB 612 |
| 15-31-151 | enacted | Ch. 545 | HB 601 |
| 15-31-161 | enacted | Ch. 537 | HB 434 |
| 15-31-162 | enacted | Ch. 537 | HB 434 |
| 15-31-202 | amended | Ch. 65 | HB 274 |
| 15-31-204 | repealed | Cb. 65 | HB 274 |
| 15-31-408 | repealed | Ch. 422 | HB 166 |
| 15-31-509 | amended | Ch. 51 | HB 82 |
| 15-31-510 | amended | Ch. 51 | HB 82 |
| 15-31-545 | enacted | Ch. 51 | HB 82 |
| 15-31-701 | amended | Ch. 369 | HB 612 |
| 15-31-702 | amended | Ch. 369 | HB 612 |
| 15-31-801 | enacted | Ch. 382 | SB 83 |
| 15-31-802 | enacted | Ch. 382 | SB 83 |
| 15-31-803 | enacted | Ch. 382 | SB 83 |
| 15-31-804 | enacted | Ch. 382 | SB 83 |
| 15-31-805 | enacted | Ch. 382 | SB 83 |
| 15-31-806 | enacted | Ch. 382 | SB 83 |
| 15-31-807 | enacted | Ch. 382 | SB 83 |
| 15-31-808 | enacted | Ch. 382 | SB 83 |
| 15-32-102 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 200 | HB 532 |
| 15-32-201 | amended | Ch. 42 | SB 36 |
| 15-32-301 | amended | Ch. 218 | HB 480 |
| 15-32-302 | amended | Ch. 218 | HB 480 |
| 15-32-303 | amended | Ch. 218 | HB 480 |
| 15-32-403 | amended | Ch. 42 | SB 36 |
| 15-35-108 | amended | Ch. 422 | HB 166 |
| | amended | Ch. 469 | HB 5 |
| 15-36-304 | amended | Ch. 466 | SB 386 |
| 15-36-314 | amended | Ch. 295 | SB 49 |

HeinOnline -- 1997 vol. III 3751 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 15-36-315 | amended | Ch. 295 | SB 49 |
| 15-36-323 | amended | Ch. 463 | SB 195 |
| 15-36-324 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 422 | HB 166 |
| | amended | Ch. 466 | SB 386 |
| | amended | Ch. 532 | HB 169 |
| 15-36-325 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 466 | SB 386 |
| | amended | Ch. 532 | HB 169 |
| 15-37-117 | amended | Ch. 415 | SB 377 |
| 15-38-104 | amended | Ch. 42 | SB 36 |
| 15-38-106 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 415 | SB 377 |
| | amended | Ch. 422 | HB 166 |
| 15-38-201 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 444 | HB 171 |
| 15-38-202 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 415 | SB 377 |
| | amended | Ch. 444 | HB 171 |
| 15-38-203 | amended | Ch. 444 | HB 171 |
| 15-44-102 | amended | Ch. 297 | SB 100 |
| 15-44-103 | amended | Ch. 297 | SB 100 |
| 15-50-207 | amended | Ch. 496 | SB 57 |
| 15-59-201 | repealed | Ch. 65 | HB 274 |
| 15-59-203 | repealed | Ch. 65 | HB 274 |
| 15-59-204 | repealed | Ch. 65 | HB 274 |
| 15-59-205 | repealed | Ch. 65 | HB 274 |
| 15-59-206 | repealed | Ch. 65 | HB 274 |
| 15-59-207 | repealed | Ch. 65 | HB 274 |
| 15-59-208 | repealed | Ch. 65 | HB 274 |
| 15-59-209 | repealed | Ch. 65 | HB 274 |
| 15-59-210 | repealed | Ch. 65 | HB 274 |
| 15-59-212 | repealed | Ch. 65 | HB 274 |
| 15-59-213 | repealed | Ch. 65 | HB 274 |
| 15-59-214 | repealed | Ch. 65 | HB 274 |
| 15-59-221 | repealed | Ch. 65 | HB 274 |
| 15-61-102 | amended | Ch. 296 | SB 55 |
| 15-61-203 | amended | Ch. 296 | SB 55 |
| 15-61-204 | amended | Ch. 296 | SB 55 |
| 15-62-101 | enacted | Ch. 540 | HB 536 |
| 15-62-102 | enacted | Ch. 540 | HB 536 |
| 15-62-103 | enacted | Ch. 540 | HB 536 |
| 15-62-201 | enacted | Ch. 540 | HB 536 |
| 15-62-202 | enacted | Ch. 540 | HB 536 |
| 15-62-203 | enacted | Ch. 540 | HB 536 |
| 15-62-204 | enacted | Ch. 540 | HB 536 |
| 15-62-205 | enacted | Ch. 540 | HB 536 |
| 15-62-206 | enacted | Ch. 540 | HB 536 |
| 15-63-101 | enacted | Ch. 544 | HB 599 |
| 15-63-102 | enacted | Ch. 544 | HB 599 |
| 15-63-201 | enacted | Ch. 544 | HB 599 |
| 15-63-202 | enacted | Ch. 544 | HB 599 |
| 15-63-203 | enacted | Ch. 544 | HB 599 |
| 15-63-204 | enacted | Ch. 544 | HB 599 |
| 15-63-205 | enacted | Ch. 544 | HB 599 |
| 15-65-121 | amended | Ch. 469 | HB 5 |
| 15-70-101 | amended | Ch. 239 | SB 257 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 15-70-104 | amended | Ch. 236 | SB 188 |
| 15-70-125 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 422 | HB 166 |
| 15-70-201 | amended | Ch. 236 | SB 188 |
| 15-70-202 | amended | Ch. 236 | SB 188 |
| 15-70-233 | enacted | Ch. 236 | SB 188 |
| 15-70-235 | amended | Ch. 42 | SB 36 |
| 15-70-236 | amended | Ch. 42 | SB 36 |
| 15-70-301 | amended | Ch. 236 | SB 188 |
| 15-70-308 | repealed 1/1/98 | Ch. 232 | SB 29 |
| 15-70-341 | amended | Ch. 236 | SB 188 |
| 15-70-357 | enacted | Ch. 236 | SB 188 |
| 15-70-522 | amended | Ch. 510 | HB 555 |
| 15-70-701 | amended | Ch. 125 | HB 311 |
| 15-70-702 | amended | Ch. 125 | HB 311 |
| 15-70-703 | amended | Ch. 125 | HB 311 |
| 15-70-704 | amended | Ch. 125 | HB 311 |
| 15-70-705 | amended | Ch. 125 | HB 311 |
| 15-70-706 | amended | Ch. 125 | HB 311 |
| 15-70-707 | amended | Ch. 125 | HB 311 |
| 15-70-711 | amended | Ch. 125 | HB 311 |
| 15-70-712 | amended | Ch. 125 | HB 311 |
| 15-70-713 | amended | Ch. 125 | HB 311 |
| 15-70-714 | amended | Ch. 125 | HB 311 |
| 15-70-715 | amended | Ch. 125 | HB 311 |
| 15-70-716 | amended | Ch. 125 | HB 311 |
| 15-70-717 | amended | Ch. 125 | HB 311 |
| 15-70-718 | amended | Ch. 125 | HB 311 |
| 15-71-101 | repealed 1/1/98 | Ch. 125 | HB 311 |
| 15-71-102 | repealed 1/1/98 | Ch. 125 | HB 311 |
| 15-71-103 | repealed 1/1/98 | Ch. 125 | HB 311 |
| 15-71-104 | repealed 1/1/98 | Ch. 125 | HB 311 |
| 15-71-105 | repealed 1/1/98 | Ch. 125 | HB 311 |
| 15-71-110 | repealed 1/1/98 | Ch. 125 | HB 311 |
| 16-1-106 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 399 | HB 308 |
| 16-1-201 | amended | Ch. 42 | SB 36 |
| 16-1-202 | amended | Ch. 42 | SB 36 |
| 16-1-306 | amended | Ch. 422 | HB 166 |
| 16-1-404 | amended | Ch. 422 | HB 166 |
| 16-1-406 | amended | Ch. 422 | HB 166 |
| 16-1-408 | repealed | Ch. 422 | HB 166 |
| 16-1-409 | amended | Ch. 422 | HB 166 |
| 16-1-410 | repealed | Ch. 422 | HB 166 |
| 16-1-411 | amended | Ch. 399 | HB 308 |
| 16-2-101 | amended | Ch. 42 | SB 36 |
| 16-2-103 | amended | Ch. 42 | SB 36 |
| 16-2-301 | amended | Ch. 399 | HB 308 |
| 16-2-401 | repealed | Ch. 42 | SB 36 |
| 16-2-402 | repealed | Ch. 42 | SB 36 |
| 16-2-403 | repealed | Ch. 42 | SB 36 |
| 16-2-404 | repealed | Ch. 42 | SB 36 |
| 16-2-405 | repealed | Ch. 42 | SB 36 |
| 16-2-406 | repealed | Ch. 42 | SB 36 |
| 16-2-407 | repealed 7/1/99 | Ch. 42 | SB 36 |
| 16-2-408 | repealed | Ch. 42 | SB 36 |
| 16-3-201 | amended | Ch. 546 | HB 604 |

HeinOnline -- 1997 vol. III 3753 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 16-3-220 | amended | Ch. 42 | SB 36 |
| 16-3-221 | amended | Ch. 130 | HB 310 |
| 16-3-418 | amended | Ch. 399 | HB 308 |
| 16-4-105 | amended | Ch. 465 | SB 354 |
| | amended | Ch. 528 | HB 78 |
| 16-4-111 | amended | Ch. 465 | SB 354 |
| 16-4-115 | amended | Ch. 528 | HB 78 |
| 16-4-202 | amended | Ch. 371 | SB 181 |
| | amended | Ch. 487 | HB 376 |
| 16-4-203 | amended | Ch. 528 | HB 78 |
| 16-4-207 | amended | Ch. 528 | HB 78 |
| 16-4-402 | amended | Ch. 528 | HB 78 |
| 16-4-404 | amended | Ch. 528 | HB 78 |
| 16-4-405 | amended | Ch. 528 | HB 78 |
| 16-4-420 | enacted | Ch. 465 | SB 354 |
| 16-4-421 | enacted | Ch. 465 | SB 354 |
| 16-4-422 | enacted | Ch. 465 | SB 354 |
| 16-4-423 | enacted | Ch. 465 | SB 354 |
| 16-4-501 | amended | Ch. 371 | SB 181 |
| | amended | Ch. 528 | HB 78 |
| 16-6-106 | amended | Ch. 42 | SB 36 |
| 16-6-301 | amended | Ch. 546 | HB 604 |
| 16-11-110 | formerly 15-30-211 | Ch. 6 | SB 47 |
| 16-11-119 | amended | Ch. 422 | HB 166 |
| 16-11-120 | amended | Ch. 366 | HB 391 |
| 16-11-122 | amended | Ch. 366 | HB 391 |
| 16-11-206 | amended | Ch. 422 | HB 166 |
| 16-11-306 | amended | Ch. 518 | HB 331 |
| 16-11-308 | amended | Ch. 518 | HB 331 |
| 17-1-102 | amended | Ch. 48 | HB 23 |
| 17-1-111 | amended | Ch. 48 | HB 23 |
| 17-1-123 | repealed | Ch. 48 | HB 23 |
| 17-1-508 | amended | Ch. 422 | HB 166 |
| 17-2-101 | amended | Ch. 532 | HB 169 |
| 17-2-102 | amended | Ch. 532 | HB 169 |
| 17-2-103 | amended | Ch. 532 | HB 169 |
| 17-2-107 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 547 | SB 187 |
| 17-2-110 | amended | Ch. 48 | HB 23 |
| 17-2-121 | amended | Ch. 532 | HB 169 |
| 17-2-201 | amended | Ch. 48 | HB 23 |
| 17-2-301 | enacted | Ch. 270 | HB 240 |
| 17-2-302 | enacted | Ch. 270 | HB 240 |
| 17-2-303 | enacted | Ch. 270 | HB 240 |
| 17-2-304 | enacted | Ch. 270 | HB 240 |
| 17-3-102 | amended | Ch. 48 | HB 23 |
| 17-3-106 | amended | Ch. 48 | HB 23 |
| 17-3-109 | repealed | Ch. 347 | SB 19 |
| 17-3-221 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 532 | HB 169 |
| 17-3-222 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 532 | HB 169 |
| 17-4-101 | amended | Ch. 17 | SB 40 |
| | amended | Ch. 48 | HB 23 |
| 17-4-105 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 17-4-106 | amended | Ch. 17 | SB 40 |

HeinOnline -- 1997 vol. III 3754 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 17-4-107 | amended | Ch. 17 | SB 40 |
| | amended | Ch. 347 | SB 19 |
| 17-4-108 | amended | Ch. 17 | SB 40 |
| | amended | Ch. 347 | SB 19 |
| 17-5-202 | amended | Ch. 42 | SB 36 |
| 17-5-205 | amended | Ch. 31 | HB 32 |
| 17-5-403 | amended | Ch. 422 | HB 166 |
| 17-5-404 | amended | Ch. 422 | HB 166 |
| 17-5-405 | amended | Ch. 422 | HB 166 |
| 17-5-408 | amended | Ch. 422 | HB 166 |
| 17-5-804 | amended | Ch. 422 | HB 166 |
| 17-5-1608 | amended | Ch. 483 | HB 248 |
| 17-5-2001 | enacted | Ch. 483 | HB 248 |
| 17-6-103 | amended | Ch. 42 | SB 36 |
| 17-6-201 | amended | Ch. 32 | HB 36 |
| | amended | Ch. 422 | HB 166 |
| | amended | Ch. 532 | HB 169 |
| | amended | Ch. 549 | HB 578 |
| 17-6-203 | amended | Ch. 223 | HB 174 |
| 17-6-212 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 48 | HB 23 |
| 17-6-225 | enacted | Ch. 115 | HB 214 |
| 17-6-302 | amended | Ch. 549 | HB 578 |
| 17-6-305 | amended | Ch. 549 | HB 578 |
| 17-6-308 | amended | Ch. 549 | HB 578 |
| 17-6-311 | amended | Ch. 98 | HB 350 |
| 17-6-318 | amended | Ch. 98 | HB 350 |
| 17-6-503 | amended | Ch. 549 | HB 578 |
| 17-6-509 | amended | Ch. 549 | HB 578 |
| 17-6-510 | amended | Ch. 549 | HB 578 |
| 17-7-102 | amended | Ch. 347 | SB 19 |
| 17-7-111 | amended | Ch. 347 | SB 19 |
| 17-7-112 | amended | Ch. 347 | SB 19 |
| 17-7-121 | amended | Ch. 347 | SB 19 |
| 17-7-122 | amended | Ch. 347 | SB 19 |
| 17-7-123 | amended | Ch. 347 | SB 19 |
| 17-7-124 | amended | Ch. 347 | SB 19 |
| 17-7-132 | amended | Ch. 347 | SB 19 |
| 17-7-138 | amended | Ch. 11 | SB 30 |
| | amended | Ch. 347 | SB 19 |
| 17-7-139 | amended | Ch. 347 | SB 19 |
| 17-7-150 | enacted | Ch. 74 | SB 35 |
| 17-7-151 | enacted | Ch. 74 | SB 35 |
| 17-7-204 | amended | Ch. 347 | SB 19 |
| 17-7-211 | amended | Ch. 347 | SB 19 |
| 17-7-301 | amended | Ch. 347 | SB 19 |
| 17-7-304 | amended | Ch. 361 | HB 567 |
| | amended | Ch. 532 | HB 169 |
| 17-7-402 | amended | Ch. 76 | SB 107 |
| | amended | Ch. 532 | HB 169 |
| 17-7-502 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 276 | SB 67 |
| | amended | Ch. 422 | HB 166 |
| | amended | Ch. 445 | HB 173 |
| | amended | Ch. 461 | HB 607 |
| | amended | Ch. 466 | SB 386 |
| | amended | Ch. 469 | HB 5 |

HeinOnline -- 1997 vol. III 3755 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| | amended | Ch. 480 | HB 163 |
| | amended | Ch. 523 | HB 547 |
| | amended | Ch. 532 | HB 169 |
| | amended | Ch. 549 | HB 578 |
| 17-8-101 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 347 | SB 19 |
| | amended | Ch. 532 | HB 169 |
| 17-8-201 | amended | Ch. 48 | HB 23 |
| 17-8-202 | amended | Ch. 48 | HB 23 |
| 17-8-303 | amended | Ch. 124 | SB 125 |
| 17-8-306 | amended | Ch. 48 | HB 23 |
| | amended | Ch. 243 | SB 313 |
| 17-8-307 | repealed | Ch. 48 | HB 23 |
| 18-1-101 | amended | Ch. 443 | HB 139 |
| 18-1-103 | amended | Ch. 42 | SB 36 |
| 18-1-118 | amended | Ch. 377 | HB 193 |
| 18-1-404 | amended | Ch. 508 | HB 534 |
| 18-2-101 | amended | Ch. 392 | HB 118 |
| 18-2-102 | amended | Ch. 249 | HB 217 |
| 18-2-103 | amended | Ch. 249 | HB 217 |
| 18-2-105 | amended | Ch. 249 | HB 217 |
| 18-2-201 | amended | Ch. 249 | HB 217 |
| 18-2-301 | amended | Ch. 57 | HB 92 |
| | amended | Ch. 249 | HB 217 |
| 18-2-302 | amended | Ch. 249 | HB 217 |
| 18-2-401 | amended | Ch. 522 | HB 407 |
| 18-2-403 | amended | Ch. 522 | HB 407 |
| 18-2-404 | amended | Ch. 522 | HB 407 |
| 18-2-421 | amended | Ch. 522 | HB 407 |
| 18-2-422 | amended | Ch. 522 | HB 407 |
| 18-2-432 | amended | Ch. 522 | HB 407 |
| 18-3-101 | amended | Ch. 455 | HB 398 |
| 18-3-102 | repealed | Ch. 455 | HB 398 |
| 18-3-103 | repealed | Ch. 455 | HB 398 |
| 18-3-104 | repealed | Ch. 455 | HB 398 |
| 18-3-105 | amended | Ch. 455 | HB 398 |
| 18-3-107 | repealed | Ch. 455 | HB 398 |
| 18-3-110 | enacted | Ch. 455 | HB 398 |
| 18-3-111 | enacted | Ch. 455 | HB 398 |
| 18-4-122 | amended | Ch. 443 | HB 139 |
| 18-4-123 | amended | Ch. 443 | HB 139 |
| 18-4-126 | amended | Ch. 443 | HB 139 |
| 18-4-131 | repealed | Ch. 443 | HB 139 |
| 18-4-132 | amended | Ch. 443 | HB 139 |
| 18-4-133 | amended | Ch. 443 | HB 139 |
| 18-4-141 | amended | Ch. 443 | HB 139 |
| 18-4-224 | amended | Ch. 443 | HB 139 |
| 18-4-225 | repealed | Ch. 443 | HB 139 |
| 18-4-241 | amended | Ch. 443 | HB 139 |
| 18-4-242 | amended | Ch. 443 | HB 139 |
| 18-4-302 | amended | Ch. 443 | HB 139 |
| 18-4-303 | amended | Ch. 443 | HB 139 |
| 18-4-304 | amended | Ch. 443 | HB 139 |
| 18-4-305 | amended | Ch. 443 | HB 139 |
| 18-4-309 | amended | Ch. 443 | HB 139 |
| 18-4-310 | amended | Ch. 443 | HB 139 |
| 18-4-312 | amended | Ch. 443 | HB 139 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 18-4-402 | amended | Ch. 443 | HB 139 |
| 18-5-101 | amended | Ch. 472 | HB 53 |
| 18-5-102 | amended | Ch. 472 | HB 53 |
| 18-5-103 | amended | Ch. 472 | HB 53 |
| 18-8-101 | repealed | Ch. 443 | HB 139 |
| 18-8-102 | repealed | Ch. 443 | HB 139 |
| 18-8-103 | repealed | Ch. 443 | HB 139 |
| | amended | Ch. 531 | HB 131 |
| 18-8-104 | repealed | Ch. 443 | HB 139 |
| 18-8-105 | repealed | Ch. 443 | HB 139 |
| 18-8-106 | repealed | Ch. 443 | HB 139 |
| 18-8-111 | repealed | Ch. 443 | HB 139 |
| 18-8-112 | repealed | Ch. 443 | HB 139 |
| 18-8-211 | amended | Ch. 443 | HB 139 |
| 19-1-104 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 223 | HB 174 |
| 19-1-301 | amended | Ch. 223 | HB 174 |
| 19-1-402 | amended | Ch. 42 | SB 36 |
| 19-1-503 | amended | Ch. 42 | SB 36 |
| 19-2-303 | amended | Ch. 370 | SB 124 |
| 19-2-404 | amended | Ch. 532 | HB 169 |
| 19-2-408 | amended | Ch. 532 | HB 169 |
| 19-2-409 | enacted | Ch. 287 | HB 170 |
| 19-2-502 | amended | Ch. 532 | HB 169 |
| 19-2-701 | amended | Ch. 370 | SB 124 |
| 19-2-702 | amended | Ch. 370 | SB 124 |
| 19-2-704 | amended | Ch. 370 | SB 124 |
| 19-2-706 | amended | Ch. 361 | HB 567 |
| 19-2-801 | amended | Ch. 370 | SB 124 |
| 19-2-802 | amended | Ch. 370 | SB 124 |
| 19-2-907 | amended | Ch. 370 | SB 124 |
| 19-2-908 | enacted | Ch. 370 | SB 124 |
| 19-2-909 | enacted | Ch. 552 | SB 374 |
| 19-2-1004 | amended | Ch. 552 | SB 374 |
| 19-2-1010 | enacted | Ch. 370 | SB 124 |
| 19-2-1101 | enacted | Ch. 287 | HB 170 |
| 19-3-315 | amended | Ch. 287 | HB 170 |
| 19-3-316 | amended | Ch. 287 | HB 170 |
| 19-3-319 | enacted | Ch. 287 | HB 170 |
| | amended | Ch. 532 | HB 169 |
| 19-3-401 | amended | Ch. 370 | SB 124 |
| 19-3-412 | amended | Ch. 208 | HB 496 |
| | amended | Ch. 370 | SB 124 |
| 19-3-503 | amended | Ch. 287 | HB 170 |
| 19-3-504 | amended | Ch. 370 | SB 124 |
| 19-3-511 | amended | Ch. 370 | SB 124 |
| 19-3-512 | amended | Ch. 287 | HB 170 |
| 19-3-513 | amended | Ch. 287 | HB 170 |
| 19-3-903 | repealed | Ch. 370 | SB 124 |
| 19-3-1006 | repealed | Ch. 370 | SB 124 |
| 19-3-1015 | amended | Ch. 370 | SB 124 |
| 19-3-1104 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 370 | SB 124 |
| 19-3-1205 | amended | Ch. 42 | SB 36 |
| 19-3-1601 | repealed | Ch. 287 | HB 170 |
| 19-3-1602 | repealed | Ch. 287 | HB 170 |
| 19-3-1603 | repealed | Ch. 287 | HB 170 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 19-3-1605 | enacted | Ch. 287 | HB 170 |
| 19-5-101 | amended | Ch. 287 | HB 170 |
| 19-5-103 | amended | Ch. 370 | SB 124 |
| 19-5-404 | amended | Ch. 287 | HB 170 |
| | amended | Ch. 532 | HB 169 |
| 19-5-502 | amended | Ch. 287 | HB 170 |
| 19-5-601 | amended | Ch. 287 | HB 170 |
| | amended | Ch. 370 | SB 124 |
| 19-5-801 | amended | Ch. 370 | SB 124 |
| 19-5-802 | amended | Ch. 287 | HB 170 |
| 19-5-901 | enacted | Ch. 287 | HB 170 |
| 19-6-402 | amended | Ch. 287 | HB 170 |
| 19-6-404 | amended | Ch. 287 | HB 170 |
| 19-6-501 | amended | Ch. 370 | SB 124 |
| 19-6-612 | amended | Ch. 370 | SB 124 |
| 19-6-707 | amended | Ch. 287 | HB 170 |
| 19-6-709 | amended | Ch. 287 | HB 170 |
| | amended | Ch. 532 | HB 169 |
| 19-6-710 | enacted | Ch. 287 | HB 170 |
| 19-6-801 | amended | Ch. 287 | HB 170 |
| 19-7-301 | amended | Ch. 248 | HB 216 |
| 19-7-403 | amended | Ch. 248 | HB 216 |
| 19-7-404 | amended | Ch. 248 | HB 216 |
| 19-7-501 | amended | Ch. 370 | SB 124 |
| 19-7-502 | amended | Ch. 248 | HB 216 |
| 19-7-503 | amended | Ch. 248 | HB 216 |
| 19-7-504 | repealed | Ch. 248 | HB 216 |
| 19-7-612 | amended | Ch. 370 | SB 124 |
| 19-7-708 | repealed | Ch. 287 | HB 170 |
| 19-7-709 | repealed | Ch. 287 | HB 170 |
| 19-7-710 | repealed | Ch. 287 | HB 170 |
| 19-7-711 | enacted | Ch. 287 | HB 170 |
| 19-7-801 | amended | Ch. 370 | SB 124 |
| 19-7-901 | amended | Ch. 248 | HB 216 |
| 19-8-101 | amended | Ch. 223 | HB 174 |
| 19-8-102 | amended | Ch. 223 | HB 174 |
| 19-8-301 | amended | Ch. 223 | HB 174 |
| 19-8-302 | amended | Ch. 223 | HB 174 |
| 19-8-308 | enacted | Ch. 223 | HB 174 |
| 19-8-502 | amended | Ch. 287 | HB 170 |
| 19-8-504 | amended | Ch. 223 | HB 174 |
| | amended | Ch. 287 | HB 170 |
| | amended | Ch. 532 | HB 169 |
| 19-8-601 | amended | Ch. 370 | SB 124 |
| 19-8-604 | amended | Ch. 223 | HB 174 |
| 19-8-701 | amended | Ch. 223 | HB 174 |
| 19-8-712 | amended | Ch. 223 | HB 174 |
| | amended | Ch. 370 | SB 124 |
| 19-8-902 | amended | Ch. 223 | HB 174 |
| 19-8-903 | amended | Ch. 223 | HB 174 |
| 19-8-905 | enacted | Ch. 370 | SB 124 |
| 19-8-1002 | amended | Ch. 287 | HB 170 |
| 19-8-1101 | repealed | Ch. 287 | HB 170 |
| 19-8-1102 | repealed | Ch. 287 | HB 170 |
| 19-8-1103 | repealed | Ch. 287 | HB 170 |
| 19-8-1105 | enacted | Ch. 287 | HB 170 |
| 19-9-104 | amended | Ch. 250 | HB 505 |

HeinOnline -- 1997 vol. III 3758 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 19-9-208 | repealed | Ch. 532 | HB 169 |
| 19-9-301 | amended | Ch. 250 | HB 505 |
| 19-9-405 | amended | Ch. 223 | HB 174 |
| 19-9-411 | amended | Ch. 42 | SB 36 |
| 19-9-702 | amended | Ch. 445 | HB 173 |
| | amended | Ch. 532 | HB 169 |
| 19-9-703 | amended | Ch. 250 | HB 505 |
| 19-9-710 | amended | Ch. 287 | HB 170 |
| 19-9-801 | amended | Ch. 250 | HB 505 |
| | amended | Ch. 370 | SB 124 |
| 19-9-904 | amended | Ch. 370 | SB 124 |
| 19-9-905 | amended | Ch. 370 | SB 124 |
| 19-9-1007 | amended | Ch. 287 | HB 170 |
| | amended | Ch. 445 | HB 173 |
| 19-9-1009 | enacted | Ch. 287 | HB 170 |
| 19-9-1101 | amended | Ch. 42 | SB 36 |
| 19-13-104 | amended | Ch. 457 | HB 430 |
| 19-13-301 | amended | Ch. 254 | HB 569 |
| | amended | Ch. 457 | HB 430 |
| 19-13-404 | amended | Ch. 223 | HB 174 |
| 19-13-601 | amended | Ch. 457 | HB 430 |
| 19-13-604 | amended | Ch. 445 | HB 173 |
| | amended | Ch. 532 | HB 169 |
| 19-13-615 | repealed | Ch. 457 | HB 430 |
| | repealed | Ch. 532 | HB 169 |
| 19-13-701 | amended | Ch. 370 | SB 124 |
| | amended | Ch. 457 | HB 430 |
| 19-13-704 | amended | Ch. 457 | HB 430 |
| 19-13-803 | amended | Ch. 457 | HB 430 |
| 19-13-804 | amended | Ch. 370 | SB 124 |
| 19-13-805 | amended | Ch. 370 | SB 124 |
| 19-13-902 | amended | Ch. 457 | HB 430 |
| 19-13-1006 | repealed | Ch. 457 | HB 430 |
| | amended | Ch. 532 | HB 169 |
| 19-13-1007 | amended | Ch. 445 | HB 173 |
| 19-13-1009 | repealed | Ch. 457 | HB 430 |
| | amended | Ch. 532 | HB 169 |
| 19-13-1010 | enacted | Ch. 287 | HB 170 |
| 19-17-102 | amended | Ch. 370 | SB 124 |
| 19-17-301 | amended | Ch. 532 | HB 169 |
| 19-18-512 | amended | Ch. 532 | HB 169 |
| 19-18-513 | repealed | Ch. 532 | HB 169 |
| 19-18-606 | amended | Ch. 457 | HB 430 |
| | repealed | Ch. 532 | HB 169 |
| 19-18-612 | amended | Ch. 552 | SB 374 |
| 19-19-205 | amended | Ch. 422 | HB 166 |
| | amended | Ch. 532 | HB 169 |
| 19-19-305 | amended | Ch. 532 | HB 169 |
| 19-19-504 | amended | Ch. 552 | SB 374 |
| 19-19-506 | amended | Ch. 532 | HB 169 |
| 19-20-101 | amended | Ch. 442 | HB 134 |
| 19-20-104 | amended | Ch. 442 | HB 134 |
| 19-20-106 | enacted | Ch. 442 | HB 134 |
| 19-20-203 | amended | Ch. 532 | HB 169 |
| 19-20-208 | amended | Ch. 442 | HB 134 |
| 19-20-302 | amended | Ch. 42 | SB 36 |
| 19-20-305 | amended | Ch. 442 | HB 134 |

HeinOnline -- 1997 vol. III 3759 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 19-20-306 | enacted | Ch. 552 | SB 374 |
| 19-20-405 | amended | Ch. 408 | SB 296 |
| 19-20-407 | amended | Ch. 408 | SB 296 |
| 19-20-409 | amended | Ch. 442 | HB 134 |
| 19-20-410 | amended | Ch. 408 | SB 296 |
| 19-20-412 | amended | Ch. 442 | HB 134 |
| 19-20-501 | amended | Ch. 532 | HB 169 |
| 19-20-503 | amended | Ch. 442 | HB 134 |
| 19-20-602 | amended | Ch. 442 | HB 134 |
| 19-20-603 | amended | Ch. 442 | HB 134 |
| 19-20-605 | amended | Ch. 442 | HB 134 |
| | amended | Ch. 532 | HB 169 |
| 19-20-606 | repealed | Ch. 532 | HB 169 |
| 19-20-621 | enacted | Ch. 419 | HB 121 |
| 19-20-702 | amended | Ch. 442 | HB 134 |
| 19-20-703 | amended | Ch. 442 | HB 134 |
| 19-20-706 | amended | Ch. 442 | HB 134 |
| | amended | Ch. 552 | SB 374 |
| 19-20-711 | amended | Ch. 442 | HB 134 |
| 19-20-712 | amended | Ch. 442 | HB 134 |
| 19-20-713 | amended | Ch. 442 | HB 134 |
| 19-20-715 | amended | Ch. 442 | HB 134 |
| 19-20-716 | enacted | Ch. 442 | HB 134 |
| 19-20-717 | enacted | Ch. 442 | HB 134 |
| 19-20-801 | amended | Ch. 442 | HB 134 |
| 19-20-804 | amended | Ch. 442 | HB 134 |
| 19-20-805 | enacted | Ch. 442 | HB 134 |
| 19-20-902 | amended | Ch. 442 | HB 134 |
| 19-20-903 | amended | Ch. 442 | HB 134 |
| 19-20-904 | amended | Ch. 442 | HB 134 |
| 19-20-905 | amended | Ch. 442 | HB 134 |
| 19-20-1001 | amended | Ch. 442 | HB 134 |
| 19-20-1002 | amended | Ch. 442 | HB 134 |
| 19-21-111 | repealed | Ch. 419 | HB 121 |
| 19-21-203 | amended | Ch. 419 | HB 121 |
| 19-21-212 | amended | Ch. 552 | SB 374 |
| 19-50-102 | amended | Ch. 37 | HB 96 |
| | amended | Ch. 42 | SB 36 |
| 20-1-212 | amended | Ch. 323 | HB 190 |
| 20-1-213 | enacted | Ch. 157 | SB 15 |
| 20-1-220 | formerly 20-5-411 | | |
| 20-1-301 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 42 | SB 36 |
| | amended | Ch. 430 | SB 71 |
| 20-1-302 | amended | Ch. 430 | SB 71 |
| 20-1-304 | amended | Ch. 430 | SB 71 |
| 20-1-306 | amended | Ch. 202 | SB 117 |
| 20-1-401 | amended | Ch. 423 | HB 183 |
| 20-1-402 | amended | Ch. 423 | HB 183 |
| 20-1-403 | repealed | Ch. 423 | HB 183 |
| 20-1-404 | amended | Ch. 423 | HB 183 |
| 20-1-406 | repealed | Ch. 423 | HB 183 |
| 20-1-407 | amended | Ch. 423 | HB 183 |
| 20-3-106 | amended | Ch. 219 | HB 560 |
| | amended | Ch. 311 | HB 28 |
| | amended | Ch. 388 | SB 28 |
| | amended | Ch. 430 | SB 71 |

HeinOnline -- 1997 vol. III 3760 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 20-3-107 | amended | Ch. 438 | HB 49 |
| 20-3-108 | amended | Ch. 422 | HB 166 |
| 20-3-205 | amended | Ch. 22 | SB 70 |
| 20-3-206 | amended | Ch. 219 | HB 560 |
| 20-3-209 | amended | Ch. 22 | SB 70 |
| 20-3-210 | amended | Ch. 438 | HB 49 |
| 20-3-302 | amended | Ch. 219 | HB 560 |
| 20-3-312 | amended | Ch. 219 | HB 560 |
| 20-3-322 | amended | Ch. 211 | SB 235 |
| 20-3-324 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 311 | HB 28 |
| 20-3-342 | amended | Ch. 219 | HB 560 |
| 20-3-343 | amended | Ch. 219 | HB 560 |
| 20-3-351 | amended | Ch. 219 | HB 560 |
| 20-3-352 | amended | Ch. 219 | HB 560 |
| 20-3-355 | amended | Ch. 219 | HB 560 |
| 20-3-356 | amended | Ch. 219 | HB 560 |
| 20-4-203 | amended | Ch. 259 | SB 198 |
| | amended | Ch. 438 | HB 49 |
| 20-4-204 | amended | Ch. 438 | HB 49 |
| 20-4-205 | amended | Ch. 438 | HB 49 |
| 20-4-206 | amended | Ch. 438 | HB 49 |
| 20-4-207 | amended | Ch. 438 | HB 49 |
| 20-4-208 | amended | Ch. 438 | HB 49 |
| 20-4-301 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 320 | HB 77 |
| 20-5-316 | amended | Ch. 22 | SB 70 |
| | repealed | Ch. 529 | HB 104 |
| 20-5-321 | amended | Ch. 529 | HB 104 |
| | amended | Ch. 550 | SB 48 |
| 20-5-323 | amended | Ch. 529 | HB 104 |
| 20-5-324 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 389 | SB 95 |
| | amended | Ch. 529 | HB 104 |
| 20-5-411 | renumbered 20-1-220 | | |
| 20-6-101 | amended | Ch. 219 | HB 560 |
| 20-6-104 | amended | Ch. 219 | HB 560 |
| 20-6-209 | amended | Ch. 430 | SB 71 |
| 20-6-213 | amended | Ch. 403 | HB 491 |
| 20-6-216 | repealed | Ch. 219 | HB 560 |
| 20-6-217 | repealed | Ch. 219 | HB 560 |
| 20-6-303 | repealed | Ch. 219 | HB 560 |
| 20-6-304 | repealed | Ch. 219 | HB 560 |
| 20-6-311 | repealed | Ch. 219 | HB 560 |
| 20-6-312 | amended | Ch. 219 | HB 560 |
| 20-6-313 | amended | Ch. 219 | HB 560 |
| 20-6-314 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 403 | HB 491 |
| 20-6-320 | amended | Ch. 403 | HB 491 |
| 20-6-322 | enacted | Ch. 403 | HB 491 |
| 20-6-325 | repealed | Ch. 219 | HB 560 |
| 20-6-415 | repealed | Ch. 219 | HB 560 |
| 20-6-501 | amended | Ch. 219 | HB 560 |
| 20-6-604 | amended | Ch. 144 | HB 501 |
| 20-6-609 | amended | Ch. 22 | SB 70 |
| 20-6-621 | amended | Ch. 79 | SB 131 |
| 20-6-631 | amended | Ch. 153 | SB 370 |

HeinOnline -- 1997 vol. III 3761 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 20-6-633 | amended | Ch. 153 | SB 370 |
| 20-6-701 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 95 | HB 206 |
| 20-6-702 | amended | Ch. 22 | SB 70 |
| 20-6-703 | amended | Ch. 403 | HB 491 |
| 20-6-704 | amended | Ch. 95 | HB 206 |
| 20-7-132 | enacted | Ch. 138 | HB 314 |
| 20-7-133 | enacted | Ch. 320 | HB 77 |
| 20-7-401 | amended | Ch. 472 | HB 53 |
| 20-7-403 | amended | Ch. 529 | HB 104 |
| 20-7-420 | amended | Ch. 529 | HB 104 |
| 20-7-422 | amended | Ch. 529 | HB 104 |
| | amended | Ch. 550 | SB 48 |
| 20-7-504 | amended | Ch. 42 | SB 36 |
| 20-7-505 | repealed | Ch. 42 | SB 36 |
| 20-7-705 | amended | Ch. 211 | SB 235 |
| | amended | Ch. 430 | SB 71 |
| 20-7-714 | amended | Ch. 264 | SB 285 |
| 20-7-1101 | repealed | Ch. 423 | HB 183 |
| 20-8-111 | amended | Ch. 422 | HB 166 |
| 20-9-113 | repealed | Ch. 211 | SB 235 |
| 20-9-114 | repealed | Ch. 211 | SB 235 |
| 20-9-115 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 42 | SB 36 |
| | amended | Ch. 211 | SB 235 |
| 20-9-121 | amended | Ch. 211 | SB 235 |
| 20-9-123 | repealed | Ch. 211 | SB 235 |
| 20-9-131 | amended | Ch. 211 | SB 235 |
| 20-9-132 | amended | Ch. 211 | SB 235 |
| 20-9-141 | amended | Ch. 389 | SB 95 |
| | amended | Ch. 496 | SB 57 |
| 20-9-143 | amended | Ch. 22 | SB 70 |
| 20-9-161 | amended | Ch. 22 | SB 70 |
| 20-9-165 | amended | Ch. 211 | SB 235 |
| 20-9-166 | amended | Ch. 22 | SB 70 |
| 20-9-212 | amended | Ch. 22 | SB 70 |
| 20-9-306 | amended | Ch. 437 | HB 47 |
| 20-9-311 | amended | Ch. 212 | SB 240 |
| | amended | Ch. 430 | SB 71 |
| 20-9-314 | amended | Ch. 22 | SB 70 |
| 20-9-331 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 496 | SB 57 |
| 20-9-332 | amended | Ch. 22 | SB 70 |
| 20-9-333 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 496 | SB 57 |
| 20-9-334 | amended | Ch. 22 | SB 70 |
| 20-9-335 | amended | Ch. 22 | SB 70 |
| 20-9-341 | amended | Ch. 42 | SB 36 |
| 20-9-347 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 42 | SB 36 |
| 20-9-353 | amended | Ch. 211 | SB 235 |
| 20-9-360 | amended | Ch. 422 | HB 166 |
| | amended | Ch. 496 | SB 57 |
| 20-9-361 | amended | Ch. 422 | HB 166 |
| 20-9-375 | enacted | Ch. 437 | HB 47 |
| 20-9-402 | amended | Ch. 219 | HB 560 |
| 20-9-404 | amended | Ch. 397 | HB 263 |

HeinOnline -- 1997 vol. III 3762 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 20-9-405 | amended | Ch. 397 | HB 263 |
| 20-9-426 | amended | Ch. 144 | HB 501 |
| 20-9-435 | amended | Ch. 219 | HB 560 |
| 20-9-438 | amended | Ch. 211 | SB 235 |
| 20-9-451 | repealed | Ch. 219 | HB 560 |
| 20-9-452 | repealed | Ch. 219 | HB 560 |
| 20-9-453 | repealed | Ch. 219 | HB 560 |
| 20-9-454 | repealed | Ch. 219 | HB 560 |
| 20-9-455 | repealed | Ch. 219 | HB 560 |
| 20-9-456 | repealed | Ch. 219 | HB 560 |
| 20-9-466 | amended | Ch. 42 | SB 36 |
| 20-9-471 | amended | Ch. 23 | HB 25 |
| | amended | Ch. 499 | SB 207 |
| 20-9-501 | amended | Ch. 211 | SB 235 |
| | amended | Ch. 496 | SB 57 |
| 20-9-503 | amended | Ch. 23 | HB 25 |
| | amended | Ch. 211 | SB 235 |
| 20-9-507 | amended | Ch. 22 | SB 70 |
| 20-9-509 | amended | Ch. 22 | SB 70 |
| 20-9-514 | amended | Ch. 22 | SB 70 |
| 20-9-533 | amended | Ch. 22 | SB 70 |
| 20-9-534 | amended | Ch. 22 | SB 70 |
| 20-9-801 | amended | Ch. 430 | SB 71 |
| 20-9-802 | amended | Ch. 430 | SB 71 |
| 20-9-803 | repealed | Ch. 430 | SB 71 |
| 20-9-804 | repealed | Ch. 430 | SB 71 |
| 20-9-806 | amended | Ch. 430 | SB 71 |
| 20-10-104 | amended | Ch. 427 | HB 523 |
| 20-10-124 | amended | Ch. 22 | SB 70 |
| 20-10-126 | amended | Ch. 427 | HB 523 |
| 20-10-143 | amended | Ch. 211 | SB 235 |
| 20-10-144 | amended | Ch. 22 | SB 70 |
| | amended | Ch. 211 | SB 235 |
| | amended | Ch. 496 | SB 57 |
| 20-10-146 | amended | Ch. 496 | SB 57 |
| 20-10-147 | amended | Ch. 238 | SB 244 |
| 20-15-312 | amended | Ch. 243 | SB 313 |
| 20-15-326 | amended | Ch. 42 | SB 36 |
| 20-15-403 | amended | Ch. 310 | SB 349 |
| | amended | Ch. 522 | HB 407 |
| 20-15-404 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 219 | HB 560 |
| 20-20-204 | amended | Ch. 144 | HB 501 |
| 20-20-401 | amended | Ch. 144 | HB 501 |
| 20-25-302 | amended | Ch. 243 | SB 313 |
| 20-25-307 | amended | Ch. 425 | HB 344 |
| 20-25-421 | amended | Ch. 41 | SB 10 |
| | amended | Ch. 418 | HB 17 |
| 20-25-428 | enacted | Ch. 362 | SB 84 |
| 20-25-501 | amended | Ch. 42 | SB 36 |
| 20-25-503 | amended | Ch. 243 | SB 313 |
| 20-25-707 | amended | Ch. 472 | HB 53 |
| 20-25-901 | enacted | Ch. 540 | HB 536 |
| 20-25-902 | enacted | Ch. 540 | HB 536 |
| 20-26-103 | amended | Ch. 243 | SB 313 |
| 20-26-1101 | amended | Ch. 243 | SB 313 |
| | amended | Ch. 446 | HB 180 |

HeinOnline -- 1997 vol. III 3763 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 20-26-1102 | amended | Ch. 243 | SB 313 |
| 20-26-1103 | amended | Ch. 243 | SB 313 |
| 20-26-1104 | amended | Ch. 243 | SB 313 |
| 20-26-1105 | amended | Ch. 243 | SB 313 |
| 20-26-1106 | amended | Ch. 243 | SB 313 |
| 20-26-1107 | amended | Ch. 243 | SB 313 |
| 20-26-1115 | enacted | Ch. 446 | HB 180 |
| 20-26-1116 | enacted | Ch. 446 | HB 180 |
| 20-26-1117 | enacted and amended | Ch. 446 | HB 180 |
| 20-26-1118 | enacted | Ch. 446 | HB 180 |
| 20-26-1119 | enacted | Ch. 446 | HB 180 |
| 20-26-1120 | enacted | Ch. 446 | HB 180 |
| 20-26-1121 | enacted | Ch. 446 | HB 180 |
| 20-26-1503 | amended | Ch. 89 | SB 126 |
| 20-30-101 | repealed | Ch. 364 | HB 58 |
| 20-30-102 | repealed | Ch. 364 | HB 58 |
| 20-30-103 | repealed | Ch. 364 | HB 58 |
| 20-30-104 | repealed | Ch. 364 | HB 58 |
| 20-30-105 | repealed | Ch. 364 | HB 58 |
| 20-30-201 | repealed | Ch. 364 | HB 58 |
| 20-30-202 | repealed | Ch. 364 | HB 58 |
| 20-30-203 | repealed | Ch. 364 | HB 58 |
| 20-30-301 | repealed | Ch. 364 | HB 58 |
| 20-30-302 | repealed | Ch. 364 | HB 58 |
| 20-30-303 | repealed | Ch. 364 | HB 58 |
| 20-30-304 | repealed | Ch. 364 | HB 58 |
| 20-30-305 | repealed | Ch. 364 | HB 58 |
| 20-30-306 | repealed | Ch. 364 | HB 58 |
| 20-30-401 | repealed | Ch. 364 | HB 58 |
| 20-30-402 | repealed | Ch. 364 | HB 58 |
| 20-30-403 | repealed | Ch. 364 | HB 58 |
| 20-30-404 | repealed | Ch. 364 | HB 58 |
| 20-30-405 | repealed | Ch. 364 | HB 58 |
| 20-32-103 | amended | Ch. 243 | SB 313 |
| 22-1-103 | amended | Ch. 472 | HB 53 |
| 22-1-412 | amended | Ch. 42 | SB 36 |
| 22-3-429 | amended | Ch. 42 | SB 36 |
| 22-3-603 | amended | Ch. 42 | SB 36 |
| 22-3-1001 | enacted | Ch. 469 | HB 5 |
| 22-3-1002 | enacted | Ch. 469 | HB 5 |
| 22-3-1003 | enacted | Ch. 469 | HB 5 |
| 22-3-1004 | enacted | Ch. 469 | HB 5 |
| 23-1-303 | amended | Ch. 486 | HB 371 |
| 23-2-517 | amended | Ch. 402 | HB 444 |
| 23-2-523 | amended | Ch. 42 | SB 36 |
| 23-2-536 | amended | Ch. 42 | SB 36 |
| 23-2-615.1 | amended | Ch. 402 | HB 444 |
| 23-2-622 | amended | Ch. 42 | SB 36 |
| 23-2-701 | repealed | Ch. 346 | HB 594 |
| 23-2-702 | amended | Ch. 346 | HB 594 |
| 23-2-705 | repealed | Ch. 346 | HB 594 |
| 23-2-711 | repealed | Ch. 346 | HB 594 |
| 23-2-712 | repealed | Ch. 346 | HB 594 |
| 23-2-713 | repealed | Ch. 346 | HB 594 |
| 23-2-714 | repealed | Ch. 346 | HB 594 |
| 23-2-715 | repealed | Ch. 346 | HB 594 |
| 23-2-716 | repealed | Ch. 346 | HB 594 |

HeinOnline -- 1997 vol. III 3764 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 23-2-717 | amended | Ch. 42 | SB 36 |
| | repealed | Ch. 346 | HB 594 |
| 23-2-718 | repealed | Ch. 346 | HB 594 |
| 23-2-721 | repealed | Ch. 346 | HB 594 |
| 23-2-722 | repealed | Ch. 346 | HB 594 |
| 23-2-723 | repealed | Ch. 346 | HB 594 |
| 23-2-724 | repealed | Ch. 346 | HB 594 |
| 23-2-725 | repealed | Ch. 346 | HB 594 |
| 23-2-732 | repealed | Ch. 346 | HB 594 |
| 23-2-734 | amended | Ch. 346 | HB 594 |
| 23-2-736 | amended | Ch. 42 | SB 36 |
| 23-2-803 | amended | Ch. 402 | HB 444 |
| 23-3-501 | amended | Ch. 492 | HB 598 |
| 23-4-101 | amended | Ch. 18 | SB 65 |
| 23-4-102 | amended | Ch. 18 | SB 65 |
| 23-4-105 | amended | Ch. 18 | SB 65 |
| 23-4-106 | amended | Ch. 18 | SB 65 |
| 23-4-202 | amended | Ch. 18 | SB 65 |
| 23-4-204 | amended | Ch. 18 | SB 65 |
| 23-4-302 | amended | Ch. 18 | SB 65 |
| 23-4-304 | amended | Ch. 18 | SB 65 |
| 23-5-112 | amended | Ch. 13 | HB 16 |
| | amended | Ch. 252 | HB 541 |
| 23-5-119 | enacted | Ch. 465 | SB 354 |
| 23-5-152 | amended | Ch. 354 | SB 368 |
| 23-5-156 | amended | Ch. 252 | HB 541 |
| 23-5-157 | amended | Ch. 252 | HB 541 |
| 23-5-158 | amended | Ch. 550 | SB 48 |
| 23-5-306 | amended | Ch. 465 | SB 354 |
| 23-5-406 | amended | Ch. 42 | SB 36 |
| 23-5-502 | amended | Ch. 13 | HB 16 |
| | amended | Ch. 465 | SB 354 |
| 23-5-503 | amended | Ch. 13 | HB 16 |
| 23-5-513 | enacted | Ch. 13 | HB 16 |
| 23-5-603 | amended | Ch. 465 | SB 354 |
| 23-5-611 | amended | Ch. 465 | SB 354 |
| 23-5-612 | amended | Ch. 354 | SB 368 |
| 23-5-614 | amended | Ch. 354 | SB 368 |
| 23-5-631 | amended | Ch. 354 | SB 368 |
| 23-7-103 | amended | Ch. 42 | SB 36 |
| 23-7-211 | amended | Ch. 42 | SB 36 |
| 23-7-301 | amended | Ch. 42 | SB 36 |
| 23-7-402 | amended | Ch. 494 | HB 615 |
| 25-1-201 | amended | Ch. 287 | HB 170 |
| | amended | Ch. 343 | HB 231 |
| | amended | Ch. 480 | HB 163 |
| | amended | Ch. 484 | HB 343 |
| 25-1-202 | amended | Ch. 384 | SB 280 |
| 25-2-118 | amended | Ch. 352 | SB 314 |
| 25-2-122 | amended | Ch. 352 | SB 314 |
| 25-3-105 | enacted | Ch. 69 | HB 321 |
| 25-9-411 | amended | Ch. 429 | HB 572 |
| 25-9-506 | amended | Ch. 382 | SB 83 |
| 25-9-603 | amended | Ch. 382 | SB 83 |
| 25-9-609 | amended | Ch. 382 | SB 83 |
| 25-9-801 | enacted | Ch. 382 | SB 83 |
| 25-9-802 | enacted | Ch. 382 | SB 83 |

HeinOnline -- 1997 vol. III 3765 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 25-9-803 | enacted | Ch. 382 | SB 83 |
| 25-9-804 | enacted | Ch. 382 | SB 83 |
| 25-9-805 | enacted | Ch. 382 | SB 83 |
| 25-9-806 | enacted | Ch. 382 | SB 83 |
| 25-9-807 | enacted | Ch. 382 | SB 83 |
| 25-9-808 | enacted | Ch. 382 | SB 83 |
| 25-9-809 | enacted | Ch. 382 | SB 83 |
| 25-10-109 | enacted | Ch. 475 | HB 122 |
| 25-10-206 | amended | Ch. 42 | SB 36 |
| 25-10-404 | amended | Ch. 475 | HB 122 |
| 25-13-608 | amended | Ch. 552 | SB 374 |
| 25-31-602 | amended | Ch. 490 | HB 502 |
| 25-34-101 | repealed | Ch. 241 | SB 277 |
| 25-34-102 | repealed | Ch. 241 | SB 277 |
| 25-34-103 | repealed | Ch. 241 | SB 277 |
| 25-34-104 | repealed | Ch. 241 | SB 277 |
| 25-34-105 | amended | Ch. 135 | HB 243 |
| | repealed | Ch. 241 | SB 277 |
| 25-34-106 | repealed | Ch. 241 | SB 277 |
| 25-34-201 | repealed | Ch. 241 | SB 277 |
| 25-34-202 | repealed | Ch. 241 | SB 277 |
| 25-34-203 | repealed | Ch. 241 | SB 277 |
| 25-34-204 | repealed | Ch. 241 | SB 277 |
| 25-34-205 | repealed | Ch. 241 | SB 277 |
| 25-34-206 | repealed | Ch. 241 | SB 277 |
| 25-34-207 | repealed | Ch. 241 | SB 277 |
| 25-34-208 | repealed | Ch. 241 | SB 277 |
| 25-34-301 | repealed | Ch. 241 | SB 277 |
| 25-34-302 | repealed | Ch. 241 | SB 277 |
| 25-34-303 | repealed | Ch. 241 | SB 277 |
| 25-34-401 | repealed | Ch. 241 | SB 277 |
| 25-34-402 | repealed | Ch. 241 | SB 277 |
| 25-34-403 | repealed | Ch. 241 | SB 277 |
| 25-34-404 | repealed | Ch. 241 | SB 277 |
| 25-35-505 | amended | Ch. 135 | HB 243 |
| 26-1-812 | enacted | Ch. 484 | HB 343 |
| 27-1-221 | amended | Ch. 328 | SB 212 |
| 27-1-306 | amended | Ch. 71 | SB 9 |
| 27-1-307 | amended | Ch. 42 | SB 36 |
| 27-1-702 | amended | Ch. 293 | HB 571 |
| | amended | Ch. 429 | HB 572 |
| 27-1-703 | amended | Ch. 293 | HB 571 |
| | amended | Ch. 429 | HB 572 |
| 27-1-704 | enacted | Ch. 293 | HB 571 |
| 27-1-705 | enacted | Ch. 429 | HB 572 |
| 27-1-706 | enacted | Ch. 429 | HB 572 |
| 27-1-709 | enacted | Ch. 400 | HB 352 |
| 27-1-718 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 135 | HB 243 |
| 27-1-719 | amended | Ch. 429 | HB 572 |
| 27-1-736 | enacted | Ch. 359 | HB 337 |
| 27-2-401 | amended | Ch. 490 | HB 502 |
| 27-5-114 | amended | Ch. 19 | SB 135 |
| 27-6-103 | amended | Ch. 133 | HB 396 |
| 27-6-206 | amended | Ch. 133 | HB 396 |
| | amended | Ch. 492 | HB 598 |
| 27-6-302 | amended | Ch. 133 | HB 396 |

HeinOnline -- 1997 vol. III 3766 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 27-6-306 | amended | Ch. 133 | HB 396 |
| 27-6-308 | amended | Ch. 133 | HB 396 |
| 27-6-401 | amended | Ch. 133 | HB 396 |
| 27-8-204 | amended | Ch. 490 | HB 502 |
| 27-31-201 | amended | Ch. 169 | SB 160 |
| 28-1-301 | amended | Ch. 429 | HB 572 |
| 28-11-311 | amended | Ch. 429 | HB 572 |
| 30-1-105 | amended | Ch. 536 | HB 426 |
| 30-1-206 | amended | Ch. 536 | HB 426 |
| 30-2-512 | amended | Ch. 536 | HB 426 |
| 30-3-124 | amended | Ch. 536 | HB 426 |
| 30-4-104 | amended | Ch. 536 | HB 426 |
| 30-4-213 | amended | Ch. 42 | SB 36 |
| 30-5-102 | repealed | Ch. 536 | HB 426 |
| 30-5-103 | repealed | Ch. 536 | HB 426 |
| 30-5-104 | repealed | Ch. 536 | HB 426 |
| 30-5-105 | repealed | Ch. 536 | HB 426 |
| 30-5-106 | repealed | Ch. 536 | HB 426 |
| 30-5-107 | repealed | Ch. 536 | HB 426 |
| 30-5-108 | repealed | Ch. 536 | HB 426 |
| 30-5-109 | repealed | Ch. 536 | HB 426 |
| 30-5-110 | repealed | Ch. 536 | HB 426 |
| 30-5-111 | repealed | Ch. 536 | HB 426 |
| 30-5-112 | repealed | Ch. 536 | HB 426 |
| 30-5-113 | repealed | Ch. 536 | HB 426 |
| 30-5-114 | repealed | Ch. 536 | HB 426 |
| 30-5-115 | repealed | Ch. 536 | HB 426 |
| 30-5-116 | repealed | Ch. 536 | HB 426 |
| 30-5-117 | repealed | Ch. 536 | HB 426 |
| 30-5-122 | enacted | Ch. 536 | HB 426 |
| 30-5-123 | enacted | Ch. 536 | HB 426 |
| 30-5-124 | enacted | Ch. 536 | HB 426 |
| 30-5-125 | enacted | Ch. 536 | HB 426 |
| 30-5-126 | enacted | Ch. 536 | HB 426 |
| 30-5-127 | enacted | Ch. 536 | HB 426 |
| 30-5-128 | enacted | Ch. 536 | HB 426 |
| 30-5-129 | enacted | Ch. 536 | HB 426 |
| 30-5-130 | enacted | Ch. 536 | HB 426 |
| 30-5-131 | enacted | Ch. 536 | HB 426 |
| 30-5-132 | enacted | Ch. 536 | HB 426 |
| 30-5-133 | enacted | Ch. 536 | HB 426 |
| 30-5-134 | enacted | Ch. 536 | HB 426 |
| 30-5-135 | enacted | Ch. 536 | HB 426 |
| 30-5-136 | enacted | Ch. 536 | HB 426 |
| 30-5-137 | enacted | Ch. 536 | HB 426 |
| 30-8-102 | repealed | Ch. 536 | HB 426 |
| 30-8-103 | repealed | Ch. 536 | HB 426 |
| 30-8-104 | repealed | Ch. 536 | HB 426 |
| 30-8-105 | repealed | Ch. 536 | HB 426 |
| 30-8-106 | repealed | Ch. 536 | HB 426 |
| 30-8-107 | repealed | Ch. 536 | HB 426 |
| 30-8-108 | repealed | Ch. 536 | HB 426 |
| 30-8-112 | enacted | Ch. 536 | HB 426 |
| 30-8-113 | enacted | Ch. 536 | HB 426 |
| 30-8-114 | enacted | Ch. 536 | HB 426 |
| 30-8-115 | enacted | Ch. 536 | HB 426 |
| 30-8-116 | enacted | Ch. 536 | HB 426 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 30-8-117 | enacted | Ch. 536 | HB 426 |
| 30-8-118 | enacted | Ch. 536 | HB 426 |
| 30-8-119 | enacted | Ch. 536 | HB 426 |
| 30-8-120 | enacted | Ch. 536 | HB 426 |
| 30-8-121 | enacted | Ch. 536 | HB 426 |
| 30-8-122 | enacted | Ch. 536 | HB 426 |
| 30-8-123 | enacted | Ch. 536 | HB 426 |
| 30-8-124 | enacted | Ch. 536 | HB 426 |
| 30-8-125 | enacted | Ch. 536 | HB 426 |
| 30-8-126 | enacted | Ch. 536 | HB 426 |
| 30-8-201 | repealed | Ch. 536 | HB 426 |
| 30-8-202 | repealed | Ch. 536 | HB 426 |
| 30-8-203 | repealed | Ch. 536 | HB 426 |
| 30-8-204 | repealed | Ch. 536 | HB 426 |
| 30-8-205 | repealed | Ch. 536 | HB 426 |
| 30-8-206 | repealed | Ch. 536 | HB 426 |
| 30-8-207 | repealed | Ch. 536 | HB 426 |
| 30-8-208 | repealed | Ch. 536 | HB 426 |
| 30-8-211 | enacted | Ch. 536 | HB 426 |
| 30-8-212 | enacted | Ch. 536 | HB 426 |
| 30-8-213 | enacted | Ch. 536 | HB 426 |
| 30-8-214 | enacted | Ch. 536 | HB 426 |
| 30-8-215 | enacted | Ch. 536 | HB 426 |
| 30-8-216 | enacted | Ch. 536 | HB 426 |
| 30-8-217 | enacted | Ch. 536 | HB 426 |
| 30-8-218 | enacted | Ch. 536 | HB 426 |
| 30-8-219 | enacted | Ch. 536 | HB 426 |
| 30-8-220 | enacted | Ch. 536 | HB 426 |
| 30-8-301 | repealed | Ch. 536 | HB 426 |
| 30-8-302 | repealed | Ch. 536 | HB 426 |
| 30-8-303 | repealed | Ch. 536 | HB 426 |
| 30-8-304 | repealed | Ch. 536 | HB 426 |
| 30-8-305 | repealed | Ch. 536 | HB 426 |
| 30-8-306 | repealed | Ch. 536 | HB 426 |
| 30-8-307 | repealed | Ch. 536 | HB 426 |
| 30-8-308 | repealed | Ch. 536 | HB 426 |
| 30-8-309 | repealed | Ch. 536 | HB 426 |
| 30-8-310 | repealed | Ch. 536 | HB 426 |
| 30-8-311 | repealed | Ch. 536 | HB 426 |
| 30-8-312 | repealed | Ch. 536 | HB 426 |
| 30-8-313 | repealed | Ch. 536 | HB 426 |
| 30-8-314 | repealed | Ch. 536 | HB 426 |
| 30-8-315 | repealed | Ch. 536 | HB 426 |
| 30-8-316 | repealed | Ch. 536 | HB 426 |
| 30-8-317 | repealed | Ch. 536 | HB 426 |
| 30-8-318 | repealed | Ch. 536 | HB 426 |
| 30-8-319 | repealed | Ch. 536 | HB 426 |
| 30-8-320 | repealed | Ch. 536 | HB 426 |
| 30-8-321 | repealed | Ch. 536 | HB 426 |
| 30-8-331 | enacted | Ch. 536 | HB 426 |
| 30-8-332 | enacted | Ch. 536 | HB 426 |
| 30-8-333 | enacted | Ch. 536 | HB 426 |
| 30-8-334 | enacted | Ch. 536 | HB 426 |
| 30-8-335 | enacted | Ch. 536 | HB 426 |
| 30-8-336 | enacted | Ch. 536 | HB 426 |
| 30-8-337 | enacted | Ch. 536 | HB 426 |
| 30-8-401 | repealed | Ch. 536 | HB 426 |

HeinOnline -- 1997 vol. III 3768 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 30-8-402 | repealed | Ch. 536 | HB 426 |
| 30-8-403 | repealed | Ch. 536 | HB 426 |
| 30-8-404 | repealed | Ch. 536 | HB 426 |
| 30-8-405 | repealed | Ch. 536 | HB 426 |
| 30-8-406 | repealed | Ch. 536 | HB 426 |
| 30-8-407 | repealed | Ch. 536 | HB 426 |
| 30-8-408 | repealed | Ch. 536 | HB 426 |
| 30-8-411 | enacted | Ch. 536 | HB 426 |
| 30-8-412 | enacted | Ch. 536 | HB 426 |
| 30-8-413 | enacted | Ch. 536 | HB 426 |
| 30-8-414 | enacted | Ch. 536 | HB 426 |
| 30-8-415 | enacted | Ch. 536 | HB 426 |
| 30-8-416 | enacted | Ch. 536 | HB 426 |
| 30-8-417 | enacted | Ch. 536 | HB 426 |
| 30-8-501 | enacted | Ch. 536 | HB 426 |
| 30-8-502 | enacted | Ch. 536 | HB 426 |
| 30-8-503 | enacted | Ch. 536 | HB 426 |
| 30-8-504 | enacted | Ch. 536 | HB 426 |
| 30-8-505 | enacted | Ch. 536 | HB 426 |
| 30-8-506 | enacted | Ch. 536 | HB 426 |
| 30-8-507 | enacted | Ch. 536 | HB 426 |
| 30-8-508 | enacted | Ch. 536 | HB 426 |
| 30-8-509 | enacted | Ch. 536 | HB 426 |
| 30-8-510 | enacted | Ch. 536 | HB 426 |
| 30-8-511 | enacted | Ch. 536 | HB 426 |
| 30-9-103 | amended | Ch. 536 | HB 426 |
| 30-9-104 | amended | Ch. 536 | HB 426 |
| 30-9-105 | amended | Ch. 536 | HB 426 |
| 30-9-106 | amended | Ch. 536 | HB 426 |
| 30-9-115 | enacted | Ch. 536 | HB 426 |
| 30-9-116 | enacted | Ch. 536 | HB 426 |
| 30-9-203 | amended | Ch. 536 | HB 426 |
| 30-9-301 | amended | Ch. 536 | HB 426 |
| 30-9-302 | amended | Ch. 536 | HB 426 |
| 30-9-303 | amended | Ch. 536 | HB 426 |
| 30-9-304 | amended | Ch. 536 | HB 426 |
| 30-9-305 | amended | Ch. 536 | HB 426 |
| 30-9-306 | amended | Ch. 536 | HB 426 |
| 30-9-309 | amended | Ch. 536 | HB 426 |
| 30-9-312 | amended | Ch. 536 | HB 426 |
| 30-9-403 | amended | Ch. 290 | HB 422 |
| 30-9-431 | amended | Ch. 290 | HB 422 |
| 30-10-103 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 533 | HB 287 |
| 30-10-104 | amended | Ch. 533 | HB 287 |
| 30-10-105 | amended | Ch. 395 | HB 185 |
| 30-10-107 | amended | Ch. 533 | HB 287 |
| 30-10-110 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 533 | HB 287 |
| 30-10-201 | amended | Ch. 533 | HB 287 |
| 30-10-202 | amended | Ch. 533 | HB 287 |
| 30-10-206 | amended | Ch. 533 | HB 287 |
| 30-10-207 | amended | Ch. 533 | HB 287 |
| 30-10-209 | amended | Ch. 533 | HB 287 |
| 30-10-211 | enacted | Ch. 533 | HB 287 |
| 30-10-301 | amended | Ch. 533 | HB 287 |
| 30-10-303 | amended | Ch. 533 | HB 287 |

HeinOnline -- 1997 vol. III 3769 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 30-10-309 | enacted | Ch. 390 | SB 270 |
| 30-10-310 | enacted | Ch. 390 | SB 270 |
| 30-10-315 | enacted | Ch. 468 | SB 382 |
| 30-10-316 | enacted | Ch. 468 | SB 382 |
| 30-10-317 | enacted | Ch. 468 | SB 382 |
| 30-10-318 | enacted | Ch. 468 | SB 382 |
| 30-10-319 | enacted | Ch. 468 | SB 382 |
| 30-10-320 | enacted | Ch. 468 | SB 382 |
| 30-10-321 | enacted | Ch. 468 | SB 382 |
| 30-10-322 | enacted | Ch. 468 | SB 382 |
| 30-10-323 | enacted | Ch. 468 | SB 382 |
| 30-10-401 | repealed | Ch. 536 | HB 426 |
| 30-10-402 | repealed | Ch. 536 | HB 426 |
| 30-10-403 | repealed | Ch. 536 | HB 426 |
| 30-10-404 | repealed | Ch. 536 | HB 426 |
| 30-10-405 | repealed | Ch. 536 | HB 426 |
| 30-10-406 | repealed | Ch. 536 | HB 426 |
| 30-10-407 | repealed | Ch. 536 | HB 426 |
| 30-10-408 | repealed | Ch. 536 | HB 426 |
| 30-10-409 | repealed | Ch. 536 | HB 426 |
| 30-10-410 | repealed | Ch. 536 | HB 426 |
| 30-10-411 | repealed | Ch. 536 | HB 426 |
| 30-10-901 | enacted | Ch. 348 | SB 79 |
| 30-10-902 | enacted | Ch. 348 | SB 79 |
| 30-10-903 | enacted | Ch. 348 | SB 79 |
| 30-10-904 | enacted | Ch. 348 | SB 79 |
| 30-10-905 | enacted | Ch. 348 | SB 79 |
| 30-10-906 | enacted | Ch. 348 | SB 79 |
| 30-10-907 | enacted | Ch. 348 | SB 79 |
| 30-10-908 | enacted | Ch. 348 | SB 79 |
| 30-10-909 | enacted | Ch. 348 | SB 79 |
| 30-10-910 | enacted | Ch. 348 | SB 79 |
| 30-10-911 | enacted | Ch. 348 | SB 79 |
| 30-16-912 | enacted | Ch. 348 | SB 79 |
| 30-10-913 | enacted | Ch. 348 | SB 79 |
| 30-10-914 | enacted | Ch. 348 | SB 79 |
| 30-10-915 | enacted | Ch. 348 | SB 79 |
| 30-12-203 | amended | Ch. 366 | HB 391 |
| 30-12-1001 | repealed | Ch. 24 | HB 35 |
| 30-12-1062 | repealed | Ch. 24 | HB 35 |
| 30-12-1003 | repealed | Ch. 24 | HB 35 |
| 30-12-1004 | repealed | Ch. 24 | HB 35 |
| 30-12-1005 | repealed | Ch. 24 | HB 35 |
| 30-12-1006 | repealed | Ch. 24 | HB 35 |
| 30-13-203 | amended | Ch. 366 | HB 391 |
| 30-13-206 | amended | Ch. 366 | HB 391 |
| 30-13-210 | amended | Ch. 366 | HB 391 |
| 30-13-217 | amended | Ch. 366 | HB 391 |
| 30-13-221 | amended | Ch. 290 | HB 422 |
| 30-13-341 | amended | Ch. 290 | HB 422 |
| 30-14-225 | amended | Ch. 207 | HB 478 |
| 30-16-103 | amended | Ch. 366 | HB 391 |
| 30-16-104 | enacted | Ch. 366 | HB 391 |
| 30-16-301 | amended | Ch. 366 | HB 391 |
| 30-16-302 | amended | Ch. 366 | HB 391 |
| 31-1-115 | enacted | Ch. 21 | SB 58 |
| 31-1-235 | amended | Ch. 266 | SB 275 |

HeinOnline -- 1997 vol. III 3770 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 31-1-241 | amended | Ch. 267 | SB 276 |
| 32-1-101 | amended | Ch. 382 | SB 83 |
| 32-1-102 | amended | Ch. 382 | SB 83 |
| 32-1-104 | amended | Ch. 117 | HB 262 |
| 32-1-109 | amended | Ch. 117 | HB 262 |
| 32-1-202 | amended | Ch. 117 | HB 262 |
| | amended | Ch. 382 | SB 83 |
| 32-1-203 | amended | Ch. 117 | HB 262 |
| 32-1-204 | amended | Ch. 117 | HB 262 |
| 32-1-213 | amended | Ch. 117 | HB 262 |
| 32-1-218 | amended | Ch. 117 | HB 262 |
| 32-1-220 | amended | Ch. 148 | SB 104 |
| 32-1-301 | amended | Ch. 382 | SB 83 |
| 32-1-362 | amended | Ch. 117 | HB 262 |
| 32-1-370 | enacted | Ch. 117 | HB 262 |
| 32-1-371 | amended | Ch. 117 | HB 262 |
| 32-1-372 | amended | Ch. 117 | HB 262 |
| 32-1-376 | amended | Ch. 117 | HB 262 |
| 32-1-377 | amended | Ch. 117 | HB 262 |
| 32-1-381 | amended | Ch. 42 | SB 36 |
| 32-1-383 | amended | Ch. 117 | HB 262 |
| 32-1-384 | amended | Ch. 117 | HB 262 |
| 32-1-423 | amended | Ch. 117 | HB 262 |
| 32-1-426 | amended | Ch. 536 | HB 426 |
| 32-1-446 | amended | Ch. 382 | SB 83 |
| 32-1-453 | amended | Ch. 42 | SB 36 |
| 32-1-461 | amended | Ch. 382 | SB 83 |
| 32-1-462 | amended | Ch. 382 | SB 83 |
| 32-1-464 | amended | Ch. 382 | SB 83 |
| 32-1-468 | amended | Ch. 382 | SB 83 |
| 32-1-473 | amended | Ch. 382 | SB 83 |
| 32-1-491 | amended | Ch. 382 | SB 83 |
| 32-1-492 | amended | Ch. 237 | SB 239 |
| | amended | Ch. 382 | SB 83 |
| 32-1-501 | amended | Ch. 382 | SB 83 |
| 32-1-537 | amended | Ch. 422 | HB 166 |
| 32-1-1005 | amended | Ch. 42 | SB 36 |
| 32-3-502 | amended | Ch. 365 | HB 238 |
| 32-3-608 | amended | Ch. 365 | HB 238 |
| 32-3-803 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 365 | HB 238 |
| 32-3-804 | amended | Ch. 365 | HB 238 |
| 32-3-805 | amended | Ch. 365 | HB 238 |
| 32-3-807 | amended | Ch. 365 | HB 238 |
| 32-3-810 | enacted | Ch. 365 | HB 238 |
| 32-5-102 | amended | Ch. 374 | SB 379 |
| 32-5-103 | amended | Ch. 374 | SB 379 |
| 32-5-203 | amended | Ch. 374 | SB 379 |
| 32-5-302 | amended | Ch. 374 | SB 379 |
| 32-5-307 | amended | Ch. 374 | SB 379 |
| 32-5-503 | amended | Ch. 374 | SB 379 |
| 32-5-505 | amended | Ch. 374 | SB 379 |
| 32-6-102 | amended | Ch. 42 | SB 36 |
| 32-6-304 | repealed | Ch. 117 | HB 262 |
| 32-6-401 | repealed | Ch. 117 | HB 262 |
| 32-6-402 | repealed | Ch. 117 | HB 262 |
| 32-8-101 | enacted | Ch. 382 | SB 83 |

HeinOnline -- 1997 vol. III 3771 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 32-8-102 | enacted | Ch. 382 | SB 83 |
| 32-8-103 | enacted | Ch. 382 | SB 83 |
| 32-8-104 | enacted | Ch. 382 | SB 83 |
| 32-8-105 | enacted | Ch. 382 | SB 83 |
| 32-8-106 | enacted | Ch. 382 | SB 83 |
| 32-8-107 | enacted | Ch. 382 | SB 83 |
| 32-8-201 | enacted | Ch. 382 | SB 83 |
| 32-8-202 | enacted | Ch. 382 | SB 83 |
| 32-8-203 | enacted | Ch. 382 | SB 83 |
| 32-8-204 | enacted | Ch. 382 | SB 83 |
| 32-8-205 | enacted | Ch. 382 | SB 83 |
| 32-8-301 | enacted | Ch. 382 | SB 83 |
| 32-8-302 | enacted | Ch. 382 | SB 83 |
| 32-8-303 | enacted | Ch. 382 | SB 83 |
| 32-8-304 | enacted | Ch. 382 | SB 83 |
| 32-8-306 | enacted | Ch. 382 | SB 83 |
| 32-8-308 | enacted | Ch. 382 | SB 83 |
| 32-8-309 | enacted | Ch. 382 | SB 83 |
| 32-8-311 | enacted | Ch. 382 | SB 83 |
| 32-8-312 | enacted | Ch. 382 | SB 83 |
| 32-8-314 | enacted | Ch. 382 | SB 83 |
| 32-8-315 | enacted | Ch. 382 | SB 83 |
| 32-8-316 | enacted | Ch. 382 | SB 83 |
| 32-8-401 | enacted | Ch. 382 | SB 83 |
| 32-8-402 | enacted | Ch. 382 | SB 83 |
| 32-8-403 | enacted | Ch. 382 | SB 83 |
| 32-8-404 | enacted | Ch. 382 | SB 83 |
| 32-8-501 | enacted | Ch. 382 | SB 83 |
| 32-8-502 | enacted | Ch. 382 | SB 83 |
| 32-8-503 | enacted | Ch. 382 | SB 83 |
| 32-8-504 | enacted | Ch. 382 | SB 83 |
| 32-8-505 | enacted | Ch. 382 | SB 83 |
| 32-8-506 | enacted | Ch. 382 | SB 83 |
| 32-8-507 | enacted | Ch. 382 | SB 83 |
| 32-8-508 | enacted | Ch. 382 | SB 83 |
| 32-8-509 | enacted | Ch. 382 | SB 83 |
| 32-8-510 | enacted | Ch. 382 | SB 83 |
| 32-8-515 | enacted | Ch. 382 | SB 83 |
| 32-8-516 | enacted | Ch. 382 | SB 83 |
| 32-8-517 | enacted | Ch. 382 | SB 83 |
| 32-8-518 | enacted | Ch. 382 | SB 83 |
| 32-8-521 | enacted | Ch. 382 | SB 83 |
| 32-8-522 | enacted | Ch. 382 | SB 83 |
| 32-8-523 | enacted | Ch. 382 | SB 83 |
| 32-8-524 | enacted | Ch. 382 | SB 83 |
| 32-8-601 | enacted | Ch. 382 | SB 83 |
| 32-8-602 | enacted | Ch. 382 | SB 83 |
| 32-8-603 | enacted | Ch. 382 | SB 83 |
| 33-1-801 | enacted | Ch. 527 | HB 27 |
| 33-1-802 | enacted | Ch. 527 | HB 27 |
| 33-1-803 | enacted | Ch. 527 | HB 27 |
| 33-1-804 | enacted | Ch. 527 | HB 27 |
| 33-1-1205 | amended | Ch. 276 | SB 67 |
| | amended | Ch. 531 | HB 131 |
| 33-1-1301 | enacted | Ch. 390 | SB 270 |
| 33-1-1302 | enacted | Ch. 390 | SB 270 |
| 33-1-1303 | enacted | Ch. 390 | SB 270 |

HeinOnline -- 1997 vol. III 3772 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 33-2-119 | amended | Ch. 310 | SB 349 |
| 33-2-307 | amended | Ch. 531 | HB 131 |
| 33-2-317 | amended | Ch. 531 | HB 131 |
| 33-2-514 | amended | Ch. 531 | HB 131 |
| 33-2-515 | repealed | Ch. 531 | HB 131 |
| 33-2-517 | amended | Ch. 531 | HB 131 |
| 33-2-518 | enacted | Ch. 531 | HB 131 |
| 33-2-523 | amended | Ch. 42 | SB 36 |
| 33-2-536 | repealed | Ch. 531 | HB 131 |
| 33-2-537 | amended | Ch. 531 | HB 131 |
| 33-2-704 | amended | Ch. 531 | HB 131 |
| 33-2-708 | amended | Ch. 70 | HB 358 |
| 33-2-721 | repealed | Ch. 531 | HB 131 |
| 33-2-722 | repealed | Ch. 531 | HB 131 |
| 33-2-723 | repealed | Ch. 531 | HB 131 |
| 33-2-806 | amended | Ch. 531 | HB 131 |
| 33-2-830 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 94 | HB 143 |
| 33-2-1359 | amended | Ch. 531 | HB 131 |
| 33-2-1902 | amended | Ch. 531 | HB 131 |
| 33-3-303 | amended | Ch. 531 | HB 131 |
| 33-3-307 | amended | Ch. 531 | HB 131 |
| 33-4-101 | amended | Ch. 158 | SB 39 |
| 33-4-102 | amended | Ch. 158 | SB 39 |
| 33-4-202 | amended | Ch. 531 | HB 131 |
| 33-4-203 | amended | Ch. 531 | HB 131 |
| 33-4-204 | amended | Ch. 531 | HB 131 |
| 33-4-313 | amended | Ch. 531 | HB 131 |
| 33-4-314 | amended | Ch. 531 | HB 131 |
| 33-4-404 | repealed | Ch. 531 | HB 131 |
| 33-4-409 | repealed | Ch. 531 | HB 131 |
| 33-4-502 | amended | Ch. 158 | SB 39 |
| 33-4-511 | amended | Ch. 42 | SB 36 |
| 33-5-402 | amended | Ch. 531 | HB 131 |
| 33-10-202 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 531 | HB 131 |
| 33-15-403 | amended | Ch. 416 | SB 378 |
| 33-15-1105 | amended | Ch. 531 | HB 131 |
| 33-15-1106 | amended | Ch. 531 | HB 131 |
| 33-16-1008 | amended | Ch. 284 | SB 375 |
| 33-16-1024 | amended | Ch. 276 | SB 67 |
| 33-16-1026 | amended | Ch. 42 | SB 36 |
| 33-16-1027 | amended | Ch. 531 | HB 131 |
| 33-16-1035 | amended | Ch. 42 | SB 36 |
| 33-17-102 | amended | Ch. 531 | HB 131 |
| 33-17-212 | amended | Ch. 531 | HB 131 |
| 33-17-301 | amended | Ch. 531 | HB 131 |
| 33-17-603 | amended | Ch. 42 | SB 36 |
| 33-17-1101 | amended | Ch. 261 | SB 245 |
| 33-17-1203 | amended | Ch. 456 | HB 401 |
| | amended | Ch. 531 | HB 131 |
| 33-18-215 | enacted | Ch. 53 | SB 80 |
| 33-18-216 | enacted | Ch. 304 | SB 234 |
| 33-18-223 | amended | Ch. 207 | HB 478 |
| 33-18-224 | enacted | Ch. 292 | HB 543 |
| 33-19-104 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 258 | SB 113 |

HeinOnline -- 1997 vol. III 3773 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 33-19-302 | amended | Ch. 258 | SB 113 |
| 33-19-303 | amended | Ch. 258 | SB 113 |
| 33-20-101 | amended | Ch. 531 | HB 131 |
| 33-20-121 | amended | Ch. 490 | HB 502 |
| 33-20-128 | amended | Ch. 416 | SB 378 |
| 33-20-308 | enacted | Ch. 260 | SB 226 |
| 33-20-1301 | enacted | Ch. 298 | SB 112 |
| 33-20-1302 | enacted | Ch. 298 | SB 112 |
| 33-20-1303 | enacted | Ch. 298 | SB 112 |
| 33-20-1304 | enacted | Ch. 298 | SB 112 |
| 33-20-1305 | enacted | Ch. 298 | SB 112 |
| 33-20-1306 | enacted | Ch. 298 | SB 112 |
| 33-20-1307 | enacted | Ch. 298 | SB 112 |
| 33-20-1308 | enacted | Ch. 298 | SB 112 |
| 33-20-1309 | enacted | Ch. 298 | SB 112 |
| 33-20-1310 | enacted | Ch. 298 | SB 112 |
| 33-20-1311 | enacted | Ch. 298 | SB 112 |
| 33-20-1312 | enacted | Ch. 298 | SB 112 |
| 33-20-1313 | enacted | Ch. 298 | SB 112 |
| 33-20-1314 | enacted | Ch. 298 | SB 112 |
| 33-20-1315 | enacted | Ch. 298 | SB 112 |
| 33-21-202 | amended | Ch. 530 | HB 117 |
| 33-22-101 | amended | Ch. 198 | SB 144 |
| | amended | Ch. 410 | SB 324 |
| | amended | Ch. 416 | SB 378 |
| 33-22-107 | amended | Ch. 531 | HB 131 |
| 33-22-109 | amended | Ch. 416 | SB 378 |
| 33-22-110 | amended | Ch. 416 | SB 378 |
| 33-22-130 | amended | Ch. 416 | SB 378 |
| | amended | Ch. 480 | HB 163 |
| 33-22-133 | enacted | Ch. 183 | SB 34 |
| 33-22-134 | enacted | Ch. 410 | SB 324 |
| 33-22-135 | enacted | Ch. 410 | SB 324 |
| 33-22-140 | enacted | Ch. 416 | SB 378 |
| 33-22-141 | enacted | Ch. 416 | SB 378 |
| 33-22-142 | enacted | Ch. 416 | SB 378 |
| 33-22-143 | enacted | Ch. 416 | SB 378 |
| 33-22-242 | amended | Ch. 416 | SB 378 |
| 33-22-245 | amended | Ch. 504 | SB 381 |
| 33-22-246 | enacted | Ch. 416 | SB 378 |
| 33-22-247 | enacted | Ch. 416 | SB 378 |
| 33-22-304 | amended | Ch. 472 | HB 53 |
| 33-22-504 | amended | Ch. 416 | SB 378 |
| 33-22-506 | amended | Ch. 472 | HB 53 |
| 33-22-508 | amended | Ch. 531 | HB 131 |
| 33-22-514 | enacted | Ch. 416 | SB 378 |
| 33-22-522 | amended | Ch. 504 | SB 381 |
| 33-22-523 | enacted | Ch. 416 | SB 378 |
| 33-22-524 | enacted | Ch. 416 | SB 378 |
| 33-22-525 | enacted | Ch. 416 | SB 378 |
| 33-22-526 | enacted | Ch. 416 | SB 378 |
| 33-22-703 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 416 | SB 378 |
| 33-22-705 | amended | Ch. 507 | HB 399 |
| 33-22-903 | amended | Ch. 531 | HB 131 |
| 33-22-907 | amended | Ch. 531 | HB 131 |
| 33-22-910 | amended | Ch. 531 | HB 131 |

HeinOnline -- 1997 vol. III 3774 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 33-22-1107 | amended | Ch. 416 | SB 378 |
| 33-22-1108 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 416 | SB 378 |
| 33-22-1111 | amended | Ch. 416 | SB 378 |
| 33-22-1113 | amended | Ch. 416 | SB 378 |
| 33-22-1114 | amended | Ch. 416 | SB 378 |
| 33-22-1115 | amended | Ch. 416 | SB 378 |
| 33-22-1121 | amended | Ch. 416 | SB 378 |
| 33-22-1122 | enacted | Ch. 416 | SB 378 |
| 33-22-1123 | enacted | Ch. 416 | SB 378 |
| 33-22-1124 | enacted | Ch. 416 | SB 378 |
| 33-22-1125 | enacted | Ch. 416 | SB 378 |
| 33-22-1201 | repealed | Ch. 531 | HB 131 |
| 33-22-1202 | repealed | Ch. 531 | HB 131 |
| 33-22-1203 | repealed | Ch. 531 | HB 131 |
| 33-22-1204 | repealed | Ch. 531 | HB 131 |
| 33-22-1205 | repealed | Ch. 531 | HB 131 |
| 33-22-1501 | amended | Ch. 416 | SB 378 |
| 33-22-1512 | amended | Ch. 416 | SB 378 |
| 33-22-1513 | amended | Ch. 416 | SB 378 |
| 33-22-1516 | amended | Ch. 416 | SB 378 |
| 33-22-1521 | amended | Ch. 42 | SB 36 |
| 33-22-1523 | enacted | Ch. 416 | SB 378 |
| 33-22-1703 | amended | Ch. 413 | SB 365 |
| 33-22-1707 | amended | Ch. 413 | SB 365 |
| 33-22-1803 | amended | Ch. 416 | SB 378 |
| 33-22-1804 | amended | Ch. 416 | SB 378 |
| 33-22-1809 | amended | Ch. 416 | SB 378 |
| 33-22-1811 | amended | Ch. 416 | SB 378 |
| 33-22-1818 | amended | Ch. 15 | HB 144 |
| 33-22-1819 | amended | Ch. 15 | HB 144 |
| | amended | Ch. 416 | SB 378 |
| | amended | Ch. 531 | HB 131 |
| 33-22-1820 | amended | Ch. 531 | HB 131 |
| 33-22-1827 | amended | Ch. 410 | SB 324 |
| | amended | Ch. 416 | SB 378 |
| 33-22-1828 | amended | Ch. 416 | SB 378 |
| | amended | Ch. 531 | HB 131 |
| 33-22-1901 | enacted | Ch. 198 | SB 144 |
| 33-22-1902 | enacted | Ch. 198 | SB 144 |
| 33-22-1903 | enacted | Ch. 198 | SB 144 |
| 33-22-1904 | enacted | Ch. 198 | SB 144 |
| 33-22-1905 | enacted | Ch. 198 | SB 144 |
| 33-22-1906 | enacted | Ch. 198 | SB 144 |
| 33-22-1907 | enacted | Ch. 198 | SB 144 |
| 33-22-1908 | enacted | Ch. 198 | SB 144 |
| 33-23-202 | amended | Ch. 71 | SB 9 |
| 33-23-203 | amended | Ch. 263 | SB 266 |
| | amended | Ch. 495 | SB 44 |
| 33-23-204 | amended | Ch. 495 | SB 44 |
| 33-30-102 | amended | Ch. 531 | HB 131 |
| 33-30-107 | amended | Ch. 531 | HB 131 |
| 33-30-1001 | amended | Ch. 416 | SB 378 |
| 33-30-1003 | amended | Ch. 472 | HB 53 |
| 33-30-1004 | amended | Ch. 472 | HB 53 |
| 33-30-1016 | amended | Ch. 480 | HB 163 |

HeinOnline -- 1997 vol. III 3775 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 33-31-102 | amended | Ch. 165 | HB 46 |
| | amended | Ch. 413 | SB 365 |
| | amended | Ch. 416 | SB 378 |
| 33-31-111 | amended | Ch. 198 | SB 144 |
| | amended | Ch. 410 | SB 324 |
| | amended | Ch. 413 | SB 365 |
| | amended | Ch. 416 | SB 378 |
| | amended | Ch. 527 | HB 27 |
| | amended | Ch. 531 | HB 131 |
| 33-31-114 | amended | Ch. 480 | HB 163 |
| 33-31-211 | amended | Ch. 413 | SB 365 |
| | amended | Ch. 531 | HB 131 |
| 33-31-216 | amended | Ch. 413 | SB 365 |
| 33-31-301 | amended | Ch. 183 | SB 34 |
| 33-31-306 | enacted | Ch. 165 | HB 46 |
| 33-31-307 | enacted | Ch. 416 | SB 378 |
| 33-31-311 | amended | Ch. 42 | SB 36 |
| 33-31-313 | enacted | Ch. 413 | SB 365 |
| 33-31-322 | amended | Ch. 416 | SB 378 |
| 33-35-306 | amended | Ch. 410 | SB 324 |
| | amended | Ch. 416 | SB 378 |
| 33-36-101 | enacted | Ch. 413 | SB 365 |
| 33-36-102 | enacted | Ch. 413 | SB 365 |
| 33-36-103 | enacted | Ch. 413 | SB 365 |
| 33-36-104 | enacted | Ch. 413 | SB 365 |
| 33-36-105 | enacted | Ch. 413 | SB 365 |
| 33-36-201 | enacted | Ch. 413 | SB 365 |
| 33-36-202 | enacted | Ch. 413 | SB 365 |
| 33-36-203 | enacted | Ch. 413 | SB 365 |
| 33-36-204 | enacted | Ch. 413 | SB 365 |
| 33-36-205 | enacted | Ch. 413 | SB 365 |
| 33-36-209 | enacted | Ch. 413 | SB 365 |
| 33-36-210 | enacted | Ch. 413 | SB 365 |
| 33-36-211 | enacted | Ch. 413 | SB 365 |
| 33-36-212 | enacted | Ch. 413 | SB 365 |
| 33-36-213 | enacted | Ch. 413 | SB 365 |
| 33-36-301 | enacted | Ch. 413 | SB 365 |
| 33-36-302 | enacted | Ch. 413 | SB 365 |
| 33-36-303 | enacted | Ch. 413 | SB 365 |
| 33-36-304 | enacted | Ch. 413 | SB 365 |
| 33-36-305 | enacted | Ch. 413 | SB 365 |
| 33-36-401 | enacted | Ch. 413 | SB 365 |
| 33-36-402 | enacted | Ch. 413 | SB 365 |
| 35-1-218 | amended | Ch. 290 | HB 422 |
| 35-1-820 | enacted | Ch. 268 | SB 329 |
| 35-1-933 | amended | Ch. 42 | SB 36 |
| 35-1-934 | amended | Ch. 42 | SB 36 |
| 35-1-1104 | amended | Ch. 139 | HB 348 |
| 35-1-1107 | amended | Ch. 42 | SB 36 |
| 35-2-120 | amended | Ch. 290 | HB 422 |
| 35-8-207 | amended | Ch. 290 | HB 422 |
| 35-8-304 | amended | Ch. 268 | SB 329 |
| 35-8-1306 | amended | Ch. 268 | SB 329 |
| 35-10-112 | amended | Ch. 290 | HB 422 |
| 35-12-504 | amended | Ch. 268 | SB 329 |
| 35-12-505 | amended | Ch. 268 | SB 329 |
| 35-12-508 | amended | Ch. 268 | SB 329 |

HeinOnline -- 1997 vol. III 3776 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 35-12-521 | amended | Ch. 268 | SB 329 |
| 35-12-601 | amended | Ch. 268 | SB 329 |
| 35-12-602 | amended | Ch. 268 | SB 329 |
| 35-12-604 | amended | Ch. 268 | SB 329 |
| 35-12-605 | amended | Ch. 268 | SB 329 |
| 35-12-606 | amended | Ch. 268 | SB 329 |
| 35-12-607 | amended | Ch. 268 | SB 329 |
| 35-12-608 | amended | Ch. 268 | SB 329 |
| 35-12-611 | amended | Ch. 268 | SB 329 |
| 35-12-615 | amended | Ch. 290 | HB 422 |
| 35-12-701 | amended | Ch. 268 | SB 329 |
| 35-12-703 | amended | Ch. 268 | SB 329 |
| 35-12-704 | amended | Ch. 268 | SB 329 |
| 35-12-801 | amended | Ch. 268 | SB 329 |
| 35-12-802 | amended | Ch. 268 | SB 329 |
| 35-12-902 | amended | Ch. 268 | SB 329 |
| 35-12-903 | amended | Ch. 268 | SB 329 |
| 35-12-904 | amended | Ch. 268 | SB 329 |
| 35-12-1001 | amended | Ch. 268 | SB 329 |
| 35-12-1003 | amended | Ch. 268 | SB 329 |
| 35-12-1004 | amended | Ch. 268 | SB 329 |
| 35-12-1005 | amended | Ch. 268 | SB 329 |
| 35-12-1008 | amended | Ch. 268 | SB 329 |
| 35-12-1104 | amended | Ch. 268 | SB 329 |
| 35-12-1201 | amended | Ch. 268 | SB 329 |
| 35-12-1302 | amended | Ch. 268 | SB 329 |
| 35-12-1402 | amended | Ch. 268 | SB 329 |
| 35-15-211 | amended | Ch. 290 | HB 422 |
| 35-18-503 | amended | Ch. 65 | HB 274 |
| 35-18-504 | repealed | Ch. 65 | HB 274 |
| 35-18-505 | repealed | Ch. 65 | HB 274 |
| 35-18-506 | repealed | Ch. 65 | HB 274 |
| 35-18-510 | repealed | Ch. 65 | HB 274 |
| 35-21-101 | repealed | Ch. 52 | SB 56 |
| 35-21-102 | repealed | Ch. 52 | SB 56 |
| 35-21-103 | repealed | Ch. 52 | SB 56 |
| 35-21-201 | repealed | Ch. 52 | SB 56 |
| 35-21-202 | repealed | Ch. 52 | SB 56 |
| 35-21-203 | repealed | Ch. 52 | SB 56 |
| 35-21-204 | repealed | Ch. 52 | SB 56 |
| 35-21-205 | repealed | Ch. 52 | SB 56 |
| 35-21-206 | repealed | Ch. 52 | SB 56 |
| 35-21-207 | repealed | Ch. 52 | SB 56 |
| 35-21-208 | repealed | Ch. 52 | SB 56 |
| 35-21-209 | repealed | Ch. 52 | SB 56 |
| 35-21-210 | repealed | Ch. 52 | SB 56 |
| 35-21-211 | repealed | Ch. 52 | SB 56 |
| 35-21-212 | repealed | Ch. 52 | SB 56 |
| 35-21-213 | repealed | Ch. 52 | SB 56 |
| 35-21-214 | repealed | Ch. 52 | SB 56 |
| 35-21-215 | repealed | Ch. 52 | SB 56 |
| 35-21-216 | repealed | Ch. 52 | SB 56 |
| 35-21-217 | repealed | Ch. 52 | SB 56 |
| 35-21-301 | repealed | Ch. 52 | SB 56 |
| 35-21-302 | repealed | Ch. 52 | SB 56 |
| 35-21-303 | repealed | Ch. 52 | SB 56 |
| 35-21-304 | repealed | Ch. 52 | SB 56 |

HeinOnline -- 1997 vol. III 3777 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 35-21-305 | repealed | Ch. 52 | SB 56 |
| 35-21-306 | repealed | Ch. 52 | SB 56 |
| 35-21-307 | repealed | Ch. 52 | SB 56 |
| 35-21-401 | repealed | Ch. 52 | SB 56 |
| 35-21-402 | repealed | Ch. 52 | SB 56 |
| 35-21-403 | repealed | Ch. 52 | SB 56 |
| 35-21-404 | repealed | Ch. 52 | SB 56 |
| 35-21-405 | repealed | Ch. 52 | SB 56 |
| 35-21-406 | repealed | Ch. 52 | SB 56 |
| 35-21-407 | repealed | Ch. 52 | SB 56 |
| 35-21-408 | repealed | Ch. 52 | SB 56 |
| 35-21-409 | repealed | Ch. 52 | SB 56 |
| 35-21-410 | repealed | Ch. 52 | SB 56 |
| 35-21-411 | repealed | Ch. 52 | SB 56 |
| 35-21-412 | repealed | Ch. 52 | SB 56 |
| 35-21-413 | repealed | Ch. 52 | SB 56 |
| 35-21-414 | repealed | Ch. 52 | SB 56 |
| 35-21-415 | repealed | Ch. 52 | SB 56 |
| 35-21-416 | repealed | Ch. 52 | SB 56 |
| 35-21-417 | repealed | Ch. 52 | SB 56 |
| 35-21-418 | repealed | Ch. 52 | SB 56 |
| 35-21-419 | repealed | Ch. 52 | SB 56 |
| 35-21-420 | repealed | Ch. 52 | SB 56 |
| 35-21-421 | repealed | Ch. 52 | SB 56 |
| 35-21-422 | repealed | Ch. 52 | SB 56 |
| 35-21-423 | repealed | Ch. 52 | SB 56 |
| 35-21-424 | repealed | Ch. 52 | SB 56 |
| 35-21-425 | repealed | Ch. 52 | SB 56 |
| 35-21-426 | repealed | Ch. 52 | SB 56 |
| 35-21-427 | repealed | Ch. 52 | SB 56 |
| 35-21-428 | repealed | Ch. 52 | SB 56 |
| 35-21-429 | repealed | Ch. 52 | SB 56 |
| 35-21-430 | repealed | Ch. 52 | SB 56 |
| 35-21-431 | repealed | Ch. 52 | SB 56 |
| 35-21-432 | repealed | Ch. 52 | SB 56 |
| 35-21-433 | repealed | Ch. 52 | SB 56 |
| 35-21-501 | repealed | Ch. 52 | SB 56 |
| 35-21-502 | repealed | Ch. 52 | SB 56 |
| 35-21-503 | repealed | Ch. 52 | SB 56 |
| 35-21-601 | repealed | Ch. 52 | SB 56 |
| 35-21-602 | repealed | Ch. 52 | SB 56 |
| 35-21-603 | repealed | Ch. 52 | SB 56 |
| 35-21-604 | repealed | Ch. 52 | SB 56 |
| 35-21-605 | repealed | Ch. 52 | SB 56 |
| 35-21-606 | repealed | Ch. 52 | SB 56 |
| 35-21-607 | repealed | Ch. 52 | SB 56 |
| 35-21-608 | repealed | Ch. 52 | SB 56 |
| 35-21-609 | repealed | Ch. 52 | SB 56 |
| 35-21-610 | repealed | Ch. 52 | SB 56 |
| 35-21-611 | repealed | Ch. 52 | SB 56 |
| 35-21-612 | repealed | Ch. 52 | SB 56 |
| 35-21-613 | repealed | Ch. 52 | SB 56 |
| 35-21-614 | repealed | Ch. 52 | SB 56 |
| 35-21-615 | repealed | Ch. 52 | SB 56 |
| 35-21-616 | repealed | Ch. 52 | SB 56 |
| 35-21-617 | repealed | Ch. 52 | SB 56 |
| 35-21-618 | repealed | Ch. 52 | SB 56 |

HeinOnline -- 1997 vol. III 3778 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 35-21-619 | repealed | Ch. 52 | SB 56 |
| 35-21-620 | repealed | Ch. 52 | SB 56 |
| 35-21-621 | repealed | Ch. 52 | SB 56 |
| 35-21-622 | repealed | Ch. 52 | SB 56 |
| 35-21-623 | repealed | Ch. 52 | SB 56 |
| 35-21-624 | repealed | Ch. 52 | SB 56 |
| 35-21-625 | repealed | Ch. 52 | SB 56 |
| 35-21-626 | repealed | Ch. 52 | SB 56 |
| 35-21-701 | repealed | Ch. 52 | SB 56 |
| 35-21-702 | repealed | Ch. 52 | SB 56 |
| 35-21-703 | repealed | Ch. 52 | SB 56 |
| 35-21-704 | repealed | Ch. 52 | SB 56 |
| 35-21-705 | repealed | Ch. 52 | SB 56 |
| 35-21-706 | repealed | Ch. 52 | SB 56 |
| 35-21-707 | repealed | Ch. 52 | SB 56 |
| 35-21-708 | repealed | Ch. 52 | SB 56 |
| 35-21-710 | repealed | Ch. 52 | SB 56 |
| 35-21-711 | repealed | Ch. 52 | SB 56 |
| 35-21-712 | repealed | Ch. 52 | SB 56 |
| 35-21-713 | repealed | Ch. 52 | SB 56 |
| 37-1-304 | amended | Ch. 210 | SB 148 |
| 37-1-307 | amended | Ch. 552 | SB 374 |
| 37-1-308 | amended | Ch. 475 | HB 122 |
| 37-1-401 | enacted | Ch. 481 | HB 164 |
| 37-1-402 | enacted | Ch. 481 | HB 164 |
| 37-1-403 | enacted | Ch. 481 | HB 164 |
| 37-1-404 | enacted | Ch. 481 | HB 164 |
| 37-1-405 | enacted | Ch. 481 | HB 164 |
| 37-1-406 | enacted | Ch. 481 | HB 164 |
| 37-1-407 | enacted | Ch. 481 | HB 164 |
| 37-1-408 | enacted | Ch. 481 | HB 164 |
| 37-1-409 | enacted | Ch. 481 | HB 164 |
| 37-1-410 | enacted | Ch. 481 | HB 164 |
| 37-1-411 | enacted | Ch. 481 | HB 164 |
| 37-1-412 | enacted | Ch. 481 | HB 164 |
| 37-3-301 | amended | Ch. 492 | HB 598 |
| 37-3-313 | amended | Ch. 492 | HB 598 |
| 37-3-323 | amended | Ch. 490 | HB 502 |
| 37-3-333 | enacted | Ch. 410 | SB 324 |
| 37-4-101 | amended | Ch. 151 | SB 192 |
| 37-4-102 | amended | Ch. 151 | SB 192 |
| 37-4-103 | amended | Ch. 151 | SB 192 |
| 37-4-104 | enacted | Ch. 151 | SB 192 |
| 37-4-202 | amended | Ch. 481 | HB 164 |
| 37-4-307 | amended | Ch. 492 | HB 598 |
| 37-4-311 | enacted | Ch. 358 | HB 302 |
| 37-4-312 | enacted | Ch. 358 | HB 302 |
| 37-4-313 | enacted | Ch. 358 | HB 302 |
| 37-4-314 | enacted | Ch. 358 | HB 302 |
| 37-4-326 | amended | Ch. 492 | HB 598 |
| 37-4-327 | amended | Ch. 151 | SB 192 |
| 37-4-406 | amended | Ch. 492 | HB 598 |
| 37-6-304 | amended | Ch. 492 | HB 598 |
| 37-6-311 | amended | Ch. 490 | HB 502 |
| 37-7-303 | amended | Ch. 492 | HB 598 |
| 37-7-321 | amended | Ch. 492 | HB 598 |
| 37-7-606 | amended | Ch. 492 | HB 598 |

HeinOnline -- 1997 vol. III 3779 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 37-7-703 | amended | Ch. 492 | HB 598 |
| 37-8-102 | amended | Ch. 136 | HB 256 |
| 37-8-431 | amended | Ch. 492 | HB 598 |
| 37-9-304 | amended | Ch. 492 | HB 598 |
| 37-9-305 | amended | Ch. 492 | HB 598 |
| 37-10-307 | amended | Ch. 492 | HB 598 |
| 37-11-201 | amended | Ch. 481 | HB 164 |
| 37-11-303 | amended | Ch. 481 | HB 164 |
| 37-11-308 | amended | Ch. 492 | HB 598 |
| 37-11-321 | amended | Ch. 490 | HB 502 |
| 37-12-307 | amended | Ch. 492 | HB 598 |
| 37-12-322 | amended | Ch. 490 | HB 502 |
| 37-13-306 | amended | Ch. 492 | HB 598 |
| 37-14-310 | amended | Ch. 492 | HB 598 |
| 37-15-101 | amended | Ch. 472 | HB 53 |
| 37-16-202 | amended | Ch. 481 | HB 164 |
| 37-16-303 | amended | Ch. 481 | HB 164 |
| 37-16-304 | amended | Ch. 481 | HB 164 |
| 37-16-405 | amended | Ch. 481 | HB 164 |
| 37-16-407 | amended | Ch. 481 | HB 164 |
| | amended | Ch. 492 | HB 598 |
| 37-18-104 | amended | Ch. 75 | SB 101 |
| 37-18-202 | amended | Ch. 75 | SB 101 |
| 37-18-307 | amended | Ch. 492 | HB 598 |
| 37-19-101 | amended | Ch. 52 | SB 56 |
| 37-19-301 | amended | Ch. 492 | HB 598 |
| 37-19-304 | amended | Ch. 492 | HB 598 |
| 37-19-306 | amended | Ch. 492 | HB 598 |
| 37-19-801 | enacted | Ch. 52 | SB 56 |
| 37-19-802 | enacted | Ch. 52 | SB 56 |
| 37-19-803 | enacted | Ch. 52 | SB 56 |
| 37-19-807 | enacted | Ch. 52 | SB 56 |
| 37-19-808 | enacted | Ch. 52 | SB 56 |
| 37-19-814 | enacted | Ch. 52 | SB 56 |
| 37-19-815 | enacted | Ch. 52 | SB 56 |
| 37-19-816 | enacted | Ch. 52 | SB 56 |
| 37-19-822 | enacted | Ch. 52 | SB 56 |
| 37-19-823 | enacted | Ch. 52 | SB 56 |
| 37-19-824 | enacted | Ch. 52 | SB 56 |
| 37-19-825 | enacted | Ch. 52 | SB 56 |
| 37-19-826 | enacted | Ch. 52 | SB 56 |
| 37-19-831 | enacted | Ch. 52 | SB 56 |
| 37-20-203 | amended | Ch. 492 | HB 598 |
| 37-20-302 | amended | Ch. 492 | HB 598 |
| 37-23-201 | amended | Ch. 507 | HB 399 |
| 37-23-203 | amended | Ch. 492 | HB 598 |
| 37-23-205 | amended | Ch. 492 | HB 598 |
| 37-23-208 | enacted | Ch. 278 | SB 229 |
| 37-25-305 | amended | Ch. 42 | SB 36 |
| 37-25-307 | amended | Ch. 492 | HB 598 |
| 37-26-201 | amended | Ch. 481 | HB 164 |
| 37-26-301 | amended | Ch. 481 | HB 164 |
| 37-27-205 | amended | Ch. 492 | HB 598 |
| 37-29-302 | amended | Ch. 42 | SB 36 |
| 37-29-304 | amended | Ch. 492 | HB 598 |
| 37-29-305 | amended | Ch. 42 | SB 36 |
| 37-29-306 | amended | Ch. 492 | HB 598 |

HeinOnline -- 1997 vol. III 3780 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 37-30-203 | amended | Ch. 481 | HB 164 |
| 37-30-307 | amended | Ch. 472 | HB 53 |
| | amended | Ch. 481 | HB 164 |
| 37-30-310 | amended | Ch. 492 | HB 598 |
| 37-30-423 | amended | Ch. 492 | HB 598 |
| 37-30-424 | amended | Ch. 492 | HB 598 |
| 37-31-101 | amended | Ch. 305 | SB 259 |
| | amended | Ch. 491 | HB 561 |
| 37-31-203 | amended | Ch. 305 | SB 259 |
| 37-31-301 | amended | Ch. 305 | SB 259 |
| | amended | Ch. 472 | HB 53 |
| 37-31-302 | amended | Ch. 305 | SB 259 |
| | amended | Ch. 492 | HB 598 |
| 37-31-304 | amended | Ch. 305 | SB 259 |
| 37-31-305 | amended | Ch. 305 | SB 259 |
| 37-31-308 | amended | Ch. 305 | SB 259 |
| | amended | Ch. 472 | HB 53 |
| 37-31-311 | amended | Ch. 305 | SB 259 |
| 37-31-312 | amended | Ch. 305 | SB 259 |
| 37-31-331 | amended | Ch. 305 | SB 259 |
| 37-32-305 | amended | Ch. 492 | HB 598 |
| 37-35-101 | enacted | Ch. 507 | HB 399 |
| 37-35-102 | enacted | Ch. 507 | HB 399 |
| 37-35-103 | enacted | Ch. 507 | HB 399 |
| 37-35-201 | enacted | Ch. 507 | HB 399 |
| 37-35-202 | enacted | Ch. 507 | HB 399 |
| 37-35-203 | enacted | Ch. 507 | HB 399 |
| 37-35-301 | enacted | Ch. 507 | HB 399 |
| 37-35-302 | enacted | Ch. 507 | HB 399 |
| 37-35-303 | enacted | Ch. 507 | HB 399 |
| 37-35-304 | enacted | Ch. 507 | HB 399 |
| 37-40-203 | amended | Ch. 492 | HB 598 |
| 37-40-304 | amended | Ch. 492 | HB 598 |
| 37-42-102 | amended | Ch. 538 | HB 483 |
| 37-43-204 | amended | Ch. 422 | HB 166 |
| 37-50-203 | amended | Ch. 492 | HB 598 |
| 37-50-314 | amended | Ch. 492 | HB 598 |
| 37-50-317 | amended | Ch. 492 | HB 598 |
| 37-51-103 | amended | Ch. 251 | HB 533 |
| 37-51-310 | amended | Ch. 492 | HB 598 |
| 37-51-603 | amended | Ch. 492 | HB 598 |
| 37-54-102 | amended | Ch. 481 | HB 164 |
| 37-54-105 | amended | Ch. 481 | HB 164 |
| 37-54-201 | amended | Ch. 481 | HB 164 |
| 37-54-202 | amended | Ch. 481 | HB 164 |
| 37-54-203 | repealed | Ch. 481 | HB 164 |
| 37-54-210 | amended | Ch. 481 | HB 164 |
| 37-54-211 | amended | Ch. 481 | HB 164 |
| 37-54-301 | amended | Ch. 481 | HB 164 |
| 37-54-304 | amended | Ch. 481 | HB 164 |
| 37-54-305 | amended | Ch. 481 | HB 164 |
| 37-54-311 | amended | Ch. 481 | HB 164 |
| 37-60-301 | amended | Ch. 360 | HB 447 |
| | amended | Ch. 480 | HB 163 |
| 37-60-303 | amended | Ch. 481 | HB 164 |
| 37-60-309 | amended | Ch. 360 | HB 447 |
| 37-60-310 | amended | Ch. 360 | HB 447 |

HeinOnline -- 1997 vol. III 3781 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 37-60-315 | enacted | Ch. 360 | HB 447 |
| 37-65-202 | amended | Ch. 481 | HB 164 |
| 37-65-306 | amended | Ch. 492 | HB 598 |
| 37-66-307 | amended | Ch. 492 | HB 598 |
| 37-68-307 | amended | Ch. 492 | HB 598 |
| 37-68-310 | amended | Ch. 492 | HB 598 |
| 37-69-307 | amended | Ch. 492 | HB 598 |
| 37-72-302 | amended | Ch. 100 | HB 367 |
| 37-72-306 | amended | Ch. 492 | HB 598 |
| 39-1-102 | amended | Ch. 467 | SB 350 |
| 39-2-205 | enacted | Ch. 521 | HB 345 |
| 39-2-206 | enacted | Ch. 521 | HB 345 |
| 39-2-207 | enacted | Ch. 521 | HB 345 |
| 39-2-208 | enacted | Ch. 521 | HB 345 |
| 39-2-209 | enacted | Ch. 521 | HB 345 |
| 39-2-210 | enacted | Ch. 521 | HB 345 |
| 39-2-211 | enacted | Ch. 521 | HB 345 |
| 39-2-304 | amended | Ch. 521 | HB 345 |
| 39-2-912 | amended | Ch. 472 | HB 53 |
| 39-3-205 | amended | Ch. 209 | SB 120 |
| 39-3-406 | amended | Ch. 2 | SB 18 |
| | amended | Ch. 42 | SB 36 |
| | amended | Ch. 193 | HB 341 |
| | amended | Ch. 472 | HB 53 |
| | amended | Ch. 515 | HB 146 |
| 39-3-701 | repealed | Ch. 548 | HB 252 |
| 39-3-702 | repealed | Ch. 548 | HB 252 |
| 39-3-703 | repealed | Ch. 548 | HB 252 |
| 39-3-705 | repealed | Ch. 548 | HB 252 |
| 39-3-706 | repealed | Ch. 548 | HB 252 |
| 39-7-303 | amended | Ch. 486 | HB 371 |
| 39-7-601 | repealed | Ch. 42 | SB 36 |
| | repealed | Ch. 486 | HB 371 |
| 39-7-602 | repealed | Ch. 42 | SB 36 |
| | repealed | Ch. 486 | HB 371 |
| 39-7-603 | repealed | Ch. 42 | SB 36 |
| | repealed | Ch. 486 | HB 371 |
| 39-7-604 | repealed | Ch. 42 | SB 36 |
| | repealed | Ch. 486 | HB 371 |
| 39-7-605 | repealed | Ch. 42 | SB 36 |
| | repealed | Ch. 486 | HB 371 |
| 39-7-606 | repealed | Ch. 42 | SB 36 |
| | repealed | Ch. 486 | HB 371 |
| 39-8-207 | amended | Ch. 42 | SB 36 |
| 39-9-101 | amended | Ch. 548 | HB 252 |
| 39-9-102 | amended | Ch. 548 | HB 252 |
| 39-9-201 | amended | Ch. 548 | HB 252 |
| 39-9-202 | repealed | Ch. 548 | HB 252 |
| 39-9-203 | repealed | Ch. 548 | HB 252 |
| 39-9-204 | amended | Ch. 548 | HB 252 |
| 39-9-206 | amended | Ch. 548 | HB 252 |
| 39-9-207 | amended | Ch. 548 | HB 252 |
| 39-9-211 | amended | Ch. 548 | HB 252 |
| 39-9-301 | amended | Ch. 548 | HB 252 |
| 39-9-302 | repealed | Ch. 548 | HB 252 |
| 39-9-303 | amended | Ch. 548 | HB 252 |
| 39-9-401 | amended | Ch. 548 | HB 252 |

HeinOnline -- 1997 vol. III 3782 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 39-9-402 | repealed | Ch. 548 | HB 252 |
| 39-9-403 | repealed | Ch. 548 | HB 252 |
| 39-9-404 | repealed | Ch. 548 | HB 252 |
| 39-9-405 | repealed | Ch. 548 | HB 252 |
| 39-9-406 | repealed | Ch. 548 | HB 252 |
| 39-9-407 | repealed | Ch. 548 | HB 252 |
| 39-9-408 | repealed | Ch. 548 | HB 252 |
| 39-9-409 | repealed | Ch. 548 | HB 252 |
| 39-9-410 | repealed | Ch. 548 | HB 252 |
| 39-29-101 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 339 | HB 172 |
| 39-30-101 | amended | Ch. 472 | HB 53 |
| 39-30-102 | amended | Ch. 472 | HB 53 |
| 39-30-103 | amended | Ch. 339 | HB 172 |
| | amended | Ch. 472 | HB 53 |
| 39-30-106 | amended | Ch. 472 | HB 53 |
| 39-30-107 | amended | Ch. 472 | HB 53 |
| 39-30-201 | amended | Ch. 472 | HB 53 |
| 39-30-202 | amended | Ch. 472 | HB 53 |
| 39-30-203 | amended | Ch. 472 | HB 53 |
| 39-51-201 | amended | Ch. 60 | HB 115 |
| | amended | Ch. 491 | HB 561 |
| 39-51-204 | amended | Ch. 60 | HB 115 |
| | amended | Ch. 491 | HB 561 |
| 39-51-301 | amended | Ch. 491 | HB 561 |
| 39-51-307 | amended | Ch. 42 | SB 36 |
| 39-51-401 | amended | Ch. 42 | SB 36 |
| 39-51-402 | amended | Ch. 42 | SB 36 |
| 39-51-403 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 60 | HB 115 |
| 39-51-404 | amended | Ch. 42 | SB 36 |
| 39-51-407 | amended | Ch. 42 | SB 36 |
| 39-51-501 | amended | Ch. 42 | SB 36 |
| 39-51-503 | amended | Ch. 42 | SB 36 |
| 39-51-1105 | amended | Ch. 491 | HB 561 |
| 39-51-1109 | amended | Ch. 491 | HB 561 |
| 39-51-1110 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 491 | HB 561 |
| 39-51-1213 | amended | Ch. 60 | HB 115 |
| 39-51-1301 | amended | Ch. 491 | HB 561 |
| 39-51-1303 | amended | Ch. 60 | HB 115 |
| | amended | Ch. 491 | HB 561 |
| 39-51-1304 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 60 | HB 115 |
| | amended | Ch. 491 | HB 561 |
| 39-51-2106 | amended | Ch. 42 | SB 36 |
| 39-51-2108 | amended | Ch. 491 | HB 561 |
| 39-51-2110 | amended | Ch. 42 | SB 36 |
| 39-51-2207 | enacted | Ch. 60 | HB 115 |
| 39-51-2208 | enacted | Ch. 60 | HB 115 |
| 39-51-2302 | amended | Ch. 60 | HB 115 |
| 39-51-2402 | amended | Ch. 491 | HB 561 |
| 39-51-2508 | amended | Ch. 42 | SB 36 |
| 39-51-2602 | amended | Ch. 42 | SB 36 |
| 39-51-3105 | amended | Ch. 60 | HB 115 |
| 39-51-3106 | amended | Ch. 42 | SB 36 |
| 39-51-3201 | amended | Ch. 60 | HB 115 |

HeinOnline -- 1997 vol. III 3783 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 39-71-116 | amended | Ch. 276 | SB 67 |
| | amended | Ch. 404 | HB 519 |
| | amended | Ch. 500 | SB 251 |
| 39-71-117 | amended | Ch. 172 | SB 41 |
| 39-71-118 | amended | Ch. 172 | SB 41 |
| | amended | Ch. 500 | SB 251 |
| | amended | Ch. 515 | HB 146 |
| 39-71-120 | amended | Ch. 548 | HB 252 |
| 39-71-123 | amended | Ch. 491 | HB 561 |
| 39-71-201 | amended | Ch. 385 | SB 290 |
| 39-71-225 | amended | Ch. 310 | SB 349 |
| 39-71-303 | amended | Ch. 172 | SB 41 |
| 39-71-318 | amended | Ch. 276 | SB 67 |
| 39-71-401 | amended | Ch. 172 | SB 41 |
| | amended | Ch. 310 | SB 349 |
| | amended | Ch. 386 | SB 304 |
| | amended | Ch. 491 | HB 561 |
| | amended | Ch. 548 | HB 252 |
| 39-71-406 | amended | Ch. 276 | SB 67 |
| 39-71-414 | amended | Ch. 172 | SB 41 |
| 39-71-431 | amended | Ch. 42 | SB 36 |
| | repealed | Ch. 310 | SB 349 |
| 39-71-432 | amended | Ch. 172 | SB 41 |
| 39-71-433 | amended | Ch. 310 | SB 349 |
| 39-71-501 | amended | Ch. 42 | SB 36 |
| 39-71-502 | amended | Ch. 276 | SB 67 |
| 39-71-503 | amended | Ch. 310 | SB 349 |
| | amended | Ch. 422 | HB 166 |
| 39-71-504 | amended | Ch. 284 | SB 375 |
| | amended | Ch. 310 | SB 349 |
| 39-71-517 | amended | Ch. 42 | SB 36 |
| 39-71-519 | amended | Ch. 42 | SB 36 |
| 39-71-531 | repealed | Ch. 172 | SB 41 |
| | repealed | Ch. 310 | SB 349 |
| | amended | Ch. 422 | HB 166 |
| 39-71-532 | repealed | Ch. 172 | SB 41 |
| | repealed | Ch. 310 | SB 349 |
| 39-71-533 | repealed | Ch. 172 | SB 41 |
| | repealed | Ch. 310 | SB 349 |
| | amended | Ch. 422 | HB 166 |
| 39-71-534 | repealed | Ch. 172 | SB 41 |
| | repealed | Ch. 310 | SB 349 |
| | repealed | Ch. 422 | HB 166 |
| 39-71-605 | amended | Ch. 276 | SB 67 |
| 39-71-606 | amended | Ch. 276 | SB 67 |
| 39-71-703 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 276 | SB 67 |
| 39-71-704 | amended | Ch. 308 | SB 331 |
| | amended | Ch. 310 | SB 349 |
| 39-71-712 | amended | Ch. 276 | SB 67 |
| 39-71-721 | amended | Ch. 310 | SB 349 |
| 39-71-723 | amended | Ch. 172 | SB 41 |
| 39-71-724 | amended | Ch. 172 | SB 41 |
| 39-71-741 | amended | Ch. 310 | SB 349 |
| 39-71-901 | amended | Ch. 472 | HB 53 |
| 39-71-902 | repealed 1/1/98 | Ch. 284 | SB 375 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 39-71-903 | amended | Ch. 284 | SB 375 |
| | amended | Ch. 472 | HB 53 |
| 39-71-904 | amended | Ch. 472 | HB 53 |
| 39-71-905 | amended | Ch. 472 | HB 53 |
| 39-71-906 | amended | Ch. 472 | HB 53 |
| 39-71-907 | amended | Ch. 284 | SB 375 |
| | amended | Ch. 472 | HB 53 |
| 39-71-910 | repealed 1/1/98 | Ch. 284 | SB 375 |
| 39-71-913 | repealed 1/1/98 | Ch. 284 | SB 375 |
| 39-71-915 | enacted | Ch. 284 | SB 375 |
| 39-71-1003 | amended | Ch. 122 | SB 62 |
| 39-71-1004 | amended | Ch. 122 | SB 62 |
| 39-71-1006 | amended | Ch. 122 | SB 62 |
| | amended | Ch. 276 | SB 67 |
| 39-71-1011 | amended | Ch. 122 | SB 62 |
| 39-71-1013 | repealed | Ch. 122 | SB 62 |
| | repealed | Ch. 310 | SB 349 |
| 39-71-1014 | amended | Ch. 122 | SB 62 |
| 39-71-1031 | amended | Ch. 122 | SB 62 |
| 39-71-1032 | amended | Ch. 122 | SB 62 |
| 39-71-1109 | repealed | Ch. 310 | SB 349 |
| 39-71-2206 | repealed | Ch. 310 | SB 349 |
| 39-71-2314 | amended | Ch. 310 | SB 349 |
| 39-71-2316 | amended | Ch. 276 | SB 67 |
| 39-71-2320 | amended | Ch. 276 | SB 67 |
| 39-71-2321 | amended | Ch. 276 | SB 67 |
| 39-71-2322 | amended | Ch. 276 | SB 67 |
| 39-71-2327 | amended | Ch. 276 | SB 67 |
| 39-71-2351 | amended | Ch. 276 | SB 67 |
| 39-71-2352 | amended | Ch. 276 | SB 67 |
| 39-71-2354 | contingently repealed | Ch. 276 | SB 67 |
| | amended | Ch. 422 | HB 166 |
| 39-71-2355 | contingently repealed | Ch. 276 | SB 67 |
| 39-71-2363 | amended | Ch. 276 | SB 67 |
| 39-71-2501 | amended | Ch. 276 | SB 67 |
| | contingently repealed | Ch. 276 | SB 67 |
| | amended | Ch. 491 | HB 561 |
| 39-71-2502 | contingently repealed | Ch. 276 | SB 67 |
| 39-71-2503 | amended | Ch. 276 | SB 67 |
| | contingently repealed | Ch. 276 | SB 67 |
| | amended | Ch. 422 | HB 166 |
| | amended | Ch. 491 | HB 561 |
| 39-71-2504 | repealed | Ch. 276 | SB 67 |
| | amended | Ch. 422 | HB 166 |
| 39-71-2505 | amended | Ch. 276 | SB 67 |
| | amended | Ch. 491 | HB 561 |
| 39-71-2506 | contingently repealed | Ch. 276 | SB 67 |
| 39-71-2507 | enacted | Ch. 491 | HB 561 |
| 39-71-2905 | amended | Ch. 276 | SB 67 |
| 40-1-105 | amended | Ch. 343 | HB 231 |
| 40-1-107 | amended | Ch. 552 | SB 374 |
| 40-1-206 | amended | Ch. 73 | SB 14 |
| 40-1-213 | amended | Ch. 343 | HB 231 |
| 40-1-401 | amended | Ch. 424 | HB 323 |
| 40-1-402 | amended | Ch. 343 | HB 231 |
| 40-4-103 | amended | Ch. 343 | HB 231 |
| 40-4-104 | amended | Ch. 343 | HB 231 |

HeinOnline -- 1997 vol. III 3785 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 40-4-105 | amended | Ch. 343 | HB 231 |
| | amended | Ch. 552 | SB 374 |
| 40-4-109 | amended | Ch. 343 | HB 231 |
| 40-4-110 | amended | Ch. 343 | HB 231 |
| 40-4-121 | amended | Ch. 255 | SB 32 |
| | amended | Ch. 256 | SB 33 |
| 40-4-123 | amended | Ch. 343 | HB 231 |
| 40-4-201 | amended | Ch. 326 | SB 16 |
| | amended | Ch. 343 | HB 231 |
| 40-4-204 | amended | Ch. 343 | HB 231 |
| | amended | Ch. 552 | SB 374 |
| 40-4-205 | amended | Ch. 343 | HB 231 |
| 40-4-206 | amended | Ch. 552 | SB 374 |
| 40-4-208 | amended | Ch. 326 | SB 16 |
| 40-4-211 | amended | Ch. 343 | HB 231 |
| 40-4-212 | amended | Ch. 343 | HB 231 |
| 40-4-213 | amended | Ch. 343 | HB 231 |
| 40-4-214 | amended | Ch. 343 | HB 231 |
| 40-4-215 | amended | Ch. 343 | HB 231 |
| | amended | Ch. 486 | HB 371 |
| 40-4-216 | amended | Ch. 343 | HB 231 |
| 40-4-217 | amended | Ch. 343 | HB 231 |
| 40-4-218 | amended | Ch. 514 | HB 129 |
| 40-4-219 | amended | Ch. 343 | HB 231 |
| 40-4-220 | amended | Ch. 343 | HB 231 |
| 40-4-221 | amended | Ch. 343 | HB 231 |
| 40-4-222 | repealed | Ch. 343 | HB 231 |
| 40-4-223 | repealed | Ch. 343 | HB 231 |
| 40-4-224 | repealed | Ch. 343 | HB 231 |
| 40-4-225 | amended | Ch. 343 | HB 231 |
| 40-4-226 | amended | Ch. 343 | HB 231 |
| 40-4-233 | enacted | Ch. 343 | HB 231 |
| 40-4-234 | enacted | Ch. 343 | HB 231 |
| 40-4-251 | enacted | Ch. 326 | SB 16 |
| 40-4-252 | enacted | Ch. 326 | SB 16 |
| 40-4-253 | enacted | Ch. 326 | SB 16 |
| 40-4-254 | enacted | Ch. 326 | SB 16 |
| 40-4-255 | enacted | Ch. 326 | SB 16 |
| 40-4-256 | enacted | Ch. 326 | SB 16 |
| 40-4-257 | enacted | Ch. 326 | SB 16 |
| 40-4-258 | enacted | Ch. 326 | SB 16 |
| 40-4-302 | amended | Ch. 343 | HB 231 |
| 40-4-307 | amended | Ch. 343 | HB 231 |
| 40-5-103 | amended | Ch. 552 | SB 374 |
| 40-5-149 | amended | Ch. 552 | SB 374 |
| 40-5-151 | amended | Ch. 552 | SB 374 |
| 40-5-157 | enacted | Ch. 552 | SB 374 |
| 40-5-161 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 552 | SB 374 |
| 40-5-162 | amended | Ch. 552 | SB 374 |
| 40-5-163 | amended | Ch. 552 | SB 374 |
| 40-5-164 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 552 | SB 374 |
| 40-5-173 | amended | Ch. 552 | SB 374 |
| 40-5-188 | amended | Ch. 552 | SB 374 |
| 40-5-189 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |

HeinOnline -- 1997 vol. III 3786 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 40-5-194 | amended | Ch. 552 | SB 374 |
| 40-5-195 | amended | Ch. 552 | SB 374 |
| 40-5-196 | amended | Ch. 552 | SB 374 |
| 40-5-201 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-202 | amended | Ch. 482 | HB 168 |
| 40-5-203 | amended | Ch. 552 | SB 374 |
| 40-5-206 | amended | Ch. 552 | SB 374 |
| 40-5-210 | amended | Ch. 552 | SB 374 |
| 40-5-225 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-226 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-227 | amended | Ch. 552 | SB 374 |
| 40-5-231 | amended | Ch. 482 | HB 168 |
| 40-5-232 | amended | Ch. 398 | HB 276 |
| | amended | Ch. 552 | SB 374 |
| 40-5-233 | amended | Ch. 552 | SB 374 |
| 40-5-235 | amended | Ch. 552 | SB 374 |
| 40-5-236 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-237 | amended | Ch. 552 | SB 374 |
| 40-5-242 | amended | Ch. 262 | SB 288 |
| 40-5-248 | amended | Ch. 262 | SB 288 |
| | amended | Ch. 432 | SB 173 |
| 40-5-253 | amended | Ch. 482 | HB 168 |
| 40-5-263 | amended | Ch. 552 | SB 374 |
| 40-5-264 | amended | Ch. 552 | SB 374 |
| 40-5-271 | amended | Ch. 552 | SB 374 |
| 40-5-273 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-274 | amended | Ch. 552 | SB 374 |
| 40-5-275 | enacted | Ch. 552 | SB 374 |
| 40-5-302 | amended | Ch. 552 | SB 374 |
| 40-5-303 | amended | Ch. 552 | SB 374 |
| 40-5-304 | amended | Ch. 552 | SB 374 |
| 40-5-305 | amended | Ch. 552 | SB 374 |
| 40-5-306 | amended | Ch. 552 | SB 374 |
| 40-5-307 | amended | Ch. 552 | SB 374 |
| 40-5-308 | amended | Ch. 552 | SB 374 |
| 40-5-309 | amended | Ch. 552 | SB 374 |
| 40-5-310 | amended | Ch. 552 | SB 374 |
| 40-5-312 | amended | Ch. 552 | SB 374 |
| 40-5-313 | amended | Ch. 552 | SB 374 |
| 40-5-314 | amended | Ch. 552 | SB 374 |
| 40-5-315 | amended | Ch. 552 | SB 374 |
| 40-5-403 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-404 | amended | Ch. 552 | SB 374 |
| 40-5-412 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-413 | amended | Ch. 552 | SB 374 |
| 40-5-414 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-421 | amended | Ch. 552 | SB 374 |
| 40-5-423 | amended | Ch. 552 | SB 374 |

HeinOnline -- 1997 vol. III 3787 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 40-5-443 | amended | Ch. 552 | SB 374 |
| 40-5-701 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 552 | SB 374 |
| 40-5-702 | amended | Ch. 552 | SB 374 |
| 40-5-703 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-704 | amended | Ch. 552 | SB 374 |
| 40-5-709 | amended | Ch. 552 | SB 374 |
| 40-5-710 | amended | Ch. 552 | SB 374 |
| 40-5-711 | amended | Ch. 552 | SB 374 |
| 40-5-809 | amended | Ch. 482 | HB 168 |
| 40-5-821 | amended | Ch. 42 | SB 36 |
| 40-5-824 | amended | Ch. 482 | HB 168 |
| | amended | Ch. 552 | SB 374 |
| 40-5-901 | enacted | Ch. 552 | SB 374 |
| 40-5-906 | enacted | Ch. 552 | SB 374 |
| 40-5-907 | enacted | Ch. 552 | SB 374 |
| 40-5-908 | enacted | Ch. 552 | SB 374 |
| 40-5-909 | enacted | Ch. 552 | SB 374 |
| 40-5-910 | enacted | Ch. 552 | SB 374 |
| 40-5-911 | enacted | Ch. 552 | SB 374 |
| 40-5-921 | enacted | Ch. 552 | SB 374 |
| 40-5-922 | enacted | Ch. 552 | SB 374 |
| 40-5-923 | enacted | Ch. 552 | SB 374 |
| 40-5-924 | enacted | Ch. 552 | SB 374 |
| 40-6-102 | amended | Ch. 552 | SB 374 |
| 40-6-105 | amended | Ch. 552 | SB 374 |
| 40-6-108 | amended | Ch. 480 | HB 163 |
| 40-6-111 | amended | Ch. 552 | SB 374 |
| 40-6-115 | amended | Ch. 552 | SB 374 |
| 40-6-116 | amended | Ch. 552 | SB 374 |
| 40-6-117 | amended | Ch. 552 | SB 374 |
| 40-6-125 | repealed | Ch. 480 | HB 163 |
| 40-6-126 | repealed | Ch. 480 | HB 163 |
| 40-6-127 | repealed | Ch. 480 | HB 163 |
| 40-6-128 | repealed | Ch. 480 | HB 163 |
| 40-6-129 | repealed | Ch. 480 | HB 163 |
| 40-6-130 | repealed | Ch. 480 | HB 163 |
| 40-6-135 | repealed | Ch. 480 | HB 163 |
| 40-6-211 | amended | Ch. 343 | HB 231 |
| 40-6-221 | amended | Ch. 343 | HB 231 |
| 40-6-222 | repealed | Ch. 343 | HB 231 |
| 40-6-223 | repealed | Ch. 343 | HB 231 |
| 40-6-224 | repealed | Ch. 343 | HB 231 |
| 40-6-231 | repealed | Ch. 343 | HB 231 |
| 40-8-101 | repealed | Ch. 480 | HB 163 |
| 40-8-102 | repealed | Ch. 480 | HB 163 |
| 40-8-103 | repealed | Ch. 480 | HB 163 |
| 40-8-104 | repealed | Ch. 480 | HB 163 |
| 40-8-105 | repealed | Ch. 480 | HB 163 |
| 40-8-106 | repealed | Ch. 480 | HB 163 |
| 40-8-107 | repealed | Ch. 480 | HB 163 |
| 40-8-108 | repealed | Ch. 480 | HB 163 |
| 40-8-109 | repealed | Ch. 480 | HB 163 |
| 40-8-110 | repealed | Ch. 480 | HB 163 |

HeinOnline -- 1997 vol. III 3788 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 40-8-111 | repealed | Ch. 480 | HB 163 |
| | amended | Ch. 514 | HB 129 |
| | amended | Ch. 516 | HB 203 |
| 40-8-112 | repealed | Ch. 480 | HB 163 |
| 40-8-113 | repealed | Ch. 480 | HB 163 |
| 40-8-114 | repealed | Ch. 480 | HB 163 |
| 40-8-115 | repealed | Ch. 480 | HB 163 |
| 40-8-116 | repealed | Ch. 480 | HB 163 |
| 40-8-117 | repealed | Ch. 480 | HB 163 |
| 40-8-121 | repealed | Ch. 480 | HB 163 |
| 40-8-122 | repealed | Ch. 480 | HB 163 |
| 40-8-123 | repealed | Ch. 480 | HB 163 |
| 40-8-124 | repealed | Ch. 480 | HB 163 |
| 40-8-125 | repealed | Ch. 480 | HB 163 |
| 40-8-126 | repealed | Ch. 480 | HB 163 |
| 40-8-127 | repealed | Ch. 480 | HB 163 |
| 40-8-128 | repealed | Ch. 480 | HB 163 |
| 40-8-135 | repealed | Ch. 480 | HB 163 |
| 40-8-136 | repealed | Ch. 480 | HB 163 |
| 40-8-201 | repealed | Ch. 480 | HB 163 |
| 40-8-202 | repealed | Ch. 480 | HB 163 |
| 40-9-101 | amended | Ch. 343 | HB 231 |
| 40-9-102 | amended | Ch. 343 | HB 231 |
| 40-15-110 | enacted | Ch. 484 | HB 343 |
| 40-15-202 | amended | Ch. 484 | HB 343 |
| 40-15-204 | amended | Ch. 186 | SB 54 |
| 40-15-302 | amended | Ch. 484 | HB 343 |
| 41-1-304 | amended | Ch. 21 | SB 58 |
| 41-1-402 | amended | Ch. 42 | SB 36 |
| 41-3-101 | amended | Ch. 501 | SB 283 |
| 41-3-102 | amended | Ch. 514 | HB 129 |
| | amended | Ch. 516 | HB 203 |
| 41-3-109 | enacted | Ch. 516 | HB 203 |
| 41-3-201 | amended | Ch. 514 | HB 129 |
| 41-3-202 | amended | Ch. 514 | HB 129 |
| | amended | Ch. 516 | HB 203 |
| 41-3-204 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 514 | HB 129 |
| | amended | Ch. 516 | HB 203 |
| 41-3-205 | amended | Ch. 514 | HB 129 |
| | amended | Ch. 550 | SB 48 |
| 41-3-303 | amended | Ch. 516 | HB 203 |
| 41-3-401 | amended | Ch. 516 | HB 203 |
| 41-3-402 | amended | Ch. 501 | SB 283 |
| 41-3-403 | amended | Ch. 501 | SB 283 |
| | amended | Ch. 516 | HB 203 |
| 41-3-404 | amended | Ch. 516 | HB 203 |
| 41-3-406 | amended | Ch. 516 | HB 203 |
| 41-3-410 | repealed | Ch. 516 | HB 203 |
| 41-3-411 | enacted | Ch. 516 | HB 203 |
| 41-3-412 | enacted | Ch. 516 | HB 203 |
| 41-3-603 | repealed | Ch. 516 | HB 203 |
| 41-3-607 | amended | Ch. 516 | HB 203 |
| 41-3-609 | amended | Ch. 480 | HB 163 |
| | amended | Ch. 514 | HB 129 |
| | amended | Ch. 516 | HB 203 |
| 41-3-701 | amended | Ch. 405 | HB 576 |

HeinOnline -- 1997 vol. III 3789 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 41-3-703 | amended | Ch. 405 | HB 576 |
| 41-3-705 | enacted | Ch. 405 | HB 576 |
| 41-3-1101 | amended | Ch. 550 | SB 48 |
| 41-3-1102 | amended | Ch. 514 | HB 129 |
| | amended | Ch. 550 | SB 48 |
| 41-3-1103 | amended | Ch. 550 | SB 48 |
| 41-3-1104 | amended | Ch. 550 | SB 48 |
| 41-3-1114 | amended | Ch. 550 | SB 48 |
| 41-3-1122 | amended | Ch. 550 | SB 48 |
| 41-3-1132 | amended | Ch. 550 | SB 48 |
| 41-3-1141 | amended | Ch. 514 | HB 129 |
| 41-3-1142 | amended | Ch. 514 | HB 129 |
| 41-4-102 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 516 | HB 203 |
| 41-5-103 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 189 | SB 109 |
| | amended | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-111 | formerly 41-5-207 | Ch. 286 | HB 114 |
| 41-5-112 | formerly 41-5-530 | Ch. 286 | HB 114 |
| 41-5-121 | formerly 41-5-525 | Ch. 286 | HB 114 |
| 41-5-122 | formerly 41-5-526 | Ch. 286 | HB 114 |
| 41-5-123 | formerly 41-5-527 | Ch. 286 | HB 114 |
| 41-5-124 | formerly 41-5-528 | Ch. 286 | HB 114 |
| 41-5-125 | formerly 41-5-529 | Ch. 286 | HB 114 |
| 41-5-201 | amended | Ch. 550 | SB 48 |
| 41-5-202 | renumbered 41-5-1405 | Ch. 286 | HB 114 |
| 41-5-203 | amended | Ch. 498 | SB 99 |
| | amended | Ch. 550 | SB 48 |
| 41-5-204 | amended | Ch. 550 | SB 48 |
| 41-5-205 | amended | Ch. 498 | SB 99 |
| 41-5-206 | amended | Ch. 285 | SB 383 |
| | amended | Ch. 550 | SB 48 |
| 41-5-207 | renumbered 41-5-111 | Ch. 286 | HB 114 |
| 41-5-208 | amended | Ch. 286 | HB 114 |
| | amended | Ch. 498 | SB 99 |
| | amended | Ch. 550 | SB 48 |
| 41-5-215 | formerly 41-5-603 | Ch. 286 | HB 114 |
| 41-5-216 | formerly 41-5-604 | Ch. 286 | HB 114 |
| 41-5-217 | formerly 41-5-605 | Ch. 286 | HB 114 |
| 41-5-301 | amended | Ch. 185 | SB 46 |
| | amended and renumbered 41-5-1201 | Ch. 286 | HB 114 |
| 41-5-303 | amended and renumbered 41-5-331 | Ch. 286 | HB 114 |
| 41-5-304 | renumbered 41-5-1206 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-305 | amended and renumbered 41-5-341 | Ch. 286 | HB 114 |
| 41-5-306 | amended and renumbered 41-5-344 | Ch. 286 | HB 114 |
| 41-5-307 | amended and renumbered 41-5-322 | Ch. 286 | HB 114 |
| 41-5-309 | renumbered 41-5-323 | Ch. 286 | HB 114 |
| 41-5-310 | repealed | Ch. 286 | HB 114 |
| | repealed | Ch. 550 | SB 48 |
| 41-5-311 | amended and renumbered 41-5-349 | Ch. 286 | HB 114 |
| 41-5-312 | repealed | Ch. 286 | HB 114 |
| 41-5-313 | renumbered 41-5-350 | Ch. 286 | HB 114 |
| 41-5-314 | renumbered 41-5-321 | Ch. 286 | HB 114 |
| 41-5-321 | formerly 41-5-314 | Ch. 286 | HB 114 |
| 41-5-322 | formerly 41-5-307 | Ch. 286 | HB 114 |

HeinOnline -- 1997 vol. III 3790 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 41-5-323 | formerly 41-5-309 | Ch. 286 | HB 114 |
| 41-5-331 | formerly 41-5-303 | Ch. 286 | HB 114 |
| 41-5-332 | enacted | Ch. 286 | HB 114 |
| 41-5-333 | enacted | Ch. 286 | HB 114 |
| 41-5-334 | enacted | Ch. 286 | HB 114 |
| 41-5-341 | formerly 41-5-305 | Ch. 286 | HB 114 |
| 41-5-342 | enacted | Ch. 286 | HB 114 |
| 41-5-343 | enacted | Ch. 286 | HB 114 |
| 41-5-344 | formerly 41-5-306 | Ch. 286 | HB 114 |
| 41-5-345 | enacted | Ch. 286 | HB 114 |
| 41-5-346 | enacted | Ch. 286 | HB 114 |
| 41-5-347 | enacted | Ch. 286 | HB 114 |
| 41-5-348 | enacted | Ch. 286 | HB 114 |
| 41-5-349 | formerly 41-5-311 | Ch. 286 | HB 114 |
| 41-5-350 | formerly 41-5-313 | Ch. 286 | HB 114 |
| 41-5-401 | renumbered 41-5-1302 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-402 | renumbered 41-5-1303 | Ch. 286 | HB 114 |
| 41-5-403 | amended | Ch. 185 | SB 46 |
| | renumbered 41-5-1304 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-501 | renumbered 41-5-1402 | Ch. 286 | HB 114 |
| | amended | Ch. 498 | SB 99 |
| | amended | Ch. 550 | SB 48 |
| 41-5-502 | amended and renumbered 41-5-1403 | Ch. 286 | HB 114 |
| 41-5-503 | renumbered 41-5-1404 | Ch. 286 | HB 114 |
| 41-5-511 | renumbered 41-5-1413 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-512 | renumbered 41-5-1411 | Ch. 286 | HB 114 |
| 41-5-513 | renumbered 41-5-1414 | Ch. 286 | HB 114 |
| 41-5-514 | renumbered 41-5-1415 | Ch. 286 | HB 114 |
| 41-5-515 | renumbered 41-5-1412 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-521 | amended and renumbered 41-5-1502 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-522 | amended and renumbered 41-5-1511 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-523 | amended | Ch. 185 | SB 46 |
| | renumbered 41-5-1512 | Ch. 286 | HB 114 |
| | amended | Ch. 375 | HB 111 |
| | amended | Ch. 550 | SB 48 |
| 41-5-524 | renumbered 41-5-1501 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-525 | amended and renumbered 41-5-121 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-526 | renumbered 41-5-122 | Ch. 286 | HB 114 |
| 41-5-527 | amended and renumbered 41-5-123 | Ch. 286 | HB 114 |
| 41-5-528 | renumbered 41-5-124 | Ch. 286 | HB 114 |
| 41-5-529 | renumbered 41-5-125 | Ch. 286 | HB 114 |
| 41-5-530 | amended and renumbered 41-5-112 | Ch. 286 | HB 114 |
| | amended | Ch. 516 | HB 203 |
| 41-5-531 | renumbered 41-5-1421 | Ch. 286 | HB 114 |
| 41-5-532 | renumbered 41-5-1423 | Ch. 286 | HB 114 |
| 41-5-533 | renumbered 41-5-1431 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |

HeinOnline -- 1997 vol. III 3791 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 41-5-603 | renumbered 41-5-215 | Ch. 286 | HB 114 |
| | amended | Ch. 450 | HB 264 |
| | amended | Ch. 480 | HB 163 |
| | amended | Ch. 550 | SB 48 |
| 41-5-604 | renumbered 41-5-216 | Ch. 286 | HB 114 |
| | amended | Ch. 480 | HB 163 |
| 41-5-605 | renumbered 41-5-217 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-701 | renumbered 41-5-1701 | Ch. 286 | HB 114 |
| 41-5-702 | renumbered 41-5-1702 | Ch. 286 | HB 114 |
| 41-5-703 | renumbered 41-5-1703 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-704 | renumbered 41-5-1704 | Ch. 286 | HB 114 |
| | amended | Ch. 381 | SB 51 |
| 41-5-705 | renumbered 41-5-1705 | Ch. 286 | HB 114 |
| | amended | Ch. 381 | SB 51 |
| 41-5-706 | renumbered 41-5-1706 | Ch. 286 | HB 114 |
| 41-5-802 | renumbered 41-5-1801 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-809 | renumbered 41-5-1802 | Ch. 286 | HB 114 |
| 41-5-810 | renumbered 41-5-1803 | Ch. 286 | HB 114 |
| 41-5-811 | renumbered 41-5-1804 | Ch. 286 | HB 114 |
| 41-5-812 | renumbered 41-5-1805 | Ch. 286 | HB 114 |
| 41-5-813 | renumbered 41-5-1806 | Ch. 286 | HB 114 |
| 41-5-814 | renumbered 41-5-1807 | Ch. 286 | HB 114 |
| 41-5-1001 | renumbered 41-5-1901 | Ch. 286 | HB 114 |
| 41-5-1002 | renumbered 41-5-1902 | Ch. 286 | HB 114 |
| 41-5-1003 | renumbered 41-5-1903 | Ch. 286 | HB 114 |
| 41-5-1004 | renumbered 41-5-1904 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-1005 | renumbered 41-5-1905 | Ch. 286 | HB 114 |
| 41-5-1006 | renumbered 41-5-1906 | Ch. 286 | HB 114 |
| 41-5-1007 | renumbered 41-5-1907 | Ch. 286 | HB 114 |
| 41-5-1008 | amended | Ch. 42 | SB 36 |
| | renumbered 41-5-1908 | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-1101 | renumbered 41-5-1601 | Ch. 286 | HB 114 |
| 41-5-1102 | renumbered 41-5-1602 | Ch. 286 | HB 114 |
| | amended | Ch. 498 | SB 99 |
| 41-5-1103 | renumbered 41-5-1603 | Ch. 286 | HB 114 |
| | amended | Ch. 498 | SB 99 |
| 41-5-1104 | renumbered 41-5-1604 | Ch. 286 | HB 114 |
| | amended | Ch. 498 | SB 99 |
| | amended | Ch. 550 | SB 48 |
| 41-5-1105 | renumbered 41-5-1605 | Ch. 286 | HB 114 |
| | amended | Ch. 498 | SB 99 |
| | amended | Ch. 550 | SB 48 |
| 41-5-1201 | formerly 41-5-301 | Ch. 286 | HB 114 |
| 41-5-1202 | enacted | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-1203 | enacted | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 41-5-1204 | enacted | Ch. 286 | HB 114 |
| 41-5-1205 | enacted | Ch. 286 | HB 114 |
| 41-5-1206 | formerly 41-5-304 | Ch. 286 | HB 114 |
| 41-5-1301 | enacted | Ch. 286 | HB 114 |
| | enacted | Ch. 550 | SB 48 |

HeinOnline -- 1997 vol. III 3792 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 41-5-1302 | formerly 41-5-401 | Ch. 286 | HB 114 |
| 41-5-1303 | formerly 41-5-402 | Ch. 286 | HB 114 |
| 41-5-1304 | formerly 41-5-403 | Ch. 286 | HB 114 |
| 41-5-1401 | enacted | Ch. 286 | HB 114 |
| 41-5-1402 | formerly 41-5-501 | Ch. 286 | HB 114 |
| 41-5-1403 | formerly 41-5-502 | Ch. 286 | HB 114 |
| 41-5-1404 | formerly 41-5-503 | Ch. 286 | HB 114 |
| 41-5-1405 | formerly 41-5-202 | Ch. 286 | HB 114 |
| 41-5-1411 | formerly 41-5-512 | Ch. 286 | HB 114 |
| 41-5-1412 | formerly 41-5-515 | Ch. 286 | HB 114 |
| 41-5-1413 | formerly 41-5-511 | Ch. 286 | HB 114 |
| 41-5-1414 | formerly 41-5-513 | Ch. 286 | HB 114 |
| 41-5-1415 | formerly 41-5-514 | Ch. 286 | HB 114 |
| 41-5-1416 | formerly 46-24-207 | Ch. 550 | SB 48 |
| 41-5-1421 | formerly 41-5-531 | Ch. 286 | HB 114 |
| 41-5-1422 | enacted | Ch. 550 | SB 48 |
| 41-5-1423 | formerly 41-5-532 | Ch. 286 | HB 114 |
| 41-5-1431 | formerly 41-5-533 | Ch. 286 | HB 114 |
| 41-5-1432 | enacted | Ch. 498 | SB 99 |
| 41-5-1501 | formerly 41-5-524 | Ch. 286 | HB 114 |
| 41-5-1502 | formerly 41-5-521 | Ch. 286 | HB 114 |
| 41-5-1503 | enacted | Ch. 550 | SB 48 |
| 41-5-1504 | enacted | Ch. 550 | SB 48 |
| 41-5-1511 | formerly 41-5-522 | Ch. 286 | HB 114 |
| 41-5-1512 | formerly 41-5-523 | Ch. 286 | HB 114 |
| 41-5-1513 | enacted | Ch. 550 | SB 48 |
| 41-5-1521 | enacted | Ch. 550 | SB 48 |
| 41-5-1522 | enacted | Ch. 550 | SB 48 |
| 41-5-1523 | enacted | Ch. 550 | SB 48 |
| 41-5-1524 | enacted | Ch. 550 | SB 48 |
| 41-5-1525 | enacted | Ch. 550 | SB 48 |
| 41-5-1601 | formerly 41-5-1101 | Ch. 286 | HB 114 |
| 41-5-1602 | formerly 41-5-1102 | Ch. 286 | HB 114 |
| 41-5-1603 | formerly 41-5-1103 | Ch. 286 | HB 114 |
| 41-5-1604 | formerly 41-5-1104 | Ch. 286 | HB 114 |
| 41-5-1605 | formerly 41-5-1105 | Ch. 286 | HB 114 |
| 41-5-1606 | enacted | Ch. 498 | SB 99 |
| 41-5-1607 | enacted | Ch. 498 | SB 99 |
| 41-5-1701 | formerly 41-5-701 | Ch. 286 | HB 114 |
| 41-5-1702 | formerly 41-5-702 | Ch. 286 | HB 114 |
| 41-5-1703 | formerly 41-5-703 | Ch. 286 | HB 114 |
| 41-5-1704 | formerly 41-5-704 | Ch. 286 | HB 114 |
| 41-5-1705 | formerly 41-5-705 | Ch. 286 | HB 114 |
| 41-5-1706 | formerly 41-5-706 | Ch. 286 | HB 114 |
| 41-5-1707 | enacted | Ch. 550 | SB 48 |
| 41-5-1801 | formerly 41-5-802 | Ch. 286 | HB 114 |
| 41-5-1802 | formerly 41-5-809 | Ch. 286 | HB 114 |
| 41-5-1803 | formerly 41-5-810 | Ch. 286 | HB 114 |
| 41-5-1804 | formerly 41-5-811 | Ch. 286 | HB 114 |
| 41-5-1805 | formerly 41-5-812 | Ch. 286 | HB 114 |
| 41-5-1806 | formerly 41-5-813 | Ch. 286 | HB 114 |
| 41-5-1807 | formerly 41-5-814 | Ch. 286 | HB 114 |
| 41-5-1901 | formerly 41-5-1001 | Ch. 286 | HB 114 |
| 41-5-1902 | formerly 41-5-1002 | Ch. 286 | HB 114 |
| 41-5-1903 | formerly 41-5-1003 | Ch. 286 | HB 114 |
| 41-5-1904 | formerly 41-5-1004 | Ch. 286 | HB 114 |
| 41-5-1905 | formerly 41-5-1005 | Ch. 286 | HB 114 |

HeinOnline -- 1997 vol. III 3793 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 41-5-1906 | formerly 41-5-1006 | Ch. 286 | HB 114 |
| 41-5-1907 | formerly 41-5-1007 | Ch. 286 | HB 114 |
| 41-5-1908 | formerly 41-5-1008 | Ch. 286 | HB 114 |
| 42-1-101 | enacted | Ch. 480 | HB 163 |
| 42-1-102 | enacted | Ch. 480 | HB 163 |
| 42-1-103 | enacted | Ch. 480 | HB 163 |
| 42-1-104 | enacted | Ch. 480 | HB 163 |
| 42-1-105 | enacted | Ch. 480 | HB 163 |
| 42-1-106 | enacted | Ch. 480 | HB 163 |
| 42-1-107 | enacted | Ch. 480 | HB 163 |
| 42-1-108 | enacted | Ch. 480 | HB 163 |
| 42-1-109 | enacted | Ch. 480 | HB 163 |
| 42-1-110 | enacted | Ch. 480 | HB 163 |
| 42-1-111 | enacted | Ch. 480 | HB 163 |
| 42-2-101 | enacted | Ch. 480 | HB 163 |
| 42-2-102 | enacted | Ch. 480 | HB 163 |
| 42-2-103 | enacted | Ch. 480 | HB 163 |
| 42-2-104 | enacted | Ch. 480 | HB 163 |
| 42-2-105 | enacted | Ch. 480 | HB 163 |
| 42-2-106 | enacted | Ch. 480 | HB 163 |
| 42-2-201 | enacted | Ch. 480 | HB 163 |
| 42-2-202 | enacted | Ch. 480 | HB 163 |
| 42-2-203 | enacted | Ch. 480 | HB 163 |
| 42-2-204 | enacted | Ch. 480 | HB 163 |
| 42-2-205 | enacted | Ch. 480 | HB 163 |
| 42-2-206 | enacted | Ch. 480 | HB 163 |
| 42-2-207 | enacted | Ch. 480 | HB 163 |
| 42-2-208 | enacted | Ch. 480 | HB 163 |
| 42-2-209 | enacted | Ch. 480 | HB 163 |
| 42-2-214 | enacted | Ch. 480 | HB 163 |
| 42-2-215 | enacted | Ch. 480 | HB 163 |
| 42-2-216 | enacted | Ch. 480 | HB 163 |
| 42-2-217 | enacted | Ch. 480 | HB 163 |
| 42-2-218 | enacted | Ch. 480 | HB 163 |
| 42-2-222 | enacted | Ch. 480 | HB 163 |
| 42-2-223 | enacted | Ch. 480 | HB 163 |
| 42-2-224 | enacted | Ch. 480 | HB 163 |
| 42-2-225 | enacted | Ch. 480 | HB 163 |
| 42-2-226 | enacted | Ch. 480 | HB 163 |
| 42-2-230 | enacted | Ch. 480 | HB 163 |
| 42-2-301 | enacted | Ch. 480 | HB 163 |
| 42-2-302 | enacted | Ch. 480 | HB 163 |
| 42-2-303 | enacted | Ch. 480 | HB 163 |
| 42-2-401 | enacted | Ch. 480 | HB 163 |
| 42-2-402 | enacted | Ch. 480 | HB 163 |
| 42-2-403 | enacted | Ch. 480 | HB 163 |
| 42-2-404 | enacted | Ch. 480 | HB 163 |
| 42-2-405 | enacted | Ch. 480 | HB 163 |
| 42-2-408 | enacted | Ch. 480 | HB 163 |
| 42-2-409 | enacted | Ch. 480 | HB 163 |
| 42-2-410 | enacted | Ch. 480 | HB 163 |
| 42-2-411 | enacted | Ch. 480 | HB 163 |
| 42-2-412 | enacted | Ch. 480 | HB 163 |
| 42-2-413 | enacted | Ch. 480 | HB 163 |
| 42-2-417 | enacted | Ch. 480 | HB 163 |
| 42-2-418 | enacted | Ch. 480 | HB 163 |
| 42-2-421 | enacted | Ch. 480 | HB 163 |

HeinOnline -- 1997 vol. III 3794 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 42-2-422 | enacted | Ch. 480 | HB 163 |
| 42-2-501 | enacted | Ch. 480 | HB 163 |
| 42-2-502 | enacted | Ch. 480 | HB 163 |
| 42-2-503 | enacted | Ch. 480 | HB 163 |
| 42-2-601 | enacted | Ch. 480 | HB 163 |
| 42-2-602 | enacted | Ch. 480 | HB 163 |
| 42-2-603 | enacted | Ch. 480 | HB 163 |
| 42-2-604 | enacted | Ch. 480 | HB 163 |
| 42-2-605 | enacted | Ch. 480 | HB 163 |
| 42-2-606 | enacted | Ch. 480 | HB 163 |
| 42-2-607 | enacted | Ch. 480 | HB 163 |
| 42-2-608 | enacted | Ch. 480 | HB 163 |
| 42-2-609 | enacted | Ch. 480 | HB 163 |
| 42-2-610 | enacted | Ch. 480 | HB 163 |
| 42-2-611 | enacted | Ch. 480 | HB 163 |
| 42-2-616 | enacted | Ch. 480 | HB 163 |
| 42-2-617 | enacted | Ch. 480 | HB 163 |
| 42-2-618 | enacted | Ch. 480 | HB 163 |
| 42-2-619 | enacted | Ch. 480 | HB 163 |
| 42-2-620 | enacted | Ch. 480 | HB 163 |
| 42-3-101 | enacted | Ch. 480 | HB 163 |
| 42-3-102 | enacted | Ch. 480 | HB 163 |
| 42-3-201 | enacted | Ch. 480 | HB 163 |
| 42-3-202 | enacted | Ch. 480 | HB 163 |
| 42-3-203 | enacted | Ch. 480 | HB 163 |
| 42-3-204 | enacted | Ch. 480 | HB 163 |
| 42-3-205 | enacted | Ch. 480 | HB 163 |
| 42-3-206 | enacted | Ch. 480 | HB 163 |
| 42-3-207 | enacted | Ch. 480 | HB 163 |
| 42-3-212 | enacted | Ch. 480 | HB 163 |
| 42-3-213 | enacted | Ch. 480 | HB 163 |
| 42-3-301 | enacted | Ch. 480 | HB 163 |
| 42-4-101 | enacted | Ch. 480 | HB 163 |
| 42-4-102 | enacted | Ch. 480 | HB 163 |
| 42-4-103 | enacted | Ch. 480 | HB 163 |
| 42-4-106 | enacted | Ch. 480 | HB 163 |
| 42-4-110 | enacted | Ch. 480 | HB 163 |
| 42-4-111 | enacted | Ch. 480 | HB 163 |
| 42-4-112 | enacted | Ch. 480 | HB 163 |
| 42-4-113 | enacted | Ch. 480 | HB 163 |
| 42-4-114 | enacted | Ch. 480 | HB 163 |
| 42-4-115 | enacted | Ch. 480 | HB 163 |
| 42-4-116 | enacted | Ch. 480 | HB 163 |
| 42-4-201 | enacted | Ch. 480 | HB 163 |
| 42-4-202 | enacted | Ch. 480 | HB 163 |
| 42-4-203 | enacted | Ch. 480 | HB 163 |
| 42-4-204 | enacted | Ch. 480 | HB 163 |
| 42-4-205 | enacted | Ch. 480 | HB 163 |
| 42-4-206 | enacted | Ch. 480 | HB 163 |
| 42-4-209 | enacted | Ch. 480 | HB 163 |
| 42-4-210 | enacted | Ch. 480 | HB 163 |
| 42-4-301 | enacted | Ch. 480 | HB 163 |
| 42-4-302 | enacted | Ch. 480 | HB 163 |
| 42-4-303 | enacted | Ch. 480 | HB 163 |
| 42-4-304 | enacted | Ch. 480 | HB 163 |
| 42-4-305 | enacted | Ch. 480 | HB 163 |
| 42-4-309 | enacted | Ch. 480 | HB 163 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 42-4-310 | enacted | Ch. 480 | HB 163 |
| 42-4-311 | enacted | Ch. 480 | HB 163 |
| 42-4-312 | enacted | Ch. 480 | HB 163 |
| 42-4-401 | enacted | Ch. 480 | HB 163 |
| 42-4-402 | enacted | Ch. 480 | HB 163 |
| 42-4-403 | enacted | Ch. 480 | HB 163 |
| 42-4-404 | enacted | Ch. 480 | HB 163 |
| 42-4-405 | enacted | Ch. 480 | HB 163 |
| 42-5-101 | enacted | Ch. 480 | HB 163 |
| 42-5-102 | enacted | Ch. 480 | HB 163 |
| 42-5-103 | enacted | Ch. 480 | HB 163 |
| 42-5-104 | enacted | Ch. 480 | HB 163 |
| 42-5-105 | enacted | Ch. 480 | HB 163 |
| 42-5-106 | enacted | Ch. 480 | HB 163 |
| 42-5-107 | enacted | Ch. 480 | HB 163 |
| 42-5-108 | enacted | Ch. 480 | HB 163 |
| 42-5-109 | enacted | Ch. 480 | HB 163 |
| 42-5-201 | enacted | Ch. 480 | HB 163 |
| 42-5-202 | enacted | Ch. 480 | HB 163 |
| 42-5-203 | enacted | Ch. 480 | HB 163 |
| 42-5-204 | enacted | Ch. 480 | HB 163 |
| 42-5-205 | enacted | Ch. 480 | HB 163 |
| 42-5-301 | enacted | Ch. 480 | HB 163 |
| 42-6-101 | enacted | Ch. 480 | HB 163 |
| 42-6-102 | enacted | Ch. 480 | HB 163 |
| 42-6-103 | enacted | Ch. 480 | HB 163 |
| 42-6-104 | enacted | Ch. 480 | HB 163 |
| 42-6-105 | enacted | Ch. 480 | HB 163 |
| 42-6-109 | enacted | Ch. 480 | HB 163 |
| 42-7-101 | enacted | Ch. 480 | HB 163 |
| 42-7-102 | enacted | Ch. 480 | HB 163 |
| 42-7-105 | enacted | Ch. 480 | HB 163 |
| 42-7-106 | enacted | Ch. 480 | HB 163 |
| 42-8-101 | enacted | Ch. 480 | HB 163 |
| 42-8-102 | enacted | Ch. 480 | HB 163 |
| 42-8-103 | enacted | Ch. 480 | HB 163 |
| 42-8-104 | enacted | Ch. 480 | HB 163 |
| 42-8-107 | enacted | Ch. 480 | HB 163 |
| 42-8-108 | enacted | Ch. 480 | HB 163 |
| 42-10-101 | formerly 52-2-501 | Ch. 480 | HB 163 |
| 42-10-102 | formerly 52-2-502 | Ch. 480 | HB 163 |
| 42-10-103 | formerly 52-2-503 | Ch. 480 | HB 163 |
| 42-10-104 | formerly 52-2-504 | Ch. 480 | HB 163 |
| 42-10-105 | formerly 52-2-505 | Ch. 480 | HB 163 |
| 42-10-106 | formerly 52-2-506 | Ch. 480 | HB 163 |
| 42-10-107 | formerly 52-2-507 | Ch. 480 | HB 163 |
| 42-10-108 | formerly 52-2-508 | Ch. 480 | HB 163 |
| 42-10-109 | formerly 52-2-509 | Ch. 480 | HB 163 |
| 42-10-110 | formerly 52-2-510 | Ch. 480 | HB 163 |
| 42-10-121 | formerly 52-2-521 | Ch. 480 | HB 163 |
| 42-10-122 | formerly 52-2-522 | Ch. 480 | HB 163 |
| 42-10-123 | formerly 52-2-523 | Ch. 480 | HB 163 |
| 42-10-124 | formerly 52-2-524 | Ch. 480 | HB 163 |
| 42-10-125 | formerly 52-2-525 | Ch. 480 | HB 163 |
| 42-10-126 | formerly 52-2-526 | Ch. 480 | HB 163 |
| 42-10-127 | formerly 52-2-527 | Ch. 480 | HB 163 |
| 42-10-128 | formerly 52-2-528 | Ch. 480 | HB 163 |

HeinOnline -- 1997 vol. III 3796 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 44-5-303 | amended | Ch. 519 | HB 333 |
| 44-6-101 | amended | Ch. 375 | HB 111 |
| 45-2-311 | amended | Ch. 42 | SB 36 |
| 45-5-202 | amended | Ch. 245 | SB 341 |
| | amended | Ch. 433 | SB 256 |
| 45-5-205 | amended | Ch. 317 | HB 65 |
| 45-5-206 | amended | Ch. 245 | SB 341 |
| | amended | Ch. 484 | HB 343 |
| 45-5-210 | enacted | Ch. 433 | SB 256 |
| 45-5-223 | enacted | Ch. 62 | HB 200 |
| | amended | Ch. 303 | SB 219 |
| 45-5-304 | amended | Ch. 343 | HB 231 |
| 45-5-503 | amended | Ch. 312 | SB 201 |
| 45-5-512 | enacted | Ch. 334 | SB 31 |
| | amended | Ch. 341 | HB 268 |
| 45-5-622 | amended | Ch. 333 | SB 369 |
| 45-5-623 | amended | Ch. 155 | HB 411 |
| 45-5-624 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 182 | HB 577 |
| | amended | Ch. 550 | SB 48 |
| 45-5-631 | amended | Ch. 343 | HB 231 |
| 45-5-632 | amended | Ch. 343 | HB 231 |
| 45-5-633 | amended | Ch. 343 | HB 231 |
| 45-5-634 | enacted | Ch. 343 | HB 231 |
| 45-5-637 | amended | Ch. 550 | SB 48 |
| 45-7-302 | amended | Ch. 69 | HB 321 |
| 45-7-306 | amended | Ch. 26 | HB 43 |
| 45-8-209 | amended | Ch. 63 | HB 215 |
| 45-8-212 | amended | Ch. 230 | SB 205 |
| 45-8-317 | amended | Ch. 42 | SB 36 |
| 45-8-318 | amended | Ch. 168 | SB 6 |
| | amended | Ch. 550 | SB 48 |
| 45-8-360 | amended | Ch. 29 | HB 218 |
| 45-8-361 | enacted | Ch. 435 | HB 29 |
| 45-8-401 | enacted | Ch. 285 | SB 383 |
| 45-8-402 | enacted | Ch. 285 | SB 383 |
| 45-8-403 | enacted | Ch. 285 | SB 383 |
| 45-8-404 | enacted | Ch. 285 | SB 383 |
| 45-8-405 | enacted | Ch. 285 | SB 383 |
| 45-8-406 | enacted | Ch. 285 | SB 383 |
| 45-8-407 | enacted | Ch. 285 | SB 383 |
| 45-8-408 | enacted | Ch. 285 | SB 383 |
| 45-9-208 | amended | Ch. 42 | SB 36 |
| 45-10-108 | amended | Ch. 42 | SB 36 |
| 46-4-201 | amended | Ch. 478 | HB 137 |
| 46-5-212 | amended | Ch. 12 | SB 161 |
| 46-5-307 | amended | Ch. 186 | SB 54 |
| 46-5-308 | amended | Ch. 186 | SB 54 |
| 46-6-211 | amended | Ch. 42 | SB 36 |
| 46-6-311 | amended | Ch. 484 | HB 343 |
| 46-6-602 | amended | Ch. 233 | SB 167 |
| 46-7-102 | amended | Ch. 129 | HB 257 |
| 46-9-302 | amended | Ch. 484 | HB 343 |
| 46-9-503 | amended | Ch. 456 | HB 401 |
| 46-11-504 | amended | Ch. 162 | SB 145 |
| 46-12-211 | amended | Ch. 163 | SB 163 |
| 46-14-101 | amended | Ch. 42 | SB 36 |

HeinOnline -- 1997 vol. III 3797 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 46-14-206 | amended | Ch. 490 | HB 502 |
| 46-15-411 | amended | Ch. 186 | SB 54 |
| 46-16-105 | amended | Ch. 163 | SB 163 |
| 46-17-201 | amended | Ch. 129 | HB 257 |
| 46-17-203 | amended | Ch. 163 | SB 163 |
| 46-17-311 | amended | Ch. 129 | HB 257 |
| | amended | Ch. 149 | SB 142 |
| 46-18-101 | amended | Ch. 189 | SB 109 |
| | amended | Ch. 474 | HB 102 |
| 46-18-102 | amended | Ch. 163 | SB 163 |
| | amended | Ch. 378 | HB 222 |
| 46-18-111 | amended | Ch. 189 | SB 109 |
| 46-18-113 | amended | Ch. 189 | SB 109 |
| 46-18-115 | amended | Ch. 163 | SB 163 |
| 46-18-130 | amended | Ch. 42 | SB 36 |
| 46-18-201 | amended | Ch. 181 | HB 540 |
| | amended | Ch. 189 | SB 109 |
| | amended | Ch. 322 | HB 125 |
| | amended | Ch. 341 | HB 268 |
| | amended | Ch. 375 | HB 111 |
| | amended | Ch. 525 | HB 559 |
| 46-18-225 | amended | Ch. 189 | SB 109 |
| 46-18-237 | enacted | Ch. 475 | HB 122 |
| 46-18-241 | amended | Ch. 181 | HB 540 |
| 46-18-243 | amended | Ch. 26 | HB 43 |
| 46-18-244 | amended | Ch. 181 | HB 540 |
| 46-18-246 | amended | Ch. 181 | HB 540 |
| 46-18-247 | amended | Ch. 181 | HB 540 |
| 46-18-251 | amended | Ch. 181 | HB 540 |
| | amended | Ch. 186 | SB 54 |
| 46-18-254 | repealed | Ch. 375 | HB 111 |
| 46-18-256 | amended | Ch. 550 | SB 48 |
| 46-18-301 | amended | Ch. 378 | HB 222 |
| 46-18-303 | amended | Ch. 312 | SB 201 |
| 46-18-310 | amended | Ch. 302 | SB 216 |
| 46-18-701 | amended | Ch. 189 | SB 109 |
| 46-18-801 | amended | Ch. 42 | SB 36 |
| 46-18-1001 | amended | Ch. 322 | HB 125 |
| 46-18-1002 | amended | Ch. 322 | HB 125 |
| 46-18-1003 | amended | Ch. 322 | HB 125 |
| 46-19-103 | amended | Ch. 92 | HB 98 |
| 46-20-701 | amended | Ch. 42 | SB 36 |
| 46-21-101 | amended | Ch. 378 | HB 222 |
| 46-21-102 | amended | Ch. 378 | HB 222 |
| 46-21-104 | amended | Ch. 302 | SB 216 |
| 46-21-105 | amended | Ch. 302 | SB 216 |
| | amended | Ch. 378 | HB 222 |
| 46-21-201 | amended | Ch. 378 | HB 222 |
| 46-23-201 | amended | Ch. 189 | SB 109 |
| 46-23-210 | amended | Ch. 420 | HB 135 |
| 46-23-215 | amended | Ch. 189 | SB 109 |
| 46-23-301 | amended | Ch. 92 | HB 98 |
| 46-23-401 | amended | Ch. 189 | SB 109 |
| | repealed | Ch. 322 | HB 125 |
| 46-23-405 | repealed | Ch. 322 | HB 125 |
| 46-23-411 | repealed | Ch. 322 | HB 125 |
| 46-23-412 | repealed | Ch. 322 | HB 125 |

HeinOnline -- 1997 vol. III 3798 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 46-23-421 | repealed | Ch. 322 | HB 125 |
| 46-23-422 | repealed | Ch. 322 | HB 125 |
| 46-23-426 | repealed | Ch. 322 | HB 125 |
| 46-23-501 | amended | Ch. 375 | HB 111 |
| 46-23-502 | amended | Ch. 375 | HB 111 |
| 46-23-503 | amended | Ch. 375 | HB 111 |
| 46-23-504 | amended | Ch. 375 | HB 111 |
| 46-23-505 | amended | Ch. 375 | HB 111 |
| 46-23-506 | amended | Ch. 375 | HB 111 |
| 46-23-507 | amended | Ch. 375 | HB 111 |
| 46-23-508 | amended | Ch. 375 | HB 111 |
| 46-23-509 | enacted | Ch. 375 | HB 111 |
| 46-23-510 | enacted | Ch. 375 | HB 111 |
| 46-23-511 | enacted | Ch. 375 | HB 111 |
| 46-24-206 | amended | Ch. 186 | SB 54 |
| 46-24-207 | amended | Ch. 286 | HB 114 |
| | amended and renumbered 41-5-1416 | Ch. 550 | SB 48 |
| 46-24-212 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 189 | SB 109 |
| 46-30-401 | amended | Ch. 42 | SB 36 |
| 49-2-101 | amended | Ch. 467 | SB 350 |
| 49-2-201 | repealed | Ch. 467 | SB 350 |
| 49-2-203 | amended | Ch. 467 | SB 350 |
| 49-2-204 | amended | Ch. 467 | SB 350 |
| 49-2-205 | enacted | Ch. 467 | SB 350 |
| 49-2-210 | enacted | Ch. 467 | SB 350 |
| 49-2-305 | amended | Ch. 194 | HB 495 |
| 49-2-501 | amended | Ch. 467 | SB 350 |
| 49-2-502 | repealed | Ch. 467 | SB 350 |
| 49-2-503 | amended | Ch. 467 | SB 350 |
| 49-2-504 | amended | Ch. 467 | SB 350 |
| 49-2-505 | amended | Ch. 467 | SB 350 |
| 49-2-506 | amended | Ch. 467 | SB 350 |
| 49-2-508 | amended | Ch. 467 | SB 350 |
| 49-2-509 | amended | Ch. 467 | SB 350 |
| 49-2-510 | amended | Ch. 422 | HB 166 |
| | amended | Ch. 467 | SB 350 |
| 49-3-304 | repealed | Ch. 467 | SB 350 |
| 49-3-305 | repealed | Ch. 467 | SB 350 |
| 49-3-306 | repealed | Ch. 467 | SB 350 |
| 49-3-307 | repealed | Ch. 467 | SB 350 |
| 49-3-308 | repealed | Ch. 467 | SB 350 |
| 49-3-309 | repealed | Ch. 467 | SB 350 |
| 49-3-310 | repealed | Ch. 467 | SB 350 |
| 49-3-311 | repealed | Ch. 467 | SB 350 |
| 49-3-312 | repealed | Ch. 467 | SB 350 |
| 49-3-315 | enacted | Ch. 467 | SB 350 |
| 49-4-203 | amended | Ch. 394 | HB 184 |
| 49-4-214 | amended | Ch. 394 | HB 184 |
| 49-4-301 | amended | Ch. 280 | SB 282 |
| 49-4-303 | amended | Ch. 280 | SB 282 |
| 49-4-305 | amended | Ch. 280 | SB 282 |
| 50-1-202 | amended | Ch. 73 | SB 14 |
| | amended | Ch. 472 | HB 53 |
| 50-1-210 | enacted | Ch. 73 | SB 14 |
| 50-2-111 | amended | Ch. 83 | HB 60 |

HeinOnline -- 1997 vol. III 3799 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 50-3-103 | amended | Ch. 116 | HB 225 |
| | amended | Ch. 201 | HB 224 |
| 50-3-109 | amended | Ch. 532 | HB 169 |
| 50-4-203 | amended | Ch. 517 | HB 298 |
| 50-4-504 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 188 | SB 68 |
| 50-4-505 | enacted | Ch. 531 | HB 131 |
| 50-4-605 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 188 | SB 68 |
| 50-5-101 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 93 | HB 108 |
| | amended | Ch. 99 | HB 359 |
| | amended | Ch. 171 | SB 298 |
| | amended | Ch. 188 | SB 68 |
| 50-5-103 | amended | Ch. 99 | HB 359 |
| | amended | Ch. 188 | SB 68 |
| 50-5-105 | amended | Ch. 472 | HB 53 |
| 50-5-112 | amended | Ch. 422 | HB 166 |
| 50-5-113 | amended | Ch. 422 | HB 166 |
| 50-5-228 | amended | Ch. 42 | SB 36 |
| 50-5-232 | amended | Ch. 422 | HB 166 |
| 50-5-301 | amended | Ch. 93 | HB 108 |
| 50-5-302 | amended | Ch. 93 | HB 108 |
| 50-5-304 | amended | Ch. 93 | HB 108 |
| 50-5-305 | amended | Ch. 93 | HB 108 |
| 50-5-306 | amended | Ch. 93 | HB 108 |
| 50-5-308 | amended | Ch. 93 | HB 108 |
| 50-5-309 | amended | Ch. 93 | HB 108 |
| 50-5-310 | amended | Ch. 93 | HB 108 |
| 50-5-316 | repealed | Ch. 93 | HB 108 |
| 50-5-402 | repealed | Ch. 8 | HB 33 |
| 50-5-403 | repealed | Ch. 8 | HB 33 |
| 50-5-404 | repealed | Ch. 8 | HB 33 |
| 50-5-405 | repealed | Ch. 8 | HB 33 |
| 50-5-406 | repealed | Ch. 8 | HB 33 |
| 50-5-407 | repealed | Ch. 8 | HB 33 |
| 50-5-408 | repealed | Ch. 8 | HB 33 |
| 50-5-409 | repealed | Ch. 8 | HB 33 |
| 50-5-410 | repealed | Ch. 8 | HB 33 |
| 50-5-411 | repealed | Ch. 8 | HB 33 |
| 50-5-1104 | amended | Ch. 42 | SB 36 |
| 50-6-103 | amended | Ch. 171 | SB 298 |
| 50-6-401 | amended | Ch. 171 | SB 298 |
| 50-6-402 | amended | Ch. 171 | SB 298 |
| 50-6-403 | repealed | Ch. 171 | SB 298 |
| 50-6-404 | amended | Ch. 171 | SB 298 |
| 50-10-101 | amended | Ch. 93 | HB 108 |
| 50-15-121 | amended | Ch. 118 | HB 340 |
| 50-15-210 | amended | Ch. 552 | SB 374 |
| 50-15-223 | amended | Ch. 480 | HB 163 |
| | amended | Ch. 552 | SB 374 |
| 50-15-401 | repealed | Ch. 118 | HB 340 |
| 50-15-403 | amended | Ch. 118 | HB 340 |
| | amended | Ch. 552 | SB 374 |
| 50-15-411 | enacted | Ch. 351 | SB 297 |
| 50-15-412 | enacted | Ch. 351 | SB 297 |
| 50-15-702 | amended | Ch. 101 | HB 370 |

HeinOnline -- 1997 vol. III 3800 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 50-15-703 | amended | Ch. 101 | HB 370 |
| 50-15-704 | amended | Ch. 101 | HB 370 |
| 50-15-710 | enacted | Ch. 101 | HB 370 |
| 50-16-525 | amended | Ch. 519 | HB 333 |
| 50-16-701 | amended | Ch. 93 | HB 108 |
| 50-16-1003 | amended | Ch. 197 | HB 412 |
| | amended | Ch. 524 | HB 558 |
| 50-16-1004 | enacted | Ch. 524 | HB 558 |
| 50-16-1007 | amended | Ch. 524 | HB 558 |
| 50-19-303 | amended | Ch. 171 | SB 298 |
| 50-19-312 | repealed | Ch. 171 | SB 298 |
| 50-19-323 | amended | Ch. 519 | HB 333 |
| 50-19-401 | enacted | Ch. 519 | HB 333 |
| 50-19-402 | enacted | Ch. 519 | HB 333 |
| 50-19-403 | enacted | Ch. 519 | HB 333 |
| 50-19-404 | enacted | Ch. 519 | HB 333 |
| 50-19-405 | enacted | Ch. 519 | HB 333 |
| 50-19-406 | enacted | Ch. 519 | HB 333 |
| 50-20-109 | amended | Ch. 314 | HB 365 |
| 50-20-401 | enacted | Ch. 314 | SB 365 |
| 50-31-103 | amended | Ch. 42 | SB 36 |
| 50-31-202 | amended | Ch. 42 | SB 36 |
| 50-31-203 | amended | Ch. 42 | SB 36 |
| 50-31-301 | amended | Ch. 42 | SB 36 |
| 50-31-306 | amended | Ch. 42 | SB 36 |
| 50-31-307 | amended | Ch. 42 | SB 36 |
| 50-31-311 | amended | Ch. 42 | SB 36 |
| 50-31-312 | amended | Ch. 42 | SB 36 |
| 50-32-209 | amended | Ch. 113 | HB 165 |
| 50-32-222 | amended | Ch. 113 | HB 165 |
| 50-32-224 | amended | Ch. 113 | HB 165 |
| 50-32-226 | amended | Ch. 113 | HB 165 |
| 50-32-229 | amended | Ch. 103 | SB 8 |
| | amended | Ch. 113 | HB 165 |
| 50-32-232 | amended | Ch. 113 | HB 165 |
| 50-32-233 | enacted | Ch. 113 | HB 165 |
| 50-39-101 | amended | Ch. 481 | HB 164 |
| 50-39-102 | amended | Ch. 481 | HB 164 |
| | amended | Ch. 492 | HB 598 |
| 50-39-104 | repealed | Ch. 481 | HB 164 |
| 50-39-108 | enacted | Ch. 481 | HB 164 |
| 50-40-206 | amended | Ch. 422 | HB 166 |
| 50-49-103 | amended | Ch. 171 | SB 298 |
| 50-49-104 | repealed | Ch. 171 | SB 298 |
| 50-49-105 | repealed | Ch. 171 | SB 298 |
| 50-49-106 | amended | Ch. 171 | SB 298 |
| 50-49-107 | amended | Ch. 171 | SB 298 |
| 50-50-102 | amended | Ch. 412 | SB 338 |
| 50-50-201 | amended | Ch. 366 | HB 391 |
| 50-50-203 | amended | Ch. 366 | HB 391 |
| 50-50-205 | amended | Ch. 366 | HB 391 |
| 50-50-207 | amended | Ch. 366 | HB 391 |
| 50-50-214 | amended | Ch. 366 | HB 391 |
| 50-51-101 | amended | Ch. 412 | SB 338 |
| 50-51-102 | amended | Ch. 350 | SB 118 |
| | amended | Ch. 412 | SB 338 |

HeinOnline -- 1997 vol. III 3801 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 50-51-103 | amended | Ch. 350 | SB 118 |
| | amended | Ch. 412 | SB 338 |
| 50-51-108 | enacted | Ch. 350 | SB 118 |
| 50-51-201 | amended | Ch. 350 | SB 118 |
| | amended | Ch. 412 | SB 338 |
| 50-51-207 | amended | Ch. 350 | SB 118 |
| | amended | Ch. 412 | SB 338 |
| 50-51-212 | amended | Ch. 350 | SB 118 |
| 50-51-401 | amended | Ch. 412 | SB 338 |
| 50-52-102 | amended | Ch. 350 | SB 118 |
| 50-52-203 | amended | Ch. 350 | SB 118 |
| 50-52-211 | enacted | Ch. 350 | SB 118 |
| 50-53-201 | amended | Ch. 42 | SB 36 |
| 50-53-202 | amended | Ch. 42 | SB 36 |
| 50-53-203 | amended | Ch. 42 | SB 36 |
| 50-53-204 | amended | Ch. 42 | SB 36 |
| 50-53-206 | amended | Ch. 42 | SB 36 |
| 50-53-207 | amended | Ch. 42 | SB 36 |
| 50-53-211 | amended | Ch. 42 | SB 36 |
| 50-53-212 | amended | Ch. 42 | SB 36 |
| 50-53-216 | amended | Ch. 42 | SB 36 |
| 50-53-217 | amended | Ch. 42 | SB 36 |
| 50-53-218 | amended | Ch. 42 | SB 36 |
| 50-60-101 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 331 | SB 286 |
| | amended | Ch. 488 | HB 388 |
| 50-60-102 | amended | Ch. 488 | HB 388 |
| 50-60-104 | amended | Ch. 240 | SB 265 |
| | amended | Ch. 346 | HB 594 |
| | amended | Ch. 357 | HB 281 |
| 50-60-106 | amended | Ch. 488 | HB 388 |
| 50-60-201 | amended | Ch. 331 | SB 286 |
| | amended | Ch. 472 | HB 53 |
| 50-60-203 | amended | Ch. 140 | HB 382 |
| | amended | Ch. 331 | SB 286 |
| | amended | Ch. 488 | HB 388 |
| 50-60-204 | amended | Ch. 488 | HB 388 |
| 50-60-205 | amended | Ch. 93 | HB 108 |
| 50-60-211 | enacted | Ch. 331 | SB 286 |
| 50-60-212 | enacted | Ch. 331 | SB 286 |
| 50-60-213 | enacted | Ch. 331 | SB 286 |
| 50-60-214 | enacted | Ch. 331 | SB 286 |
| 50-60-301 | amended | Ch. 93 | HB 108 |
| 50-60-302 | amended | Ch. 488 | HB 388 |
| 50-60-401 | amended | Ch. 240 | SB 265 |
| 50-60-402 | amended | Ch. 240 | SB 265 |
| 50-60-403 | amended | Ch. 240 | SB 265 |
| 50-60-508 | amended | Ch. 357 | HB 281 |
| 50-60-510 | amended | Ch. 379 | HB 266 |
| 50-60-604 | amended | Ch. 357 | HB 281 |
| | amended | Ch. 379 | HB 266 |
| 50-62-112 | enacted | Ch. 201 | HB 224 |
| 50-71-321 | amended | Ch. 307 | SB 325 |
| 50-72-201 | amended | Ch. 307 | SB 325 |
| 50-72-202 | amended | Ch. 307 | SB 325 |
| 50-74-219 | amended | Ch. 385 | SB 290 |
| 50-74-313 | amended | Ch. 492 | HB 598 |

HeinOnline -- 1997 vol. III 3802 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 50-74-314 | repealed | Ch. 481 | HB 164 |
| 50-76-103 | amended | Ch. 481 | HB 164 |
| 50-76-104 | amended | Ch. 481 | HB 164 |
| 50-76-105 | amended | Ch. 492 | HB 598 |
| 50-76-106 | repealed | Ch. 481 | HB 164 |
| 50-76-111 | enacted | Ch. 481 | HB 164 |
| 50-76-112 | enacted | Ch. 481 | HB 164 |
| 50-78-103 | amended | Ch. 93 | HB 108 |
| 50-79-101 | formerly 75-3-101 | Ch. 73 | SB 14 |
| 50-79-102 | formerly 75-3-102 | Ch. 73 | SB 14 |
| 50-79-103 | formerly 75-3-103 | Ch. 73 | SB 14 |
| 50-79-104 | formerly 75-3-104 | Ch. 73 | SB 14 |
| 50-79-105 | formerly 75-3-105 | Ch. 73 | SB 14 |
| 50-79-106 | formerly 75-3-106 | Ch. 73 | SB 14 |
| 50-79-107 | formerly 75-3-107 | Ch. 73 | SB 14 |
| 50-79-108 | formerly 75-3-108 | Ch. 73 | SB 14 |
| 50-79-201 | formerly 75-3-201 | Ch. 73 | SB 14 |
| 50-79-202 | formerly 75-3-202 | Ch. 73 | SB 14 |
| 50-79-203 | formerly 75-3-203 | Ch. 73 | SB 14 |
| 50-79-204 | formerly 75-3-204 | Ch. 73 | SB 14 |
| 50-79-301 | formerly 75-3-301 | Ch. 73 | SB 14 |
| 50-79-302 | formerly 75-3-302 | Ch. 73 | SB 14 |
| 50-79-303 | formerly 75-3-303 | Ch. 73 | SB 14 |
| 50-79-304 | formerly 75-3-304 | Ch. 73 | SB 14 |
| 50-79-401 | formerly 75-3-401 | Ch. 73 | SB 14 |
| 50-79-402 | formerly 75-3-402 | Ch. 73 | SB 14 |
| 50-79-403 | formerly 75-3-403 | Ch. 73 | SB 14 |
| 50-79-404 | formerly 75-3-404 | Ch. 73 | SB 14 |
| 50-79-405 | formerly 75-3-405 | Ch. 73 | SB 14 |
| 50-79-406 | formerly 75-3-406 | Ch. 73 | SB 14 |
| 50-79-407 | formerly 75-3-407 | Ch. 73 | SB 14 |
| 50-79-410 | formerly 75-3-410 | Ch. 73 | SB 14 |
| 50-79-501 | formerly 75-3-501 | Ch. 73 | SB 14 |
| 50-79-502 | formerly 75-3-502 | Ch. 73 | SB 14 |
| 52-1-103 | amended | Ch. 171 | SB 298 |
| | amended | Ch. 472 | HB 53 |
| 52-1-202 | repealed | Ch. 171 | SB 298 |
| 52-1-203 | repealed | Ch. 171 | SB 298 |
| 52-2-113 | amended | Ch. 472 | HB 53 |
| 52-2-211 | amended | Ch. 550 | SB 48 |
| 52-2-401 | repealed | Ch. 480 | HB 163 |
| 52-2-402 | repealed | Ch. 480 | HB 163 |
| 52-2-403 | repealed | Ch. 480 | HB 163 |
| 52-2-404 | repealed | Ch. 480 | HB 163 |
| 52-2-405 | repealed | Ch. 480 | HB 163 |
| 52-2-406 | repealed | Ch. 480 | HB 163 |
| 52-2-407 | repealed | Ch. 480 | HB 163 |
| 52-2-501 | renumbered 42-10-101 | Ch. 480 | HB 163 |
| 52-2-502 | renumbered 42-10-102 | Ch. 480 | HB 163 |
| 52-2-503 | renumbered 42-10-103 | Ch. 480 | HB 163 |
| 52-2-504 | renumbered 42-10-104 | Ch. 480 | HB 163 |
| 52-2-505 | amended and renumbered 42-10-105 | Ch. 480 | HB 163 |
| 52-2-506 | renumbered 42-10-106 | Ch. 480 | HB 163 |
| 52-2-507 | renumbered 42-10-107 | Ch. 480 | HB 163 |
| 52-2-508 | renumbered 42-10-108 | Ch. 480 | HB 163 |
| 52-2-509 | renumbered 42-10-109 | Ch. 480 | HB 163 |
| 52-2-510 | renumbered 42-10-110 | Ch. 480 | HB 163 |

HeinOnline -- 1997 vol. III 3803 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 52-2-521 | renumbered 42-10-121 | Ch. 480 | HB 163 |
| 52-2-522 | renumbered 42-10-122 | Ch. 480 | HB 163 |
| 52-2-523 | amended | Ch. 42 | SB 36 |
| | renumbered 42-10-123 | Ch. 480 | HB 163 |
| 52-2-524 | renumbered 42-10-124 | Ch. 480 | HB 163 |
| 52-2-525 | renumbered 42-10-125 | Ch. 480 | HB 163 |
| 52-2-526 | renumbered 42-10-126 | Ch. 480 | HB 163 |
| 52-2-527 | renumbered 42-10-127 | Ch. 480 | HB 163 |
| 52-2-528 | renumbered 42-10-128 | Ch. 480 | HB 163 |
| 52-2-703 | amended | Ch. 318 | HB 66 |
| 52-2-704 | amended | Ch. 171 | SB 298 |
| 52-2-705 | repealed | Ch. 171 | SB 298 |
| 52-2-711 | amended | Ch. 318 | HB 66 |
| 52-2-741 | amended | Ch. 222 | HB 159 |
| 52-5-101 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 189 | SB 109 |
| | amended | Ch. 550 | SB 48 |
| 52-5-102 | amended | Ch. 550 | SB 48 |
| 52-5-103 | amended | Ch. 550 | SB 48 |
| 52-5-107 | amended | Ch. 550 | SB 48 |
| 52-5-108 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 189 | SB 109 |
| 52-5-109 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 189 | SB 109 |
| 52-5-111 | amended | Ch. 550 | SB 48 |
| 52-5-112 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 189 | SB 109 |
| 52-5-113 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 189 | SB 109 |
| | amended | Ch. 550 | SB 48 |
| 52-5-126 | amended | Ch. 550 | SB 48 |
| 52-5-127 | amended | Ch. 550 | SB 48 |
| 52-5-128 | amended | Ch. 550 | SB 48 |
| 52-5-129 | amended | Ch. 286 | HB 114 |
| | amended | Ch. 550 | SB 48 |
| 53-1-102 | amended | Ch. 189 | SB 109 |
| 53-1-103 | amended | Ch. 189 | SB 109 |
| 53-1-104 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 189 | SB 109 |
| 53-1-107 | enacted | Ch. 316 | HB 44 |
| 53-1-108 | enacted | Ch. 316 | HB 44 |
| 53-1-201 | amended | Ch. 550 | SB 48 |
| 53-1-202 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 189 | SB 109 |
| 53-1-203 | amended | Ch. 189 | SB 109 |
| | amended | Ch. 322 | HB 125 |
| | amended | Ch. 455 | HB 398 |
| | amended | Ch. 550 | SB 48 |
| 53-1-207 | enacted | Ch. 513 | HB 101 |
| 53-1-301 | amended | Ch. 315 | SB 2 |
| 53-1-302 | amended | Ch. 189 | SB 109 |
| 53-1-304 | amended | Ch. 315 | SB 2 |
| 53-1-401 | amended | Ch. 190 | SB 114 |
| 53-1-402 | amended | Ch. 190 | SB 114 |
| 53-1-403 | amended | Ch. 190 | SB 114 |
| 53-1-404 | amended | Ch. 190 | SB 114 |
| 53-1-405 | amended | Ch. 190 | SB 114 |

HeinOnline -- 1997 vol. III 3804 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 53-1-406 | amended | Ch. 190 | SB 114 |
| 53-1-407 | amended | Ch. 190 | SB 114 |
| 53-1-408 | amended | Ch. 190 | SB 114 |
| 53-1-409 | amended | Ch. 190 | SB 114 |
| 53-1-410 | amended | Ch. 190 | SB 114 |
| 53-1-411 | amended | Ch. 190 | SB 114 |
| 53-1-412 | amended | Ch. 190 | SB 114 |
| 53-1-413 | amended | Ch. 190 | SB 114 |
| 53-1-414 | enacted | Ch. 190 | SB 114 |
| 53-2-108 | amended | Ch. 486 | HB 371 |
| 53-2-109 | amended | Ch. 486 | HB 371 |
| 53-2-201 | amended | Ch. 472 | HB 53 |
| | amended | Ch. 486 | HB 371 |
| 53-2-211 | amended | Ch. 486 | HB 371 |
| 53-2-606 | amended | Ch. 486 | HB 371 |
| 53-2-610 | amended | Ch. 486 | HB 371 |
| 53-2-612 | amended | Ch. 262 | SB 288 |
| 53-2-613 | amended | Ch. 486 | HB 371 |
| | amended | Ch. 552 | SB 374 |
| 53-2-804 | renumbered 53-3-116 | Ch. 42 | SB 36 |
| 53-2-901 | amended | Ch. 486 | HB 371 |
| 53-2-902 | amended | Ch. 486 | HB 371 |
| 53-2-903 | amended | Ch. 486 | HB 371 |
| 53-2-904 | amended | Ch. 486 | HB 371 |
| 53-2-1103 | amended | Ch. 486 | HB 371 |
| 53-2-1109 | amended | Ch. 486 | HB 371 |
| 53-3-116 | formerly 53-2-804 | Ch. 42 | SB 36 |
| 53-4-201 | amended | Ch. 486 | HB 371 |
| 53-4-202 | amended | Ch. 486 | HB 371 |
| 53-4-211 | amended | Ch. 486 | HB 371 |
| 53-4-212 | amended | Ch. 486 | HB 371 |
| 53-4-214 | amended | Ch. 486 | HB 371 |
| 53-4-221 | amended | Ch. 486 | HB 371 |
| 53-4-231 | amended | Ch. 486 | HB 371 |
| 53-4-233 | amended | Ch. 486 | HB 371 |
| 53-4-241 | amended | Ch. 486 | HB 371 |
| 53-4-246 | amended | Ch. 486 | HB 371 |
| 53-4-247 | amended | Ch. 486 | HB 371 |
| 53-4-248 | amended | Ch. 486 | HB 371 |
| 53-4-249 | repealed | Ch. 486 | HB 371 |
| 53-4-601 | amended | Ch. 486 | HB 371 |
| 53-4-602 | amended | Ch. 486 | HB 371 |
| 53-4-603 | amended | Ch. 486 | HB 371 |
| | amended | Ch. 515 | HB 146 |
| 53-4-606 | amended | Ch. 486 | HB 371 |
| 53-4-607 | amended | Ch. 472 | HB 53 |
| | amended | Ch. 486 | HB 371 |
| 53-4-608 | amended | Ch. 486 | HB 371 |
| 53-4-609 | amended | Ch. 486 | HB 371 |
| 53-4-611 | amended | Ch. 486 | HB 371 |
| 53-4-612 | amended | Ch. 486 | HB 371 |
| 53-4-613 | amended | Ch. 486 | HB 371 |
| 53-4-701 | amended | Ch. 486 | HB 371 |
| 53-4-702 | amended | Ch. 486 | HB 371 |
| 53-4-703 | amended | Ch. 486 | HB 371 |
| 53-4-705 | amended | Ch. 486 | HB 371 |
| 53-4-706 | amended | Ch. 486 | HB 371 |

HeinOnline -- 1997 vol. III 3805 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 53-4-707 | repealed | Ch. 486 | HB 371 |
| 53-4-708 | repealed | Ch. 486 | HB 371 |
| 53-4-715 | repealed | Ch. 486 | HB 371 |
| 53-4-716 | repealed | Ch. 486 | HB 371 |
| 53-4-717 | amended | Ch. 486 | HB 371 |
| 53-4-718 | repealed | Ch. 486 | HB 371 |
| 53-4-720 | repealed | Ch. 486 | HB 371 |
| 53-6-101 | amended | Ch. 486 | HB 371 |
| 53-6-106 | amended | Ch. 93 | HB 108 |
| 53-6-110 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 93 | HB 108 |
| 53-6-113 | amended | Ch. 486 | HB 371 |
| 53-6-131 | amended | Ch. 486 | HB 371 |
| 53-6-134 | amended | Ch. 486 | HB 371 |
| 53-6-143 | amended | Ch. 195 | SB 69 |
| | amended | Ch. 262 | SB 288 |
| 53-6-150 | amended | Ch. 422 | HB 166 |
| 53-6-708 | amended | Ch. 42 | SB 36 |
| 53-6-801 | enacted | Ch. 195 | SB 69 |
| 53-6-802 | enacted | Ch. 195 | SB 69 |
| 53-6-803 | enacted | Ch. 195 | SB 69 |
| 53-6-804 | enacted | Ch. 195 | SB 69 |
| 53-6-805 | enacted | Ch. 195 | SB 69 |
| 53-6-901 | enacted | Ch. 380 | HB 538 |
| 53-6-902 | enacted | Ch. 380 | HB 538 |
| 53-6-903 | enacted | Ch. 380 | HB 538 |
| 53-6-904 | enacted | Ch. 380 | HB 538 |
| 53-6-905 | enacted | Ch. 380 | HB 538 |
| 53-6-906 | enacted | Ch. 380 | HB 538 |
| 53-6-907 | enacted | Ch. 380 | HB 538 |
| 53-6-908 | enacted | Ch. 380 | HB 538 |
| 53-6-909 | enacted | Ch. 380 | HB 538 |
| 53-6-910 | enacted | Ch. 380 | HB 538 |
| 53-7-101 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 472 | HB 53 |
| 53-7-102 | amended | Ch. 472 | HB 53 |
| 53-7-105 | amended | Ch. 472 | HB 53 |
| 53-7-301 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 472 | HB 53 |
| 53-7-306 | amended | Ch. 472 | HB 53 |
| 53-9-102 | amended | Ch. 186 | SB 54 |
| 53-9-103 | amended | Ch. 186 | SB 54 |
| 53-9-107 | amended | Ch. 286 | HB 114 |
| 53-9-128 | amended | Ch. 186 | SB 54 |
| 53-18-101 | amended | Ch. 472 | HB 53 |
| 53-18-103 | amended | Ch. 472 | HB 53 |
| 53-18-105 | amended | Ch. 472 | HB 53 |
| 53-19-102 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 472 | HB 53 |
| 53-19-301 | amended | Ch. 396 | HB 207 |
| | amended | Ch. 472 | HB 53 |
| 53-19-302 | amended | Ch. 396 | HB 207 |
| | amended | Ch. 472 | HB 53 |
| 53-19-303 | amended | Ch. 396 | HB 207 |
| 53-19-304 | amended | Ch. 396 | HB 207 |
| 53-19-306 | amended | Ch. 396 | HB 207 |
| | amended | Ch. 472 | HB 53 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 53-19-307 | amended | Ch. 396 | HB 207 |
| | amended | Ch. 472 | HB 53 |
| 53-19-308 | amended | Ch. 396 | HB 207 |
| 53-19-310 | amended | Ch. 396 | HB 207 |
| | amended | Ch. 472 | HB 53 |
| 53-20-102 | amended | Ch. 472 | HB 53 |
| 53-20-112 | amended | Ch. 490 | HB 502 |
| 53-20-142 | amended | Ch. 472 | HB 53 |
| 53-20-148 | amended | Ch. 472 | HB 53 |
| 53-20-202 | amended | Ch. 472 | HB 53 |
| 53-20-203 | amended | Ch. 171 | SB 298 |
| | amended | Ch. 472 | HB 53 |
| 53-20-205 | amended | Ch. 171 | SB 298 |
| 53-20-207 | repealed | Ch. 171 | SB 298 |
| 53-21-101 | amended | Ch. 490 | HB 502 |
| 53-21-102 | amended | Ch. 490 | HB 502 |
| 53-21-112 | amended | Ch. 490 | HB 502 |
| 53-21-115 | amended | Ch. 490 | HB 502 |
| 53-21-116 | amended | Ch. 490 | HB 502 |
| 53-21-121 | amended | Ch. 490 | HB 502 |
| 53-21-122 | amended | Ch. 490 | HB 502 |
| 53-21-123 | amended | Ch. 490 | HB 502 |
| 53-21-126 | amended | Ch. 490 | HB 502 |
| 53-21-127 | amended | Ch. 490 | HB 502 |
| 53-21-128 | amended | Ch. 490 | HB 502 |
| 53-21-129 | amended | Ch. 490 | HB 502 |
| 53-21-132 | amended | Ch. 490 | HB 502 |
| 53-21-134 | amended | Ch. 490 | HB 502 |
| 53-21-138 | amended | Ch. 490 | HB 502 |
| 53-21-139 | amended | Ch. 490 | HB 502 |
| 53-21-144 | amended | Ch. 490 | HB 502 |
| 53-21-182 | amended | Ch. 490 | HB 502 |
| 53-21-195 | amended | Ch. 490 | HB 502 |
| 53-21-197 | amended | Ch. 490 | HB 502 |
| 53-21-198 | amended | Ch. 490 | HB 502 |
| 53-21-202 | amended | Ch. 171 | SB 298 |
| 53-21-506 | amended | Ch. 550 | SB 48 |
| 53-24-103 | amended | Ch. 188 | SB 68 |
| 53-24-108 | amended | Ch. 422 | HB 166 |
| 53-24-204 | amended | Ch. 507 | HB 399 |
| 53-24-208 | amended | Ch. 188 | SB 68 |
| 53-24-215 | repealed | Ch. 507 | HB 399 |
| 53-24-216 | repealed | Ch. 507 | HB 399 |
| 53-24-217 | repealed | Ch. 507 | HB 399 |
| 53-30-101 | amended | Ch. 189 | SB 109 |
| 53-30-102 | amended | Ch. 189 | SB 109 |
| 53-30-105 | amended | Ch. 189 | SB 109 |
| 53-30-111 | amended | Ch. 315 | SB 2 |
| 53-30-131 | amended | Ch. 315 | SB 2 |
| 53-30-132 | amended | Ch. 315 | SB 2 |
| | amended | Ch. 513 | HB 101 |
| 53-30-151 | amended | Ch. 189 | SB 109 |
| 53-30-302 | amended | Ch. 322 | HB 125 |
| 53-30-303 | amended | Ch. 322 | HB 125 |
| 53-30-312 | amended | Ch. 322 | HB 125 |
| 53-30-313 | amended | Ch. 322 | HB 125 |
| 53-30-314 | amended | Ch. 322 | HB 125 |

HeinOnline -- 1997 vol. III 3807 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 53-30-315 | amended | Ch. 322 | HB 125 |
| 53-30-321 | amended | Ch. 322 | HB 125 |
| 53-30-322 | amended | Ch. 322 | HB 125 |
| 53-30-324 | repealed | Ch. 322 | HB 125 |
| 53-30-325 | repealed | Ch. 322 | HB 125 |
| 53-30-326 | amended | Ch. 322 | HB 125 |
| 53-30-503 | amended | Ch. 189 | SB 109 |
| | amended | Ch. 224 | HB 544 |
| 53-30-504 | amended | Ch. 224 | HB 544 |
| 53-30-505 | amended | Ch. 455 | HB 398 |
| 53-30-506 | amended | Ch. 224 | HB 544 |
| 53-30-507 | amended | Ch. 224 | HB 544 |
| 53-30-511 | enacted | Ch. 224 | HB 544 |
| 53-30-601 | enacted | Ch. 511 | HB 83 |
| 53-30-602 | enacted | Ch. 511 | HB 83 |
| 53-30-603 | enacted | Ch. 511 | HB 83 |
| 53-30-604 | enacted | Ch. 511 | HB 83 |
| 53-30-605 | enacted | Ch. 511 | HB 83 |
| 53-30-606 | enacted | Ch. 511 | HB 83 |
| 53-30-607 | enacted | Ch. 511 | HB 83 |
| 53-30-608 | enacted | Ch. 511 | HB 83 |
| 53-30-609 | enacted | Ch. 511 | HB 83 |
| 53-30-610 | enacted | Ch. 511 | HB 83 |
| 53-30-611 | enacted | Ch. 511 | HB 83 |
| 60-1-207 | enacted | Ch. 321 | HB 93 |
| 60-1-208 | enacted | Ch. 342 | HB 202 |
| 60-2-107 | amended | Ch. 178 | HB 363 |
| 60-2-112 | amended | Ch. 443 | HB 139 |
| 60-2-128 | amended | Ch. 178 | HB 363 |
| 60-2-208 | amended | Ch. 42 | SB 36 |
| 60-2-220 | amended | Ch. 422 | HB 166 |
| 60-2-242 | enacted | Ch. 321 | HB 93 |
| 60-3-206 | amended | Ch. 239 | SB 257 |
| 60-4-401 | amended | Ch. 324 | HB 320 |
| 60-4-402 | amended | Ch. 324 | HB 320 |
| 60-4-403 | amended | Ch. 324 | HB 320 |
| 60-5-512 | amended | Ch. 281 | SB 309 |
| 60-11-120 | amended | Ch. 422 | HB 166 |
| 60-11-121 | amended | Ch. 42 | SB 36 |
| 60-11-122 | repealed | Ch. 422 | HB 166 |
| 60-11-123 | amended | Ch. 422 | HB 166 |
| 61-1-102 | amended | Ch. 105 | SB 81 |
| 61-1-104 | amended | Ch. 159 | SB 129 |
| 61-1-122 | repealed | Ch. 42 | SB 36 |
| 61-1-129 | amended | Ch. 121 | SB 26 |
| 61-1-133 | amended | Ch. 431 | SB 85 |
| 61-1-134 | amended | Ch. 105 | SB 81 |
| 61-1-139 | enacted | Ch. 496 | SB 57 |
| 61-1-140 | enacted | Ch. 496 | SB 57 |
| 61-1-314 | amended | Ch. 231 | SB 246 |
| 61-1-512 | enacted | Ch. 107 | SB 303 |
| 61-1-513 | enacted | Ch. 200 | HB 532 |
| 61-2-108 | amended | Ch. 42 | SB 36 |
| 61-2-302 | amended | Ch. 107 | SB 303 |
| 61-3-101 | amended | Ch. 496 | SB 57 |
| 61-3-103 | amended | Ch. 90 | SB 152 |
| 61-3-109 | enacted | Ch. 90 | SB 152 |

HeinOnline -- 1997 vol. III 3808 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 61-3-207 | amended | Ch. 200 | HB 532 |
| 61-3-208 | amended | Ch. 496 | SB 57 |
| 61-3-209 | enacted | Ch. 200 | HB 532 |
| 61-3-303 | amended | Ch. 200 | HB 532 |
| | amended | Ch. 496 | SB 57 |
| 61-3-321 | amended | Ch. 72 | SB 12 |
| | amended | Ch. 532 | HB 169 |
| 61-3-332 | amended | Ch. 72 | SB 12 |
| | amended | Ch. 109 | HB 18 |
| | amended | Ch. 472 | HB 53 |
| 61-3-446 | amended | Ch. 42 | SB 36 |
| 61-3-454 | amended | Ch. 472 | HB 53 |
| 61-3-456 | amended | Ch. 496 | SB 57 |
| | amended | Ch. 509 | HB 554 |
| 61-3-463 | amended | Ch. 42 | SB 36 |
| 61-3-468 | enacted | Ch. 462 | HB 616 |
| 61-3-501 | amended | Ch. 496 | SB 57 |
| 61-3-502 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 199 | HB 63 |
| 61-3-503 | amended | Ch. 200 | HB 532 |
| | amended | Ch. 496 | SB 57 |
| 61-3-504 | amended | Ch. 496 | SB 57 |
| 61-3-506 | amended | Ch. 121 | SB 26 |
| | amended | Ch. 496 | SB 57 |
| 61-3-507 | amended | Ch. 496 | SB 57 |
| 61-3-509 | amended | Ch. 121 | SB 26 |
| | amended | Ch. 422 | HB 166 |
| | amended | Ch. 496 | SB 57 |
| 61-3-519 | amended | Ch. 121 | SB 26 |
| 61-3-520 | amended | Ch. 496 | SB 57 |
| 61-3-521 | amended | Ch. 121 | SB 26 |
| 61-3-522 | amended | Ch. 402 | HB 444 |
| 61-3-523 | amended | Ch. 402 | HB 444 |
| 61-3-524 | amended | Ch. 121 | SB 26 |
| 61-3-527 | amended | Ch. 402 | HB 444 |
| | amended | Ch. 496 | SB 57 |
| 61-3-528 | enacted | Ch. 496 | SB 57 |
| 61-3-529 | enacted | Ch. 496 | SB 57 |
| 61-3-530 | enacted | Ch. 121 | SB 26 |
| | amended | Ch. 402 | HB 444 |
| 61-3-535 | amended | Ch. 121 | SB 26 |
| | amended | Ch. 496 | SB 57 |
| 61-3-537 | amended | Ch. 496 | SB 57 |
| 61-3-701 | amended | Ch. 496 | SB 57 |
| 61-3-721 | amended | Ch. 72 | SB 12 |
| 61-3-736 | enacted | Ch. 496 | SB 57 |
| 61-3-737 | enacted | Ch. 496 | SB 57 |
| 61-3-738 | enacted | Ch. 496 | SB 57 |
| 61-4-101 | amended | Ch. 220 | SB 116 |
| | amended | Ch. 221 | SB 343 |
| 61-4-104 | amended | Ch. 221 | SB 343 |
| 61-4-120 | amended | Ch. 221 | SB 343 |
| 61-4-121 | amended | Ch. 221 | SB 343 |
| 61-4-131 | amended | Ch. 221 | SB 343 |
| 61-4-133 | amended | Ch. 221 | SB 343 |
| 61-4-134 | amended | Ch. 221 | SB 343 |
| 61-4-141 | enacted | Ch. 221 | SB 343 |

HeinOnline -- 1997 vol. III 3809 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 61-4-201 | amended | Ch. 221 | SB 343 |
| 61-4-205 | amended | Ch. 221 | SB 343 |
| 61-4-206 | amended | Ch. 221 | SB 343 |
| 61-4-207 | amended | Ch. 221 | SB 343 |
| 61-4-208 | amended | Ch. 221 | SB 343 |
| 61-4-309 | repealed | Ch. 42 | SB 36 |
| 61-4-310 | amended | Ch. 42 | SB 36 |
| 61-5-101 | amended | Ch. 164 | SB 204 |
| 61-5-104 | amended | Ch. 105 | SB 81 |
| 61-5-107 | amended | Ch. 552 | SB 374 |
| 61-5-121 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 422 | HB 166 |
| 61-5-126 | amended | Ch. 42 | SB 36 |
| 61-5-208 | amended | Ch. 107 | SB 303 |
| 61-5-212 | amended | Ch. 88 | SB 106 |
| 61-6-304 | amended | Ch. 452 | HB 346 |
| 61-7-114 | amended | Ch. 105 | SB 81 |
| 61-8-105 | amended | Ch. 431 | SB 85 |
| 61-8-303 | amended | Ch. 473 | HB 99 |
| 61-8-309 | amended | Ch. 206 | HB 466 |
| 61-8-312 | amended | Ch. 232 | SB 29 |
| 61-8-314 | enacted | Ch. 473 | HB 99 |
| 61-8-315 | enacted | Ch. 473 | HB 99 |
| 61-8-323 | amended | Ch. 119 | HB 385 |
| 61-8-328 | amended | Ch. 119 | HB 385 |
| 61-8-339 | amended | Ch. 106 | SB 86 |
| 61-8-356 | amended | Ch. 42 | SB 36 |
| 61-8-365 | amended | Ch. 67 | HB 290 |
| 61-8-372 | enacted | Ch. 67 | HB 290 |
| 61-8-401 | amended | Ch. 88 | SB 106 |
| | amended | Ch. 107 | SB 303 |
| | amended | Ch. 512 | HB 100 |
| | amended | Ch. 525 | HB 559 |
| 61-8-402 | amended | Ch. 88 | SB 106 |
| 61-8-403 | amended | Ch. 88 | SB 106 |
| 61-8-404 | amended | Ch. 88 | SB 106 |
| 61-8-405 | amended | Ch. 88 | SB 106 |
| 61-8-406 | amended | Ch. 107 | SB 303 |
| | amended | Ch. 512 | HB 100 |
| | amended | Ch. 525 | HB 559 |
| 61-8-407 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 88 | SB 106 |
| 61-8-409 | amended | Ch. 88 | SB 106 |
| 61-8-410 | amended | Ch. 520 | HB 339 |
| 61-8-421 | amended | Ch. 525 | HB 559 |
| 61-8-422 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 525 | HB 559 |
| 61-8-440 | enacted | Ch. 107 | SB 303 |
| 61-8-441 | enacted | Ch. 107 | SB 303 |
| 61-8-442 | enacted | Ch. 107 | SB 303 |
| 61-8-714 | amended | Ch. 512 | HB 100 |
| | amended | Ch. 525 | HB 559 |
| 61-8-715 | amended | Ch. 473 | HB 99 |
| 61-8-722 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 512 | HB 100 |
| | amended | Ch. 525 | HB 559 |
| 61-8-731 | enacted | Ch. 512 | HB 100 |

HeinOnline -- 1997 vol. III 3810 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 61-8-732 | amended | Ch. 512 | HB 100 |
| | enacted | Ch. 525 | HB 559 |
| 61-8-733 | enacted | Ch. 525 | HB 559 |
| 61-8-734 | amended | Ch. 512 | HB 100 |
| | enacted | Ch. 525 | HB 559 |
| 61-8-803 | amended | Ch. 105 | SB 81 |
| 61-8-805 | amended | Ch. 88 | SB 106 |
| | amended | Ch. 105 | SB 81 |
| 61-8-806 | amended | Ch. 88 | SB 106 |
| | amended | Ch. 105 | SB 81 |
| 61-8-808 | amended | Ch. 105 | SB 81 |
| 61-8-812 | amended | Ch. 105 | SB 81 |
| 61-9-101 | amended | Ch. 431 | SB 85 |
| 61-9-105 | amended | Ch. 431 | SB 85 |
| 61-9-109 | amended | Ch. 431 | SB 85 |
| 61-9-203 | amended | Ch. 431 | SB 85 |
| 61-9-204 | amended | Ch. 431 | SB 85 |
| 61-9-206 | amended | Ch. 431 | SB 85 |
| 61-9-207 | amended | Ch. 431 | SB 85 |
| 61-9-208 | amended | Ch. 431 | SB 85 |
| 61-9-209 | amended | Ch. 431 | SB 85 |
| 61-9-213 | amended | Ch. 431 | SB 85 |
| 61-9-215 | amended | Ch. 431 | SB 85 |
| 61-9-216 | amended | Ch. 431 | SB 85 |
| 61-9-217 | amended | Ch. 431 | SB 85 |
| 61-9-218 | amended | Ch. 431 | SB 85 |
| 61-9-220 | amended | Ch. 431 | SB 85 |
| 61-9-221 | amended | Ch. 431 | SB 85 |
| 61-9-224 | repealed | Ch. 431 | SB 85 |
| 61-9-226 | amended | Ch. 431 | SB 85 |
| 61-9-227 | amended | Ch. 431 | SB 85 |
| 61-9-308 | amended | Ch. 431 | SB 85 |
| 61-9-309 | amended | Ch. 431 | SB 85 |
| 61-9-310 | amended | Ch. 431 | SB 85 |
| 61-9-311 | amended | Ch. 431 | SB 85 |
| 61-9-312 | amended | Ch. 431 | SB 85 |
| 61-9-401 | amended | Ch. 431 | SB 85 |
| 61-9-402 | amended | Ch. 431 | SB 85 |
| 61-9-404 | amended | Ch. 431 | SB 85 |
| 61-9-405 | amended | Ch. 431 | SB 85 |
| 61-9-407 | amended | Ch. 431 | SB 85 |
| 61-9-408 | amended | Ch. 431 | SB 85 |
| 61-9-409 | amended | Ch. 431 | SB 85 |
| 61-9-410 | repealed | Ch. 431 | SB 85 |
| 61-9-414 | amended | Ch. 431 | SB 85 |
| 61-9-415 | amended | Ch. 431 | SB 85 |
| 61-9-416 | amended | Ch. 431 | SB 85 |
| 61-9-417 | amended | Ch. 431 | SB 85 |
| 61-9-419 | amended | Ch. 431 | SB 85 |
| 61-9-420 | amended | Ch. 431 | SB 85 |
| 61-9-423 | amended | Ch. 431 | SB 85 |
| 61-9-430 | enacted | Ch. 431 | SB 85 |
| 61-9-516 | amended | Ch. 431 | SB 85 |
| 61-10-102 | amended | Ch. 283 | SB 335 |
| 61-10-104 | amended | Ch. 58 | HB 97 |
| | amended | Ch. 232 | SB 29 |
| 61-10-107 | amended | Ch. 232 | SB 29 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 61-10-109 | amended | Ch. 232 | SB 29 |
| 61-10-124 | amended | Ch. 232 | SB 29 |
| 61-10-128 | amended | Ch. 232 | SB 29 |
| 61-10-144 | amended | Ch. 232 | SB 29 |
| 61-10-145 | amended | Ch. 232 | SB 29 |
| 61-10-146 | amended | Ch. 232 | SB 29 |
| 61-10-201 | amended | Ch. 232 | SB 29 |
| 61-10-203 | amended | Ch. 232 | SB 29 |
| 61-10-211 | amended | Ch. 232 | SB 29 |
| 61-11-101 | amended | Ch. 525 | HB 559 |
| 61-12-201 | amended | Ch. 42 | SB 36 |
| 61-12-206 | amended | Ch. 125 | HB 311 |
| 61-12-402 | amended | Ch. 496 | SB 57 |
| 61-12-504 | amended | Ch. 472 | HB 53 |
| 67-3-206 | amended | Ch. 402 | HB 444 |
| 69-1-224 | amended | Ch. 42 | SB 36 |
| 69-3-305 | amended | Ch. 349 | SB 89 |
| 69-3-307 | amended | Ch. 472 | HB 53 |
| 69-3-803 | amended | Ch. 349 | SB 89 |
| 69-3-805 | amended | Ch. 349 | SB 89 |
| 69-3-806 | amended | Ch. 349 | SB 89 |
| 69-3-807 | amended | Ch. 349 | SB 89 |
| 69-3-831 | enacted | Ch. 349 | SB 89 |
| 69-3-832 | enacted | Ch. 349 | SB 89 |
| 69-3-833 | enacted | Ch. 349 | SB 89 |
| 69-3-834 | enacted | Ch. 349 | SB 89 |
| 69-3-835 | enacted | Ch. 349 | SB 89 |
| 69-3-836 | enacted | Ch. 349 | SB 89 |
| 69-3-837 | enacted | Ch. 349 | SB 89 |
| 69-3-838 | enacted | Ch. 349 | SB 89 |
| 69-3-839 | enacted | Ch. 349 | SB 89 |
| 69-3-840 | enacted | Ch. 349 | SB 89 |
| 69-3-841 | enacted | Ch. 349 | SB 89 |
| 69-3-842 | enacted | Ch. 349 | SB 89 |
| 69-3-843 | enacted | Ch. 349 | SB 89 |
| 69-3-844 | enacted | Ch. 349 | SB 89 |
| 69-3-845 | enacted | Ch. 349 | SB 89 |
| 69-3-846 | enacted | Ch. 349 | SB 89 |
| 69-3-847 | enacted | Ch. 349 | SB 89 |
| 69-3-848 | enacted | Ch. 349 | SB 89 |
| 69-3-849 | enacted | Ch. 349 | SB 89 |
| 69-3-856 | enacted | Ch. 349 | SB 89 |
| 69-3-857 | enacted | Ch. 349 | SB 89 |
| 69-3-858 | enacted | Ch. 349 | SB 89 |
| 69-3-859 | enacted | Ch. 349 | SB 89 |
| 69-3-860 | enacted | Ch. 349 | SB 89 |
| 69-3-861 | enacted | Ch. 349 | SB 89 |
| 69-3-862 | enacted | Ch. 349 | SB 89 |
| 69-3-1001 | amended | Ch. 349 | SB 89 |
| 69-3-1301 | enacted | Ch. 325 | HB 431 |
| 69-3-1302 | enacted | Ch. 325 | HB 431 |
| 69-3-1303 | enacted | Ch. 325 | HB 431 |
| 69-3-1304 | enacted | Ch. 325 | HB 431 |
| 69-3-1305 | enacted | Ch. 325 | HB 431 |
| 69-3-1401 | enacted | Ch. 506 | SB 396 |
| 69-3-1402 | enacted | Ch. 506 | SB 396 |
| 69-3-1403 | enacted | Ch. 506 | SB 396 |

HeinOnline -- 1997 vol. III 3812 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 69-3-1404 | enacted | Ch. 506 | SB 396 |
| 69-3-1405 | enacted | Ch. 506 | SB 396 |
| 69-3-1406 | enacted | Ch. 506 | SB 396 |
| 69-3-1407 | enacted | Ch. 506 | SB 396 |
| 69-3-1408 | enacted | Ch. 506 | SB 396 |
| 69-3-1409 | enacted | Ch. 506 | SB 396 |
| 69-4-501 | amended | Ch. 179 | HB 375 |
| 69-4-502 | amended | Ch. 179 | HB 375 |
| 69-4-503 | amended | Ch. 179 | HB 375 |
| 69-4-504 | amended | Ch. 179 | HB 375 |
| 69-4-506 | repealed | Ch. 179 | HB 375 |
| 69-4-508 | enacted | Ch. 179 | HB 375 |
| 69-4-511 | repealed | Ch. 179 | HB 375 |
| 69-5-101 | amended | Ch. 505 | SB 390 |
| 69-5-102 | amended | Ch. 505 | SB 390 |
| 69-5-103 | repealed | Ch. 505 | SB 390 |
| 69-5-104 | amended | Ch. 505 | SB 390 |
| 69-5-105 | amended | Ch. 505 | SB 390 |
| 69-5-106 | amended | Ch. 505 | SB 390 |
| 69-5-107 | amended | Ch. 505 | SB 390 |
| 69-5-108 | amended | Ch. 505 | SB 390 |
| 69-5-109 | amended | Ch. 505 | SB 390 |
| 69-5-110 | amended | Ch. 505 | SB 390 |
| 69-5-111 | amended | Ch. 505 | SB 390 |
| 69-5-112 | enacted | Ch. 505 | SB 390 |
| 69-6-101 | repealed | Ch. 349 | SB 89 |
| 69-6-102 | repealed | Ch. 349 | SB 89 |
| 69-6-103 | repealed | Ch. 349 | SB 89 |
| 69-8-101 | enacted | Ch. 505 | SB 390 |
| 69-8-102 | enacted | Ch. 505 | SB 390 |
| 69-8-103 | enacted | Ch. 505 | SB 390 |
| 69-8-104 | enacted | Ch. 505 | SB 390 |
| 69-8-201 | enacted | Ch. 505 | SB 390 |
| 69-8-202 | enacted | Ch. 505 | SB 390 |
| 69-8-203 | enacted | Ch. 505 | SB 390 |
| 69-8-204 | enacted | Ch. 505 | SB 390 |
| 69-8-208 | enacted | Ch. 505 | SB 390 |
| 69-8-209 | enacted | Ch. 505 | SB 390 |
| 69-8-210 | enacted | Ch. 505 | SB 390 |
| 69-8-211 | enacted | Ch. 505 | SB 390 |
| 69-8-301 | enacted | Ch. 505 | SB 390 |
| 69-8-302 | enacted | Ch. 505 | SB 390 |
| 69-8-303 | enacted | Ch. 505 | SB 390 |
| 69-8-304 | enacted | Ch. 505 | SB 390 |
| 69-8-308 | enacted | Ch. 505 | SB 390 |
| 69-8-309 | enacted | Ch. 505 | SB 390 |
| 69-8-310 | enacted | Ch. 505 | SB 390 |
| 69-8-311 | enacted | Ch. 505 | SB 390 |
| 69-8-401 | enacted | Ch. 505 | SB 390 |
| 69-8-402 | enacted | Ch. 505 | SB 390 |
| 69-8-403 | enacted | Ch. 505 | SB 390 |
| 69-8-404 | enacted | Ch. 505 | SB 390 |
| 69-8-408 | enacted | Ch. 505 | SB 390 |
| 69-8-409 | enacted | Ch. 505 | SB 390 |
| 69-8-410 | enacted | Ch. 505 | SB 390 |
| 69-8-411 | enacted | Ch. 505 | SB 390 |
| 69-8-501 | enacted | Ch. 505 | SB 390 |

HeinOnline -- 1997 vol. III 3813 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 69-8-502 | enacted | Ch. 505 | SB 390 |
| 69-8-503 | enacted | Ch. 505 | SB 390 |
| 69-11-202 | amended | Ch. 22 | SB 70 |
| 69-12-314 | amended | Ch. 42 | SB 36 |
| 69-12-331 | amended | Ch. 200 | HB 532 |
| 69-12-406 | amended | Ch. 42 | SB 36 |
| 69-14-111 | amended | Ch. 235 | SB 182 |
| 69-14-112 | amended | Ch. 235 | SB 182 |
| 69-14-114 | amended | Ch. 235 | SB 182 |
| 69-14-115 | amended | Ch. 235 | SB 182 |
| 69-14-116 | amended | Ch. 235 | SB 182 |
| 69-14-119 | repealed | Ch. 235 | SB 182 |
| 69-14-120 | amended | Ch. 235 | SB 182 |
| 69-14-133 | amended | Ch. 235 | SB 182 |
| 69-14-232 | amended | Ch. 235 | SB 182 |
| 69-14-301 | repealed | Ch. 235 | SB 182 |
| 69-14-302 | repealed | Ch. 235 | SB 182 |
| 69-14-303 | repealed | Ch. 235 | SB 182 |
| 69-14-304 | repealed | Ch. 235 | SB 182 |
| 69-14-305 | repealed | Ch. 235 | SB 182 |
| 69-14-306 | repealed | Ch. 235 | SB 182 |
| 69-14-307 | repealed | Ch. 235 | SB 182 |
| 69-14-308 | repealed | Ch. 235 | SB 182 |
| 69-14-309 | repealed | Ch. 235 | SB 182 |
| 69-14-310 | repealed | Ch. 235 | SB 182 |
| 69-14-311 | repealed | Ch. 235 | SB 182 |
| 69-14-312 | repealed | Ch. 235 | SB 182 |
| 69-14-401 | amended | Ch. 235 | SB 182 |
| 69-14-604 | amended | Ch. 235 | SB 182 |
| 69-14-708 | amended | Ch. 235 | SB 182 |
| 69-14-712 | repealed | Ch. 235 | SB 182 |
| 69-14-713 | amended | Ch. 235 | SB 182 |
| 69-14-801 | amended | Ch. 235 | SB 182 |
| 69-14-921 | amended | Ch. 235 | SB 182 |
| 69-14-922 | amended | Ch. 235 | SB 182 |
| 69-14-1004 | amended | Ch. 235 | SB 182 |
| 70-1-311 | repealed | Ch. 42 | SB 36 |
| 70-9-101 | repealed | Ch. 124 | SB 125 |
| 70-9-102 | repealed | Ch. 124 | SB 125 |
| 70-9-104 | repealed | Ch. 124 | SB 125 |
| 70-9-105 | repealed | Ch. 124 | SB 125 |
| 70-9-106 | repealed | Ch. 124 | SB 125 |
| 70-9-111 | repealed | Ch. 124 | SB 125 |
| 70-9-121 | repealed | Ch. 124 | SB 125 |
| 70-9-122 | repealed | Ch. 124 | SB 125 |
| 70-9-201 | repealed | Ch. 124 | SB 125 |
| 70-9-202 | repealed | Ch. 124 | SB 125 |
| 70-9-203 | repealed | Ch. 124 | SB 125 |
| 70-9-204 | repealed | Ch. 124 | SB 125 |
| 70-9-205 | repealed | Ch. 124 | SB 125 |
| 70-9-206 | repealed | Ch. 124 | SB 125 |
| 70-9-207 | repealed | Ch. 124 | SB 125 |
| 70-9-208 | repealed | Ch. 124 | SB 125 |
| 70-9-209 | repealed | Ch. 124 | SB 125 |
| 70-9-210 | repealed | Ch. 124 | SB 125 |
| 70-9-301 | repealed | Ch. 124 | SB 125 |
| 70-9-302 | repealed | Ch. 124 | SB 125 |

HeinOnline -- 1997 vol. III 3814 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 70-9-303 | repealed | Ch. 124 | SB 125 |
| 70-9-304 | repealed | Ch. 124 | SB 125 |
| 70-9-305 | repealed | Ch. 124 | SB 125 |
| 70-9-306 | repealed | Ch. 124 | SB 125 |
| 70-9-307 | repealed | Ch. 124 | SB 125 |
| 70-9-308 | repealed | Ch. 124 | SB 125 |
| 70-9-309 | repealed | Ch. 124 | SB 125 |
| 70-9-310 | repealed | Ch. 124 | SB 125 |
| 70-9-311 | repealed | Ch. 124 | SB 125 |
| 70-9-312 | repealed | Ch. 124 | SB 125 |
| 70-9-314 | repealed | Ch. 124 | SB 125 |
| 70-9-315 | repealed | Ch. 124 | SB 125 |
| 70-9-316 | repealed | Ch. 124 | SB 125 |
| 70-9-701 | enacted | Ch. 382 | SB 83 |
| 70-9-801 | enacted | Ch. 124 | SB 125 |
| 70-9-802 | enacted | Ch. 124 | SB 125 |
| 70-9-803 | enacted | Ch. 124 | SB 125 |
| | amended | Ch. 268 | SB 329 |
| 70-9-804 | enacted | Ch. 124 | SB 125 |
| 70-9-805 | enacted | Ch. 124 | SB 125 |
| 70-9-806 | enacted | Ch. 124 | SB 125 |
| 70-9-807 | enacted | Ch. 124 | SB 125 |
| 70-9-808 | enacted | Ch. 124 | SB 125 |
| 70-9-809 | enacted | Ch. 124 | SB 125 |
| 70-9-810 | enacted | Ch. 124 | SB 125 |
| 70-9-811 | enacted | Ch. 124 | SB 125 |
| 70-9-812 | enacted | Ch. 124 | SB 125 |
| 70-9-813 | enacted | Ch. 124 | SB 125 |
| 70-9-814 | enacted | Ch. 124 | SB 125 |
| 70-9-815 | enacted | Ch. 124 | SB 125 |
| 70-9-816 | enacted | Ch. 124 | SB 125 |
| 70-9-817 | enacted | Ch. 124 | SB 125 |
| 70-9-818 | enacted | Ch. 124 | SB 125 |
| 70-9-819 | enacted | Ch. 124 | SB 125 |
| 70-9-820 | enacted | Ch. 124 | SB 125 |
| 70-9-821 | enacted | Ch. 124 | SB 125 |
| 70-9-822 | enacted | Ch. 124 | SB 125 |
| 70-9-823 | enacted | Ch. 124 | SB 125 |
| 70-9-824 | enacted | Ch. 124 | SB 125 |
| 70-9-825 | enacted | Ch. 124 | SB 125 |
| 70-9-826 | enacted | Ch. 124 | SB 125 |
| 70-9-827 | enacted | Ch. 124 | SB 125 |
| 70-9-828 | enacted | Ch. 124 | SB 125 |
| 70-9-829 | enacted | Ch. 124 | SB 125 |
| 70-19-413 | amended | Ch. 490 | HB 502 |
| 70-23-304 | amended | Ch. 279 | SB 263 |
| 70-24-103 | amended | Ch. 401 | HB 406 |
| 70-24-303 | amended | Ch. 401 | HB 406 |
| 70-24-423 | amended | Ch. 132 | HB 357 |
| 70-24-430 | amended | Ch. 401 | HB 406 |
| 70-24-436 | amended | Ch. 401 | HB 406 |
| 70-25-201 | amended | Ch. 401 | HB 406 |
| 70-29-113 | amended | Ch. 490 | HB 502 |
| 70-29-210 | amended | Ch. 490 | HB 502 |
| 70-29-328 | amended | Ch. 490 | HB 502 |
| 70-32-104 | amended | Ch. 30 | HB 24 |
| 71-3-302 | amended | Ch. 482 | HB 168 |

HeinOnline -- 1997 vol. III 3815 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 72-3-807 | amended | Ch. 482 | HB 168 |
| 72-5-231 | amended | Ch. 279 | SB 263 |
| 72-5-322 | amended | Ch. 490 | HB 502 |
| 72-6-204 | amended | Ch. 279 | SB 263 |
| 72-6-213 | amended | Ch. 279 | SB 263 |
| 72-6-226 | amended | Ch. 279 | SB 263 |
| 72-14-102 | amended | Ch. 124 | SB 125 |
| 72-16-101 | amended | Ch. 288 | HB 384 |
| 72-16-202 | repealed | Ch. 61 | HB 148 |
| 72-16-304 | amended | Ch. 253 | HB 566 |
| 72-16-313 | amended | Ch. 464 | SB 272 |
| 72-16-323 | enacted | Ch. 288 | HB 384 |
| 72-16-331 | amended | Ch. 42 | SB 36 |
| 72-16-453 | amended | Ch. 288 | HB 384 |
| 72-16-455 | amended | Ch. 288 | HB 384 |
| 72-16-479 | amended | Ch. 42 | SB 36 |
| 72-16-603 | amended | Ch. 279 | SB 263 |
| 72-17-213 | amended | Ch. 42 | SB 36 |
| 72-34-117 | amended | Ch. 279 | SB 263 |
| 72-37-102 | amended | Ch. 365 | HB 238 |
| 72-37-103 | amended | Ch. 365 | HB 238 |
| 75-1-314 | enacted | Ch. 38 | HB 132 |
| 75-1-1101 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 444 | HB 171 |
| 75-1-1201 | enacted | Ch. 534 | HB 293 |
| 75-1-1202 | enacted | Ch. 534 | HB 293 |
| 75-1-1203 | enacted | Ch. 534 | HB 293 |
| 75-1-1204 | enacted | Ch. 534 | HB 293 |
| 75-1-1205 | enacted | Ch. 534 | HB 293 |
| 75-1-1206 | enacted | Ch. 534 | HB 293 |
| 75-2-101 | amended | Ch. 42 | SB 36 |
| 75-2-211 | amended | Ch. 273 | HB 529 |
| 75-2-216 | amended | Ch. 112 | HB 152 |
| 75-2-220 | amended | Ch. 51 | HB 82 |
| 75-3-101 | renumbered 50-79-101 | Ch. 73 | SB 14 |
| 75-3-102 | renumbered 50-79-102 | Ch. 73 | SB 14 |
| 75-3-103 | amended | Ch. 42 | SB 36 |
| | amended and renumbered 50-79-103 | Ch. 73 | SB 14 |
| 75-3-104 | renumbered 50-79-104 | Ch. 73 | SB 14 |
| 75-3-105 | renumbered 50-79-105 | Ch. 73 | SB 14 |
| 75-3-106 | renumbered 50-79-106 | Ch. 73 | SB 14 |
| 75-3-107 | renumbered 50-79-107 | Ch. 73 | SB 14 |
| 75-3-108 | renumbered 50-79-108 | Ch. 73 | SB 14 |
| 75-3-201 | renumbered 50-79-201 | Ch. 73 | SB 14 |
| 75-3-202 | renumbered 50-79-202 | Ch. 73 | SB 14 |
| 75-3-203 | renumbered 50-79-203 | Ch. 73 | SB 14 |
| 75-3-204 | renumbered 50-79-204 | Ch. 73 | SB 14 |
| 75-3-301 | renumbered 50-79-301 | Ch. 73 | SB 14 |
| 75-3-302 | renumbered 50-79-302 | Ch. 73 | SB 14 |
| 75-3-303 | renumbered 50-79-303 | Ch. 73 | SB 14 |
| 75-3-304 | renumbered 50-79-304 | Ch. 73 | SB 14 |
| 75-3-401 | renumbered 50-79-401 | Ch. 73 | SB 14 |
| 75-3-402 | renumbered 50-79-402 | Ch. 73 | SB 14 |
| 75-3-403 | renumbered 50-79-403 | Ch. 73 | SB 14 |
| 75-3-404 | renumbered 50-79-404 | Ch. 73 | SB 14 |
| 75-3-405 | renumbered 50-79-405 | Ch. 73 | SB 14 |
| 75-3-406 | renumbered 50-79-406 | Ch. 73 | SB 14 |

HeinOnline -- 1997 vol. III 3816 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 75-3-407 | renumbered 50-79-407 | Ch. 73 | SB 14 |
| 75-3-410 | renumbered 50-79-410 | Ch. 73 | SB 14 |
| 75-3-501 | renumbered 50-79-501 | Ch. 73 | SB 14 |
| 75-3-502 | amended and renumbered 50-79-502 | Ch. 73 | SB 14 |
| 75-5-103 | amended | Ch. 541 | HB 546 |
| 75-5-301 | amended | Ch. 40 | SB 1 |
| 75-5-516 | amended | Ch. 51 | HB 82 |
| 75-5-621 | amended | Ch. 42 | SB 36 |
| 75-5-701 | enacted | Ch. 541 | HB 546 |
| 75-5-702 | enacted | Ch. 541 | HB 546 |
| 75-5-703 | enacted | Ch. 541 | HB 546 |
| 75-5-704 | enacted | Ch. 541 | HB 546 |
| 75-5-705 | enacted | Ch. 541 | HB 546 |
| 75-5-1101 | amended | Ch. 538 | HB 483 |
| 75-5-1102 | amended | Ch. 538 | HB 483 |
| 75-5-1103 | amended | Ch. 538 | HB 483 |
| 75-5-1104 | amended | Ch. 538 | HB 483 |
| 75-5-1105 | amended | Ch. 538 | HB 483 |
| 75-5-1106 | amended | Ch. 538 | HB 483 |
| 75-5-1107 | amended | Ch. 538 | HB 483 |
| 75-5-1108 | amended | Ch. 422 | HB 166 |
| 75-5-1111 | amended | Ch. 538 | HB 483 |
| 75-5-1112 | amended | Ch. 538 | HB 483 |
| 75-5-1113 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 538 | HB 483 |
| 75-5-1121 | amended | Ch. 533 | HB 483 |
| 75-6-103 | amended | Ch. 73 | SB 14 |
| 75-6-106 | amended | Ch. 73 | SB 14 |
| 75-6-109 | amended | Ch. 73 | SB 14 |
| 75-6-201 | amended | Ch. 538 | HB 483 |
| 75-6-202 | amended | Ch. 533 | HB 483 |
| 75-6-203 | amended | Ch. 538 | HB 483 |
| 75-6-204 | amended | Ch. 538 | HB 483 |
| 75-6-205 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 538 | HB 483 |
| 75-6-211 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 538 | HB 483 |
| 75-6-212 | amended | Ch. 538 | HB 483 |
| 75-6-213 | repealed | Ch. 538 | HB 483 |
| 75-6-214 | amended | Ch. 422 | HB 166 |
| 75-6-215 | repealed | Ch. 538 | HB 483 |
| 75-6-221 | amended | Ch. 538 | HB 483 |
| 75-6-222 | amended | Ch. 538 | HB 483 |
| 75-6-223 | amended | Ch. 538 | HB 483 |
| 75-6-224 | amended | Ch. 538 | HB 483 |
| 75-6-226 | enacted | Ch. 538 | HB 483 |
| 75-6-231 | enacted | Ch. 538 | HB 483 |
| 75-6-232 | enacted | Ch. 538 | HB 483 |
| 75-10-103 | amended | Ch. 372 | SB 315 |
| 75-10-203 | amended | Ch. 373 | SB 332 |
| 75-10-204 | amended | Ch. 373 | SB 332 |
| 75-10-210 | repealed | Ch. 112 | HB 152 |
| 75-10-216 | enacted | Ch. 373 | SB 332 |
| 75-10-401 | amended | Ch. 112 | HB 152 |
| 75-10-402 | amended | Ch. 112 | HB 152 |
| 75-10-403 | amended | Ch. 112 | HB 152 |
| | amended | Ch. 156 | HB 486 |

HeinOnline -- 1997 vol. III 3817 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 75-10-404 | amended | Ch. 112 | HB 152 |
| 75-10-405 | amended | Ch. 112 | HB 152 |
| 75-10-409 | amended | Ch. 112 | HB 152 |
| 75-10-410 | amended | Ch. 112 | HB 152 |
| 75-10-411 | amended | Ch. 112 | HB 152 |
| 75-10-413 | amended | Ch. 112 | HB 152 |
| 75-10-415 | amended | Ch. 112 | HB 152 |
| 75-10-416 | amended | Ch. 112 | HB 152 |
| 75-10-420 | amended | Ch. 112 | HB 152 |
| 75-10-423 | amended and renumbered 75-11-525 | Ch. 112 | HB 152 |
| 75-10-424 | amended | Ch. 112 | HB 152 |
| 75-10-434 | amended | Ch. 84 | HB 162 |
| 75-10-447 | renumbered 75-11-526 | Ch. 112 | HB 152 |
| 75-10-514 | amended | Ch. 213 | HB 160 |
| 75-10-540 | enacted | Ch. 213 | HB 160 |
| 75-10-701 | amended | Ch. 415 | SB 377 |
| 75-10-702 | amended | Ch. 415 | SB 377 |
| 75-10-704 | amended | Ch. 86 | HB 288 |
| | amended | Ch. 415 | SB 377 |
| 75-10-707 | amended | Ch. 42 | SB 36 |
| 75-10-711 | amended | Ch. 539 | HB 524 |
| 75-10-715 | amended | Ch. 415 | SB 377 |
| 75-10-719 | amended | Ch. 415 | SB 377 |
| 75-10-720 | amended | Ch. 415 | SB 377 |
| 75-10-723 | amended | Ch. 539 | HB 524 |
| 75-10-724 | amended | Ch. 415 | SB 377 |
| 75-10-726 | enacted | Ch. 415 | SB 377 |
| 75-10-732 | amended | Ch. 539 | HB 524 |
| 75-10-736 | amended | Ch. 539 | HB 524 |
| 75-10-742 | enacted | Ch. 415 | SB 377 |
| 75-10-743 | enacted | Ch. 415 | SB 377 |
| 75-10-744 | enacted | Ch. 415 | SB 377 |
| 75-10-745 | enacted | Ch. 415 | SB 377 |
| 75-10-746 | enacted | Ch. 415 | SB 377 |
| 75-10-747 | enacted | Ch. 415 | SB 377 |
| 75-10-748 | enacted | Ch. 415 | SB 377 |
| 75-10-749 | enacted | Ch. 415 | SB 377 |
| 75-10-750 | enacted | Ch. 415 | SB 377 |
| 75-10-751 | enacted | Ch. 415 | SB 377 |
| 75-10-752 | enacted | Ch. 415 | SB 377 |
| 75-10-805 | amended | Ch. 440 | HB 75 |
| 75-10-806 | amended | Ch. 42 | SB 36 |
| 75-10-924 | amended | Ch. 487 | HB 376 |
| 75-10-954 | amended | Ch. 422 | HB 166 |
| 75-10-702(2) | enacted | Ch. 539 | HB 524 |
| 75-11-203 | amended | Ch. 112 | HB 152 |
| 75-11-302 | amended | Ch. 112 | HB 152 |
| 75-11-307 | amended | Ch. 115 | HB 214 |
| 75-11-309 | amended | Ch. 112 | HB 152 |
| 75-11-313 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 115 | HB 214 |
| 75-11-315 | enacted | Ch. 115 | HB 214 |
| 75-11-318 | amended | Ch. 115 | HB 214 |
| 75-11-501 | enacted | Ch. 112 | HB 152 |
| 75-11-502 | enacted | Ch. 112 | HB 152 |
| 75-11-503 | enacted | Ch. 112 | HB 152 |
| | amended | Ch. 156 | HB 486 |

HeinOnline -- 1997 vol. III 3818 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 75-11-504 | enacted | Ch. 112 | HB 152 |
| 75-11-505 | enacted | Ch. 112 | HB 152 |
| 75-11-510 | enacted | Ch. 112 | HB 152 |
| 75-11-511 | enacted | Ch. 112 | HB 152 |
| 75-11-512 | enacted | Ch. 112 | HB 152 |
| 75-11-513 | enacted | Ch. 112 | HB 152 |
| 75-11-514 | enacted | Ch. 112 | HB 152 |
| 75-11-515 | enacted | Ch. 112 | HB 152 |
| 75-11-516 | enacted | Ch. 112 | HB 152 |
| 75-11-518 | enacted | Ch. 112 | HB 152 |
| 75-11-520 | enacted | Ch. 112 | HB 152 |
| 75-11-525 | formerly 75-10-423 | Ch. 112 | HB 152 |
| 75-11-526 | formerly 75-10-447 | Ch. 112 | HB 152 |
| 75-20-102 | amended | Ch. 329 | SB 224 |
| 75-20-104 | amended | Ch. 329 | SB 224 |
| 75-20-201 | amended | Ch. 329 | SB 224 |
| 75-20-202 | repealed | Ch. 329 | SB 224 |
| 75-20-204 | amended | Ch. 273 | HB 529 |
| 75-20-205 | repealed | Ch. 329 | SB 224 |
| 75-20-207 | amended | Ch. 329 | SB 224 |
| 75-20-208 | amended | Ch. 329 | SB 224 |
| 75-20-211 | amended | Ch. 329 | SB 224 |
| 75-20-213 | amended | Ch. 329 | SB 224 |
| 75-20-215 | amended | Ch. 329 | SB 224 |
| 75-20-216 | amended | Ch. 329 | SB 224 |
| 75-20-218 | repealed | Ch. 329 | SB 224 |
| 75-20-220 | repealed | Ch. 329 | SB 224 |
| 75-20-221 | repealed | Ch. 329 | SB 224 |
| 75-20-222 | repealed | Ch. 329 | SB 224 |
| 75-20-223 | enacted | Ch. 329 | SB 224 |
| 75-20-225 | amended | Ch. 329 | SB 224 |
| 75-20-226 | amended | Ch. 329 | SB 224 |
| 75-20 227 | repealed | Ch. 329 | SB 224 |
| 75-20-231 | enacted | Ch. 329 | SB 224 |
| 75-20-232 | enacted | Ch. 329 | SB 224 |
| 75-20-301 | amended | Ch. 329 | SB 224 |
| 75-20-302 | amended | Ch. 329 | SB 224 |
| 75-20-303 | amended | Ch. 329 | SB 224 |
| 75-20-304 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 329 | SB 224 |
| 75-20-402 | amended | Ch. 329 | SB 224 |
| 75-20-403 | amended | Ch. 329 | SB 224 |
| 75-20-406 | amended | Ch. 329 | SB 224 |
| 75-20-501 | repealed | Ch. 329 | SB 224 |
| 75-20-503 | repealed | Ch. 329 | SB 224 |
| 75-20-1202 | amended | Ch. 329 | SB 224 |
| 75-20-1205 | amended | Ch. 329 | SB 224 |
| 76-1-112 | amended | Ch. 274 | HB 556 |
| 76-2-202 | amended | Ch. 42 | SB 36 |
| 76-2-222 | amended | Ch. 42 | SB 36 |
| 76-2-302 | amended | Ch. 42 | SB 36 |
| 76-2-303 | amended | Ch. 217 | HB 421 |
| 76-3-103 | amended | Ch. 503 | SB 339 |
| 76-3-201 | amended | Ch. 503 | SB 339 |
| 76-3-305 | amended | Ch. 42 | SB 36 |
| 76-3-507 | amended | Ch. 503 | SB 339 |
| 76-3-511 | amended | Ch. 42 | SB 36 |

HeinOnline -- 1997 vol. III 3819 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 76-4-125 | amended | Ch. 289 | HB 408 |
| 76-4-1201 | repealed | Ch. 481 | HB 164 |
| 76-4-1202 | repealed | Ch. 481 | HB 164 |
| 76-4-1203 | repealed | Ch. 481 | HB 164 |
| 76-4-1204 | repealed | Ch. 481 | HB 164 |
| 76-4-1205 | repealed | Ch. 481 | HB 164 |
| 76-4-1206 | repealed | Ch. 481 | HB 164 |
| 76-4-1207 | repealed | Ch. 481 | HB 164 |
| 76-4-1208 | repealed | Ch. 481 | HB 164 |
| 76-4-1209 | repealed | Ch. 481 | HB 164 |
| 76-4-1210 | repealed | Ch. 481 | HB 164 |
| 76-4-1211 | repealed | Ch. 481 | HB 164 |
| 76-4-1212 | repealed | Ch. 481 | HB 164 |
| 76-4-1213 | repealed | Ch. 481 | HB 164 |
| 76-4-1221 | repealed | Ch. 481 | HB 164 |
| 76-4-1222 | repealed | Ch. 481 | HB 164 |
| 76-4-1223 | repealed | Ch. 481 | HB 164 |
| 76-4-1224 | repealed | Ch. 481 | HB 164 |
| 76-4-1225 | repealed | Ch. 481 | HB 164 |
| 76-4-1226 | repealed | Ch. 481 | HB 164 |
| 76-4-1227 | repealed | Ch. 481 | HB 164 |
| 76-4-1228 | repealed | Ch. 481 | HB 164 |
| 76-4-1229 | repealed | Ch. 481 | HB 164 |
| 76-4-1230 | repealed | Ch. 481 | HB 164 |
| 76-4-1231 | repealed | Ch. 481 | HB 164 |
| 76-4-1232 | repealed | Ch. 481 | HB 164 |
| 76-4-1233 | repealed | Ch. 481 | HB 164 |
| 76-4-1234 | repealed | Ch. 481 | HB 164 |
| 76-4-1235 | repealed | Ch. 481 | HB 164 |
| 76-4-1236 | repealed | Ch. 481 | HB 164 |
| 76-4-1237 | repealed | Ch. 481 | HB 164 |
| 76-4-1238 | repealed | Ch. 481 | HB 164 |
| 76-4-1239 | repealed | Ch. 481 | HB 164 |
| 76-4-1240 | repealed | Ch. 481 | HB 164 |
| 76-4-1241 | repealed | Ch. 481 | HB 164 |
| 76-4-1242 | repealed | Ch. 481 | HB 164 |
| 76-4-1243 | repealed | Ch. 481 | HB 164 |
| 76-4-1244 | repealed | Ch. 481 | HB 164 |
| 76-4-1245 | repealed | Ch. 481 | HB 164 |
| 76-4-1246 | repealed | Ch. 481 | HB 164 |
| 76-4-1247 | repealed | Ch. 481 | HB 164 |
| 76-4-1248 | repealed | Ch. 481 | HB 164 |
| 76-4-1249 | repealed | Ch. 481 | HB 164 |
| 76-4-1250 | repealed | Ch. 481 | HB 164 |
| 76-4-1251 | repealed | Ch. 481 | HB 164 |
| 76-6-105 | amended | Ch. 42 | SB 36 |
| 76-11-101 | amended | Ch. 27 | HB 73 |
| 76-12-123 | amended | Ch. 422 | HB 166 |
| 76-13-102 | amended | Ch. 27 | HB 73 |
| 76-13-103 | amended | Ch. 27 | HB 73 |
| 76-13-109 | amended | Ch. 27 | HB 73 |
| 76-13-112 | amended | Ch. 27 | HB 73 |
| 76-13-114 | amended | Ch. 532 | HB 169 |
| 76-13-201 | amended | Ch. 27 | HB 73 |
| 76-13-204 | amended | Ch. 27 | HB 73 |
| 76-13-205 | amended | Ch. 27 | HB 73 |
| 76-13-403 | amended | Ch. 27 | HB 73 |

HeinOnline -- 1997 vol. III 3820 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 76-13-408 | amended | Ch. 27 | HB 73 |
| 76-13-414 | amended | Ch. 27 | HB 73 |
| 76-14-113 | amended | Ch. 42 | SB 36 |
| 76-15-524 | amended | Ch. 141 | HB 402 |
| 76-15-541 | amended | Ch. 42 | SB 36 |
| 76-15-542 | amended | Ch. 141 | HB 402 |
| 76-15-543 | amended | Ch. 42 | SB 36 |
| 76-15-546 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 141 | HB 402 |
| 76-15-547 | amended | Ch. 141 | HB 402 |
| 77-1-101 | amended | Ch. 32 | HB 36 |
| 77-1-125 | enacted | Ch. 460 | HB 551 |
| 77-1-130 | enacted | Ch. 461 | HB 607 |
| 77-1-131 | enacted | Ch. 461 | HB 607 |
| 77-1-208 | amended | Ch. 463 | SB 195 |
| 77-1-221 | repealed | Ch. 42 | SB 36 |
| 77-1-405 | enacted | Ch. 449 | HB 212 |
| 77-1-505 | amended | Ch. 422 | HB 166 |
| 77-1-607 | amended | Ch. 247 | HB 156 |
| 77-1-701 | amended | Ch. 32 | HB 36 |
| 77-1-804 | amended | Ch. 42 | SB 36 |
| 77-2-318 | amended | Ch. 472 | HB 53 |
| 77-2-323 | amended | Ch. 422 | HB 166 |
| 77-2-328 | amended | Ch. 422 | HB 166 |
| 77-2-402 | amended | Ch. 42 | SB 36 |
| 77-2-403 | amended | Ch. 42 | SB 36 |
| 77-3-423 | amended | Ch. 34 | HB 81 |
| 77-3-432 | amended | Ch. 34 | HB 81 |
| 77-3-433 | amended | Ch. 34 | HB 81 |
| 77-3-435 | amended | Ch. 34 | HB 81 |
| 77-3-442 | amended | Ch. 34 | HB 81 |
| 77-3-444 | amended | Ch. 42 | SB 36 |
| 77-5-305 | amended | Ch. 422 | HB 166 |
| 77-5-306 | repealed | Ch. 422 | HB 166 |
| 77-6-202 | amended | Ch. 42 | SB 36 |
| 80-1-301 | enacted | Ch. 534 | HB 293 |
| 80-1-302 | enacted | Ch. 534 | HB 293 |
| 80-1-303 | enacted | Ch. 534 | HB 293 |
| 80-1-304 | enacted | Ch. 534 | HB 293 |
| 80-1-305 | enacted | Ch. 534 | HB 293 |
| 80-1-306 | enacted | Ch. 534 | HB 293 |
| 80-4-301 | repealed | Ch. 76 | SB 107 |
| 80-4-302 | repealed | Ch. 76 | SB 107 |
| 80-4-303 | repealed | Ch. 76 | SB 107 |
| 80-4-304 | repealed | Ch. 76 | SB 107 |
| 80-4-305 | repealed | Ch. 76 | SB 107 |
| 80-4-306 | repealed | Ch. 76 | SB 107 |
| 80-4-307 | repealed | Ch. 76 | SB 107 |
| 80-4-308 | repealed | Ch. 76 | SB 107 |
| 80-4-402 | amended | Ch. 76 | SB 107 |
| 80-4-405 | amended | Ch. 76 | SB 107 |
| 80-4-409 | amended | Ch. 76 | SB 107 |
| 80-4-421 | amended | Ch. 76 | SB 107 |
| 80-4-423 | repealed | Ch. 76 | SB 107 |
| 80-4-429 | amended | Ch. 76 | SB 107 |
| 80-4-501 | amended | Ch. 76 | SB 107 |
| 80-4-535 | repealed | Ch. 76 | SB 107 |

HeinOnline -- 1997 vol. III 3821 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 80-4-536 | amended | Ch. 76 | SB 107 |
| 80-4-602 | amended | Ch. 76 | SB 107 |
| 80-4-701 | amended | Ch. 76 | SB 107 |
| 80-4-702 | amended | Ch. 76 | SB 107 |
| 80-4-703 | amended | Ch. 76 | SB 107 |
| 80-4-704 | amended | Ch. 76 | SB 107 |
| 80-4-705 | amended | Ch. 76 | SB 107 |
| 80-4-706 | amended | Ch. 76 | SB 107 |
| 80-4-707 | repealed | Ch. 76 | SB 107 |
| 80-4-708 | amended | Ch. 76 | SB 107 |
| 80-4-710 | repealed | Ch. 76 | SB 107 |
| 80-4-711 | enacted | Ch. 76 | SB 107 |
| 80-4-721 | amended | Ch. 76 | SB 107 |
| 80-4-722 | amended | Ch. 76 | SB 107 |
| 80-4-723 | repealed | Ch. 76 | SB 107 |
| 80-4-724 | amended | Ch. 76 | SB 107 |
| 80-4-725 | amended | Ch. 76 | SB 107 |
| 80-4-727 | repealed | Ch. 76 | SB 107 |
| 80-5-402 | amended | Ch. 59 | HB 105 |
| 80-5-403 | amended | Ch. 59 | HB 105 |
| 80-5-404 | amended | Ch. 59 | HB 105 |
| 80-5-405 | amended | Ch. 59 | HB 105 |
| 80-6-1102 | amended | Ch. 4 | HB 57 |
| 80-7-106 | amended | Ch. 366 | HB 391 |
| 80-7-121 | repealed | Ch. 7 | SB 53 |
| 80-7-123 | amended | Ch. 7 | SB 53 |
| | amended | Ch. 42 | SB 36 |
| 80-7-135 | amended | Ch. 7 | SB 53 |
| 80-7-401 | enacted | Ch. 7 | SB 53 |
| 80-7-402 | enacted | Ch. 7 | SB 53 |
| 80-7-403 | enacted | Ch. 7 | SB 53 |
| 80-7-404 | enacted | Ch. 7 | SB 53 |
| 80-8-107 | amended | Ch. 454 | HB 361 |
| 80-8-111 | amended | Ch. 42 | SB 36 |
| 80-8-120 | amended | Ch. 180 | HB 489 |
| 80-8-121 | enacted | Ch. 180 | HB 489 |
| 80-8-201 | amended | Ch. 73 | SB 14 |
| 81-2-120 | amended | Ch. 523 | HB 547 |
| 81-2-801 | amended | Ch. 54 | SB 183 |
| 81-3-201 | amended | Ch. 376 | HB 189 |
| 81-3-211 | amended | Ch. 376 | HB 189 |
| 81-7-111 | amended | Ch. 214 | HB 278 |
| 81-7-114 | amended | Ch. 214 | HB 278 |
| 81-7-118 | amended | Ch. 214 | HB 278 |
| 81-7-119 | repealed | Ch. 214 | HB 278 |
| 81-7-120 | amended | Ch. 214 | HB 278 |
| 81-7-121 | amended | Ch. 214 | HB 278 |
| 81-7-122 | amended | Ch. 214 | HB 278 |
| 81-9-201 | amended | Ch. 366 | HB 391 |
| 81-20-201 | amended | Ch. 366 | HB 391 |
| 81-22-101 | amended | Ch. 42 | SB 36 |
| 82-1-201 | amended | Ch. 228 | SB 50 |
| 82-1-302 | amended | Ch. 126 | HB 69 |
| 82-1-304 | amended | Ch. 126 | HB 69 |
| 82-1-305 | amended | Ch. 126 | HB 69 |
| 82-1-306 | amended | Ch. 126 | HB 69 |
| 82-3-201 | repealed | Ch. 24 | HB 35 |

HeinOnline -- 1997 vol. III 3822 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 82-3-202 | repealed | Ch. 24 | HB 35 |
| 82-3-203 | repealed | Ch. 24 | HB 35 |
| 82-3-204 | repealed | Ch. 24 | HB 35 |
| 82-3-205 | repealed | Ch. 24 | HB 35 |
| 82-4-203 | amended | Ch. 196 | HB 154 |
| 82-4-205 | amended | Ch. 273 | HB 529 |
| 82-4-226 | amended | Ch. 196 | HB 154 |
| 82-4-232 | amended | Ch. 42 | SB 36 |
| 82-4-233 | amended | Ch. 196 | HB 154 |
| 82-4-235 | amended | Ch. 196 | HB 154 |
| 82-4-243 | enacted | Ch. 196 | HB 154 |
| 82-4-253 | amended | Ch. 42 | SB 36 |
| 82-4-254 | amended | Ch. 42 | SB 36 |
| 82-4-303 | amended | Ch. 272 | HB 437 |
| 82-4-305 | amended | Ch. 272 | HB 437 |
| 82-4-310 | amended | Ch. 272 | HB 437 |
| 82-4-337 | amended | Ch. 42 | SB 36 |
| 82-4-354 | amended | Ch. 535 | HB 395 |
| 82-4-360 | amended | Ch. 42 | SB 36 |
| 82-4-361 | amended | Ch. 271 | HB 383 |
| | amended | Ch. 273 | HB 529 |
| | amended | Ch. 535 | HB 395 |
| 82-4-441 | amended | Ch. 271 | HB 383 |
| | amended | Ch. 273 | HB 529 |
| 82-11-113 | repealed | Ch. 34 | HB 81 |
| 82-11-114 | repealed | Ch. 34 | HB 81 |
| 82-11-115 | repealed | Ch. 34 | HB 81 |
| 82-11-116 | repealed | Ch. 34 | HB 81 |
| 82-11-123 | amended | Ch. 34 | HB 81 |
| 82-11-135 | amended | Ch. 466 | SB 386 |
| 82-11-136 | amended | Ch. 422 | HB 166 |
| 82-11-161 | amended | Ch. 34 | HB 81 |
| 82-11-162 | repealed | Ch. 34 | HB 81 |
| 82-15-105 | amended | Ch. 366 | HB 391 |
| 85-1-102 | amended | Ch. 436 | HB 31 |
| 85-1-220 | amended | Ch. 422 | HB 166 |
| 85-1-601 | amended | Ch. 436 | HB 31 |
| 85-1-602 | amended | Ch. 436 | HB 31 |
| 85-1-603 | amended | Ch. 332 | SB 310 |
| 85-1-604 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 444 | HB 171 |
| 85-1-605 | amended | Ch. 50 | HB 71 |
| | amended | Ch. 436 | HB 31 |
| 85-1-611 | amended | Ch. 436 | HB 31 |
| 85-1-613 | amended | Ch. 332 | SB 310 |
| | amended | Ch. 436 | HB 31 |
| 85-1-615 | amended | Ch. 332 | SB 310 |
| 85-2-101 | amended | Ch. 497 | SB 97 |
| 85-2-102 | amended | Ch. 497 | SB 97 |
| 85-2-105 | amended | Ch. 45 | SB 72 |
| 85-2-112 | amended | Ch. 45 | SB 72 |
| 85-2-211 | repealed | Ch. 42 | SB 36 |
| 85-2-217 | amended | Ch. 44 | SB 59 |
| | amended | Ch. 497 | SB 97 |
| 85-2-227 | amended | Ch. 174 | SB 108 |
| 85-2-228 | amended | Ch. 497 | SB 97 |
| 85-2-231 | amended | Ch. 174 | SB 108 |

HeinOnline -- 1997 vol. III 3823 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 85-2-233 | amended | Ch. 174 | SB 108 |
| 85-2-301 | amended | Ch. 497 | SB 97 |
| 85-2-309 | amended | Ch. 497 | SB 97 |
| 85-2-311 | amended | Ch. 497 | SB 97 |
| 85-2-313 | amended | Ch. 497 | SB 97 |
| 85-2-316 | amended | Ch. 330 | SB 273 |
| | amended | Ch. 497 | SB 97 |
| 85-2-321 | amended | Ch. 497 | SB 97 |
| 85-2-329 | amended | Ch. 497 | SB 97 |
| 85-2-331 | amended | Ch. 330 | SB 273 |
| | amended | Ch. 497 | SB 97 |
| 85-2-336 | amended | Ch. 497 | SB 97 |
| 85-2-337 | amended | Ch. 353 | SB 342 |
| 85-2-338 | amended | Ch. 353 | SB 342 |
| 85-2-340 | amended | Ch. 497 | SB 97 |
| 85-2-341 | amended | Ch. 497 | SB 97 |
| 85-2-342 | amended | Ch. 497 | SB 97 |
| 85-2-343 | amended | Ch. 441 | HB 120 |
| 85-2-401 | amended | Ch. 497 | SB 97 |
| 85-2-402 | amended | Ch. 353 | SB 342 |
| | amended | Ch. 497 | SB 97 |
| 85-2-404 | amended | Ch. 174 | SB 108 |
| 85-2-406 | amended | Ch. 174 | SB 108 |
| 85-2-424 | amended | Ch. 167 | HB 506 |
| 85-2-431 | amended | Ch. 167 | HB 506 |
| 85-2-440 | enacted | Ch. 353 | SB 342 |
| 85-2-605 | amended | Ch. 145 | HB 507 |
| 85-2-701 | amended | Ch. 42 | SB 36 |
| 85-2-702 | amended | Ch. 44 | SB 59 |
| 85-2-708 | enacted | Ch. 497 | SB 97 |
| 85-2-905 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 444 | HB 171 |
| 85-3-211 | amended | Ch. 42 | SB 36 |
| 85-5-407 | amended | Ch. 42 | SB 36 |
| 85-5-408 | amended | Ch. 42 | SB 36 |
| 85-6-109 | amended | Ch. 42 | SB 36 |
| 85-7-411 | amended | Ch. 306 | SB 284 |
| 85-7-1802 | amended | Ch. 306 | SB 284 |
| 85-7-1846 | enacted | Ch. 306 | SB 284 |
| 85-7-1910 | amended | Ch. 42 | SB 36 |
| 85-7-2159 | amended | Ch. 42 | SB 36 |
| 85-9-206 | amended | Ch. 234 | SB 180 |
| 85-9-623 | amended | Ch. 234 | SB 180 |
| 85-20-501 | enacted | Ch. 170 | SB 175 |
| 85-20-601 | enacted | Ch. 265 | SB 337 |
| 85-20-701 | enacted | Ch. 137 | HB 283 |
| 87-1-102 | amended | Ch. 552 | SB 374 |
| 87-1-108 | amended | Ch. 552 | SB 374 |
| 87-1-110 | enacted | Ch. 161 | SB 141 |
| 87-1-209 | amended | Ch. 184 | SB 42 |
| 87-1-272 | amended | Ch. 440 | HB 75 |
| 87-1-301 | amended | Ch. 355 | SB 394 |
| 87-1-506 | amended | Ch. 523 | HB 547 |
| 87-1-513 | amended | Ch. 523 | HB 547 |
| 87-1-605 | amended | Ch. 336 | HB 20 |
| 87-2-102 | amended | Ch. 187 | SB 60 |
| 87-2-105 | amended | Ch. 187 | SB 60 |

HeinOnline -- 1997 vol. III 3824 1997

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 87-2-106 | amended | Ch. 187 | SB 60 |
| 87-2-202 | amended | Ch. 187 | SB 60 |
| 87-2-308 | enacted | Ch. 336 | HB 20 |
| 87-2-411 | amended | Ch. 187 | SB 60 |
| 87-2-412 | amended | Ch. 187 | SB 60 |
| 87-2-504 | amended | Ch. 355 | SB 394 |
| 87-2-512 | enacted | Ch. 355 | SB 394 |
| 87-2-706 | amended | Ch. 472 | HB 53 |
| 87-2-711 | amended | Ch. 187 | SB 60 |
| 87-2-802 | amended | Ch. 77 | SB 115 |
| | amended | Ch. 189 | SB 109 |
| 87-2-803 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 472 | HB 53 |
| 87-2-808 | enacted | Ch. 275 | SB 63 |
| 87-2-902 | amended | Ch. 187 | SB 60 |
| 87-2-903 | amended | Ch. 187 | SB 60 |
| 87-2-1001 | amended | Ch. 187 | SB 60 |
| 87-3-124 | amended | Ch. 43 | SB 52 |
| 87-3-141 | amended | Ch. 453 | HB 360 |
| 87-3-142 | amended | Ch. 453 | HB 360 |
| 87-5-112 | amended | Ch. 42 | SB 36 |
| 87-5-601 | amended | Ch. 393 | HB 151 |
| 87-5-602 | amended | Ch. 393 | HB 151 |
| 87-5-603 | amended | Ch. 393 | HB 151 |
| 87-5-605 | amended | Ch. 393 | HB 151 |
| 87-5-721 | amended | Ch. 344 | HB 271 |
| 90-2-1104 | amended | Ch. 42 | SB 36 |
| | amended | Ch. 444 | HB 171 |
| 90-2-1121 | amended | Ch. 42 | SB 36 |
| 90-3-101 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-102 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-201 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-202 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-203 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-204 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-301 | amended | Ch. 422 | HB 166 |
| | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-303 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-304 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-305 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-501 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-502 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-503 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-504 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-505 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-506 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-519 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-520 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-521 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-522 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-523 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-524 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-525 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-3-901 | repealed 7/1/99 | Ch. 549 | HB 578 |
| 90-4-1002 | amended | Ch. 42 | SB 36 |
| 90-6-103 | amended | Ch. 472 | HB 53 |
| 90-6-127 | amended | Ch. 42 | SB 36 |

| Title-Ch.-Sec. | Action | Chapter | Bill # |
|---|---|---|---|
| 90-6-201 | amended | Ch. 204 | SB 223 |
| 90-6-205 | amended | Ch. 204 | SB 223 |
| 90-6-206 | amended | Ch. 204 | SB 223 |
| 90-6-207 | amended | Ch. 204 | SB 223 |
| 90-6-208 | amended | Ch. 204 | SB 223 |
| 90-6-209 | amended | Ch. 204 | SB 223 |
| 90-6-210 | amended | Ch. 42 | SB 36 |
| 90-6-212 | repealed | Ch. 204 | SB 223 |
| 90-6-503 | amended | Ch. 39 | HB 56 |
| 90-7-102 | amended | Ch. 477 | HB 136 |
| | amended | Ch. 479 | HB 149 |
| 90-7-103 | amended | Ch. 477 | HB 136 |
| 90-7-104 | amended | Ch. 93 | HB 108 |
| | amended | Ch. 472 | HB 53 |
| | amended | Ch. 477 | HB 136 |
| | amended | Ch. 479 | HB 149 |
| 90-7-111 | amended | Ch. 477 | HB 136 |
| 90-7-201 | amended | Ch. 479 | HB 149 |
| 90-7-202 | amended | Ch. 477 | HB 136 |
| | amended | Ch. 479 | HB 149 |
| 90-7-204 | amended | Ch. 477 | HB 136 |
| 90-7-211 | amended | Ch. 477 | HB 136 |
| | amended | Ch. 479 | HB 149 |
| 90-7-213 | amended | Ch. 477 | HB 136 |
| | amended | Ch. 479 | HB 149 |
| 90-7-214 | amended | Ch. 477 | HB 136 |
| 90-7-220 | amended | Ch. 422 | HB 166 |
| 90-7-221 | amended | Ch. 422 | HB 166 |
| 90-7-226 | enacted | Ch. 477 | HB 136 |
| 90-7-227 | enacted | Ch. 477 | HB 136 |
| 90-7-228 | enacted | Ch. 477 | HB 136 |
| 90-7-302 | amended | Ch. 479 | HB 149 |
| 90-7-303 | amended | Ch. 477 | HB 136 |
| 90-7-304 | amended | Ch. 477 | HB 136 |
| 90-7-305 | amended | Ch. 477 | HB 136 |
| | amended | Ch. 479 | HB 149 |
| 90-7-307 | amended | Ch. 477 | HB 136 |
| 90-7-317 | amended | Ch. 477 | HB 136 |
| | amended | Ch. 479 | HB 149 |
| 90-8-201 | amended | Ch. 549 | HB 578 |
| 90-8-301 | amended | Ch. 42 | SB 36 |
| 90-15-303 | amended | Ch. 45 | SB 72 |
| 90-15-305 | enacted | Ch. 45 | SB 72 |

HeinOnline -- 1997 vol. III 3826 1997

# TABLE

# OF

# SESSION LAWS AFFECTED

HeinOnline -- 1997 vol. III 3827 1997

HeinOnline -- 1997 vol. III 3828 1997

# SESSION LAWS AFFECTED

| Laws Affected | Action | Chapter | Bill # |
|---|---|---|---|
| Laws of 1987 | | | |
| Ch. 504, sec. 1 | repealed | Ch. 33 | HB 59 |
| Laws of 1991 | | | |
| Ch. 774, sec. 12 | amended | Ch. 471 | HB 14 |
| Laws of 1993 | | | |
| Ch. 387, sec. 11 | amended | Ch. 225 | SB 21 |
| Ch. 549, sec. 9 | amended | Ch. 192 | HB 91 |
| Ch. 613, sec. 1 | amended | Ch. 434 | HB 6 |
| Sp. Laws of November 1993 | | | |
| Ch. 23, sec. 13 | amended | Ch. 417 | HB 13 |
| | repealed | Ch. 532 | HB 169 |
| Laws of 1995 | | | |
| Ch. 196, sec. 4 | amended | Ch. 82 | HB 40 |
| Ch. 378, sec. 25 | amended | Ch. 517 | HB 298 |
| Ch. 381, sec. 1 | amended | Ch. 225 | SB 21 |
| Ch. 454, sec. 2 | amended | Ch. 108 | HB 7 |
| Ch. 512, sec. 1 | amended | Ch. 434 | HB 6 |
| Ch. 542, sec. 5 | amended | Ch. 411 | SB 336 |
| Ch. 547, sec. 6 | amended | Ch. 469 | HB 5 |
| Ch. 584, sec. 16, 18, 27 | amended | Ch. 415 | SB 377 |

HeinOnline -- 1997 vol. III 3829 1997

HeinOnline -- 1997 vol. III 3830 1997

# TABLE

# OF

# SENATE BILL

# TO

# CHAPTER NUMBER

HeinOnline -- 1997 vol. III 3831 1997

HeinOnline -- 1997 vol. III 3832 1997

# SENATE BILL

# TO

# CHAPTER NUMBER

| Bill No. | Chapter No. |
|---|---|
| SB 1 | 40 |
| SB 2 | 315 |
| SB 6 | 168 |
| SB 7 | 120 |
| SB 8 | 103 |
| SB 9 | 71 |
| SB 10 | 41 |
| SB 12 | 72 |
| SB 13 | 20 |
| SB 14 | 73 |
| SB 15 | 157 |
| SB 16 | 326 |
| SB 18 | 2 |
| SB 19 | 347 |
| SB 20 | 16 |
| SB 21 | 225 |
| SB 24 | 10 |
| SB 25 | 226 |
| SB 26 | 121 |
| SB 27 | 227 |
| SB 28 | 388 |
| SB 29 | 232 |
| SB 30 | 11 |
| SB 31 | 334 |
| SB 32 | 255 |
| SB 33 | 256 |
| SB 34 | 183 |
| SB 35 | 74 |
| SB 36 | 42 |
| SB 38 | 104 |
| SB 39 | 158 |
| SB 40 | 17 |
| SB 41 | 172 |
| SB 42 | 184 |
| SB 44 | 495 |
| SB 46 | 185 |
| SB 47 | 6 |
| SB 48 | 550 |
| SB 49 | 295 |
| SB 50 | 228 |
| SB 51 | 381 |
| SB 52 | 43 |
| SB 53 | 7 |
| SB 54 | 186 |
| SB 55 | 296 |
| SB 56 | 52 |
| SB 57 | 496 |
| SB 58 | 21 |
| SB 59 | 44 |
| SB 60 | 187 |
| SB 62 | 122 |
| SB 63 | 275 |
| SB 65 | 18 |
| SB 66 | 147 |
| SB 67 | 276 |
| SB 68 | 188 |
| SB 69 | 195 |
| SB 70 | 22 |
| SB 71 | 430 |
| SB 72 | 45 |
| SB 76 | 47 |
| SB 77 | 46 |
| SB 79 | 348 |
| SB 80 | 53 |
| SB 81 | 105 |
| SB 83 | 382 |
| SB 84 | 362 |
| SB 85 | 431 |
| SB 86 | 106 |
| SB 87 | 406 |
| SB 89 | 349 |
| SB 92 | 173 |
| SB 94 | 257 |
| SB 95 | 389 |
| SB 97 | 497 |
| SB 99 | 498 |
| SB 100 | 297 |
| SB 101 | 75 |
| SB 103 | 87 |
| SB 104 | 148 |
| SB 106 | 88 |
| SB 107 | 76 |
| SB 108 | 174 |
| SB 109 | 189 |
| SB 112 | 298 |
| SB 113 | 258 |
| SB 114 | 190 |
| SB 115 | 77 |
| SB 116 | 220 |
| SB 117 | 202 |
| SB 118 | 350 |
| SB 119 | 123 |
| SB 120 | 209 |
| SB 121 | 78 |

HeinOnline -- 1997 vol. III 3833 1997

| Bill No. | Chapter No. |
|---|---|
| SB 124 | 370 |
| SB 125 | 124 |
| SB 126 | 89 |
| SB 127 | 299 |
| SB 129 | 159 |
| SB 130 | 407 |
| SB 131 | 79 |
| SB 133 | 277 |
| SB 134 | 300 |
| SB 135 | 19 |
| SB 138 | 160 |
| SB 141 | 161 |
| SB 142 | 149 |
| SB 144 | 198 |
| SB 145 | 162 |
| SB 148 | 210 |
| SB 151 | 383 |
| SB 152 | 90 |
| SB 158 | 150 |
| SB 159 | 229 |
| SB 160 | 169 |
| SB 161 | 12 |
| SB 163 | 163 |
| SB 167 | 233 |
| SB 173 | 432 |
| SB 175 | 170 |
| SB 180 | 234 |
| SB 181 | 371 |
| SB 182 | 235 |
| SB 183 | 54 |
| SB 187 | 547 |
| SB 188 | 236 |
| SB 191 | 327 |
| SB 192 | 151 |
| SB 195 | 463 |
| SB 197 | 152 |
| SB 198 | 259 |
| SB 201 | 312 |
| SB 204 | 164 |
| SB 205 | 230 |
| SB 207 | 499 |
| SB 212 | 328 |
| SB 213 | 301 |
| SB 216 | 302 |
| SB 219 | 303 |
| SB 223 | 204 |
| SB 224 | 329 |
| SB 226 | 260 |
| SB 229 | 278 |
| SB 234 | 304 |
| SB 235 | 211 |
| SB 239 | 237 |
| SB 240 | 212 |
| SB 244 | 238 |
| SB 245 | 261 |
| SB 246 | 231 |
| SB 251 | 500 |
| SB 256 | 433 |
| SB 257 | 239 |
| SB 259 | 305 |
| SB 263 | 279 |
| SB 264 | 205 |
| SB 265 | 240 |
| SB 266 | 263 |
| SB 269 | 363 |
| SB 270 | 390 |
| SB 271 | 335 |
| SB 272 | 464 |
| SB 273 | 330 |
| SB 275 | 266 |
| SB 276 | 267 |
| SB 277 | 241 |
| SB 280 | 384 |
| SB 282 | 280 |
| SB 283 | 501 |
| SB 284 | 306 |
| SB 285 | 264 |
| SB 286 | 331 |
| SB 288 | 262 |
| SB 290 | 385 |
| SB 296 | 408 |
| SB 297 | 351 |
| SB 298 | 171 |
| SB 300 | 409 |
| SB 303 | 107 |
| SB 304 | 386 |
| SB 308 | 502 |
| SB 309 | 281 |
| SB 310 | 332 |
| SB 311 | 242 |
| SB 313 | 243 |
| SB 314 | 352 |
| SB 315 | 372 |
| SB 316 | 282 |
| SB 324 | 410 |
| SB 325 | 307 |
| SB 326 | 244 |
| SB 329 | 268 |
| SB 331 | 308 |
| SB 332 | 373 |
| SB 335 | 283 |
| SB 336 | 411 |
| SB 337 | 265 |
| SB 338 | 412 |
| SB 339 | 503 |
| SB 341 | 245 |
| SB 342 | 353 |
| SB 343 | 221 |
| SB 344 | 309 |
| SB 349 | 310 |
| SB 350 | 467 |
| SB 354 | 465 |
| SB 361 | 246 |
| SB 365 | 413 |

| Bill No. | Chapter No. |
|---|---|
| SB 368 | 354 |
| SB 369 | 333 |
| SB 370 | 153 |
| SB 372 | 414 |
| SB 374 | 552 |
| SB 375 | 284 |
| SB 377 | 415 |
| SB 378 | 416 |
| SB 379 | 374 |
| SB 381 | 504 |
| SB 382 | 468 |
| SB 383 | 285 |
| SB 386 | 466 |
| SB 390 | 505 |
| SB 394 | 355 |
| SB 396 | 506 |

HeinOnline -- 1997 vol. III 3836 1997

# TABLE

# OF

# HOUSE BILL

# TO

# CHAPTER NUMBER

HeinOnline -- 1997 vol. III 3837 1997

HeinOnline -- 1997 vol. III 3838 1997

# HOUSE BILL

# TO

# CHAPTER NUMBER

| Bill No. | Chapter No. | Bill No. | Chapter No. |
|---|---|---|---|
| HB 1 | 1 | HB 63 | 199 |
| HB 2 | 551 | HB 64 | 91 |
| HB 3 | 269 | HB 65 | 317 |
| HB 4 | 387 | HB 66 | 318 |
| HB 5 | 469 | HB 68 | 337 |
| HB 6 | 434 | HB 69 | 126 |
| HB 7 | 108 | HB 70 | 49 |
| HB 8 | 80 | HB 71 | 50 |
| HB 9 | 470 | HB 72 | 319 |
| HB 10 | 526 | HB 73 | 27 |
| HB 11 | 55 | HB 74 | 439 |
| HB 12 | 81 | HB 75 | 440 |
| HB 13 | 417 | HB 76 | 338 |
| HB 14 | 471 | HB 77 | 320 |
| HB 16 | 13 | HB 78 | 528 |
| HB 17 | 418 | HB 81 | 34 |
| HB 18 | 109 | HB 82 | 51 |
| HB 19 | 14 | HB 83 | 511 |
| HB 20 | 336 | HB 85 | 25 |
| HB 22 | 56 | HB 87 | 35 |
| HB 23 | 48 | HB 88 | 36 |
| HB 24 | 30 | HB 89 | 391 |
| HB 25 | 23 | HB 90 | 191 |
| HB 26 | 5 | HB 91 | 192 |
| HB 27 | 527 | HB 92 | 57 |
| HB 28 | 311 | HB 93 | 321 |
| HB 29 | 435 | HB 96 | 37 |
| HB 30 | 3 | HB 97 | 58 |
| HB 31 | 436 | HB 98 | 92 |
| HB 32 | 31 | HB 99 | 473 |
| HB 33 | 8 | HB 100 | 512 |
| HB 35 | 24 | HB 101 | 513 |
| HB 36 | 32 | HB 102 | 474 |
| HB 40 | 82 | HB 104 | 529 |
| HB 42 | 110 | HB 105 | 59 |
| HB 43 | 26 | HB 107 | 111 |
| HB 44 | 316 | HB 108 | 93 |
| HB 46 | 165 | HB 110 | 154 |
| HB 47 | 437 | HB 111 | 375 |
| HB 48 | 9 | HB 114 | 286 |
| HB 49 | 438 | HB 115 | 60 |
| HB 53 | 472 | HB 117 | 530 |
| HB 56 | 39 | HB 118 | 392 |
| HB 57 | 4 | HB 120 | 441 |
| HB 58 | 364 | HB 121 | 419 |
| HB 59 | 33 | HB 122 | 475 |
| HB 60 | 83 | HB 123 | 476 |

HeinOnline -- 1997 vol. III 3839 1997

| Bill No. | Chapter No. |
|---|---|
| HB 125 | 322 |
| HB 129 | 514 |
| HB 131 | 531 |
| HB 132 | 38 |
| HB 134 | 442 |
| HB 135 | 420 |
| HB 136 | 477 |
| HB 137 | 478 |
| HB 139 | 443 |
| HB 140 | 421 |
| HB 141 | 28 |
| HB 143 | 94 |
| HB 144 | 15 |
| HB 146 | 515 |
| HB 148 | 61 |
| HB 149 | 479 |
| HB 151 | 393 |
| HB 152 | 112 |
| HB 154 | 196 |
| HB 156 | 247 |
| HB 159 | 222 |
| HB 160 | 213 |
| HB 162 | 84 |
| HB 163 | 480 |
| HB 164 | 481 |
| HB 165 | 113 |
| HB 166 | 422 |
| HB 168 | 482 |
| HB 169 | 532 |
| HB 170 | 287 |
| HB 171 | 444 |
| HB 172 | 339 |
| HB 173 | 445 |
| HB 174 | 223 |
| HB 180 | 446 |
| HB 182 | 85 |
| HB 183 | 423 |
| HB 184 | 394 |
| HB 185 | 395 |
| HB 188 | 447 |
| HB 189 | 376 |
| HB 190 | 323 |
| HB 193 | 377 |
| HB 197 | 127 |
| HB 199 | 340 |
| HB 200 | 62 |
| HB 201 | 128 |
| HB 202 | 342 |
| HB 203 | 516 |
| HB 205 | 114 |
| HB 206 | 95 |
| HB 207 | 396 |
| HB 210 | 448 |
| HB 211 | 96 |
| HB 212 | 449 |
| HB 214 | 115 |
| HB 215 | 63 |
| HB 216 | 248 |
| HB 217 | 249 |
| HB 218 | 29 |
| HB 222 | 378 |
| HB 224 | 201 |
| HB 225 | 116 |
| HB 227 | 97 |
| HB 231 | 343 |
| HB 234 | 313 |
| HB 238 | 365 |
| HB 239 | 64 |
| HB 240 | 270 |
| HB 243 | 135 |
| HB 248 | 483 |
| HB 251 | 356 |
| HB 252 | 548 |
| HB 256 | 136 |
| HB 257 | 129 |
| HB 262 | 117 |
| HB 263 | 397 |
| HB 264 | 450 |
| HB 266 | 379 |
| HB 268 | 341 |
| HB 271 | 344 |
| HB 274 | 65 |
| HB 276 | 398 |
| HB 278 | 214 |
| HB 281 | 357 |
| HB 283 | 137 |
| HB 285 | 451 |
| HB 287 | 533 |
| HB 288 | 86 |
| HB 289 | 66 |
| HB 290 | 67 |
| HB 292 | 68 |
| HB 293 | 534 |
| HB 298 | 517 |
| HB 302 | 358 |
| HB 308 | 399 |
| HB 310 | 130 |
| HB 311 | 125 |
| HB 314 | 138 |
| HB 316 | 203 |
| HB 317 | 175 |
| HB 318 | 215 |
| HB 319 | 176 |
| HB 320 | 324 |
| HB 321 | 69 |
| HB 322 | 177 |
| HB 323 | 424 |
| HB 330 | 131 |
| HB 331 | 518 |
| HB 333 | 519 |
| HB 337 | 359 |
| HB 339 | 520 |
| HB 340 | 118 |
| HB 341 | 193 |

| Bill No. | Chapter No. |
|---|---|
| HB 343 | 484 |
| HB 344 | 425 |
| HB 345 | 521 |
| HB 346 | 452 |
| HB 348 | 139 |
| HB 350 | 98 |
| HB 352 | 400 |
| HB 357 | 132 |
| HB 358 | 70 |
| HB 359 | 99 |
| HB 360 | 453 |
| HB 361 | 454 |
| HB 363 | 178 |
| HB 365 | 314 |
| HB 367 | 100 |
| HB 369 | 485 |
| HB 370 | 101 |
| HB 371 | 486 |
| HB 375 | 179 |
| HB 376 | 487 |
| HB 377 | 216 |
| HB 381 | 166 |
| HB 382 | 140 |
| HB 383 | 271 |
| HB 384 | 288 |
| HB 385 | 119 |
| HB 388 | 488 |
| HB 389 | 489 |
| HB 391 | 366 |
| HB 392 | 102 |
| HB 395 | 535 |
| HB 396 | 133 |
| HB 398 | 455 |
| HB 399 | 507 |
| HB 401 | 456 |
| HB 402 | 141 |
| HB 406 | 401 |
| HB 407 | 522 |
| HB 408 | 289 |
| HB 411 | 155 |
| HB 412 | 197 |
| HB 421 | 217 |
| HB 422 | 290 |
| HB 426 | 536 |
| HB 430 | 457 |
| HB 431 | 325 |
| HB 434 | 537 |
| HB 435 | 426 |
| HB 437 | 272 |
| HB 439 | 142 |
| HB 441 | 134 |
| HB 444 | 402 |
| HB 447 | 360 |
| HB 466 | 206 |
| HB 468 | 291 |
| HB 470 | 143 |
| HB 478 | 207 |
| HB 479 | 345 |
| HB 480 | 218 |
| HB 483 | 538 |
| HB 486 | 156 |
| HB 489 | 180 |
| HB 491 | 403 |
| HB 495 | 194 |
| HB 496 | 208 |
| HB 501 | 144 |
| HB 502 | 490 |
| HB 505 | 250 |
| HB 506 | 167 |
| HB 507 | 145 |
| HB 508 | 458 |
| HB 518 | 459 |
| HB 519 | 404 |
| HB 521 | 367 |
| HB 523 | 427 |
| HB 524 | 539 |
| HB 529 | 273 |
| HB 532 | 200 |
| HB 533 | 251 |
| HB 534 | 508 |
| HB 536 | 540 |
| HB 538 | 380 |
| HB 540 | 181 |
| HB 541 | 252 |
| HB 543 | 292 |
| HB 544 | 224 |
| HB 546 | 541 |
| HB 547 | 523 |
| HB 550 | 146 |
| HB 551 | 460 |
| HB 554 | 509 |
| HB 555 | 510 |
| HB 556 | 274 |
| HB 558 | 524 |
| HB 559 | 525 |
| HB 560 | 219 |
| HB 561 | 491 |
| HB 566 | 253 |
| HB 567 | 361 |
| HB 568 | 428 |
| HB 569 | 254 |
| HB 571 | 293 |
| HB 572 | 429 |
| HB 575 | 294 |
| HB 576 | 405 |
| HB 577 | 182 |
| HB 578 | 549 |
| HB 584 | 542 |
| HB 591 | 543 |
| HB 594 | 346 |
| HB 596 | 368 |
| HB 598 | 492 |
| HB 599 | 544 |
| HB 601 | 545 |

| Bill No. | Chapter No. |
|---|---|
| HB 604 | 546 |
| HB 607 | 461 |
| HB 610 | 493 |
| HB 612 | 369 |
| HB 615 | 494 |
| HB 616 | 462 |

# TABLE

# OF

# CHAPTER NUMBER

# TO

# BILL NUMBER

HeinOnline -- 1997 vol. III 3843 1997

HeinOnline -- 1997 vol. III 3844 1997

# CHAPTER NUMBER

# TO

# BILL NUMBER

| Chapter No. | Bill No. |
|---|---|
| Ch. 1 | HB 1 |
| Ch. 2 | SB 18 |
| Ch. 3 | HB 30 |
| Ch. 4 | HB 57 |
| Ch. 5 | HB 26 |
| Ch. 6 | SB 47 |
| Ch. 7 | SB 53 |
| Ch. 8 | HB 33 |
| Ch. 9 | HB 48 |
| Ch. 10 | SB 24 |
| Ch. 11 | SB 30 |
| Ch. 12 | SB 161 |
| Ch. 13 | HB 16 |
| Ch. 14 | HB 19 |
| Ch. 15 | HB 144 |
| Ch. 16 | SB 20 |
| Ch. 17 | SB 40 |
| Ch. 18 | SB 65 |
| Ch. 19 | SB 135 |
| Ch. 20 | SB 13 |
| Ch. 21 | SB 58 |
| Ch. 22 | SB 70 |
| Ch. 23 | HB 25 |
| Ch. 24 | HB 35 |
| Ch. 25 | HB 85 |
| Ch. 26 | HB 43 |
| Ch. 27 | HB 73 |
| Ch. 28 | HB 141 |
| Ch. 29 | HB 218 |
| Ch. 30 | HB 24 |
| Ch. 31 | HB 32 |
| Ch. 32 | HB 36 |
| Ch. 33 | HB 59 |
| Ch. 34 | HB 81 |
| Ch. 35 | HB 87 |
| Ch. 36 | HB 88 |
| Ch. 37 | HB 96 |
| Ch. 38 | HB 132 |
| Ch. 39 | HB 56 |
| Ch. 40 | SB 1 |
| Ch. 41 | SB 10 |
| Ch. 42 | SB 36 |
| Ch. 43 | SB 52 |
| Ch. 44 | SB 59 |
| Ch. 45 | SB 72 |
| Ch. 46 | SB 77 |
| Ch. 47 | SB 76 |
| Ch. 48 | HB 23 |
| Ch. 49 | HB 70 |
| Ch. 50 | HB 71 |
| Ch. 51 | HB 82 |
| Ch. 52 | SB 56 |
| Ch. 53 | SB 80 |
| Ch. 54 | SB 183 |
| Ch. 55 | HB 11 |
| Ch. 56 | HB 22 |
| Ch. 57 | HB 92 |
| Ch. 58 | HB 97 |
| Ch. 59 | HB 105 |
| Ch. 60 | HB 115 |
| Ch. 61 | HB 148 |
| Ch. 62 | HB 200 |
| Ch. 63 | HB 215 |
| Ch. 64 | HB 239 |
| Ch. 65 | HB 274 |
| Ch. 66 | HB 289 |
| Ch. 67 | HB 290 |
| Ch. 68 | HB 292 |
| Ch. 69 | HB 321 |
| Ch. 70 | HB 358 |
| Ch. 71 | SB 9 |
| Ch. 72 | SB 12 |
| Ch. 73 | SB 14 |
| Ch. 74 | SB 35 |
| Ch. 75 | SB 101 |
| Ch. 76 | SB 107 |
| Ch. 77 | SB 115 |
| Ch. 78 | SB 121 |
| Ch. 79 | SB 131 |
| Ch. 80 | HB 8 |
| Ch. 81 | HB 12 |
| Ch. 82 | HB 40 |
| Ch. 83 | HB 60 |
| Ch. 84 | HB 162 |
| Ch. 85 | HB 182 |
| Ch. 86 | HB 288 |
| Ch. 87 | SB 103 |
| Ch. 88 | SB 106 |
| Ch. 89 | SB 126 |
| Ch. 90 | SB 152 |
| Ch. 91 | HB 64 |
| Ch. 92 | HB 98 |
| Ch. 93 | HB 108 |
| Ch. 94 | HB 143 |
| Ch. 95 | HB 206 |
| Ch. 96 | HB 211 |

HeinOnline -- 1997 vol. III 3845 1997

| Chapter No. | Bill No. |
|---|---|
| Ch. 97 | HB 227 |
| Ch. 98 | HB 350 |
| Ch. 99 | HB 359 |
| Ch. 100 | HB 367 |
| Ch. 101 | HB 370 |
| Ch. 102 | HB 392 |
| Ch. 103 | SB 8 |
| Ch. 104 | SB 38 |
| Ch. 105 | SB 81 |
| Ch. 106 | SB 86 |
| Ch. 107 | SB 303 |
| Ch. 108 | HB 7 |
| Ch. 109 | HB 18 |
| Ch. 110 | HB 42 |
| Ch. 111 | HB 107 |
| Ch. 112 | HB 152 |
| Ch. 113 | HB 165 |
| Ch. 114 | HB 205 |
| Ch. 115 | HB 214 |
| Ch. 116 | HB 225 |
| Ch. 117 | HB 262 |
| Ch. 118 | HB 340 |
| Ch. 119 | HB 385 |
| Ch. 120 | SB 7 |
| Ch. 121 | SB 26 |
| Ch. 122 | SB 62 |
| Ch. 123 | SB 119 |
| Ch. 124 | SB 125 |
| Ch. 125 | HB 311 |
| Ch. 126 | HB 69 |
| Ch. 127 | HB 197 |
| Ch. 128 | HB 201 |
| Ch. 129 | HB 257 |
| Ch. 130 | HB 310 |
| Ch. 131 | HB 330 |
| Ch. 132 | HB 357 |
| Ch. 133 | HB 396 |
| Ch. 134 | HB 441 |
| Ch. 135 | HB 243 |
| Ch. 136 | HB 256 |
| Ch. 137 | HB 283 |
| Ch. 138 | HB 314 |
| Ch. 139 | HB 348 |
| Ch. 140 | HB 382 |
| Ch. 141 | HB 402 |
| Ch. 142 | HB 439 |
| Ch. 143 | HB 470 |
| Ch. 144 | HB 501 |
| Ch. 145 | HB 507 |
| Ch. 146 | HB 550 |
| Ch. 147 | SB 66 |
| Ch. 148 | SB 104 |
| Ch. 149 | SB 142 |
| Ch. 150 | SB 158 |
| Ch. 151 | SB 192 |
| Ch. 152 | SB 197 |
| Ch. 153 | SB 370 |
| Ch. 154 | HB 110 |
| Ch. 155 | HB 411 |
| Ch. 156 | HB 486 |
| Ch. 157 | SB 15 |
| Ch. 158 | SB 39 |
| Ch. 159 | SB 129 |
| Ch. 160 | SB 138 |
| Ch. 161 | SB 141 |
| Ch. 162 | SB 145 |
| Ch. 163 | SB 163 |
| Ch. 164 | SB 204 |
| Ch. 165 | HB 46 |
| Ch. 166 | HB 381 |
| Ch. 167 | HB 506 |
| Ch. 168 | SB 6 |
| Ch. 169 | SB 160 |
| Ch. 170 | SB 175 |
| Ch. 171 | SB 298 |
| Ch. 172 | SB 41 |
| Ch. 173 | SB 92 |
| Ch. 174 | SB 108 |
| Ch. 175 | HB 317 |
| Ch. 176 | HB 319 |
| Ch. 177 | HB 322 |
| Ch. 178 | HB 363 |
| Ch. 179 | HB 375 |
| Ch. 180 | HB 489 |
| Ch. 181 | HB 540 |
| Ch. 182 | HB 577 |
| Ch. 183 | SB 34 |
| Ch. 184 | SB 42 |
| Ch. 185 | SB 46 |
| Ch. 186 | SB 54 |
| Ch. 187 | SB 60 |
| Ch. 188 | SB 68 |
| Ch. 189 | SB 109 |
| Ch. 190 | SB 114 |
| Ch. 191 | HB 90 |
| Ch. 192 | HB 91 |
| Ch. 193 | HB 341 |
| Ch. 194 | HB 495 |
| Ch. 195 | SB 69 |
| Ch. 196 | HB 154 |
| Ch. 197 | HB 412 |
| Ch. 198 | SB 144 |
| Ch. 199 | HB 63 |
| Ch. 200 | HB 532 |
| Ch. 201 | HB 224 |
| Ch. 202 | SB 117 |
| Ch. 203 | HB 316 |
| Ch. 204 | SB 223 |
| Ch. 205 | SB 264 |
| Ch. 206 | HB 466 |
| Ch. 207 | HB 478 |
| Ch. 208 | HB 496 |
| Ch. 209 | SB 120 |
| Ch. 210 | SB 148 |

HeinOnline -- 1997 vol. III 3846 1997

| Chapter No. | Bill No. |
|---|---|
| Ch. 211 | SB 235 |
| Ch. 212 | SB 240 |
| Ch. 213 | HB 160 |
| Ch. 214 | HB 278 |
| Ch. 215 | HB 318 |
| Ch. 216 | HB 377 |
| Ch. 217 | HB 421 |
| Ch. 218 | HB 480 |
| Ch. 219 | HB 560 |
| Ch. 220 | SB 116 |
| Ch. 221 | SB 343 |
| Ch. 222 | HB 159 |
| Ch. 223 | HB 174 |
| Ch. 224 | HB 544 |
| Ch. 225 | SB 21 |
| Ch. 226 | SB 25 |
| Ch. 227 | SB 27 |
| Ch. 228 | SB 50 |
| Ch. 229 | SB 159 |
| Ch. 230 | SB 205 |
| Ch. 231 | SB 246 |
| Ch. 232 | SB 29 |
| Ch. 233 | SB 167 |
| Ch. 234 | SB 180 |
| Ch. 235 | SB 182 |
| Ch. 236 | SB 188 |
| Ch. 237 | SB 239 |
| Ch. 238 | SB 244 |
| Ch. 239 | SB 257 |
| Ch. 240 | SB 265 |
| Ch. 241 | SB 277 |
| Ch. 242 | SB 311 |
| Ch. 243 | SB 313 |
| Ch. 244 | SB 326 |
| Ch. 245 | SB 341 |
| Ch. 246 | SB 361 |
| Ch. 247 | HB 156 |
| Ch. 248 | HB 216 |
| Ch. 249 | HB 217 |
| Ch. 250 | HB 505 |
| Ch. 251 | HB 533 |
| Ch. 252 | HB 541 |
| Ch. 253 | HB 566 |
| Ch. 254 | HB 569 |
| Ch. 255 | SB 32 |
| Ch. 256 | SB 33 |
| Ch. 257 | SB 94 |
| Ch. 258 | SB 113 |
| Ch. 259 | SB 198 |
| Ch. 260 | SB 226 |
| Ch. 261 | SB 245 |
| Ch. 262 | SB 288 |
| Ch. 263 | SB 266 |
| Ch. 264 | SB 285 |
| Ch. 265 | SB 337 |
| Ch. 266 | SB 275 |
| Ch. 267 | SB 276 |
| Ch. 268 | SB 329 |
| Ch. 269 | HB 3 |
| Ch. 270 | HB 240 |
| Ch. 271 | HB 383 |
| Ch. 272 | HB 437 |
| Ch. 273 | HB 529 |
| Ch. 274 | HB 556 |
| Ch. 275 | SB 63 |
| Ch. 276 | SB 67 |
| Ch. 277 | SB 133 |
| Ch. 278 | SB 229 |
| Ch. 279 | SB 263 |
| Ch. 280 | SB 282 |
| Ch. 281 | SB 309 |
| Ch. 282 | SB 316 |
| Ch. 283 | SB 335 |
| Ch. 284 | SB 375 |
| Ch. 285 | SB 383 |
| Ch. 286 | HB 114 |
| Ch. 287 | HB 170 |
| Ch. 288 | HB 384 |
| Ch. 289 | HB 408 |
| Ch. 290 | HB 422 |
| Ch. 291 | HB 468 |
| Ch. 292 | HB 543 |
| Ch. 293 | HB 571 |
| Ch. 294 | HB 575 |
| Ch. 295 | SB 49 |
| Ch. 296 | SB 55 |
| Ch. 297 | SB 100 |
| Ch. 298 | SB 112 |
| Ch. 299 | SB 127 |
| Ch. 300 | SB 134 |
| Ch. 301 | SB 213 |
| Ch. 302 | SB 216 |
| Ch. 303 | SB 219 |
| Ch. 304 | SB 234 |
| Ch. 305 | SB 259 |
| Ch. 306 | SB 284 |
| Ch. 307 | SB 325 |
| Ch. 308 | SB 331 |
| Ch. 309 | SB 344 |
| Ch. 310 | SB 349 |
| Ch. 311 | HB 28 |
| Ch. 312 | SB 201 |
| Ch. 313 | HB 234 |
| Ch. 314 | HB 365 |
| Ch. 315 | SB 2 |
| Ch. 316 | HB 44 |
| Ch. 317 | HB 65 |
| Ch. 318 | HB 66 |
| Ch. 319 | HB 72 |
| Ch. 320 | HB 77 |
| Ch. 321 | HB 93 |
| Ch. 322 | HB 125 |
| Ch. 323 | HB 190 |
| Ch. 324 | HB 320 |

HeinOnline -- 1997 vol. III 3847 1997

| Chapter No. | Bill No. |
|---|---|
| Ch. 325 | HB 431 |
| Ch. 326 | SB 16 |
| Ch. 327 | SB 191 |
| Ch. 328 | SB 212 |
| Ch. 329 | SB 224 |
| Ch. 330 | SB 273 |
| Ch. 331 | SB 286 |
| Ch. 332 | SB 310 |
| Ch. 333 | SB 369 |
| Ch. 334 | SB 31 |
| Ch. 335 | SB 271 |
| Ch. 336 | HB 20 |
| Ch. 337 | HB 68 |
| Ch. 338 | HB 76 |
| Ch. 339 | HB 172 |
| Ch. 340 | HB 199 |
| Ch. 341 | HB 268 |
| Ch. 342 | HB 202 |
| Ch. 343 | HB 231 |
| Ch. 344 | HB 271 |
| Ch. 345 | HB 479 |
| Ch. 346 | HB 594 |
| Ch. 347 | SB 19 |
| Ch. 348 | SB 79 |
| Ch. 349 | SB 89 |
| Ch. 350 | SB 118 |
| Ch. 351 | SB 297 |
| Ch. 352 | SB 314 |
| Ch. 353 | SB 342 |
| Ch. 354 | SB 368 |
| Ch. 355 | SB 394 |
| Ch. 356 | HB 251 |
| Ch. 357 | HB 281 |
| Ch. 358 | HB 302 |
| Ch. 359 | HB 337 |
| Ch. 360 | HB 447 |
| Ch. 361 | HB 567 |
| Ch. 362 | SB 84 |
| Ch. 363 | SB 269 |
| Ch. 364 | HB 58 |
| Ch. 365 | HB 238 |
| Ch. 366 | HB 391 |
| Ch. 367 | HB 521 |
| Ch. 368 | HB 596 |
| Ch. 369 | HB 612 |
| Ch. 370 | SB 124 |
| Ch. 371 | SB 181 |
| Ch. 372 | SB 315 |
| Ch. 373 | SB 332 |
| Ch. 374 | SB 379 |
| Ch. 375 | HB 111 |
| Ch. 376 | HB 189 |
| Ch. 377 | HB 193 |
| Ch. 378 | HB 222 |
| Ch. 379 | HB 266 |
| Ch. 380 | HB 538 |
| Ch. 381 | SB 51 |
| Ch. 382 | SB 83 |
| Ch. 383 | SB 151 |
| Ch. 384 | SB 280 |
| Ch. 385 | SB 290 |
| Ch. 386 | SB 304 |
| Ch. 387 | HB 4 |
| Ch. 388 | SB 28 |
| Ch. 389 | SB 95 |
| Ch. 390 | SB 270 |
| Ch. 391 | HB 89 |
| Ch. 392 | HB 118 |
| Ch. 393 | HB 151 |
| Ch. 394 | HB 184 |
| Ch. 395 | HB 185 |
| Ch. 396 | HB 207 |
| Ch. 397 | HB 263 |
| Ch. 398 | HB 276 |
| Ch. 399 | HB 308 |
| Ch. 400 | HB 352 |
| Ch. 401 | HB 406 |
| Ch. 402 | HB 444 |
| Ch. 403 | HB 491 |
| Ch. 404 | HB 519 |
| Ch. 405 | HB 576 |
| Ch. 406 | SB 87 |
| Ch. 407 | SB 130 |
| Ch. 408 | SB 296 |
| Ch. 409 | SB 300 |
| Ch. 410 | SB 324 |
| Ch. 411 | SB 336 |
| Ch. 412 | SB 338 |
| Ch. 413 | SB 365 |
| Ch. 414 | SB 372 |
| Ch. 415 | SB 377 |
| Ch. 416 | SB 378 |
| Ch. 417 | HB 13 |
| Ch. 418 | HB 17 |
| Ch. 419 | HB 121 |
| Ch. 420 | HB 135 |
| Ch. 421 | HB 140 |
| Ch. 422 | HB 166 |
| Ch. 423 | HB 183 |
| Ch. 424 | HB 323 |
| Ch. 425 | HB 344 |
| Ch. 426 | HB 435 |
| Ch. 427 | HB 523 |
| Ch. 428 | HB 568 |
| Ch. 429 | HB 572 |
| Ch. 430 | SB 71 |
| Ch. 431 | SB 85 |
| Ch. 432 | SB 173 |
| Ch. 433 | SB 256 |
| Ch. 434 | HB 6 |
| Ch. 435 | HB 29 |
| Ch. 436 | HB 31 |
| Ch. 437 | HB 47 |
| Ch. 438 | HB 49 |

HeinOnline -- 1997 vol. III 3848 1997

| Chapter No. | Bill No. |
|---|---|
| Ch. 439 | HB 74 |
| Ch. 440 | HB 75 |
| Ch. 441 | HB 120 |
| Ch. 442 | HB 134 |
| Ch. 443 | HB 139 |
| Ch. 444 | HB 171 |
| Ch. 445 | HB 173 |
| Ch. 446 | HB 180 |
| Ch. 447 | HB 188 |
| Ch. 448 | HB 210 |
| Ch. 449 | HB 212 |
| Ch. 450 | HB 264 |
| Ch. 451 | HB 285 |
| Ch. 452 | HB 346 |
| Ch. 453 | HB 360 |
| Ch. 454 | HB 361 |
| Ch. 455 | HB 398 |
| Ch. 456 | HB 401 |
| Ch. 457 | HB 430 |
| Ch. 458 | HB 508 |
| Ch. 459 | HB 518 |
| Ch. 460 | HB 551 |
| Ch. 461 | HB 607 |
| Ch. 462 | HB 616 |
| Ch. 463 | SB 195 |
| Ch. 464 | SB 272 |
| Ch. 465 | SB 354 |
| Ch. 466 | SB 386 |
| Ch. 467 | SB 350 |
| Ch. 468 | SB 382 |
| Ch. 469 | HB 5 |
| Ch. 470 | HB 9 |
| Ch. 471 | HB 14 |
| Ch. 472 | HB 53 |
| Ch. 473 | HB 99 |
| Ch. 474 | HB 102 |
| Ch. 475 | HB 122 |
| Ch. 476 | HB 123 |
| Ch. 477 | HB 136 |
| Ch. 478 | HB 137 |
| Ch. 479 | HB 149 |
| Ch. 480 | HB 163 |
| Ch. 481 | HB 164 |
| Ch. 482 | HB 168 |
| Ch. 483 | HB 248 |
| Ch. 484 | HB 343 |
| Ch. 485 | HB 369 |
| Ch. 486 | HB 371 |
| Ch. 487 | HB 376 |
| Ch. 488 | HB 388 |
| Ch. 489 | HB 389 |
| Ch. 490 | HB 502 |
| Ch. 491 | HB 561 |
| Ch. 492 | HB 598 |
| Ch. 493 | HB 610 |
| Ch. 494 | HB 615 |
| Ch. 495 | SB 44 |
| Ch. 496 | SB 57 |
| Ch. 497 | SB 97 |
| Ch. 498 | SB 99 |
| Ch. 499 | SB 207 |
| Ch. 500 | SB 251 |
| Ch. 501 | SB 283 |
| Ch. 502 | SB 308 |
| Ch. 503 | SB 339 |
| Ch. 504 | SB 381 |
| Ch. 505 | SB 390 |
| Ch. 506 | SB 396 |
| Ch. 507 | HB 399 |
| Ch. 508 | HB 534 |
| Ch. 509 | HB 554 |
| Ch. 510 | HB 555 |
| Ch. 511 | HB 83 |
| Ch. 512 | HB 100 |
| Ch. 513 | HB 101 |
| Ch. 514 | HB 129 |
| Ch. 515 | HB 146 |
| Ch. 516 | HB 203 |
| Ch. 517 | HB 298 |
| Ch. 518 | HB 331 |
| Ch. 519 | HB 333 |
| Ch. 520 | HB 339 |
| Ch. 521 | HB 345 |
| Ch. 522 | HB 407 |
| Ch. 523 | HB 547 |
| Ch. 524 | HB 558 |
| Ch. 525 | HB 559 |
| Ch. 526 | HB 10 |
| Ch. 527 | HB 27 |
| Ch. 528 | HB 78 |
| Ch. 529 | HB 104 |
| Ch. 530 | HB 117 |
| Ch. 531 | HB 131 |
| Ch. 532 | HB 169 |
| Ch. 533 | HB 287 |
| Ch. 534 | HB 293 |
| Ch. 535 | HB 395 |
| Ch. 536 | HB 426 |
| Ch. 537 | HB 434 |
| Ch. 538 | HB 483 |
| Ch. 539 | HB 524 |
| Ch. 540 | HB 536 |
| Ch. 541 | HB 546 |
| Ch. 542 | HB 584 |
| Ch. 543 | HB 591 |
| Ch. 544 | HB 599 |
| Ch. 545 | HB 601 |
| Ch. 546 | HB 604 |
| Ch. 547 | SB 187 |
| Ch. 548 | HB 252 |
| Ch. 549 | HB 578 |
| Ch. 550 | SB 48 |
| Ch. 551 | HB 2 |
| Ch. 552 | SB 374 |

HeinOnline -- 1997 vol. III 3849 1997

HeinOnline -- 1997 vol. III 3850 1997

# TABLES

# OF

# EFFECTIVE DATES

# BY CHAPTER NUMBER

# and

# BY EFFECTIVE DATE

Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that:

"Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein."

The following is a list of effective dates for the 55th Legislature in regular session.

HeinOnline -- 1997 vol. III 3851 1997

HeinOnline -- 1997 vol. III 3852 1997

# EFFECTIVE DATES

# BY CHAPTER NUMBER

| Chapter No. | | Bill No. | | Effective Date |
|---|---|---|---|---|
| Ch. 1 | | HB 1 | | 01/15/97 |
| Ch. 2 | | SB 18 | | 01/27/97 |
| Ch. 3 | | HB 30 | | 10/01/97 |
| Ch. 4 | | HB 57 | | 07/01/97 |
| Ch. 5 | | HB 26 | | 10/01/97 |
| Ch. 6 | | SB 47 | | 02/05/97 |
| Ch. 7 | | SB 53 | | 10/01/97 |
| Ch. 8 | | HB 33 | | 10/01/97 |
| Ch. 9 | | HB 48 | | 02/07/97 |
| Ch. 10 | | SB 24 | | 10/01/97 |
| Ch. 11 | | SB 30 | | 02/07/97 |
| Ch. 12 | | SB 161 | | 10/01/97 |
| Ch. 13 | | HB 16 | | 10/01/97 |
| Ch. 14 | | HB 19 | | 07/01/97 |
| Ch. 15 | | HB 144 | | 02/11/97 |
| Ch. 16 | | SB 20 | | 02/11/97 |
| Ch. 17 | | SB 40 | | 02/11/97 |
| Ch. 18 | | SB 65 | | 02/11/97 |
| Ch. 19 | | SB 135 | | 02/11/97 |
| Ch. 20 | | SB 13 | | 02/12/97 |
| Ch. 21 | | SB 58 | | 07/01/97 |
| Ch. 22 | | SB 70 | | 07/01/97 |
| Ch. 23 | | HB 25 | | 07/01/97 |
| Ch. 24 | | HB 35 | | 10/01/97 |
| Ch. 25 | | HB 85 | | 10/01/97 |
| Ch. 26 | | HB 43 | | 02/21/97 |
| Ch. 27 | | HB 73 | | 02/21/97 |
| Ch. 28 | | HB 141 | | 10/01/97 |
| Ch. 29 | | HB 218 | | 10/01/97 |
| Ch. 30 | | HB 24 | | 10/01/97 |
| Ch. 31 | | HB 32 | | 02/24/97 |
| Ch. 32 | | HB 36 | | 10/01/97 |
| Ch. 33 | | HB 59 | | 10/01/97 |
| Ch. 34 | | HB 81 | | 02/24/97 |
| Ch. 35 | | HB 87 | | 02/24/97 |
| Ch. 36 | | HB 88 | | 02/24/97 |
| Ch. 37 | | HB 96 | | 02/24/97 |
| Ch. 38 | | HB 132 | | 07/01/97 |
| Ch. 39 | | HB 56 | | 03/12/97 |
| Ch. 40 | | SB 1 | | 03/12/97 |
| Ch. 41 | | SB 10 | | 03/12/97 |
| Ch. 42 | §§ 1-315(1) & 316 | SB 36 | | 03/12/97 |
| | § 315(2) | | | 07/01/99 |
| Ch. 43 | | SB 52 | | 03/12/97 |
| Ch. 44 | | SB 59 | | 07/01/97 |
| Ch. 45 | | SB 72 | | 10/01/97 |
| Ch. 46 | | SB 77 | | 10/01/97 |
| Ch. 47 | | SB 76 | | 03/13/97 |
| Ch. 48 | | HB 23 | | 07/01/97 |
| Ch. 49 | | HB 70 | | 03/13/97 |

HeinOnline -- 1997 vol. III 3853 1997

| Chapter No. | | Bill No. | | Effective Date |
|---|---|---|---|---|
| Ch. | 50 | HB | 71 | 03/13/97 |
| Ch. | 51 | HB | 82 | 03/13/97 |
| Ch. | 52 | SB | 56 | 10/01/97 |
| Ch. | 53 | SB | 80 | 10/01/97 |
| Ch. | 54 | SB | 183 | 03/13/97 |
| Ch. | 55 | HB | 11 | 03/17/97 |
| | §§ 2-5 | | | |
| | § 1 | | | 07/01/97 |
| Ch. | 56 | HB | 22 | 10/01/97 |
| Ch. | 57 | HB | 92 | 07/01/97 |
| Ch. | 58 | HB | 97 | 10/01/97 |
| Ch. | 59 | HB | 105 | 10/01/97 |
| Ch. | 60 | HB | 115 | 03/17/97 |
| | §§ 1, 3-5 & 7-14 | | | |
| | § 2 | | | 10/01/97 |
| | § 6 | | | 01/01/98 |
| Ch. | 61 | HB | 148 | 03/17/97 |
| Ch. | 62 | HB | 200 | 10/01/97 |
| Ch. | 63 | HB | 215 | 10/01/97 |
| Ch. | 64 | HB | 239 | 10/01/97 |
| Ch. | 65 | HB | 274 | 07/01/97 |
| Ch. | 66 | HB | 289 | 04/16/97 |
| Ch. | 67 | HB | 290 | 10/01/97 |
| Ch. | 68 | HB | 292 | 10/01/97 |
| Ch. | 69 | HB | 321 | 03/17/97 |
| Ch. | 70 | HB | 358 | 07/01/97 |
| Ch. | 71 | SB | 9 | 10/01/97 |
| Ch. | 72 | SB | 12 | 01/01/98 |
| Ch. | 73 | SB | 14 | 07/01/97 |
| Ch. | 74 | SB | 35 | 10/01/97 |
| Ch. | 75 | SB | 101 | 10/01/97 |
| Ch. | 76 | SB | 107 | 07/01/97 |
| Ch. | 77 | SB | 115 | 10/01/97 |
| Ch. | 78 | SB | 121 | 07/01/97 |
| Ch. | 79 | SB | 131 | 03/17/97 |
| Ch. | 80 | HB | 8 | 03/19/97 |
| Ch. | 81 | HB | 12 | 07/01/97 |
| Ch. | 82 | HB | 40 | 06/30/97 |
| Ch. | 83 | HB | 60 | 07/01/97 |
| Ch. | 84 | HB | 162 | 07/01/97 |
| Ch. | 85 | HB | 182 | 10/01/97 |
| Ch. | 86 | HB | 288 | 03/19/97 |
| Ch. | 87 | SB | 103 | 10/01/97 |
| Ch. | 88 | SB | 106 | 10/01/97 |
| Ch. | 89 | SB | 126 | 10/01/97 |
| Ch. | 90 | SB | 152 | 10/01/97 |
| Ch. | 91 | HB | 64 | 03/19/97 |
| Ch. | 92 | HB | 98 | 03/19/97 |
| Ch. | 93 | HB | 108 | 03/19/97 |
| Ch. | 94 | HB | 143 | 10/01/97 |
| Ch. | 95 | HB | 206 | 03/19/97 |
| Ch. | 96 | HB | 211 | 10/01/97 |
| Ch. | 97 | HB | 227 | 10/01/97 |
| Ch. | 98 | HB | 350 | 10/01/97 |
| Ch. | 99 | HB | 359 | 03/19/97 |
| Ch. | 100 | HB | 367 | 10/01/97 |
| Ch. | 101 | HB | 370 | 10/01/97 |
| Ch. | 102 | HB | 392 | 10/01/97 |
| Ch. | 103 | SB | 8 | 10/01/97 |

HeinOnline -- 1997 vol. III 3854 1997

| Chapter No. | | Bill No. | | Effective Date |
|---|---|---|---|---|
| Ch. 104 | | SB 38 | | 10/01/97 |
| Ch. 105 | | SB 81 | | 10/01/97 |
| Ch. 106 | | SB 86 | | 10/01/97 |
| Ch. 107 | §§ 3 & 10 | SB 303 | | 03/19/97 |
| | §§ 1, 2 & 4-9 | | | 07/01/97 |
| Ch. 108 | | HB 7 | | 07/01/97 |
| Ch. 109 | §§ 1-10 & 12-14 | HB 18 | | 03/20/97 |
| | § 11 | | | 07/01/97 |
| Ch. 110 | | HB 42 | | 10/01/97 |
| Ch. 111 | | HB 107 | | 03/20/97 |
| Ch. 112 | | HB 152 | | 10/01/97 |
| Ch. 113 | | HB 165 | | 03/20/97 |
| Ch. 114 | | HB 205 | | 10/01/97 |
| Ch. 115 | | HB 214 | | 07/01/97 |
| Ch. 116 | | HB 225 | | 03/20/97 |
| Ch. 117 | §§ 1-9 & 11-19 | HB 262 | | 03/20/97 |
| | § 10 | | | 07/01/97 |
| Ch. 118 | | HB 340 | | 10/01/97 |
| Ch. 119 | | HB 385 | | 10/01/97 |
| Ch. 120 | | SB 7 | | 07/01/97 |
| Ch. 121 | §§ 5 & 13 | SB 26 | | 03/20/97 |
| | §§ 1-4 & 6-12 | | | 01/01/98 |
| Ch. 122 | | SB 62 | | 07/01/97 |
| Ch. 123 | | SB 119 | | 03/20/97 |
| Ch. 124 | | SB 125 | | 07/01/97 |
| Ch. 125 | | HB 311 | | 01/01/98 |
| Ch. 126 | | HB 69 | | 10/01/97 |
| Ch. 127 | | HB 197 | | 07/01/97 |
| Ch. 128 | | HB 201 | | 10/01/97 |
| Ch. 129 | | HB 257 | | 03/24/97 |
| Ch. 130 | | HB 310 | | 03/24/97 |
| Ch. 131 | | HB 330 | | 10/01/97 |
| Ch. 132 | | HB 357 | | 10/01/97 |
| Ch. 133 | | HB 396 | | 10/01/97 |
| Ch. 134 | | HB 441 | | 03/24/97 |
| Ch. 135 | | HB 243 | | 10/01/97 |
| Ch. 136 | | HB 256 | | 03/25/97 |
| Ch. 137 | | HB 283 | | 10/01/97 |
| Ch. 138 | | HB 314 | | 10/01/97 |
| Ch. 139 | | HB 348 | | 10/01/97 |
| Ch. 140 | | HB 382 | | 10/01/97 |
| Ch. 141 | | HB 402 | | 03/25/97 |
| Ch. 142 | | HB 439 | | 10/01/97 |
| Ch. 143 | | HB 470 | | 07/01/97 |
| Ch. 144 | | HB 501 | | 10/01/97 |
| Ch. 145 | | HB 507 | | 03/25/97 |
| Ch. 146 | | HB 550 | | 10/01/97 |
| Ch. 147 | | SB 66 | | 03/25/97 |
| Ch. 148 | | SB 104 | | 10/01/97 |
| Ch. 149 | | SB 142 | | 03/25/97 |
| Ch. 150 | | SB 158 | | 03/25/97 |
| Ch. 151 | | SB 192 | | 10/01/97 |
| Ch. 152 | | SB 197 | | 10/01/97 |
| Ch. 153 | | SB 370 | | 03/25/97 |
| Ch. 154 | | HB 110 | | 03/26/97 |
| Ch. 155 | | HB 411 | | 03/26/97 |
| Ch. 156 | | HB 486 | | 03/26/97 |

| Chapter No. | | Bill No. | | Effective Date |
|---|---|---|---|---|
| Ch. 157 | | SB | 15 | 07/01/97 |
| Ch. 158 | | SB | 39 | 10/01/97 |
| Ch. 159 | | SB | 129 | 01/01/98 |
| Ch. 160 | | SB | 138 | 10/01/97 |
| Ch. 161 | | SB | 141 | 03/26/97 |
| Ch. 162 | | SB | 145 | 03/26/97 |
| Ch. 163 | | SB | 163 | 03/26/97 |
| Ch. 164 | | SB | 204 | 07/01/97 |
| Ch. 165 | | HB | 46 | 10/01/97 |
| Ch. 166 | | HB | 381 | 03/27/97 |
| Ch. 167 | | HB | 506 | 01/01/98 |
| Ch. 168 | | SB | 6 | 10/01/97 |
| Ch. 169 | | SB | 160 | 03/27/97 |
| Ch. 170 | | SB | 175 | 10/01/97 |
| Ch. 171 | | SB | 298 | 10/01/97 |
| Ch. 172 | §§ 9-12 | SB | 41 | 03/28/97 |
| | §§ 1-8 | | | 07/01/97 |
| Ch. 173 | | SB | 92 | 07/01/97 |
| Ch. 174 | | SB | 108 | 03/28/97 |
| Ch. 175 | | HB | 317 | 07/01/97 |
| Ch. 176 | | HB | 319 | 04/01/97 |
| Ch. 177 | | HB | 322 | 10/01/97 |
| Ch. 178 | | HB | 363 | 10/01/97 |
| Ch. 179 | | HB | 375 | 10/01/97 |
| Ch. 180 | | HB | 489 | 04/01/97 |
| Ch. 181 | | HB | 540 | 10/01/97 |
| Ch. 182 | | HB | 577 | 04/01/97 |
| Ch. 183 | | SB | 34 | 01/01/98 |
| Ch. 184 | | SB | 42 | 04/01/97 |
| Ch. 185 | | SB | 46 | 10/01/97 |
| Ch. 186 | | SB | 54 | 07/01/97 |
| Ch. 187 | | SB | 60 | 03/01/98 |
| Ch. 188 | | SB | 68 | 10/01/97 |
| Ch. 189 | §§ 21 & 31 | SB | 109 | 04/01/97 |
| | § 4 | | | 07/01/97 |
| | §§ 1-3, 5-20 & 22-30 | | | 10/01/97 |
| Ch. 190 | §§ 2 & 18 | SB | 114 | 04/01/97 |
| | §§ 1 & 3-17 | | | 07/01/97 |
| Ch. 191 | | HB | 90 | 07/01/97 |
| Ch. 192 | | HB | 91 | 04/02/97 |
| Ch. 193 | | HB | 341 | 10/01/97 |
| Ch. 194 | | HB | 495 | 10/01/97 |
| Ch. 195 | | SB | 69 | Effective date is contingent on repeal of 42 USC 1396P(B)(1)(A) and (B)(1)(B) |
| Ch. 196 | §§ 1-3 & 5-9 | HB | 154 | 04/03/97 |
| | § 4 | | | Effective date is date approved by Secretary of U.S. Dept. of Interior |
| Ch. 197 | | HB | 412 | 04/03/97 |
| Ch. 198 | | SB | 144 | 04/02/97 |
| Ch. 199 | | HB | 63 | 07/01/97 |
| Ch. 200 | | HB | 532 | 01/01/98 |
| Ch. 201 | | HB | 224 | 04/04/97 |
| Ch. 202 | | SB | 117 | 04/04/97 |
| Ch. 203 | | HB | 316 | 10/01/97 |
| Ch. 204 | | SB | 223 | 07/01/97 |

HeinOnline -- 1997 vol. III 3856 1997

| Chapter No. | Bill No. | Effective Date |
|---|---|---|
| Ch. 205 | SB 264 | 04/07/97 |
| Ch. 206 | HB 466 | 10/01/97 |
| Ch. 207 | HB 478 | 10/01/97 |
| Ch. 208 | HB 496 | 04/07/97 |
| Ch. 209 | SB 120 | 10/01/97 |
| Ch. 210 | SB 148 | 10/01/97 |
| Ch. 211 | SB 235 | 04/07/97 |
| Ch. 212 | SB 240 | 07/01/97 |
| Ch. 213 | HB 160 | 04/08/97 |
| Ch. 214 | HB 278 | 10/01/97 |
| Ch. 215 | HB 318 | 07/01/97 |
| Ch. 216 | HB 377 | 10/01/97 |
| Ch. 217 | HB 421 | 10/01/97 |
| Ch. 218 | HB 480 | 04/08/97 |
| Ch. 219 | HB 560 | 07/01/97 |
| Ch. 220 | SB 116 | 04/08/97 |
| Ch. 221 | SB 343 | 04/08/97 |
| Ch. 222 | HB 159 | 10/01/97 |
| Ch. 223 | HB 174 | 07/01/97 |
| Ch. 224 | HB 544 | 10/01/97 |
| Ch. 225 | SB 21 | 04/10/97 |
| Ch. 226 | SB 25 | 04/10/97 |
| Ch. 227 | SB 27 | 10/01/97 |
| Ch. 228 | SB 50 | 10/01/97 |
| Ch. 229 | SB 159 | 10/01/97 |
| Ch. 230 | SB 205 | 04/10/97 |
| Ch. 231 | SB 246 | 10/01/97 |
| Ch. 232 | SB 29 | 01/01/98 |
| Ch. 233 | SB 167 | 10/01/97 |
| Ch. 234 | SB 180 | 04/11/97 |
| Ch. 235 | SB 182 | 10/01/97 |
| Ch. 236 | SB 188 | 04/11/97 |
| Ch. 237 | SB 239 | 10/01/97 |
| Ch. 238 | SB 244 | 10/01/97 |
| Ch. 239 | SB 257 | 07/01/97 |
| Ch. 240 | SB 265 | 10/01/97 |
| Ch. 241 | SB 277 | 07/01/97 |
| Ch. 242 | SB 311 | 10/01/97 |
| Ch. 243 | SB 313 | 07/01/97 |
| Ch. 244 | SB 326 | 10/01/97 |
| Ch. 245 | SB 341 | 10/01/97 |
| Ch. 246 | SB 361 | 04/11/97 |
| Ch. 247 | HB 156 | 07/01/97 |
| Ch. 248 | HB 216 | 07/01/97 |
| Ch. 249 | HB 217 | 07/01/97 |
| Ch. 250 | HB 505 | 07/01/97 |
| Ch. 251 | HB 533 | 10/01/97 |
| Ch. 252 | HB 541 | 10/01/97 |
| Ch. 253 | HB 566 | 04/14/97 |
| Ch. 254 | HB 569 | 04/14/97 |
| Ch. 255 | SB 32 | 10/01/97 |
| Ch. 256 | SB 33 | 10/01/97 |
| Ch. 257 | SB 94 | 10/01/97 |
| Ch. 258 | SB 113 | 10/01/97 |
| Ch. 259 | SB 198 | 07/01/97 |
| Ch. 260 | SB 226 | 10/01/97 |
| Ch. 261 | SB 245 | 10/01/97 |

HeinOnline -- 1997 vol. III 3857 1997

| Chapter No. | | Bill No. | | Effective Date |
|---|---|---|---|---|
| Ch. 262 | | SB | 288 | 07/01/97 |
| Ch. 263 | | SB | 266 | 10/01/97 |
| Ch. 264 | | SB | 285 | 10/01/97 |
| Ch. 265 | | SB | 337 | 10/01/97 |
| Ch. 266 | | SB | 275 | 10/01/97 |
| Ch. 267 | | SB | 276 | 10/01/97 |
| Ch. 268 | | SB | 329 | 10/01/97 |
| Ch. 269 | | HB | 3 | 04/16/97 |
| Ch. 270 | | HB | 240 | 07/01/98 |
| Ch. 271 | | HB | 383 | 04/16/97 |
| Ch. 272 | | HB | 437 | 04/16/97 |
| Ch. 273 | | HB | 529 | 04/16/97 |
| Ch. 274 | | HB | 556 | 07/01/97 |
| Ch. 275 | | SB | 63 | 04/16/97 |
| Ch. 276 | §§ 6(35), 10, 11 & 32-35 | SB | 67 | 04/16/97 |
| | §§ 1-5, 6(1)-6(34), 6(36), 7, 9, 12-15, 17, 18, 20, 21, 23, 25-30, & 31(1) | | | 07/01/97 |
| | §§ 8, 19, 22, 24 & 31(2) | | | Effective date is termination date of old fund liability tax |
| Ch. 277 | §§ 2 & 3 | SB | 133 | 04/16/97 |
| | § 1, if approved by electorate | | | 01/01/99 |
| Ch. 278 | | SB | 229 | 04/16/97 |
| Ch. 279 | | SB | 263 | 10/01/97 |
| Ch. 280 | | SB | 282 | 10/01/97 |
| Ch. 281 | | SB | 309 | 04/16/97 |
| Ch. 282 | | SB | 316 | 10/01/97 |
| Ch. 283 | | SB | 335 | 04/16/97 |
| Ch. 284 | §§ 6, 8 & 9 | SB | 375 | 04/16/97 |
| | §§ 1-5 & 7 | | | 01/01/98 |
| Ch. 285 | | SB | 383 | 04/16/97 |
| Ch. 286 | | HB | 114 | 10/01/97 |
| Ch. 287 | | HB | 170 | 07/01/97 |
| Ch. 288 | | HB | 384 | 04/18/97 |
| Ch. 289 | | HB | 408 | 10/01/97 |
| Ch. 290 | | HB | 422 | 04/18/97 |
| Ch. 291 | | HB | 468 | 10/01/97 |
| Ch. 292 | | HB | 543 | 04/18/97 |
| Ch. 293 | | HB | 571 | 04/18/97 |
| Ch. 294 | | HB | 575 | 04/17/97 |
| Ch. 295 | | SB | 49 | 04/17/97 |
| Ch. 296 | | SB | 55 | 04/18/97 |
| Ch. 297 | | SB | 100 | 04/17/97 |
| Ch. 298 | | SB | 112 | 10/01/97 |
| Ch. 299 | | SB | 127 | 04/17/97 |
| Ch. 300 | | SB | 134 | 10/01/97 |
| Ch. 301 | | SB | 213 | 01/01/98 |
| Ch. 302 | | SB | 216 | 04/17/97 |
| Ch. 303 | | SB | 219 | 04/17/97 |
| Ch. 304 | | SB | 234 | 10/01/97 |
| Ch. 305 | | SB | 259 | 10/01/97 |
| Ch. 306 | | SB | 284 | 07/01/97 |
| Ch. 307 | | SB | 325 | 07/01/98 |
| Ch. 308 | | SB | 331 | 07/01/97 |
| Ch. 309 | | SB | 344 | 07/01/97 |
| Ch. 310 | | SB | 349 | 07/01/97 |
| Ch. 311 | | HB | 28 | 10/01/97 |

HeinOnline -- 1997 vol. III 3858 1997

| Chapter No. | | Bill No. | | Effective Date |
|---|---|---|---|---|
| Ch. 312 | | SB 201 | | 10/01/97 |
| Ch. 313 | | HB 234 | | Contingent upon voter approval |
| Ch. 314 | | HB 365 | | 10/01/97 |
| Ch. 315 | | SB 2 | | 07/01/97 |
| Ch. 316 | | HB 44 | | 10/01/97 |
| Ch. 317 | | HB 65 | | 10/01/97 |
| Ch. 318 | | HB 66 | | 04/21/97 |
| Ch. 319 | | HB 72 | | 10/01/97 |
| Ch. 320 | | HB 77 | | 10/01/97 |
| Ch. 321 | | HB 93 | | 10/01/97 |
| Ch. 322 | | HB 125 | | 10/01/97 |
| Ch. 323 | | HB 190 | | 10/01/97 |
| Ch. 324 | | HB 320 | | 04/21/97 |
| Ch. 325 | | HB 431 | | 04/21/97 |
| Ch. 326 | | SB 16 | | 10/01/97 |
| Ch. 327 | | SB 191 | | 04/21/97 |
| Ch. 328 | | SB 212 | | 04/21/97 |
| Ch. 329 | | SB 224 | | 07/01/97 |
| Ch. 330 | | SB 273 | | 04/21/97 |
| Ch. 331 | | SB 286 | | 10/01/97 |
| Ch. 332 | | SB 310 | | 04/21/97 |
| Ch. 333 | | SB 369 | | 10/01/97 |
| Ch. 334 | | SB 31 | | 10/01/97 |
| Ch. 335 | | SB 271 | | 10/01/97 |
| Ch. 336 | | HB 20 | | 10/01/97 |
| Ch. 337 | | HB 68 | | 04/22/97 |
| Ch. 338 | | HB 76 | | 10/01/97 |
| Ch. 339 | | HB 172 | | 07/01/97 |
| Ch. 340 | | HB 199 | | 04/22/97 |
| Ch. 341 | | HB 268 | | 10/01/97 |
| Ch. 342 | | HB 202 | | 07/01/97 |
| Ch. 343 | | HB 231 | | 10/01/97 |
| Ch. 344 | | HB 271 | | 10/01/97 |
| Ch. 345 | | HB 479 | | 10/01/97 |
| Ch. 346 | | HB 594 | | 07/01/97 |
| Ch. 347 | | SB 19 | | 07/01/97 |
| Ch. 348 | | SB 79 | | 10/01/97 |
| Ch. 349 | | SB 89 | | 04/22/97 |
| Ch. 350 | §§ 2, 6, 7, 10 & 11 | SB 118 | | 04/22/97 |
| | §§ 1, 3-5, 8 & 9 | | | 10/01/97 |
| Ch. 351 | | SB 297 | | 07/01/97 |
| Ch. 352 | | SB 314 | | 10/01/97 |
| Ch. 353 | | SB 342 | | 04/22/97 |
| Ch. 354 | §§ 1 & 5 | SB 368 | | 04/22/97 |
| | §§ 2-4 | | | 07/01/97 |
| Ch. 355 | | SB 394 | | 04/22/97 |
| Ch. 356 | | HB 251 | | 10/01/97 |
| Ch. 357 | | HB 281 | | 07/01/97 |
| Ch. 358 | | HB 302 | | 10/01/97 |
| Ch. 359 | | HB 337 | | 04/22/97 |
| Ch. 360 | | HB 447 | | 04/22/97 |
| Ch. 361 | | HB 567 | | 07/01/97 |
| Ch. 362 | | SB 84 | | 04/22/97 |
| Ch. 363 | | SB 269 | | 07/01/97 |
| Ch. 364 | | HB 58 | | 10/01/97 |
| Ch. 365 | | HB 238 | | 10/01/97 |

HeinOnline -- 1997 vol. III 3859 1997

| Chapter No. | | Bill No. | | Effective Date |
|---|---|---|---|---|
| Ch. | 366 | HB | 391 | 10/01/97 |
| Ch. | 367 | HB | 521 | 10/01/97 |
| Ch. | 368 | HB | 596 | 04/23/97 |
| Ch. | 369 | HB | 612 | 04/23/97 |
| Ch. | 370 | SB | 124 | 04/23/97 |
| Ch. | 371 | SB | 181 | 07/01/97 |
| Ch. | 372 | SB | 315 | 07/01/97 |
| Ch. | 373 | SB | 332 | 07/01/97 |
| Ch. | 374 | SB | 379 | 10/01/97 |
| Ch. | 375 | HB | 111 | 10/01/97 |
| Ch. | 376 | HB | 189 | 04/24/97 |
| Ch. | 377 | HB | 193 | 07/01/97 |
| Ch. | 378 | HB | 222 | 04/24/97, except the provision in § 6(3)(a) that the notification must state that counsel to be appointed will meet Supreme Court standards for counsel is effective on the effective dato of standards adopted under § 7. |
| Ch. | 379 | HB | 266 | 10/01/97 |
| Ch. | 380 | HB | 538 | 07/01/97 |
| Ch. | 381 | SB | 51 | 07/01/97 |
| Ch. | 382 | SB | 83 | §7 04/24/97 |
| | | | | §§ 1-6 & 8-90 10/01/97 |
| Ch. | 383 | SB | 151 | 04/24/97 |
| Ch. | 384 | SB | 280 | 10/01/97 |
| Ch. | 385 | SB | 290 | §§ 1 & 4-8 04/24/97 |
| | | | | § 3 07/01/97 |
| | | | | § 2 07/01/99 |
| Ch. | 386 | SB | 304 | 10/01/97 |
| Cb. | 387 | HB | 4 | 04/25/97 |
| Ch. | 388 | SB | 28 | 07/01/97 |
| Ch. | 389 | SB | 95 | 04/25/97 |
| Ch. | 390 | SB | 270 | 10/01/97 |
| Ch. | 391 | HB | 89 | §§ 1-9 & 11-14 04/28/97 |
| | | | | § 10 07/01/97 |
| Ch. | 392 | HB | 118 | 04/28/97 |
| Ch. | 393 | HB | 151 | 04/28/97 |
| Ch. | 394 | HB | 184 | 10/01/97 |
| Ch. | 395 | HB | 185 | 07/01/97 |
| Ch. | 396 | HB | 207 | 07/01/97 |
| Ch. | 397 | HB | 263 | 10/01/97 |
| Ch. | 398 | HB | 276 | 10/01/97 |
| Ch. | 399 | HB | 308 | 07/01/97 |
| Ch. | 400 | HB | 352 | 10/01/97 |
| Ch. | 401 | HB | 406 | 10/01/97 |
| Ch. | 402 | HB | 444 | §§ 2 & 9 07/01/97 |
| | | | | §§ 1 & 3-8 01/01/98 |
| Ch. | 403 | HB | 491 | 04/28/97 |
| Ch. | 404 | HB | 519 | 10/01/97 |
| Ch. | 405 | HB | 576 | 07/01/97 |
| Ch. | 406 | SB | 87 | 04/28/97 |
| Ch. | 407 | SB | 130 | 04/28/97 |
| Ch. | 408 | SB | 296 | 07/01/97 |
| Ch. | 409 | SB | 300 | 10/01/97 |

HeinOnline -- 1997 vol. III 3860 1997

| Chapter No. | | Bill No. | | Effective Date |
|---|---|---|---|---|
| Ch. 410 | | SB | 324 | 10/01/97 |
| Ch. 411 | | SB | 336 | 04/28/97 |
| Ch. 412 | §§ 3 & 9 | SB | 338 | 04/28/97 |
| | §§ 1, 2 & 4-8 | | | 07/01/98 |
| Ch. 413 | §§ 12, 22 & 30-33 | SB | 365 | 04/28/97 |
| | §§ 1-11, 14, 16 & 17 | | | 01/01/98 |
| | §§ 13, 15, 18-21 & 23-29 | | | 10/01/99 |
| Ch. 414 | | SB | 372 | 01/01/98 |
| Ch. 415 | §§ 5 & 29 | SB | 377 | 04/28/97 |
| | §§ 1, 2, 4, 6-28 & 30 | | | 07/01/97 |
| | § 3 | | | 07/01/99 |
| Ch. 416 | §§ 45 & 53 | SB | 378 | 04/28/97 |
| | §§ 1, 5-8, 17-40 & 42-44 | | | 07/01/97 |
| | § 41 | | | 09/01/97 |
| | §§ 2-4, 10-16 & 46-52 | | | 10/01/97 |
| | § 9 | | | 01/01/98 |
| Ch. 417 | | HB | 13 | 07/01/97 |
| Ch. 418 | §§ 1(4) & 4 | HB | 17 | 04/29/97 |
| | §§ 1(1-3), 2 & 3 | | | 07/01/97 |
| Ch. 419 | | HB | 121 | 07/01/97 |
| Ch. 420 | §§ 1 & 3-6 | HB | 135 | 04/29/97 |
| | § 2 | | | 01/01/2001 |
| Ch. 421 | | HB | 140 | 10/01/97 |
| Ch. 422 | § 4 | HB | 166 | 04/29/97 |
| | §§ 1-3, 5-26, 28-65, 66(1), 67 & 68 | | | 07/01/97 |
| | §§ 27 & 66(2) | | | 07/01/2008 |
| Ch. 423 | | HB | 183 | 10/01/97 |
| Ch. 424 | | HB | 323 | 10/01/97 |
| Ch. 425 | | HB | 344 | 10/01/97 |
| Ch. 426 | | HB | 435 | 10/01/97 |
| Ch. 427 | | HB | 523 | 10/01/97 |
| Ch. 428 | | HB | 568 | 10/01/97 |
| Ch. 429 | | HB | 572 | Effective date is contingent upon HB 571 being invalidated or found to be unconstitutional. This bill would be effective on the day after the effective date of the invalidation or finding of unconstitutionality. |
| Ch. 430 | | SB | 71 | 07/01/97 |
| Ch. 431 | | SB | 85 | 10/01/97 |
| Ch. 432 | | SB | 173 | 10/01/97 |
| Ch. 433 | | SB | 256 | 04/29/97 |
| Ch. 434 | §§ 2-8 | HB | 6 | 04/30/97 |
| | § 1 | | | 07/01/97 |
| Ch. 435 | | HB | 29 | 04/30/97 |
| Ch. 436 | | HB | 31 | 07/01/97 |
| Ch. 437 | §§ 1 & 3-6 | HB | 47 | 07/01/97 |
| | § 2 | | | 07/01/98 |
| Ch. 438 | | HB | 49 | 07/01/97 |
| Ch. 439 | | HB | 74 | 07/01/97 |
| Ch. 440 | | HB | 75 | 10/01/97 |
| Ch. 441 | | HB | 120 | 10/01/97 |
| Ch. 442 | | HB | 134 | 04/30/97 |
| Ch. 443 | §§ 2, 10 & 22-24 | HB | 139 | 04/30/97 |
| | §§ 1, 3-9 & 11-21 | | | 10/01/97 |

HeinOnline -- 1997 vol. III 3861 1997

| Chapter No. | | Bill No. | | Effective Date |
|---|---|---|---|---|
| Ch. 444 | | HB | 171 | 07/01/97 |
| Ch. 445 | | HB | 173 | 07/01/97 |
| Ch. 446 | | HB | 180 | 10/01/97 |
| Ch. 447 | | HB | 188 | 04/30/97 |
| Ch. 448 | §§ 7 & 18 | HB | 210 | 04/30/97 |
| | §§ 1-6 & 8-17 | | | 07/01/97 |
| Ch. 449 | | HB | 212 | 04/30/97 |
| Ch. 450 | | HB | 264 | 10/01/97 |
| Ch. 451 | | HB | 285 | 10/01/97 |
| Ch. 452 | | HB | 346 | 07/01/97 |
| Ch. 453 | | HB | 360 | 10/01/97 |
| Ch. 454 | | HB | 361 | 10/01/97 |
| Ch. 455 | | HB | 398 | 04/30/97 |
| Ch. 456 | | HB | 401 | 10/01/97 |
| Ch. 457 | | HB | 430 | 07/01/97 |
| Ch. 458 | | HB | 508 | 04/30/97 |
| Ch. 459 | §§ 8, 16 & 18 | HB | 518 | 04/30/97 |
| | §§ 1-7, 9-15 & 17 | | | 10/01/97 |
| Ch. 460 | | HB | 551 | 07/01/97 |
| Ch. 461 | | HB | 607 | 10/01/97 |
| Ch. 462 | | HB | 616 | 04/30/97 |
| Ch. 463 | | SB | 195 | 04/30/97 |
| Ch. 464 | | SB | 272 | 04/30/97 |
| Ch. 465 | | SB | 354 | 10/01/97 |
| Ch. 466 | §§ 1-9, 13 & 14 | SB | 386 | 04/30/97 |
| | §§ 10-12 | | | 07/01/97 |
| Ch. 467 | | SB | 350 | 07/01/97 |
| Ch. 468 | | SB | 382 | 05/01/97 |
| Ch. 469 | §§ 1-9, 11-19 & 21-23 | HB | 5 | 05/01/97 |
| | § 10 | | | 07/01/97 |
| | Note: § 20 was line item vetoed | | | |
| Ch. 470 | | HB | 9 | 07/01/97 |
| Ch. 471 | | HB | 14 | 05/01/97 |
| Ch. 472 | | HB | 53 | 10/01/97 |
| Ch. 473 | | HB | 99 | 05/01/97 |
| Ch. 474 | | HB | 102 | 10/01/97 |
| Ch. 475 | | HB | 122 | 05/01/97 |
| Ch. 476 | | HB | 123 | 10/01/97 |
| Ch. 477 | | HB | 136 | 07/01/97 |
| Ch. 478 | | HB | 137 | 10/01/97 |
| Ch. 479 | | HB | 149 | 10/01/97 |
| Ch. 480 | §§ 1-18, 27, 39-59, 61-64, 66, 69-74 & 76-177 | HB | 163 | 10/01/97 |
| | §§ 19-26, 28-38, 60, 65, 67, 68 & 75 | | | 10/01/98 |
| Ch. 481 | | HB | 164 | 10/01/97 |
| Ch. 482 | | HB | 168 | 05/02/97 |
| Ch. 483 | | HB | 248 | 05/01/97 |
| Ch. 484 | | HB | 343 | 07/01/97 |
| Ch. 485 | | HB | 369 | 10/01/97 |
| Ch. 486 | §§ 1-25 & 28-53 | HB | 371 | 05/02/97 |
| | § 26 | | | 07/01/97 |
| | § 27 | | | 07/01/99 |
| Ch. 487 | | HB | 376 | 10/01/97 |
| Ch. 488 | | HB | 388 | 07/01/98 |
| Ch. 489 | | HB | 389 | 10/01/97 |
| Ch. 490 | | HB | 502 | 07/01/97 |

HeinOnline -- 1997 vol. III 3862 1997

| Chapter No. | | | Bill No. | | Effective Date |
|---|---|---|---|---|---|
| Ch. | 491 | §§ 1, 20 & 35-40 | HB | 561 | 07/01/97 |
| | | §§ 3-7, 9-12, 17-19, 21-23, 25-32 & 34 | | | 01/01/98 |
| | | §§ 2, 8, 13-16, 24 & 33 | | | 01/01/99 |
| Ch. | 492 | | HB | 598 | 07/01/97 |
| Ch. | 493 | | HB | 610 | 07/01/97 |
| Ch. | 494 | | HB | 615 | 07/01/97 |
| Ch. | 495 | | SB | 44 | 05/02/97 |
| Ch. | 496 | §§ 25, 39 & 42 | SB | 57 | 05/01/97 |
| | | §§ 1-24, 26-38, 40 & 41 | | | 01/01/98 |
| Ch. | 497 | | SB | 97 | 05/01/97 |
| Ch. | 498 | | SB | 99 | 05/02/97 |
| Ch. | 499 | | SB | 207 | 07/01/97 |
| Ch. | 500 | | SB | 251 | 07/01/97 |
| Ch. | 501 | | SB | 283 | 05/02/97 |
| Ch. | 502 | | SB | 308 | 05/02/97 |
| Ch. | 503 | | SB | 339 | 05/01/97 |
| Ch. | 504 | | SB | 381 | 05/02/97 |
| Ch. | 505 | | SB | 390 | 05/02/97 |
| Ch. | 506 | | SB | 396 | 05/02/97 |
| Ch. | 507 | | HB | 399 | 07/01/97 |
| Ch. | 508 | | HB | 534 | 05/01/97 |
| Ch. | 509 | | HB | 554 | 05/01/97 |
| Ch. | 510 | | HB | 555 | 10/01/97 |
| Ch. | 511 | | HB | 83 | 05/02/97 |
| Ch. | 512 | | HB | 100 | 05/02/97 |
| Ch. | 513 | | HB | 101 | 05/02/97 |
| Ch. | 514 | | HB | 129 | 05/02/97 |
| Ch. | 515 | | HB | 146 | 05/02/97 |
| Ch. | 516 | | HB | 203 | 10/01/97 |
| Ch. | 517 | §§ 1, 3 & 4 | HB | 298 | 05/02/97 |
| | | § 2 | | | 07/01/97 |
| Ch. | 518 | | HB | 331 | 10/01/97 |
| Ch. | 519 | | HB | 333 | 05/02/97 |
| Ch. | 520 | | HB | 339 | 05/02/97 |
| Ch. | 521 | | HB | 345 | 10/01/97 |
| Ch. | 522 | | HB | 407 | 07/01/97 |
| Ch. | 523 | | HB | 547 | 10/01/97 |
| Ch. | 524 | | HB | 558 | 10/01/97 |
| Ch. | 525 | | HB | 559 | 10/01/97 |
| Ch. | 526 | | HB | 10 | 07/01/97 |
| Ch. | 527 | | HB | 27 | 10/01/97 |
| Ch. | 528 | | HB | 78 | 07/01/97 |
| Ch. | 529 | | HB | 104 | 07/01/97 |
| Ch. | 530 | | HB | 117 | 10/01/97 |
| Ch. | 531 | §§ 9 & 47 | HB | 131 | 05/05/97 |
| | | §§ 1-8 & 10-46 | | | 10/01/97 |
| Ch. | 532 | §§ 40(2) & 41 | HB | 169 | 05/05/97 |
| | | §§ 1-39 & 40(1) | | | 07/01/97 |
| Ch. | 533 | | HB | 287 | 10/01/97 |
| Ch. | 534 | | HB | 293 | 10/01/97 |
| Ch. | 535 | | HB | 395 | 10/01/97 |
| Ch. | 536 | | HB | 426 | 10/01/97 |
| Ch. | 537 | | HB | 434 | 05/05/97 |
| Ch. | 538 | | HB | 483 | 05/05/97 |
| Ch. | 539 | | HB | 524 | 05/05/97 |
| Ch. | 540 | | HB | 536 | 07/01/97 |

HeinOnline -- 1997 vol. III 3863 1997

| Chapter No. | | Bill No. | Effective Date |
|---|---|---|---|
| Ch. 541 | | HB 546 | 05/05/97 |
| Ch. 542 | §§ 1-3 & 5-10, subject to § 7 | HB 584 | 07/01/97 |
| | § 4, subject to § 7 | | 07/01/99 |
| Ch. 543 | | HB 591 | 05/05/97 |
| Ch. 544 | | HB 599 | 01/01/98 |
| Ch. 545 | | HB 601 | 10/01/97 |
| Ch. 546 | | HB 604 | 10/01/97 |
| Ch. 547 | | SB 187 | 07/01/97 |
| Ch. 548 | | HB 252 | 07/01/97 |
| Ch. 549 | §§ 1, 6(5), 7 & 16 | HB 578 | 05/07/97 |
| | §§ 2-5, 6(1-4) & 8-15 | | 07/01/99 |
| Ch. 550 | | SB 48 | 07/01/97 |
| Ch. 551 | | HB 2 | 07/01/97 |
| Ch. 552 | §§ 11, 12 & 14-104 | SB 374 | 07/01/97 |
| | §§ 1, 9, 10 & 13 | | 10/01/97 |
| | §§ 2-8 | | 10/01/98 |

HeinOnline -- 1997 vol. III 3864 1997

# EFFECTIVE DATES

# BY DATE

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 01/15/97 | Ch. 1 | HB 1 |
| 01/27/97 | Ch. 2 | SB 18 |
| 02/05/97 | Ch. 6 | SB 47 |
| 02/07/97 | Ch. 9 | HB 48 |
| 02/07/97 | Ch. 11 | SB 30 |
| 02/11/97 | Ch. 15 | HB 144 |
| 02/11/97 | Ch. 16 | SB 20 |
| 02/11/97 | Ch. 17 | SB 40 |
| 02/11/97 | Ch. 18 | SB 65 |
| 02/11/97 | Ch. 19 | SB 135 |
| 02/12/97 | Ch. 20 | SB 13 |
| 02/21/97 | Ch. 26 | HB 43 |
| 02/21/97 | Ch. 27 | HB 73 |
| 02/24/97 | Ch. 31 | HB 32 |
| 02/24/97 | Ch. 34 | HB 81 |
| 02/24/97 | Ch. 35 | HB 87 |
| 02/24/97 | Ch. 36 | HB 88 |
| 02/24/97 | Ch. 37 | HB 96 |
| 03/12/97 | Ch. 39 | HB 56 |
| 03/12/97 | Ch. 40 | SB 1 |
| 03/12/97 | Ch. 41 | SB 10 |
| 03/12/97 | Ch. 42 | SB 36 §§ 1-315(1) & 316 |
| 03/12/97 | Ch. 43 | SB 52 |
| 03/13/97 | Ch. 47 | SB 76 |
| 03/13/97 | Ch. 49 | HB 70 |
| 03/13/97 | Ch. 50 | HB 71 |
| 03/13/97 | Ch. 51 | HB 82 |
| 03/13/97 | Ch. 54 | SB 183 |
| 03/17/97 | Ch. 55 | HB 11 §§ 2-5 |
| 03/17/97 | Ch. 60 | HB 115 §§ 1, 3-5 & 7-14 |
| 03/17/97 | Ch. 61 | HB 148 |
| 03/17/97 | Ch. 69 | HB 321 |
| 03/17/97 | Ch. 79 | SB 131 |
| 03/19/97 | Ch. 80 | HB 8 |
| 03/19/97 | Ch. 86 | HB 288 |
| 03/19/97 | Ch. 91 | HB 64 |
| 03/19/97 | Ch. 92 | HB 98 |
| 03/19/97 | Ch. 93 | HB 108 |
| 03/19/97 | Ch. 95 | HB 206 |
| 03/19/97 | Ch. 99 | HB 359 |
| 03/19/97 | Ch. 107 | SB 303 §§ 3 & 10 |
| 03/20/97 | Ch. 109 | HB 18 §§ 1-10 & 12-14 |
| 03/20/97 | Ch. 111 | HB 107 |
| 03/20/97 | Ch. 113 | HB 165 |
| 03/20/97 | Ch. 116 | HB 225 |

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 03/20/97 | Ch. 117 | HB 262 §§ 1-9 & 11-19 |
| 03/20/97 | Ch. 121 | SB 26 §§ 5 & 13 |
| 03/20/97 | Ch. 123 | SB 119 |
| 03/24/97 | Ch. 129 | HB 257 |
| 03/24/97 | Ch. 130 | HB 310 |
| 03/24/97 | Ch. 134 | HB 441 |
| 03/25/97 | Ch. 136 | HB 256 |
| 03/25/97 | Ch. 141 | HB 402 |
| 03/25/97 | Ch. 145 | HB 507 |
| 03/25/97 | Ch. 147 | SB 66 |
| 03/25/97 | Ch. 149 | SB 142 |
| 03/25/97 | Ch. 150 | SB 158 |
| 03/25/97 | Ch. 153 | SB 370 |
| 03/26/97 | Ch. 154 | HB 110 |
| 03/26/97 | Ch. 155 | HB 411 |
| 03/26/97 | Ch. 156 | HB 486 |
| 03/26/97 | Ch. 161 | SB 141 |
| 03/26/97 | Ch. 162 | SB 145 |
| 03/26/97 | Ch. 163 | SB 163 |
| 03/27/97 | Ch. 166 | HB 381 |
| 03/27/97 | Ch. 169 | SB 160 |
| 03/28/97 | Ch. 172 | SB 41 §§ 9-12 |
| 03/28/97 | Ch. 174 | SB 108 |
| 04/01/97 | Ch. 176 | HB 319 |
| 04/01/97 | Ch. 180 | HB 489 |
| 04/01/97 | Ch. 182 | HB 577 |
| 04/01/97 | Ch. 184 | SB 42 |
| 04/01/97 | Ch. 189 | SB 109 §§ 21 & 31 |
| 04/01/97 | Ch. 190 | SB 114 §§ 2 & 18 |
| 04/02/97 | Ch. 192 | HB 91 |
| 04/02/97 | Ch. 198 | SB 144 |
| 04/03/97 | Ch. 196 | HB 154 §§ 1-3 & 5-9 |
| 04/03/97 | Ch. 197 | HB 412 |
| 04/04/97 | Ch. 201 | HB 224 |
| 04/04/97 | Ch. 202 | SB 117 |
| 04/07/97 | Ch. 205 | SB 264 |
| 04/07/97 | Ch. 208 | HB 496 |
| 04/07/97 | Ch. 211 | SB 235 |
| 04/08/97 | Ch. 213 | HB 160 |
| 04/08/97 | Ch. 218 | HB 480 |
| 04/08/97 | Ch. 220 | SB 116 |
| 04/08/97 | Ch. 221 | SB 343 |
| 04/10/97 | Ch. 225 | SB 21 |
| 04/10/97 | Ch. 226 | SB 25 |
| 04/10/97 | Ch. 230 | SB 205 |
| 04/11/97 | Ch. 234 | SB 180 |
| 04/11/97 | Ch. 236 | SB 188 |
| 04/11/97 | Ch. 246 | SB 361 |
| 04/14/97 | Ch. 253 | HB 566 |
| 04/14/97 | Ch. 254 | HB 569 |
| 04/16/97 | Ch. 66 | HB 289 |

HeinOnline -- 1997 vol. III 3866 1997

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 04/16/97 | Ch. 269 | HB 3 |
| 04/16/97 | Ch. 271 | HB 383 |
| 04/16/97 | Ch. 272 | HB 437 |
| 04/16/97 | Ch. 273 | HB 529 |
| 04/16/97 | Ch. 275 | SB 63 |
| 04/16/97 | Ch. 276 | SB 67 |
| | | §§ 6(35), 10, 11 & 32-35 |
| 04/16/97 | Ch. 277 | SB 133 |
| | | §§ 2 & 3 |
| 04/16/97 | Ch. 278 | SB 229 |
| 04/16/97 | Ch. 281 | SB 309 |
| 04/16/97 | Ch. 283 | SB 335 |
| 04/16/97 | Ch. 284 | SB 375 |
| | | §§ 6, 8 & 9 |
| 04/16/97 | Ch. 285 | SB 383 |
| 04/17/97 | Ch. 294 | HB 575 |
| 04/17/97 | Ch. 295 | SB 49 |
| 04/17/97 | Ch. 297 | SB 100 |
| 04/17/97 | Ch. 299 | SB 127 |
| 04/17/97 | Ch. 302 | SB 216 |
| 04/17/97 | Ch. 303 | SB 219 |
| 04/18/97 | Ch. 288 | HB 384 |
| 04/18/97 | Ch. 290 | HB 422 |
| 04/18/97 | Ch. 292 | HB 543 |
| 04/18/97 | Ch. 293 | HB 571 |
| 04/18/97 | Ch. 296 | SB 55 |
| 04/21/97 | Ch. 318 | HB 66 |
| 04/21/97 | Ch. 324 | HB 320 |
| 04/21/97 | Ch. 325 | HB 431 |
| 04/21/97 | Ch. 327 | SB 191 |
| 04/21/97 | Ch. 328 | SB 212 |
| 04/21/97 | Ch. 330 | SB 273 |
| 04/21/97 | Ch. 332 | SB 310 |
| 04/22/97 | Ch. 337 | HB 68 |
| 04/22/97 | Ch. 340 | HB 199 |
| 04/22/97 | Ch. 349 | SB 89 |
| 04/22/97 | Ch. 350 | SB 118 |
| | | §§ 2, 6, 7, 10 & 11 |
| 04/22/97 | Ch. 353 | SB 342 |
| 04/22/97 | Ch. 354 | SB 368 |
| | | §§ 1 & 5 |
| 04/22/97 | Ch. 355 | SB 394 |
| 04/22/97 | Ch. 359 | HB 337 |
| 04/22/97 | Ch. 360 | HB 447 |
| 04/22/97 | Ch. 362 | SB 84 |
| 04/23/97 | Ch. 368 | HB 596 |
| 04/23/97 | Ch. 369 | HB 612 |
| 04/23/97 | Ch. 370 | SB 124 |
| 04/24/97 | Ch. 376 | HB 189 |
| 04/24/97 | Ch. 378 | HB 222 |
| 04/24/97 | Ch. 382 | SB 83 |
| | | § 7 |
| 04/24/97 | Ch. 383 | SB 151 |
| 04/24/97 | Ch. 385 | SB 290 |
| | | §§ 1 & 4-8 |
| 04/25/97 | Ch. 387 | HB 4 |
| 04/25/97 | Ch. 389 | SB 95 |

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 04/28/97 | Ch. 391 | HB 89 |
| | | §§ 1-9 & 11-14 |
| 04/28/97 | Ch. 392 | HB 118 |
| 04/28/97 | Ch. 393 | HB 151 |
| 04/28/97 | Ch. 403 | HB 491 |
| 04/28/97 | Ch. 406 | SB 87 |
| 04/28/97 | Ch. 407 | SB 130 |
| 04/28/97 | Ch. 411 | SB 336 |
| 04/28/97 | Ch. 412 | SB 338 |
| | | §§ 3 & 9 |
| 04/28/97 | Ch. 413 | SB 365 |
| | | §§ 12, 22 & 30-33 |
| 04/28/97 | Ch. 415 | SB 377 |
| | | §§ 5 & 29 |
| 04/28/97 | Ch. 416 | SB 378 |
| | | §§ 45 & 53 |
| 04/29/97 | Ch. 418 | HB 17 |
| | | §§ 1(4) & 4 |
| 04/29/97 | Ch. 420 | HB 135 |
| | | §§ 1 & 3-6 |
| 04/29/97 | Ch. 422 | HB 166 |
| | | § 4 |
| 04/29/97 | Ch. 433 | SB 256 |
| 04/30/97 | Ch. 434 | HB 6 |
| | | §§ 2-8 |
| 04/30/97 | Ch. 435 | HB 29 |
| 04/30/97 | Ch. 442 | HB 134 |
| 04/30/97 | Ch. 443 | HB 139 |
| | | §§ 2, 10 & 22-24 |
| 04/30/97 | Ch. 447 | HB 188 |
| 04/30/97 | Ch. 448 | HB 210 |
| | | §§ 7 & 18 |
| 04/30/97 | Ch. 449 | HB 212 |
| 04/30/97 | Ch. 455 | HB 398 |
| 04/30/97 | Ch. 458 | HB 508 |
| 04/30/97 | Ch. 459 | HB 518 |
| | | §§ 8, 16 & 18 |
| 04/30/97 | Ch. 462 | HB 616 |
| 04/30/97 | Ch. 463 | SB 195 |
| 04/30/97 | Ch. 464 | SB 272 |
| 04/30/97 | Ch. 466 | SB 386 |
| | | §§ 1-9, 13 & 14 |
| 05/01/97 | Ch. 468 | SB 382 |
| 05/01/97 | Ch. 469 | HB 5 |
| | | §§ 1-9, 11-19 & 21-23 |
| 05/01/97 | Ch. 471 | HB 14 |
| 05/01/97 | Ch. 473 | HB 99 |
| 05/01/97 | Ch. 475 | HB 122 |
| 05/01/97 | Ch. 483 | HB 248 |
| 05/01/97 | Ch. 496 | SB 57 |
| | | §§ 25, 39 & 42 |
| 05/01/97 | Ch. 497 | SB 97 |
| 05/01/97 | Ch. 503 | SB 339 |
| 05/01/97 | Ch. 508 | HB 534 |
| 05/01/97 | Ch. 509 | HB 554 |
| 05/02/97 | Ch. 482 | HB 168 |

HeinOnline -- 1997 vol. III 3868 1997

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 05/02/97 | Ch. 486 | HB 371 |
| | | §§ 1-25 & 28-53 |
| 05/02/97 | Ch. 495 | SB 44 |
| 05/02/97 | Ch. 498 | SB 99 |
| 05/02/97 | Ch. 501 | SB 283 |
| 05/02/97 | Ch. 502 | SB 308 |
| 05/02/97 | Ch. 504 | SB 381 |
| 05/02/97 | Ch. 505 | SB 390 |
| 05/02/97 | Ch. 506 | SB 396 |
| 05/02/97 | Ch. 511 | HB 83 |
| 05/02/97 | Ch. 512 | HB 100 |
| 05/02/97 | Ch. 513 | HB 101 |
| 05/02/97 | Ch. 514 | HB 129 |
| 05/02/97 | Ch. 515 | HB 146 |
| 05/02/97 | Ch. 517 | HB 298 |
| | | §§ 1, 3 & 4 |
| 05/02/97 | Ch. 519 | HB 333 |
| 05/02/97 | Ch. 520 | HB 339 |
| 05/05/97 | Ch. 531 | HB 131 |
| | | §§ 9 & 47 |
| 05/05/97 | Ch. 532 | HB 169 |
| | | §§ 40(2) & 41 |
| 05/05/97 | Ch. 537 | HB 434 |
| 05/05/97 | Ch. 538 | HB 483 |
| 05/05/97 | Ch. 539 | HB 524 |
| 05/05/97 | Ch. 541 | HB 546 |
| 05/05/97 | Ch. 543 | HB 591 |
| 05/07/97 | Ch. 549 | HB 575 |
| | | §§ 1, 6(5), 7 & 16 |
| 06/30/97 | Ch. 82 | HB 40 |
| 07/01/97 | Ch. 4 | HB 57 |
| 07/01/97 | Ch. 14 | HB 19 |
| 07/01/97 | Ch. 21 | SB 58 |
| 07/01/97 | Ch. 22 | SB 70 |
| 07/01/97 | Ch. 23 | HB 25 |
| 07/01/97 | Ch. 38 | HB 132 |
| 07/01/97 | Ch. 44 | SB 59 |
| 07/01/97 | Ch. 48 | HB 23 |
| 07/01/97 | Ch. 55 | HB 11 |
| | | § 1 |
| 07/01/97 | Ch. 57 | HB 92 |
| 07/01/97 | Ch. 65 | HB 274 |
| 07/01/97 | Ch. 70 | HB 358 |
| 07/01/97 | Ch. 73 | SB 14 |
| 07/01/97 | Ch. 76 | SB 107 |
| 07/01/97 | Ch. 78 | SB 121 |
| 07/01/97 | Ch. 81 | HB 12 |
| 07/01/97 | Ch. 83 | HB 60 |
| 07/01/97 | Ch. 84 | HB 162 |
| 07/01/97 | Ch. 107 | SB 303 |
| | | §§ 1, 2 & 4-9 |
| 07/01/97 | Ch. 108 | HB 7 |
| 07/01/97 | Ch. 109 | HB 18 |
| | | § 11 |
| 07/01/97 | Ch. 115 | HB 214 |
| 07/01/97 | Ch. 117 | HB 262 |
| | | § 10 |

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 07/01/97 | Ch. 120 | SB 7 |
| 07/01/97 | Ch. 122 | SB 62 |
| 07/01/97 | Ch. 124 | SB 125 |
| 07/01/97 | Ch. 127 | HB 197 |
| 07/01/97 | Ch. 143 | HB 470 |
| 07/01/97 | Ch. 157 | SB 15 |
| 07/01/97 | Ch. 164 | SB 204 |
| 07/01/97 | Ch. 172 | SB 41 §§ 1-8 |
| 07/01/97 | Ch. 173 | SB 92 |
| 07/01/97 | Ch. 175 | HB 317 |
| 07/01/97 | Ch. 186 | SB 54 |
| 07/01/97 | Ch. 189 | SB 109 § 4 |
| 07/01/97 | Ch. 190 | SB 114 §§ 1 & 3-17 |
| 07/01/97 | Ch. 191 | HB 90 |
| 07/01/97 | Ch. 199 | HB 63 |
| 07/01/97 | Ch. 204 | SB 223 |
| 07/01/97 | Ch. 212 | SB 240 |
| 07/01/97 | Ch. 215 | HB 318 |
| 07/01/97 | Ch. 219 | HB 560 |
| 07/01/97 | Ch. 223 | HB 174 |
| 07/01/97 | Ch. 239 | SB 257 |
| 07/01/97 | Ch. 241 | SB 277 |
| 07/01/97 | Ch. 243 | SB 313 |
| 07/01/97 | Ch. 247 | HB 156 |
| 07/01/97 | Ch. 248 | HB 216 |
| 07/01/97 | Ch. 249 | HB 217 |
| 07/01/97 | Ch. 250 | HB 505 |
| 07/01/97 | Ch. 259 | SB 198 |
| 07/01/97 | Ch. 262 | SB 288 |
| 07/01/97 | Ch. 274 | HB 556 |
| 07/01/97 | Ch. 276 | SB 67 §§ 1-5, 6(1)-6(34), 6(36), 7, 9, 12-15, 17, 18, 20, 21, 23, 25-30 & 31(1) |
| 07/01/97 | Ch. 287 | HB 170 |
| 07/01/97 | Ch. 306 | SB 284 |
| 07/01/97 | Ch. 308 | SB 331 |
| 07/01/97 | Ch. 309 | SB 344 |
| 07/01/97 | Ch. 310 | SB 349 |
| 07/01/97 | Ch. 315 | SB 2 |
| 07/01/97 | Ch. 329 | SB 224 |
| 07/01/97 | Ch. 339 | HB 172 |
| 07/01/97 | Ch. 342 | HB 202 |
| 07/01/97 | Ch. 346 | HB 594 |
| 07/01/97 | Ch. 347 | SB 19 |
| 07/01/97 | Ch. 351 | SB 297 |
| 07/01/97 | Ch. 354 | SB 368 §§ 2-4 |
| 07/01/97 | Ch. 357 | HB 281 |
| 07/01/97 | Ch. 361 | HB 567 |
| 07/01/97 | Ch. 363 | SB 269 |
| 07/01/97 | Ch. 371 | SB 181 |
| 07/01/97 | Ch. 372 | SB 315 |
| 07/01/97 | Ch. 373 | SB 332 |
| 07/01/97 | Ch. 377 | HB 193 |

HeinOnline -- 1997 vol. III 3870 1997

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 07/01/97 | Ch. 380 | HB 538 |
| 07/01/97 | Ch. 381 | SB 51 |
| 07/01/97 | Ch. 385 | SB 290 § 3 |
| 07/01/97 | Ch. 388 | SB 28 |
| 07/01/97 | Ch. 391 | HB 89 § 10 |
| 07/01/97 | Ch. 395 | HB 185 |
| 07/01/97 | Ch. 396 | HB 207 |
| 07/01/97 | Ch. 399 | HB 308 |
| 07/01/97 | Ch. 402 | HB 444 §§ 2 & 9 |
| 07/01/97 | Ch. 405 | HB 576 |
| 07/01/97 | Ch. 408 | SB 296 |
| 07/01/97 | Ch. 415 | SB 377 §§ 1, 2, 4, 6-28 & 30 |
| 07/01/97 | Ch. 416 | SB 378 §§ 1, 5-8, 17-40 & 42-44 |
| 07/01/97 | Ch. 417 | HB 13 |
| 07/01/97 | Ch. 418 | HB 17 §§ 1(1-3), 2 & 3 |
| 07/01/97 | Ch. 419 | HB 121 |
| 07/01/97 | Ch. 422 | HB 166 §§ 1-3, 5-26, 28-65, 66(1), 67 & 68 |
| 07/01/97 | Ch. 430 | SB 71 |
| 07/01/97 | Ch. 434 | HB 6 § 1 |
| 07/01/97 | Ch. 436 | HB 31 |
| 07/01/97 | Ch. 437 | HB 47 §§ 1 & 3-6 |
| 07/01/97 | Ch. 438 | HB 49 |
| 07/01/97 | Ch. 439 | HB 74 |
| 07/01/97 | Ch. 444 | HB 171 |
| 07/01/97 | Ch. 445 | HB 173 |
| 07/01/97 | Ch. 448 | HB 210 §§ 1-6 & 8-17 |
| 07/01/97 | Ch. 452 | HB 346 |
| 07/01/97 | Ch. 457 | HB 430 |
| 07/01/97 | Ch. 460 | HB 551 |
| 07/01/97 | Ch. 466 | SB 386 §§ 10-12 |
| 07/01/97 | Ch. 467 | SB 350 |
| 07/01/97 | Ch. 469 | HB 5 § 10 |
| 07/01/97 | Ch. 470 | HB 9 |
| 07/01/97 | Ch. 477 | HB 136 |
| 07/01/97 | Ch. 484 | HB 343 |
| 07/01/97 | Ch. 486 | HB 371 § 26 |
| 07/01/97 | Ch. 490 | HB 502 |
| 07/01/97 | Ch. 491 | HB 561 §§ 1, 20 & 35-40 |
| 07/01/97 | Ch. 492 | HB 598 |
| 07/01/97 | Ch. 493 | HB 610 |
| 07/01/97 | Ch. 494 | HB 615 |
| 07/01/97 | Ch. 499 | SB 207 |
| 07/01/97 | Ch. 500 | SB 251 |

HeinOnline -- 1997 vol. III 3871 1997

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 07/01/97 | Ch. 507 | HB 399 |
| 07/01/97 | Ch. 517 | HB 298 § 2 |
| 07/01/97 | Ch. 522 | HB 407 |
| 07/01/97 | Ch. 526 | HB 10 |
| 07/01/97 | Ch. 528 | HB 78 |
| 07/01/97 | Ch. 529 | HB 104 |
| 07/01/97 | Ch. 532 | HB 169 §§ 1-39 & 40(1) |
| 07/01/97 | Ch. 540 | HB 536 |
| 07/01/97 | Ch. 542 | HB 584 §§ 1-3 & 5-10, subject to § 7 |
| 07/01/97 | Ch. 547 | SB 187 |
| 07/01/97 | Ch. 548 | HB 252 |
| 07/01/97 | Ch. 550 | SB 48 |
| 07/01/97 | Ch. 551 | HB 2 |
| 07/01/97 | Ch. 552 | SB 374 §§ 11, 12 & 14-104 |
| 09/01/97 | Ch. 416 | SB 378 § 41 |
| 10/01/97 | Ch. 3 | HB 30 |
| 10/01/97 | Ch. 5 | HB 26 |
| 10/01/97 | Ch. 7 | SB 53 |
| 10/01/97 | Ch. 8 | HB 33 |
| 10/01/97 | Ch. 10 | SB 24 |
| 10/01/97 | Ch. 12 | SB 161 |
| 10/01/97 | Ch. 13 | HB 16 |
| 10/01/97 | Ch. 24 | HB 35 |
| 10/01/97 | Ch. 25 | HB 85 |
| 10/01/97 | Ch. 28 | HB 141 |
| 10/01/97 | Ch. 29 | HB 218 |
| 10/01/97 | Ch. 30 | HB 24 |
| 10/01/97 | Ch. 32 | HB 36 |
| 10/01/97 | Ch. 33 | HB 59 |
| 10/01/97 | Ch. 45 | SB 72 |
| 10/01/97 | Ch. 46 | SB 77 |
| 10/01/97 | Ch. 52 | SB 56 |
| 10/01/97 | Ch. 53 | SB 80 |
| 10/01/97 | Ch. 56 | HB 22 |
| 10/01/97 | Ch. 58 | HB 97 |
| 10/01/97 | Ch. 59 | HB 105 |
| 10/01/97 | Ch. 60 | HB 115 § 2 |
| 10/01/97 | Ch. 62 | HB 200 |
| 10/01/97 | Ch. 63 | HB 215 |
| 10/01/97 | Ch. 64 | HB 239 |
| 10/01/97 | Ch. 67 | HB 290 |
| 10/01/97 | Ch. 68 | HB 292 |
| 10/01/97 | Ch. 71 | SB 9 |
| 10/01/97 | Ch. 74 | SB 35 |
| 10/01/97 | Ch. 75 | SB 101 |
| 10/01/97 | Ch. 77 | SB 115 |
| 10/01/97 | Ch. 85 | HB 182 |
| 10/01/97 | Ch. 87 | SB 103 |
| 10/01/97 | Ch. 88 | SB 106 |
| 10/01/97 | Ch. 89 | SB 126 |
| 10/01/97 | Ch. 90 | SB 152 |

HeinOnline -- 1997 vol. III 3872 1997

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 10/01/97 | Ch. 94 | HB 143 |
| 10/01/97 | Ch. 96 | HB 211 |
| 10/01/97 | Ch. 97 | HB 227 |
| 10/01/97 | Ch. 98 | HB 350 |
| 10/01/97 | Ch. 100 | HB 367 |
| 10/01/97 | Ch. 101 | HB 370 |
| 10/01/97 | Ch. 102 | HB 392 |
| 10/01/97 | Ch. 103 | SB 8 |
| 10/01/97 | Ch. 104 | SB 38 |
| 10/01/97 | Ch. 105 | SB 81 |
| 10/01/97 | Ch. 106 | SB 86 |
| 10/01/97 | Ch. 110 | HB 42 |
| 10/01/97 | Ch. 112 | HB 152 |
| 10/01/97 | Ch. 114 | HB 205 |
| 10/01/97 | Ch. 118 | HB 340 |
| 10/01/97 | Ch. 119 | HB 385 |
| 10/01/97 | Ch. 126 | HB 69 |
| 10/01/97 | Ch. 128 | HB 201 |
| 10/01/97 | Ch. 131 | HB 330 |
| 10/01/97 | Ch. 132 | HB 357 |
| 10/01/97 | Ch. 133 | HB 396 |
| 10/01/97 | Ch. 135 | HB 243 |
| 10/01/97 | Ch. 137 | HB 283 |
| 10/01/97 | Ch. 138 | HB 314 |
| 10/01/97 | Ch. 139 | HB 348 |
| 10/01/97 | Ch. 140 | HB 382 |
| 10/01/97 | Ch. 142 | HB 439 |
| 10/01/97 | Ch. 144 | HB 501 |
| 10/01/97 | Ch. 146 | HB 550 |
| 10/01/97 | Ch. 148 | SB 104 |
| 10/01/97 | Ch. 151 | SB 192 |
| 10/01/97 | Ch. 152 | SB 197 |
| 10/01/97 | Ch. 158 | SB 39 |
| 10/01/97 | Ch. 160 | SB 138 |
| 10/01/97 | Ch. 165 | HB 46 |
| 10/01/97 | Ch. 168 | SB 6 |
| 10/01/97 | Ch. 170 | SB 175 |
| 10/01/97 | Ch. 171 | SB 298 |
| 10/01/97 | Ch. 177 | HB 322 |
| 10/01/97 | Ch. 178 | HB 363 |
| 10/01/97 | Ch. 179 | HB 375 |
| 10/01/97 | Ch. 181 | HB 540 |
| 10/01/97 | Ch. 185 | SB 46 |
| 10/01/97 | Ch. 188 | SB 68 |
| 10/01/97 | Ch. 189 | SB 109 §§ 1-3, 5-20 & 22-30 |
| 10/01/97 | Ch. 193 | HB 341 |
| 10/01/97 | Ch. 194 | HB 495 |
| 10/01/97 | Ch. 203 | HB 316 |
| 10/01/97 | Ch. 206 | HB 466 |
| 10/01/97 | Ch. 207 | HB 478 |
| 10/01/97 | Ch. 209 | SB 120 |
| 10/01/97 | Ch. 210 | SB 148 |
| 10/01/97 | Ch. 214 | HB 278 |
| 10/01/97 | Ch. 216 | HB 377 |
| 10/01/97 | Ch. 217 | HB 421 |
| 10/01/97 | Ch. 222 | HB 159 |

HeinOnline -- 1997 vol. III 3873 1997

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 10/01/97 | Ch. 224 | HB 544 |
| 10/01/97 | Ch. 227 | SB 27 |
| 10/01/97 | Ch. 228 | SB 50 |
| 10/01/97 | Ch. 229 | SB 159 |
| 10/01/97 | Ch. 231 | SB 246 |
| 10/01/97 | Ch. 233 | SB 167 |
| 10/01/97 | Ch. 235 | SB 182 |
| 10/01/97 | Ch. 237 | SB 239 |
| 10/01/97 | Ch. 238 | SB 244 |
| 10/01/97 | Ch. 240 | SB 265 |
| 10/01/97 | Ch. 242 | SB 311 |
| 10/01/97 | Ch. 244 | SB 326 |
| 10/01/97 | Ch. 245 | SB 341 |
| 10/01/97 | Ch. 251 | HB 533 |
| 10/01/97 | Ch. 252 | HB 541 |
| 10/01/97 | Ch. 255 | SB 32 |
| 10/01/97 | Ch. 256 | SB 33 |
| 10/01/97 | Ch. 257 | SB 94 |
| 10/01/97 | Ch. 258 | SB 113 |
| 10/01/97 | Ch. 260 | SB 226 |
| 10/01/97 | Ch. 261 | SB 245 |
| 10/01/97 | Ch. 263 | SB 266 |
| 10/01/97 | Ch. 264 | SB 285 |
| 10/01/97 | Ch. 265 | SB 337 |
| 10/01/97 | Ch. 266 | SB 275 |
| 10/01/97 | Ch. 267 | SB 276 |
| 10/01/97 | Ch. 268 | SB 329 |
| 10/01/97 | Ch. 279 | SB 263 |
| 10/01/97 | Ch. 280 | SB 282 |
| 10/01/97 | Ch. 282 | SB 316 |
| 10/01/97 | Ch. 286 | HB 114 |
| 10/01/97 | Ch. 289 | HB 408 |
| 10/01/97 | Ch. 291 | HB 468 |
| 10/01/97 | Ch. 298 | SB 112 |
| 10/01/97 | Ch. 300 | SB 134 |
| 10/01/97 | Ch. 304 | SB 234 |
| 10/01/97 | Ch. 305 | SB 259 |
| 10/01/97 | Ch. 311 | HB 28 |
| 10/01/97 | Ch. 312 | SB 201 |
| 10/01/97 | Ch. 314 | HB 365 |
| 10/01/97 | Ch. 316 | HB 44 |
| 10/01/97 | Ch. 317 | HB 65 |
| 10/01/97 | Ch. 319 | HB 72 |
| 10/01/97 | Ch. 320 | HB 77 |
| 10/01/97 | Ch. 321 | HB 93 |
| 10/01/97 | Ch. 322 | HB 125 |
| 10/01/97 | Ch. 323 | HB 190 |
| 10/01/97 | Ch. 326 | SB 16 |
| 10/01/97 | Ch. 331 | SB 286 |
| 10/01/97 | Ch. 333 | SB 369 |
| 10/01/97 | Ch. 334 | SB 31 |
| 10/01/97 | Ch. 335 | SB 271 |
| 10/01/97 | Ch. 336 | HB 20 |
| 10/01/97 | Ch. 338 | HB 76 |
| 10/01/97 | Ch. 341 | HB 268 |
| 10/01/97 | Ch. 343 | HB 231 |
| 10/01/97 | Ch. 344 | HB 271 |

HeinOnline -- 1997 vol. III 3874 1997

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 10/01/97 | Ch. 345 | HB 479 |
| 10/01/97 | Ch. 348 | SB 79 |
| 10/01/97 | Ch. 350 | SB 118 |
| | | §§ 1, 3-5, 8 & 9 |
| 10/01/97 | Ch. 352 | SB 314 |
| 10/01/97 | Ch. 356 | HB 251 |
| 10/01/97 | Ch. 358 | HB 302 |
| 10/01/97 | Ch. 364 | HB 58 |
| 10/01/97 | Ch. 365 | HB 238 |
| 10/01/97 | Ch. 366 | HB 391 |
| 10/01/97 | Ch. 367 | HB 521 |
| 10/01/97 | Ch. 374 | SB 379 |
| 10/01/97 | Ch. 375 | HB 111 |
| 10/01/97 | Ch. 379 | HB 266 |
| 10/01/97 | Ch. 382 | SB 83 |
| | | §§ 1-6 & 8-90 |
| 10/01/97 | Ch. 384 | SB 280 |
| 10/01/97 | Ch. 386 | SB 304 |
| 10/01/97 | Ch. 390 | SB 270 |
| 10/01/97 | Ch. 394 | HB 184 |
| 10/01/97 | Ch. 397 | HB 263 |
| 10/01/97 | Ch. 398 | HB 276 |
| 10/01/97 | Ch. 400 | HB 352 |
| 10/01/97 | Ch. 401 | HB 406 |
| 10/01/97 | Ch. 404 | HB 519 |
| 10/01/97 | Ch. 409 | SB 300 |
| 10/01/97 | Ch. 410 | SB 324 |
| 10/01/97 | Ch. 416 | SB 378 |
| | | §§ 2-4, 10-16 & 46-52 |
| 10/01/97 | Ch. 421 | HB 140 |
| 10/01/97 | Ch. 423 | HB 183 |
| 10/01/97 | Ch. 424 | HB 323 |
| 10/01/97 | Ch. 425 | HB 344 |
| 10/01/97 | Ch. 426 | HB 435 |
| 10/01/97 | Ch. 427 | HB 523 |
| 10/01/97 | Ch. 428 | HB 568 |
| 10/01/97 | Ch. 431 | SB 85 |
| 10/01/97 | Ch. 432 | SB 173 |
| 10/01/97 | Ch. 440 | HB 75 |
| 10/01/97 | Ch. 441 | HB 120 |
| 10/01/97 | Ch. 443 | HB 139 |
| | | §§ 1, 3-9 & 11-21 |
| 10/01/97 | Ch. 446 | HB 180 |
| | | §§ 1, 2, 3(1-5), 3(7 & 8), 4-8, 10 & 11 |
| 10/01/97 | Ch. 450 | HB 264 |
| 10/01/97 | Ch. 451 | HB 285 |
| 10/01/97 | Ch. 453 | HB 360 |
| 10/01/97 | Ch. 454 | HB 361 |
| 10/01/97 | Ch. 456 | IIB 401 |
| 10/01/97 | Ch. 459 | HB 518 |
| | | §§ 1-7, 9-15 & 17 |
| 10/01/97 | Ch. 461 | HB 607 |
| 10/01/97 | Ch. 465 | SB 354 |
| 10/01/97 | Ch. 472 | HB 53 |
| 10/01/97 | Ch. 474 | HB 102 |
| 10/01/97 | Ch. 476 | HB 123 |
| 10/01/97 | Ch. 478 | HB 137 |

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 10/01/97 | Ch. 479 | HB 149 |
| 10/01/97 | Ch. 480 | HB 163 |
| | | §§ 1-18, 27, 39-59, 61-64, 66, 69-74 & 76-177 |
| 10/01/97 | Ch. 481 | HB 164 |
| 10/01/97 | Ch. 485 | HB 369 |
| 10/01/97 | Ch. 487 | HB 376 |
| 10/01/97 | Ch. 489 | HB 389 |
| 10/01/97 | Ch. 510 | HB 555 |
| 10/01/97 | Ch. 516 | HB 203 |
| 10/01/97 | Ch. 518 | HB 331 |
| 10/01/97 | Ch. 521 | HB 345 |
| 10/01/97 | Ch. 523 | HB 547 |
| 10/01/97 | Ch. 524 | HB 558 |
| 10/01/97 | Ch. 525 | HB 559 |
| 10/01/97 | Ch. 527 | HB 27 |
| 10/01/97 | Ch. 530 | HB 117 |
| 10/01/97 | Ch. 531 | HB 131 |
| | | §§ 1-8 & 10-46 |
| 10/01/97 | Ch. 533 | HB 287 |
| 10/01/97 | Ch. 534 | HB 293 |
| 10/01/97 | Ch. 535 | HB 395 |
| 10/01/97 | Ch. 536 | HB 426 |
| 10/01/97 | Ch. 545 | HB 601 |
| 10/01/97 | Ch. 546 | HB 604 |
| 10/01/97 | Ch. 552 | SB 374 |
| | | §§ 1, 9, 10 & 13 |
| 01/01/98 | Ch. 60 | HB 115 |
| | | § 6 |
| 01/01/98 | Ch. 72 | SB 12 |
| 01/01/98 | Ch. 121 | SB 26 |
| | | §§ 1-4 & 6-12 |
| 01/01/98 | Ch. 125 | HB 311 |
| 01/01/98 | Ch. 159 | SB 129 |
| 01/01/98 | Ch. 167 | HB 506 |
| 01/01/98 | Ch. 183 | SB 34 |
| 01/01/98 | Ch. 200 | HB 532 |
| 01/01/98 | Ch. 232 | SB 29 |
| 01/01/98 | Ch. 284 | SB 375 |
| | | §§ 1-5 & 7 |
| 01/01/98 | Ch. 301 | SB 213 |
| 01/01/98 | Ch. 402 | HB 444 |
| | | §§ 1 & 3-8 |
| 01/01/98 | Ch. 413 | SB 365 |
| | | §§ 1-11, 14, 16 & 17 |
| 01/01/98 | Ch. 414 | SB 372 |
| 01/01/98 | Ch. 416 | SB 378 |
| | | § 9 |
| 01/01/98 | Ch. 491 | HB 561 |
| | | §§ 3-7, 9-12, 17-19, 21-23, 25-32 & 34 |
| 01/01/98 | Ch. 496 | SB 57 |
| | | §§ 1-24, 26-38, 40 & 41 |
| 01/01/98 | Ch. 544 | HB 599 |
| 03/01/98 | Ch. 187 | SB 60 |
| 07/01/98 | Ch. 270 | HB 240 |
| 07/01/98 | Ch. 307 | SB 325 |
| 07/01/98 | Ch. 412 | SB 338 |
| | | §§ 1, 2 & 4-8 |

HeinOnline -- 1997 vol. III 3876 1997

| Effective Date | Chapter No. | Bill No. |
|---|---|---|
| 07/01/98 | Ch. 437 | HB 47 § 2 |
| 07/01/98 | Ch. 488 | HB 388 |
| 10/01/98 | Ch. 480 | HB 163 §§ 19-26, 28-38, 60, 65, 67, 68 & 75 |
| 10/01/98 | Ch. 552 | SB 374 §§ 2-8 |
| 01/01/99 | Ch. 277 | SB 133 § 1, if approved by electorate |
| 01/01/99 | Ch. 491 | HB 561 §§ 2, 8, 13-16, 24 & 33 |
| 07/01/99 | Ch. 42 | SB 36 § 315(2) |
| 07/01/99 | Ch. 385 | SB 290 § 2 |
| 07/01/99 | Ch. 415 | SB 377 § 3 |
| 07/01/99 | Ch. 486 | HB 371 § 27 |
| 07/01/99 | Ch. 542 | HB 584 § 4, effective subject to § 7 |
| 07/01/99 | Ch. 549 | HB 578 §§ 2-5, 6(1-4) & 8-15 |
| 10/01/99 | Ch. 413 | SB 365 §§ 13, 15, 18-21 & 23-29 |
| 01/01/2001 | Ch. 420 | HB 135 § 2 |
| 07/01/2008 | Ch. 422 | HB 166 §§ 27 & 66(2) |
| ? | Ch. 195 | SB 69 (Effective contingent on repeal of 42 USC 1396P(B)(1)(A) and (B)(1)(B)) |
| ? | Ch. 196 | HB 154 (§ 4 is effective on date approved by Secretary of U.S. Dept. of Interior) |
| ? | Ch. 276 | SB 67 (§§ 8, 19, 22, 24 & 31(2) are effective on the termination date of old fund liability tax) |
| ? | Ch. 313 | HB 234 (Contingent upen voter approval) |
| ? | Ch. 378 | HB 222 (Effective on date of standards adopted under § 7, § 6(3)(a)) |
| ? | Ch. 429 | HB 572 (Contingent upon HB 571 being invalidated or being found unconstitutional, this bill would be effective on the day after the effective date of the invalidation or finding of unconstitutionality) |

HeinOnline -- 1997 vol. III 3877 1997

HeinOnline -- 1997 vol. III 3878 1997

# TABLE

# OF

# SESSION LAW TO CODE

HeinOnline -- 1997 vol. III 3879 1997

HeinOnline -- 1997 vol. III 3880 1997

# SESSION LAW

# TO

# CODE

| Ch. | Sec. | MCA |
|---|---|---|
| 1 | 1 | Appropriation |
| | 2 | Effective date |
| 2 | 1 | 2-18-606 |
| | 2 | 39-3-406 |
| | 3 | Effective date |
| 3 | 1 | 2-16-117 |
| 4 | 1 | 2-15-3004 |
| | 2 | 80-6-1102 |
| | 3 | Repealer |
| | 4 | Transition |
| | 5 | Effective date |
| 5 | 1 | 13-10-201 |
| | 2 | 13-10-404 |
| 6 | 1 | 15-30-211 (ronum. 15-1-208, 16-11-110) |
| | 2 | Renumbering — directions to code commissioner |
| | 3 | Effective date |
| 7 | 1 | 80-7-401 |
| | 2 | 80-7-402 |
| | 3 | 80-7-403 |
| | 4 | 80-7-404 |
| | 5 | 80-7-123 |
| | 6 | 80-7-135 |
| | 7 | Repealer |
| 8 | 1 | Repealer |
| 9 | 1 | 10-1-203 |
| | 2 | 10-1-304 |
| | 3 | Retroactive applicability |
| | 4 | Effective date |
| 10 | 1 | 10-1-104 |
| | 2 | Saving clause |
| 11 | 1 | 17-7-138 |
| | 2 | 5-4-103 |
| | 3 | Codification instruction |
| | 4 | Repealer |
| | 5 | Effective date |
| 12 | 1 | 46-5-212 |
| 13 | 1 | 23-5-112 |
| | 2 | 23-5-513 |
| | 3 | 23-5-502 |
| | 4 | 23-5-503 |
| | 5 | Codification instruction |
| 14 | 1 | Committee on veterans' needs |
| | 2 | Duties of committee |
| | 3 | Appropriation |
| | 4 | Effective date |
| | 5 | Termination |
| 15 | 1 | 33-22-1818 |
| | 2 | 33-22-1819 |
| | 3 | Effective date |
| 16 | 1 | 15-23-211 |
| | 2 | Effective date — retroactive applicability |
| | 3 | Termination |
| 17 | 1 | 17-4-101 |
| | 2 | 17-4-106 |
| | 3 | 17-4-107 |
| | 4 | 17-4-108 |
| | 5 | Effective date |
| 18 | 1 | 23-4-101 |
| | 2 | 23-4-102 |
| | 3 | 23-4-105 |
| | 4 | 23-4-106 |
| | 5 | 23-4-202 |
| | 6 | 23-4-204 |
| | 7 | 23-4-302 |
| | 8 | 23-4-304 |
| | 9 | Severability |
| | 10 | Effective date |
| 19 | 1 | 27-5-114 |
| | 2 | Effective date |
| 20 | 1 | 2-17-101 |
| | 2 | 2-17-103 |
| | 3 | 2-17-108 |
| | 4 | 5-2-503 |
| | 5 | Effective date |
| 21 | 1 | 31-1-115 |
| | 2 | 41-1-304 |
| | 3 | Codification instruction |
| | 4 | Applicability |
| | 5 | Effective date |
| 22 | 1 | 15-23-703 |
| | 2 | 17-3-222 |
| | 3 | 20-1-301 |
| | 4 | 20-3-205 |
| | 5 | 20-3-209 |
| | 6 | 20-3-324 |
| | 7 | 20-4-301 |

HeinOnline -- 1997 vol. III 3881 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 8 | 20-5-316 |
| | 9 | 20-5-324 |
| | 10 | 20-6-314 |
| | 11 | 20-6-609 |
| | 12 | 20-6-701 |
| | 13 | 20-6-702 |
| | 14 | 20-9-115 |
| | 15 | 20-9-143 |
| | 16 | 20-9-161 |
| | 17 | 20-9-166 |
| | 18 | 20-9-212 |
| | 19 | 20-9-314 |
| | 20 | 20-9-331 |
| | 21 | 20-9-332 |
| | 22 | 20-9-333 |
| | 23 | 20-9-334 |
| | 24 | 20-9-335 |
| | 25 | 20-9-347 |
| | 26 | 20-9-507 |
| | 27 | 20-9-509 |
| | 28 | 20-9-514 |
| | 29 | 20-9-533 |
| | 30 | 20-9-534 |
| | 31 | 20-10-124 |
| | 32 | 20-10-144 |
| | 33 | 69-11-202 |
| | 34 | Effective date |
| 23 | 1 | 20-9-471 |
| | 2 | 20-9-503 |
| | 3 | Effective date |
| 24 | 1 | Repealer |
| 25 | 1 | 13-37-126 |
| 26 | 1 | 45-7-306 |
| | 2 | 46-18-243 |
| | 3 | Applicability |
| | 4 | Effective date |
| 27 | 1 | 76-11-101 |
| | 2 | 76-13-102 |
| | 3 | 76-13-103 |
| | 4 | 76-13-109 |
| | 5 | 76-13-112 |
| | 6 | 76-13-201 |
| | 7 | 76-13-204 |
| | 8 | 76-13-205 |
| | 9 | 76-13-403 |
| | 10 | 76-13-408 |
| | 11 | 76-13-414 |
| | 12 | Effective date |
| 28 | 1 | 3-2-603 |
| | 2 | 3-2-604 |
| | 3 | Repealer |
| 29 | 1 | 45-8-360 |
| 30 | 1 | 70-32-104 |
| | 2 | Applicability |
| 31 | 1 | 17-5-205 |
| | 2 | Effective date |
| 32 | 1 | 17-6-201 |
| | 2 | 77-1-101 |
| | 3 | 77-1-701 |
| 33 | 1 | Repealer |
| 34 | 1 | 77-3-423 |
| | 2 | 77-3-432 |
| | 3 | 77-3-433 |
| | 4 | 77-3-435 |
| | 5 | 77-3-442 |
| | 6 | 82-11-123 |
| | 7 | 82-11-161 |
| | 8 | Repealer |
| | 9 | Effective date |
| 35 | 1 | 15-1-303 |
| | 2 | Effective date |
| 36 | 1 | 15-1-303 |
| | 2 | 15-8-601 |
| | 3 | Retroactive applicability |
| | 4 | Effective date |
| 37 | 1 | 19-50-102 |
| | 2 | Retroactive applicability |
| | 3 | Effective date |
| 38 | 1 | 75-1-314 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 39 | 1 | 90-6-503 |
| | 2 | Effective date |
| 40 | 1 | 75-5-301 |
| | 2 | Severability |
| | 3 | Retroactive applicability |
| | 4 | Effective date |
| 41 | 1 | 20-25-421 |
| | 2 | Effective date |
| 42 | 1 | 1-11-101 |
| | 2 | 2-1-212 |
| | 3 | 2-2-121 |
| | 4 | 2-2-136 |
| | 5 | 2-4-313 |
| | 6 | 2-4-622 |
| | 7 | 2-7-517 |
| | 8 | 2-8-113 |
| | 9 | 2-15-2204 |
| | 10 | 2-18-203 |
| | 11 | 2-18-301 |
| | 12 | 2-18-303 |
| | 13 | 2-18-304 |
| | 14 | 2-18-704 |
| | 15 | 2-18-1202 |
| | 16 | 3-2-405 |
| | 17 | 5-2-504 |
| | 18 | 5-4-307 |
| | 19 | 5-4-308 |
| | 20 | 5-5-214 |
| | 21 | 5-5-217 |
| | 22 | 5-11-203 |
| | 23 | 5-11-210 |
| | 24 | 5-11-212 |
| | 25 | 5-11-213 |

HeinOnline -- 1997 vol. III 3882 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 26 | 5-17-205 |
| | 27 | 5-18-107 |
| | 28 | 5-22-101 |
| | 29 | 7-1-114 |
| | 30 | 7-2-2218 |
| | 31 | 7-2-2219 |
| | 32 | 7-4-2106 |
| | 33 | 7-4-2206 |
| | 34 | 7-6-2531 |
| | 35 | 7-7-4602 |
| | 36 | 7-13-4311 |
| | 37 | 7-14-4736 |
| | 38 | 7-16-2105 |
| | 39 | 7-16-4222 |
| | 40 | 7-32-2244 |
| | 41 | 7-34-2201 |
| | 42 | 10-2-416 |
| | 43 | 10-3-207 |
| | 44 | 10-3-501 |
| | 45 | 10-3-504 |
| | 46 | 10-4-101 |
| | 47 | 10-4-301 |
| | 48 | 13-13-276 |
| | 49 | 13-13-278 |
| | 50 | 13-25-106 |
| | 51 | 13-27-202 |
| | 52 | 13-37-106 |
| | 53 | 13-37-128 |
| | 54 | 13-37-130 |
| | 55 | 15-1-521 |
| | 56 | 15-1-704 |
| | 57 | 15-7-303 |
| | 58 | 15-8-104 |
| | 59 | 15-16-102 |
| | 60 | 15-16-119 |
| | 61 | 15-23-101 |
| | 62 | 15-23-703 |
| | 63 | 15-23-706 |
| | 64 | 15-23-707 |
| | 65 | 15-30-101 |
| | 66 | 15-30-111 |
| | 67 | 15-30-117 |
| | 68 | 15-30-121 |
| | 69 | 15-30-162 |
| | 70 | 15-30-201 |
| | 71 | 15-30-202 |
| | 72 | 15-31-102 |
| | 73 | 15-31-131 |
| | 74 | 15-32-102 |
| | 75 | 15-32-201 |
| | 76 | 15-32-403 |
| | 77 | 15-36-324 |
| | 78 | 15-36-325 |
| | 79 | 15-38-104 |
| | 80 | 15-38-106 |
| | 81 | 15-38-201 |
| | 82 | 15-38-202 |
| | 83 | 15-70-125 |
| | 84 | 15-70-235 |
| | 85 | 15-70-236 |
| | 86 | 16-1-106 |
| | 87 | 16-1-201 |
| | 88 | 16-1-202 |
| | 89 | 16-2-101 |
| | 90 | 16-2-103 |
| | 91 | 16-3-220 |
| | 92 | 16-6-106 |
| | 93 | 17-2-107 |
| | 94 | 17-3-221 |
| | 95 | 17-5-202 |
| | 96 | 17-6-103 |
| | 97 | 17-6-212 |
| | 98 | 17-7-502 |
| | 99 | 17-8-101 |
| | 100 | 18-1-103 |
| | 101 | 19-1-104 |
| | 102 | 19-1-402 |
| | 103 | 19-1-503 |
| | 104 | 19-3-1104 |
| | 105 | 19-3-1205 |
| | 106 | 19-9-411 |
| | 107 | 19-9-1101 |
| | 108 | 19-20-302 |
| | 109 | 19-50-102 |
| | 110 | 20-1-301 |
| | 111 | 20-7-504 |
| | 112 | 20-9-115 |
| | 113 | 20-9-341 |
| | 114 | 20-9-347 |
| | 115 | 20-9-466 |
| | 116 | 20-15-326 |
| | 117 | 20-15-404 |
| | 118 | 20-25-501 |
| | 119 | 22-1-412 |
| | 120 | 22-3-429 |
| | 121 | 22-3-603 |
| | 122 | 23-2-523 |
| | 123 | 23-2-536 |
| | 124 | 23-2-622 |
| | 125 | 23-2-717 |
| | 126 | 23-2-736 |
| | 127 | 23-5-406 |
| | 128 | 23-7-103 |
| | 129 | 23-7-211 |
| | 130 | 23-7-301 |
| | 131 | 25-10-206 |
| | 132 | 27-1-307 |
| | 133 | 27-1-718 |
| | 134 | 30-4-213 |
| | 135 | 30-10-103 |
| | 136 | 30-10-110 |
| | 137 | 32-1-381 |
| | 138 | 32-1-453 |
| | 139 | 32-1-1005 |

HeinOnline -- 1997 vol. III 3883 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 140 | 32-3-803 |
| | 141 | 32-6-102 |
| | 142 | 33-2-523 |
| | 143 | 33-2-830 |
| | 144 | 33-4-511 |
| | 145 | 33-10-202 |
| | 146 | 33-16-1026 |
| | 147 | 33-16-1035 |
| | 148 | 33-17-603 |
| | 149 | 33-19-104 |
| | 150 | 33-22-703 |
| | 151 | 33-22-1108 |
| | 152 | 33-22-1521 |
| | 153 | 33-31-311 |
| | 154 | 35-1-933 |
| | 155 | 35-1-934 |
| | 156 | 35-1-1107 |
| | 157 | 37-25-305 |
| | 158 | 37-29-302 |
| | 159 | 37-29-305 |
| | 160 | 39-3-406 |
| | 161 | 39-8-207 |
| | 162 | 39-29-101 |
| | 163 | 39-51-307 |
| | 164 | 39-51-401 |
| | 165 | 39-51-402 |
| | 166 | 39-51-403 |
| | 167 | 39-51-404 |
| | 168 | 39-51-407 |
| | 169 | 39-51-501 |
| | 170 | 39-51-503 |
| | 171 | 39-51-1110 |
| | 172 | 39-51-1304 |
| | 173 | 39-51-2106 |
| | 174 | 39-51-2110 |
| | 175 | 39-51-2508 |
| | 176 | 39-51-2602 |
| | 177 | 39-51-3106 |
| | 178 | 39-71-431 |
| | 179 | 39-71-501 |
| | 180 | 39-71-517 |
| | 181 | 39-71-519 |
| | 182 | 39-71-703 |
| | 183 | 40-5-161 |
| | 184 | 40-5-164 |
| | 185 | 40-5-201 |
| | 186 | 40-5-701 |
| | 187 | 40-5-821 |
| | 188 | 41-1-402 |
| | 189 | 41-3-204 |
| | 190 | 41-4-102 |
| | 191 | 41-5-103 |
| | 192 | 41-5-1008 |
| | 193 | 45-2-311 |
| | 194 | 45-5-624 |
| | 195 | 45-8-317 |
| | 196 | 45-9-208 |
| | 197 | 45-10-108 |
| | 198 | 46-6-211 |
| | 199 | 46-14-101 |
| | 200 | 46-18-130 |
| | 201 | 46-18-801 |
| | 202 | 46-20-701 |
| | 203 | 46-24-212 |
| | 204 | 46-30-401 |
| | 205 | 50-4-504 |
| | 206 | 50-4-605 |
| | 207 | 50-5-101 |
| | 208 | 50-5-228 |
| | 209 | 50-5-1104 |
| | 210 | 50-31-103 |
| | 211 | 50-31-202 |
| | 212 | 50-31-203 |
| | 213 | 50-31-301 |
| | 214 | 50-31-306 |
| | 215 | 50-31-307 |
| | 216 | 50-31-311 |
| | 217 | 50-31-312 |
| | 218 | 50-53-201 |
| | 219 | 50-53-202 |
| | 220 | 50-53-203 |
| | 221 | 50-53-204 |
| | 222 | 50-53-206 |
| | 223 | 50-53-207 |
| | 224 | 50-53-211 |
| | 225 | 50-53-212 |
| | 226 | 50-53-216 |
| | 227 | 50-53-217 |
| | 228 | 50-53-218 |
| | 229 | 50-60-101 |
| | 230 | 52-2-523 |
| | 231 | 52-5-101 |
| | 232 | 52-5-108 |
| | 233 | 52-5-109 |
| | 234 | 52-5-112 |
| | 235 | 52-5-113 |
| | 236 | 53-1-104 |
| | 237 | 53-1-202 |
| | 238 | 53-6-110 |
| | 239 | 53-6-708 |
| | 240 | 53-7-101 |
| | 241 | 53-7-301 |
| | 242 | 53-19-102 |
| | 243 | 60-2-208 |
| | 244 | 60-11-121 |
| | 245 | 61-2-108 |
| | 246 | 61-3-446 |
| | 247 | 61-3-463 |
| | 248 | 61-3-502 |
| | 249 | 61-4-310 |
| | 250 | 61-5-121 |
| | 251 | 61-5-126 |
| | 252 | 61-8-356 |
| | 253 | 61-8-407 |

| Ch. | Sec. | MCA |
|---|---|---|
| | 254 | 61-8-422 |
| | 255 | 61-8-722 |
| | 256 | 61-12-201 |
| | 257 | 69-1-224 |
| | 258 | 69-12-314 |
| | 259 | 69-12-406 |
| | 260 | 72-16-331 |
| | 261 | 72-16-479 |
| | 262 | 72-17-213 |
| | 263 | 75-1-1101 |
| | 264 | 75-2-101 |
| | 265 | 75-3-103 |
| | 266 | 75-5-621 |
| | 267 | 75-5-1113 |
| | 268 | 75-6-205 |
| | 269 | 75-6-211 |
| | 270 | 75-10-707 |
| | 271 | 75-10-806 |
| | 272 | 75-11-313 |
| | 273 | 75-20-304 |
| | 274 | 76-2-202 |
| | 275 | 76-2-222 |
| | 276 | 76-2-302 |
| | 277 | 76-3-305 |
| | 278 | 76-3-511 |
| | 279 | 76-6-105 |
| | 280 | 76-14-113 |
| | 281 | 76-15-541 |
| | 282 | 76-15-543 |
| | 283 | 76-15-546 |
| | 284 | 77-1-804 |
| | 285 | 77-2-402 |
| | 286 | 77-2-403 |
| | 287 | 77-3-444 |
| | 283 | 77-6-202 |
| | 289 | 80-7-123 |
| | 290 | 80-8-111 |
| | 291 | 81-22-101 |
| | 292 | 82-4-232 |
| | 293 | 82-4-253 |
| | 294 | 82-4-254 |
| | 295 | 82-4-337 |
| | 296 | 82-4-360 |
| | 297 | 85-1-604 |
| | 298 | 85-2-701 |
| | 299 | 85-2-905 |
| | 300 | 85-3-211 |
| | 301 | 85-5-407 |
| | 302 | 85-5-408 |
| | 303 | 85-6-109 |
| | 304 | 85-7-1910 |
| | 305 | 85-7-2159 |
| | 306 | 87-2-803 |
| | 307 | 87-5-112 |
| | 308 | 90-2-1104 |
| | 309 | 90-2-1121 |
| | 310 | 90-4-1002 |
| | 311 | 90-6-127 |
| | 312 | 90-6-210 |
| | 313 | 90-8-301 |
| | 314 | Code commissioner instructions |
| | 315 | Repealor |
| | 316 | Effective dates |
| 43 | 1 | 87-3-124 |
| | 2 | Effective date |
| 44 | 1 | 85-2-217 |
| | 2 | 85-2-702 |
| | 3 | Notification to tribal governments |
| | 4 | Effective date |
| 45 | 1 | 85-2-105 |
| | 2 | 85-2-112 |
| | 3 | 90-15-305 |
| | 4 | 90-15-303 |
| | 5 | Codification instruction |
| 46 | 1 | 7-33-2108 |
| | 2 | 7-33-2202 |
| | 3 | 7-33-2208 |
| | 4 | 7-33-2313 |
| | 5 | 7-33-2405 |
| | 6 | 7-33-4112 |
| | 7 | 10-3-202 |
| | 8 | 10-3-209 |
| | 9 | Two-thirds vote required |
| | 10 | Codification instruction |
| 47 | 1 | 13-27-402 |
| | 2 | 13-27-403 |
| | 3 | 13-27-406 |
| | 4 | 13-27-407 |
| | 5 | Effective date |
| 48 | 1 | 17-1-102 |
| | 2 | 17-1-111 |
| | 3 | 17-2-110 |
| | 4 | 17-2-201 |
| | 5 | 17-3-102 |
| | 6 | 17-3-106 |
| | 7 | 17-4-101 |
| | 8 | 17-6-212 |
| | 9 | 17-8-201 |
| | 10 | 17-8-202 |
| | 11 | 17-8-306 |
| | 12 | 15-1-501 |
| | 13 | Repealer |
| | 14 | Effective date |
| 49 | 1 | 15-1-101 |
| | 2 | 15-24-1203 |
| | 3 | Effective date — retroactive applicability |
| 50 | 1 | 85-1-605 |
| | 2 | Effective date |
| 51 | 1 | 15-31-545 |
| | 2 | 15-31-111 |
| | 3 | 15-31-509 |

| Ch. | Sec. | MCA |
|---|---|---|
| | 4 | 15-31-510 |
| | 5 | 75-2-220 |
| | 6 | 75-5-516 |
| | 7 | Codification instruction |
| | 8 | Retroactive applicability |
| | 9 | Effective date |
| 52 | 1 | 2-15-1853 |
| | 2 | 37-19-101 |
| | 3 | 37-19-801 |
| | 4 | 37-19-802 |
| | 5 | 37-19-803 |
| | 6 | 37-19-807 |
| | 7 | 37-19-808 |
| | 8 | 37-19-814 |
| | 9 | 37-19-815 |
| | 10 | 37-19-816 |
| | 11 | 37-19-822 |
| | 12 | 37-19-823 |
| | 13 | 37-19-824 |
| | 14 | 37-19-825 |
| | 15 | 37-19-826 |
| | 16 | 37-19-831 |
| | 17 | Repealer |
| | 18 | Codification instruction |
| | 19 | Severability |
| 53 | 1 | 33-18-215 |
| | 2 | Codification instruction |
| 54 | 1 | 81-2-801 |
| | 2 | Effective date |
| 55 | 1 | Appropriations from the treasure state endowment special revenue account |
| | 2 | Approval of grants — completion of appropriation |
| | 3 | Conditions and manner of disbursement of grant funds |
| | 4 | Approval of treasure state loans |
| | 5 | Effective dates |
| 56 | 1 | 2-17-502 |
| 57 | 1 | 18-2-301 |
| | 2 | Effective date |
| 58 | 1 | 61-10-104 |
| 59 | 1 | 80-5-402 |
| | 2 | 80-5-403 |
| | 3 | 80-5-404 |
| | 4 | 80-5-405 |
| 60 | 1 | 39-51-2207 |
| | 2 | 39-51-2208 |
| | 3 | 39-51-201 |
| | 4 | 39-51-204 |
| | 5 | 39-51-403 |
| | 6 | 39-51-1213 |
| | 7 | 39-51-1303 |
| | 8 | 39-51-1304 |
| | 9 | 39-51-2302 |
| | 10 | 39-51-3105 |
| | 11 | 39-51-3201 |
| | 12 | Codification instruction |
| | 13 | Retroactive applicability |
| | 14 | Effective dates |
| 61 | 1 | 15-1-205 |
| | 2 | Repealer |
| | 3 | Effective date |
| 62 | 1 | Surreptitious visual recordation — penalty |
| | 2 | Codification instruction |
| 63 | 1 | 45-8-209 |
| 64 | 1 | 1-5-416 |
| 65 | 1 | 15-31-202 |
| | 2 | 35-18-503 |
| | 3 | Repealer |
| | 4 | Effective date |
| | 5 | Applicability |
| 66 | 1 | Legion of valor — free fishing — requirement to comply with regulations |
| | 2 | Termination |
| 67 | 1 | 7-5-2112 |
| | | 7-5-4113 |
| | | 61-8-372 |
| | 2 | 7-5-2109 |
| | 3 | 7-5-4104 |
| | 4 | 61-8-365 |
| | 5 | Codification instruction |
| 68 | 1 | 7-32-240 |
| | 2 | Codification instruction |
| 69 | 1 | 25-3-105 |
| | 2 | 45-7-302 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 70 | 1 | 33-2-708 |
| | 2 | Effective date |
| 71 | 1 | 27-1-306 |
| | 2 | 33-23-202 |
| | 3 | Applicability |
| 72 | 1 | 61-3-321 |
| | 2 | 61-3-332 |
| | 3 | 61-3-721 |
| | 4 | Staggered implementation |
| | 5 | Termination date |
| | 6 | Effective date |
| 73 | 1 | 7-22-2403 |
| | 2 | 7-22-2409 |
| | 3 | 7-22-2418 |
| | 4 | 40-1-206 |
| | 5 | 50-1-202 |
| | 6 | 75-3-103 (renum. 50-79-103) |
| | 7 | 75-3-502 (renum. 50-79-502) |
| | 8 | 75-6-103 |
| | 9 | 75-6-106 |
| | 10 | 75-6-109 |
| | 11 | 80-8-201 |

HeinOnline -- 1997 vol. III 3886 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 12 | 50-1-210 |
| | 13 | Codification instructions |
| | 14 | Effective date |
| 74 | 1 | 17-7-150 |
| | 2 | 17-7-151 |
| | 3 | Codification instruction |
| 75 | 1 | 37-18-104 |
| | 2 | 37-18-202 |
| 76 | 1 | 17-7-402 |
| | 2 | 80-4-402 |
| | 3 | 80-4-405 |
| | 4 | 80-4-409 |
| | 5 | 80-4-421 |
| | 6 | 80-4-429 |
| | 7 | 80-4-501 |
| | 8 | 80-4-536 |
| | 9 | 80-4-602 |
| | 10 | 80-4-701 |
| | 11 | 80-4-702 |
| | 12 | 80-4-703 |
| | 13 | 80-4-704 |
| | 14 | 80-4-705 |
| | 15 | 80-4-706 |
| | 16 | 80-4-708 |
| | 17 | 80-4-721 |
| | 18 | 80-4-722 |
| | 19 | 80-4-724 |
| | 20 | 80-4-725 |
| | 21 | 80-4-711 |
| | 22 | Repealer |
| | 23 | Severability |
| | 24 | Codification instruction |
| | 25 | Effective date |
| 77 | 1 | 87-2-802 |
| | 2 | Applicability |
| 78 | 1 | 7-8-2232 |
| | 2 | Effective date |
| 79 | 1 | 20-6-621 |
| | 2 | Effective date |
| 80 | 1 | Approval of renewable resource projects and authorizations te provide loans |
| | 2 | Projects not cempleting requirements — projects reauthorized |
| | 3 | Coal severance tax bonds authorized |
| | 4 | Creation of state debt — appropriation of coal severance tax —bonding provisions |
| | 5 | Condition of loans |
| | 6 | Interest rates on loans |
| | 7 | Private and discount purchase of loans |
| | 8 | Appropriations established |
| | 9 | Severability |
| | 10 | Effective date |
| 81 | 1 | Stripper-well payments — reappropriation — definition — priority |
| | 2 | Appropriation of bond proceeds |
| | 3 | Approval of energy conservation projects — definition |
| | 4 | Bond authorization — appropriation of bond proceeds |
| | 5 | Requirements for approval of state debt |
| | 6 | Effective date |
| 82 | 1 | Sec. 4, Ch. 196, L. 1995 |
| | 2 | Effective date |
| 83 | 1 | 50-2-111 |
| | 2 | Effective date |
| 84 | 1 | 75-10-434 |
| | 2 | Effective date |
| 85 | 1 | 13-10-327 |
| | 2 | 13-10-328 |
| | 3 | 13-12-204 |
| | 4 | 13-13-204 |
| | 5 | 13-15-106 |
| | 6 | 13-13-212 |
| | 7 | 13-25-101 |
| 86 | 1 | 75-10-704 |
| | 2 | Effective date |
| | 3 | Retroactive applicability |
| 87 | 1 | 10-1-111 |
| | 2 | Codification instruction |
| | 3 | Saving clause |
| | 4 | Two-thirds vote required |
| 88 | 1 | 61-5-212 |
| | 2 | 61-8-401 |
| | 3 | 61-8-402 |
| | 4 | 61-8-403 |
| | 5 | 61-8-404 |
| | 6 | 61-8-405 |
| | 7 | 61-8-407 |
| | 8 | 61-8-409 |
| | 9 | 61-8-805 |
| | 10 | 61-8-806 |
| 89 | 1 | 20-26-1503 |
| 90 | 1 | 61-3-109 |
| | 2 | 61-3-103 |
| | 3 | Codification instruction |
| | 4 | Termination |
| 91 | 1 | 2-7-503 |
| | 2 | Retroactive applicability |
| | 3 | Effective date |
| 92 | 1 | 46-19-103 |
| | 2 | 46-23-301 |
| | 3 | Effective date |

HeinOnline -- 1997 vol. III 3887 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 4 | Applicability |
| 93 | 1 | 7-34-2102 |
| | 2 | 7-34-2201 |
| | 3 | 50-5-101 |
| | 4 | 50-5-301 |
| | 5 | 50-5-302 |
| | 6 | 50-5-304 |
| | 7 | 50-5-305 |
| | 8 | 50-5-306 |
| | 9 | 50-5-308 |
| | 10 | 50-5-309 |
| | 11 | 50-5-310 |
| | 12 | 50-10-101 |
| | 13 | 50-16-701 |
| | 14 | 50-60-205 |
| | 15 | 50-60-301 |
| | 16 | 50-78-103 |
| | 17 | 53-6-106 |
| | 18 | 53-6-110 |
| | 19 | 90-7-104 |
| | 20 | Repealer |
| | 21 | Saving clause |
| | 22 | Effective date |
| 94 | 1 | 33-2-830 |
| 95 | 1 | 20-6-701 |
| | 2 | 20-6-704 |
| | 3 | Effective date |
| 96 | 1 | 7-33-4101 |
| 97 | 1 | 13-1-303 |
| 98 | 1 | 17-6-311 |
| | 2 | 17-6-318 |
| 99 | 1 | 50-5-101 |
| | 2 | 50-5-103 |
| | 3 | Effective date |
| 100 | 1 | 37-72-302 |
| 101 | 1 | 50-15-702 |
| | 2 | 50-15-703 |
| | 3 | 50-15-704 |
| | 4 | 50-15-710 |
| | 5 | Codification instruction |
| 102 | 1 | 2-15-3006 |
| 103 | 1 | 50-32-229 |
| 104 | 1 | 5-6-103 |
| 105 | 1 | 61-1-102 |
| | 2 | 61-1-134 |
| | 3 | 61-5-104 |
| | 4 | 61-7-114 |
| | 5 | 61-8-803 |
| | 6 | 61-8-805 |
| | 7 | 61-8-806 |
| | 8 | 61-8-808 |
| | 9 | 61-8-812 |
| 106 | 1 | 61-8-339 |
| 107 | 1 | 61-1-512 |
| | 2 | 61-8-440 |
| | 3 | 61-8-441 |
| | 4 | 61-2-302 |
| | 5 | 61-5-208 |
| | 6 | 61-8-401 |
| | 7 | 61-8-406 |
| | 8 | 61-8-442 |
| | 9 | Codification instruction |
| | 10 | Effective dates |
| 108 | 1 | Appropriations for reclamation and development grants |
| | 2 | Approved grant projects |
| | 3 | Coordination of fund sources for grants program projects |
| | 4 | Condition of grants |
| | 5 | Other appropriations |
| | 6 | Sec. 2, Ch. 454, L. 1995 |
| | 7 | Reversion of funds |
| | 8 | Severability |
| | 9 | Effective date |
| 109 | 1 | Legislative findings |
| | 2 | Request for proposals |
| | 3 | Board to select site |
| | 4 | Site selection procedure and criteria |
| | 5 | Site visitations and hearings required |
| | 6 | Site selection |
| | 7 | 10-2-601 |
| | 8 | 10-2-602 |
| | 9 | 10-2-603 |
| | 10 | 61-3-332 |
| | 11 | Appropriation |
| | 12 | Notification to tribal governments |
| | 13 | Effective dates |
| | 14 | Termination |
| 110 | 1 | 2-4-315 |
| 111 | 1 | Voided by sec. 2, Ch. 383 (coordination section) |
| | 2 | Voided by sec. 2, Ch. 383 (coordination section) |
| 112 | 1 | 75-11-501 |
| | 2 | 75-11-502 |
| | 3 | 75-11-503 |
| | 4 | 75-11-504 |
| | 5 | 75-11-505 |
| | 6 | 75-11-510 |
| | 7 | 75-11-511 |
| | 8 | 75-11-512 |
| | 9 | 75-11-513 |
| | 10 | 75-11-514 |
| | 11 | 75-11-515 |
| | 12 | 75-11-516 |
| | 13 | Voided by sec. 37 (coordination section) |
| | 14 | 75-11-518 |
| | 15 | 75-11-520 |
| | 16 | 75-2-216 |

HeinOnline -- 1997 vol. III 3888 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 17 | 75-10-401 |
| | 18 | 75-10-402 |
| | 19 | 75-10-403 |
| | 20 | 75-10-404 |
| | 21 | 75-10-405 |
| | 22 | 75-10-409 |
| | 23 | 75-10-410 |
| | 24 | 75-10-411 |
| | 25 | 75-10-413 |
| | 26 | 75-10-415 |
| | 27 | 75-10-416 |
| | 28 | 75-10-420 |
| | 29 | 75-10-423 (renum. 75-11-525) |
| | 30 | Voided by sec. 37 (coordination section) |
| | 31 | 75-10-424 |
| | 32 | 75-11-203 |
| | 33 | 75-11-302 |
| | 34 | 75-11-309 |
| | 35 | Repealer |
| | 36 | Codification instruction |
| | 37 | Coordination instruction |
| | 38 | Saving clause |
| 113 | 1 | 50-32-209 |
| | 2 | 50-32-222 |
| | 3 | 50-32-224 |
| | 4 | 50-32-226 |
| | 5 | 50-32-229 |
| | 6 | 50-32-232 |
| | 7 | 50-32-233 |
| | 8 | Codification instruction |
| | 9 | Saving clause |
| | 10 | Effective date |
| 114 | 1 | 7-11-1102 |
| 115 | 1 | 17-6-225 |
| | 2 | 75-11-307 |
| | 3 | 75-11-313 |
| | 4 | 75-11-318 |
| | 5 | 75-11-315 |
| | 6 | Codification instruction |
| | 7 | Effective date |
| 116 | 1 | 50-3-103 |
| | 2 | Effective date |
| 117 | 1 | 32-1-104 |
| | 2 | 32-1-109 |
| | 3 | 32-1-202 |
| | 4 | 32-1-203 |
| | 5 | 32-1-204 |
| | 6 | 32-1-213 |
| | 7 | 32-1-218 |
| | 8 | 32-1-362 |
| | 9 | 32-1-371 |
| | 10 | 32-1-372 |
| | 11 | 32-1-376 |
| | 12 | 32-1-377 |
| | 13 | 32-1-383 |
| | 14 | 32-1-384 |
| | 15 | 32-1-423 |
| | 16 | 32-1-370 |
| | 17 | Repealer |
| | 18 | Codification instruction |
| | 19 | Effective dates |
| 118 | 1 | 50-15-121 |
| | 2 | 50-15-403 |
| | 3 | Repealer |
| 119 | 1 | 61-8-323 |
| | 2 | 61-8-328 |
| 120 | 1 | Voided by sec. 27, Ch. 415; sec. 7(1), Ch. 542 (coordination sections) |
| | 2 | Voided by sec. 27, Ch. 415; sec. 7(1), Ch. 542 (coordination sections) |
| | 3 | Voided hy sec. 27, Ch. 415; sec. 7(1), Ch. 542 (coordination sections) |
| | 4 | Voided by sec. 27, Ch. 415; sec. 7(1), Ch. 542 (coordination sections) |
| | 5 | Voided by sec. 27, Ch. 415; sec. 7(1), Ch. 542 (coordination sections) |
| | 6 | Voided by sec. 27, Ch. 415; sec. 7(1), Ch. 542 (coordination sections) |
| | 7 | Voided by sec. 27, Ch. 415; sec. 7(1), Ch. 542 (coordination sections) |
| 121 | 1 | 7-1-2111 |
| | 2 | 15-6-138 |
| | 3 | 15-6-201 |
| | 4 | 61-1-129 |
| | 5 | 61-3-506 |
| | 6 | 61-3-509 |
| | 7 | 61-3-519 |
| | 8 | 61-3-521 |
| | 9 | 61-3-524 |
| | 10 | 61-3-530 |
| | 11 | 61-3-535 |
| | 12 | Codification instruction |
| | 13 | Effective dates — rulemaking |
| 122 | 1 | 39-71-1003 |
| | 2 | 39-71-1004 |
| | 3 | 39-71-1006 |
| | 4 | 39-71-1011 |
| | 5 | 39-71-1014 |
| | 6 | 39-71-1031 |
| | 7 | 39-71-1032 |
| | 8 | Repealer |
| | 9 | Saving clause |
| | 10 | Effective date |
| 123 | 1 | 15-1-211 |
| | 2 | 15-24-102 |

HeinOnline -- 1997 vol. III 3889 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 3 | 15-30-111 |
| | 4 | Voided by sec. 39(1), Ch. 491 (coordination section) |
| | 5 | Voided by sec. 39(1), Ch. 491 (coordination section) |
| | 6 | Voided by sec. 39(1), Ch. 491 (coordination section) |
| | 7 | Repealer |
| | 8 | Retroactive appllcability |
| | 9 | Effective date |
| 124 | 1 | 70-9-801 |
| | 2 | 70-9-802 |
| | 3 | 70-9-803 |
| | 4 | 70-9-804 |
| | 5 | 70-9-805 |
| | 6 | 70-9-806 |
| | 7 | 70-9-807 |
| | 8 | 70-9-808 |
| | 9 | 70-9-809 |
| | 10 | 70-9-810 |
| | 11 | 70-9-811 |
| | 12 | 70-9-812 |
| | 13 | 70-9-813 |
| | 14 | 70-9-814 |
| | 15 | 70-9-815 |
| | 16 | 70-9-816 |
| | 17 | 70-9-817 |
| | 18 | 70-9-818 |
| | 19 | 70-9-819 |
| | 20 | 70-9-820 |
| | 21 | 70-9-821 |
| | 22 | 70-9-822 |
| | 23 | 70-9-823 |
| | 24 | 70-9-824 |
| | 25 | 70-9-825 |
| | 26 | 70-9-826 |
| | 27 | 70-9-827 |
| | 28 | 70-9-828 |
| | 29 | 70-9-829 |
| | 30 | 17-8-303 |
| | 31 | 72-14-102 |
| | 32 | Coordination instruction |
| | 33 | Severability |
| | 34 | Two-thirds vote |
| | 35 | Repealer |
| | 36 | Effective date |
| 125 | 1 | 15-70-701 |
| | 2 | 15-70-702 |
| | 3 | 15-70-703 |
| | 4 | 15-70-704 |
| | 5 | 15-70-705 |
| | 6 | 15-70-706 |
| | 7 | 15-70-707 |
| | 8 | 15-70-711 |
| | 9 | 15-70-712 |
| | 10 | 15-70-713 |
| | 11 | 15-70-714 |
| | 12 | 15-70-715 |
| | 13 | 15-70-716 |
| | 14 | 15-70-717 |
| | 15 | 15-70-718 |
| | 16 | 61-12-206 |
| | 17 | Repealer |
| | 18 | Effective date |
| 126 | 1 | 82-1-302 |
| | 2 | 82-1-304 |
| | 3 | 82-1-305 |
| | 4 | 82-1-306 |
| 127 | 1 | 7-12-4303 |
| | 2 | 7-12-4311 |
| | 3 | 7-12-4342 |
| | 4 | 7-12-4354 |
| | 5 | Effective date |
| 128 | 1 | 7-8-2111 |
| 129 | 1 | 46-7-102 |
| | 2 | 46-17-201 |
| | 3 | 46-17-311 |
| | 4 | Effective date |
| | 5 | Applicability |
| 130 | 1 | 16-3-221 |
| | 2 | Effective date |
| 131 | 1 | 7-6-202 |
| 132 | 1 | 70-24-423 |
| 133 | 1 | 27-6-103 |
| | 2 | 27-6-206 |
| | 3 | 27-6-302 |
| | 4 | 27-6-306 |
| | 5 | 27-6-308 |
| | 6 | 27-6-401 |
| | 7 | Podiatric contributions to fund — delayed implementation — capital contribution |
| | 8 | Applicability |
| 134 | 1 | 15-2-301 |
| | 2 | 15-15-103 |
| | 3 | Effective dato |
| 135 | 1 | 25-34-105 |
| | 2 | 25-35-505 |
| | 3 | 27-1-718 |
| | 4 | Applicability |
| 136 | 1 | 37-8-102 |
| | 2 | Effective date |
| 137 | 1 | 85-20-701 |
| | 2 | Codification instruction |
| 138 | 1 | 20-7-132 |
| | 2 | Codification instruction |
| 139 | 1 | 35-1-1104 |
| 140 | 1 | 50-60-203 |
| 141 | 1 | 76-15-524 |
| | 2 | 76-15-542 |
| | 3 | 76-15-546 |
| | 4 | 76-15-547 |
| | 5 | Retroactive applicability |

HeinOnline -- 1997 vol. III 3890 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 6 | Effective date |
| 142 | 1 | 13-22-104 |
| | 2 | 13-22-106 |
| 143 | 1 | 2-18-617 |
| | 2 | Effective date |
| 144 | 1 | 20-6-604 |
| | 2 | 20-9-426 |
| | 3 | 20-20-204 |
| | 4 | 20-20-401 |
| 145 | 1 | 85-2-605 |
| | 2 | Effective date |
| 146 | 1 | 13-19-102 |
| | 2 | 13-19-104 |
| 147 | 1 | 2-18-711 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 148 | 1 | 32-1-220 |
| 149 | 1 | 46-17-311 |
| | 2 | Applicability |
| | 3 | Effective date |
| 150 | 1 | 3-10-231 |
| | 2 | Effective date |
| 151 | 1 | 37-4-101 |
| | 2 | 37-4-102 |
| | 3 | 37-4-103 |
| | 4 | 37-4-327 |
| | 5 | 37-4-104 |
| | 6 | Codification instruction |
| | 7 | Applicability |
| 152 | 1 | 2-4-302 |
| | 2 | 2-4-305 |
| 153 | 1 | 20-6-631 |
| | 2 | 20-6-633 |
| | 3 | Effective date |
| 154 | 1 | Natural resource damage program appropriation |
| | 2 | Extension of previous loans |
| | 3 | Rate of interest |
| | 4 | Contracts |
| | 5 | Fund balance transfer — reconciliation |
| | 6 | Use of recovered funds |
| | 7 | Effective date |
| 155 | 1 | 45-5-623 |
| | 2 | Effective date |
| 156 | 1 | 75-10-403 |
| | 2 | Coordination instruction |
| | 3 | Effective date |
| 157 | 1 | 20-1-213 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 158 | 1 | 33-4-101 |
| | 2 | 33-4-102 |
| | 3 | 33-4-502 |
| 159 | 1 | 61-1-104 |
| | 2 | Effective date |
| 160 | 1 | 7-4-2701 |
| | 2 | 7-4-2702 |
| 161 | 1 | 87-1-110 |
| | 2 | Codification instruction |
| | 3 | Effectivo date |
| 162 | 1 | 46-11-504 |
| | 2 | Applicability |
| | 3 | Effective date |
| 163 | 1 | 46-12-211 |
| | 2 | 46-16-105 |
| | 3 | 46-17-203 |
| | 4 | 46-18-102 |
| | 5 | 46-18-115 |
| | 6 | Applicability |
| | 7 | Effective date |
| 164 | 1 | 61-5-101 |
| | 2 | Effective date |
| 165 | 1 | 33-31-102 |
| | 2 | 33-31-306 |
| | 3 | Codification instruction |
| | 4 | Applicability |
| 166 | 1 | 15-6-209 |
| | 2 | Application for exemption |
| | 3 | Effective date — retroactive applicability |
| 167 | 1 | 15-7-305 |
| | 2 | 15-7-308 |
| | 3 | 85-2-424 |
| | 4 | 85-2-431 |
| | 5 | Effective date — applicability |
| 168 | 1 | 45-8-318 |
| 169 | 1 | 27-31-201 |
| | 2 | Applicability |
| | 3 | Effective date |
| 170 | 1 | 85-20-501 |
| | 2 | Codification instruction |
| 171 | 1 | 2-15-2204 |
| | 2 | 50-5-101 |
| | 3 | 50-6-103 |
| | 4 | 50-6-401 |
| | 5 | 50-6-402 |
| | 6 | 50-6-404 |
| | 7 | 50-19-303 |
| | 8 | 50-49-103 |
| | 9 | 50-49-106 |
| | 10 | 50-49-107 |
| | 11 | 52-1-103 |
| | 12 | 52-2-704 |
| | 13 | 53-20-203 |
| | 14 | 53-20-205 |
| | 15 | 53-21-202 |
| | 16 | Repealer |
| 172 | 1 | 39-71-117 |
| | 2 | 39-71-118 |
| | 3 | 39-71-303 |
| | 4 | 39-71-401 |
| | 5 | 39-71-414 |
| | 6 | 39-71-432 |

HeinOnline -- 1997 vol. III 3891 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 7 | 39-71-723 |
| | 8 | 39-71-724 |
| | 9 | Repealer |
| | 10 | Transition |
| | 11 | Saving clause |
| | 12 | Effective dates — applicability |
| 173 | 1 | 2-15-225 |
| | 2 | Effective date |
| 174 | 1 | 3-7-501 |
| | 2 | 85-2-227 |
| | 3 | 85-2-231 |
| | 4 | 85-2-233 |
| | 5 | 85-2-404 |
| | 6 | 85-2-406 |
| | 7 | Saving clause |
| | 8 | Effective date |
| 175 | 1 | 7-12-2161 |
| | 2 | Effective date |
| 176 | 1 | 7-6-604 |
| | 2 | Effective date |
| 177 | 1 | 7-14-203 |
| | 2 | 7-14-204 |
| | 3 | 7-14-207 |
| | 4 | 7-14-208 |
| | 5 | 7-14-209 |
| | 6 | 7-14-210 |
| | 7 | 7-14-241 |
| 178 | 1 | 60-2-107 |
| | 2 | 60-2-128 |
| 179 | 1 | 69-4-501 |
| | 2 | 69-4-502 |
| | 3 | 69-4-503 |
| | 4 | 69-4-504 |
| | 5 | 69-4-508 |
| | 6 | Repealer |
| | 7 | Codification instruction |
| 180 | 1 | 80-8-120 |
| | 2 | 80-8-121 |
| | 3 | Severability |
| | 4 | Applicability |
| | 5 | Effective date |
| 181 | 1 | 46-18-201 |
| | 2 | 46-18-241 |
| | 3 | 46-18-244 |
| | 4 | 46-18-246 |
| | 5 | 46-18-247 |
| | 6 | 46-18-251 |
| 182 | 1 | 45-5-624 |
| | 2 | Effective date |
| 183 | 1 | 33-22-133 |
| | 2 | 33-31-301 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 184 | 1 | 87-1-209 |
| | 2 | Effective date |
| 185 | 1 | 41-5-301 |
| | 2 | 41-5-403 |
| | 3 | 41-5-523 |
| 186 | 1 | 40-15-204 |
| | 2 | 46-5-307 |
| | 3 | 46-5-308 |
| | 4 | 46-15-411 |
| | 5 | 46-18-251 |
| | 6 | 46-24-206 |
| | 7 | 53-9-102 |
| | 8 | 53-9-103 |
| | 9 | 53-9-128 |
| | 10 | Effective date |
| 187 | 1 | 87-2-102 |
| | 2 | 87-2-105 |
| | 3 | 87-2-106 |
| | 4 | 87-2-202 |
| | 5 | 87-2-411 |
| | 6 | 87-2-412 |
| | 7 | 87-2-711 |
| | 8 | 87-2-902 |
| | 9 | 87-2-903 |
| | 10 | 87-2-1001 |
| | 11 | Effective date |
| 188 | 1 | 50-4-504 |
| | 2 | 50-4-605 |
| | 3 | 50-5-101 |
| | 4 | 50-5-103 |
| | 5 | 53-24-103 |
| | 6 | 53-24-208 |
| 189 | 1 | 1-1-207 |
| | 2 | 41-5-103 |
| | 3 | 46-18-101 |
| | 4 | 46-18-111 |
| | 5 | 46-18-113 |
| | 6 | 46-18-201 |
| | 7 | 46-18-225 |
| | 8 | 46-18-701 |
| | 9 | 46-23-201 |
| | 10 | 46-23-215 |
| | 11 | 46-23-401 |
| | 12 | 46-24-212 |
| | 13 | 52-5-101 |
| | 14 | 52-5-108 |
| | 15 | 52-5-109 |
| | 16 | 52-5-112 |
| | 17 | 52-5-113 |
| | 18 | 53-1-102 |
| | 19 | 53-1-103 |
| | 20 | 53-1-104 |
| | 21 | 53-1-202 |
| | 22 | 53-1-203 |
| | 23 | 53-1-302 |
| | 24 | 53-30-101 |
| | 25 | 53-30-102 |
| | 26 | Repealed prior to effective date of amendment |
| | 27 | 53-30-151 |
| | 28 | 53-30-503 |

HeinOnline -- 1997 vol. III 3892 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 29 | 87-2-802 |
| | 30 | Code commissioner instruction |
| | 31 | Effective dates |
| 190 | 1 | 53-1-401 |
| | 2 | 53-1-402 |
| | 3 | 53-1-403 |
| | 4 | 53-1-404 |
| | 5 | 53-1-405 |
| | 6 | 53-1-406 |
| | 7 | 53-1-407 |
| | 8 | 53-1-408 |
| | 9 | 53-1-409 |
| | 10 | 53-1-410 |
| | 11 | 53-1-411 |
| | 12 | 53-1-412 |
| | 13 | 53-1-413 |
| | 14 | 53-1-414 |
| | 15 | Codification instruction |
| | 16 | Severability |
| | 17 | Applicability |
| | 18 | Effective dates |
| 191 | 1 | Development and implementation of new or modified public employees' retirement system |
| | 2 | Appropriation |
| | 3 | Coordination instruction |
| | 4 | Effective date |
| 192 | 1 | Sec. 9, Ch. 549, L. 1993 |
| | 2 | Effective date |
| 193 | 1 | 39-3-406 |
| 194 | 1 | 49-2-305 |
| 195 | 1 | 53-6-802 |
| | 2 | 53-6-801 |
| | 3 | 53-6-803 |
| | 4 | 53-6-804 |
| | 5 | 53-6-805 |
| | 6 | 53-6-143 |
| | 7 | Codification instruction |
| | 8 | Contingent effective dates |
| 196 | 1 | 82-4-243 |
| | 2 | 82-4-203 |
| | 3 | 82-4-226 |
| | 4 | 82-4-233 |
| | 5 | 82-4-235 |
| | 6 | Codification instruction |
| | 7 | Severability |
| | 8 | Retroactive applicability |
| | 9 | Effective dates |
| 197 | 1 | 50-16-1003 |
| | 2 | Effective date |
| 198 | 1 | 33-22-1901 |
| | 2 | 33-22-1902 |
| | 3 | 33-22-1903 |
| | 4 | 33-22-1904 |
| | 5 | 33-22-1905 |
| | 6 | 33-22-1906 |
| | 7 | 33-22-1907 |
| | 8 | 33-22-1908 |
| | 9 | 33-22-101 |
| | 10 | 33-31-111 |
| | 11 | Codification instruction |
| | 12 | Severability |
| | 13 | Applicability |
| | 14 | Effective date |
| 199 | 1 | 61-3-502 |
| | 2 | Effective date |
| 200 | 1 | 61-1-513 |
| | 2 | 15-1-116 |
| | 3 | 15-1-117 |
| | 4 | 61-3-209 |
| | 5 | 7-13-4502 |
| | 6 | 15-1-101 |
| | 7 | 15-6-134 |
| | 8 | 15-8-201 |
| | 9 | 15-8-205 |
| | 10 | 15-16-202 |
| | 11 | 15-24-201 |
| | 12 | 15-24-202 |
| | 13 | 15-24-203 |
| | 14 | 15-24-204 |
| | 15 | 15-24-205 |
| | 16 | 15-24-206 |
| | 17 | 15-24-208 |
| | 18 | 15-24-209 |
| | 19 | 15-24-210 |
| | 20 | 15-32-102 |
| | 21 | 61-3-207 |
| | 22 | 61-3-303 |
| | 23 | 61-3-503 |
| | 24 | 69-12-331 |
| | 25 | Codification instruction |
| | 26 | Effective date |
| 201 | 1 | 50-3-103 |
| | 2 | 50-62-112 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 202 | 1 | 20-1-306 |
| | 2 | Notification of tribal governments |
| | 3 | Effective date |
| 203 | 1 | 7-5-2301 |
| 204 | 1 | 90-6-201 |
| | 2 | 90-6-205 |
| | 3 | 90-6-206 |
| | 4 | 90-6-207 |
| | 5 | 90-6-208 |
| | 6 | 90-6-209 |
| | 7 | Repealer |
| | 8 | Effective date |
| 205 | 1 | 2-15-203 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 206 | 1 | 61-8-309 |

HeinOnline -- 1997 vol. III 3893 1997

| Ch. | Sec. | MCA |
|---|---|---|
| 207 | 1 | 30-14-225 |
| | 2 | 33-18-223 |
| 208 | 1 | 19-3-412 |
| | 2 | Effective date |
| 209 | 1 | 39-3-205 |
| 210 | 1 | 37-1-304 |
| 211 | 1 | 20-3-322 |
| | 2 | 20-7-705 |
| | 3 | 20-9-115 |
| | 4 | 20-9-121 |
| | 5 | 20-9-131 |
| | 6 | 20-9-132 |
| | 7 | 20-9-165 |
| | 8 | 20-9-353 |
| | 9 | 20-9-438 |
| | 10 | 20-9-501 |
| | 11 | 20-9-503 |
| | 12 | 20-10-143 |
| | 13 | 20-10-144 |
| | 14 | Repealer |
| | 15 | Effective date |
| 212 | 1 | 20-9-311 |
| | 2 | Effective date — retroactive applicability |
| 213 | 1 | 75-10-540 |
| | 2 | 75-10-514 |
| | 3 | Codification instruction |
| | 4 | Saving clause |
| | 5 | Effective date |
| 214 | 1 | 7-21-2105 |
| | 2 | 81-7-111 |
| | 3 | 81-7-114 |
| | 4 | 81-7-118 |
| | 5 | 81-7-120 |
| | 6 | 81-7-121 |
| | 7 | 81-7-122 |
| | 8 | Repealer |
| 215 | 1 | 7-5-2142 |
| | 2 | 7-5-2143 |
| | 3 | 7-5-2144 |
| | 4 | 7-5-2145 |
| | 5 | Effective date |
| 216 | 1 | 7-13-2529 |
| 217 | 1 | 76-2-303 |
| 218 | 1 | 15-30-121 |
| | 2 | 15-32-301 |
| | 3 | 15-32-302 |
| | 4 | 15-32-303 |
| | 5 | Effective date — retroactive applicability |
| 219 | 1 | 7-6-2701 |
| | 2 | 7-7-2203 |
| | 3 | 7-14-2524 |
| | 4 | 20-3-106 |
| | 5 | 20-3-206 |
| | 6 | 20-3-302 |
| | 7 | 20-3-312 |
| | 8 | 20-3-342 |
| | 9 | 20-3-343 |
| | 10 | 20-3-351 |
| | 11 | 20-3-352 |
| | 12 | 20-3-355 |
| | 13 | 20-3-356 |
| | 14 | 20-6-101 |
| | 15 | 20-6-104 |
| | 16 | 20-6-312 |
| | 17 | 20-6-313 |
| | 18 | 20-6-501 |
| | 19 | 20-9-402 |
| | 20 | 20-9-435 |
| | 21 | 20-15-404 |
| | 22 | Repealer |
| | 23 | Effective date |
| 220 | 1 | 61-4-101 |
| | 2 | Effective date |
| 221 | 1 | 61-4-101 |
| | 2 | 61-4-104 |
| | 3 | 61-4-120 |
| | 4 | 61-4-121 |
| | 5 | 61-4-131 |
| | 6 | 61-4-133 |
| | 7 | 61-4-134 |
| | 8 | 61-4-201 |
| | 9 | 61-4-205 |
| | 10 | 61-4-206 |
| | 11 | 61-4-207 |
| | 12 | 61-4-208 |
| | 13 | 61-4-141 |
| | 14 | Codification instruction |
| | 15 | Saving clause |
| | 16 | Effective date |
| 222 | 1 | 52-2-741 |
| 223 | 1 | 19-8-308 |
| | 2 | 19-8-101 |
| | 3 | 19-8-102 |
| | 4 | 19-8-301 |
| | 5 | 19-8-302 |
| | 6 | 19-8-504 |
| | 7 | 19-8-604 |
| | 8 | 19-8-701 |
| | 9 | 19-8-712 |
| | 10 | 19-8-902 |
| | 11 | 19-8-903 |
| | 12 | Instruction to code commissioner |
| | | 17-6-203 |
| | | 19-1-104 |
| | | 19-1-301 |
| | | 19-9-405 |
| | | 19-13-404 |
| | 13 | Codification instruction |
| | 14 | Effective date |
| 224 | 1 | 53-30-503 |
| | 2 | 53-30-504 |

HeinOnline -- 1997 vol. III 3894 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 3 | 53-30-506 |
| | 4 | 53-30-507 |
| | 5 | 53-30-511 |
| | 6 | Codification instruction |
| 225 | 1 | Sec. 11, Ch. 387, L. 1993 |
| | 2 | Sec. 1, Ch. 381, L. 1995 |
| | | 5-20-201 |
| | | 5-20-202 |
| | | 5-20-203 |
| | | 5-20-204 |
| | | 5-20-205 |
| | | 5-20-206 |
| | | 5-20-207 |
| | | 5-20-208 |
| | 3 | Effective date |
| 226 | 1 | 7-4-2206 |
| | 2 | Effective date |
| 227 | 1 | 7-7-2101 |
| | 2 | 7-7-2402 |
| 228 | 1 | 82-1-201 |
| 229 | 1 | 7-6-205 |
| 230 | 1 | 45-8-212 |
| | 2 | Effective date |
| 231 | 1 | 61-1-314 |
| 232 | 1 | 61-8-312 |
| | 2 | 61-10-104 |
| | 3 | 61-10-107 |
| | 4 | 61-10-109 |
| | 5 | 61-10-124 |
| | 6 | 61-10-128 |
| | 7 | 61-10-144 |
| | 8 | 61-10-145 |
| | 9 | 61-10-146 |
| | 10 | 61-10-201 |
| | 11 | 61-10-203 |
| | 12 | 61-10-211 |
| | 13 | Repealer |
| | 14 | Effective date |
| 233 | 1 | 13-2-115 |
| | 2 | 13-2-122 |
| | 3 | 46-6-602 |
| 234 | 1 | 7-7-2223 |
| | 2 | 7-7-2227 |
| | 3 | 7-7-2229 |
| | 4 | 7-7-2237 |
| | 5 | 7-7-4226 |
| | 6 | 7-7-4227 |
| | 7 | 7-7-4235 |
| | 8 | 7-7-4426 |
| | 9 | 7-7-4427 |
| | 10 | 7-13-2208 |
| | 11 | 7-13-2231 |
| | 12 | 7-13-2323 |
| | 13 | 7-13-2341 |
| | 14 | 85-9-206 |
| | 15 | 85-9-623 |
| | 16 | Effective date |
| 235 | 1 | 69-14-111 |
| | 2 | 69-14-112 |
| | 3 | 69-14-114 |
| | 4 | 69-14-115 |
| | 5 | 69-14-116 |
| | 6 | 69-14-120 |
| | 7 | 69-14-133 |
| | 8 | 69-14-232 |
| | 9 | 69-14-401 |
| | 10 | 69-14-604 |
| | 11 | 69-14-708 |
| | 12 | 69-14-713 |
| | 13 | 69-14-801 |
| | 14 | 69-14-921 |
| | 15 | 69-14-922 |
| | 16 | 69-14-1004 |
| | 17 | Repealer |
| 236 | 1 | 15-70-104 |
| | 2 | 15-70-201 |
| | 3 | 15-70-202 |
| | 4 | 15-70-301 |
| | 5 | 15-70-341 |
| | 6 | 15-70-233 |
| | | 15-70-357 |
| | 7 | Codification instruction |
| | 8 | Effective date |
| 237 | 1 | 32-1-492 |
| 238 | 1 | 20-10-147 |
| 239 | 1 | 15-70-101 |
| | 2 | 60-3-206 |
| | 3 | Effective date |
| 240 | 1 | 50-60-104 |
| | 2 | 50-60-401 |
| | 3 | 50-60-402 |
| | 4 | 50-60-403 |
| 241 | 1 | 3-2-107 |
| | 2 | 3-12-101 |
| | 3 | Repealer |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 242 | 1 | 13-13-201 |
| | 2 | 13-13-214 |
| | 3 | 13-13-221 |
| | 4 | 13-13-225 |
| | 5 | 13-13-229 |
| | 6 | 13-13-231 |
| | 7 | 13-13-232 |
| | 8 | 13-13-241 |
| | 9 | 13-15-201 |
| 243 | 1 | 2-2-104 |
| | 2 | 2-15-1520 |
| | 3 | 17-8-306 |
| | 4 | 20-15-312 |
| | 5 | 20-25-302 |
| | 6 | 20-25-503 |
| | 7 | 20-26-103 |
| | 8 | 20-26-1101 |

HeinOnline -- 1997 vol. III 3895 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 9 | 20-26-1102 |
| | 10 | 20-26-1103 |
| | 11 | 20-26-1104 |
| | 12 | 20-26-1105 |
| | 13 | 20-26-1106 |
| | 14 | 20-26-1107 |
| | 15 | 20-32-103 |
| | 16 | Effective date |
| 244 | 1 | Montana grass conservation advisory committee established |
| | 2 | 76-16-103 (amendment not codified) |
| | 3 | 76-16-104 (amendment not codified) |
| | 4 | 76-16-105 (amendment not codified) |
| | 5 | Termination |
| 245 | 1 | 45-5-202 |
| | 2 | 45-5-206 |
| 246 | 1 | 1-2-112 |
| | 2 | 13-1-101 |
| | 3 | 13-1-203 |
| | 4 | 13-1-204 |
| | 5 | 13-2-203 |
| | 6 | 13-2-207 |
| | 7 | 13-2-402 |
| | 8 | 13-2-403 |
| | 9 | 13-2-512 |
| | 10 | 13-19-313 |
| | 11 | 13-2-219 |
| | 12 | 13-2-220 |
| | 13 | 13-2-221 |
| | 14 | 13-2-222 |
| | 15 | Electors not voting in 1996 general election — placement on inactive voting list |
| | 16 | Repealer |
| | 17 | Codification instruction |
| | 18 | Effective date |
| 247 | 1 | 77-1-607 |
| | 2 | Coordination instruction |
| | 3 | Effective date |
| | 4 | Termination |
| 248 | 1 | 19-7-301 |
| | 2 | 19-7-403 |
| | 3 | 19-7-404 |
| | 4 | 19-7-502 |
| | 5 | 19-7-503 |
| | 6 | 19-7-901 |
| | 7 | Unfunded mandato law superseded |
| | 8 | Repealer |
| | 9 | Effective date |
| 249 | 1 | 18-2-102 |
| | 2 | 18-2-103 |
| | 3 | 18-2-105 |
| | 4 | 18-2-201 |
| | 5 | 18-2-301 |
| | 6 | 18-2-302 |
| | 7 | Effective date |
| 250 | 1 | 19-9-104 |
| | 2 | 19-9-301 |
| | 3 | Voided by sec. 8(3)(a), (3)(c), Ch. 445 (coordination section) |
| | 4 | 19-9-703 |
| | 5 | 19-9-801 |
| | 6 | Unfunded mandate law superseded |
| | 7 | Effective date |
| 251 | 1 | 37-51-103 |
| 252 | 1 | 23-5-112 |
| | 2 | 23-5-156 |
| | 3 | 23-5-157 |
| 253 | 1 | 72-16-304 |
| | 2 | Effective date — retroactive applicability |
| 254 | 1 | 19-13-301 |
| | 2 | Coordination instruction |
| | 3 | Effective date |
| 255 | 1 | 40-4-121 |
| 256 | 1 | 40-4-121 |
| 257 | 1 | 5-22-102 |
| 258 | 1 | 33-19-104 |
| | 2 | 33-19-302 |
| | 3 | 33-19-303 |
| 259 | 1 | 20-4-203 |
| | 2 | Saving clause |
| | 3 | Effective date — applicability |
| 260 | 1 | 33-20-308 |
| | 2 | Codification instruction |
| 261 | 1 | 33-17-1101 |
| 262 | 1 | 40-5-242 |
| | 2 | 40-5-248 |
| | 3 | 53-2-612 |
| | 4 | 53-6-143 |
| | 5 | Effective date |
| 263 | 1 | 33-23-203 |
| 264 | 1 | 20-7-714 |
| 265 | 1 | 85-20-601 |
| | 2 | Provision exception |
| | 3 | Codification instruction |
| 266 | 1 | 31-1-235 |
| 267 | 1 | 31-1-241 |
| 268 | 1 | 35-1-820 |
| | 2 | 35-8-304 |
| | 3 | 35-8-1306 |
| | 4 | 35-12-504 |
| | 5 | 35-12-505 |
| | 6 | 35-12-508 |
| | 7 | 35-12-521 |
| | 8 | 35-12-601 |

HeinOnline -- 1997 vol. III 3896 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 9 | 35-12-602 |
| | 10 | 35-12-604 |
| | 11 | 35-12-605 |
| | 12 | 35-12-606 |
| | 13 | 35-12-607 |
| | 14 | 35-12-608 |
| | 15 | 35-12-611 |
| | 16 | 35-12-701 |
| | 17 | 35-12-703 |
| | 18 | 35-12-704 |
| | 19 | 35-12-801 |
| | 20 | 35-12-802 |
| | 21 | 35-12-902 |
| | 22 | 35-12-903 |
| | 23 | 35-12-904 |
| | 24 | 35-12-1001 |
| | 25 | 35-12-1003 |
| | 26 | 35-12-1004 |
| | 27 | 35-12-1005 |
| | 28 | 35-12-1008 |
| | 29 | 35-12-1104 |
| | 30 | 35-12-1201 |
| | 31 | 35-12-1302 |
| | 32 | 35-12-1402 |
| | 33 | Property of nonutility cooperatives |
| | 34 | Codification instruction |
| 269 | 1 | Time limits |
| | 2 | Totals not appropriations |
| | 3 | Appropriations |
| | 4 | Effective date |
| 270 | 1 | 17-2-301 |
| | 2 | 17-2-302 |
| | 3 | 17-2-303 |
| | 4 | 17-2-304 |
| | 5 | Retroactive applicability |
| | 6 | Effective date |
| 271 | 1 | 82-4-361 |
| | 2 | 82-4-441 |
| | 3 | Applicability |
| | 4 | Effective date |
| 272 | 1 | 82-4-303 |
| | 2 | 82-4-305 |
| | 3 | 82-4-310 |
| | 4 | Applicability |
| | 5 | Effective date |
| 273 | 1 | 75-2-211 |
| | 2 | 75-20-204 |
| | 3 | 82-4-205 |
| | 4 | 82-4-361 |
| | 5 | 82-4-441 |
| | 6 | Saving clause |
| | 7 | Effective date |
| 274 | 1 | 76-1-112 |
| | 2 | Retroactive applicability |
| | 3 | Effective date |
| 275 | 1 | 87-2-808 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 276 | 1 | 2-15-1019 |
| | 2 | 2-15-2015 |
| | 3 | 17-7-502 |
| | 4 | 33-1-1205 |
| | 5 | 33-16-1024 |
| | 6 | 39-71-116 |
| | 7 | 39-71-318 |
| | 8 | 39-71-406 |
| | 9 | 39-71-502 |
| | 10 | 39-71-605 |
| | 11 | 39-71-606 |
| | 12 | 39-71-703 |
| | 13 | 39-71-712 |
| | 14 | 39-71-1006 |
| | 15 | 39-71-2316 |
| | 16 | 39-71-2316 |
| | 17 | 39-71-2320 |
| | 18 | 39-71-2321 |
| | 19 | 39-71-2321 |
| | 20 | 39-71-2322 |
| | 21 | 39-71-2327 |
| | 22 | 39-71-2351 |
| | 23 | 39-71-2352 |
| | 24 | 39-71-2352 |
| | 25 | 39-71-2363 |
| | 26 | 39-71-2501 |
| | 27 | 39-71-2503 |
| | 28 | 39-71-2505 |
| | 29 | 39-71-2905 |
| | 30 | Transfer of funds |
| | 31 | Repealer |
| | 32 | Severability |
| | 33 | Retroactive applicability |
| | 34 | Effective dates — applicability |
| | 35 | Termination |
| 277 | 1 | 20-25-423 |
| | 2 | Submission to electorate |
| | 3 | Effective dates |
| 278 | 1 | 37-23-208 |
| | 2 | Applicability |
| | 3 | Effective date |
| | 4 | Termination |
| 279 | 1 | 70-23-304 |
| | 2 | 72-5-231 |
| | 3 | 72-6-204 |
| | 4 | 72-6-213 |
| | 5 | 72-6-226 |
| | 6 | 72-16-603 |
| | 7 | 72-34-117 |
| 280 | 1 | 49-4-301 |
| | 2 | 49-4-303 |
| | 3 | 49-4-305 |
| 281 | 1 | 60-5-512 |
| | 2 | Effective date |

HeinOnline -- 1997 vol. III 3897 1997

| Ch. | Sec. | MCA |
|---|---|---|
| 282 | 1 | 2-18-704 |
| | 2 | Retroactive applicability |
| 283 | 1 | 61-10-102 |
| | 2 | Effective date |
| 284 | 1 | 39-71-915 |
| | 2 | 33-16-1008 |
| | 3 | 39-71-504 |
| | 4 | 39-71-903 |
| | 5 | 39-71-907 |
| | 6 | Transfer and credit of excess funds held in subsequent injury fund |
| | 7 | Repealer |
| | 8 | Codification instruction |
| | 9 | Effective dates |
| 285 | 1 | 45-8-401 |
| | 2 | 45-8-402 |
| | 3 | 45-8-403 |
| | 4 | 45-8-404 |
| | 5 | 45-8-405 |
| | 6 | 45-8-406 |
| | 7 | 45-8-407 |
| | 8 | 45-8-408 |
| | 9 | 41-5-206 |
| | 10 | Codification instruction |
| | 11 | Severability |
| | 12 | Effective date |
| | 13 | Retroactive applicability |
| 286 | 1 | 7-6-501 |
| | 2 | 7-32-2244 |
| | 3 | 41-5-103 |
| | 4 | 41-5-208 |
| | 5 | 41-5-301 (renum. 41-5-1201) |
| | 6 | 41-5-1202 |
| | 7 | 41-5-1204 |
| | 8 | 41-5-1205 |
| | 9 | 41-5-1301 |
| | 10 | 41-5-1401 |
| | 11 | 41-5-303 (renum. 41-5-331) |
| | 12 | 41-5-332 |
| | 13 | 41-5-333 |
| | 14 | 41-5-334 |
| | 15 | 41-5-305 (renum. 41-5-341) |
| | 16 | 41-5-342 |
| | 17 | 41-5-306 (renum. 41-5-344) |
| | 18 | 41-5-345 |
| | 19 | 41-5-346 |
| | 20 | 41-5-347 |
| | 21 | 41-5-348 |
| | 22 | 41-5-307 (renum. 41-5-322) |
| | 23 | 41-5-311 (renum. 41-5-349) |
| | 24 | Voided by sec. 49(3)(e) (coordination section) |
| | 25 | 41-5-502 (renum. 41-5-1403) |
| | 26 | 41-5-521 (renum. 41-5-1502) |
| | 27 | 41-5-522 (renum. 41-5-1511) |
| | 28 | Voided by sec. 49(3)(e) (coordination section) |
| | 29 | Voided by sec. 49(3)(e) (coordination section) |
| | 30 | Voided by sec. 49(3)(e) (coordination section) |
| | 31 | Voided by sec. 49(3)(e) (coordination section) |
| | 32 | Voided by sec. 49(3)(e) (coordination section) |
| | 33 | Voided by sec. 49(3)(e) (coordination section) |
| | 34 | Voided by sec. 49(3)(e) (coordination section) |
| | 35 | Voided by sec. 49(3)(e) (coordination section) |
| | 36 | Voided by sec. 49(3)(e) (coordination section) |
| | 37 | Voided by sec. 49(3)(e) (coordination section) |
| | 38 | 41-5-525 (renum. 41-5-121) |
| | 39 | 41-5-527 (renum. 41-5-123) |
| | 40 | 41-5-530 (renum. 41-5-112) |
| | 41 | Voided by sec. 49(3)(e) (coordination section) |
| | 42 | Voided by sec. 49(3)(e) (coordination section) |
| | 43 | 46-24-207 |
| | 44 | 52-5-129 |
| | 45 | 53-9-107 |
| | 46 | Repealer |
| | 47 | Code commissioner instructions |
| | 48 | Codification instruction |
| | 49 | Coordination instruction<br>41-5-343<br>41-5-1203<br>Code commissioner instruction |
| | 50 | Saving clause |
| | 51 | Applicability |
| 287 | 1 | 19-3-1605<br>19-7-711<br>19-8-1105 |
| | 2 | 19-5-901 |
| | 3 | 19-2-1101<br>19-6-710<br>19-9-1009<br>19-13-1010 |
| | 4 | 19-3-319 |
| | 5 | 19-2-409 |
| | 6 | 3-2-404 |
| | 7 | 3-2-405 |
| | 8 | 19-3-315 |
| | 9 | 19-3-316 |
| | 10 | 19-3-503 |
| | 11 | 19-3-512 |

HeinOnline -- 1997 vol. III 3898 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 12 | 19-3-513 |
| | 13 | 19-5-101 |
| | 14 | 19-5-404 |
| | 15 | 19-5-502 |
| | 16 | 19-5-601 |
| | 17 | 19-5-802 |
| | 18 | 19-6-402 |
| | 19 | 19-6-404 |
| | 20 | 19-6-707 |
| | 21 | 19-6-709 |
| | 22 | 19-6-801 |
| | 23 | 19-8-502 |
| | 24 | 19-8-504 |
| | 25 | 19-8-1002 |
| | 26 | Voided by sec. 8(3)(c), Ch. 455 (coordination section) |
| | 27 | 19-9-710 |
| | 28 | 19-9-1007 |
| | 29 | Voided by sec. 12(1), Ch. 457 (coordination section) |
| | 30 | Voided by sec. 8(4)(a), (4)(b), Ch. 445 (coordination section) |
| | 31 | Voided by sec. 12(2), Ch. 457 (coordination section) |
| | 32 | Voided by sec. 12(3), Ch. 457 (coordination section) |
| | 33 | Voided by sec. 12(4), Ch. 457 (coordination section) |
| | 34 | Voided by sec. 8(5), Ch. 445 (coordination section) |
| | 35 | Voided by sec. 8(6), Ch. 445 (coordination section) |
| | 36 | Voided by sec. 8(7), Ch. 445 (coordination section) |
| | 37 | 25-1-201 |
| | 38 | Repealer |
| | 39 | Codification instruction |
| | 40 | Effective date |
| 288 | 1 | 72-16-323 |
| | 2 | 72-16-101 |
| | 3 | 72-16-453 |
| | 4 | 72-16-455 |
| | 5 | Codification instruction |
| | 6 | Effective date — retroactive applicability |
| 289 | 1 | 76-4-125 |
| 290 | 1 | 30-9-403 |
| | 2 | 30-9-431 |
| | 3 | 30-13-221 |
| | 4 | 30-13-341 |
| | 5 | 35-1-218 |
| | 6 | 35-2-120 |
| | 7 | 35-8-207 |
| | 8 | 35-10-112 |
| | 9 | 35-12-615 |
| | 10 | 35-15-211 |
| | 11 | Effective date |
| 291 | 1 | 2-15-404 |
| | 2 | 2-15-401 |
| | 3 | Codification instruction |
| 292 | 1 | 33-18-224 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 293 | 1 | 27-1-704 |
| | 2 | 27-1-702 |
| | 3 | 27-1-703 |
| | 4 | Applicability |
| | 5 | Nonseverability |
| | 6 | Effectivo date |
| 294 | 1 | 13-35-227 |
| | 2 | 13-35-236 |
| | 3 | 13-37-250 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 295 | 1 | 15-36-314 |
| | 2 | 15-36-315 |
| | 3 | Retroactive applicability |
| | 4 | Effective date |
| 296 | 1 | 15-61-102 |
| | 2 | 15-61-203 |
| | 3 | 15-61-204 |
| | 4 | Retroactive applicability |
| | 5 | Effective date |
| 297 | 1 | 15-6-143 |
| | 2 | 15-44-102 |
| | 3 | 15-44-103 |
| | 4 | Effective date — retroactive applicability |
| 298 | 1 | 33-20-1301 |
| | 2 | 33-20-1302 |
| | 3 | 33-20-1303 |
| | 4 | 33-20-1304 |
| | 5 | 33-20-1305 |
| | 6 | 33-20-1306 |
| | 7 | 33-20-1307 |
| | 8 | 33-20-1308 |
| | 9 | 33-20-1309 |
| | 10 | 33-20-1310 |
| | 11 | 33-20-1311 |
| | 12 | 33-20-1312 |
| | 13 | 33-20-1313 |
| | 14 | 33-20-1314 |
| | 15 | 33-20-1315 |
| | 16 | Codification instruction |
| 299 | 1 | 15-8-111 |
| | 2 | Effective date — retroactive applicability |
| 300 | 1 | 15-10-412 |
| 301 | 1 | 15-6-211 |
| | 2 | Effective date — applicability |
| 302 | 1 | 46-18-310 |
| | 2 | 46-21-104 |
| | 3 | 46-21-105 |

HeinOnline -- 1997 vol. III 3899 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 4 | Coordination instruction |
| | 5 | Severability |
| | 6 | Effective date |
| 303 | 1 | 45-5-223 |
| | 2 | Codification instruction |
| | 3 | Coordination instruction |
| | 4 | Effective date |
| 304 | 1 | 33-18-216 |
| | 2 | Codification instruction |
| | 3 | Saving clause |
| | 4 | Severability |
| 305 | 1 | 37-31-101 |
| | 2 | 37-31-203 |
| | 3 | 37-31-301 |
| | 4 | 37-31-302 |
| | 5 | 37-31-304 |
| | 6 | 37-31-305 |
| | 7 | 37-31-308 |
| | 8 | 37-31-311 |
| | 9 | 37-31-312 |
| | 10 | 37-31-331 |
| 306 | 1 | 85-7-1846 |
| | 2 | 85-7-411 |
| | 3 | 85-7-1802 |
| | 4 | Effective date |
| | 5 | Termination |
| | 6 | Codification instruction |
| | 7 | Saving clause |
| 307 | 1 | 50-71-321 |
| | 2 | 50-72-201 |
| | 3 | 50-72-202 |
| | 4 | Effective date |
| 308 | 1 | 39-71-704 |
| | 2 | Effective date — applicability |
| 309 | 1 | 13-2-123 |
| | 2 | 13-2-114 |
| | 3 | 13-2-115 |
| | 4 | Codification instruction |
| | 5 | Coordination instruction |
| | 6 | Effective date |
| 310 | 1 | 20-15-403 |
| | 2 | 33-2-119 |
| | 3 | 39-71-225 |
| | 4 | 39-71-401 |
| | 5 | 39-71-433 |
| | 6 | 39-71-503 |
| | 7 | 39-71-504 |
| | 8 | 39-71-704 |
| | 9 | 39-71-721 |
| | 10 | 39-71-741 |
| | 11 | 39-71-2314 |
| | 12 | Transfer of deposits and surplus funds |
| | 13 | Repealer |
| | 14 | Severability |
| | 15 | Effective date |
| 311 | 1 | 20-3-106 |
| | 2 | 20-3-324 |
| 312 | 1 | 45-5-503 |
| | 2 | 46-18-303 |
| 313 | 1 | Art. II, sec. 28, Mont. Const. |
| | 2 | Submission to electorate |
| 314 | 1 | 50-20-401 |
| | 2 | 50-20-109 |
| | 3 | Codification instruction |
| 315 | 1 | 53-1-301 |
| | 2 | 53-1-304 |
| | 3 | 53-30-111 |
| | 4 | 53-30-131 |
| | 5 | 53-30-132 |
| | 6 | Effective date |
| 316 | 1 | 53-1-107 |
| | 2 | 53-1-108 |
| | 3 | Codification instruction |
| 317 | 1 | 45-5-205 |
| 318 | 1 | 52-2-703 |
| | 2 | 52-2-711 |
| | 3 | Saving clause |
| | 4 | Effective date |
| 319 | 1 | 1-1-516 |
| | 2 | Codification instruction |
| 320 | 1 | 20-7-133 |
| | 2 | 20-4-301 |
| | 3 | Codification instruction |
| 321 | 1 | 60-1-207 |
| | 2 | 60-2-242 |
| | 3 | Codification instruction |
| 322 | 1 | 46-18-201 |
| | 2 | 46-18-1001 |
| | 3 | 46-18-1002 |
| | 4 | 46-18-1003 |
| | 5 | 53-1-203 |
| | 6 | 53-30-302 |
| | 7 | 53-30-303 |
| | 8 | 53-30-312 |
| | 9 | 53-30-313 |
| | 10 | 53-30-314 |
| | 11 | 53-30-315 |
| | 12 | 53-30-321 |
| | 13 | 53-30-322 |
| | 14 | 53-30-326 |
| | 15 | Repealer |
| | 16 | Coordination instruction |
| | 17 | Saving clause |
| 323 | 1 | 2-6-403 |
| | 2 | 20-1-212 |
| 324 | 1 | 60-4-401 |
| | 2 | 60-4-402 |
| | 3 | 60-4-403 |
| | 4 | Effective date |
| 325 | 1 | 69-3-1301 |
| | 2 | 69-3-1302 |
| | 3 | 69-3-1303 |
| | 4 | 69-3-1304 |

HeinOnline -- 1997 vol. III 3900 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 5 | 69-3-1305 |
| | 6 | Codification instruction |
| | 7 | Coordination instruction |
| | 8 | Effective date |
| 326 | 1 | 40-4-251 |
| | 2 | 40-4-252 |
| | 3 | 40-4-253 |
| | 4 | 40-4-254 |
| | 5 | 40-4-255 |
| | 6 | 40-4-256 |
| | 7 | 40-4-257 |
| | 8 | 40-4-258 |
| | 9 | 40-4-201 |
| | 10 | 40-4-208 |
| | 11 | Codification instruction |
| | 12 | Applicability |
| 327 | 1 | 7-6-1531 |
| | 2 | 7-6-1532 |
| | 3 | 7-6-1533 |
| | 4 | 7-6-1534 |
| | 5 | 7-6-1535 |
| | 6 | 7-6-1536 |
| | 7 | 7-6-1537 |
| | 8 | 7-6-1538 |
| | 9 | 7-6-1539 |
| | 10 | 7-6-1540 |
| | 11 | 7-6-1541 |
| | 12 | 7-6-1542 |
| | 13 | 7-6-1543 |
| | 14 | 7-6-1544 |
| | 15 | 7-6-1545 |
| | 16 | 7-6-1546 |
| | 17 | 7-6-1547 |
| | 18 | 7-6-1548 |
| | 19 | 7-6-1549 |
| | 20 | 7-6-1550 |
| | 21 | 7-6-4465 (renum. 7-6-1505) |
| | 22 | 7-6-4469 (renum. 7-6-1509) |
| | 23 | Codification instruction |
| | 24 | Saving clause |
| | 25 | Effective date |
| 328 | 1 | 27-1-221 |
| | 2 | Applicability |
| | 3 | Effective date |
| 329 | 1 | 75-20-231 |
| | 2 | 75-20-232 |
| | 3 | 75-20-223 |
| | 4 | 75-20-102 |
| | 5 | 75-20-104 |
| | 6 | 75-20-201 |
| | 7 | 75-20-207 |
| | 8 | 75-20-208 |
| | 9 | 75-20-211 |
| | 10 | 75-20-213 |
| | 11 | 75-20-215 |
| | 12 | 75-20-216 |
| | 13 | 75-20-225 |
| | 14 | 75-20-226 |
| | 15 | 75-20-301 |
| | 16 | 75-20-302 |
| | 17 | 75-20-303 |
| | 18 | 75-20-304 |
| | 19 | 75-20-402 |
| | 20 | 75-20-403 |
| | 21 | 75-20-406 |
| | 22 | 75-20-1202 |
| | 23 | 75-20-1205 |
| | 24 | Repealer |
| | 25 | Codification instruction |
| | 26 | Applicability |
| | 27 | Effective date |
| 330 | 1 | 85-2-316 |
| | 2 | 85-2-331 |
| | 3 | Effective date |
| 331 | 1 | 50-60-211 |
| | 2 | 50-60-212 |
| | 3 | 50-60-213 |
| | 4 | 50-60-214 |
| | 5 | 50-60-101 |
| | 6 | 50-60-201 |
| | 7 | 50-60-203 |
| | 8 | Codification instruction |
| | 9 | Applicability |
| 332 | 1 | 85-1-603 |
| | 2 | 85-1-613 |
| | 3 | 85-1-615 |
| | 4 | Applicability |
| | 5 | Effective date |
| 333 | 1 | 45-5-622 |
| 334 | 1 | 45-5-512 |
| | 2 | Codification instruction |
| | 3 | Applicability |
| 335 | 1 | 2-4-305 |
| | 2 | 2-4-306 |
| | 3 | Applicability |
| 336 | 1 | 87-2-308 |
| | 2 | 87-1-605 |
| | 3 | Codification instruction |
| 337 | 1 | 2-9-108 |
| | 2 | Severability |
| | 3 | Two-thirds vote required |
| | 4 | Effective date |
| 338 | 1 | 13-19-106 |
| | 2 | 13-19-206 |
| | 3 | 13-19-311 |
| 339 | 1 | 2-18-101 |
| | 2 | 2-18-102 |
| | 3 | 2-18-103 |
| | 4 | 2-18-104 |
| | 5 | 2-18-111 |
| | 6 | 2-18-304 |
| | 7 | 2-18-601 |
| | 8 | 2-18-603 |
| | 9 | 2-18-611 |

HeinOnline -- 1997 vol. III 3901 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 10 | 2-18-618 |
| | 11 | 39-29-101 |
| | 12 | 39-30-103 |
| | 13 | Repealer |
| | 14 | Effective date |
| 340 | 1 | 2-4-302 |
| | 2 | Effective date |
| 341 | 1 | 46-18-201 |
| | 2 | Coordination instruction |
| | 3 | Application |
| 342 | 1 | 60-1-208 |
| | 2 | Effective date |
| | 3 | Codification instruction |
| 343 | 1 | 25-1-201 |
| | 2 | 40-1-105 |
| | 3 | 40-1-213 |
| | 4 | 40-1-402 |
| | 5 | 40-4-103 |
| | 6 | 40-4-104 |
| | 7 | 40-4-105 |
| | 8 | 40-4-109 |
| | 9 | 40-4-110 |
| | 10 | 40-4-123 |
| | 11 | 40-4-201 |
| | 12 | 40-4-204 |
| | 13 | 40-4-205 |
| | 14 | 40-4-211 |
| | 15 | 40-4-212 |
| | 16 | 40-4-213 |
| | 17 | 40-4-214 |
| | 18 | 40-4-215 |
| | 19 | 40-4-233 |
| | 20 | 40-4-234 |
| | 21 | 40-4-216 |
| | 22 | 40-4-217 |
| | 23 | 40-4-219 |
| | 24 | 40-4-220 |
| | 25 | 40-4-221 |
| | 26 | 40-4-225 |
| | 27 | 40-4-226 |
| | 28 | 40-4-302 |
| | 29 | 40-4-307 |
| | 30 | 40-6-211 |
| | 31 | 40-6-221 |
| | 32 | 40-9-101 |
| | 33 | 40-9-102 |
| | 34 | 45-5-304 |
| | 35 | 45-5-634 |
| | 36 | 45-5-631 |
| | 37 | 45-5-632 |
| | 38 | 45-5-633 |
| | 39 | Repealer |
| | 40 | Codification instruction |
| | 41 | Saving clause |
| | 42 | Severability |
| | 43 | Applicability |
| 344 | 1 | 87-5-721 |
| 345 | 1 | 3-15-313 |
| | 2 | 3-15-402 |
| 346 | 1 | 23-2-702 |
| | 2 | 23-2-734 |
| | 3 | 50-60-104 |
| | 4 | Repealer |
| | 5 | Effective date |
| 347 | 1 | 5-12-205 |
| | 2 | 5-12-303 |
| | 3 | 17-4-107 |
| | 4 | 17-4-108 |
| | 5 | 17-7-102 |
| | 6 | 17-7-111 |
| | 7 | 17-7-112 |
| | 8 | 17-7-121 |
| | 9 | 17-7-122 |
| | 10 | 17-7-123 |
| | 11 | 17-7-124 |
| | 12 | 17-7-132 |
| | 13 | 17-7-138 |
| | 14 | 17-7-139 |
| | 15 | 17-7-204 |
| | 16 | 17-7-211 |
| | 17 | 17-7-301 |
| | 18 | 17-8-101 |
| | 19 | Repealer |
| | 20 | Effective date |
| 348 | 1 | 30-10-901 |
| | 2 | 30-10-902 |
| | 3 | 30-10-903 |
| | 4 | 30-10-904 |
| | 5 | 30-10-905 |
| | 6 | 30-10-906 |
| | 7 | 30-10-907 |
| | 8 | 30-10-908 |
| | 9 | 30-10-909 |
| | 10 | 30-10-910 |
| | 11 | 30-10-911 |
| | 12 | 30-10-912 |
| | 13 | 30-10-913 |
| | 14 | 30-10-914 |
| | 15 | 30-10-915 |
| | 16 | Report to legislature |
| | 17 | Codification instruction |
| | 18 | Termination |
| 349 | 1 | 69-3-831 |
| | 2 | 69-3-832 |
| | 8 | 69-3-833 |
| | 4 | 69-3-834 |
| | 5 | 69-3-835 |
| | 6 | 39-3-836 |
| | 7 | 69-3-837 |
| | 8 | 69-3-838 |
| | 9 | 69-3-839 |
| | 10 | 69-3-840 |
| | 11 | 69-3-841 |
| | 12 | 69-3-842 |

HeinOnline -- 1997 vol. III 3902 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 13 | 69-3-843 |
| | 14 | 69-3-844 |
| | 15 | 69-3-845 |
| | 16 | 69-3-846 |
| | 17 | 69-3-847 |
| | 18 | 69-3-848 |
| | 19 | 69-3-849 |
| | 20 | Voided by sec. 7, Ch. 325 (coordination section) |
| | 21 | 69-3-856 |
| | 22 | 69-3-857 |
| | 23 | 69-3-858 |
| | 24 | 69-3-859 |
| | 25 | 69-3-860 |
| | 26 | 69-3-861 |
| | 27 | 69-3-862 |
| | 28 | 2-4-102 |
| | 29 | 69-3-305 |
| | 30 | 69-3-803 |
| | 31 | 69-3-805 |
| | 32 | 69-3-806 |
| | 33 | 69-3-807 |
| | 34 | 69-3-1001 |
| | 35 | Telecommunications committee |
| | 36 | Appropriation |
| | 37 | Codification instruction |
| | 38 | Repealer |
| | 39 | Severability |
| | 40 | Effective date |
| | 41 | Termination |
| 350 | 1 | 50-51-102 |
| | 2 | 50-51-103 |
| | 3 | 50-51-201 |
| | 4 | 50-51-207 |
| | 5 | 50-51-212 |
| | 6 | 50-51-108 |
| | 7 | 50-52-102 |
| | 8 | 50-52-203 |
| | 9 | 50-52-211 |
| | 10 | Codification instruction |
| | 11 | Effective dates |
| 351 | 1 | 50-15-411 |
| | 2 | 50-15-412 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 352 | 1 | 25-2-118 |
| | 2 | 25-2-122 |
| 353 | 1 | 85-2-337 |
| | 2 | 85-2-338 |
| | 3 | 85-2-402 |
| | 4 | 85-2-440 |
| | 5 | Codification instruction |
| | 6 | Effective date |
| 354 | 1 | 23-5-152 |
| | 2 | 23-5-612 |
| | 3 | 23-5-614 |
| | 4 | 23-5-631 |
| | 5 | Effective dates |
| 355 | 1 | 87-1-301 |
| | 2 | 87-2-504 |
| | 3 | 87-2-512 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| | 6 | Termination |
| 356 | 1 | 3-15-205 |
| 357 | 1 | 50-60-104 |
| | 2 | 50-60-508 |
| | 3 | 50-60-604 |
| | 4 | Appropriation |
| | 5 | Effective date |
| 358 | 1 | 37-4-311 |
| | 2 | 37-4-312 |
| | 3 | 37-4-313 |
| | 4 | 37-4-314 |
| | 5 | Codification instruction |
| 359 | 1 | 27-1-736 |
| | 2 | Codification instruction |
| | 3 | Applicability |
| | 4 | Effective date |
| 360 | 1 | 37-60-315 |
| | 2 | 37-60-301 |
| | 3 | 37-60-309 |
| | 4 | 37-60-310 |
| | 5 | Codification instruction |
| | 6 | Effective date |
| 361 | 1 | 2-18-1203 |
| | 2 | 17-7-304 |
| | 3 | 19-2-706 |
| | 4 | Coordination instruction |
| | 5 | Effective date |
| 362 | 1 | 20-25-428 |
| | 2 | Notification to tribal governments |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 363 | 1 | Protective services professionals' pay schedules |
| | 2 | Report to legislature |
| | 3 | Effective date |
| 364 | 1 | 2-6-109 |
| | 2 | Repealer |
| 365 | 1 | 32-3-502 |
| | 2 | 32-3-608 |
| | 3 | 32-3-803 |
| | 4 | 32-3-804 |
| | 5 | 32-3-805 |
| | 6 | 32-3-807 |
| | 7 | 72-37-102 |
| | 8 | 72-37-103 |
| | 9 | 32-3-810 |
| | 10 | Codification instruction |
| 366 | 1 | 30-16-104 |

HeinOnline -- 1997 vol. III 3903 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 2 | 16-11-120 |
| | 3 | 16-11-122 |
| | 4 | 30-12-203 |
| | 5 | 30-13-203 |
| | 6 | 30-13-206 |
| | 7 | 30-13-210 |
| | 8 | 30-13-217 |
| | 9 | 30-16-103 |
| | 10 | 30-16-301 |
| | 11 | 30-16-302 |
| | 12 | 50-50-201 |
| | 13 | 50-50-203 |
| | 14 | 50-50-205 |
| | 15 | 50-50-207 |
| | 16 | 50-50-214 |
| | 17 | 80-7-106 |
| | 18 | 81-9-201 |
| | 19 | 81-20-201 |
| | 20 | 82-15-105 |
| | 21 | Codification instruction |
| | 22 | Coordination instruction |
| 367 | 1 | 1-1-215 |
| 368 | 1 | 15-31-102 |
| | 2 | Effective date — retroactive applicability |
| 369 | 1 | 15-31-141 |
| | 2 | 15-31-701 |
| | 3 | 15-31-702 |
| | 4 | Effective date — applicability — retroactive applicability |
| 370 | 1 | 19-2-1010 |
| | 2 | 19-8-905 |
| | 3 | 19-2-908 |
| | 4 | 2-6-109 |
| | 5 | 19-2-303 |
| | 6 | 19-2-701 |
| | 7 | 19-2-702 |
| | 8 | 19-2-704 |
| | 9 | 19-2-801 |
| | 10 | 19-2-802 |
| | 11 | 19-2-907 |
| | 12 | 19-3-401 |
| | 13 | 19-3-412 |
| | 14 | 19-3-504 |
| | 15 | 19-3-511 |
| | 16 | Voided by sec. 41 (coordination section) |
| | 17 | 19-3-1015 |
| | 18 | 19-3-1104 |
| | 19 | Voided by sec. 41 (coordination section) |
| | 20 | 19-5-103 |
| | 21 | Voided by sec. 41 (coordination section) |
| | 22 | 19-5-801 |
| | 23 | 19-6-501 |
| | 24 | 19-6-612 |
| | 25 | 19-7-501 |
| | 26 | 19-7-612 |
| | 27 | Voided by sec. 41 (coordination section) |
| | 28 | 19-7-801 |
| | 29 | 19-8-601 |
| | 30 | 19-8-712 |
| | 31 | Voided by sec. 41 (coordination section) |
| | 32 | 19-9-801 |
| | 33 | 19-9-904 |
| | 34 | 19-9-905 |
| | 35 | 19-13-701 |
| | 36 | 19-13-804 |
| | 37 | 19-13-805 |
| | 38 | 19-17-102 |
| | 39 | Repealer |
| | 40 | Codification instruction |
| | 41 | Coordination instructions |
| | 42 | Retroactive applicability |
| | 43 | Effective date |
| 371 | 1 | 16-4-202 |
| | 2 | 16-4-501 |
| | 3 | Saving clause |
| | 4 | Effective date |
| 372 | 1 | 75-10-103 |
| | 2 | Effective date |
| 373 | 1 | 75-10-203 |
| | 2 | 75-10-204 |
| | 3 | 75-10-216 |
| | 4 | Waste tire study |
| | 5 | Codification instruction |
| | 6 | Applicability |
| | 7 | Effective date |
| 374 | 1 | 32-5-102 |
| | 2 | 32-5-103 |
| | 3 | 32-5-203 |
| | 4 | 32-5-302 |
| | 5 | 32-5-307 |
| | 6 | 32-5-503 |
| | 7 | 32-5-505 |
| | 8 | Saving clause |
| 375 | 1 | 41-5-523 |
| | 2 | 44-6-101 |
| | 3 | 46-18-201 |
| | 4 | 46-23-501 |
| | 5 | 46-23-502 |
| | 6 | 46-23-503 |
| | 7 | 46-23-504 |
| | 8 | 46-23-505 |
| | 9 | 46-23-506 |
| | 10 | 46-23-507 |
| | 11 | 46-23-508 |
| | 12 | 46-23-509 |
| | 13 | 46-23-510 |
| | 14 | 46-23-511 |
| | 15 | Repealer |

HeinOnline -- 1997 vol. III 3904 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 16 | Codification instruction |
| | 17 | Two-thirds vote required |
| | 18 | Applicability |
| 376 | 1 | 81-3-201 |
| | 2 | 81-3-211 |
| | 3 | Effective date |
| 377 | 1 | 5-13-304 |
| | 2 | 18-1-118 |
| | 3 | Effective date |
| | 4 | Termination |
| 378 | 1 | 46-18-102 |
| | 2 | 46-18-301 |
| | 3 | 46-21-101 |
| | 4 | 46-21-102 |
| | 5 | 46-21-105 |
| | 6 | 46-21-201 |
| | 7 | Attorney general petition to supreme court for competency standards |
| | 8 | Severability |
| | 9 | Applicability |
| | 10 | Effective dates |
| 379 | 1 | 50-60-510 |
| | 2 | 50-60-604 |
| 380 | 1 | 53-6-901 |
| | 2 | 53-6-902 |
| | 3 | 53-6-903 |
| | 4 | 53-6-904 |
| | 5 | 53-6-905 |
| | 6 | 53-6-906 |
| | 7 | 53-6-907 |
| | 8 | 53-6-908 |
| | 9 | 53-6-909 |
| | 10 | 53-6-910 |
| | 11 | Codification instruction |
| | 12 | Effective date |
| | 13 | Termination |
| 381 | 1 | 41-5-704 |
| | 2 | 41-5-705 |
| | 3 | Effective date |
| 382 | 1 | 32-8-102 |
| | 2 | 32-8-101 |
| | 3 | 32-8-103 |
| | 4 | 32-8-104 |
| | 5 | 32-8-105 |
| | 6 | 32-8-106 |
| | 7 | 32-8-107 |
| | 8 | 32-8-201 |
| | 9 | 32-8-202 |
| | 10 | 32-8-203 |
| | 11 | 32-8-204 |
| | 12 | 32-8-205 |
| | 13 | 32-8-301 |
| | 14 | 32-8-302 |
| | 15 | 32-8-303 |
| | 16 | 32-8-304 |
| | 17 | 32-8-306 |
| | 18 | 32-8-308 |
| | 19 | 32-8-309 |
| | 20 | 32-8-311 |
| | 21 | 32-8-312 |
| | 22 | 32-8-314 |
| | 23 | 32-8-315 |
| | 24 | 32-8-316 |
| | 25 | 32-8-401 |
| | 26 | 32-8-402 |
| | 27 | 32-8-403 |
| | 28 | 32-8-404 |
| | 29 | 32-8-501 |
| | 30 | 32-8-502 |
| | 31 | 32-8-503 |
| | 32 | 32-8-504 |
| | 33 | 32-8-505 |
| | 34 | 32-8-506 |
| | 35 | 32-8-507 |
| | 36 | 32-8-508 |
| | 37 | 32-8-509 |
| | 38 | 32-8-510 |
| | 39 | 32-8-515 |
| | 40 | 32-8-516 |
| | 41 | 32-8-517 |
| | 42 | 32-8-518 |
| | 43 | 32-8-521 |
| | 44 | 32-8-522 |
| | 45 | 32-8-523 |
| | 46 | 32-8-524 |
| | 47 | 25-9-801 |
| | 48 | 25-9-802 |
| | 49 | 25-9-803 |
| | 50 | 25-9-804 |
| | 51 | 25-9-805 |
| | 52 | 25-9-806 |
| | 53 | 25-9-807 |
| | 54 | 25-9-808 |
| | 55 | 25-9-809 |
| | 56 | 15-31-801 |
| | 57 | 15-31-802 |
| | 58 | 15-31-803 |
| | 59 | 15-31-804 |
| | 60 | 15-31-805 |
| | 61 | 15-31-806 |
| | 62 | 15-31-807 |
| | 63 | 15-31-808 |
| | 64 | 70-9-701 |
| | 65 | 32-8-601 |
| | 66 | 32-8-602 |
| | 67 | 32-8-603 |
| | 68 | 15-1-501 |
| | 69 | 15-31-101 |
| | 70 | 15-31-102 |
| | 71 | 25-9-506 |
| | 72 | 25-9-603 |
| | 73 | 25-9-609 |
| | 74 | 32-1-101 |

HeinOnline -- 1997 vol. III 3905 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 75 | 32-1-102 |
| | 76 | 32-1-202 |
| | 77 | 32-1-301 |
| | 78 | 32-1-446 |
| | 79 | 32-1-461 |
| | 80 | 32-1-462 |
| | 81 | 32-1-464 |
| | 82 | 32-1-468 |
| | 83 | 32-1-473 |
| | 84 | 32-1-491 |
| | 85 | 32-1-492 |
| | 86 | 32-1-501 |
| | 87 | Severability |
| | 88 | Codification instruction |
| | 89 | Effective dates |
| | 90 | Termination |
| 383 | 1 | 15-30-121 |
| | 2 | Coordination instructions |
| | 3 | Effective date — retroactive applicability |
| 384 | 1 | 3-5-602 |
| | 2 | 25-1-202 |
| 385 | 1 | 39-71-201 |
| | 2 | 39-71-201 |
| | 3 | 50-74-219 |
| | 4 | 2-15-1709 |
| | 5 | Required report |
| | 6 | Codification instruction |
| | 7 | Effective dates — applicability |
| | 8 | Termination |
| 386 | 1 | 39-71-401 |
| 387 | 1 | Time limits |
| | 2 | Totals not appropriations |
| | 3 | Appropriations |
| | 4 | Effective date |
| 388 | 1 | 2-15-1010 |
| | 2 | 20-3-106 |
| | 3 | Effective date |
| 389 | 1 | 20-5-324 |
| | 2 | 20-9-141 |
| | 3 | Effective date |
| 390 | 1 | 33-1-1301 |
| | 2 | 33-1-1302 |
| | 3 | 33-1-1303 |
| | 4 | 30-10-309 |
| | 5 | 30-10-310 |
| | 6 | Codification instruction |
| 391 | 1 | 5-23-101 |
| | 2 | 5-23-102 |
| | 3 | 5-23-103 |
| | 4 | 5-23-104 |
| | 5 | 5-23-105 |
| | 6 | 5-23-106 |
| | 7 | 5-23-107 |
| | 8 | 5-23-108 |
| | 9 | 5-23-109 |
| | 10 | Appropriation |
| | 11 | Codification instruction |
| | 12 | Transition |
| | 13 | Effective dates |
| | 14 | Termination |
| 392 | 1 | 18-2-101 |
| | 2 | Effective date |
| 393 | 1 | 2-15-3404 |
| | 2 | 87-5-601 |
| | 3 | 87-5-602 |
| | 4 | 87-5-603 |
| | 5 | 87-5-605 |
| | 6 | Effective date |
| 394 | 1 | 49-4-203 |
| | 2 | 49-4-214 |
| 395 | 1 | 30-10-105 |
| | 2 | Effective date |
| 396 | 1 | 2-15-2212 |
| | 2 | 53-19-301 |
| | 3 | 53-19-302 |
| | 4 | 53-19-303 |
| | 5 | 53-19-304 |
| | 6 | 53-19-306 |
| | 7 | 53-19-307 |
| | 8 | 53-19-308 |
| | 9 | 53-19-310 |
| | 10 | Effective date |
| 397 | 1 | 7-11-104 |
| | 2 | 20-9-404 |
| | 3 | 20-9-405 |
| | 4 | Applicability |
| 398 | 1 | 40-5-232 |
| 399 | 1 | 16-1-106 |
| | 2 | 16-1-411 |
| | 3 | 16-2-301 |
| | 4 | 16-3-418 |
| | 5 | Effective date |
| 400 | 1 | 27-1-709 |
| | 2 | Two-thirds vote required |
| | 3 | Applicability |
| 401 | 1 | 70-24-103 |
| | 2 | 70-24-303 |
| | 3 | 70-24-430 |
| | 4 | 70-24-436 |
| | 5 | 70-25-201 |
| 402 | 1 | 23-2-517 |
| | 2 | 23-2-615.1 |
| | 3 | 23-2-803 |
| | 4 | 61-3-522 |
| | 5 | 61-3-523 |
| | 6 | 61-3-527 |
| | 7 | 67-3-206 |
| | 8 | Coordination instructions |
| | 9 | Effective dates — applicability |
| 403 | 1 | 20-6-213 |
| | 2 | 20-6-314 |
| | 3 | 20-6-320 |

HeinOnline -- 1997 vol. III 3906 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 4 | 20-6-703 |
| | 5 | 20-6-322 |
| | 6 | Codification instruction |
| | 7 | Effective date |
| 404 | 1 | 39-71-116 |
| 405 | 1 | 41-3-701 |
| | 2 | 41-3-703 |
| | 3 | 41-3-705 |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 406 | 1 | 2-6-103 |
| | 2 | Effective date |
| 407 | 1 | 15-18-413 |
| | 2 | Effective date |
| 408 | 1 | 19-20-405 |
| | 2 | 19-20-407 |
| | 3 | 19-20-410 |
| | 4 | Effective date |
| 409 | 1 | 15-6-136 |
| 410 | 1 | 33-22-134 |
| | 2 | 33-22-135 |
| | 3 | 37-3-333 |
| | 4 | 33-22-101 |
| | 5 | 33-22-1827 |
| | 6 | 33-31-111 |
| | 7 | 33-35-306 |
| | 8 | Codification instruction |
| | 9 | Applicability |
| 411 | 1 | Sec. 5, Ch. 542, L. 1995 |
| | 2 | Effective date |
| 412 | 1 | 50-50-102 |
| | 2 | 50-51-101 |
| | 3 | 50-51-102 |
| | 4 | 50-51-103 |
| | 5 | 50-51-201 |
| | 6 | 50-51-207 |
| | 7 | 50-51-401 |
| | 8 | Coordination instruction |
| | 9 | Effective dates |
| 413 | 1 | 33-22-1703 |
| | 2 | 33-22-1707 |
| | 3 | 33-31-102 |
| | 4 | 33-31-111 |
| | 5 | 33-31-211 |
| | 6 | 33-31-216 |
| | 7 | 33-31-313 |
| | 8 | 33-36-101 |
| | 9 | 33-36-102 |
| | 10 | 33-36-103 |
| | 11 | 33-36-104 |
| | 12 | 33-36-105 |
| | 13 | 33-36-201 |
| | 14 | 33-36-202 |
| | 15 | 33-36-203 |
| | 16 | 33-36-204 |
| | 17 | 33-36-205 |
| | 18 | 33-36-209 |
| | 19 | 33-36-210 |
| | 20 | 33-36-211 |
| | 21 | 33-36-212 |
| | 22 | 33-36-213 |
| | 23 | 33-36-301 |
| | 24 | 33-36-302 |
| | 25 | 33-36-303 |
| | 26 | 33-36-304 |
| | 27 | 33-36-305 |
| | 28 | 33-36-401 |
| | 29 | 33-36-402 |
| | 30 | Codification instruction |
| | 31 | Severability |
| | 32 | Applicability |
| | 33 | Effective dates |
| 414 | 1 | 15-7-108 |
| | 2 | 15-7-102 |
| | 3 | 15-8-201 |
| | 4 | 15-10-305 |
| | 5 | Codification instruction |
| | 6 | Applicability |
| | 7 | Effective date — rulemaking |
| 415 | 1 | 15-37-117 |
| | 2 | 15-38-106 |
| | 3 | 15-38-202 |
| | 4 | 75-10-701 |
| | 5 | 75-10-702 |
| | 6 | 75-10-704 |
| | 7 | 75-10-715 |
| | 8 | 75-10-719 |
| | 9 | 75-10-720 |
| | 10 | 75-10-724 |
| | 11 | 75-10-726 |
| | 12 | 75-10-742 |
| | 13 | 75-10-743 |
| | 14 | 75-10-744 |
| | 15 | 75-10-745 |
| | 16 | 75-10-746 |
| | 17 | 75-10-747 |
| | 18 | 75-10-748 |
| | 19 | 75-10-749 |
| | 20 | 75-10-750 |
| | 21 | 75-10-751 |
| | 22 | 75-10-752 |
| | 23 | Sec. 16, Ch. 584, L. 1995 |
| | 24 | Sec. 18, Ch. 584, L. 1995 |
| | 25 | Sec. 27, Ch. 584, L. 1995 |
| | 26 | Codificatien instruction |
| | 27 | Coordination instructions |
| | 28 | Severability |
| | 29 | Effective dates |
| | 30 | Termination |
| 416 | 1 | 33-15-403 |
| | 2 | 33-20-128 |
| | 3 | 33-22-101 |
| | 4 | 33-22-109 |
| | 5 | 33-22-110 |

HeinOnline -- 1997 vol. III 3907 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 6 | 33-22-130 |
| | 7 | 33-22-242 |
| | 8 | 33-22-504 |
| | 9 | 33-22-703 |
| | 10 | 33-22-1107 |
| | 11 | 33-22-1108 |
| | 12 | 33-22-1111 |
| | 13 | 33-22-1113 |
| | 14 | 33-22-1114 |
| | 15 | 33-22-1115 |
| | 16 | 33-22-1121 |
| | 17 | 33-22-1501 |
| | 18 | 33-22-1512 |
| | 19 | 33-22-1513 |
| | 20 | 33-22-1516 |
| | 21 | 33-22-1803 |
| | 22 | 33-22-1804 |
| | 23 | 33-22-1809 |
| | 24 | 33-22-1811 |
| | 25 | 33-22-1819 |
| | 26 | 33-22-1827 |
| | 27 | 33-22-1828 |
| | 28 | 33-30-1001 |
| | 29 | 33-31-102 |
| | 30 | 33-31-111 |
| | 31 | 33-31-322 |
| | 32 | 33-35-306 |
| | 33 | 33-22-140 |
| | 34 | 33-22-141 |
| | 35 | 33-22-523 |
| | 36 | 33-22-142 |
| | 37 | 33-22-246 |
| | 38 | 33-22-247 |
| | 39 | 33-22-514 |
| | 40 | 33-22-524 |
| | 41 | 33-22-1523 |
| | 42 | 33-22-525 |
| | 43 | 33-31-307 |
| | 44 | 33-22-526 |
| | 45 | 33-22-143 |
| | 46 | 33-22-1122 |
| | 47 | 33-22-1123 |
| | 48 | 33-22-1124 |
| | 49 | 33-22-1125 |
| | 50 | Codification instruction |
| | 51 | Coordination instruction |
| | 52 | Applicability |
| | 53 | Effective dates |
| | 54 | Termination |
| 417 | 1 | Competency-based personnel systems |
| | 2 | 2-16-405 |
| | 3 | 2-18-103 |
| | 4 | 2-18-301 |
| | 5 | 2-18-303 |
| | 6 | 2-18-304 |
| | 7 | 2-18-312 |
| | 8 | 2-18-313 |
| | 9 | 2-18-315 |
| | 10 | 2-18-703 |
| | 11 | 2-18-1102 |
| | 12 | 2-18-1103 |
| | 13 | 2-18-1105 |
| | 14 | 2-18-1106 |
| | 15 | 5-2-301 |
| | 16 | 13-37-106 |
| | 17 | Sec. 13, Ch. 23, Sp. L. November 1993 |
| | 18 | Repealer |
| | 19 | Appropriation |
| | 20 | Codification instruction |
| | 21 | Effective date |
| 418 | 1 | 10-1-121 |
| | 2 | 20-25-421 |
| | 3 | Codification instruction |
| | 4 | Effective dates |
| 419 | 1 | 19-20-621 |
| | 2 | 19-21-203 |
| | 3 | Repealer |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 420 | 1 | 2-15-2302 |
| | 2 | 2-15-2302 |
| | 3 | 46-23-210 |
| | 4 | Effective dates |
| | 5 | Retroactive applicability |
| | 6 | Termination |
| 421 | 1 | 7-4-2105 |
| | 2 | 7-4-2205 |
| 422 | 1 | 2-17-105 |
| | 2 | 7-15-4286 |
| | 3 | 7-15-4292 |
| | 4 | 10-3-312 |
| | 5 | 10-4-301 |
| | 6 | 10-4-302 |
| | 7 | 15-1-501 |
| | 8 | 15-30-153 |
| | 9 | 15-35-108 |
| | 10 | 15-36-324 |
| | 11 | 15-38-106 |
| | 12 | 15-70-125 |
| | 13 | 16-1-306 |
| | 14 | 16-1-404 |
| | 15 | 16-1-406 |
| | 16 | 16-1-409 |
| | 17 | 16-11-119 |
| | 18 | 16-11-206 |
| | 19 | 17-1-508 |
| | 20 | 17-5-403 |
| | 21 | 17-5-404 |
| | 22 | 17-5-405 |
| | 23 | 17-5-408 |
| | 24 | 17-5-804 |
| | 25 | 17-6-201 |

HeinOnline -- 1997 vol. III 3908 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 26 | 17-7-502 |
| | 27 | 17-7-502 |
| | 28 | 19-19-205 |
| | 29 | 20-3-108 |
| | 30 | 20-8-111 |
| | 31 | 20-9-360 |
| | 32 | 20-9-361 |
| | 33 | 32-1-537 |
| | 34 | 37-43-204 |
| | 35 | 39-71-503 |
| | 36 | 39-71-531 |
| | 37 | 39-71-533 |
| | 38 | 39-71-2354 |
| | 39 | 39-71-2503 |
| | 40 | 39-71-2504 |
| | 41 | 49-2-510 |
| | 42 | 50-5-112 |
| | 43 | 50-5-113 |
| | 44 | 50-5-232 |
| | 45 | 50-40-206 |
| | 46 | 53-6-150 |
| | 47 | 53-24-108 |
| | 48 | 60-2-220 |
| | 49 | 60-11-120 |
| | 50 | 60-11-123 |
| | 51 | 61-3-509 |
| | 52 | 61-5-121 |
| | 53 | 75-5-1108 |
| | 54 | 75-6-214 |
| | 55 | 75-10-954 |
| | 56 | 76-12-123 |
| | 57 | 77-1-505 |
| | 58 | 77-2-323 |
| | 59 | 77-2-328 |
| | 60 | 77-5-305 |
| | 61 | 82-11-136 |
| | 62 | 85-1-220 |
| | 63 | 90-3-301 |
| | 64 | 90-7-220 |
| | 65 | 90-7-221 |
| | 66 | Repealer |
| | 67 | Coordination |
| | 68 | Effective dates — termination |
| 423 | 1 | 20-1-401 |
| | 2 | 20-1-402 |
| | 3 | 20-1-404 |
| | 4 | 20-1-407 |
| | 5 | Repealer |
| 424 | 1 | 40-1-401 |
| 425 | 1 | 20-25-307 |
| 426 | 1 | 7-23-4201 |
| | 2 | 7-23-4202 |
| | 3 | 7-23-4203 |
| | 4 | Codification instruction |
| | 5 | Applicability |
| 427 | 1 | 20-10-104 |
| | 2 | 20-10-126 |
| 428 | 1 | 2-15-150 |
| | 2 | Termination |
| | 3 | Codification instruction |
| 429 | 1 | 27-1-705 |
| | 2 | 27-1-706 |
| | 3 | 25-9-411 |
| | 4 | 27-1-702 |
| | 5 | 27-1-703 |
| | 6 | 27-1-719 |
| | 7 | 28-1-301 |
| | 8 | 28-11-311 |
| | 9 | Severability |
| | 10 | Applicability |
| | 11 | Contingent effective dates |
| 430 | 1 | 20-1-301 |
| | 2 | 20-1-302 |
| | 3 | 20-1-304 |
| | 4 | 20-3-106 |
| | 5 | 20-6-209 |
| | 6 | 20-7-705 |
| | 7 | 20-9-311 |
| | 8 | 20-9-801 |
| | 9 | 20-9-802 |
| | 10 | 20-9-806 |
| | 11 | Repealer |
| | 12 | Effective date |
| 431 | 1 | 61-1-133 |
| | 2 | 61-8-105 |
| | 3 | 61-9-101 |
| | 4 | 61-9-105 |
| | 5 | 61-9-109 |
| | 6 | 61-9-203 |
| | 7 | 61-9-204 |
| | 8 | 61-9-206 |
| | 9 | 61-9-207 |
| | 10 | 61-9-208 |
| | 11 | 61-9-209 |
| | 12 | 61-9-213 |
| | 13 | 61-9-215 |
| | 14 | 61-9-216 |
| | 15 | 61-9-217 |
| | 16 | 61-9-218 |
| | 17 | 61-9-220 |
| | 18 | 61-9-221 |
| | 19 | 61-9-226 |
| | 20 | 61-9-227 |
| | 21 | 61-9-308 |
| | 22 | 61-9-309 |
| | 23 | 61-9-310 |
| | 24 | 61-9-311 |
| | 25 | 61-9-312 |
| | 26 | 61-9-401 |
| | 27 | 61-9-402 |
| | 28 | 61-9-404 |
| | 29 | 61-9-405 |
| | 30 | 61-9-407 |
| | 31 | 61-9-408 |

HeinOnline -- 1997 vol. III 3909 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 32 | 61-9-409 |
| | 33 | 61-9-414 |
| | 34 | 61-9-415 |
| | 35 | 61-9-416 |
| | 36 | 61-9-417 |
| | 37 | 61-9-419 |
| | 38 | 61-9-420 |
| | 39 | 61-9-423 |
| | 40 | 61-9-430 |
| | 41 | 61-9-516 |
| | 42 | Repealer |
| | 43 | Codification instruction |
| 432 | 1 | 40-5-248 |
| | 2 | Applicability |
| 433 | 1 | 45-5-210 |
| | 2 | 45-5-202 |
| | 3 | Codification instruction |
| | 4 | Applicability |
| | 5 | Effective date |
| 434 | 1 | Appropriations from renewable resource grant and loan state special revenue account |
| | 2 | Condition of grants |
| | 3 | Conditions for grants |
| | 4 | Appropriations established |
| | 5 | Sec. 1, Ch. 613, L. 1993 |
| | 6 | Sec. 1, Ch. 512, L. 1995 |
| | 7 | Severability |
| | 8 | Effective dates |
| 435 | 1 | 45-8-361 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 436 | 1 | 85-1-102 |
| | 2 | 85-1-601 |
| | 3 | 85-1-602 |
| | 4 | 85-1-605 |
| | 5 | 85-1-611 |
| | 6 | 85-1-613 |
| | 7 | Notification to tribal governments |
| | 8 | Effective date |
| 437 | 1 | 20-9-306 |
| | 2 | 20-9-306 |
| | 3 | 20-9-375 |
| | 4 | Appropriations |
| | 5 | Effective dates — applicability |
| | 6 | Termination |
| 438 | 1 | 20-3-107 |
| | 2 | 20-4-203 |
| | 3 | 20-4-204 |
| | 4 | 20-4-205 |
| | 5 | 20-4-206 |
| | 6 | 20-4-207 |
| | 7 | 20-4-208 |
| | 8 | 20-3-210 |
| | 9 | Saving clause |
| | 10 | Effective date |
| 439 | 1 | 2-18-501 |
| | 2 | 2-18-502 |
| | 3 | 2-18-503 |
| | 4 | Effective date |
| 440 | 1 | 2-17-321 |
| | 2 | 2-17-322 |
| | 3 | 2-17-323 |
| | 4 | 75-10-805 |
| | 5 | 87-1-272 |
| 441 | 1 | 85-2-343 |
| 442 | 1 | 19-20-805 |
| | 2 | 19-20-716 |
| | 3 | 19-20-106 |
| | 4 | 19-20-717 |
| | 5 | 19-20-101 |
| | 6 | 19-20-104 |
| | 7 | 19-20-208 |
| | 8 | 19-20-305 |
| | 9 | 19-20-409 |
| | 10 | 19-20-412 |
| | 11 | 19-20-503 |
| | 12 | 19-20-602 |
| | 13 | 19-20-603 |
| | 14 | 19-20-605 |
| | 15 | 19-20-702 |
| | 16 | 19-20-703 |
| | 17 | 19-20-706 |
| | 18 | 19-20-711 |
| | 19 | 19-20-712 |
| | 20 | 19-20-713 |
| | 21 | 19-20-715 |
| | 22 | 19-20-801 |
| | 23 | 19-20-804 |
| | 24 | 19-20-902 |
| | 25 | 19-20-903 |
| | 26 | 19-20-904 |
| | 27 | 19-20-905 |
| | 28 | 19-20-1001 |
| | 29 | 19-20-1002 |
| | 30 | Codification instruction |
| | 31 | Coordination instruction |
| | 32 | Retroactive applicability |
| | 33 | Effective date |
| 443 | 1 | 18-1-101 |
| | 2 | 18-4-122 |
| | 3 | 18-4-123 |
| | 4 | 18-4-126 |
| | 5 | 18-4-132 |
| | 6 | 18-4-133 |
| | 7 | 18-4-141 |
| | 8 | 18-4-224 |
| | 9 | 18-4-241 |
| | 10 | 18-4-242 |
| | 11 | 18-4-302 |
| | 12 | 18-4-303 |
| | 13 | 18-4-304 |

HeinOnline -- 1997 vol. III 3910 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 14 | 18-4-305 |
| | 15 | 18-4-309 |
| | 16 | 18-4-310 |
| | 17 | 18-4-312 |
| | 18 | 18-4-402 |
| | 19 | 18-8-211 |
| | 20 | 60-2-112 |
| | 21 | Repealer |
| | 22 | Severability |
| | 23 | Retroactive applicability |
| | 24 | Effective dates |
| 444 | 1 | 15-38-201 |
| | 2 | 15-38-202 |
| | 3 | 15-38-203 |
| | 4 | 75-1-1101 |
| | 5 | 85-1-604 |
| | 6 | 85-2-905 |
| | 7 | 90-2-1104 |
| | 8 | Effective date |
| 445 | 1 | 17-7-502 |
| | 2 | 19-9-702 |
| | 3 | 19-9-1007 |
| | 4 | 19-13-604 |
| | 5 | 19-13-1007 |
| | 6 | Voided by sec. 8(2)(c) (coordination section) |
| | 7 | Voided by sec. 8(2)(d) (coordination section) |
| | 8 | Coordination instruction |
| | 9 | Effective date |
| 446 | 1 | 20-26-1115 |
| | 2 | 20-26-1116 |
| | 3 | 20-26-1117 |
| | 4 | 20-26-1118 |
| | 5 | 20-26-1119 |
| | 6 | 20-26-1120 |
| | 7 | 20-26-1121 |
| | 8 | 20-26-1101 |
| | 9 | Voided by sec. 11 |
| | 10 | Codification instruction |
| | 11 | Required vote — voidness |
| 447 | 1 | Definitions |
| | 2 | Appropriation of bond proceeds and approval of information technology information projects |
| | 3 | Authorization of bonds |
| | 4 | Planning and design |
| | 5 | Financial plans to be approved |
| | 6 | Allocation of selected debt service costa |
| | 7 | Agreements for other funding sources |
| | 8 | Expenditures |
| | 9 | Two-thirds vote required |
| | 10 | Severability |
| | 11 | Effective date |
| 448 | 1 | 10-4-101 |
| | 2 | 10-4-102 |
| | 3 | 10-4-103 |
| | 4 | 10-4-111 |
| | 5 | 10-4-112 |
| | 6 | 10-4-113 |
| | 7 | 10-4-125 |
| | 8 | 10-4-126 |
| | 9 | 10-4-201 |
| | 10 | 10-4-202 |
| | 11 | 10-4-301 |
| | 12 | 10-4-302 |
| | 13 | 10-4-303 |
| | 14 | 10-4-311 |
| | 15 | 10-4-312 |
| | 16 | Codification instruction |
| | 17 | Applicability |
| | 18 | Effective dates |
| 449 | 1 | 77-1-405 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 450 | 1 | 41-5-603 |
| 451 | 1 | 2-15-213 |
| 452 | 1 | 61-6-304 |
| | 2 | Effective date |
| 453 | 1 | 87-3-141 |
| | 2 | 87-3-142 |
| 454 | 1 | 80-8-107 |
| | 2 | Local implementation |
| 455 | 1 | 18-3-101 |
| | 2 | 18-3-105 |
| | 3 | 18-3-110 |
| | 4 | 18-3-111 |
| | 5 | 53-1-203 |
| | 6 | 53-30-505 |
| | 7 | Approval of projects — bonds |
| | 8 | Repealer |
| | 9 | Codification instruction |
| | 10 | Two-thirds vote required |
| | 11 | Effective date |
| 456 | 1 | 33-17-1203 |
| | 2 | 46-9-503 |
| 457 | 1 | 19-13-104 |
| | 2 | 19-13-301 |
| | 3 | 19-13-601 |
| | 4 | Voided by sec. 8(4)(b), Ch. 445 (coordination section) |
| | 5 | 19-13-701 |
| | 6 | 19-13-704 |
| | 7 | 19-13-803 |
| | 8 | 19-13-902 |
| | 9 | Voided by sec. 8(6), Ch. 445 (coordination section) |
| | 10 | 19-18-606 |
| | 11 | Repealer |

HeinOnline -- 1997 vol. III 3911 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 12 | Coordination instructions |
| | 13 | Effective date |
| 458 | 1 | 2-7-503 |
| | 2 | 7-6-4104 |
| | 3 | 7-6-4140 |
| | 4 | 7-6-4141 |
| | 5 | 7-6-4121 |
| | 6 | 7-6-4123 |
| | 7 | 7-6-4124 |
| | 8 | 7-6-4134 |
| | 9 | 7-6-4135 |
| | 10 | 7-6-4202 |
| | 11 | 7-6-4205 |
| | 12 | 7-6-4207 |
| | 13 | 7-6-4208 |
| | 14 | 7-6-4209 |
| | 15 | 7-6-4260 |
| | 16 | 7-6-4261 |
| | 17 | 7-6-4262 |
| | 18 | 7-6-4263 |
| | 19 | 7-6-4264 |
| | 20 | 7-6-4265 |
| | 21 | 7-6-4266 |
| | 22 | 7-6-4267 |
| | 23 | 7-6-4270 |
| | 24 | 7-6-4234 |
| | 25 | 7-6-4271 |
| | 26 | 7-6-4237 |
| | 27 | 7-6-4240 |
| | 28 | 7-6-4272 |
| | 29 | Repealer |
| | 30 | Codification instruction |
| | 31 | Applicability |
| | 32 | Effective date |
| 459 | 1 | 7-4-4111 |
| | 2 | 7-5-4302 |
| | 3 | 7-5-4306 |
| | 4 | 7-7-2209 |
| | 5 | 7-7-4208 |
| | 6 | 7-7-4251 |
| | 7 | 7-7-4626 |
| | 8 | 7-11-1102 |
| | 9 | 7-12-2171 |
| | 10 | 7-12-4169 |
| | 11 | 7-12-4203 |
| | 12 | 7-13-2208 |
| | 13 | 7-14-2526 |
| | 14 | 7-16-4104 |
| | 15 | 7-33-2404 |
| | 16 | 7-5-140 |
| | 17 | Codification instruction |
| | 18 | Effective dates |
| 460 | 1 | 77-1-125 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 461 | 1 | 77-1-130 |
| | 2 | 77-1-131 |
| | 3 | 17-7-502 |
| | 4 | Codification instruction |
| | 5 | Termination |
| 462 | 1 | 61-3-468 |
| | 2 | Codification instruction |
| | 3 | Retroactive applicability |
| | 4 | Effective date |
| 463 | 1 | 7-6-2514 |
| | 2 | 15-6-134 |
| | 3 | 15-7-102 |
| | 4 | 15-7-111 |
| | 5 | 15-10-401 |
| | 6 | 15-10-402 |
| | 7 | 15-10-412 |
| | 8 | 15-36-323 |
| | 9 | 77-1-208 |
| | 10 | Property tax committee |
| | 11 | Extension of 1997 deadlines relating to property taxation |
| | 12 | Appropriation |
| | 13 | Appropriation carryover |
| | 14 | Repealer |
| | 15 | Effective date — retroactive applicability |
| 464 | 1 | 72-16-313 |
| | 2 | Retroactive applicability |
| | 3 | Termination — applicability |
| | 4 | Effective date |
| 465 | 1 | 16-4-420 |
| | 2 | 16-4-421 |
| | 3 | 16-4-422 |
| | 4 | 16-4-423 |
| | 5 | 23-5-119 |
| | 6 | 16-4-105 |
| | 7 | 16-4-111 |
| | 8 | 23-5-306 |
| | 9 | 23-5-502 |
| | 10 | 23-5-603 |
| | 11 | 23-5-611 |
| | 12 | Severability |
| | 13 | Codification instruction |
| 466 | 1 | 7-1-2111 |
| | 2 | 7-7-2101 |
| | 3 | 7-7-2203 |
| | 4 | 7-14-2524 |
| | 5 | 7-14-2525 |
| | 6 | 7-16-2327 |
| | 7 | 15-1-501 |
| | 8 | 15-36-304 |
| | 9 | 15-36-324 |
| | 10 | 15-36-324 |
| | 11 | 15-36-325 |
| | 12 | 17-7-502 |
| | 13 | 82-11-135 |
| | 14 | Effective dates — tormination |

HeinOnline -- 1997 vol. III 3912 1997

| Ch. | Sec. | MCA |
|---|---|---|
| 467 | 1 | 49-2-205 |
| | 2 | 2-15-1706 |
| | 3 | 39-1-102 |
| | 4 | 49-2-101 |
| | 5 | 49-2-203 |
| | 6 | 49-2-204 |
| | 7 | 49-2-501 |
| | 8 | 49-2-503 |
| | 9 | 49-2-504 |
| | 10 | 49-2-505 |
| | 11 | 49-2-506 |
| | 12 | 49-2-508 |
| | 13 | 49-2-509 |
| | 14 | 49-2-510 |
| | 15 | 49-2-210 |
| | 16 | 49-3-315 |
| | 17 | Staff transfer |
| | 18 | Repealer |
| | 19 | Codification instructions |
| | 20 | Applicability — saving clause |
| | 21 | Effective date |
| 468 | 1 | 30-10-315 |
| | 2 | 30-10-316 |
| | 3 | 30-10-317 |
| | 4 | 30-10-318 |
| | 5 | 30-10-319 |
| | 6 | 30-10-320 |
| | 7 | 30-10-321 |
| | 8 | 30-10-322 |
| | 9 | 30-10-323 |
| | 10 | Codification instruction |
| | 11 | Severability |
| | 12 | Effective dato |
| 469 | 1 | Definitions |
| | 2 | Capital projects appropriations |
| | 3 | Land acquisition appreprlation |
| | 4 | Capital improvements |
| | 5 | Transfer of funds |
| | 6 | Planning and design |
| | 7 | Capital projects — contingent funds |
| | 8 | Legislative consent |
| | 9 | Appropriation for purchase and maintenance of Virginia City and Nevada City assets |
| | 10 | 15-35-108 |
| | 11 | 15-65-121 |
| | 12 | 17-7-502 |
| | 13 | 22-3-1002 |
| | 14 | Montana heritage preservation and development commission — initial appointments |
| | 15 | 22-3-1001 |
| | 16 | 22-3-1003 |
| | 17 | 22-3-1004 |
| | 18 | Codification instruction |
| | 19 | Sec. 6, Ch. 547, L. 1995 |
| | 20 | Voided by Governor's amendatory veto |
| | 21 | Severability |
| | 22 | Coordination |
| | 23 | Effective dates — termination |
| 470 | 1 | Appropriation of cultural and aesthetic grant funds — priority of disbursement |
| | 2 | Reversion of granted money |
| | 3 | Reduction of grants |
| 471 | 1 | Definitions |
| | 2 | Appropriation of bond proceeds and other funds |
| | 3 | Authorization of bonds |
| | 4 | Planning and design |
| | 5 | Capital projects — contingent funds |
| | 6 | Legislative consent |
| | 7 | Requirements for approval of state debt |
| | 8 | Sec. 12, Ch. 774, L. 1991 |
| | 9 | Severability |
| | 10 | Effective date |
| 472 | 1 | 2-15-2205 |
| | 2 | 2-15-2212 |
| | 3 | 7-14-111 |
| | 4 | 7-15-4207 |
| | 5 | 7-15-4431 |
| | 6 | 13-3-201 |
| | 7 | 13-3-202 |
| | 8 | 13-3-203 |
| | 9 | 13-3-205 |
| | 10 | 13-3-207 |
| | 11 | 13-3-213 |
| | 12 | 13-13-211 |
| | 13 | 15-6-201 |
| | 14 | 15-30-114 |
| | 15 | 15-30-115 |
| | 16 | 18-5-101 |
| | 17 | 18-5-102 |
| | 18 | 18-5-103 |
| | 19 | 20-7-401 |
| | 20 | 20-25-707 |
| | 21 | 22-1-103 |
| | 22 | 33-22-304 |
| | 23 | 33-22-506 |
| | 24 | 33-30-1003 |
| | 25 | 33-30-1004 |
| | 26 | 37-15-101 |
| | 27 | 37-30-307 |
| | 28 | 37-31-301 |
| | 29 | 37-31-308 |

HeinOnline -- 1997 vol. III 3913 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 30 | 39-2-912 |
| | 31 | 39-3-406 |
| | 32 | 39-30-101 |
| | 33 | 39-30-102 |
| | 34 | 39-30-103 |
| | 35 | 39-30-106 |
| | 36 | 39-30-107 |
| | 37 | 39-30-201 |
| | 38 | 39-30-202 |
| | 39 | 39-30-203 |
| | 40 | 39-71-901 |
| | 41 | 39-71-903 |
| | 42 | 39-71-904 |
| | 43 | 39-71-905 |
| | 44 | 39-71-906 |
| | 45 | 39-71-907 |
| | 46 | 50-1-202 |
| | 47 | 50-5-105 |
| | 48 | 50-60-201 |
| | 49 | 52-1-103 |
| | 50 | 52-2-113 |
| | 51 | 53-2-201 |
| | 52 | 53-4-607 |
| | 53 | 53-7-101 |
| | 54 | 53-7-102 |
| | 55 | 53-7-105 |
| | 56 | 53-7-301 |
| | 57 | 53-7-306 |
| | 58 | 53-18-101 |
| | 59 | 53-18-103 |
| | 60 | 53-18-105 |
| | 61 | 53-19-102 |
| | 62 | 53-19-301 |
| | 63 | 53-19-302 |
| | 64 | 53-19-306 |
| | 65 | 53-19-307 |
| | 66 | 53-19-310 |
| | 67 | 53-20-102 |
| | 68 | 53-20-142 |
| | 69 | 53-20-148 |
| | 70 | 53-20-202 |
| | 71 | 53-20-203 |
| | 72 | 61-3-332 |
| | 73 | 61-3-454 |
| | 74 | 61-12-504 |
| | 75 | 69-3-307 |
| | 76 | 77-2-318 |
| | 77 | 87-2-706 |
| | 78 | 87-2-803 |
| | 79 | 90-6-103 |
| | 80 | 90-7-104 |
| 473 | 1 | 61-8-314 |
| | 2 | 61-8-315 |
| | 3 | 61-8-303 |
| | 4 | 61-8-715 |
| | 5 | Codification instruction |
| | 6 | Effective date |
| | 7 | Termination |
| 474 | 1 | 46-18-101 |
| 475 | 1 | 25-10-109 |
| | 2 | 46-18-237 |
| | 3 | 25-10-404 |
| | 4 | 37-1-308 |
| | 5 | Codification instruction |
| | 6 | Severability |
| | 7 | Effective date |
| 476 | 1 | 2-17-801 |
| | 2 | 2-17-802 |
| | 3 | 2-17-803 |
| | 4 | 2-17-804 |
| | 5 | 2-17-807 |
| | 6 | 2-17-806 |
| | 7 | 2-17-812 |
| | 8 | 5-11-115 (renum. 2-17-805) |
| | 9 | Codification instruction |
| 477 | 1 | 90-7-102 |
| | 2 | 90-7-103 |
| | 3 | 90-7-104 |
| | 4 | 90-7-111 |
| | 5 | 90-7-202 |
| | 6 | 90-7-204 |
| | 7 | 90-7-211 |
| | 8 | 90-7-213 |
| | 9 | 90-7-214 |
| | 10 | 90-7-303 |
| | 11 | 90-7-304 |
| | 12 | 90-7-305 |
| | 13 | 90-7-307 |
| | 14 | 90-7-317 |
| | 15 | 90-7-226 |
| | 16 | 90-7-227 |
| | 17 | 90-7-228 |
| | 18 | Severability |
| | 19 | Codification instruction |
| | 20 | Effective date |
| 478 | 1 | 46-4-201 |
| 479 | 1 | 90-7-102 |
| | 2 | 90-7-104 |
| | 3 | 90-7-201 |
| | 4 | 90-7-202 |
| | 5 | 90-7-211 |
| | 6 | 90-7-213 |
| | 7 | 90-7-302 |
| | 8 | 90-7-305 |
| | 9 | 90-7-317 |
| 480 | 1 | 42-1-101 |
| | 2 | 42-1-102 |
| | 3 | 42-1-103 |
| | 4 | 42-1-104 |
| | 5 | 42-1-105 |
| | 6 | 42-1-106 |
| | 7 | 42-1-107 |
| | 8 | 42-1-108 |
| | 9 | 42-1-109 |

HeinOnline -- 1997 vol. III 3914 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 10 | 42-1-110 |
| | 11 | 42-1-111 |
| | 12 | 42-2-101 |
| | 13 | 42-2-102 |
| | 14 | 42-2-103 |
| | 15 | 42-2-104 |
| | 16 | 42-2-105 |
| | 17 | 42-2-106 |
| | 18 | 42-2-201 |
| | 19 | 42-2-202 |
| | 20 | 42-2-203 |
| | 21 | 42-2-204 |
| | 22 | 42-2-205 |
| | 23 | 42-2-206 |
| | 24 | 42-2-207 |
| | 25 | 42-2-208 |
| | 26 | 42-2-209 |
| | 27 | 42-2-214 |
| | 28 | 42-2-214 |
| | 29 | 42-2-215 |
| | 30 | 42-2-216 |
| | 31 | 42-2-217 |
| | 32 | 42-2-218 |
| | 33 | 42-2-222 |
| | 34 | 42-2-223 |
| | 35 | 42-2-224 |
| | 36 | 42-2-225 |
| | 37 | 42-2-226 |
| | 38 | 42-2-230 |
| | 39 | 42-2-301 |
| | 40 | 42-2-302 |
| | 41 | 42-2-303 |
| | 42 | 42-2-401 |
| | 43 | 42-2-402 |
| | 44 | 42-2-403 |
| | 45 | 42-2-404 |
| | 46 | 42-2-405 |
| | 47 | 42-2-408 |
| | 48 | 42-2-409 |
| | 49 | 42-2-410 |
| | 50 | 42-2-411 |
| | 51 | 42-2-412 |
| | 52 | 42-2-413 |
| | 53 | 42-2-417 |
| | 54 | 42-2-418 |
| | 55 | 42-2-421 |
| | 56 | 42-2-422 |
| | 57 | 42-2-501 |
| | 58 | 42-2-502 |
| | 59 | 42-2-503 |
| | 60 | 42-2-503 |
| | 61 | 42-2-601 |
| | 62 | 42-2-602 |
| | 63 | 42-2-603 |
| | 64 | 42-2-604 |
| | 65 | 42-2-604 |
| | 66 | 42-2-605 |
| | 67 | 42-2-605 |
| | 68 | 42-2-606 |
| | 69 | 42-2-606 |
| | 70 | 42-2-607 |
| | 71 | 42-2-608 |
| | 72 | 42-2-609 |
| | 73 | 42-2-610 |
| | 74 | 42-2-611 |
| | 75 | 42-2-611 |
| | 76 | 42-2-616 |
| | 77 | 42-2-617 |
| | 78 | 42-2-618 |
| | 79 | 42-2-619 |
| | 80 | 42-2-620 |
| | 81 | 42-3-101 |
| | 82 | 42-3-102 |
| | 83 | 42-3-201 |
| | 84 | 43-3-202 |
| | 85 | 43-3-203 |
| | 86 | 43-3-204 |
| | 87 | 43-3-205 |
| | 88 | 43-3-206 |
| | 89 | 43-3-207 |
| | 90 | 42-3-212 |
| | 91 | 42-3-213 |
| | 92 | 42-3-301 |
| | 93 | 42-4-101 |
| | 94 | 42-4-102 |
| | 95 | 42-4-103 |
| | 96 | 42-4-106 |
| | 97 | 42-4-110 |
| | 98 | 42-4-111 |
| | 99 | 42-4-112 |
| | 100 | 42-4-113 |
| | 101 | 42-4-114 |
| | 102 | 42-4-115 |
| | 103 | 42-4-116 |
| | 104 | 42-4-201 |
| | 105 | 42-4-202 |
| | 106 | 42-4-203 |
| | 107 | 42-4-204 |
| | 108 | 42-4-205 |
| | 109 | 42-4-206 |
| | 110 | 42-4-209 |
| | 111 | 42-4-210 |
| | 112 | 42-4-301 |
| | 113 | 42-4-302 |
| | 114 | 42-4-303 |
| | 115 | 42-4-304 |
| | 116 | 42-4-305 |
| | 117 | 42-4-309 |
| | 118 | 42-4-310 |
| | 119 | 42-4-311 |
| | 120 | 42-4-312 |
| | 121 | 42-4-401 |
| | 122 | 42-4-402 |
| | 123 | 42-4-403 |

HeinOnline -- 1997 vol. III 3915 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 124 | 42-4-404 |
| | 125 | 42-4-405 |
| | 126 | 42-5-101 |
| | 127 | 42-5-102 |
| | 128 | 42-5-103 |
| | 129 | 42-5-104 |
| | 130 | 42-5-105 |
| | 131 | 42-5-106 |
| | 132 | 42-5-107 |
| | 133 | 42-5-108 |
| | 134 | 42-5-109 |
| | 135 | 42-5-201 |
| | 136 | 42-5-202 |
| | 137 | 42-5-203 |
| | 138 | 42-5-204 |
| | 139 | 42-5-205 |
| | 140 | 45-5-301 |
| | 141 | 42-6-101 |
| | 142 | 42-6-102 |
| | 143 | 42-6-103 |
| | 144 | 42-6-104 |
| | 145 | 42-6-105 |
| | 146 | 42-6-109 |
| | 147 | 42-7-101 |
| | 148 | 42-7-102 |
| | 149 | 42-7-105 |
| | 150 | 42-7-106 |
| | 151 | 42-8-101 |
| | 152 | 42-8-102 |
| | 153 | 42-8-103 |
| | 154 | 42-8-104 |
| | 155 | 42-8-107 |
| | 156 | 42-8-108 |
| | 157 | 2-6-104 |
| | 158 | 2-18-606 |
| | 159 | 17-7-502 |
| | 160 | 25-1-201 |
| | 161 | 33-22-130 |
| | 162 | 33-30-1016 |
| | 163 | 33-31-114 |
| | 164 | 37-60-301 |
| | 165 | 40-6-108 |
| | 166 | 41-3-609 |
| | 167 | 41-5-603 |
| | 168 | 41-5-604 |
| | 169 | 50-15-223 |
| | 170 | 52-2-505 (renum. 42-10-105) |
| | 171 | Repealer |
| | 172 | Severability |
| | 173 | Applicability |
| | 174 | Code commissioner instructions |
| | 175 | Termination |
| | 176 | Notification to tribal governments |
| | 177 | Effective dates |
| 481 | 1 | 37-1-401 |
| | 2 | 37-1-402 |
| | 3 | 37-1-403 |
| | 4 | 37-1-404 |
| | 5 | 37-1-405 |
| | 6 | 37-1-406 |
| | 7 | 37-1-407 |
| | 8 | 37-1-408 |
| | 9 | 37-1-409 |
| | 10 | 37-1-410 |
| | 11 | 37-1-411 |
| | 12 | 37-1-412 |
| | 18 | 2-15-1842 |
| | 14 | 2-15-1850 |
| | 15 | 37-4-202 |
| | 16 | 37-11-201 |
| | 17 | 37-11-303 |
| | 18 | 37-16-202 |
| | 19 | 37-16-303 |
| | 20 | 37-16-304 |
| | 21 | 37-16-405 |
| | 22 | 37-16-407 |
| | 23 | 37-26-201 |
| | 24 | 37-26-301 |
| | 25 | 37-30-203 |
| | 26 | 37-30-307 |
| | 27 | 37-54-102 |
| | 28 | 37-54-105 |
| | 29 | 37-54-201 |
| | 30 | 37-54-202 |
| | 31 | 37-54-210 |
| | 32 | 37-54-211 |
| | 33 | 37-54-301 |
| | 34 | 37-54-304 |
| | 35 | 37-54-305 |
| | 36 | 37-54-311 |
| | 37 | 37-60-303 |
| | 38 | 37-65-202 |
| | 39 | 50-39-108 |
| | 40 | 50-76-111 |
| | 41 | 50-76-112 |
| | 42 | 50-39-101 |
| | 43 | 50-39-102 |
| | 44 | 50-76-103 |
| | 45 | 50-76-104 |
| | 46 | Repealer |
| | 47 | Codification instruction |
| | 48 | Coordination instruction |
| | 49 | Severability |
| 482 | 1 | 17-4-105 |
| | 2 | 40-5-189 |
| | 3 | 40-5-201 |
| | 4 | 40-5-202 |
| | 5 | 40-5-225 |
| | 6 | 40-5-226 |
| | 7 | 40-5-231 |
| | 8 | 40-5-236 |
| | 9 | 40-5-253 |

HeinOnline -- 1997 vol. III 3916 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 10 | 40-5-273 |
| | 11 | 40-5-403 |
| | 12 | 40-5-412 |
| | 13 | 40-5-414 |
| | 14 | 40-5-703 |
| | 15 | 40-5-809 |
| | 16 | 40-5-824 |
| | 17 | 71-3-302 |
| | 18 | 72-3-807 |
| | 19 | Effective date |
| 483 | 1 | 17-5-1608 |
| | 2 | 17-5-2001 |
| | 3 | Low-income housing |
| | 4 | Codification instruction |
| | 5 | Effective date |
| 484 | 1 | 25-1-201 |
| | 2 | Temporary order or temporary injunction — continuing effect |
| | 3 | 40-15-202 |
| | 4 | 40-15-302 |
| | 5 | 45-5-206 |
| | 6 | 46-6-311 |
| | 7 | 46-9-302 |
| | 8 | 26-1-812 |
| | 9 | 40-15-110 |
| | 10 | Codification instruction |
| | 11 | Severability |
| | 12 | Retroactive applicability |
| | 13 | Effective date |
| | 14 | Termination |
| 485 | 1 | 7-2-4303 |
| | 2 | 7-2-4311 |
| | 3 | 7-2-4312 |
| | 4 | 7-2-4313 |
| | 5 | 7-2-4314 |
| | 6 | 7-2-4325 |
| | 7 | 7-2-4502 |
| | 8 | 7-3-4101 |
| | 9 | 7-4-4303 |
| | 10 | 7-4-4306 |
| | 11 | Repealer |
| 486 | 1 | 23-1-303 |
| | 2 | 39-7-303 |
| | 3 | 40-4-215 |
| | 4 | 53-2-108 |
| | 5 | 53-2-109 |
| | 6 | 53-2-201 |
| | 7 | 53-2-211 |
| | 8 | 53-2-606 |
| | 9 | 53-2-610 |
| | 10 | 53-2-613 |
| | 11 | 53-2-901 |
| | 12 | 53-2-902 |
| | 13 | 53-2-903 |
| | 14 | 53-2-904 |
| | 15 | 53-2-1103 |
| | 16 | 53-2-1109 |
| | 17 | 53-4-201 |
| | 18 | 53-4-202 |
| | 19 | 53-4-211 |
| | 20 | 53-4-212 |
| | 21 | 53-4-214 |
| | 22 | 53-4-221 |
| | 23 | 53-4-231 |
| | 24 | 53-4-233 |
| | 25 | 53-4-241 |
| | 26 | 53-4-246 |
| | 27 | 53-4-246 |
| | 28 | 53-4-247 |
| | 29 | 53-4-248 |
| | 30 | 53-4-601 |
| | 31 | 53-4-602 |
| | 32 | 53-4-603 |
| | 33 | 53-4-606 |
| | 34 | 53-4-607 |
| | 35 | 53-4-608 |
| | 36 | 53-4-609 |
| | 37 | 53-4-611 |
| | 38 | 53-4-612 |
| | 39 | 53-4-613 |
| | 40 | 53-4-701 |
| | 41 | 53-4-702 |
| | 42 | 53-4-703 |
| | 43 | 53-4-705 |
| | 44 | 53-4-706 |
| | 45 | 53-4-717 |
| | 46 | 53-6-101 |
| | 47 | 53-6-113 |
| | 48 | 53-6-131 |
| | 49 | 53-6-134 |
| | 50 | Saving clause |
| | 51 | Repealer |
| | 52 | Effective dates |
| | 53 | Termination |
| 487 | 1 | 2-3-111 |
| | 2 | 16-4-202 |
| | 3 | 75-10-924 |
| 488 | 1 | 50-60-101 |
| | 2 | 50-60-102 |
| | 3 | 50-60-106 |
| | 4 | 50-60-203 |
| | 5 | 50-60-204 |
| | 6 | 50-60-302 |
| | 7 | Effective date |
| 489 | 1 | 2-4-102 |
| | 2 | 2-4-302 |
| | 3 | 2-4-303 |
| | 4 | 2-4-305 |
| | 5 | 2-4-306 |
| 490 | 1 | 2-16-501 |
| | 2 | 2-16-503 |
| | 3 | 25-31-602 |
| | 4 | 27-2-401 |

HeinOnline -- 1997 vol. III 3917 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 5 | 27-8-204 |
| | 6 | 33-20-121 |
| | 7 | 37-3-323 |
| | 8 | 37-6-311 |
| | 9 | 37-11-321 |
| | 10 | 37-12-322 |
| | 11 | Voided by sec. 78(1), Ch. 550 (coordination section) |
| | 12 | 46-14-206 |
| | 13 | 53-20-112 |
| | 14 | 53-21-101 |
| | 15 | 53-21-102 |
| | 16 | 53-21-112 |
| | 17 | 53-21-115 |
| | 18 | 53-21-116 |
| | 19 | 53-21-121 |
| | 20 | 53-21-122 |
| | 21 | 53-21-123 |
| | 22 | 53-21-126 |
| | 23 | 53-21-127 |
| | 24 | 53-21-128 |
| | 25 | 53-21-129 |
| | 26 | 53-21-132 |
| | 27 | 53-21-134 |
| | 28 | 53-21-138 |
| | 29 | 53-21-139 |
| | 30 | 53-21-144 |
| | 31 | 53-21-182 |
| | 32 | 53-21-195 |
| | 33 | 53-21-197 |
| | 34 | 53-21-198 |
| | 35 | 70-19-413 |
| | 36 | 70-29-113 |
| | 37 | 70-29-210 |
| | 38 | 70-29-328 |
| | 39 | 72-5-322 |
| | 40 | Saving clause |
| | 41 | Effective date |
| 491 | 1 | 15-30-249 |
| | 2 | 15-30-250 |
| | 3 | 15-30-251 |
| | 4 | 15-30-255 |
| | 5 | 15-30-256 |
| | 6 | 39-71-2507 |
| | 7 | 15-30-257 |
| | 8 | 15-1-302 |
| | 9 | 15-2-302 |
| | 10 | 15-30-201 |
| | 11 | 15-30-202 |
| | 12 | 15-30-203 |
| | 13 | 15-30-204 |
| | 14 | 15-30-207 |
| | 15 | 15-30-208 |
| | 16 | 15-30-209 |
| | 17 | 37-31-101 |
| | 18 | 39-51-201 |
| | 19 | 39-51-204 |
| | 20 | 39-51-301 |
| | 21 | 39-51-1105 |
| | 22 | 39-51-1109 |
| | 23 | 39-51-1110 |
| | 24 | 39-51-1301 |
| | 25 | 39-51-1303 |
| | 26 | 39-51-1304 |
| | 27 | 39-51-2108 |
| | 28 | 39-51-2402 |
| | 29 | 39-71-123 |
| | 30 | 39-71-401 |
| | 31 | 39-71-2501 |
| | 32 | 39-71-2503 |
| | 33 | 39-71-2503 |
| | 34 | 39-71-2505 |
| | 35 | Repealer |
| | 36 | Severability |
| | 37 | Saving clause |
| | 38 | Codification instruction |
| | 39 | Coordination instruction |
| | 40 | Effective dates |
| 492 | 1 | Appropriation |
| | 2 | 23-3-501 |
| | 3 | 27-6-206 |
| | 4 | 37-3-301 |
| | 5 | 37-3-313 |
| | 6 | 37-4-307 |
| | 7 | 37-4-326 |
| | 8 | 37-4-406 |
| | 9 | 37-6-304 |
| | 10 | 37-7-303 |
| | 11 | 37-7-321 |
| | 12 | 37-7-606 |
| | 13 | 37-7-703 |
| | 14 | 37-8-431 |
| | 15 | 37-9-304 |
| | 16 | 37-9-305 |
| | 17 | 37-10-307 |
| | 18 | 37-11-308 |
| | 19 | 37-12-307 |
| | 20 | 37-13-306 |
| | 21 | 37-14-310 |
| | 22 | 37-16-407 |
| | 23 | 37-18-307 |
| | 24 | 37-19-301 |
| | 25 | 37-19-304 |
| | 26 | 37-19-306 |
| | 27 | 37-20-203 |
| | 28 | 37-20-302 |
| | 29 | 37-23-203 |
| | 30 | 37-23-205 |
| | 31 | 37-25-307 |
| | 32 | 37-27-205 |
| | 33 | 37-29-304 |
| | 34 | 37-29-306 |
| | 35 | 37-30-310 |
| | 36 | 37-30-424 |

HeinOnline -- 1997 vol. III 3918 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 37 | 37-30-423 |
| | 38 | 37-31-302 |
| | 39 | 37-32-305 |
| | 40 | 37-40-203 |
| | 41 | 37-40-304 |
| | 42 | 37-50-203 |
| | 43 | 37-50-314 |
| | 44 | 37-50-317 |
| | 45 | 37-51-310 |
| | 46 | 37-51-603 |
| | 47 | 37-65-306 |
| | 48 | 37-66-307 |
| | 49 | 37-68-307 |
| | 50 | 37-68-310 |
| | 51 | 37-69-307 |
| | 52 | 37-72-306 |
| | 53 | 50-39-102 |
| | 54 | 50-74-313 |
| | 55 | 50-76-105 |
| | 56 | Coordination instructions |
| | 57 | Effective date |
| 493 | 1 | Transportation funding and expenditure study commnittee — composition — appointments |
| | 2 | Meetings |
| | 3 | Reimbursement of expenses |
| | 4 | Powers and duties — staff support — recommendations — report |
| | 5 | Funding for study — appropriation |
| | 6 | Effective date |
| | 7 | Termination |
| 494 | 1 | Gaming study commission — composition — vacancies |
| | 2 | Meetings |
| | 3 | Reimbursement of expenses — componsation |
| | 4 | Powers and duties — staff support — recommendations — report |
| | 5 | Appropriation |
| | 6 | 23-7-402 |
| | 7 | Effective date |
| | 8 | Termination |
| 495 | 1 | 33-23-203 |
| | 2 | 33-23-204 |
| | 3 | Applicability |
| | 4 | Effective date |
| 496 | 1 | 7-1-2111 |
| | 2 | 15-6-138 |
| | 3 | 15-6-201 |
| | 4 | 15-8-111 |
| | 5 | 15-8-201 |
| | 6 | 15-8-202 |
| | 7 | 15-16-202 |
| | 8 | 15-50-207 |
| | 9 | 20-9-141 |
| | 10 | 20-9-331 |
| | 11 | 20-9-333 |
| | 12 | 20-9-360 |
| | 13 | 20-9-501 |
| | 14 | 20-10-144 |
| | 15 | 20-10-146 |
| | 16 | 61-1-139 |
| | 17 | 61-1-140 |
| | 18 | 61-3-101 |
| | 19 | 61-3-208 |
| | 20 | 61-3-303 |
| | 21 | 61-3-456 |
| | 22 | 61-3-501 |
| | 23 | 61-3-503 |
| | 24 | 61-3-504 |
| | 25 | 61-3-506 |
| | 26 | 61-3-507 |
| | 27 | 61-3-509 |
| | 28 | 61-3-520 |
| | 29 | 61-3-527 |
| | 30 | 61-3-535 |
| | 31 | 61-3-537 |
| | 32 | 61-3-528 |
| | 33 | 61-3-529 |
| | 34 | 61-3-736 |
| | 35 | 61-3-737 |
| | 36 | 61-3-738 |
| | 37 | 61-3-701 |
| | 38 | 61-12-402 |
| | 39 | Legislative audit committee analysis |
| | 40 | Codification instruction |
| | 41 | Repealer |
| | 42 | Effective dates — applicability — rulemaking |
| 497 | 1 | 85-2-101 |
| | 2 | 85-2-102 |
| | 3 | 85-2-217 |
| | 4 | 85-2-228 |
| | 5 | 85-2-301 |
| | 6 | 85-2-309 |
| | 7 | 85-2-311 |
| | 8 | 85-2-313 |
| | 9 | 85-2-316 |
| | 10 | 85-2-321 |
| | 11 | 85-2-329 |
| | 12 | 85-2-331 |
| | 13 | 85-2-336 |
| | 14 | 85-2-340 |
| | 15 | 85-2-341 |
| | 16 | 85-2-342 |
| | 17 | 85-2-401 |
| | 18 | 85-2-402 |
| | 19 | 85-2-708 |

HeinOnline -- 1997 vol. III 3919 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 20 | Notification to tribal governments |
| | 21 | Codification instruction |
| | 22 | Saving clause |
| | 23 | Severability |
| | 24 | Retroactive applicability |
| | 25 | Effectivo date |
| 498 | 1 | 41-5-203 |
| | 2 | 41-5-205 |
| | 3 | Voided by sec. 78(2), Ch. 550 (coordination section) |
| | 4 | 41-5-208 |
| | 5 | 41-5-501 |
| | 6 | 41-5-1102 |
| | 7 | 41-5-1103 |
| | 8 | 41-5-1104 |
| | 9 | 41-5-1105 |
| | 10 | 41-5-1606 |
| | 11 | 41-5-1607 |
| | 12 | 41-5-1432 |
| | 13 | Coordination instruction |
| | 14 | Codification instruction |
| | 15 | Severability |
| | 16 | Effective dato |
| | 17 | Applicability |
| 499 | 1 | 20-9-471 |
| | 2 | Effective date |
| 500 | 1 | 39-71-116 |
| | 2 | 39-71-118 |
| | 3 | Severability |
| | 4 | Effective date — applicability |
| 501 | 1 | 41-3-101 |
| | 2 | 41-3-402 |
| | 3 | 41-3-403 |
| | 4 | Effective date |
| 502 | 1 | 2-11-101 |
| | 2 | 2-11-102 |
| | 3 | 2-11-103 |
| | 4 | 2-11-104 |
| | 5 | Applicability |
| | 6 | Effective date |
| 503 | 1 | 76-3-103 |
| | 2 | 76-3-201 |
| | 3 | 76-3-507 |
| | 4 | Severability |
| | 5 | Effective date — retroactivo applicability |
| 504 | 1 | 33-22-245 |
| | 2 | 33-22-522 |
| | 3 | Effective dato |
| 505 | 1 | 69-8-101 |
| | 2 | 69-8-102 |
| | 3 | 69-8-103 |
| | 4 | 69-8-104 |
| | 5 | 69-8-201 |
| | 6 | 69-8-202 |
| | 7 | 69-8-203 |
| | 8 | 69-8-204 |
| | 9 | 69-8-208 |
| | 10 | 69-8-209 |
| | 11 | 69-8-210 |
| | 12 | 69-8-211 |
| | 13 | 69-8-301 |
| | 14 | 69-8-302 |
| | 15 | 69-8-303 |
| | 16 | 69-8-304 |
| | 17 | 69-8-308 |
| | 18 | 69-8-309 |
| | 19 | 69-8-310 |
| | 20 | 69-8-311 |
| | 21 | 69-8-401 |
| | 22 | 69-8-402 |
| | 23 | 69-8-403 |
| | 24 | 69-8-404 |
| | 25 | 69-8-408 |
| | 26 | 69-8-409 |
| | 27 | 69-8-410 |
| | 28 | 69-8-411 |
| | 29 | 69-8-501 |
| | 30 | 69-8-502 |
| | 31 | 69-8-503 |
| | 32 | 15-6-137 |
| | 33 | 15-6-141 |
| | 34 | 69-5-101 |
| | 35 | 69-5-102 |
| | 36 | 69-5-104 |
| | 37 | 69-5-105 |
| | 38 | 69-5-106 |
| | 39 | 69-5-107 |
| | 40 | 69-5-108 |
| | 41 | 69-5-109 |
| | 42 | 69-5-110 |
| | 43 | 69-5-111 |
| | 44 | 69-5-112 |
| | 45 | Appropriation |
| | 46 | Repealer |
| | 47 | Saving clause |
| | 48 | Severability |
| | 49 | Codification instructions |
| | 50 | Effective date |
| 506 | 1 | 69-3-1401 |
| | 2 | 69-3-1402 |
| | 3 | 69-3-1408 |
| | 4 | 69-8-1404 |
| | 5 | 69-3-1405 |
| | 6 | 69-3-1406 |
| | 7 | 69-3-1407 |
| | 8 | 69-3-1408 |
| | 9 | 69-3-1409 |
| | 10 | Saving clause — retroactive applicability |
| | 11 | Severability |
| | 12 | Codification instruction |
| | 13 | Coordination instructions |

HeinOnline -- 1997 vol. III 3920 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 14 | Effective date |
| 507 | 1 | 37-35-101 |
| | 2 | 37-35-102 |
| | 3 | 37-35-103 |
| | 4 | 37-35-201 |
| | 5 | 37-35-202 |
| | 6 | 37-35-203 |
| | 7 | 37-35-301 |
| | 8 | 37-35-302 |
| | 9 | 37-35-303 |
| | 10 | 37-35-304 |
| | 11 | 33-22-705 |
| | 12 | 37-23-201 |
| | 13 | 53-24-204 |
| | 14 | Repealer |
| | 15 | Codification instruction |
| | 16 | Effective dates |
| 508 | 1 | 18-1-404 |
| | 2 | 2-9-317 |
| | 3 | Effective date |
| 509 | 1 | 61-3-456 |
| | 2 | Applicability |
| | 3 | Effective date |
| 510 | 1 | 15-70-522 |
| 511 | 1 | 53-30-601 |
| | 2 | 53-30-602 |
| | 3 | 53-30-603 |
| | 4 | 53-30-604 |
| | 5 | 53-30-605 |
| | 6 | 53-30-606 |
| | 7 | 53-30-607 |
| | 8 | 53-30-608 |
| | 9 | 53-30-609 |
| | 10 | 53-30-610 |
| | 11 | 53-30-611 |
| | 12 | Codification instruction |
| | 13 | Applicability |
| | 14 | Effective date |
| 512 | 1 | 61-8-714 |
| | 2 | 61-8-722 |
| | 3 | 61-8-731 |
| | 4 | Coordination |
| | 5 | Effective date |
| 513 | 1 | Voided by sec. 5 (coordination section) |
| | 2 | 53-1-207 |
| | 3 | Severability |
| | 4 | Codification instruction |
| | 5 | Coordination instruction |
| | 6 | Effective date — applicability |
| 514 | 1 | 40-4-218 |
| | 2 | 40-8-111 |
| | 3 | 41-3-102 |
| | 4 | 41-3-201 |
| | 5 | 41-3-202 |
| | 6 | 41-3-204 |
| | 7 | 41-3-205 |
| | 8 | 41-3-609 |
| | 9 | 41-3-1102 |
| | 10 | 41-3-1141 |
| | 11 | 41-3-1142 |
| | 12 | Effective date |
| 515 | 1 | 39-3-406 |
| | 2 | 39-71-118 |
| | 3 | 53-4-603 |
| | 4 | Saving clause |
| | 5 | Effective date |
| 516 | 1 | 40-8-111 |
| | 2 | 41-3-102 |
| | 3 | 41-3-202 |
| | 4 | 41-3-204 |
| | 5 | 41-3-303 |
| | 6 | 41-3-401 |
| | 7 | 41-3-403 |
| | 8 | 41-3-404 |
| | 9 | 41-3-406 |
| | 10 | 41-3-411 |
| | 11 | 41-3-412 |
| | 12 | 41-3-607 |
| | 13 | 41-3-609 |
| | 14 | 41-4-102 |
| | 15 | 41-5-530 |
| | 16 | 41-3-109 |
| | 17 | Repealer |
| | 18 | Codification instruction |
| | 19 | Coordination instruction |
| | 20 | Applicability |
| 517 | 1 | 50-4-203 |
| | 2 | Appropriation |
| | 3 | Sec. 25, Ch. 378, L. 1995 |
| | 4 | Effective dates |
| 518 | 1 | 16-11-306 |
| | 2 | 16-11-303 |
| 519 | 1 | 50-19-401 |
| | 2 | 50-19-402 |
| | 3 | 50-19-403 |
| | 4 | 50-19-404 |
| | 5 | 50-19-405 |
| | 6 | 50-19-406 |
| | 7 | 44-5-303 |
| | 8 | 50-16-525 |
| | 9 | 50-19-323 |
| | 10 | Codification instruction |
| | 11 | Effective date |
| 520 | 1 | 61-8-410 |
| | 2 | Effective date |
| 521 | 1 | 39-2-205 |
| | 2 | 39-2-206 |
| | 3 | 39-2-207 |
| | 4 | 39-2-208 |
| | 5 | 39-2-209 |
| | 6 | 39-2-210 |
| | 7 | 39-2-211 |
| | 8 | 39-2-304 |

HeinOnline -- 1997 vol. III 3921 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 9 | Codification instruction |
| | 10 | Severability |
| 522 | 1 | 18-2-401 |
| | 2 | 18-2-403 |
| | 3 | 18-2-404 |
| | 4 | 18-2-421 |
| | 5 | 18-2-422 |
| | 6 | 18-2-432 |
| | 7 | 20-15-403 |
| | 8 | Transition for necessary prevailing wage rates |
| | 9 | Saving clause |
| | 10 | Severability |
| | 11 | Effective date |
| 523 | 1 | 17-7-502 |
| | 2 | 81-2-120 |
| | 3 | 87-1-506 |
| | 4 | 87-1-513 |
| 524 | 1 | 50-16-1004 |
| | 2 | 50-16-1003 |
| | 3 | 50-16-1007 |
| | 4 | Codification instruction |
| 525 | 1 | 46-18-201 |
| | 2 | 61-8-401 |
| | 3 | 61-8-406 |
| | 4 | 61-8-421 |
| | 5 | 61-8-422 |
| | 6 | 61-8-714 |
| | 7 | 61-8-722 |
| | 8 | 61-11-101 |
| | 9 | 61-8-732 |
| | 10 | 61-8-733 |
| | 11 | 61-8-734 |
| | 12 | Codification instruction |
| | 13 | Coordination |
| | 14 | Applicability |
| 526 | 1 | Policy |
| | 2 | Definitions |
| | 3 | Deposit of oil overcharge revenue |
| | 4 | Matching funds for low-income energy assistance — appropriation |
| | 5 | Low-income home weatherization — appropriation |
| | 6 | Recommissioning state-owned buildings — appropriation |
| | 7 | Infrastructuro to support purchase and use of ethanol-fueled vehicles — appropriation |
| | 8 | Reduce petroleum use in Yellowstone region — appropriation |
| | 9 | Small business and tribal environmental compliance loan fund program — appropriation |
| | 10 | Recycling for mercury-containing lamps — appropriation |
| | 11 | Low-income home weatherization — appropriation |
| | 12 | Food bank network transportation — appropriation |
| | 13 | Carryover — reappropriations |
| | 14 | Conditions appliod to appropriations |
| | 15 | Appropriations prioritized |
| | 16 | Coordination instruction |
| | 17 | Effective date |
| 527 | 1 | 33-31-111 |
| | 2 | 33-1-801 |
| | 3 | 33-1-802 |
| | 4 | 33-1-803 |
| | 5 | 33-1-804 |
| | 6 | Codification instruction |
| | 7 | Applicability |
| 528 | 1 | 16-4-105 |
| | 2 | 16-4-115 |
| | 3 | 16-4-203 |
| | 4 | 16-4-207 |
| | 5 | 16-4-402 |
| | 6 | 16-4-404 |
| | 7 | 16-4-405 |
| | 8 | 16-4-501 |
| | 9 | Applicability |
| | 10 | Effective date |
| 529 | 1 | 20-5-321 |
| | 2 | 20-5-323 |
| | 3 | 20-5-324 |
| | 4 | 20-7-403 |
| | 5 | 20-7-420 |
| | 6 | 20-7-422 |
| | 7 | Repealer |
| | 8 | Coordination instruction |
| | 9 | Effective date |
| 530 | 1 | 33-21-202 |
| 531 | 1 | 18-8-103 |
| | 2 | 33-1-1205 |
| | 3 | 33-2-307 |
| | 4 | 33-2-317 |
| | 5 | 33-2-514 |
| | 6 | 33-2-517 |
| | 7 | 33-2-537 |
| | 8 | 33-2-704 |
| | 9 | 33-2-806 |
| | 10 | 33-2-1359 |
| | 11 | 33-2-1902 |
| | 12 | 33-3-303 |

HeinOnline -- 1997 vol. III 3922 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 13 | 33-3-307 |
| | 14 | 33-4-202 |
| | 15 | 33-4-203 |
| | 16 | 33-4-204 |
| | 17 | 33-4-313 |
| | 18 | 33-4-314 |
| | 19 | 33-5-402 |
| | 20 | 33-10-202 |
| | 21 | 33-15-1105 |
| | 22 | 33-15-1106 |
| | 23 | 33-16-1027 |
| | 24 | 33-17-102 |
| | 25 | 33-17-212 |
| | 26 | 33-17-301 |
| | 27 | 33-17-1203 |
| | 28 | 33-20-101 |
| | 29 | 33-22-107 |
| | 30 | 33-22-508 |
| | 31 | 33-22-903 |
| | 32 | 33-22-907 |
| | 33 | 33-22-910 |
| | 34 | Voided by sec. 51, Ch. 416 (coordination section) |
| | 35 | 33-22-1819 |
| | 36 | 33-22-1820 |
| | 37 | 33-22-1828 |
| | 38 | 33-30-102 |
| | 39 | 33-30-107 |
| | 40 | 33-31-111 |
| | 41 | 33-31-211 |
| | 42 | 50-4-505 |
| | 43 | 33-2-518 |
| | 44 | Repealer |
| | 45 | Codification instruction |
| | 46 | Severability |
| | 47 | Effective dates |
| 532 | 1 | 2-9-202 |
| | 2 | 2-15-1009 |
| | 3 | 2-18-812 |
| | 4 | 15-36-324 |
| | 5 | 15-36-325 |
| | 6 | 17-2-101 |
| | 7 | 17-2-102 |
| | 8 | 17-2-103 |
| | 9 | 17-2-121 |
| | 10 | 17-3-221 |
| | 11 | 17-3-222 |
| | 12 | 17-6-201 |
| | 13 | 17-7-304 |
| | 14 | 17-7-402 |
| | 15 | 17-7-502 |
| | 16 | 17-8-101 |
| | 17 | 19-2-404 |
| | 18 | 19-2-408 |
| | 19 | 19-2-502 |
| | 20 | 19-5-404 |
| | 21 | 19-6-709 |
| | 22 | 19-8-504 |
| | 23 | 19-9-702 |
| | 24 | Voided by sec. 8(1), Ch. 445 (coordination section) |
| | 25 | 19-13-604 |
| | 26 | 19-13-1006 |
| | 27 | 19-13-1009 |
| | 28 | 19-17-301 |
| | 29 | 19-18-512 |
| | 30 | 19-19-205 |
| | 31 | 19-19-305 |
| | 32 | 19-19-506 |
| | 33 | 19-20-203 |
| | 34 | 19-20-501 |
| | 35 | 19-20-605 |
| | 36 | 50-3-109 |
| | 37 | 61-3-321 |
| | 38 | 76-13-114 |
| | 39 | Coordination instructions |
| | 40 | Repealer |
| | 41 | Effective dates |
| 533 | 1 | 30-10-103 |
| | 2 | 30-10-104 |
| | 3 | 30-10-107 |
| | 4 | 30-10-110 |
| | 5 | 30-10-201 |
| | 6 | 30-10-202 |
| | 7 | 30-10-206 |
| | 8 | 30-10-207 |
| | 9 | 30-10-209 |
| | 10 | 30-10-301 |
| | 11 | 30-10-303 |
| | 12 | 30-10-211 |
| | 13 | Codification instruction |
| | 14 | Severability |
| 534 | 1 | 75-1-1201<br>80-1-301 |
| | 2 | 75-1-1202<br>80-1-302 |
| | 3 | 75-1-1203<br>80-1-303 |
| | 4 | 75-1-1204<br>80-1-304 |
| | 5 | 75-1-1205<br>80-1-305 |
| | 6 | 75-1-1206<br>80-1-306 |
| | 7 | Severability |
| | 8 | Saving clause |
| | 9 | Codification instruction |
| | 10 | Termination |
| 535 | 1 | 82-4-354 |
| | 2 | 82-4-361 |
| 536 | 1 | 30-1-105 |
| | 2 | 30-1-206 |
| | 3 | 30-2-512 |
| | 4 | 30-3-124 |

HeinOnline -- 1997 vol. III 3923 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 5 | 30-4-104 |
| | 6 | 30-5-122 |
| | 7 | 30-5-123 |
| | 8 | 30-5-124 |
| | 9 | 30-5-125 |
| | 10 | 30-5-126 |
| | 11 | 30-5-127 |
| | 12 | 30-5-128 |
| | 13 | 30-5-129 |
| | 14 | 30-5-130 |
| | 15 | 30-5-131 |
| | 16 | 30-5-132 |
| | 17 | 30-5-133 |
| | 18 | 30-5-134 |
| | 19 | 30-5-135 |
| | 20 | 30-5-136 |
| | 21 | 30-5-137 |
| | 22 | 30-8-112 |
| | 23 | 30-8-113 |
| | 24 | 30-8-114 |
| | 25 | 30-8-115 |
| | 26 | 30-8-116 |
| | 27 | 30-8-117 |
| | 28 | 30-8-118 |
| | 29 | 30-8-119 |
| | 30 | 30-8-120 |
| | 31 | 30-8-121 |
| | 32 | 30-8-122 |
| | 33 | 30-8-123 |
| | 34 | 30-8-124 |
| | 35 | 30-8-125 |
| | 36 | 30-8-126 |
| | 37 | 30-8-211 |
| | 38 | 30-8-212 |
| | 39 | 30-8-213 |
| | 40 | 30-8-214 |
| | 41 | 30-8-215 |
| | 42 | 30-8-216 |
| | 43 | 30-8-217 |
| | 44 | 30-8-218 |
| | 45 | 30-8-219 |
| | 46 | 30-8-220 |
| | 47 | 30-8-331 |
| | 48 | 30-8-332 |
| | 49 | 30-8-333 |
| | 50 | 30-8-334 |
| | 51 | 30-8-335 |
| | 52 | 30-8-336 |
| | 53 | 30-8-337 |
| | 54 | 30-8-411 |
| | 55 | 30-8-412 |
| | 56 | 30-8-413 |
| | 57 | 30-8-414 |
| | 58 | 30-8-415 |
| | 59 | 30-8-416 |
| | 60 | 30-8-417 |
| | 61 | 30-8-501 |
| | 62 | 30-8-502 |
| | 63 | 30-8-503 |
| | 64 | 30-8-504 |
| | 65 | 30-8-505 |
| | 66 | 30-8-506 |
| | 67 | 30-8-507 |
| | 68 | 30-8-508 |
| | 69 | 30-8-509 |
| | 70 | 30-8-510 |
| | 71 | 30-8-511 |
| | 72 | 30-9-103 |
| | 73 | 30-9-104 |
| | 74 | 30-9-105 |
| | 75 | 30-9-106 |
| | 76 | 30-9-115 |
| | 77 | 30-9-116 |
| | 78 | 30-9-203 |
| | 79 | 30-9-301 |
| | 80 | 30-9-302 |
| | 81 | 30-9-303 |
| | 82 | 30-9-304 |
| | 83 | 30-9-305 |
| | 84 | 30-9-306 |
| | 85 | 30-9-309 |
| | 86 | 30-9-312 |
| | 87 | 32-1-426 |
| | 88 | Repealer |
| | 89 | Codification instructions |
| 537 | 1 | 15-30-165 |
| | 2 | 15-30-166 |
| | 3 | 15-31-161 |
| | 4 | 15-31-162 |
| | 5 | 15-30-167 |
| | 6 | 15-1-230 |
| | 7 | Codification instruction |
| | 8 | Effective date — retreactive applicability |
| | 9 | Termination |
| 538 | 1 | 37-42-102 |
| | 2 | 75-5-1101 |
| | 3 | 75-5-1102 |
| | 4 | 75-5-1103 |
| | 5 | 75-5-1104 |
| | 6 | 75-5-1105 |
| | 7 | 75-5-1106 |
| | 8 | 75-5-1107 |
| | 9 | 75-5-1111 |
| | 10 | 75-5-1112 |
| | 11 | 75-5-1113 |
| | 12 | 75-5-1121 |
| | 13 | 75-6-201 |
| | 14 | 75-6-202 |
| | 15 | 75-6-203 |
| | 16 | 75-6-204 |
| | 17 | 75-6-205 |
| | 18 | 75-6-211 |
| | 19 | 75-6-212 |

HeinOnline -- 1997 vol. III 3924 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 20 | 75-6-226 |
| | 21 | 75-6-231 |
| | 22 | 75-6-232 |
| | 23 | 75-6-221 |
| | 24 | 75-6-222 |
| | 25 | 75-6-223 |
| | 26 | 75-6-224 |
| | 27 | Repealer |
| | 28 | Codification instruction |
| | 29 | Saving clause |
| | 30 | Effective date — applicability |
| 539 | 1 | 75-10-711 |
| | 2 | 75-10-723 |
| | 3 | 75-10-732 |
| | 4 | 75-10-736 |
| | 5 | 75-10-702(2) |
| | 6 | Codification instruction |
| | 7 | Applicability |
| | 8 | Effective date |
| 540 | 1 | 15-62-101 |
| | 2 | 15-62-102 |
| | 3 | 15-62-103 |
| | 4 | 15-62-201 |
| | 5 | 15-62-202 |
| | 6 | 20-25-901 |
| | 7 | 20-25-902 |
| | 8 | 15-62-203 |
| | 9 | 15-62-204 |
| | 10 | 15-62-205 |
| | 11 | 15-62-206 |
| | 12 | 15-30-111 |
| | 13 | Implementation of staggered terms |
| | 14 | Codification instruction |
| | 15 | Effective date |
| 541 | 1 | 75-5-103 |
| | 2 | 75-5-701 |
| | 3 | 75-5-702 |
| | 4 | 75-5-703 |
| | 5 | 75-5-704 |
| | 6 | 75-5-705 |
| | 7 | Codification instruction |
| | 8 | Effective date |
| 542 | 1 | Voided by sec. 7(2) (coordination section) |
| | 2 | Voided by sec. 7(2) (coordination section) |
| | 3 | Voided by sec. 7(2) (coordination section) |
| | 4 | Voided by sec. 7(2) (coordination section) |
| | 5 | Appropriation |
| | 6 | Codification instruction |
| | 7 | Coordination instruction |
| | 8 | Severability |
| | 9 | Effective dates |
| | 10 | Termination |
| 543 | 1 | 15-30-171 |
| | 2 | 15-30-172 |
| | 3 | 15-30-176 |
| | 4 | 15-30-177 |
| | 5 | 15-30-178 |
| | 6 | Retroactive applicability |
| | 7 | Effective date |
| 544 | 1 | 15-63-101 |
| | 2 | 15-63-102 |
| | 3 | 15-63-201 |
| | 4 | 15-63-202 |
| | 5 | 15-63-203 |
| | 6 | 15-63-204 |
| | 7 | 15-63-205 |
| | 8 | 15-30-111 |
| | 9 | Codification instruction |
| | 10 | Effective date |
| 545 | 1 | 15-31-151 |
| | 2 | 15-30-180 |
| | 3 | Codification instruction |
| | 4 | Applicability |
| 546 | 1 | 15-6-136 |
| | 2 | 16-3-201 |
| | 3 | 16-6-301 |
| 547 | 1 | 17-2-107 |
| | 2 | Effective date |
| 548 | 1 | 39-9-101 |
| | 2 | 39-9-102 |
| | 3 | 39-9-201 |
| | 4 | 39-9-204 |
| | 5 | 39-9-206 |
| | 6 | 39-9-207 |
| | 7 | 39-9-211 |
| | 8 | 39-9-301 |
| | 9 | 39-9-303 |
| | 10 | 39-9-401 |
| | 11 | 39-71-120 |
| | 12 | 39-71-401 |
| | 13 | Severability |
| | 14 | Repealer |
| | 15 | Appropriation |
| | 16 | Effective date |
| 549 | 1 | 2-15-1818 |
| | 2 | 2-18-103 |
| | 3 | 17-6-201 |
| | 4 | 17-6-302 |
| | 5 | 17-6-305 |
| | 6 | 17-6-308 |
| | 7 | 17-6-308 |
| | 8 | 17-6-503 |
| | 9 | 17-6-509 |
| | 10 | 17-6-510 |
| | 11 | 17-7-502 |
| | 12 | 90-8-201 |
| | 13 | Repealer |
| | 14 | Saving clause |
| | 15 | Coordination instruction |

HeinOnline -- 1997 vol. III 3925 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 16 | Effective dates |
| 550 | 1 | 7-6-501 |
| | 2 | 20-5-321 |
| | 3 | 20-7-422 |
| | 4 | 23-5-158 |
| | 5 | 41-3-205 |
| | 6 | 41-3-1101 |
| | 7 | 41-3-1102 |
| | 8 | 41-3-1103 |
| | 9 | 41-3-1104 |
| | 10 | 41-3-1114 |
| | 11 | 41-3-1122 |
| | 12 | 41-3-1132 |
| | 13 | 41-5-103 |
| | 14 | 41-5-201 |
| | 15 | 41-5-203 |
| | 16 | 41-5-204 |
| | 17 | Voided by sec. 78(2), Ch. 550 (coordination section) |
| | 18 | 41-5-206 |
| | 19 | 41-5-208 |
| | 20 | Voided by sec. 49(3)(d), Ch. 286 (coordination section) |
| | 21 | Voided by sec. 49(3)(d), Ch. 286 (coordination section) |
| | 22 | 41-5-304 |
| | 23 | Voided by sec. 49(3)(d), Ch. 286 (coordination section) |
| | 24 | Voided by sec. 49(3)(d), Ch. 286 (coordination section) |
| | 25 | 41-5-401 |
| | 26 | 41-5-403 |
| | 27 | 41-5-501 |
| | 28 | 41-5-511 |
| | 29 | 41-5-515 |
| | 30 | 41-5-521 |
| | 31 | 41-5-522 |
| | 32 | 41-5-1521 |
| | 33 | 41-5-523 |
| | 34 | 41-5-1513 |
| | 35 | 41-5-1522 |
| | 36 | 41-5-1504 |
| | 37 | 41-5-1523 |
| | 38 | 41-5-1524 |
| | 39 | 41-5-1503 |
| | 40 | 41-5-1422 |
| | 41 | 41-5-1525 |
| | 42 | 41-5-524 |
| | 43 | 41-5-525 |
| | 44 | Voided by sec. 49(3)(d), Ch. 286 (coordination section) |
| | 45 | 41-5-533 |
| | 46 | 41-5-603 |
| | 47 | 41-5-605 |
| | 48 | 41-5-703 |
| | 49 | 41-5-802 |
| | 50 | 41-5-1004 |
| | 51 | 41-5-1008 |
| | 52 | 41-5-1104 |
| | 53 | 41-5-1105 |
| | 54 | 45-5-624 |
| | 55 | 45-5-637 |
| | 56 | 46-18-256 |
| | 57 | 46-24-207 (renum. 41-5-1416) |
| | 58 | 52-2-211 |
| | 59 | 52-5-101 |
| | 60 | 52-5-102 |
| | 61 | 52-5-103 |
| | 62 | 52-5-107 |
| | 63 | 52-5-111 |
| | 64 | 52-5-113 |
| | 65 | 52-5-126 |
| | 66 | 52-5-127 |
| | 67 | 52-5-128 |
| | 68 | 52-5-129 |
| | 69 | 53-1-201 |
| | 70 | 53-1-203 |
| | 71 | 53-21-506 |
| | 72 | 41-5-1707 |
| | 73 | Intervention in delinquency pilot program — department study of youth placement costs — development of incremental scale — report to legislature — department responsibilities |
| | 74 | Repealer |
| | 75 | Funding coordination |
| | 76 | Directions to cede commissioner |
| | 77 | Codification instruction |
| | 78 | Coordination instruction |
| | 79 | Saving clause |
| | 80 | Severability |
| | 81 | Effective date |
| | 82 | Termination |
| 551 | 1 | Short title |
| | 2 | First level expenditures |
| | 3 | Severability |
| | 4 | Legislative audit costs |
| | 5 | Appropriation control |
| | 6 | Program definition |
| | 7 | Personal services funding — 2001 biennium |
| | 8 | Consumer price index changes |

HeinOnline -- 1997 vol. III 3926 1997

| Ch. | Sec. | MCA |
|---|---|---|
| | 9 | Expanding technologies to reduce travel expenditures |
| | 10 | Reduced dues |
| | 11 | Totals not appropriations |
| | 12 | Coordination instruction |
| | 13 | Effective date |
| | 14 | Appropriations |
| | 15 | Rates |
| 552 | 1 | 40-5-901 |
| | 2 | 40-5-906 |
| | 3 | 40-5-907 |
| | 4 | 40-5-908 |
| | 5 | 40-5-909 |
| | 6 | 40-5-910 |
| | 7 | 40-5-911 |
| | 8 | 40-5-921 |
| | 9 | 40-5-922 |
| | 10 | 40-5-923 |
| | 11 | 40-5-924 |
| | 12 | 40-5-275 |
| | 13 | 40-5-157 |
| | 14 | 19-2-909 |
| | 15 | 19-20-306 |
| | 16 | 19-2-1004 |
| | 17 | 19-18-612 |
| | 18 | 19-19-504 |
| | 19 | 19-20-706 |
| | 20 | 19-21-212 |
| | 21 | 25-13-608 |
| | 22 | 37-1-307 |
| | 23 | 40-1-107 |
| | 24 | 40-4-105 |
| | 25 | 40-4-204 |
| | 26 | 40-4-206 |
| | 27 | 40-5-103 |
| | 28 | 40-5-149 |
| | 29 | 40-5-151 |
| | 30 | 40-5-161 |
| | 31 | 40-5-162 |
| | 32 | 40-5-163 |
| | 33 | 40-5-164 |
| | 34 | 40-5-173 |
| | 35 | 40-5-188 |
| | 36 | 40-5-189 |
| | 37 | 40-5-194 |
| | 38 | 40-5-195 |
| | 39 | 40-5-196 |
| | 40 | 40-5-201 |
| | 41 | 40-5-203 |
| | 42 | 40-5-206 |
| | 43 | 40-5-210 |
| | 44 | 40-5-225 |
| | 45 | 40-5-226 |
| | 46 | 40-5-227 |
| | 47 | 40-5-232 |
| | 48 | 40-5-233 |
| | 49 | 40-5-235 |
| | 50 | 40-5-236 |
| | 51 | 40-5-237 |
| | 52 | 40-5-263 |
| | 53 | 40-5-264 |
| | 54 | 40-5-271 |
| | 55 | 40-5-273 |
| | 56 | 40-5-274 |
| | 57 | 40-5-302 |
| | 58 | 40-5-303 |
| | 59 | 40-5-304 |
| | 60 | 40-5-305 |
| | 61 | 40-5-306 |
| | 62 | 40-5-307 |
| | 63 | 40-5-308 |
| | 64 | 40-5-309 |
| | 65 | 40-5-310 |
| | 66 | 40-5-312 |
| | 67 | 40-5-313 |
| | 68 | 40-5-314 |
| | 69 | 40-5-315 |
| | 70 | 40-5-403 |
| | 71 | 40-5-404 |
| | 72 | 40-5-412 |
| | 73 | 40-5-413 |
| | 74 | 40-5-414 |
| | 75 | 40-5-421 |
| | 76 | 40-5-423 |
| | 77 | 40-5-443 |
| | 78 | 40-5-701 |
| | 79 | 40-5-702 |
| | 80 | 40-5-703 |
| | 81 | 40-5-704 |
| | 82 | 40-5-709 |
| | 83 | 40-5-710 |
| | 84 | 40-5-711 |
| | 85 | 40-6-102 |
| | 86 | 40-6-105 |
| | 87 | 40-6-111 |
| | 88 | 40-6-115 |
| | 89 | 40-6-116 |
| | 90 | 40-6-117 |
| | 91 | 50-15-210 |
| | 92 | 50-15-223 |
| | 93 | 50-15-403 |
| | 94 | 53-2-613 |
| | 95 | 61-5-107 |
| | 96 | 87-1-102 |
| | 97 | 87-1-108 |
| | 98 | Report to legislature |
| | 99 | Codification instruction |
| | 100 | Coordination instruction |
| | 101 | Severability |
| | 102 | Two-thirds vote required |
| | 103 | Effective dates |
| | 104 | Contingent termination — request for federal exemptions |

HeinOnline -- 1997 vol. III 3927 1997

# 1996 BALLOT ISSUES

| Const. Init. | Sec. | MCA |
|---|---|---|
| 123 | 1 | 27-1-1501 |
| | 2 | 27-1-1502 |
| | 3 | 27-1-1503 |
| | 4 | 27-1-1505 |
| | 5 | Codification instruction |
| | 6 | Effective date — applicability |
| 125 | 1 | 13-35-227 |
| | 2 | 13-37-250 |
| | 3 | Codification instruction |
| | 4 | Severability |